



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2018.

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.12400 of 2018

and

W.M.P (MD) No.11267 of 2018

D.Alagusubramania Raja

... Petitioner

Vs.

1. Central Board of Secondary Education,
rep. by its Secretary,
"Shiksha Kendra", 2, Community Centre,
Preet Vihar,
Delhi - 110 092.

2. Kendriya Vidyalaya Sangathan
(Under Ministry of Human Resource Development)
rep. by its Assistant Commissioner,
Regional Office - Chennai,
I.I.T. Campus, Chennai - 600 036.

3. Kendriya Vidyalaya Sangathan
rep. by its Principal
Panangadi Road, Srinivasa Nagar,
Sivagangai - 630 561.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the Impugned Order in F.No.395/KVSVG/2018 on the file of the respondent No.3 dated 11.05.2018 and quash the same as illegal and consequently for a direction, directing the respondent No.3 to declare the result of the petitioner's daughter namely A.Prakashini Nachiyar as pass in IX Standard as per the Examination Bye-Laws of the first respondent Board and admit her in X Standard within the time period stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.G.Nagarajan for R1
Mr.E.T.Rejendran for R2 & R3

O R D E R

The petitioner's daughter was a student of the third respondent school and studied IX standard during the academic year 2017-18. On conclusion of the academic year 2017-2018, a report card was issued to the petitioner, in which, it was shown that the petitioner's daughter had secured 55 marks in English, 42 marks in Sanskrit, 27 marks in Maths, 34 marks in Science and 43 marks in Social Science. As per the instructions given in the report card itself in relation to the marks obtained in the individual subjects, various grades were given to the petitioner's daughter as C1 in English, C2 in Sanskrit, E in Maths, D in Science, C2 in Social Science. 'E' Grade was considered to be fail, since the minimum percentage of marks to be obtained in each subject was 33. Since the petitioner's daughter had secured 27 marks in Maths, she was granted 'E' Grade in that subject.

2.While so, in addition to the Maths, the petitioner's daughter was also directed to write the Science examination once again, when she had secured 34 marks out of 100 more than the minimum 33 marks and she was also granted 'D' Grade. In view of her failing in the Maths paper and also not being considered for having pass in Science subject, despite she scored 34 marks, the petitioner's daughter was declared to have failed in the IX standard. In the supplementary examinations conducted, the petitioner's daughter had scored more than minimum marks in the Maths subject, that is, she had scored 27 out of 80 marks in Science and 39 out of 100 marks in Maths. In the said circumstances, the petitioner/father written to the Principal of the third respondent school to declare the results of his daughter as pass on the basis of the instructions given in the report card and admit his daughter in the X standard vide his representation, dated 05.05.2018. In response to the representation, the third respondent school has given reply on 11.05.2018 stating that even in the supplementary examination, the petitioner's daughter did not clear and also did not secure minimum marks of 33% separately for both internal and external examination, although it was acknowledged by the third respondent that the petitioner's daughter had secured aggregate of 'D' Grade, if marks are taken together. In the above said circumstances, the petitioner is before this Court challenging the reply of the third respondent dated 11.05.2018.

3.The learned counsel appearing for the petitioner would strongly contend that the impugned communication by the third respondent is contrary to the provisions of the examination bye-laws and also contrary to the instructions issued in the report card. Once it is admitted by the third respondent that the petitioner's daughter had secured 'D' Grade in the subject concerned, the question of subjecting her to write supplementary examination for



the same subject, did not arise at all. In any event, in the supplementary examination, the petitioner's daughter had got the minimum 33 marks in the Maths subject and therefore, she ought to be declared as pass in the IX Standard. In support of his contention, the learned counsel for the petitioner would draw the attention of this Court the examination bye-laws which is applicable to the Kendriya Vidyalayas run by the Central Government. He would draw the attention of this Court to Clause 38A, which provides for grading in secondary school examination, which supports the contention of the petitioner that grading 'D' would construed to be a pass grade. He would further draw the attention of this Court paragraph V of Clause 41-1, which reads as under:-

"41.1. Pass Criteria (Secondary School Examinations)

(v) In order to be eligible to qualify Class IX examination a candidate shall have to obtain minimum Grade D in all the five subjects (excluding the 6th additional subject) under Scholastic Area A as well as grades in subjects under Scholastic Area B, as stipulated in the Scheme of Studies, at the main or the subsequent improvement of Performance attempt."

