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

+ W.P.(C) 2849/2017 & C.M.No. 12479/2017 (for stay)

SASHYA SIKRI

..... Petitioner

Through: Mr. Ravi Sikri, Senior Advocate
with Mr. Deepak Yadav, Advocate

Versus

CENTRAL BOARD OF SECONDARY EDUCATION AND
ORS.

..... Respondents

Through: Mr. Amit Bansal, Ms. Seema Dolo
& Mr. Akhil Kulshrestha,
Advocates for respondents No.1 &
2
Mr. Rajesh Yadav, Advocate for
respondent No.3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
31.05.2017

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In this petition, challenge is to the withdrawal of permission granted to petitioner to appear for All India Senior School Certificate Examination (AISSCE), 2017. Vide Communication of 27th March, 2017, respondent-School intimated petitioner that a Communication of 24th March, 2017 had been received from respondent Central Board of Secondary Education (*hereinafter referred to as the "CBSE"*) that the competent authority has decided to withdraw the approval given for condonation of shortage of attendance in respect of petitioner.

While entertaining this petition, petitioner was permitted to appear in remaining class-XII board examination for the academic session 2016-17 and vide order of 2nd May, 2017, respondent-CBSE was called upon to consider the case of petitioner in the light of medical record produced by petitioner, as she had already appeared in all the examinations by then. Vide order of 28th March, 2017, it was directed that petitioner's result be kept in a sealed cover and it be not declared. Today, petitioner's result in a sealed cover has been produced before the Court and on opening, it is found that petitioner has secured good marks in the examination of AISSCE, 2016-17.

Vide order of 2nd May, 2017, respondents were permitted to file their counter affidavits. Respondent No.3-School has filed counter affidavit wherein the stand taken is that as per CBSE Examination Bye-Laws, 75% attendance is mandated which could be condoned upto 60% only in medical cases and petitioner is having attendance of 45.9% only in the academic year in question and so, the withdrawal of condonation of attendance is justified.

During the course of hearing, it was vehemently asserted by learned Senior Counsel for petitioner that once the shortage of attendance has been condoned on medical grounds, then there is no provision under the '*CBSE Examination Bye-Laws*' to review it. A copy of Examination Bye-Laws of Central Board of Secondary Examination, Delhi has been placed on record in support of this submission.

Respondent-CBSE has produced the original file and its perusal reveals that after CBSE had condoned the shortage of attendance in case of petitioner, the principal of respondent No.3-School had written to

CBSE for withdrawal of condonation of shortage of attendance and the reason put-forth for adopting such course is that the parents of petitioner had misbehaved with the school Principal. While acting upon subsequent communication of respondent No.3-School, CBSE had issued the impugned communication withdrawing condonation of shortage of attendance.

After having heard counsel for the parties at length and on perusal of impugned communication, original file produced by respondent-CBSE and the material on record, I find that there is a noting on the original file of CBSE to the effect that the legal advice tendered is that there is no basis of withdrawing the condonation of shortage of attendance and it has been recommended that the condonation of shortage of attendance be regularized. However, office noting is conclusive with the remarks *“please discuss”*.

This Court is of the considered opinion that once the shortage of attendance has been condoned then, it is not open to the authorities concerned to withdraw the condonation of shortage of attendance. Even CBSE Examination Bye-Laws, Delhi do not permit adoption of such a course. The stand taken by counsel for respondent No.3-School in the counter affidavit is not borne out from the record, as Rule 14 of CBSE Examination Bye-Laws empowers the Chairman of CBSE to condone the shortage of attendance even if it is below 60% in exceptional cases. So far as alleged misbehavior of parents of petitioner with school principal is concerned, this Court finds that it is unjustifiable but it cannot be a ground for revoking condonation of attendance already granted by the authorities concerned. Without going into this aspect any further and

upon finding that it is impermissible to withdraw the condonation of attendance, this Court is of the opinion that petitioner cannot be made to suffer for no fault of hers.

In view of aforesaid, impugned Communications of 27th March, 2017 of respondent No.3-School and 24th March, 2017 of respondents No.1 & 2- CBSE are hereby quashed with direction to respondents No.1 & 2-CBSE to declare the result of petitioner and requisite grade be accordingly granted.

Let compliance of this order be made within a week from today.

With aforesaid directions, this petition and application are disposed of.

A copy of this order be given *dasti* under the signatures of Court Master to counsel for the parties.

(SUNIL GAUR)
JUDGE

MAY 31, 2017

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