

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.13933,10385 and 8119 of 2018

M.Logeshwaran (Minor)
Rep.by his father and guardian
G.Mahendran

...Petitioner
in W.P.No.13933/2018

Minor E.Chalhma
Rep. by her father and guardian
Mr.N.Elango

...Petitioner in W.P.Nos.10385
& 8119/ 2018

Versus

1. The Assistant Secretary/Deputy Secretary
Central Board of Secondary Education,
New No.3, (Old No.1630),
"AJ" Block, 16th Main Road,
Anna Nagar West, Chennai-600 040.
2. The Additional Commissioner,
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai
IIT Campus, Chennai-600 036.
3. The Principal,
Kendriya Vidyalaya
Island Grounds,
Chennai-600 002.

...Respondents in W.P.Nos.13933
and 10385/2018

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1. The Additional Commissioner (Academics),
Kendriya Vidyalaya Sangathan,
18, Institutional Aread,
Shaheed Jeet Singh Marg,
New Delhi-110 016.

2. The Deputy Commissioner/Director,
Kendriya Vidyalaya Sangathan,
Regional Office, Chennai
IIT Campus, Chennai-600 036.
3. The Principal,
Kendriya Vidyalaya,
Island Grounds,
Chennai-600 001.
4. The Regional Director,
Central Board of Secondary Education,
New No.3, Old No.1630A, J Block,
16th Main Road, Anna Nagar West,
Chennai-40.

...Respondents in W.P.8119/2018

(R4 impleaded vide order dated 16.04.2018 in W.M.P.11191/18 in W.P.No.8119/18)

W.P.No.13933 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the 3rd respondent to declare the Physics subject as pass and permit the petitioner to re-appear for failed Biology subject under compartment examination with 3 chances as already the petitioner has passed in theory and practical of the Physics subject for the XI standard.

W.P.No.10385 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to declare that the petitioner has passed in theory and practical of the Chemistry subject for the XI Standard, written on 17.03.2018 Academic year of 2017-2018 by applying "CBSE Examination Bye-Laws-Chapter No.7 (Scheme of Examination) pass Criteria Item No.40.1(vi) of Page Nos.36 & 37, on the basis of the representation dated 17.04.2018 to the respondents 1 to 3, and permit the petitioner to continue her studies in XII Standard.

W.P.No.8119 of 2018:

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to permit the petitioner to reappear for the two failed subjects of Physics and Chemistry to be held on 06.04.2018 and 07.04.2018, so as to continue her education based on the representation dated 02.04.2018 to the respondents 1 and 2 and 03.04.2018 to the 3rd respondent.

For Petitioner in
W.P.No.13933/2018

: Mr.M.Palanimuthu

For Petitioner in
W.P.Nos.10385 & 8119/2018

: Mr.K.R.A.Muthukirushnan

For 1st Respondent in all W.Ps. : Mr.G.Nagarajan

For Respondents 2 & 3 in all W.Ps.: Mr.M.Vaidhyanathan

COMMON ORDER

As the issue involved in all the above Writ Petitions is one and the same, the Writ Petitions are taken up for disposal by a common order.

2. According to the minor Petitioner in W.P.No.13933 of 2018 viz. M.Logeshwaran, he is studying in the 3rd Respondent/School and appeared for XI Annual Examination conducted during March 2018. Results were declared on 27.03.2018 and he came to know that he failed in two subjects, viz. Physics and Biology. It is the case of the Petitioner that the 3rd Respondent/Kendriya Vidyalaya, which is under the control of the Central Board of Secondary Education, should follow the CBSE Examination Bye law for XI Standard.

2.1. The Petitioner in W.P.No.13933 of 2018 drew reference to the CBSE Examination Bye-laws - Chapter No.7, Scheme of Examination Item No.40/1, Pass Criteria (Senior School Certificate Examination) of Item No.vi for Standard XI, which reads as under:

"In order to be declared as having passed the Class XI Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of examination shall be 33%. In case of subject involving practical work a candidate must obtain 33% marks in theory and 33% in practical separately in addition to 33% marks in aggregate in order to qualify in that subject."

2.2. It is further stated by the Petitioner that the same was confirmed by the 1st Respondent in paragraph 6 of their counter affidavit in W.P.No.8119 of 2018. Relevant portion of the same is extracted below:

"additional amendment issued by the CBSE dated 29.11.2016, item No.40.2

(ii) ... a candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment."

Thus, according to the Petitioner, External Examination (Annual/Final Examination) marks alone should be considered for pass criteria for XI Standard.

2.3. It is further stated by the Petitioner that he had secured Pass Marks in Physics Examination, but the 3rd Respondent has erroneously declared that the Petitioner has failed in Physics subject in XI Standard during the Academic Session 2017-2018. In this regard, the Petitioner made a representation to the 1st Respondent and the same was handed over directly to the 1st Respondent on 10.05.2018.

2.4. Furthermore, the Petitioner was permitted to re-appear in Biology subject under Compartment basis with three chances of re-appearance, for clearing the subject as per CBSE Bye-law Chapter No.7, Item No.42(iii). The grievance of the Petitioner is that unless his results in the Examination conducted in Physics is immediately declared by the Respondents and he is permitted to re-appear for the failed Biology subject under Compartment basis, he will be put to irreparable loss and hardship, thereby his career would be affected.

2.5. Hence, the Petitioner in W.P.No.13933 of 2018 has come up with the said Writ Petition seeking a direction to the 3rd respondent to declare his result in Physics subject as pass and permit him to re-appear for failed Biology subject under compartment examination with 3 chances, as already, he had passed in Theory and Practicals of Physics subject for XI standard.

3. Minor E.Chalhama, represented by her father has filed two Writ Petitions in W.P.Nos.10385 and 8119 of 2018. According to her, she is studying in the 3rd Respondent/School and appeared for XI Annual Examination conducted during March 2018. Results were declared on 27.03.2018 and she came to know that she failed in two subjects, viz. Chemistry and Physics. She obtained 36% (25/70) in the Chemistry Theory in the Final Exam. However, by applying weightage in the subject, the School has declared as fail with (23/85) theory marks and overall score as 35 out of 100, as per the new Scheme of Examination.

3.1. It is further stated by the Petitioner/Chalhama that till the academic year 2016-2017, XI Standard Students were allowed to re-appear for two failed subjects as per the Revision

of Education Code for Kendriya Vidyalaya Sangathan. As per the new rule introduced, XI Standard students are permitted to appear only in one failed subject. The grievance of the Petitioner is that the students and parents were not informed about the new Rule during the academic year 2017-2018, well in advance.

3.2. It is the case of the Petitioner/Chalhama that she had secured Pass Marks in the Chemistry Examination, but the 3rd Respondent has erroneously declared that she has failed in Chemistry subject in XI Standard during the Academic Session 2017-2018. Thus, according to the Petitioner, unless her result in Chemistry subject and her result in Physics Theory Exam, which was already put in a sealed cover, are declared by the Respondents, she will put to irreparable loss.

3.4. Hence, the Petitioner/Chalhama, filed W.P.No.10385 of 2018 seeking a direction to the respondents to declare that she has passed in theory and practicals of Chemistry subject for XI Standard, written on 17.03.2018 for the academic year of 2017-2018 by applying "CBSE Examination Bye-Laws-Chapter No.7 (Scheme of Examination) pass Criteria Item No.40.1(vi) of Page Nos.36 & 37, on the basis of her representation dated 17.04.2018 to the respondents 1 to 3, and permit her to continue her studies in XII Standard. She filed W.P.No.8119 of 2018 seeking a direction to the respondents to permit her to reappear for the two failed subjects, i.e. Physics and Chemistry to be held on 06.04.2018 and 07.04.2018, so as to continue her education based on the representation dated 02.04.2018 made to respondents 1 and 2 and the representation dated 03.04.2018 made to the 3rd respondent.

4. The 1st Respondent/CBSE has filed counter affidavit stating that the Examination for XI Standard is conducted by the 3rd Respondent and the CBSE has nothing to do with the conduct and publishing the results in the XI Standard, subject to periodical regulations issued by the CBSE.

4.1. It is further stated by the 1st Respondent that CBSE Examination Bye-Laws - Chapter No.7 (Scheme of Examination) pass Criteria Item No.40.1 (vi) clearly states the obtaining of prescribed marks in the subject in XI Standard Examination. However, as to the allegation of the Petitioner/Chalhama that she had obtained more than 33%, it is stated that the 1st Respondent has nothing to do with the same and that if the candidate obtained 33% as enumerated in the relevant Examination Bye-law, the candidate is deemed to have passed in the particular subject.

