

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 25.09.2013

+ W.P.(C) 3604/2013

HARSH SALUJA

..... Petitioner

Through: Mr Rakesh Chaudhry and Mr Anil Gera, Advs.

versus

GOVT. OF NCT OF DELHI & OTHERS Respondents

Through: Mr Sushil K. Tekriwal and Mr A. Gosain, Advs. for R-1
Mr Vinay Sabharwal, Adv for Respondents 2 to 4

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court was a student of Salwan Public School. In the first term examination, the petitioner obtained 07 out of 100 marks in Economics and 26 out of 100 marks in Mathematics. In the second term, the petitioner got 34 out of 100 marks in Mathematics and 46 out of 100 marks in Economics. As per the instructions issued by Directorate of Education, Government of NCT of Delhi, which are binding on the school, in subjects, without practical work (Mathematics is a subject without practical work), while computing the marks in class XI as a whole, $\frac{3}{4}$ of the marks obtained in the second term examination

and the marks obtained in the first term examination out of 25 marks have to be taken into consideration. Computed accordingly, the petitioner obtained 25.5 marks in the second term and 6.5 marks in the first term, thereby making a total of 32 out of 100 marks in Mathematics. In Economics, as per the above-referred instructions of the Directorate of Education, 14/19 of the marks obtained in second term had to be added to the marks obtained in the project work out of 05 at school level plus marks obtained in the first term examination, out of 25 marks. Computed accordingly, the petitioner obtained 35.64 out of 100 marks in Economics.

2. Admittedly, the passed marks were 33 out of 100 in Mathematics as well as in Economics. However, the petitioner was detained in class XI, on the ground that he had failed in Mathematics as well as in Economics. The aforesaid decision was taken by the school on the basis of a uniform policy adopted by it to give equal weightage to the marks in the first term as well as marks in the second term in all subjects. Being aggrieved from his being detained in class XI, the petitioner is before this Court by way of this writ petition.

3. The first question which arises for consideration in this case is as to whether the respondent-Salwan Public School was entitled to adopt a

weightage/formula different from the formula/weightage contained in the instructions, issued by Directorate of Education. Vide Circular No.F.D.E/School/Promotion Rules/9/2001/18663-20963 dated 08.09.2001, Directorate of Education circulated instructions regarding assessment, evaluation and promotion of students from Class I to Class IX and Class XI. The said instructions were issued under Rule 41 of Delhi School Education Rules, 1973, which empowers the Administrator to issue detailed instructions on the advice of the Advisory Board regarding assessment, evaluation and promotion of students from one class to another. Having been issued in exercise of statutory powers conferred upon the Administrator under Rule 41 of Delhi School Education Rules, the aforesaid instructions are binding on the respondent-Salwan Public School, which in any case, never challenged the said instructions by way of appropriate proceedings. Instruction No. 37 of the above-referred instructions reads as under:-

“37. All Recognized unaided schools are required to comply with these instructions and no dilution of the criteria prescribed is permissible under any circumstances. If, however, a recognized Unaided school desires to have more stringent criteria than those prescribed in these instructions, it can do so provided it has sought and obtained the prior

approval of the Director of Education. All such requests must reach the Office of the Director of Education by 30th April of the session at that latest.”

4. Admittedly, Salwan Public School is a recognized unaided school. The school, therefore, is under an obligation to comply with the said instructions unless it adopts a more stringent criteria with the prior approval of the Directorate of Education. The request in this regard has to be submitted on or before 30th April of the relevant session. Moreover, the schools are required to bring the instructions to the notice of the students and their parents or guardians immediately on the commencement of the session and in any case by the 15th day of April. This is not the case of the respondent-school that it had taken prior approval of the Directorate of Education to adopt a criteria more stringent than the criteria stipulated in the instructions dated 08.09.2001. In the absence of approval from the Directorate of Education, the respondent-school could not have adopted a criteria more stringent than the criteria, notified by the Directorate. Therefore, any reliance upon the more stringent criteria adopted by the school would be wholly misplaced. The school, therefore, was under an obligation to adopt only the criteria notified by Directorate of Education, while computing the

performance of the students. Applying the aforesaid criteria, notified by Directorate of Education, the petitioner passed in Economics though he did not pass in Mathematics in the class XI examination.

Instructions No. 32 of the above-referred instructions dated 08.09.2001 reads as under:

“32. Compartment Examination: A student who is eligible to take the comprehensive test in order to be declared “passed” can be declared eligible for appearing at the compartment examination, provided he/she has obtained at least 20% marks in one failing subject in Class XI and in not more than two failing subjects in Classes IV to IX. In case the candidate gets at least 15% marks in failing subject(s) (not more than two in Classes IV to IX), he should get at least 40% marks in aggregate in the remaining subjects in order to become eligible for the compartment examination. Such a student shall be eligible to appear in the subject (s) at a subsequent examination to be held in the last week of April before the summer vacation and to be known as the “Compartment Examination”. If the student secures in the subject(s) in which he/she has taken the compartment examination, at least 33% marks disregarding the terminal test marks, he/she shall be declared successful in the compartment examination and promoted to the next higher class.”

Since the petitioner had passed in Economics on the basis of the criteria notified by Directorate of Education, he shall be deemed to have failed only in one subject, i.e., Mathematics in Class XI. Since admittedly, the petitioner obtained more than 20% marks in Mathematics, he was entitled to appear in the compartmental examination which the school is required to hold for the students, who are not able to pass in all the subjects. Admittedly, the respondent-school did not place the name of the petitioner in the list of the students who were to sit in the compartmental examination in Mathematics. The contention of the learned counsel for the respondent-school is that a student seeking to sit in the compartmental examination was required to submit a claim to the school for sitting in such examination. This is also his contention that a student who is seeking grace marks is not entitled to sit in the compartmental examination. I, however, find no merit in either of the contentions. A bare perusal of Instruction No. 32 would show that sitting in the compartmental examination is a matter of right for the student who is otherwise eligible to appear in such examination. Therefore, the school, in my view, ought to have placed the petitioner in compartment in Mathematics, while declaring his result for class XI. Instruction No. 35 on which reliance is placed by the learned counsel for

the respondent-school in support of his contention provides that grace marks up to maximum of 10 in all, shall be awarded to a student to reach the minimum required 33% of marks in each of the subject(s) to the condition that a minimum of 25% of marks shall be secured in each subject. The said clause also provides that no grace marks shall be awarded to the student taking the compartmental examination. This clause, in my view, does not, in any manner, advance the contention of the learned counsel for the respondent-school since the petitioner in the first place was never placed in compartment in Mathematics. This clause only debars a person from seeking grace marks if he chooses to take a compartmental examination. Since no grace marks were actually awarded to the petitioner, he could not have been precluded from appearing in the compartment examination. In fact as regards grace marks, the contention of the learned counsel for the respondent-school is that such marks are no more available to the students of class XI in view of the Circular No.DE5(43)/04/Exam 91-96 dated 08.02.2013, issued by Directorate of Education, which, inter alia reads as under:-

“Since Academic Session 2010-2011, students of class XI are being declared successful even if they fail in one of their main subjects provided they cleared an additional subject.

As CBSE guidelines do not allow a candidate to

offer a subject in class XII which he/she has not passed in class XI, it becomes compulsory for the students either to clear the main subject (in which he/she failed) through the Compartmental Examination or to repeat class XI. The relevant provision is as follows:

18 (iii) – “The candidate shall not offer a subject in Class XII which he has not studied and passed in Class XI”.

To avoid this complication, it has been decided that from the current Academic Session (2012-2013), only those students shall be declared successful in class XI who pass all the five main subjects of their respective streams. Although the results of additional subject will be reflected in the Progress Report yet it shall not be considered for promotion or detention”

5. I am in agreement with the learned counsel for the respondent-school that in view of the above-referred circular, which appears to be based on the instructions, issued by the Central Board of Secondary Education, the petitioner was not entitled to grace marks in Mathematics or any other subject, in class XI. As a necessary corollary to this, he was entitled to appear in the compartmental examination in Mathematics since grace marks could not have been awarded and in fact were never awarded to him.

6. A perusal of CBSE Circular No.CD/2009/COORD dated 12.05.2009 would show that the schools could not have adopted their

own criteria for the students in class XI since adopting their own pass criteria would be in violation of the Rules of Examination Bye-Laws which the schools affiliated to Central Board of Secondary Examination are duty bound to follow. This is yet another reason why respondent-Salwan Public School could not have adopted a criteria different from the criteria, notified by Directorate of Education.

7. For the reasons stated hereinabove, the writ petition is disposed of with a direction to the respondent-Salwan Public School to hold a compartmental examination in Mathematics for the petitioner within two weeks from today. The result of the said examination would be declared within one week thereafter and if the petitioner passes the said examination, he shall be duly promoted to Class XII of the school.

The writ petition stands disposed of. No orders as to costs.

V.K. JAIN, J

SEPTEMBER 25, 2013
BG