



2024:DHC:1807



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

+ **W.P.(C) 2760/2024**

MASTER SHAURYA PRATAP SINGH & ANR. ... Petitioners

Through: Mr. Mohinder J.S. Rupal, Mr. Hardik Rupal, Mr. Sangram Singh, Mr. Vikas Malhotra, Mr. Dinesh Tiwari and Mr. A.N. Shukla, Advs.

Versus

THE SOVEREIGN SCHOOL & ANR. Respondents

Through: Mr. Avadh Kaushik, Ms. Saloni Mahajan and Mr. Rishabh Kumar, Advs. for Respondents 1 and 2

Mr. Utkarsh Singh and Ms. Nikita Vir, Advs. on behalf of Mr. Santosh Kumar Tripathi, SC (Civil) for DoE – GNCTD

Mr. Atul Kumar and Ms. Aditi Gupta, Advs. for Respondent 4 – CBSE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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26.02.2024

1. The petitioners are brothers and study in Classes IX and XI in the Sovereign School, Rohini, Delhi (hereinafter referred to as “the School”).

2. The petitioners have not been allowed to appear in their final examinations of Classes IX and XI, owing to shortage in attendance. They, therefore, seek issuance of mandamus to the School to allow them to appear in their final Classes IX and XI examinations



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commencing from 1 March 2024.

3. The only case that the petition seeks to make out is that, owing to harassment by certain senior students, which involved physical scuffles, assaults and injuries, the petitioners were so traumatized that they were scared to attend the School and, therefore, had to remain away. Graphic details of the incidents which purportedly led to traumatization of the petitioners are provided in paras 8 to 22 of the writ petition. It is also submitted that the School administration on being approached in this regard also failed to lend a sympathetic ear or put in place any corrective measures.

4. The petitioners, in the circumstances, instituted a complaint in the P.S. Budh Vihar on 13 December 2023 on their alleged assaulters. PCR call was made, which led to registration of General Diary No. 0068A dated 13 December 2023 in Police Station Budh Vihar. Mr. Rupal, learned Counsel for the petitioners submits that, on 17 December 2023, the parents of the students, who had purportedly assaulted and harassed the petitioners, prayed for forgiveness in the police station. Thus, Mr. Rupal submits that the allegations, of the petitioners of their having been subjected to bullying, torture and physical and mental harassment stood substantiated.

5. Mr. Rupal also points that that there has never been any incident, earlier in the academic career of the petitioners who have been in the School since the beginning, of their having been short in attendance. The shortage in attendance in the year 2023-24 is, therefore, clearly attributable to the harassment and physical and



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mental humiliation that the petitioners had to undergo.

6. It is in these circumstances that the petitioners have moved the present writ petition before this Court, seeking quashing of various notices issued by the School to the petitioners on 6 September 2023, 10 September 2023, 30 November 2023, 30 December 2023 and 31 January 2024 alleging that, owing to shortage of attendance, it would not be possible to permit them to appear in the final examinations of their respective years. Consequently, the petitioners have also sought permission to be allowed to appear in the said examinations.

7. I have heard Mr. Rupal, learned Counsel for the petitioners at length.

8. The relevant provisions relating to attendance of students from Classes IX to XII are to be found in the various sub paras of para 18 of Order dated 9 October 2019 titled “Strengthening Assessment and Evaluation Practices and Promotion Policy for Classes IX to XII with effect from academic Sessions 2019-20” (hereinafter referred to as “the Attendance Policy”) issued by the Directorate of Education (DoE). Clauses (f) to (j) of para 18 of the Attendance Policy read as under:

“(f) If the shortage of attendance at the time of the Annual examination is not more than 10%, in special circumstances of the case and if the Head of the School is satisfied with the genuineness of the reasons submitted by the student and his/her parent or guardian in written application for condonation of shortage to take the Annual Exam, the shortage of attendance up to 10% may be condoned by concerned Head of School. Application for condonation of shortage of attendance shall be submitted by the parent or the guardian of the student to the Head of the school by the last day of January.



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(g) If the shortage of attendance at the time of Annual Examination is more than 10% but not more than 15% and the Head of the school is satisfied with the genuineness of the reasons of shortage submitted by the student and his parents or guardian, the Head of School may recommend, giving concrete and satisfactory reasons in writing thereof, his case for condonation of shortage of attendance to the DDE(Zone) concerned who may approve such condonation at his discretion and allow the student to take the Annual Examination. Application for condonation of attendance shall be submitted by the parent or the guardian of the student to the Head of school by the last day of January.

(h) If the shortage of attendance at the time of the Annual Examination, for whatever reason or reasons, is more than 15%, i.e. the actual attendance of the student is less than 60% of the total attendance during the session, condonation of the shortage of attendance shall not be allowed, the student shall not be eligible to appear at the Annual Examination and shall be detained except in such cases as mentioned in the instructions.

(i) The Director (Education) at his/her discretion, may also make further condonation upto a maximum of 10% in the required minimum attendance percentage as a condition of eligibility to appear at the Annual Examination in exceptional circumstances created on medical grounds, such as student suffering from serious diseases like cancer, AIDS, TB or similar serious disease requiring long period of hospitalization or any other extraordinary circumstances.

(j) The Director (Education), at his/her discretion, may make further relaxation upto a maximum of 10% in the required minimum attendance percentage as a condition of eligibility to appear at the Annual Examination in case of natural calamities like floods, earthquakes, epidemics etc. or in cases of dislocation of studies due to Government orders or riots or other such events in respect of students of schools located in the affected areas or the students residing in such areas provided that such a calamity had disrupted normal life in the concerned area for a period of more than 15 days. But such discretion shall not be used in individual cases.”

