

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

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1. LPA No.580 of 2022 (O&M)
Date of Decision: August 30th, 2022

Board of School Education, Haryana, Bhiwani
...Appellant

Versus

Nitin and others
...Respondents

2. LPA No.629 of 2022 (O&M)

Board of School Education, Haryana, Bhiwani
...Appellant

Versus

Annu and others
...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. K.K. Gupta, Advocate
for the appellant.

Mr. Vikram Singh, Advocate
for respondent No.1 (in LPA No.580 of 2022)
for respondents No.2 to 5, 7 to 11, 13 to 37, 48, 53, 57, 60, 61,
68 and 69 (in LPA No.629 of 2022).

AUGUSTINE GEORGE MASIH, J.

These appeals have been preferred by the Board of School Education, Haryana (hereinafter referred to as the 'Board') challenging the judgment dated 10.01.2022 passed by the learned Single Judge, whereby writ petitions i.e. CWP Nos.20299 and 20308 of 2021 preferred by the private respondents, who were school students seeking declaration of their Class 10 result, had been allowed, where Review Application preferred by the appellant-Board stands dismissed by a common order dated 29.04.2022.

2. Briefly the facts of the case are that the private respondents were students of Haryana Senior Secondary School, which was a private school and

running since 1995-1996. Initially, it started functioning with temporary affiliation with the Board, which got permanent affiliation up to 8th Class in the year 2002. Application for permanent affiliation up to Class 12th was declined in the year 2003 due to lack of adequate infrastructure in terms of area, building and hygiene norms. However, temporary affiliation on year to year basis up to academic year 2019-2020 was granted. State of Haryana finally on 05.09.2019 passed an order withdrawing recognition to the private schools and as a result thereof, affiliation of the Board came to an end.

3. Haryana Senior Secondary School from the session 2020-21 was not entitled to make admissions of the students beyond 8th Class. However, it proceeded to admit student to Class 9th onwards including the private respondents in Class 10th. The academic session came to an end on 31.03.2021 but the students continued to study according to their claim in the same very school i.e. Haryana Senior Secondary School. It would not be out of way to mention here that the District Education Officer vide various communications had all through been warning the private schools to not make any admissions but despite that, the process of admission and studies of students continued.

4. With an intention to save the students' educational career and to maintain continuity of their studies, a communication dated 10.06.2021 was sent by the Director School Education to the District Education Officer to shift the students of Haryana Senior Secondary School to nearby Government School. The students from 9th to 12th Class were admitted for the session 2020-21. On 25/26.06.2021, Board was informed about the admission of the students of the private school (Haryana Senior Secondary School) by the Principal Government Model Senior Secondary School, Samalkha. The Board vide communication dated 16.08.2021 informed that the practical examination

would be conducted on 23.08.2021 to 26.08.2021 of the secondary and senior secondary students. It was also intimated that Shri Rakesh Kumar of Government Girls High School, Joshi (Panipat) has been appointed as an Observer of practical examinations vide separate communication dated 16.08.2021. On 24.09.2021, the Board conveyed the date-sheet for holding the theory examinations. In pursuance thereto, Government Model Senior Secondary School, Samalkha (Panipat) got the examination forms filled up for all the 73 students of secondary education and deposited the examination fee of ₹54,750/- vide cash receipt dated 06.08.2021. The Board also issued admit cards to all those 73 students containing the date-sheet and the roll numbers. The Assistant Secretary (Conduct) informed that none of the candidates came present to participate in the examination and all of them had absented despite the Superintendent and other staff being available on the Centre fixed by the Board.

5. At this stage, these two above referred to writ petitions were preferred by the students seeking the declaration of their result on the basis of a policy dated 24.05.2021, where it was decided that the secondary/senior secondary annual examination 2021 could not be conducted due to COVID pandemic and, therefore, marks of the regular students of secondary education be given proportionate to the marks of internal assessment sent by the schools in those subjects of secondary class, where practical examinations have been provided marks be given proportionate to the marks got in internal assessment and practical.

6. Result of Class 10th students was not declared, whereas that of Class 12th was announced. On inquiry, it was informed that since they did not participate in the practical and theory examinations, which were held as per the date-sheet circulated in physical mode, their candidature has been rejected.

