

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P.Nos.9888, 14838 to 14850 and 15017 of 2015

Parents Association of Sainik School
Amaravathinagar (PASSAM),
Rep. By its President,
S.Eswaran, S/o.Sellappagounder,
No.21, Nehru Street Extn.,
Arumaikaran Thottam,
15 Velampalayam, Tirupur - 52. ...Petitioner in W.P.No.9888 of 2015

C.Gowri Shankar,
Minor rep by his Father
K.P.Chandrasekaran. ...Petitioner in W.P.No.14838 of 2015

K.Sanjay Kumar
Minor rep by his Father
T.Kanthan ...Petitioner in W.P.No.14839 of 2015

R.Gowtham Nivass
Minor rep by his Father
V.Ramesh ...Petitioner in W.P.No.14840 of 2015

V.K.Suji Yokesh
Minor rep by his Father
V.K.Kalai ...Petitioner in W.P.No.14841 of 2015

S.Dinesh
Minor rep by his Father
T.Sakthivel ...Petitioner in W.P.No.14842 of 2015

S.Karunai Devan
Minor rep by his Mother
S.Kalavathi ...Petitioner in W.P.No.14843 of 2015

V.S.Ranjith Prabhu
Minor rep by his Father
V.K.Shanmugam ...Petitioner in W.P.No.14844 of 2015

D.Rohan
Minor rep by his Father

G.Dhanapal

...Petitioner in W.P.No.14845 of 2015

S.Saravanan

Minor rep by his Father
T.V.Sethuramasamy.

...Petitioner in W.P.No.14846 of 2015

M.E.Sanjay

Minor rep by his Mother
V.Sangeetha

...Petitioner in W.P.No.14847 of 2015

M.Vignesh

Minor rep by his Father
V.Muruganantham

...Petitioner in W.P.No.14848 of 2015

B.Jaya Surya

Minor rep by his Father
S.R.Balasubramaniam

...Petitioner in W.P.No.14849 of 2015

R.Suraj

Minor rep by his Father
H.Rajkumar

...Petitioner in W.P.No.14850 of 2015

R.Vijayakarthish

Minor rep by his Mother
T.Amuthaveni

...Petitioner in W.P.No.15017 of 2015

Vs.

1.The Principal,
Sainik School,
Amaravathinagar,
Udumalpet Taluk,
Tirupur District.

2.The Headmaster,
Sainik School, Amaravathinagar,
Udumalpet Taluk,
Tirupur District.

3.The Joint Secretary (Trg & CAO),
E Block Dhalousie Road,
Sainik School Society,
Ministry of Defence, New Delhi - 110 011.

4.The Inspecting Officer,
Sainik School Society,
Ministry of Defence,
R No.G-101, D-1 Wing,
Sena Bhawan, New Delhi - 110 011.

5.The Regional Officer,
Central Board of Secondary Education (CBSE),
No.3 (Old No.1630A), J Block,
16th Main Road, Anna Nagar (West),
Chennai - 600 040.

6.Commandant, MRC & Chairman,
Local Board of Administration (LBA),
Sainik School, Amaravathinagar,
Wellington, Nilgiris District.

7.The District Collector &
LBA Member, Sainik School,
Tirupur District. ...Respondents 1 to 7 in all the petitions

8.The Director of School Education,
DPI Compound,
College Road, Chennai - 600 006.

9.The Principal Secretary,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

... Respondents 8 & 9 in W.P.9888/2015

... 8th Respondent in W.P.No.15017/15

V.s.Baskaran
Parent Member & LBA Members,
Sainik School, Amaravathinagar,
Udumalpet Taluk, Tirupur District.

C.Mahendran,
Member of Parliament, Pollachi Constituency &
Member of Local Board of Administration(LBA)
Sainik School,
No.11,Rajendra Road,
Udumalpet, Tirupur District.

...8th and 9th Respondent in W.P.Nos.14838
to 14850 of 2015

PRAYER IN W.P.No.9888 of 2015: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of mandamus directing the respondents 1 and 3 to consider the petitioner's representation dated 25.03.2015 and permit the children of the petitioner association members to continue their study in the first respondent School until completion of +2 course.

