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

+ W.P.(C) 2163/2017, CM No. 9377/2017

GAURANSHI

..... Petitioner

Through: Mr. Rajat Malhotra and Mr. Sunil
Malhotra, Advs.

versus

CENTRAL BOARD OF SECONDARY EDUCATION
& ORS

..... Respondents

Through: Mr. Amit Bansal, Adv. for R1 and
R2.
Mr. Pramod Dayal, Mr. Nikunj Dayal
and Ms. Payal Dayal, Advs. for R3
and R4.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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19.05.2017

1. The present petition has been filed by the petitioner with the following prayers:

“ In the light of above mentioned facts and circumstances, it is therefore most respectfully prayed that this Hon’ble Court may graciously be pleased to.

i) issue an appropriate writ / order / direction setting aside order dated 02.02.2017 passed by the Respondent No.1;

(ii) issue an appropriate writ / order / direction to the Respondents to release the admit card to the

petitioner and to allow her to sit in the Board examination to be conducted in March – April, 2017;

(iii) issue an appropriate writ / order / direction condoning the shortage in attendance of the Petitioner on merits of the Petitioner's application, or direct Respondent no.2 to condone the shortage in attendance on grounds of prolonged illness during academic session 2016-17;

(iv) issue such order or further order (s) as this Hon'ble Court may deem fit and proper in the interest of justice be also passed in favour of the petitioner."

2. It is the case of the petitioner and contended by the learned counsel for the petitioner that petitioner had studied Class-XI from Navyug School. After completing Class XI, she withdrew herself from the said School by taking School Leaving Certificate on 8th April, 2016. She had approached respondent no.3 School for admission in Class-XII. It is the case of the petitioner that respondent no.4 on behalf of respondent no.3 had sent a letter dated 12th April, 2016 to CBSE informing of the acceptance of the petitioner as a student and requesting for issuance of the registration number. It is averred that the CBSE's letter of approval was received on 22nd May, 2016 that is during summer vacation. Learned counsel for the petitioner states that as the School was in vacation, her name appeared in the attendance

register of Class-XII on 1st July, 2016. She attended the School for two days but on 3rd July, 2016, petitioner got unwell and could rejoin the School in the first week of August, 2016, pursuant thereto she attend the School till the middle of September, 2016. She again was unwell/with indifferent health, which position continued till 31st December, 2016. Thereafter, the petitioner attended the School till 31st January, 2017. It is the petitioner's case, so also canvassed by the learned counsel for the petitioner that if the attendance relates back to 1st April, 2016 (the start of academic session) or the period is excluded, as the petitioner could not have attended the classes till July 1, 2016 and also did not attend after July 3, 2016, till 1st week of August, 2016 and from middle of September, 2016 till 31st December, 2016, for compelling reasons, if the absence is condoned, her attendance would be more than 60%. Learned counsel for the petitioner states, the petitioner initially made representation on 8th February, 2017 and thereafter on 14th February, 2017. The representation dated 14th February, 2017 was rejected by the CBSE in its communication to the respondent no.3 by stating that the shortage of attendance cannot be condoned being below the minimum requirement of attendance. He points out to the short affidavit filed by the CBSE, respondent nos. 1 and 2 wherein it has been stated that the

respondent no.4, the Principal of respondent no.3 vide letter dated 27th January, 2017 intimated the CBSE that the petitioner has only 28% of attendance and cannot be allowed to appear in the Board Examination. He further states that this stand of the School is at variance with the stand now taken by the School in their counter-affidavit inasmuch as the total attendance after adding medical is 52.3%. It is his submission, in view of the stand of the parties the CBSE can revisit the matter for condoning the shortage of attendance of the petitioner, which is permissible under the Rules.

3. On the other hand, Mr. Pramod Dayal, learned counsel appearing for the respondent nos. 3 and 4 / School would submit that the petitioner in fact has only 28% of the attendance of the academic session 2016-2017. He also states that petitioner's father had deposited the fee for the first quarter on 6th April, 2016, despite that, the petitioner did not attend the classes from 6th April, 2016 till 10th May, 2016. According to him, the petitioner had attended two sessions of extra classes on 13th May, 2016. In other words, it is his submission that petitioner and her father were very well aware that petitioner is required to attend the classes. He also states that the submission of learned counsel for the petitioner relying on the affidavit filed by

respondents 3 and 4 that the petitioner has 52.3% is concerned, the same is only after adding the medical for the months of September 2016, October 2016, December 2016 and January 2017 (one day). He states, in terms of the Rules, a student is required to have minimum 75% of attendance for appearing in the Sr. Secondary Board Examination conducted by the CBSE. It is also the position of the Rules that Chairman CBSE is empowered to condone shortage of attendance up to 15% in exceptional circumstances created on medical grounds such as candidate suffering from serious diseases like Cancer, AIDS, TB or similar serious diseases requiring long period of hospitalization. The Rules also stipulates prolonged illness as a valid reason for recommending the cases of the candidates with attendance less than the prescribed percentage.

4. I have heard Mr. Amit Bansal, learned counsel for the respondents 1 and 2 also. On hearing the counsel for the parties, and perusing the pleadings, an issue has arisen whether the petitioner has 28% or 52.3% or more than 60% of attendance. If it is more than 60% then the Chairman of the CBSE has the power to condone the shortage. That being the position, this Court would refrain itself from considering this aspect. It is for the Authority so empowered, to consider this aspect. The pleadings of the

parties in these proceedings being voluminous, it would be appropriate, the petitioner is directed to submit relevant documents in support of her case seeking condonation of attendance as per Rules within a week from today for the consideration of the Competent Authority to enable him to consider the same in proper perspective and take a decision. At the same time, the respondents 3 and 4 shall also be at liberty to submit their documents in support of their case within five days thereafter. On receipt of the same, the Chairman of the CBSE shall take a decision, whether the petitioner is entitled for condonation of shortage of attendance. Any decision shall be binding on the parties. If the decision is, in favour of the petitioner the follow up action shall be taken by the CBSE. Otherwise, the matter shall be treated as closed. The writ petition is disposed of.

CM No. 9377/2017

In view of the order passed in writ petition, the present application is dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 19, 2017/jg