

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.25930 of 2016

1. E.Navin
2. P.Prathuish
3. P.Tamil Jeeva
4. T.Britto Deepak
5. E.Arun
6. B.Rubesh
7. B.Raichel

... Petitioners

- Vs -

1. The Director of School Education,
DPI Campus, Nungambakkam,
Chennai.
2. The Chief Educational Officer,
Chennai - 5.
3. The Head Master,
St.Patric Anglo Indian School,
Gandhi Nagar, Adyar,
Chennai - 20.

... Respondents

Prayer:- Writ petition filed under Section 226 of the Constitution of India for issuance of a Writ of Mandamus directing the 1st respondent to allow the petitioners to continue the studies in the 12th standard of the Higher Secondary Course in the 3rd respondent school in the Academic Year 2016-2017.

For Petitioners : Mr.K.Sakthivel
For Respondents 1 & 2 : Mr.A.N.Thambidurai, Spl.G.P.
For Respondent 3 : Dr.Xavier Arulraj
SC for M/s.A.Arul Mary
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O R D E R

The writ petition has been filed seeking a direction to the 1st respondent to allow them to continue their studies in the 12th standard of the Higher Secondary Course in the 3rd respondent school in the Academic Year 2016-2017.

2. According to the petitioners they appeared for the 11th standard common examination in the month of March, 2016 and thereafter, the petitioners' parents were called separately

along with other similarly placed persons by the 3rd respondent and advised to get transfer certificate from the school of their wards and join some other school. When the parents questioned, they were told that their wards did not fare well in the 11th standard annual examination. Therefore, the parents demanded the 3rd respondent to show the answer papers, but the same was refused. The 3rd respondent further told them that even in the re-test also their wards performance was not upto the mark. But in the meanwhile, they also collected fees for the 12th standard. When the parents demanded again to show the re-test papers, the 3rd respondent refused to provide the same. But the petitioners are confident that they had written well and there was no chance for getting very poor ratings. Therefore, the petitioners' parents demanded that the 3rd respondent should take into account the entire year performance of the students which is available in the progress report.

3. According to the petitioners' they have done well and further they would also contend that as per the Tamil Nadu Educational Rules, the school should have a definite policy of principles for promotion of students and such principles ought to have been framed in consultation with the Staff Council and apply the same impartially. This has been incorporated under Section 30(a) of the Tamil Nadu Educational Rules. They would contend that the 3rd respondent did not follow the said rules.

4. According to the petitioners, detention in the 11th standard is not permitted as per the Tamil Nadu Educational Rules. According to them, it is not mandatory even to pass in the examination held in the 11th standard and the same is not taken into account for any evaluation purposes. They would contend that the examination at the end of 11th standard has been prescribed only because few schools never teach the 11th standard subjects and therefore in order to make the schools to teach the 11th standard syllabus, the 1st respondent has made it mandatory to conduct the examination at the end of 11th standard. Therefore, they would contend that the result of the 11th standard examination shall not have any effect on continuing the course or to attend the 12th standard examination and detaining the students in the 11th standard is contrary to the Tamil Nadu Educational Rules.

5. Therefore, some of the petitioners' sent a representation dated 22.06.2016, to the Hon'ble Chief Minister Special Cell seeking interference in the matter and by their letter dated 22.06.2016, they instructed the 2nd respondent to consider the case of the petitioners and consequently the second respondent had simply forwarded their representation to the 3rd respondent, but the 3rd respondent merely stated to take the TC without assigning any reasons. Hence they have come forward with this writ petition.

6. The learned counsel for the petitioners relies on a Judgment of this Court in Gooda Srinivasalu Naidu Vs. The Collector of Chengleput at Kancheepuram reported in 1997 (III) CTC 106 for the proposition that when power is vested with an authority under Statue, that power must be exercised strictly in accordance with the procedure prescribed.

7. The learned counsel for the petitioners would further refer to G.O.Ms.No.77, School Education Department dated 09.06.2003 and contend that re-examination for XI standard should be conducted. Further he would also contend that as per the communication of the CEO dated 12.04.2016, the schools were instructed not to detain more than 5% of the students in XI standard. In paragraph 3 of the said communication it has been stated as follows:"

"மாணவர்களின் இடை நின்றலை தவிர்ப்பதற்காக 9
மற்றும் 11 ஆம் வகுப்புகளான தேர்ச்சி விதிகள்,
ஆசிரியர் குழுவின் ஒப்ப,தலுடன் முடிவு செய்யப்பட்டு
தேர்ச்சி அளிக்கப்பட வேண்டும். 95%க்கு குறையாமல்
தேர்ச்சி அளித்தல் அவசியம். தேர்ச்சி அளிப்பதில்
நிர்ணயிக்கப்பட்ட விதிகளுக்கு அப்பால் தேர்ச்சி
வழங்கப்படுமானால் அதற்கு முதன்மைக் கல்வி அலுவலரின்
சிறப்பு, அனுமதி பெற வேண்டாம் என அறிவிக்கப்படுகிறது."