W.P.Nos.14838 to 14850 of 2015:

Writ Petition filed under Article 226 of Constitution of India

praying to issue Writ of mandamus directing the 1st respondent herein to follow the CBSE Rules for promotion of the petitioners from class XI to class XII based on the Report Submitted before this court as to the marks scored by the petitioners in revaluation of answer scripts in +1 subjects namely Maths, Physics, Chemistry & Computer Science concerning Terminal and annual examinations held in the academic year 2014-15.

W.P.No.15107 of 2015:

Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of declaration direction that the ouster of the petitioner from the 1st respondents school by issuing the Transfer Certificate dated 26.3.2015 as illegal and unconstitutional and further direct the reinstatement of the petitioner in the 1st respondents school to pursue +2 course in the academic year 2015-16 as requested in the representation dated 11.5.2015 made to the 1st respondent herein.

W.P.No.9888 of 2015

For Petitioner : Mr.P.M.Duraiswamy
For R1 to R4 & R6 : Mr.Su.Srinivasan,
Asst. Solicitor General of India
For R5 : Mr.G.Nagarajan
For R7 to R9 : Mr.A.Kumar, Spl.GP

W.P.Nos.14838 to 14850 of 2015

For Petitioner : Mr.P.M.Duraiswamy
For R1 to R4 & R6 : Mr.Su.Srinivasan,
Asst. Solicitor General of India
For R5 : Mr.G.Nagarajan
For R7 : Mr.A.Kumar, Spl.GP
For R8 : Mr.P.Raja

W.P.No.15017 of 2015

For Petitioner : Mr.P.M.Duraiswamy
For R1 to R4 & R6 : Mr.Su.Srinivasan,
Asst. Solicitor General of India
For R5 : Mr.G.Nagarajan
For R7 & R8 : Mr.A.Kumar, Spl.GP

COMMON ORDER

W.P.No.9888 of 2015 has been filed by the Parents'

Association of the Sainik School Amaravathinagar (PASSAM) seeking a direction to the respondents 1 and 3 to consider their representation dated 25.03.2015 and permit the children of the Petitioner Association Members to continue their study in the first respondent School until completion of +2 course.

2. W.P.Nos.14838 to 14850 of 2015 have been filed by the petitioners seeking a direction to the first respondent to follow the CBSE Rules for the purpose of promoting from Class XI to Class XII by re-valuation of their answer sheets.

3. W.P.No.15017 of 2015 has been filed by the petitioner seeking a direction to the first respondent school to reinstate him to pursue the +2 Course in the academic year 2015-16.

4. As all the issues are interconnected between the students on the one hand and first respondent School on the other hand, they are taken up together and disposed of by this common order.

5. The first respondent Sainik School is one among the 25 Schools established all over the India under the aegis of Ministry of Defence. The object of the scheme appears to be one of preparing the cadets academically, physically and mentally fit for entry into the National Defence Academy and also to remove the Regional imbalance. The School has adopted its own Bye-Laws. The School also comes under the purview of the Central Board of Secondary Education (CBSE).

6. All the petitioners have completed 11th standard and some of them have got less than 33% as required under the CBSE Regulation. However, all of them have got less than 40% as required under the Bye-Laws of the School. Thus, all of them were not allowed to go into the 12th standard.

7. The petitioner in W.P.No.15017 of 2015 has been given the Transfer Certificate (TC). However, he could not join in any other school based upon the CBSE Regulation. Therefore, he has come forward with the present writ petition.

8. Learned counsel for the petitioners submitted that as per the Rules 40.1(vi) and 41.1(vi) of the Examination Bye-Laws of CBSE, 33% of pass marks in each subject of examination would be sufficient. Insofar as the students, who have got less than 33%, it was admitted by the School to have a re-valuation. Thus, the School cannot be allowed to wriggle out of the said statement. Even the copies of the answer sheets of the students have not been furnished quoting the pendency of the writ petition. Under the Right to Information Act, the students are entitled to have copies of the same, as it is they who wrote the examination.