9. The scheme of the aforesaid sub clauses of Clause 18 is clear and categorical. Normally, the requisite minimum percentage of attendance to enable a student to undertake the final examination for

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Class IX to XII is 75%. The Head of the School is empowered to condone upto 10% shortage. If the shortage is between 10% and 15%, the Head of the School, if he is satisfied with the genuineness of reasons of the shortage submitted by the student, may recommend condonation of the shortage of attendance to the DDE (Zone), who is empowered to condone such shortage.

10. If the shortage in attendance is more than 15%, i.e. if the actual attendance of the student is less than 60% of the total attendance, condonation of attendance is ordinarily not to be allowed except in cases “as mentioned in the instructions”. Neither side has been able to draw my attention to any independent “instructions” governing the issue, other than the aforesaid Order dated 9 October 2019 itself. Para 20 of the order, however, significantly, refers to the provisions of the Order themselves as the “instructions” by providing thus:

“20. All the Govt, Govt Aided and Recognized Un-Aided Schools shall bring *these instructions* to the notice of the students and their parents/guardians immediately on the commencement of the session and in any case, by 15th of April or within 15 days of issuing this order for current academic session.”

11. The “cases as mentioned in the instructions”, to which sub clause (h) of Clause 18 refers are, therefore, to be found in sub-clauses (i) and (j) which follow. Sub clause (i) permits a further 10% condonation of shortage in attendance, i.e., of allowing attendance upto 50%, if the student is suffering from a serious medical ailment. Clause (j) permits a further 10% reduction in the attendance requirement in the case of natural calamities like floods, earthquakes,



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epidemics or dislocation on account of factors such as riots etc.

12. The scheme, therefore, is thus:

- (i) Normal requirement – 75%.
- (ii) Relaxation upto 65% – by HOD if satisfied that the grounds for shortage are genuine.
- (iii) Relaxation upto 60% – by DDE (Zone) on recommendation of HOD.
- (iv) Relaxation upto 50% – by the Director (Education) in case the student is suffering from a serious medical ailment.
- (v) Relaxation upto 40% – in the case of natural calamities like floods, earthquakes or where the study disrupted due to riots etc.

13. In no case, therefore, do the provisions applicable to shortage of attendance permit undertaking of the final examination by students in Class IX and XI, where the attendance of the students is less than 40%. Further, the entitlement of students with attendance below 50% to undertake the examination is also subject to the shortfall being attributable to natural calamities, riots or the like. No such case, quite obviously, exists in the present instance.

14. Admittedly, Petitioner 1 attended only 43.6% classes in Class IX and Petitioner 2 attended only 36.7% classes in Class XI.



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15. It is well settled that a Court cannot direct an authority to act in violation of the law. The Attendance Policy constitutes the applicable law insofar as the shortage of attendance by students studying in Class IX to XII, governing by the CBSE are concerned. This Court cannot, howsoever sympathetic an approach it adopts, direct the DoE to permit the petitioners to undertake their Class IX and XI final examinations, as that would amount to issuing a mandamus to the authority to act in violation of Rule 18(f) to (j) of the Admission Policy as contained in the order dated 9 October 2019 of the DoE.

16. Mr. Rupal also drew my attention to Clause 18(k) of the Admission Policy, which reads thus:

“(k) Head of School will ensure that no student of classes IX to XII (Below the attendance of 60%) will appear in the examination without the approval of the Director (Education). As per Rule 35 of DSEAR- 1973, the name of student may be struck off from the roll by head of school on account of continued absence without leave for six consecutive days by a student after giving the parents or guardian of such student a reasonable opportunity of showing cause against proposed action.”

17. Clause 18(k) cannot come to the rescue of the petitioners, as it merely states that no student of Classes IX to XII, who has attendance below 60% would appear in the examination without the approval of the DoE. Mr. Rupal submits that the School ought, at the very least, to have forwarded the petitioners’ representations to the DoE. Instead, they forwarded the representations to the CBSE, which has nothing to do in the matter.

18. Even if it is assumed that the petitioners’ representations ought

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to have been forwarded to the DoE, the DoE could also not have done anything in the matter, as both the petitioners' attendance fell short of the minimum of 50%. Clause 18(k) obviously applies only to students who have, to their credit, attendance between 50% and 60%. In the case of such students, the Head of the School is required to ensure that the student does not appear in the examinations without the approval of the Director (Education).

19. In view of the applicable rule position, the allegations regarding the petitioners having been bullied and traumatized by their seniors pales into insignificance, at least insofar as the right of the petitioners to undertake their final examinations is concerned. Besides, none of the students who are alleged to have traumatised the petitioners has been impleaded as a party. The allegations against them cannot, therefore, obviously be examined without their even being impleaded in these proceedings. Besides, examination of said allegations would involve a penetrative analysis of disputed questions of fact, which a Court cannot undertake under Article 226 of the Constitution of India.

20. In any event, even if these allegations were to be regarded as true, that would not empower this Court to allow the petitioners to undertake their final examinations, without having to their credit even the bare minimum attendance of 50% that the Attendance Policy requires.

Conclusion

21. There being no provision which permits a student with less than



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50% attendance to appear in the final examination in Classes IX and XI, save and except where the shortfall in attendance is attributable to natural calamities, riots, or the like, the Court regrets that it is not able to come to the aid of the petitioners.

22. The petition is, therefore, dismissed *in limine*.

23. *Dasti*.

CM APPL. 11194/2024 and CM APPL. 11195/2024

24. These applications do not survive for consideration and stand disposed of.

C.HARI SHANKAR, J

FEBRUARY 26, 2024

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[Click here to check corrigendum, if any](#)