4. According to the learned counsel for the petitioner, the above clause was introduced in the bye-laws by the governing body on 29.06.2010 and the same was made applicable to the students till remodeled assessment was brought in the year 2017. The learned counsel would further add that in 2017 i.e, Circular, dated 31.01.2017 the remodeled assessment structure was put in place for the academic year commencing from 2017-18 for class 10. As per which, a separate minimum marks to be secured for both external and internal examination. The said remodeled assessment structure was also made applicable by the said circular for classes 6 to 9 also from the academic year 2017-18. However, the learned counsel would submit that by subsequent notification, dated 27.02.2018, the remodeled assessment structure was exempted in respect of current batch of students, who are taking the examination in 2018. The exemption as contemplated in the above notification is as follows:-

"The Examination Committee of the Board in its meeting held on 16.02.2018 after considering the circumstances and the facts that the current batch of class X : 2018 is coming from a different assessment background while they were in class IX (in 2017) resolved to approve the following for this batch of Class - X appearing in 2018 Board Examinations as a one-time measure.

<https://hcservices.ecourts.gov.in/hcservices/> the current batch i.e., the batch of class X which is taking class X Examination in 2018 with 5 main subjects (having 20 marks as internal assessment



component as per scheme of studies) may be exempted from the mandatory separate pass criteria in the subject having component of 20 marks internal assessment and Board examination of 80 marks. They need to secure overall 33% (both taken together) in the subject to be able to pass that subject."

5. The learned counsel for the petitioner would submit that once an exemption has been granted to class 10, even assuming that the petitioner's daughter is required to secure minimum marks for both internal and external separately, such exemption ought to be granted to the petitioner's daughter also, since the original remodeled assessment structure was initiated only in respect of Standard X and the same was extended to other Standards also and by the same measure, the respondents ought to have extended such exemption to class IX and X. In any event, the learned counsel would submit that the petitioner is governed by the instructions as given in the report card and also the examination bye-laws. The circular issued by the respondents cannot over-ride this specific provision contained in the examination bye-laws. Therefore, he would submit that the petitioner's daughter is entitled to be declared as pass in the IX Standard.

6. Per contra, the learned counsel for the respondents 2 and 3 would resist the claim of the petitioner stating that the petitioner's daughter had not secured minimum marks separately, both internal and external, as per the latest notification and the circular issued by the second and third respondents and therefore, this writ petition is liable to be dismissed.

7. A detailed counter affidavit has been filed on behalf of the second and third respondents. In paragraph 5 of the counter affidavit, the guidelines are stated as hereunder:-

"5. The contention put forth in para 5 regarding the pass criteria (secondary school examination) is the old promotion criteria which we now follow remodeled assessment as stated in the above said para. As per the CBSC notification dated 31.01.2017 with effect from the academic year 2017-18 onwards. I further submit that as per the CBSC Circular No. Acad-05/2017 dated 31.01.2017 on the restoration of Board Examination for class X and remodeled assessment structure and examination for classes IX and X from Academic Year 2017-18 onwards as follows:-

ASSESSMENT SCHEME FOR CLASSES IX & X



Subjects	Total 100 Marks			
	80 Marks (Board Examination) Student has to secure 33% marks out of 80 marks in each subject	20 Marks (Internal Assessment) Student has to secure 33% marks out of over all 20 marks earmarked in each subject		
		Periodic Test (10 Marks)	Notebook Submission (5 Marks)	Subject Enrichment (5 Marks)
		(i)	(ii)	(iii)
Language -1	Board will conduct Class - X Examination for 80 marks in each subject covering 100% syllabus of the subject of Class-X only. Marks and Grades both will be awarded for individual subjects	Periodic written Test, restricted to three in each subject in an Academic year. Average of the best two tests to be taken for final marks submission	This will cover: ● Regularity ● Assignment completion ● Neatness & Upkeep of notebook	Speaking and listening skills
Language -2				Speaking and listening skills
Science				
Mathematics				Practical Lab Work
Social Science				Maths Lab Practical
				Map Work and Project Work.

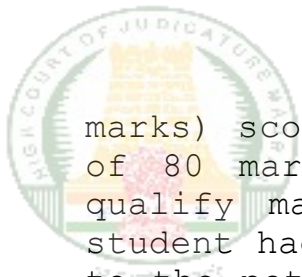
8. Further, in paragraph 9 of the counter affidavit, the factual position with regard to the marks obtained by the petitioner's daughter has been stated in detail, which is also extracted hereunder for understanding the case of the respondents 1 and 2:-

“(9) The petitioner had admitted that his daughter was unable to score minimum required marks (27 out of 80) in Maths in which she scored only 15 marks out of 80 marks which is below 33% at annual exam. But in science subject he contended that she scored 12 marks out of 20 marks in Internal assessment and 22 marks out of 80 marks in Annual Examination. He further contended that by taking together i.e., Internal Assessment and Annual examination totaling 12+22+ 34 marks out of 100 marks which is more than minimum required marks 33. His contention is incorrect. As per the CBSE's remodeled assessment as stated supra a student has to score 33%



marks i.e., 7 marks out of 20 marks in Internal Assessment separately and to secure 26 marks out of 80 marks (i.e 33) in Annual examination separately in each subjects. Marks scored in Internal assessment and Annual examination cannot be taken together. Since she scored 22 marks in science at Annual examination which is less than 33% ie 26 marks, she was placed under the compartmental examination along subject Maths. It is clearly informed to the stake holders by the CBSCE notification and KVS, though a student secures 33% together adding internal assessment and Annual examination and securing D grade is not eligible to be promoted to class X.

Marks Scored in Internal assessment 2017-18 out of 20 marks						Annual examination 2018 Out of 80 marks	
Subject	Periodic Test 10 Marks	Subject Enrichment Marks 5 Marks	Note Book Submission Marks 5 Marks	Total 20 marks	Minimum required marks 33% out of 20	Marks scored in Annual examination out of 80	Required marks to be promoted 33% out of 80 marks
Maths	3.88	4.20	4	12/20	7/20	15/80	26 marks compartmental
Science	3.38	5	4	12/20	7/20	22/80	26 marks compartmental
In internal assessment student scored						In Annual Examination	
12 marks i.e more than required marks 7 in Maths						15 marks i.e less than required marks 26 in Maths	
12 marks i.e. more than required marks 7 Science						22 marks i.e, less than the required marks 26 in Science.	



marks) scored 13/80 in Science, less than required marks 26. (33% of 80 marks) Since the student has failed to score required qualify marks in science i.e., 26 marks out of 80 marks, the student had been declared failed in class IX. It was communicated to the petitioner on 11.05.2018. The petitioner has accepted the above-said criteria and her daughter has written supplementary examination in Maths and Science. In the result of supplementary, she secured 27 marks out of 80 marks in Maths i.e., just 33%. But in Science she has secured 13 marks out of 80, which is less than 33%. Hence, the petitioner daughter was declared as failed.

10. In the above said circumstances, the learned counsel appearing for the respondents 1 and 2 would submit that the petitioner's daughter having failed in the examination in terms of the present guidelines, cannot seek the intervention of this Court to declare her as having passed the IX Standard.

11. On behalf of the first respondent, a counter affidavit has been filed. But in the counter affidavit, it is stated that no relief is claimed against the said respondent.

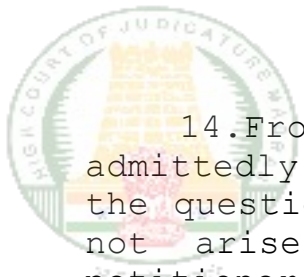
12. Heard the learned counsels appearing for the petitioner and the respondents.

13. As rightly contended by the learned counsel for the petitioner, the examination bye-laws clearly stipulates that granting 'D' Grade is construed as pass only 'E' Grade is construed to be a fail in the examination. In fact, the same position is clearly reflected in the report card. The instruction was issued in the report card with various grades in relation to the marks which is extracted hereunder:-

Instructions

Grading scales for scholastic areas: Grades are awarded on a 8.point grading scale as follows:-

Marks Range	Grade
91-100	A1
81-90	A2
71-80	B1
61-70	B2
51-60	C1
41-50	C2
33-40	D
32 & Below	E (Failed)

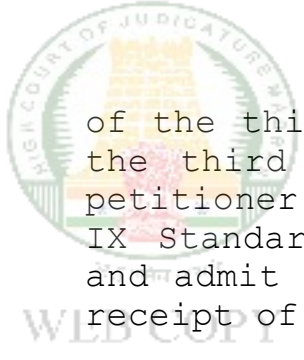


14. From the above, it could be seen that the petitioner has admittedly secured 'D' Grade in Maths as well as in Science and the question of applying the new guidelines to the petitioner did not arise in the first place, for the reason that the petitioner's daughter was governed by the examination bye-laws and the instructions contained in the report card. Therefore, the new guidelines by administrative circular cannot be allowed to override the examination bye-laws of the respondents. In any event, even if the circular has to be enforced, the same has to be enforced only for the future examination and cannot be applied to the candidates who had already entered the relevant Standard with then existing bye-laws.

15. In any event, as rightly contended by the learned counsel appearing for the petitioner, the second respondent administration itself felt that the new guidelines need not be insisted upon in respect of the batch of students to take class X examination in 2018, namely, that securing separate minimum marks both external and internal. Once such exemption is granted to Class X students, it is fair and proper that such exemption ought to have been granted to the other standards as well. This is more so for the reason that when the remodeled assessment structure was introduced by circular, dated 31.01.2017 and it was only for Class X from the academic year 2017-18. But the same was made applicable to other standard VI to IX. While that being so, this Court is unable to appreciate as to why the exemption can be singled out only in respect of Class X alone and leave out the other standard, from the benefit of the exemption. Such action on the part of the respondents 2 and 3 is discriminatory, unreasonable and violative of Article 14 and 16 of the Constitution of India.

16. Be that as it may, the petitioner's daughter being governed by the examination bye-laws and fulfilled the criteria as laid down in the report card in terms of her scoring minimum marks in the aggregate, it is not open to the authorities to insist on securing separate minimum marks both internal and external contrary to the examination bye-laws and the instructions as contained in the report card. In case the respondent administration wants to bring the new guidelines in order to regulate the academic regimen, it is always open to them to bring suitable amendment in the bye-laws and without an amendment being brought in, the circular cannot be allowed to override the bye-laws. Dehors the issue whether the circular can override the examination bye-laws, from the fact and materials as disclosed in the present proceedings the petitioner's daughter even otherwise is entitled to be declared as pass in IX Standard in view of the marks obtained by her in the supplementary examination.

<https://hcservices.courts.gov.in/hcservices>
17. For the above said reasons, this Court has no hesitation in allowing the writ petition. Accordingly, this Writ Petition is allowed and the impugned order in F.No.395/KVSVG/2018, on the file



of the third respondent, dated 11.05.2018 is hereby set aside and the third respondent is directed to declare the results of the petitioner's daughter, by name, A.Prakashini Nachiyar as pass in IX Standard as per examination bye-laws of the first respondent and admit the Petitioner's daughter in X Standard immediately on receipt of a copy of the order without any delay.

18.Since the petitioner's daughter has already lost considerable days of attendance, it is needless to mention that the third respondent school shall take a decision and admit the student without any further delay. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Principal
Kendriya Vidyalaya Sangathan
Panangadi Road, Srinivasa Nagar,
Sivagangai - 630 561.

+1cc to Mr.S.Kadarkarai, Advocate Sr.No.81935
+1cc to Mr.E.T.Rejendran, Advocate Sr.No.82088

SKN

VB/SKN/SAR1/27.09.2018/9P/4C

W.P. (MD) No.12400 of 2018
and

W.M.P (MD) No.11267 of 2018
03.09.2018