

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

DATE OF DECISION: January 10, 2022

CWP No.19780 of 2021

Mehakdeep Kaur and others

...Petitioners

VERSUS

State of Haryana and others

...Respondents

2.

CWP No.20299 of 2021

Nitin

..Petitioner

VERSUS

State of Haryana and others

...Respondents

3.

CWP No.20308 of 2021

Annu and others

..Petitioners

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vikram Singh, Advocate and
Mr. Sandeep Kumar, Advocate, for the petitioners.

Mr. Pankaj Midda, Additional Advocate General, Haryana.

Mr. K.K. Gupta, Advocate, for respondent No.4.

Mr. Sandeep Siwach, Advocate, for respondent No.6.

SUDHIR MITTAL, J.

This judgment shall decide CWP Nos.19780, 20299 and 20308 of
2021 as common questions of fact and law arise therein. The petitioners in all

respectively has been quashed by the Board of School Education Haryana-respondent No.4 (hereinafter referred to as the Board) after the same was declared. CWP No.19780 of 2021 has been preferred by students of Class-XII whereas the other two petitions have been preferred by the students of Class-X.

Should a Court of law comment on the actions of an Administrator, is one of the questions which arises in this writ petition. In my considered opinion if the Administrator does not exercise his powers judiciously and prudently and the same results in injustice, the Court can certainly comment on the actions, so as to make them aware about the expectations from such Administrators especially when they are dealing with young students who comprise the bulk of the human resource of the nation.

The facts in brief as extracted from CWP No.19780 of 2021 are that Haryana Senior Secondary School-respondent No.6 (hereinafter referred to as the private school) has been running since 1995-96. It started functioning with temporary affiliation with the Board which was converted to permanent affiliation upto Class-VIII in the year 2002. In the year 2003, the said private school applied for permanent affiliation upto Class XII but due to lack of adequate infrastructure in terms of area available, buildings and hygiene norms, permanent affiliation was not granted. Temporary affiliation was, however, granted on a year-to-year basis upto academic year 2019-2020. On 05.09.2019, the State of Haryana passed an order withdrawing recognition to the private school and automatically its affiliation with the Board came to an end. The petitioners took admission in Class-XII and Class X respectively after 01.04.2020 and the result in question pertains to the Session 2020-21. On conclusion of the academic session, normal off-line exams could not be held on account of Covid-19 pandemic. The matter was being considered at the highest level when on 10.06.2021, the Director, Secondary Education Haryana wrote to the District Education Officer, Panipat that application for provisional

affiliation of the private school had been rejected by the competent officer on 30.03.2021 and keeping in view the interests of the students, they be transferred to the nearby Government school. A copy of this letter is on record as Annexure P-1 and the same has been endorsed to the Board as well. Consequently, the students were transferred to Government Model Senior Secondary School, Samalkha-respondent No.5 (hereinafter referred to as the Government school). The fee deposited by the students was also transferred as is evidenced by the document Annexure P-2. Thereafter, their applications for the final examination were submitted by the Government school to the Board and the same were accepted. The names of the petitioners were included in the checklist of regular students dated 18.08.2021 issued by the Board. Before that, on 02.07.2021, the Board issued a notification regarding policy for declaration of result of Senior Secondary Examination, according to which, the result of Class-XII was to be declared by considering 30% marks of Class-X, 10% marks of Class-XI and 60% marks of Class-XII based upon internal valuation and practical examination. Based on this notification, the result of the petitioners was declared on 31.08.2021. Subsequently, the Board issued communication dated 24.09.2021, copy Annexure P-9 stating that the result of the petitioners had been quashed and that they would be required to take off-line examination from 04-10-2021 to 13-10-2021. This communication was addressed to the Principal of the Government School. The said school responded vide communication dated 27.09.2021 requesting for withdrawal of the decision but to no avail. This led to the filing of the present writ petition and other connected cases.

Related with the aforementioned facts is the issue of withdrawal of recognition of the private school. The order dated 05.09.2019 withdrawing recognition was challenged in CWP No.26598 of 2019 which was, however,

dismissed on 24.11.2020. Letters Patent Appeal against the said decision is pending adjudication but there is no stay in operation.

In the backdrop of the aforementioned facts, learned counsel for the petitioners has argued that the action of the Board in quashing the result after declaring the same is violative of the Examination Rules and Regulations of the Board, copy annexed as Annexure P-11. The said Rules and Regulations apply equally to secondary and senior secondary examinations. Regulation 61 clearly stipulates that before cancellation of the result or making any change therein, the candidate is required to be given an opportunity of hearing. No opportunity of hearing has been granted and thus, the impugned order deserves to be set aside. An opportunity of hearing was even more essential in this case because the petitioners had not concealed anything. The Board knew that they had been transferred from the private school to the Government school and that the affiliation of the private school stood withdrawn w.e.f. 05.09.2019. Yet, it accepted the examination forms and included the petitioners in the checklist dated 18.08.2021. Result was also declared on 31.08.2021.

The matter has been contested by the Board primarily on the ground that the admission of the petitioners in Classes X and XII was void as affiliation of the school stood withdrawn w.e.f. 05.09.2019. They were thus not entitled to take the examination. It has also been submitted that 60% marks for Class-XII students are based upon internal assessment and practical tests. The petitioners having been transferred pursuant to communication dated 10.06.2021, the academic session had already come to an end and thus, there was no question of the Government school conducting their internal assessment and holding practical examination. The details in this regard have been manufactured and, on this ground, also the result deserved to be quashed. When the matter was placed before the Chairman by the concerned branch, a decision was taken to quash the result in exercise of powers conferred by Regulation 61.

