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HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1646 of 2015**

1. Anju Chouhan D/o Shri Roop Lal Chouhan, Aged About 17 Years Through Her Father, R/o Rajeev Gandhi Nagar, District Raigarh, Chhattisgarh, India
2. Yamywalk, S/o Shri Chandaram, Aged About 19 Years R/o Gram Dhurwakari, Post Pachpedi, Masturi, District Bilaspur, Chhattisgarh, India
3. Kedar Nath Patel, S/o Shri Set Kumar Patel, Aged About 17 Years Through His Father, R/o Gram Pacheda, Tarapur, Thana Kotra Road, District Raigarh, Chhattisgarh, India
4. Sakshi Gupta, D/o Shri Ravi Kant Gupta, Aged About 16 Years Through Her Father, R/o Godripara, Chief House, Chirmiri, District Korea, Chhattisgarh, India
5. Naveen Patel, S/o Shri Naresh Patel, Aged About 17 Years Through His Father, R/o Khud Bhatha, Jairamnagar, Masturi, District Bilaspur, Chhattisgarh, India

---- Petitioners**Versus**

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh Board Of Secondary Education, Through Its Secretary, CGBSE, Pension Bada, District Raipur, Chhattisgarh
3. Divisional Officer, C G B S E, Bilaspur, District Bilaspur, Chhattisgarh
4. Divisional Officer , C G B S E, Ambikapur, District Sarguja, Chhattisgarh
5. Seth Kirori Mal Adarsh Girls Hr. Sec. School, Through Its Principal, Raigarh, District Raigarh, Chhattisgarh
6. Chhattisgarh Vidyadham Hr. Sec. School, Pachpedi, Through Its Principal, Pachpedi, Masturi, District Bilaspur, Chhattisgarh, India
7. Government Hr. Sec. School, Through Its Principal, Gorra, Block Pusor, District Raigarh, Chhattisgarh, India
8. Maurious Hr. Sec. School, Through Its Principal, Chhoti Bazar, Chirmiri, District Korea, Chhattisgarh, India
9. Government Shaheed Bhagat Singh Hr. Sec. School, Through Its Principal, Jairam Nagar, Masturi, District Bilaspur, Chhattisgarh, India

10. Board Of School And Technical Education, A- 6, Nature City, Mungeli Road, Bilaspur, (Chhattisgarh)

---- Respondents

And

WPC No. 1650 Of 2015

1. Deepa Singh D/o Shri Rajesh Singh, Aged About 19 Years R/o #829, Old Mines Quarter, II Floor, Bhatgaon, District Surajpur, Chhattisgarh, India
2. Vishal Kumar Singh, S/o Shri Rajesh Singh, Aged About 19 Years R/o # 829, Old Mines Quarter, II Floor, Bhatgaon, District Surajpur, Chhattisgarh, India
3. Anjali Behera, D/o Shri Pankaj Behera, Aged About 17 Years Through Her Father, R/o Azad Nagar, Godripara, Chirmiri, District Korea, Chhattisgarh, India

---- Petitioners

Vs

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh
2. Chhattisgarh Board Of Secondary Education, Through Its Secretary, C G B S E, Pension Bada, District Raipur, Chhattisgarh
3. Divisional Officer, C G B S E, Ambikapur, District Sarguja, Chhattisgarh
4. St. Johns Hr. Sec. School, Through Its Principal, Nawapara, Ambikapur, District Sarguja, Chhattisgarh
5. Government Girls Higher Secondary School, Through Its Principal, Godripara, Chirmiri, District Korea, Chhattisgarh, India
6. Board Of School And Technical Education, A-6, Nature City Mungeli Road, Bilaspur Chhattisgarh

---- Respondents

And

WPC No. 2253 Of 2015

Abhishek Samundrey S/o Late Shri Gopal Samundrey, Aged About 18 Years R/o Godripara, Chief House, Chirmiri, District : Korea 497449, Chhattisgarh, India

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District : Raipur, Chhattisgarh.
2. Chhattisgarh Board Of Secondary Education, Through Its Secretary, C G B S E, Pension Bada, District : Raipur, Chhattisgarh.
3. Divisional Officer, C G B S E, Ambikapur, District : Surguja, Chhattisgarh
4. Little Flower H. S. School, Through Its Principal, Godripara, Chirmiri, District : Korea Chhattisgarh.
5. Board Of School & Technical Education, Through Its Secretary, A/6, Natures City, Mungeli Road District : Bilaspur, Chhattisgarh, India

---- Respondents

And

WPC No. 2247 Of 2015

Shireen D/o Ushman Khan, Aged About 19 Years R/o Baratunga Parsapani, B - 46 Chirmiri, District Korea - 497 449, Chhattisgarh, India

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. Chhattisgarh Board Of Secondary Education, Through Its Secretary, C G B S E, Pension Bada, District : Raipur, (Chhattisgarh)
3. Divisional Officer, C G B S E, Ambikapur, District Surguja (Chhattisgarh)
4. Saraswati Shishu Mandir H. S. School, Through Its Principal, Bada Bazar, Chirmiri, District : Korea (Chhattisgarh)
5. Board Of School & Technical Education, Through Its Secretary, A/6, Natures City, Mungeli Road District : Bilaspur, (Chhattisgarh) India

---- Respondents

Shri Romir S. Goyal, counsel for the petitioner/s.