8. The second respondent the Chief Educational Officer has filed a counter. It is mainly contended that the common examination for all the students studying in XI standard in schools under all managements including the petitioners school, the responsibility of the second respondent is to issue timetable for conduct of examination, appointment of coordinators for verification and declaration of results after duly verifying the valuation process. Therefore, accordingly the second respondent conducted the XI standard annual examination and the third respondent school students also participated in the examination. The third respondent school published the results after getting the approval of the second respondent. Since the petitioners herein did not secure minimum marks they were detained by the third respondent and the second respondent advised those who were detained to appear for the instant examination. The third respondent conducted the instant examination for the benefit of those detained students as per the instructions of the second respondent in Rc.No.478/M6/2016, dated 09.03.2016.

9. The second respondent would also contend that there is no provision for seeing the answer papers as the entire examination is conducted under their supervision. It is further contended that the third respondent has never advised the petitioners to take their transfer certificates but only persuaded them to continue in the XI standard as they have not passed in the instant examinations also.

10. With regard to the complaint lodged with the CM cell, the first respondent directed the 2nd respondent to visit the 3rd respondent school and scrutinize the records to verify the claim of the petitioners. The second respondent along with the Inspector of Anglo Indian Schools visited the 3rd respondent school and verified all the records. Further the answer scripts of the petitioners were evaluated by another school and even after such evaluation, the petitioners were not in a position to secure eligible marks for a pass. Thus, according to them, the answer scripts were evaluated in a fair and transparent manner by independent evaluators.

11. The claim of the petitioners that they have been allowed to pay the fees for XII standard and hence they should be allowed to pursue XII standard is a wrong claim made by the petitioners. According to the 3rd respondent, normally fees were collected during the commencement of an academic year and accordingly the petitioners have paid the fees for the academic year 2016-17 and the 3rd respondent has no hesitation to refund the fees paid for the XII standard to the petitioners.

12. The averment of the petitioners that paras 4 and 5 of the provisions of Tamil Nadu Educational Rules were not followed, the second respondent would contend that such policies are adopted for lower classes upto VIII standard and the principle of promotion policy are evolved collectively and the same is approved by the 2nd respondent. According to the second respondent after having given moderation marks, the petitioners were not able to pass the examination.

13. It is further submitted that if the prayer of the petitioners are conceded, it would set a wrong precedent and upset the systematic procedure uniformly followed throughout the State. Referring to the decision of the Hon'ble Supreme Court in Om Prakash Shukla Vs. Akilesh Kumar Shukla reported in AIR 1986 SC 1043, they will contend that when the petitioners appeared at the examination without protest and when they found that they would not succeed in the examination, it is not for the Courts to decide or grant relief. Therefore, they would seek dismissal of the writ petition.

14. The third respondent has filed a separate detailed counter. Their school is an Anglo Indian School governed by the the Code of Regulation for Anglo Indian Schools. Clause 48 and 49 of the Regulation for Anglo Indian Schools governs promotion. Therefore, the annual promotions will be the responsibility of the Headmaster and he cannot promote anyone except in accordance with law. The automatic promotion as contemplated under Section 16 of the Right of Children to Free and Compulsory Education Act, 2009 is only upto VIII standard. Each year has a separate curriculum and at the end of each academic year, there are examination in all the subjects and

only after completing XI standard, one can join in XII standard and it is the common practice. In fact, even as per the communication issued by the CEO dated 09.03.2016, the schools were instructed not to detain more than 5% of the students in XI standard for the academic year 2015-2016 as against 15% of permitted detention in the academic year 2014-2015. Further, after the regular examination results were published, they held instant examination in June itself and even if a student could not able to pass in the first instant exam, second round of instant exam was conducted and in that exam also the petitioners did not pass and therefore they were detained and permitted to repeat the studies in XI standard for the academic year 2016-2017 only in their interest.