9. Learned Assistant Solicitor General of India and the counsel appearing for the respondents 1 to 4 and 6 submitted that the

object of the school is different. Therefore, Bye-Laws of the CBSE along with the Rules and Regulations do not have any application to the case on hand. The School is wholly 100 percent residential. The students are admitted only at Class VI and IX through All India Sainik School Entrance Examination. There is a larger public interest involved and therefore, the Right to Information Act does not have any application to the case on hand. The petitioners are seeking relief, which has not been sought for in the writ petitions based upon the averments raised. As the quality of the School is to be maintained, no interference is called for.

10. Learned counsel appearing for the CBSE submitted that appropriate directions have already been issued to the Heads of Institutions affiliated to CBSE to follow the Rules 40.1(vi) and 41.1(vi) of the Examination Bye-Laws of the CBSE. Similarly, on 28.06.2012, all the Heads of Institutions have been advised to strictly adhere to the amended Rule 8(vi), which mandates that no student will have to be removed except the situation indicated therein. Thus, the action of the first respondent School cannot be sustained in the eye of law.

11. On 12.05.2009, the following communication signed by the Controller of Examination was addressed to all the Heads of Institutions. Relevant portion of the said communication is extracted below:

"As you are aware that the Board has prescribed pass criteria for Class IX & XI in the Examination Bye-Laws of CBSE and the same is as under:-

Rule 40.1(vi) "in order to be declared as having passed the Class XI Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of examination shall be 33%. In case of subject involving practical work a candidate must obtain 33% marks in theory and 33% in practical separately in addition to 33% marks aggregate in order to qualify in that subject. "

Rule 41.1(vi) "in order to be declared as having passed in Class IX Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of the examination shall be 33%."

It is learnt that some schools have framed pass criteria on their own which leads detention of a large number of students in Class IX&XI. This is clear violation of the Rules of Examination Bye-Laws which the schools are supposed to abide by in its true spirit. This is not a healthy practice and, therefore, must be stopped

forthwith.

It is, therefore, reiterated that the pass criteria as laid down by the CBSE under Rules 40.1(vi) and 41.1(vi) be implemented by all the Schools.

Non-compliance of the instructions would be viewed seriously and the Board will be constrained to take stern action against the erring Schools to protect the interest of the students' concerned."

12. Similarly, another communication dated 28.06.2012 signed by the Controller of Examinations was addressed to all the Heads of Institutions. Relevant portion of the said communication is extracted below:

"II. Issuance of Transfer Certificate only on the grounds as stated in Rule 8(vi) of the Examination Bye-Laws.

It has come to the notice of the Board that some schools deliberately issue Transfer Certificates to students especially in Classes IX and XI to show high achievement record in Classes X and XII. Heads of the Institutions are requested to desist from this practice and no student should be forced to leave the school especially in Classes IX to XII except on the grounds as stated in the amended rule 8(vi) of the Examination Bye-laws which is as under:

Existing Rule	Amended Rule
8(vi) a student leaving his school at the end of a session or who is permitted to leave his school during the session shall on a payment of all dues, receive an authenticated copy of the Transfer Certificate up to date. A Duplicate copy may be issued if the head of the institution is satisfied that the original is lost but it shall always be so marked.	8(vi) a student leaving his school at the end of a session or who is permitted to leave his school during the session on account of migration from one city/state to another on the transfer of the parent(s) or shifting of their families from one place to another or parents' request, especially in classes IX/X/XI/XII, as the case may be, shall on payment of all dues, receive an authenticated copy of the Transfer Certificate up to date. A Duplicate copy may be issued if the head of the institution is satisfied that the original is lost but it shall always be so marked.

13. The above said communications have been reiterated in the counter affidavit filed by the CBSE. Admittedly, the first respondent School comes under the purview of the CBSE. Thus, it cannot follow its own Bye-Laws contrary to the Examination Bye-Laws of CBSE.