Shri Ramakant Mishra, Shri Alok Bakshi, Shri Manoj Paranjpe, Shri Parag Kotecha, Shri Bhupendra Singh and Shri Ankit Singhal, counsel for respective respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****11/02/2016**

Aforesaid petitions are being disposed off by this common order as they involve similar issues for consideration arising out of disputes relating to recognition and its consequences in the matter of recognition of the examining body namely Board of School and Technical Education (for short "BSTE") wherefrom these students obtained degree of passing 10th standard.

2. Respondent / BSTE, the trust applied for and granted temporary equivalence vide order dated 07/11/12 passed by the then President of respondent / C.G. Board of Secondary Education (CGBSE). On the basis of these temporary equivalence, BSTE started conducting board examination of 10th and 12th and granting certificates to the students studying in private schools which were affiliated to BSTE.

3. On 11/03/14, the State Government in its Department of School Education suspended the operation of temporary equivalence of the BSTE. The aforesaid order was challenged in number of petitions including petition filed by BSTE in WPC No.604/14. Some of the students, who had passed 10+2 examination and conferred certificate by BSTE apprehended adverse action, also filed respective petitions challenging the decision of the State Government.

4. Vide order dated 14/11/2014, the Division Bench of this Court disposed off all the petitions with a direction to the respondents therein to give proper show cause notice to BSTE and take final decision expeditiously within a period of three months. It was also observed that if the order is to the prejudice to the petitioner / institution, it must be reasoned and speaking in nature. Pending such

enquiry and final orders that may be passed, a limited protection to those students who obtained their qualification of 10th and 12th at a time when valid temporary equivalence subsisted before suspension was also granted by observing that they shall not be disturbed in any manner by the State authorities in pursuing higher studies in their present institutions and may appear in examinations. The Division Bench also observed that any consequential action by the respondents pursuant to order dated 11/03/14 stands nullified at that stage.

5. In compliance of the order passed by the Division Bench of this Court as referred to above, CGBSE issued notices and afforded opportunity of hearing to BSTE and passed an order on 07/03/15 cancelling the temporary equivalence granted in their favour mainly on the ground that grant of such equivalence was not permissible under the law and the President of the Board has no such authority.

However, keeping in view that during the pendency of disputes ever since suspension of temporary equivalence vide order dated 11/03/14, many students, who may have passed from the said Board and thereafter, passed further examination or pursuing courses in next higher courses, protected them as a class by taking a decision in their favour that they will be allowed to appear as private students.

BSTE was also heard by the State Government on their representations and the State Government also passed an order on 03/07/2015 holding that grant of temporary equivalence was illegal and ordered cancellation of the same with immediate effect. The State Government, then directed the Board that in the context of order dated 14/11/2014 passed by the High Court, it shall take

appropriate decision with regard to the equivalence or recognition of those examinations held by BSTE during the disputed period in the interest of students.

6. The petitioners herein are students desirous of appearing in examinations of either 11th or 12th standard who have filed these petitions claiming that they are entitled to be given regular admission and appear in the ensuing examination of class 11th and 12th, as the case may be, as regular students. The provisional admission granted to one of the petitioner Ku. Shireen and Abhishek Samundrey was also cancelled. These cancellations are also under challenge in their respective petitions.

7. Learned counsel appearing for the petitioners before this Court argued that the students appeared in the board examinations of Class 10th conducted by BSTE. The Board was granted temporary equivalence way back in the year 2012. Though it was suspended on 11/03/14, petitions were filed in the Court and it was held by this Court that BSTE was entitled to proper opportunity of hearing before taking any adverse decision. The decision was ultimately taken by the Board on 07/03/15 and by the State Government on 03/07/15. The contention of learned counsel for the petitioner is that during this period, petitioners – Abhishek Samundrey, Anju Chauhan, Yamywalk, Kedar Nath Patel, Sakshi Patel and Navin Patel had taken up examinations and passed 10th standard and granted certificate by the BSTE. The students are not at fault. Therefore, in these circumstances, once they have passed examination from the concerned Board, whose recognition has been later on cancelled, they were entitled to regular admission and treatment as a regular student for taking up examination of class 11th.