The result having been declared without the authorization of the Chairperson, was illegal and void as provided by Regulation 60.

It is not in dispute that the private school has been functioning since the year 1995-96. It had permanent affiliation upto Class-VIII but affiliation upto Class-XII was temporary and was being renewed from year-to-year up till the academic Session 2019-20. During the course of this session, the affiliation was withdrawn by virtue of withdrawal of recognition by the State Government vide order dated 05.09.2019. Thus, the questions to be considered are (a) whether the admission of the petitioners in Classes X and XII are *void ab initio* as affiliation stood withdrawn on 05.09.2019, (b) whether the marks of internal assessment and practical tests in respect of the petitioners were genuine or fake and (c) whether the action of quashing of the result of the petitioners is legal.

Affiliation of a school to a Board is for the purposes of examination. If a school is not affiliated, its students will not be able to take the examination conducted by the Board concerned. This requirement is to facilitate the students so that their result is recognized for admission to higher classes. If an unaffiliated school admits students, their admission is not rendered void. In the instant case, it is admitted that since the year 2003, the private school was conducting classes for students upto Class-XII on the basis of temporary affiliation and that this arrangement continued till the academic session 2019-20. Thus, the private school had the wherewithal to conduct classes although, it did not fulfill the building norms, norms regarding land and safety norms which resulted in withdrawal of recognition by the Government. It can thus, be safely concluded that education was imparted to the students and since they could not take their examination from the private school, they were transferred to the Government school. Hence, it is held that they were entitled to take the examination concerned after transfer.

The next issue is regarding the genuineness of the internal assessment marks and practical tests. According to the petitioners, the entire record of the private school pertaining to the students was transferred to the Government school inclusive of the record of internal assessment and practical examination. It was this record which was submitted for declaration of result. The Government school did not create any record for the benefit of the petitioners. This argument is plausible and merits acceptance. There is no reason for a Government school to create a record for the benefit of the petitioners and thus, the argument in this regard raised by the learned counsel for the Board is rejected. The written statement indicates that the Chairman quashed the result and kept the matter pertaining to the internal assessment and practical examination record pending, for being enquired into later. A prudent Administrator would have done this exercise before quashing the result especially when the entire record was available with the Board. Having not done so, the exercise of power under Regulation 61 is held to be arbitrary and whimsical being based upon conjecture.

Before examining the final question, it is necessary to reproduce Regulation 61. The same is as follows:

“61. Rectification of Results:

(A) The Chairman shall have the power to quash the result of a candidate after it has been declared, if

(i) he/she is disqualified for using unfair means in the Examination; or

(ii) a mistake is found in his/her result; or

(iii) he/she is found ineligible to appear in the examination; or

(iv) he/she is a person against whom action under regulation 45 i.e.

Cancellation of Admission could have been taken, had the facts come to the notice of the Board earlier.

Note:

- (A) *Before cancellation of the result or making any change in the result already declared, the candidate would be given the opportunity to explain his position against the proposed action of the Board.*
- (B) *The Deputy Secretary (Exam.) shall have the power to rectify all mistakes in the results except from Qualified to Needs proficiency Enhancement (N.P.E.) Partial Achievement / cancelled for which the approval of the Secretary will be necessary.”*

A perusal of the aforesaid Regulation shows that the Chairman does have the power to quash the result after it has been declared provided the case falls under the various sub clauses mentioned therein.

One of the sub-clauses is where action against a student could have been taken under Regulation 45 i.e. cancellation of admission, had the facts come to the notice of the Board earlier. A perusal of Regulation 45 shows that admission can be cancelled if the student is found ineligible for the examination but before doing so an opportunity of hearing is required to be granted. In the instant case, according to the Board the petitioners were ineligible to take the examination and thus, their admission deserved to be cancelled. However, Note-A to Regulation 61 provides for grant of an opportunity of hearing before any action is taken. This is a rule of prudence and is in accordance with the principles of natural of justice. It was essential to be complied with in the present case because the students had been enrolled for the examination, their names included in the checklist and result declared without there being any concealment or misrepresentation on their part. The communication dated 10.06.2021 was endorsed to the Board as well although receipt of the same has been denied by it. However, receipt of the same through the Government school has been admitted. There is no reason to accept the submission of the Board that the said communication was not received directly from the Directorate of Secondary Education, but receipt through the Government school having been admitted, the denial false into insignificance.

The order dated 05.09.2019 regarding withdrawal of recognition by the Government was also endorsed to the Board as is evident from the perusal of the said order, copy annexed as Annexure R-4/1 with the written statement of the Board. Being fully aware of the situation, the examination forms were accepted and the result was declared. It was thus incumbent upon the Board to grant an opportunity of hearing to the students before quashing their result. Careers of young students cannot be dealt with casually as has been done in the present case and the Chairman of the Board should have known better. The least that he could have done was to examine the record pertaining to internal assessment and practical examination but he did not care to do even that. Thus, the action of quashing the result of the petitioners is held to be illegal.

The writ petition is allowed and impugned order dated 24.09.2021 (Annexure P-9) and similar orders passed in the other connected cases which are also allowed, are quashed. Since the impugned orders only communicate the action of quashing of result, the order by which the result has actually been quashed is also set aside. Results be declared afresh in accordance with the result declared on 31.08.2021. Notification to this effect be issued within two weeks from the date of receipt of a certified copy of this judgment.

A photocopy of this order be placed on the files of other connected cases.

January 10, 2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes