

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

% **Date of decision: 18th August, 2015.**

+ **W.P.(C) NO. 7235/2015**

**PUNEET SINGH (MINOR) THROUGH HIS FATHER
RAMESH SINGH Petitioner**

Through: Mr. Gaurav Bhardwaj, Adv.

Versus

MODERN SCHOOL & ANR Respondents

Through: Mr. Kamal Mehta, Adv. for R-1.
Mr. Satyakam, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, a Class XI student of the respondent No.1 Modern School, Barakhamba Road, has filed this petition seeking mandamus to the respondent No.1 School and to the respondent No.2 Directorate of Education (DoE), Government of NCT of Delhi (GNCTD) to promote him to Class XII in the academic session 2015-16.

2. The petitioner took the examination conducted by the respondent No.1 School for promotion from Class XI to Class XII but has not been promoted for the reason of having failed in the subjects of Business Studies, Economics and Mathematics. It is the case of the petitioner that he had submitted an application dated 5th February, 2015 to the respondent No.1

School for allowing him to change the subject of Mathematics earlier taken by him in Class XI as the fifth subject, with the subject of Physical Education earlier taken by him as sixth subject and marks whereof were not to be computed. The counsel for the petitioner states that if the said substitution had been allowed, then, the petitioner having passed in the subject of Physical Education in the said examination, would be eligible to take the compartment examination only for the subjects of Business Studies and Economics and if clears the same, would be entitled to promotion to Class XII.

3. The petitioner however in the petition, did not make out any basis whatsoever for the relief claimed. Rather, the counsel for the respondent No.2 DoE appearing on advance notice on 31st July, 2015 when the petition came up first before this Court, pointed out, that no relief also against the respondent No.2 DoE had been claimed in the petition and that on the basis of only relief claimed against the respondent No.1 School, the writ petition would not even lie.

4. The counsel for the petitioner on 31st July, 2015 could not even orally explain as to which rule the respondent No.1 School had breached / ends in violation of in denying the relief claimed to the petitioner.

5. However in the interest of justice, the matter was adjourned.
6. On 5th August, 2015, the counsel for the petitioner relied upon the Bye-law 40.1(iv)(b) of the Examination Bye-Law, 1995 of the CBSE which is as under:

“(b) An elective subject offered as an additional subject may replace one of the elective subjects offered by the candidate. It may also replace a language provided after replacement the candidate has English / Hindi as one of the languages.”

and on the basis thereof contended that the petitioner ought to have been permitted to change the additional subject of Physical Education offered by him for one of the elective subjects viz. Mathematics, taken by him.

7. The counsel for the respondent No.2 DoE, on 5th August, 2015, handed over in Court the Promotion Rules formulated by the respondent No.2 DoE in exercise of power under Rule 41 of the Delhi School Education Rules, 1973 and on the basis thereof contended that the said Rules do not permit any change of elective subject for an essential subject in the month of February of Class XI and also do not permit for a compartment examination to be taken in more than one subject.

8. However on 5th August, 2015, it was not very clear whether the said Promotion Rules are applicable to unaided schools, as the respondent No.1 School is, or not.

9. In the circumstances, notice of the petition was issued.

10. The counsel for the respondent No.1 School states that the School does not have any record of the petitioner making or submitting any application dated 5th February, 2015 for allowing him to change the subject of Mathematics earlier taken by him as the fifth subject with the subject of Physical Education earlier taken by him as the additional subject and the marks whereof were not to be computed in the result. He has also drawn attention to Bye-Law 26(i) of the Examination Bye-Laws supra and which is as under:

“26. Rules for Change in Subject

(i) Change of subject(s) in class XI may be allowed by the Head of the School but not later than 31st of October of that academic session.”

and has contended that the application, even if made on 5th February, 2015, was clearly beyond the time prescribed of till 31st October of the academic session of Class XI and which was 31st October, 2014. It is thus contended that the petitioner cannot be allowed change of subject claiming which he is seeking to be promoted to Class XII.

11. The counsel for the respondent No.2 DoE has today handed over a copy of the “Instructions regarding Assessment, Evaluation and Promotion of Students from One class to another for Classes I to IX and XI with effect

from 2001-2002” issued by the DoE and to answer the doubt raised on 5th August, 2015, has drawn attention to Clause 37 of the said Instructions which is 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 the latest.”

12. Rule 41, under Chapter II titled “Regulation of Education” of the Rules supra empower the issuance of detailed instructions regarding assessment, evaluation and promotion of students from one class to another. No distinction is made in this regard between aided and unaided schools. The said Instructions would thus be applicable to the respondent No.1 School as well.

13. The counsel for the respondent No.2 DoE has next invited attention to Clauses 29, 31 and 32 of the said Instructions, which are as under:-

“29. Promotion Rules for Classes IV to IX & XI : In order to be declared “passed” at the end of the session, a student must secure at least 33% marks in each of the following subjects studied by him / her during the session subject to the condition that he / she secures 33% marks separately in theory and practical portions also. The promotion is also subject to the condition that a minimum of 25% of marks should be secured in the comprehensive test. In computing 33% of the marks, the benefit of a

fraction will go to the credit of the student and such a student shall be declared “passed” and he / she shall be promoted to the next higher class.

Provided that in Classes IV to VIII, a student will have to obtain a minimum of 25% marks in the third language in order to get promoted.

Provided further that in Class IX a student will have to obtain the required passing marks in any two of the three languages in order to get promoted.

(a) Classes IV & V : (1) Hindi, (2) Mathematics, (3) General Science, (4) Environmental Studies.

(b) Classes VI to VIII : (1) Hindi / regional language, (2) English, (3) Mathematics, (4) General Science, (5) Social Studies, (6) Third language, (7) Additional subject(s) (8) Physical Education.

(c) Class IX : (1) Language, (2) Language, (3) Language, (4) Mathematics, (5) Science, (6) Social Science.

(d) Class XI: (1) Language (Core/Elective), (2 to 5) Any four subjects under any stream which may include language as well.

A student must also obtain a minimum ‘E’ grade in the following subjects of Classes IX and XI;

Class IX: (1) Physical & Health Education, (2) Subject opted for under work experience / SUPW. Special mention is to be made in the report for students working on the EFA project.

Class XI : (1) Subject offered under SUPW, (2) General Studies.

31. Promotion Rules for Classes IX & XI : A student not eligible to be declared “passed” shall be declared “promoted” at the end of the session of a class provided he / she is entitled for grace marks as admissible under instruction 35 of these rules.

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.”

14. I have considered the claim of the petitioner in the light of aforesaid provisions.

15. As far as the reliance by the counsel for the petitioner on Bye-Law 40.1(iv)(b) supra to contend that the petitioner as on 5th February, 2015 was entitled to change the subject of Mathematics for Physical Education inasmuch as the said Bye-law permits change even in class XII, is concerned, Bye-Law 40.1 deals with “Pass Criteria (Senior School Certificate Examination)” and Clause (i) to (iii) thereunder, prescribed the requirements to be declared ‘pass’ in the Senior School Certificate Examination. Clause (iv) is titled “In respect of a candidate offering an additional subject, the following norms shall be applied”. It is thus borne out that Sub-clause (b) thereunder, providing for replacement of an elective subject offered as an additional subject with one of the elective subjects offered by the candidate, is for the computation of the result of the Senior

School Certificate Examination i.e. Class XII examination and the reliance by the petitioner thereon vis-a-vis promotion from Class XI to Class XII is misconceived.

16. The relevant provision therefor is in Bye-law 26(i) supra, as per which the change of subject could have been permitted till 31st October, 2014 only. Admittedly, the petitioner, till that date did not apply and thus the application, even if any, made by him on 5th February, 2015 was of no avail.

17. There is thus no merit in the contention of petitioner that he is entitled to change the subject of Mathematics, to the subject of Physical Education and has been wrongly deemed the change.

18. That brings me to the question, whether the petitioner is entitled to take compartment examination in the three subjects which he has failed.

19. It is clear from the Instructions aforesaid issued under Rule 41, that for promotion from Class XI to Class XII, a student, must have secured 33% marks in each of the subjects studied by him. The petitioner, in the Class XI examination taken by him however secured 60% marks in English, 35% in Accountancy, 23% in Business Studies, 27% in Economics and 6% in Mathematics. He is thus not entitled to promotion. It is further clear from the said Instructions that only that student is eligible to appear at the

Compartment Examination who has obtained at least 20% marks in one failing subject in Class XI. The petitioner having failed in three subjects is not eligible, having obtained less than 20% in Mathematics, he is disentitled from taking Compartment Examination in that subject.

20. The petitioner thus, under the Rules and Regulations *supra* is not entitled to be promoted to Class XII and hence not entitled to the relief claimed.

21. The counsel for the petitioner at this stage states that the respondent No.1 School has promoted certain other students similarly placed as the petitioner.

22. Adjournment is sought to amend the pleadings to that effect.

23. Though the petitioner should have urged the said ground in the first instance only and cannot have successive rounds of litigation but considering that the academic career of a youngster is involved, while dismissing this petition liberty is given to the petitioner to, if able to make out a case on the ground of discrimination which is not pleaded herein and which is not adjudicated, would be entitled to represent to the School and if remains aggrieved file a fresh petition, making appropriate pleadings and impleading the candidates vis-a-vis whom discrimination is claimed, as parties thereto and confined to the said aspect.

24. The petition is dismissed

No costs.

AUGUST 18, 2015

‘gsr’..

RAJIV SAHAI ENDLAW, J.