15. The petitioners have made a complaint to Hon'ble Chief Minister cell stating that the third respondent is trying to send them out from the school. The said complaint was forwarded to the first respondent and on 27.06.2016, the first respondent directed an I.A.S officer to enquire and report within 15 days. Accordingly, the I.A.S. Officer along with the CEO visited the school twice in July, 2016. Apart from their personal verification of all the entries in the registers, they also collected the answer sheets and got them evaluated by another school. Except some marginal difference in awarding marks, none of these petitioners managed to get minimum pass marks, even while being revalued by another school. Therefore, according to the third respondent, the evaluation had been fairly conducted by them, which came to be confirmed by the authorities and subsequently verified by an independent evaluator in another school.

16. As regards the contention that petitioners were allowed to pay the tuition fee for XII standard, the third respondent would contend that they paid the tuition fees without the permission from the school, they have done it through the bank outside the school. That part, the petitioners are not attending the school till date. The third respondent would submit that if the petitioners want to continue in the school, they can study in XI standard. As regards the demand for answer sheets, the third respondent would submit that it was instructed by the authorities not to do so as it will create a wrong precedent.

17. As regards paras 4 and 5 of the Tamil Nadu Educational Rules referred to by the petitioners, they do not refer to the correct position of law, there is no basis for the claim that the promotion in XI standard is mandatory. The claim of the petitioners that the result of the petitioners in XI standard examination has no impact over the promotion to XII standard is untenable. It will create a wrong precedent and upset the systematic procedure uniformly followed throughout the State. Therefore, according to the third respondent, the writ petition is not maintainable and the same should be dismissed.

18. Heard both parties.

19. The main contention of the petitioners is that they were directed to get their TC and go out of the school without assigning any reason. The respondents would contend that they have never advised the petitioners to take their TC but only persuaded them to continue in XI standard as they have not passed in the instant examination also.

20. For the contention of the petitioners that their performance was not properly assessed by the third respondent school, the respondents have clearly stated that after the regular examination results were published, they held instant examination in June itself and even if a student could not able to pass in the first instant exam, second round of instant exam was conducted and in that exam also the petitioners did not pass and therefore they were detained and permitted to repeat their studies in XI standard for the academic year 2016-2017 only in their interest. But the petitioners made a complaint to the Hon'ble Chief Minister Cell and the said complaint was forwarded to the first respondent and on 27.06.2016, the first respondent directed an I.A.S officer to enquire and file a report within 15 days. Accordingly, the I.A.S. Officer along with the CEO visited the school twice in July, 2016. Apart from their personal verification of all the entries in the registers, they also collected the answer sheets and got them evaluated by another school. Except some marginal difference in awarding marks, none of these petitioners managed to get minimum pass marks, even while being revalued by another school. Therefore, according to the third respondent, the evaluation had been fairly conducted by them, which came to be confirmed by the authorities and subsequently verified by an independent evaluator in another school.

21. The petitioners would further contend that they were not permitted to see the answer papers, the third respondent would submit that it was instructed by the authorities not to do so as it will create a wrong precedent. Above all, in this case the answer papers of the petitioners were independently evaluated by independent evaluator in a fair and transparent manner.

22. The petitioners would further contend that the 3rd respondent has not followed the promotion policy of the Government. According to the respondents, there is no basis for the claim that the promotion in XI standard is mandatory. The claim of the petitioners that the result of the petitioners in XI standard examination has no impact over the promotion to XII standard is untenable. It will create a wrong precedent and upset the systematic procedure uniformly followed throughout the State. As per the procedure for the examination in March, 2016 the CEO vide his communication dated 09.03.2016 has instructed all the schools not to detain

more than 5% of students in XI standard as against 15% of permitted detention in the academic year 2014-15. Hence, the guidelines on the promotion police have been followed by the 3rd respondent school.

23. In view of all the above, the prayer as sought for by the petitioners cannot be granted and hence the writ petition is dismissed. No costs.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

1. The Director of School Education,
DPI Campus, Nungambakkam,
Chennai.
 2. The Chief Educational Officer,
Chennai - 5.
 - 3.The head Master.
St.Patric Anglo Indian School,
Gandhi Nagar, Adyar, Chennai-20.
- +2 cc's to Mr.A.Arul mary,advocate,sr.71631
+1 cc to Mr.R.Prabakaran,advocate,sr.71335
+1 cc to Govt.Pleader,sr.71672.

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W.P.No.25930 of 2016

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