14. The development of a student has to be seen as a whole. While one can appreciate the efforts of the first respondent School in giving physical and mental training, merely because a student has not reached the academic standard fixed by it as desired, he/she cannot be prevented from going into the next class contrary to the Bye-Laws of the CBSE. Curiously, the above said communication dated 28.06.2012 signed by the Controller of Examinations has not been challenged. Once the first respondent School is coming under the affiliation of CBSE, it is bound to follow the same in letter and spirit. It appears that the selection of the Students to the Ministry of Defence is meager. There is no bar for other students to participate in the selection process. It is also not disputed that the selection has been made based upon the merit. Thus, once the selection is made both at 6th standard and 9th standard, then it is the duty of the Institution to see that the students are well equipped to get into the Ministry of Defence. A moral responsibility is imposed upon the Institution qua its wards. It is only a preparation for entering into the Armed Force. An academic performance is one of the factors and not the sole one. Thus, the approach of the first respondent School, though it has been followed for a number of years in following its own Bye-Laws, cannot be accepted as a correct one in the eye of law. A student is like a blossom flower to be nourished by the Institution.

15. Coming to the facts of the case, this Court is of the view that inasmuch as the Bye-Laws of the CBSE are binding on the first respondent School, such of the students/petitioners, who satisfied the same, cannot be prevented from going into the 12th standard. Incidentally, they cannot be asked to go away from the School. The said action would be contrary to the amended Rule 8(vi) of the Examination Bye-Laws of CBSE. It is to be seen that an entry into the Defence Force is not an automatic one. It is based upon the ability of the students to clear the examination proposed for the said purpose. As stated above, such an examination is meant to be written by another student other than the first respondent School students, being open in nature. Therefore, such of the students/writ petitioners, who have satisfied the parameters as fixed by the CBSE in Rules 40.1(vi) and 41.1(vi) of the Examination Bye-Laws of CBSE, will have to be allowed to continue in the 12th standard by the first respondent School. Thus, a direction is issued to the first respondent School to allow such students to continue in the 12th standard.

16. Students, who have not obtained 33% of marks as per the

Examination Bye-Laws of CBSE, cannot be allowed to continue in the 12th standard. Therefore, the contention of the learned counsel for the petitioners that the petitioners are entitled to get grace marks has no factual basis, in the light of the Examination Bye-Laws of CBSE as discussed above. As rightly submitted by the learned counsel for the CBSE, there is no provision for awarding grace marks. However, such of those students cannot be sent away by the first respondent School, but, they have to undergo the 11th standard once again. Besides, the request made for copies of the examination answer sheets is also rejected, as the same cannot be looked into in the writ petition in the light of the objection. Therefore, those students who have got less than 33% and not satisfied the Rules 40.1 (vi) and 41.1(vi) of the Examination Bye-Laws of CBSE, cannot be allowed to go into the 12th standard, but, the first respondent will have to permit them to redo the 11th standard.

17. Though it is submitted by the learned counsel for the petitioners that the first respondent School, having accepted to re-value the papers, cannot be allowed to wriggle out of the same, this Court is not inclined to accept such submission. It appears that the first respondent School was made to accept the said request in pursuant to the meeting held in a changed atmosphere. In the absence of any statutory right on behalf of the petitioner with corresponding duty on the first respondent, this Court is unable to pass appropriate orders directing the first respondent School to re-value the examination papers of the petitioner. There is also no provision under the Bye-Laws of the CBSE for re-doing the said exercise. This Court finds no malice or arbitrariness in the evaluation done by the first respondent School and hence, the said request of the petitioner is rejected.

18. Coming to the writ petition filed in W.P.No.15017 of 2015, though the petitioner has received the Transfer Certificate (TC), he could not join in any other school in 12th standard. It is stated that he has secured more than 33%, thus, satisfied Rules 40.1 (vi) and 41.1(vi) of the Examination Bye-Laws of the CBSE. However, he has been sent out based upon the Bye-Laws of the first respondent School. In other words, but for the Bye-Laws, the said student would have continued in the said School. Therefore, if the petitioner has reached the norms as per Rules 40.1(vi) and 41.1(vi) of the Examination Bye-Laws of CBSE, then he should be allowed to continue in the 12th standard by the first respondent School. However, he cannot be denied admission merely on the ground that he has received the TC. It is made clear that if the said petitioner has got less than 33% as per the Examination Bye-Laws of CBSE, then he would be allowed to continue in the 11th standard and not be allowed in the 12th standard. It is further made clear that if the TC has been given based upon the discretionary power exercised by the School as per its own Bye-Laws by awarding more marks, then the same will not be taken in favour of the petitioner in view of the above said findings, for, the said Bye-Laws cannot have any precedence over the Examination

Bye-Laws of CBSE. Insofar as the request of the petitioner made under the RTI Act, it is open to him to work out his remedy in the manner known to law.

