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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 1st December, 2020

+ LPA 332/2020

YASH YADAV

..... Appellant

Through: Mr. Apurb Lal, Advocate

versus

**CENTRAL BOARD OF SECONDARY
EDUCATION & ANR.**

..... Respondents

Through: Mr. Atul Kumar, Advocate
for R-1/CBSE

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings in the matter have been conducted through video conferencing.

1. This Letters Patent Appeal has been preferred by the original petitioner in W.P.(C) 1427/2020. The appellant (original petitioner) is aggrieved by the judgment and order of the learned Single Judge dated 15th October, 2020 in W.P.(C) 1427/2020 (Annexure-1 to the memo of this LPA).

2. Having heard learned counsel for both the sides and looking into the facts and circumstances of the case, it appears that the appellant was a student of Class X and studying at The Sovereign School, Phase-III, Pocket-

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17, Sector-24, Rohini, Delhi-110085. It further appears from the facts of the case that, owing to health issues, this appellant (original petitioner) could not attend the school classes regularly. It also appears from the facts of the case that this appellant was hospitalised for a period running from 16th October, 2019 to 21st October, 2019 at Saroj Super Speciality Hospital for treatment of “Enteric Fever with AFI with Dehydration”. It was pointed out to the learned Single Bench that the Chairman of respondent No.1 has rejected the case of the appellant for condonation of shortage of attendance on medical conditions as the same does not fall under the category of exceptional circumstances referred to in Clause 14 of the “Examination Bye-Laws, 1995 (updated upto January 2013)” hereinafter referred as “Examination Bye-Laws” framed by the Central Board of Secondary Examination (CBSE).

3. It further appears from the facts of the case that this appellant (original petitioner) was initially not allowed to appear in Class X Board Examination on the ground that he had only 43% attendance in the classes held in the academic session 2019-2020, whereas the minimum prescribed limit is 75 %.

4. Aggrieved by the aforesaid communication dated 6th January, 2020 the appellant (original petitioner) filed the writ petition being W.P.(C) 1427/2020, with the following prayers:

“a. Set-aside the letter dated 06/01/2020 by which the Respondents are not allowing the Petitioner to appear in the Xth Board Examination commencing in the month of February, 2020.

b. Call for the official records.

c. Pass such other and further order as this Hon’ble Court deems fit and proper in the facts and proper in the facts and circumstances of the case.”

5. Learned counsel appearing for the appellant (original petitioner) submitted that the shortfall in attendance took place due to health issues faced by this appellant and besides this, the appellant was hospitalized from 16th October, 2019 to 21st October, 2019 due to suffering from fever. For these very reasons, *vide* an order dated 12th February, 2020, interim relief, was granted by a learned Single Judge of this Court in W.P.(C) 1427/2020, whereby this appellant (original petitioner) was allowed to appear in the said examination. Accordingly, the appellant (original petitioner) appeared in the exam but his result was withheld. Finally, the writ petition (W.P.(C) 1427/2020) was dismissed on 15th October, 2020, by the learned Single Bench. According to learned counsel for the appellant, the learned Single Judge failed to appreciate the fact that this appellant was suffering from illness.

6. The contention of the appellant was not accepted by the learned Single Judge of this Court mainly for the reasons that -

- a. As per the Examination Bye-laws no. 13 and 14, minimum attendance required as a matter of fact is 75% of the total attendance.
- b. As per the Examination Bye-Laws Nos. 13 and 14, shortage upto 15% only may be condone by the Chairman. In the case of a candidate appearing for Board Examination having attendance below 60% in Class X, the Chairman shall consider the request for condonation of shortage of attendance only in exceptional circumstances created on medical grounds, such as candidate suffering from serious diseases like cancer, AIDS,

TB or similar serious diseases which require long period of hospitalization..

- c. In the facts of the present case, this appellant (original petitioner) had attended 80 days out of total 186 classes. Thus, presence of this appellant (original petitioner) comes to 43%.
- d. In view of these facts, this appellant (original petitioner) is neither falling in the category of minimum 75% attendance nor this appellant (original petitioner) is falling within the Bye-Laws 14(ii) as stated hereinabove.

7. The relevant Bye –laws 13 and 14 of Examination Bye-laws relied upon by the learned Single Judge reads as under-

“13. A Regular Course of Study

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 IX/X/XI/XII as the may be, upto the 1st of the month preceding the month in which the examination of the School/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 fulfils the attendance requirements as given in this Rule.

(i)(a) The expression “a regular course of study” referred to in these Bye Laws means at least 60% of attendance in respect of students participating in Sports at National level organized by recognized Federations/CBSE/SGFI, the Classes held counted from the day of commencing teaching Classes IX/X/XI/XII, as the case may be, upto the 1st of the month preceding the month in which the examination of the School Board commences.

Candidates taking up a subject(s) involving practicals shall be required to have put in at least 60% 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 fulfils the attendance requirements as given in this Rule.

14. Rules for Condonation of Shortage of Attendances

(i) If a candidate's attendance falls short of the prescribed percentage, in case of students appearing for the Secondary and Senior School Certificate Examinations conducted by the Board, 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 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 in respect of those students appearing for the Secondary and Senior School Certificate Examinations conducted by the Board. Cases of candidates with attendance

below 60% in class X or class XII, appearing for the Board's examinations, 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 hospitalization. ...”

(emphasis supplied)

8. Learned counsel appearing for the appellant further submitted that the words “similar serious disease” requiring long period of hospitalization used in Examination Bye-Law No. 14(ii) includes enteric fever, which this appellant was suffering from. He submitted that the Bye-law requires liberal interpretation in accordance with the judgment of this Court in ***Pranshu Shakti Tiwary through Mother Smt. Kanchan Tiwary vs. Central Board of Secondary Education & Ors 2019 SCC OnLine Del. 8261.***

9. We are not inclined to accept this contention of the appellant. Howsoever liberally the Bye-law is to be interpreted, the Court must be satisfied that the illness of the student concerned was of a nature which disabled him/her from attending classes, even to the extent of 60% of classes. In the present case, the learned Single Judge has rightly found that the material placed by the petitioner was woefully inadequate to arrive at this conclusion. The appellant was hospitalized only for six days in the month of October, 2019 i.e. from 16th October, 2019 to 21st October, 2019. Therefore, looking into the documents placed regarding the illness from which this appellant (original petitioner) was suffering, we find that the case was not covered under **Bye-Law No.14 (ii)** as stated hereinabove.

10. It ought to be kept in mind that minimum required attendance should be maintained by the students. Exceptions have already been carved out in the Examination Bye-Laws of the respondents to take account of normal exigencies. This appellant (original petitioner) is not falling within the exceptional circumstances as explained in the aforesaid Examination Bye-laws 14(ii). **It should be kept in mind that Court cannot do charity contrary to the legal position.**

11. Thus, it appears from the facts of the case that no error has been committed by the learned Single Judge in appreciating the facts of the present case and in applying Examination Bye-Laws Nos. 13 and 14 of the respondents as stated hereinabove. We are in full agreement with the reasons given by the learned Single Judge in the order dated 15th October, 2020 in W.P.(C) 1427/2020.

12. Hence, there is no substance in this LPA (LPA 332/2020) and the same is hereby dismissed.

CHIEF JUSTICE

PRATEEK JALAN, J

DECEMBER 1, 2020
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