8. In respect of petitioners – Shireen, Deepa Singh, Vishal Kumar Singh and

Anjali Behera, it has been argued that these are students who passed 10th standard from the disputed Board namely BSTE but later on, they all passed 11th standard after pursuing regular studies and were granted certificate by CGBSE. Therefore, in their cases, refusal to grant them regular admission and treat them as regular student is arbitrary and unjust. It is also argued that the spirit of the order passed by the Division Bench on 14/11/14 in batch of petitions required the respondents to give due effect to the fact that these petitioners had taken up regular classes of 11th standard and passed 11th as regular students. Learned counsel for the petitioners further contended that the State Government, vide its order dated 03/07/15 directed the Board to take appropriate decision with regard to recognition or equivalence of those examinations taken up by BSTE during the disputed period in the larger interest of students, but thereafter, the Board did not take any decision in the matter. Therefore, in these circumstances, it is prayed that a direction be issued to respondents to allow the petitioners to appear in the examination by granting proper enrollment as regular students.

9. Per contra, learned counsel for the State and Board argued that the petitioners are beneficiaries of a fraudulent state of affairs wherein BSTE was granted temporary equivalence by the then President of CGBSE without any semblance of authority of law and completely contrary to the statutory scheme of the applicable law and regulations. On the strength of such temporary equivalence, nowhere recognized under the law and an act of undue favour by sheer abuse of power by the then President of CGBSE, BSTE started conducting examination and distributing certificates. The Government, therefore, had to take a decision to suspend its temporary equivalence. On petitions being filed before this Court, direction was issued to afford opportunity of hearing and take decision, in compliance of which, BSTE was afforded opportunity of hearing and decision

has been taken to cancel temporary equivalence granted to BSTE. It is submitted that aggrieved authority i.e. BSTE has not filed any petition against decision taken by the Board and the State Government on 07/03/15 and 03/07/15 respectively. The students also confined their challenge to that part of the order of the Board which says that the petitioners would be treated as private students and not as regular students.

It was urged that in these circumstances, though the Board on merits, as per applicable laws, found that grant of temporary equivalence to BSTE was completely outside the authority of the then President took lenient and sympathetic view, only to protect the future of those students, who passed 10th Board examination from BSTE that they all have been allowed to appear atleast as private students in Class 11th and Class 12th so that year is not wasted and their future is not blocked. It is also submitted that the petitioners are guilty of material suppression of fact regarding order passed by this Court, State Government and the Board. It has also been submitted that the petitions suffer from misjoinder of cause of action. It was only when the objection was raised that BSTE has been impleaded as respondent.

10. Undisputedly, all the petitioners / students are those, who were granted certificate of passing 10th standard by BSTE. BSTE was granted temporary equivalence by the then President of the CGBSE. It has been held by the State Government as well as by CGBSE that such grant of temporary equivalence had no sanctity and authority of law and such grant was completely illegal. The effect of the decision relates back to the examination held by the said Board. Once it is held that grant of temporary equivalence was against the provisions of law and without the authority, the petitioners have no illegal claim of being treated as regular student either of Class 11th or 12th on the basis of they having obtained

certificate of passing 10th Board examination conducted by BSTE.

11. On petitioner's own showing, the decision of the State Government and the Board with regard to cancellation of equivalence is not under challenge but the petitioners are only challenging that part of the order by which, they have been directed to be treated as private students and not regular students. Till date, no petition has been filed by BSTE for staying the decisions of the State Government or the Board. Therefore, at this stage, in the absence of challenge to the part of the decision taken by the State Government and the Board, though temporary equivalence was bad and therefore cancelled, stands. When the aforesaid position stands as on date, the petitioners have no legal basis to claim status of regular students.

True it is that during the period, the dispute remained pending on account of suspension of temporary equivalence, leading to filing of petitions, order passed by this Court on 14/11/14, some of the petitioners were allowed to appear as regular Class 10th students and some of the petitioners were sitting on the fence, in the eye of law, the petitioners are beneficiaries of the illegal act of BSTE conducting examinations under an illegal order of temporary equivalence. Therefore, in these circumstances, I am of the opinion that the decision taken by the Board with regard to the students was only intended to protect them against any loss of educational session and to atleast allow them to appear in the examination of 11th and 12th standard, may be as private students.

12. It is found that in order dated 03/07/2015 passed by the State Government, a direction has been given to the Board to consider the aspect of equivalence or recognition in respect of those examinations which were held by BSTE during the disputed period.

The Board has not come out with any material to show that again they have taken up the matter for consideration and decision has been taken. However, for want of such decision having been taken, petitioners cannot be allowed to have a regular status. This is more so because petitioners, except Shireen and Abhishek Samundrey were not granted any admission nor they have come out with a case that they were allowed to regularly attend classes and they completed minimum period of attendance atleast to appear in the examination as regular students. The admission of Shireen and Abhishek was cancelled, being a provisional one.

It appears that though some time were allowed to them to attend classes, however, after cancellation, there is no material placed on record to show that they were actually allowed to attend classes and in this manner, they completed minimum attendance so as to entitle them to appear in the examination as regular students. For these additional reasons, I am not inclined to grant benefit as claimed by the petitioners.

13. In the result, all the petitions are dismissed leaving it open for the Board to take appropriate decision pursuant to order dated 03/07/2015 passed by the State Government.

Sd/-

(Manindra Mohan Shrivastava)
Judge