

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP No.6572 of 2019
Date of decision:-12.03.2019

Gaurav Dahiya (minor) through his father

.....Petitioner

versus

Central Board of School Education, Delhi and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. G.C. Dhuriwala, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.(ORAL)

Gaurav Dahiya (minor), has filed the instant petition through his father and natural guardian Sh. Pardeep Dahiya, assailing the order dated 07.03.2019 (Annexure P-6) passed by the Central Board of Secondary Education, declining the request for condonation of shortage of attendance. A writ of mandamus is sought to direct the respondent authorities to issue to the petitioner the provisional roll number so as to enable him to sit in the 10th class examination, slated to be held in the month of March 2019.

Brief facts are that the petitioner is a Class 10th student with the Brigadier Ran Singh Public School, Dujana, District Jhajjar, Haryana and which is affiliated to the Central Board of Secondary Education. Petitioner was arrested on 21.09.2018 on account of registration of FIR No.971 dated 21.09.2018 at Police Station, Jhajjar. He was sent for trial before the Juvenile Court, Jhajjar, his date of birth being 05.01.2003. He remained in the Juvenile Jail/Home from 21.09.2018 to 21.02.2019. Appended alongwith the writ petition is copy of the judgment dated 21.02.2019,

(Annexure P-2) passed by the Principal Magistrate, Juvenile Justice Board, Jhajjar and in terms of which the petitioner has earned acquittal. It has been averred that the petitioner immediately approached the school authorities by submitting an application on 02.03.2019 praying for issuance of the roll number so as to appear in the 10th class examination to be conducted in the month of March 2019. The requisite roll number has been denied to the petitioner as he fell short of attendance and even the request for condonation has been dismissed vide impugned order dated 07.03.2019 (Annexure P-6)

Counsel has argued that the petitioner had deposited the entire dues/fees alongwith fine etc.for the period from December 2018 to March 2019 with the school and inspite of the Principal of the School having sent the recommendatory letter to the Controller of Examination, CBSE, for issuance of admit card/roll number, the same has been declined. Counsel urges that the action of the respondent authorities is unjust and arbitrary. Further argued that the petitioner had remained in custody for the period from 21.09.2018 to 21.02.2019 on account of circumstances which were beyond his control. The trial having culminated in acquittal, the period spent by the petitioner under custody ought to have been condoned.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this court is of the considered view that there is not merit in the instant petition and the same deserves to be dismissed.

The Central Board of Secondary Education has framed examination byelaws. Rule 14 governs condonation of shortage of attendance and reads in the following terms:-

“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 Institution shall report the case to the Regional Officer concerned immediately. If in the opinion of the Head of 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 Board, 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) Authorised 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.”

Perusal of the provision reveals that in a case of shortage of attendance, if in the opinion of the head of the institution the candidate concerned deserves special consideration, he may submit his recommendation to the Regional Officer concerned of the CBSE for condonation of shortage in attendance and which in turn is to be considered by the Chairman, CBSE. Reasons which may be considered as valid for recommending the case of candidate with attendance less than the prescribed percentage are also delineated in Rule 14 itself i.e. Prolonged illness, loss of father/mother, any other reason of **similar serious** nature or authorised participation in sponsored tournaments, sports meets and at NCC/NSS camps. Even the discretion vested in the Chairman, CBSE to condone attendance is circumscribed under the Rule. Shortage upto 15 % only may be condoned by the Chairman. In the case of candidates with attendance below 60% in Class 10th or Class 12th their claim may be considered for condonation by the Chairman but only in exceptional circumstances and that to on medical grounds such as candidates suffering from serious diseases like Cancer, AIDS, TB or similar serious diseases requiring long period of hospitalization.

In the present case, the petitioner having been involved in an FIR and having faced trial and even though ultimately acquitted, his reasons of absence from classes on account of having remained in custody does not fall under the situations contemplated under Rule 14 to be considered for condonation of shortage of attendance. It may be apposite to take note that there is no challenge raised in the petition to Rule 14 of the CBSE examination byelaws. The impugned order dated 07.03.2019 (Annexure P-6) as such does not fall foul of Rule 14 of the examination byelaws framed by CBSE.

Even otherwise submission advanced by counsel that shortage of attendance has not been condoned by the CBSE authorities inspite of a recommendation having been made by the school authorities, is not well-founded. The communication dated 02.03.2019 from the Principal of respondent No.3 school and addressed to the Controller of Examination, CBSE, New Delhi (Annexure P-5) and which has been projected to be recommendatory in nature rather demolishes the case of the petitioner. Perusal of Annexure P-5 would reveal that 21.09.2018 was the last day when the petitioner attended school. He remained absent thereafter and inspite of repeated messages having been sent by the School to the parents on each working day, no response was forthcoming. Accordingly name of the petitioner was struck off from the school rolls on account of prolonged absence. As on 31.12.2018 attendance of the petitioner was 100 out of total maximum possible attendance of 185. Parents of Gaurav Dahiya, had approached the school on 25.02.2019 and informed that Gaurav had not been attending school because he was arrested and was in jail and has been acquitted and released from custody on 21.02.2019. The school authorities

in turn informed the parents that Gaurav cannot be allowed to appear in 10th class examination on account of shortage of attendance as his attendance as on 25.02.2019 stood at 100 against a maximum possible of 219. School authorities further advised that Gaurav had appeared only in the First Periodic Test and thereafter has missed the Second and Third Periodic Test. He has not covered almost 70% of the syllabus and as such there was not even a remote possibility of him passing the examination. The communication dated 02.03.2019 (Annexure P-5) further reveals that it was only on the insistence of the parents and relatives of Gaurav that a request to consider condonation of shortage of attendance had been forwarded to the CBSE authorities.

Even the communication dated 02.03.2019 (Annexure P-5) issued by the school authorities does not support the prayer and claim of the petitioner for condonation of attendance. The shortage of attendance is to the extent of almost 70%.

In view of the above, this Court does not find any patent infirmity in the impugned order dated 07.03.2019 (Annexure P-6). It is rather inconsonance with Rule 14 of the examination byelaws framed by CBSE.

No merit.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

12.03.2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No