Apart from this, what was taken against the private respondents was that their admission could not have been made by the private school once the recognition and affiliation had been cancelled on 05.09.2019. Another ground which was taken was that the policy as framed by the Board on 24.05.2021 (Annexure A-11) was for dealing with a particular situation and based upon the directions of the Haryana Government due to COVID pandemic, where secondary/senior secondary school annual examination 2021 could not be conducted, however, on 16.08.2021, it was decided to hold examinations by physical mode of these shifted students i.e. private respondents for the reason that they had been admitted to the Government School in pursuance to the letter dated 08.06.2021 of the Director School Education by which time the effect of COVID pandemic had come to an end. Another aspect which has been highlighted in the present appeal is that it is not merely for these private respondents, who were shifted to Government School from an unrecognized and unaffiliated private school vide letter dated 25/26.06.2021 but there were 47,674 other students, who had appeared. Despite the form having been filled up for the physical mode examination, admit cards issued apart from the fact that date sheets were duly conveyed, private respondents preferred not to take the examination through physical mode and had preferred the writ petition on 30.09.2021. A plea has also been raised that their case cannot be discriminated against qua the other 47000 odd students, who had appeared for the physical mode examination. It would not be out of way to mention here that applying the policy dated 24.05.2021, the Principal of the Government School has conveyed the marks of internal assessment and practical examination as 100/100. Despite calling upon the details and the manner in which such marks have been granted, there has been no clarification/response from the Principal. In the absence of any satisfactory explanation, the Board has proceeded to not

accept the same.

7. Counsel for the appellant, on the basis of the above facts, contend that the learned Single Judge has proceeded to wrongly enforce the policy dated 24.05.2021 which has no application to the case of the private respondents as their admissions in the Government School was subsequent to the conclusion of the academic session 2020-21. It was for a peculiar circumstance and situation that the said policy was framed, which would not apply to the case of the private respondents as by that time, the situation had improved and the examinations were held in the physical mode by the appellant-Board. Counsel for the appellant has also highlighted that out of 73 students of the private school, who were admitted to the Government School, Samalkha, in the month of June 2021, 33 students have approached the Board along with an application dated 19.07.2022 for allowing them to appear in the physical mode examination, which request of these students through their parents had been accepted and special examination was held for them from 31.07.2022 to 10.08.2022. Their result has also been declared, where one student has got compartment, three were absent and 29 have passed. Counsel for the appellant has also submitted that the Board is not averse to granting an opportunity to the private respondents to participate in the physical mode examination and would consider the request, if any, received from the private respondents in the spirit as it was permitted to 33 other private respondents. He, therefore, prays for acceptance of the appeal and setting aside the judgment passed by the learned Single Judge.

8. Counsel for the private respondents, on the other hand, has made a valiant effort to defend the judgment passed by the learned Single Judge by contending that there was no fault on the part of the private respondents, rather it is the private school which had misled the students into taking admission in

the said school. The students cannot be made to suffer for no fault of theirs. In any case, they have studied in the private school for the academic session 2020-21 and, therefore, were entitled to the benefit of the policy dated 24.05.2021 as framed by the Board, which benefit has been rightly granted by the learned Single Judge. He, therefore, prays for dismissal of the appeal.

9. Having considered the submissions made by the counsel for the parties as also the facts, which have been narrated above, what is apparent is that after the de-affiliation/de-recognition on 05.09.2019 of the Haryana Senior Secondary School (private school), where the private respondents were students, the said school could not have admitted students beyond 8th Class from the academic year 2020-21. Their admission itself being illegal, no benefit can be conferred upon them for having studied in the said school and, therefore, internal assessment marks as well as the practical examination marks which are sought to have been assessed and granted to the private respondents which have been forwarded by the Principal of the Government School, where they were admitted in pursuance to the letter dated 10.06.2021 issued by the Director School Education, cannot be accepted and no credit thereof can be granted. Apart from that, the policy dated 24.05.02021 on the basis of which the private respondents are claiming non-appearance by way of physical mode in the examinations which were held in pursuance to the decision taken by the Board on 16.08.2021 would fully apply to the case of the private respondents. The policy dated 24.05.2021 was for those students who could not participate in the examination because of the Government instructions on COVID pandemic. In the case of the private respondents although their admission was not in accordance with law but by taking a lenient view, the Director School Education, for saving their academic career, granted them admission in the Government School on 10.06.2021. The Appellant-Board in the same spirit

decided to hold exams and took a decision on 16.08.2021 which would govern the conduct of examinations for them. They, therefore, cannot avoid taking part in the examinations by physical mode. The judgment as passed by the learned Single Judge, therefore, cannot sustain as the policy dated 24.05.2021 would not be applicable to the case of the private respondents.

10. In the light of the statement made by the counsel for the appellant in case the private respondents take part in the supplementary examinations which are likely to be conducted by the Board, they would be permitted to sit in the said supplementary examinations provided they apply for the same. The said examinations shall not be taken as supplementary examinations but treated as that of old session.

11. In view of the above, judgment dated 10.01.2022 passed by the learned Single Judge as well as the dismissal of the Review Application dated 29.04.2022 are hereby set aside and the appeals stand disposed of with the directions issued above.

12. In the light of the decision of the appeals, pending applications stand disposed of as infructuous.

(AUGUSTINE GEORGE MASHI)
JUDGE

August 30th, 2022
Puneet

(ALOK JAIN)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes