

CWP No.8009 of 2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.8009 of 2015
Date of decision:03.08.2015**

Master Satyam Gandhi

...Petitioner

Versus

Union Territory, Chandigarh and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Varun Katyal, Advocate, for
Mr. Rajan Khetarpal, Advocate, for the petitioner.

Mr. Vishal Sodhi, advocate,
for respondents no.1 and 2.

Ms. Alka Sarin, Advocate,
for respondent no.3.

Rakesh Kumar Jain, J.

The petitioner has prayed for a writ in the nature of *mandamus*, directing the respondents to admit him in Class XI in the St. John's School, Sector-26, Chandigarh (hereinafter referred to as the “respondent-school”).

The petitioner was a student of the respondent-school, which is affiliated with the CBSE and passed his 10th class from it. According to him, he was interviewed on 24.03.2015 for the purpose of admission to Class XI. At the time of interview, the petitioner was asked to opt for the stream in which he would like to take admission. The petitioner preferred the medical stream but it was declined by the respondent-school on the ground that he is ineligible for the said stream because of his pre-board

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result. The petitioner allegedly requested to admit him in any other stream as per his eligibility, but when the final list was prepared and displayed on 29.03.2015, on the notice board of the respondent-school, the name of the petitioner was conspicuously absent therein. It is further alleged that the petitioner then came to know that the respondent-school has started taking classes of Class XI from 13.04.2015. It is alleged that father of the petitioner made a representation to the respondent-school on 23.04.2015, but no action was taken. Consequently, the present petition has been filed in which it is averred that the petitioner is a brilliant student who has been deprived of his right to education in the same school from where he has passed his Class X and cannot be denied admission to Class XI to which he has a right being an old student of the respondent-school. It is further alleged that the writ petition against the respondent-school is also maintainable as it is performing the public function of imparting education.

After notice, the respondent-school has filed its written statement in which it is averred that it is a private unaided minority educational institution and is not amenable to the writ jurisdiction of this Court. It is further averred that the respondent-school had started Class XI & XII in the year 2011-2012, after getting permission from the CBSE, upgrading the school to senior secondary school, otherwise upto the session 2010-2011, the school was only upto Class X.

It is further averred that the petitioner joined the school in the academic session 2010-2011 and for admission in the current year, a circular dated 13.05.2014 was issued by the respondent-school, clearly

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stating that all students cannot be accommodated in Class XI because of the space constraint and availability of limited seats in Class XI as the four sections of Class X have been reduced to two sections in Class XI and the shortlisting was to be done on the basis of students' academic performance and grades in the co-scholastic areas, especially attitude and values. The parents of the petitioner duly acknowledged the said circular and sent its receipt to the respondent-school on 14.05.2014.

The petitioner applied for admission in Class XI in medical stream and as per aptitude test conducted by the school, the petitioner had an aptitude for commerce. It is also averred that the petitioner had even forged the signatures of his both father and mother on the admission form as they are different in the school record. Further, counselling for admission to Class XI for the academic year 2015-16 was held on 18.02.2015 and 19.02.2015 and since the petitioner was not found to have the aptitude for medical stream, therefore, he was offered a seat in the commerce stream, to which he had categorically refused. On 23.03.2015, the list of eligible students for admission in Class XI was put up on the school notice board and in a few days, the admission process was completed for the main stream students. On 06.04.2015, mother of the petitioner met the Senior School Coordinator and requested that the petitioner may be granted admission in commerce stream, but it was pointed out by the Coordinator that the admissions even in the commerce stream were also over at that time. However, the Coordinator suggested to make an application to the school for admitting the petitioner in commerce stream, if the seats are available.

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Accordingly, the letter was written by the mother of the petitioner on 06.04.2015, but in the absence of availability of any seat in the commerce stream at that time, the admission cannot be granted. On 10.04.2015, orientation for Class XI students was held and the classes commenced w.e.f. 13.04.2015. Father of the petitioner had submitted a representation to the Principal of the school, who was informed in clear terms that the admission of Class XI has already been over and at that point of time there was no seat available with the respondent-school. However, as and when a vacancy arises, the petitioner would be considered for admission in commerce stream on the basis of merit. It is further averred in the reply that the school authorities has not admitted even a single student from outside the school into Class XI for the academic session 2015-16 because of constraint of seats and because of the fact that the first preference is always given to the students of the school.

The petitioner filed rejoinder to the reply filed by the respondent-school, in which it is averred that the respondent-school has completed the admission process in violation of Clause 7.4 of the Examination Bye-Laws of CBSE, which is reproduced as under:-

“7.4 Admission to Class XI in a school shall be open to such a student who has:

(a) obtained minimum Grade D in at least five subjects (excluding the 6th additional subject) under Scholastic Area A as per the Scheme of Studies and a Qualifying Certificate/Grade-sheet cum Certificate of

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Performance at the Secondary School (Class X)
Examination conducted by this Board/School affiliated
to this Board;

(b) has passed an equivalent examination conducted
by any other recognized Board of Secondary
Education/Indian University and recognized by this
Board as equivalent to its secondary school examination;
and”

It is further averred that on 26.03.2015, mother of the petitioner
met the Coordinator of the respondent-school and made a written
representation on the subject of admission of old student that earlier he had
applied for medical stream and could not get admission, but now he has
changed his mind to opt for commerce.