5. In the counter affidavit filed on behalf of 2nd Respondent/Kendriya Vidyalaya Sangathan, it is stated that as per Bye Law 37(ii) of the CBSE Examination Bye Laws, the Schools

affiliated to the CBSE are entitled to conduct Class XI Examinations in the manner they deem fit. In contra distinction, the Rules provides that Class IX Examinations can also be conducted by the Schools as per the criteria laid down by the Board from time to time. In other words, Schools affiliated to CBSE can prescribe their own criteria for deciding promotion to Class XII.

5.1. Furthermore, Bye Law 41, which deals with the scheme of Examination for Secondary Schools, provides that in Clause IV, subjects of study under Scholastic Area A shall be assessed jointly by the School and the Board in respect of students appearing for the Examination conducted by the Board. However, in case of students appearing for the Summative Assessment II conducted by the School, the assessment will be done by the School. Details of question papers, marks and duration will be as per the scheme of studies. According to the 2nd Respondent, the Petitioners are attempting to take refuge under Clause 40.1, which deals with Senior School Certificate Examination, wherein, it has been provided that for securing a pass in Class XI, a candidate shall obtain 33 marks in all the subjects.

5.2. It is further stated by the 2nd Respondent that modifications in the Scheme of Examinations and pass criteria for Class XI from Sessions 2017-18 onwards have been made. Clause I(f) of the Modified Scheme provides for a cumulative pattern of evaluation and this method has been brought to the notice of the students and their parents by printing the same on the Report Cards and thus, the Petitioners are estopped from objecting to the said method of evaluation.

6. In support of his case, learned counsel for the Petitioners in W.P.Nos.10385 of 2018 and 8119 of 2018, has relied on a decision of the Kerala High Court in the case of Nikitha Basheer (Minor) vs. Secretary in W.P.(C).No.13150 of 2009 (K), wherein the Court has held that fixation of 40% marks as aggregate for determining pass in a particular subject is clearly against the provisions of the Senior School Curriculum, 2009. Relevant portion of the said judgment is extracted hereunder:

"17. ... For all these reasons, the petitioner is entitled to succeed in this writ petition. It is declared that the requirement of 40% as minimum marks to be obtained by the petitioner and that too taking all mid-term tests and other terminal examinations, is clearly against the provisions of Ext.P3. As the petitioner has obtained more than the minimum of 33% marks which is prescribed by Ext.P3 for promotion to Class XII, it is

declared that the petitioner is eligible for promotion. Therefore, the endorsement in Ext.P2 to the effect that the petitioner has failed in the examination in Class XI cannot be sustained and the same is quashed. The second respondent will issue fresh progress Report showing that the petitioner has passed in Class XI and will also issue Transfer Certificate accordingly on production of a copy of this judgment. There will be a direction to the first respondent to see that the second respondent issues a fresh Progress Report and Transfer Certificate as directed above."

7. Heard the learned counsel on either side and perused the material documents available on record.

8. In the case on hand, both the Petitioners have each failed in two subjects in XI Standard in the 3rd Respondent/School. The Petitioner in W.P.No.13933 of 2018 has admitted that he has failed in two subjects, viz. Physics and Biology and depending upon the results that may be declared by the School, he has to write Biology Examination, as pursuant to the interim order, he has taken up one paper. With regard to other Petitioner viz. Chalhama in W.P.Nos.10385 and 8119 of 2018, she has failed in two subjects, viz. Physics and Chemistry and that she has taken up supplementary examination in Physics, pursuant to the order of this Court, and the results of the same is kept in a sealed cover.

9. The case of the Petitioners is that in terms of Regulation 40.1(vi) and 40.2 and 42 of the Examination Bye-Laws of the Central Board of Secondary Education, Delhi, the Petitioners would be entitled to the relief sought in the Writ Petitions. For the sake of convenience, the said Regulations are extracted below:

"40.1-Pass Criteria (Senior School Certificate Examination):

(vi) In order to be declared as having passed the Class XI Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of examination shall be 33%. In case of subject involving practical work a candidate must obtain 33% marks in theory and 33% in practical separately in addition to 33% marks in aggregate in order to qualify in that subject.

40.2-Eligibility for Compartment in Senior School Certificate Examination:

A candidate failing in one of the five subjects of external examination shall be placed in compartment in that subject provided he/she qualifies in all the subjects of internal assessment.

42-Improvement of Performance/Compartment Examination for Secondary/Senior School Certificate Examination:

(iii) A candidate placed in compartment at the Senior School Certificate Examination shall be allowed to appear only in those subjects in which he/she has been placed in compartment at the subsequent three chances of compartment."