19. In fine, all the writ petitions stand disposed of in the light of the above said observations and directions. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

rkm

To

- 1.The Principal,
Sainik School, Amaravathinagar,
Udumapet Taluk, Tirupur District.
- 2.The Headmaster,
Sainik School, Amaravathinagar,
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- 3.The Joint Secretary (Trg & CAO),
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- 4.The Inspecting Officer,
Sainik School Society, Ministry of Defence,
R No.G-101, D-1 Wing,
Sena Bhawan, New Delhi - 110 011.
- 5.The Regional Officer,
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- 6.Commandant, MRC & Chairman,
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- 7.The District Collector &
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8.The Director of School Education,
DPI Compound,
College Road, Chennai - 600 006.

9.The Principal Secretary,
School Education Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.

1 cc to Government Pleader.Sr.No.48098

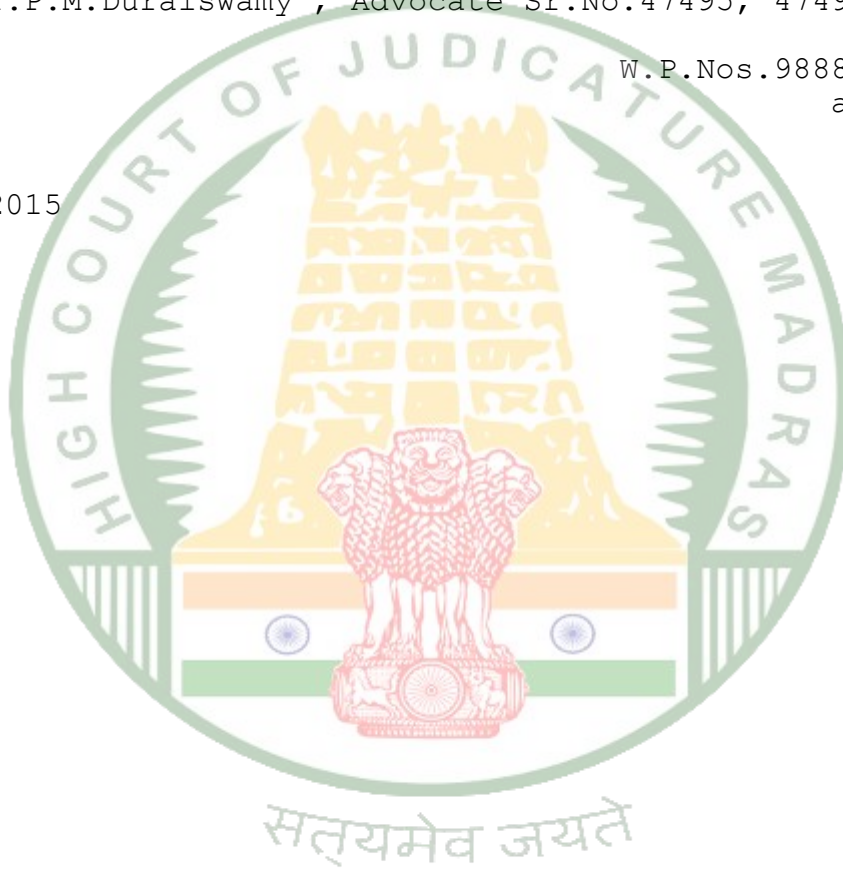
1 cc to Mr.G.Nagarajan , Advocate Sr.No.48001

2 cc to Mr.Su.Srinivasan, , Advocate Sr.No.47479 & 47480

3 cc to Mr.P.M.Duraiswamy , Advocate Sr.No.47495, 47494 & 47493

W.P.Nos.9888, 14838 to 14850
and 15017 of 2015

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PMK.21.9.2015



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