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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 3203 OF 2019

Yash Bharat Zende
Age: 16 years, Occ.Student,
U/g. of Natural father,
Shri Bharat S/o Shriram Zende,
Age: 47 years, Occ.Service
R/o 4, Varad Bungalow, Behind
Kohinoor Mangal Karuyalaya,
Gulmohar Road, Savedi, Ahmednagar ..PETITIONER

VERSUS

1. Union of India
Ministry of Human Resource Development.
2. Central board of Secondary Education,
Through Controller of Examination,
C.B.S.C., Shikhsa Kendra 2,
Community Centre, Preet Vihar,
New Delhi - 110092.
3. Central Board of Secondary Education
through Regional Officer,
New No. 3, J-Block, 16th Main Road,
Anna Nagar West, Chennai-600040 ..RESPONDENTS

Mrs Charuta S. Deshmukh, Advocate for petitioner;
Mr S. B. Deshpande, A.S.G.I. for respondent Nos. 1 to 3

**CORAM : PRASANNA B. VARALE
AND
S. M. GAVHANE, JJ.**

DATE : 5th March, 2019

ORAL ORDER:

Heard Mrs Deshmukh, learned Counsel appearing on
behalf of the petitioner and Mr S.B. Deshpande, learned

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A.S.G.I. appearing on behalf of respondent nos.1 to 3.

2. Issue notice to respondent nos.1 to 3, returnable forthwith.

3. Learned A.S.G.I. waives service of notice on behalf of respondent nos. 1 to 3.

4. The petitioner, a minor, through his father, is before us on the backdrop of peculiar circumstances with a substantive prayer i.e. prayer clause (B), thereby seeking quashing and setting aside letter dated 15th February, 2019, bearing No.CBSE/RO(M)E3 /MR/ COND/2018-19/35753 and 3525, issued by respondent no.3 as well as seeking directions by prayer clause (C) for issue of hall ticket/ admit card to petitioner for appearing in Xth standard examination for the academic year 2018-19 and further permitting him to appear for examination.

5. The petitioner was admitted in respondent no.4. Indus World School, Darewadi, Ahmednagar in VIIIth standard in the academic year 2016-17. Petitioner is stated to be a bright student. Perusal of the report card placed on record at Exh.A

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shows that the petitioner obtained overall grade B1 and his CGPA is 7.5. In so far as assessment on the aptitude as well as inclination of the petitioner towards extra-curricular activities are concerned, the report clearly shows that the petitioner was having interest in social skills. The petitioner was friendly with his friends. He had an inclination towards the process of learning. The petitioner was also friendly with his classmates and had shown keen interest in technology and computer related activities. The report also shows that the petitioner was equally good in sporting activities as he had shown a positive inclination to games of cricket and football and had, in fact, participated in inter-school district level cricket competition. The report also shows that apart from sporting activities, the petitioner had an inclination towards dramatics and had participated in English drama at his school level. We are referring to these facts in details so as to support our observation that the petitioner is a teenager and a bright student having varied interests in academic as well as extra-curricular activities. It seems that this young boy was subjected to medical examination. A copy of the report is placed on record at Exhibit- B and the misfortune could be, this young aspiring and brilliant boy who was friendly with his classmates, his fellow students, teachers and was having an active interest in extra-

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curricular activities, for the reasons best known to the experts, was subjected to the depressive features. It may not be necessary for us to refer to the other details referred to in the medical certificate. Suffice it to say that the medical expert opinion in impression, clinical observation and psychometry is suggestive of above average intelligence and depressive features (adjustment disorder) due to interpersonal issues with family. Even this observation of the expert shows that the petitioner is above average intelligence and facing illness which is certainly beyond the control of the petitioner or his family members.

6. There is another certificate placed on record issued by a private medical practitioner on 5th February, 2019 indicating that circumstances prompted petitioner for irregular attendance in the school. In the first submission, probably which is a formality, the Principal of respondent No. 4 school submitted a report to respondent No. 3 - Regional Officer on 24th December, 2018. In a tabular form, the details of attendance of the petitioner are provided to the authority and it shows that petitioner's attendance till 22nd December, 2018 is 46.79%. Perusal of the report further shows that the petitioner also was unable to attend periodical assessment for second session and

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third session, though reminders were forwarded to the parents. The father of the petitioner had approached the school authorities with medical certificates to point out that absence of the petitioner was purely for *bona fide* reason of illness of the petitioner and peculiar circumstance beyond his control.

7. It seems that the school authorities formed a positive opinion and thought it fit to refer the matter to the authorities seeking condonation of absenteeism of the petitioner. A communication is forwarded to respondent No. 3 through school on 5th February, 2019, which specifically states that, the school authorities have received the medical certificates and it is the genuine feeling of the school authorities that the petitioner is fit to appear for Xth standard examination. Accordingly, a request was made to the authority for consideration of absenteeism and permitting the petitioner to appear for the said examination. The school authorities also requested respondent No. 3 to issue hall ticket to the petitioner at the earliest by considering his case positively.

8. The school authorities again forwarded a communication on 18th February, 2019 to respondent No. 3 with reiteration of the request and with addition of the fact that the petitioner was

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under-going a prolonged treatment and now he is fit and prepared to appear for aforesaid examination and requested that the matter be treated as urgent and admit card be issued in his favour. The Principal of the school also stated that the parents of the petitioner are anxious and tensed over the situation being faced by their son. The father of the petitioner also submitted a representation to respondent No. 2 Controller of Examinations on 11th February, 2019. It will not be out of place to state that the parents and teachers association also took this matter with all positive zeal and forwarded a request / representation to respondent No. 2 on 8th February, 2019. Unfortunately, there was no positive response from the respondents authorities and by letter / communication dated 15th February, 2019 respondent No. 3 informed the Principal that request for condoning shortage of attendance is rejected as per the Board's norms. It was further informed to the Principal that admit card should not be issued to the petitioner.

9. The parents of the petitioner again made an attempt with a request letter dated 28th February, 2019 to respondent No. 2 to consider the case of the petitioner and to issue admit card to him. The parents specifically submitted in the application that denial to grant an opportunity to appear for examination would

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lead the petitioner in further depression. As there was no response, the petitioner was left with no choice but to approach this Court.

10. Mrs Deshmukh, learned Counsel appearing on behalf of the petitioner vehemently submitted that the authority ought to have considered peculiar circumstances and without raising technical hurdles ought to have considered the case of the petitioner and could have granted opportunity to the petitioner so as to prosecute his academic career.

11. We had requested Mr Deshpande, learned A.S.G.I. appearing on behalf of respondent Nos. 1 to 3 to seek response from the authorities. Mr Deshpande made available the communication in the form of para-wise comments. The same is taken on record and marked 'X' for identification. The Regional Officer i.e respondent No. 3 reiterates inability to consider the case of the petitioner on two grounds, firstly; initially when information was received through the Principal, the medical documents or certificates were not placed on record for perusal of the authority. The request, as such, was rejected by communication dated 23rd January, 2019 as per Board's norms. The school again made a representation on 5th

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February, 2019 along with certificates issued by the expert. It is stated in the communication that this certificate is obtained after rejection of the case and case was re-examined again and was rejected vide office letter dated 15th February, 2019. The second ground for rejection is, the Examination bye-laws of the Board and more particularly rules 13.1 and 14, which read thus:

"13.1 (i) The expression " a regular course of study" referred to in these Bye-Laws means at least 75% of attendance in the Classes held; counted from the day of commencing teaching of Classes X/XII upto the 1st of the month preceding the month in which the examination of the Board commences. Candidates taking up a subject(s) involving practicals shall also be required to have put in at least 75% of the total attendance for practical work in the subject in the laboratory. Heads of Institutions shall not allow a candidate who has offered subject(s) involving practicals to take the practical examination(s) unless the candidate fulfills the attendance requirements as given in this Rule.

Rule 14 : Rules for Condonation of Shortage of Attendances

(i) If a candidate's attendance falls short of the prescribed percentage, the Head of the School may submit his name to the Board provisionally. If the candidate is still short of the required percentage of attendance within three weeks of the commencement of the examination, the Head of the institute shall report the case of the Regional Officer concerned immediately. If in the opinion of the Head of

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the Institution, the candidate deserves special consideration, he may submit his recommendation to the Regional Officer concerned not later than three weeks before the commencement of the examination for condonation of shortage in attendances by the Chairman, CBSE, who may issue orders as he may deem proper. The Head of the School in his letter requesting for condonation of shortage in attendance, should give the maximum possible attendance by a student counted from the day of commencing teaching of Classes X/XII (beginning of the session) upto the 1st of the month preceding the month in which the examination of the Board commences, attendance by the candidate in question during the aforesaid period and the percentage of attendance by such a candidate during the aforesaid period.

(ii) Shortage up to 15% only may be condoned by the Chairman. Cases of candidates with attendance below 60% in class X or class XII, as the case may be, shall be considered for condonation of shortage of attendance by the Chairman only 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.

(iii) The principal shall refer a case of shortage within the above prescribed limit of condonation to the Boards, either with the recommendations or with valid reasons for not recommending the case.

(iv) The following may be considered valid reasons for recommending the cases of the candidates with

attendance less than the prescribed percentage:

- (a) prolonged illness;
- (b) loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and
- (c) any other reason of similar serious nature
- (d) Authorized participation in sponsored tournaments and sports meets of not less than inter-school level and at NCC/NSS camps including the days of journeys for such participation shall be counted as full attendance."