10. It is the case of the Petitioners that Annual Examination alone needs to be considered for the purpose of declaring the results either as 'Pass' or 'Fail' and in case, the student scores more than 33% in the Examination, results will have to be declared as pass. While so, it is the case of the 1st Respondent/CBSE that for XI Standard Examination, a decision need to be taken only by the School and CBSE has nothing to do with the conduct and publishing of results in XI Standard Examination, subject to periodical regulations issued by the CBSE.

11. It is no doubt true that XI Standard Examination will have to be conducted by the School. But, the contention that it is the discretion of the School, cannot be accepted, as the School will have to follow the criteria laid down by the Board from time to time. Whether the marks obtained in the Annual Examination alone have to be taken into account or marks obtained in the Examinations conducted by the School during the whole academic year at different stages, have to be taken into account, for the purpose of declaring the student as pass, is the issue for consideration in these Writ Petitions.

12. The conduct of the Examination includes evaluation of results and the performance of the candidates will be reflected in the Progress Card. The contention of the Petitioners that Progress Card is given only at the time of Final examination may not be correct, as the Report extracted below, would make it clear that the parents have already been put on notice. Relevant portion from the Progress Card is extracted below:

“(f) Report Card of Class XI has two parts I & II:

(i) Part I indicates subjects without practical/project. A student has to secure 33% in each subjects in a cumulative pattern (A+B) separately for promotion to next class XII.

(ii) Part II indicates subjects with practical/project as given by CBSE curriculum. A student has to secure 33% marks in the theory exam in cumulative manner (A+B) and 33% in practical exam in each subject separately for promotion to next class XII.”

13. From a reading of the same, it is very clear that 33% has to be secured by the student in cumulative Examination and that the entire academic performance of the student will have to be taken into account for the purpose of declaring him/her as pass or fail. That apart, there is a specific Circular regarding the Uniform System of Assessment, Examination and Report Card for Classes VI to IX and X from the academic year 2017-18 onwards.

14. The decision rendered by the Kerala High Court in Nikitha Basheer's case relied on by the counsel for the Petitioner in W.P.Nos.10385 and 8119 of 2018, may not be applicable to the facts of this case. Firstly, the judgment was delivered in the year 2009 and much water has flown and that new guidelines have been issued in the year 2017. Secondly, the Kerala High Court has held that fixing the minimum pass marks at 40% instead of 33%, is held to be bad.

15. In terms of the Circular, dated 21.03.2017, guidelines have been issued by the CBSE as regards Uniform system of Assessment, Examination and Report Card for Classes from VI to IX from the academic year 2017-18 onwards. Pursuant thereto, Kendriya Vidyalaya Sangathan, vide letter dated 24.03.2017 to the Deputy Commissioner/Director of Kendriya Vidyalaya Sangathan, has stated that the Kendriya Vidyalaya Sangathan has devised Uniform System of Assessment, Examination and Report Card for Classes I - XII from the academic year 2017-2018 onwards. Clause 12 of the said Circular is extracted hereunder:

“12. For class XI, a new pattern of assessment will follow having two components: Overall Assessment and Session Ending Assessment of 50% weightage each. Overall Assessment includes Periodic Tests and Half yearly examination. Year ending examination includes complete syllabus in theory and practical/project. The qualifying marks in

each subject will be 33%. In a subject involving practical work a student must obtain 33% marks in theory and 33% mark in practicals separately in addition to 33% marks in aggregate, in order to qualify in that subject. Existing provisions of compartmental examination will remain the same."

16. As stated supra, as per the new pattern of Assessment for Standard XI, results are declared based on the periodical assessment and CBSE has no control over the conduct of the Examination. As on date, the guidelines/instructions laid down by the decision rendered in Kerala High Court have been held to be bad. The Apex Court in the case of Padma Sundara Rao (Dead) vs. State of Tamil Nadu, (2002) 3 SCC 533, has categorically held that even a single fact may have bearing on the facts of a particular case that may be decided and the Court may not follow the decision.

17. When the guidelines have been fixed, which have been followed by the School in terms of the norms decided by the Board, I find there is no error on the part of the School, in taking note of the marks obtained by the student in the Examinations conducted throughout the academic session, as the entire portion is not being taken into account for setting up the Question paper in the Final Examination.

18. When the new procedure of Uniform System of Assessment is followed by the School in Standard XI, more particularly, in the light of the Circular of the CBSE, dated 21.03.2017, the same cannot be held to be contrary to bye-laws and that CBSE has categorically stated that they have no control over the conduct of Examination. Thus, when independent powers have been granted to the School to follow its own procedure, I am of the view that the procedure adopted and followed by the School with regard to the periodical assessment from the beginning of the academic year till the end of the academic year cannot be found fault with.

