

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

907 WRIT PETITION NO.12534 OF 2019

**KRISHNA ASHOK NAIK AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for Petitioners : Shri More P.P.
AGP for Respondent / State : Shri S.B. Pulkundwar
Advocate for Respondent Nos.2 & 3 : Ms Surekha Mahajan
Advocate for Respondent No.4 : Shri K.G. Gaikwad
Advocate for Respondent No.5 : Shri S.B. Deshpande

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**CORAM : S.V. GANGAPURWALA & AVINASH G. GHAROTE, JJ.
Dated: November 05, 2019**

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PER COURT :-

1. Shri. More, the learned Advocate for the petitioners submits that, the petitioners have passed the SSC examination through CBSC Board. The petitioner no.1 secured 33 marks in two subjects and petitioner no.2 secured 33 marks in one subject. The petitioners thereafter are admitted to the 11th Std. in respondent no.4 college under the Secondary School Board. The petitioners in May-2019 appeared for 11th Std. examination and secured 72% and 66% marks, respectively. The petitioners are subsequently admitted in 12th Std. The learned Advocate submits that, the respondent no.3 issued communication to the respondent no.4 to the effect that, the petitioners are entitled for admission to 11th std. for the academic year 2019-20 and would be entitled to appear for 12th std.,

examination for the academic year 2020-21 only. The learned Advocate submits that the same is illegal. The petitioners have passed the SSC examination from CBSC Board on or about March-April 2018. The petitioners were admitted for the academic year 2018-19 in the 11th Std and are entitled to appear for 12th Std. examination for the academic year 2019-2020. The respondents cannot insist that the petitioners should be allowed to appear for the examination only for the academic year 2020-21.

2. Ms. Mahajan, the learned advocate for the SSC Board submits that, the passing marks as per the Secondary School Board in any subject is 35 marks. The petitioners secured less than 35 marks in some of the subjects. As such, they cannot be said to have passed as per the rules and regulations of SSC Board. In the year-2019, a letter was received from the State Government to the effect that passing criteria would be considered as per the regulations of the Board the students have appeared for examination. The said letter cannot be given a retrospective effect. In view of the directions of the State Government, the petitioners are eligible to be admitted now for the 11th Std in the academic year 2019-20 and would be eligible to appear for 12th Std for the academic year 2020-21. The petitioners cannot take the benefit of the policy of the State Government with a

retrospective effect.

3. We have also heard Mr Deshpande, the learned ASG for the Respondent No.5 – CBSC Board.

4. It is not a subject matter of debate that the petitioners herein have passed SSC from CBSC course in March–April 2018. They have secured the minimum passing marks required as per regulations governing CBSC examination. However, the petitioners fail short of passing marks as required under the Secondary School Board regulations.

5. One Mr Rohit Mahavi had also appeared for SSC examination conducted by CBSC Board and had secured 34 marks i.e. one mark short of the passing marks required as per the Secondary School Board Regulations. He had filed the writ petition before this Court at Nagpur Bench bearing Writ Petition No.7661 of 2018. Under order dated 19.06.2019 this Court directed the SSC Board to consider the cause of the said petitioner. The said cause was considered by the Board.

6. It also appears that, subsequently the State Government has

directed to the Secondary School Board to consider the students eligible for admission to the 11th Std., if the candidates have secured the minimum passing marks required as per the regulations of the Board conducting the examination.

7. This would exhibit that the Secondary School Board has now accepted that if a student gets minimum passing marks required as per the regulations of the Board conducting the SSC examination, then he would be eligible to be admitted in 11th Std.

8. The decision has been taken by the State Government for the welfare of the students. The petitioners are already admitted to the 11th Std., appeared for the examination of the 11th Std for the academic year 2018-19 and have passed in 1st class. They are also subsequently admitted to the 12th Std for the academic year 2019-20.

9. Considering the decision taken by the State Government and accepted by the Secondary School Board, we do not find any impediment for the Secondary School Board to allow the petitioners to appear for 12th Std examination, of course upon satisfaction that they had the minimum attendance required for the 12th std. examination and satisfying all other criteria.

10. In light of the above, the impugned communication is quashed and set aside. The respondent nos.2 and 3 shall not refuse to accept the examination form of the petitioners for the 12th Std examination for the academic year 2019-20, only on the ground that the petitioners did not possess minimum 35% marks in all subjects in the SSC examination conducted by the CBSC Board as these petitioners had secured the minimum passing marks required as per the regulations of the CBSC.

11. Writ Petition accordingly allowed. No costs.

(AVINASH G. GHAROTE, J.) (S.V. GANGAPURWALA, J.)

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