12. On the backdrop of aforesaid rival submissions and on going through the material placed on record, we are of the opinion that this is a fit case wherein this Court can exercise its extra-ordinary powers under the Constitution.

13. As stated above, the career progression report shows that the petitioner is a bright student having over all interest in all streams such as academics and extra-curricular activities. At the cost of repetition, we again refer to this report and the class teacher while assessing the performance of the petitioner stated that he is very sensitive and shows compassion for living creatures. The goal set up by the petitioner is to become an Engineer. He has shown deep interest in the sporting activities like football and cricket and, in fact, had participated in the

school team at inter-school district level cricket competition. In so far as his skills are concerned, the class teacher observed that the petitioner displays good experimental skills and is active in using technology. Thus, but for some reason and unfortunate circumstances which are absolutely beyond the control of the petitioner, he was facing an ailment.

14. The certificate placed on record at Exhibit- B shows that the petitioner was subjected to medical examination on 20th July, 2018. Admittedly, this document was not placed before the authority and it seems that there is another medical certificate issued by a private practitioner on 5th February, 2019. Although these certificates were submitted belatedly, the same will not permit us to form an opinion that authenticity and genuineness of these certificates is doubtful. We have no reason to say that these certificates are un-true or not genuine and if the expert in the field assesses either physical or mental health of a person and accordingly issues a certificate, this Court would hardly be able to sit over these certificates as an appellate authority to doubt the correctness or otherwise of the certificates. This Court is not possessing expertise either in the field of physical or mental health and the assessment certainly can be done by the experts in the field as has been done in

present case. The school authority though initially could not find favour with the petitioner, the second communication dated 5th February, 2019 issued by the Principal of the school clearly shows that the school authority was also supporting the case of the petitioner positively and was requesting the authority to issue admit card and permit him to appear for examination.

15. Considering the examination bye-laws of the Board, it reveals that rule 13.1 pertains to requirement of attendance which is to be at least 75% and rule 14 (ii) is the provision enabling consideration for condonation of shortage of attendance. Perusal of these rules show that cases of candidates with attendance below 60% in class X or class XII, as the case may be, appearing for the board examination, shall be considered for condonation of shortage of attendance by the Chairman only in exceptional circumstances created on medical ground, such as, candidate suffering from serious diseases like cancer, AIDS, TB or similar serious diseases requiring long period of hospitalization.

16. Sub-rule (iv) of rule 14 reads thus:

" The following may be considered valid reasons for recommending the cases of the candidates with

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attendance less than the prescribed percentage:

- (a) prolonged illness;
- (b) loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and seek any other reason of similar serious nature."

Reading these provisions makes it clear that the cases of ailments referred to in clause (ii) of Rule 14 are illustrative in nature and Rule making authority was conscious of the fact that there can be some reason which is though not referred in the Rules but may prompt a situation for a long absence and as such to meet with such an exigency, sub-rule (iv) clause (C) states that any other reason of similar serious nature. We have no hesitation to say that the authorities can certainly consider the cases wherein material placed before them shows that the absence was for certain reason of an illness and was beyond the control of a student or his parents.

17. We have no hesitation to state that the object of the education authorities should be to see that the students are not deprived of pursuing their academic career in genuine cases and they deserve to be given an opportunity to prove their metal

in the examinations along with other fellow students and there are certain occasions wherein the authorities are faced with a situation probably not arisen earlier but, in such a situation the authorities are expected to think out of the box so as to provide an opportunity to student to appear for examination, instead of raising technical hurdles and depriving him/her of prosecuting his/her academic career. It may not be out of place to state that when we say that an opportunity of education be granted to a young boy or a girl, it is not only for appearance for examination but it is basically for young generation to raise his/her academic career and make him/her a literate and a responsible citizen. In present case, depriving such an opportunity would not only be loss of academic year but it would also be a loss for petitioner particularly in losing his confidence and aggravating his depression, which we wish to avoid.

18. In the light of discussion as above, the petition is allowed.

The order dated 15th February, 2019 passed by the Respondent no. 3 - Regional Officer is quashed and set aside. We direct respondent - authorities i.e respondent Nos.1 to 3 to issue necessary directions to respondent No.4 so as to make all

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necessary arrangements for permitting the petitioner to appear for examination as expeditiously as possible and to issue admit card to the petitioner on or before 6th March, 2019 as the examination is scheduled on 7th March, 2019.

We further make it clear that this order is on the backdrop of peculiar circumstances referred to above and should not be treated as a precedent and the authorities are at liberty to assess each and every case on its own merits and as per the examination bye- laws of the Board.

Registry to provide authenticated copies of this order to the learned Counsel appearing on behalf of the petitioner and learned A.S.G.I.

Considering the urgency in the matter, we request Mr Deshpande, learned A.S.G.I. to communicate this order to all concerned authorities, immediately.

(S. M. GAVHANE, J.)

(PRASANNA B. VARALE, J.)

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