19. Hence, this Court holds that the Petitioner in W.P.No.13933 of 2018 will not be entitled to the relief sought by him not only on merits, but also on facts, as he had withdrawn the Writ Petition filed by him in W.P.No.12731 of 2018 seeking similar relief, without liberty from the Court to file a fresh Writ Petition. That being the case, yet another Writ Petition for the same cause of action will not arise.

20. As far as the other Petitioner in W.P.Nos.10385 and 8119 of 2018 is concerned, it is seen that the School has followed the directions of the Board in conducting not only the

Examination, but also awarding of marks, taking into account the performance of the student in the entire academic year, based on the periodical Examinations conducted through the year. Hence, the relief sought by the Petitioner in the above two Writ petitions also cannot be granted. It is made clear that the sealed cover containing the results of the Petitioner/Chalhman need not be opened and the same can be returned, as the Petitioner is not eligible to take up the supplementary examination pursuant to the order of this Court.

In the result, all the three Writ Petitions are dismissed. No costs. Consequently, connected W.M.P.No.10100 of 2018 in W.P.No.8119 of 2018 and W.M.P.No.12356 of 2018 in W.P.No.10385 of 2018 are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rm/aeb

To:

1. The Deputy Secretary,
Central Board of Secondary Education,
New No.3, (Old No.1630),
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Anna Nagar West, Chennai-600 040.
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Central Board of Secondary Education,
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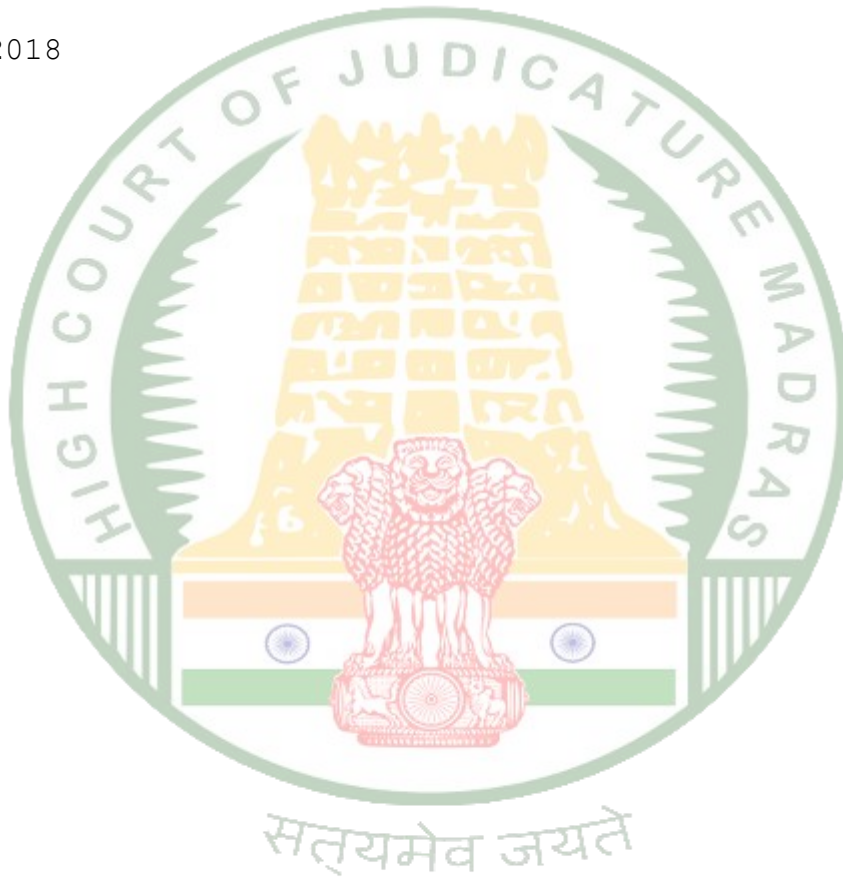
+1cc to Mr.M.Palanimuthu, Advocate, S.R.No.42603

+2cc to Mr.K.R.A.Muthukirushnan, Advocate, S.R.No.42178 & 42179

+3cc to Mr.M.Vaidhyanathan, Advocate, S.R.No.42664

W.P. No. 13933 of 2018,
10385 & 8119 of 2018

CS/09/08/2018



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