The respondent-school also filed a short affidavit of its
Principal in response to the rejoinder filed by the petitioner, in which it is
averred that respondent no.4 has already permitted the practice of
provisional admission in Class XI by its letter dated 30.03.2006 before
announcement of result of Class X. It was reiterated that because of the
space crunch and reduction of four sections of Class X into two sections of
Class XI, only the shortlisted candidates would be given admission on the
basis of their academic performance and grades in the co-scholastic areas,
especially attitude and values.

I have heard learned counsel for the parties and examined the
available record with their able assistance.

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Even if the respondent-school is a minority educational institution, but in view of the latest decision of the Supreme Court in the case of **Ramesh Ahluwalia vs. State of Punjab and others**, Civil Appeal No.6634 of 2012, decided on 13.09.2012, it is amenable to the writ jurisdiction for performance of the public function of imparting education. The relevant part of the aforesaid judgment in this regard is reproduced here-as-under:-

“We have considered the submissions made by the learned counsel for the parties. In our opinion, in view the judgment rendered by this Court in the case of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust** (supra), there can be no doubt that even a purely private body, where the State has no control over its internal affairs, would be amenable to the jurisdiction of the High Court under Article 226 of the Constitution, for issuance of a writ of mandamus. Provided, of course, the private body is performing public functions which are normally expected to be performed by the State Authorities.....”

Having crossed this hurdle, now the question is as to whether the mandamus, as prayed for, can be issued in the case of the petitioner.

There is no dispute that the petitioner had been admitted in the respondent-school in the academic year 2010-2011 and has passed his 10th class from the respondent-school. He applied for admission in Class XI in

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the medical stream, but because of his marks in the pre-board result and aptitude test conducted by the respondent-school, he was found ineligible and was denied admission in the medical stream. It was on 06.04.2015 that mother of the petitioner represented to the Principal of the School that he may be given admission in the commerce stream, which he did not opt at the first instance, but according to the respondent-school, the admissions even in the commerce stream were over on 29.03.2015 and the classes have started w.e.f. 13.04.2015, after the orientation of the students of Class XI.

The argument raised by counsel for the petitioner that the petitioner had a right to be admitted in Class XI in the respondent-school, being an old student of the same school in Class X, is supported by a decision of the Supreme Court in the case of **The Principal Cambridge School and another vs. Ms. Payal Gupta and others**, 1996 AIR 118 as in that case, it was held as under:-

“8. Now coming to the provisions of sub-rule (1) of rule 145 which is the sheet anchor of the appellant's case, we do not find anything in the said rule which contemplates or requires fresh or readmission of a student in the same school after he passes an examination from the said school. That the class X examination is a public examination does not make any difference. The question of an admission test or the result in a particular class or school for purposes of admission would arise only if a student of one institution goes for admission in

some other institution. The question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination. Learned counsel for the appellant was unable to produce or show any provision in the Act or the Rules which specifically contemplates that readmission or fresh admission is necessary to every next higher class after a student passes out a particular class nor he could show any provision of law authorizing the head of an educational institution to prescribe a cut off level of marks for continuance of further studies in higher class in the same school by a student who passes a public examination.”

However, in my considered opinion, the petitioner is not entitled for an automatic promotion to Class XI in the same school. Taking for example, in Chandigarh, after passing 10th class examination, the admission in Class XI is made by way of centralized counselling and the schools are allotted according to the grades/CGPA obtained in the 10th class. It is not necessary that a student who has passed his Class X from a particular school would get admission in the same school if he had obtained less marks in Class X than the cut-off percentage of that particular school.

Reverting back to the case of the petitioner, in this case also, the admitted fact is that there are only two sections of Class XI as against the four sections of Class X. The number of students admitted in Class XI

and XII are less than the number of students admitted in Class X and it is not imperative on the part of the respondent-school to give admission to all such students who have cleared their Class X from the respondent-school.

Insofar as the argument raised by counsel for the petitioner that the respondent-school has illegally given admission before declaration of result of Class X is concerned, it is submitted by him that the final result of Class X has been declared on 12.06.2015, whereas the admission were already over, according to the respondent-school, on 29.03.2015.

In this regard, the respondent-school has referred to the letter, issued by the CBSE to the head of all the institutions, dated 30.03.2006, by which admissions in the month of April in the new academic session to utilize the period before summer vacation for instructional purposes has been allowed as a correct practice so that the children may remain busy with meaningful activities.

Moreover, it was duly informed, by way of a circular dated 13.05.2014, by the respondent-school, to all the parents that re-admission in Class XI cannot be given to all the students because of reduction of 4 sections of Class X into two sections of Class XI and only shortlisted students can be accommodated on the basis of the student's academic performance as well as the grades he scores in the co-scholastic areas especially attitudes and values. Since the said circular was duly acknowledged by the parents of the petitioner, therefore, they were very well aware that the admission to Class XI is not automatic by way of promotion, in the respondent-school, after having passed the Class X from

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the same school.

In view of the totality of the aforesaid facts and circumstances,
I do not find any merit in the present writ petition and hence, the same is
hereby dismissed.

August 03, 2015
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(Rakesh Kumar Jain)
Judge