

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

DATE OF DECISION: February 22, 2022

CWP No.18460 of 2021

Jyoti and others

..Petitioners

Versus

Central Board of Secondary Education and another

...Respondents

2.

CWP No.24730 of 2021

Shashikant

..Petitioner

Versus

Central Board of Secondary Education and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ashish Yadav, Advocate,
for the petitioners (in both petitions).

Mr. B.S. Seemar, Advocate,
for respondent No.1.

Mr. Prashant Singh Chauhan, Advocate,
for respondent No.2 in CWP No.24730 of 2021.

Mr. Rajneesh Chadwal, AAG, Haryana.

SUDHIR MITTAL, J.

The issue involved in both these writ petitions is identical,
however, for ease of reference, the facts are being extracted from CWP
No.18460 of 2021.

2. Undisputed facts are that the petitioners took their Class-X examination in March, 2019. They cleared all subjects except one which was also cleared in the compartment examination held in March, 2020. Matriculation Certificate was issued in July, 2020. The compartment examination held in March, 2020 was the second chance. Meanwhile, the petitioners had been admitted to Class-XI during the academic session 2019-20 and cleared the same in the year 2020. Accordingly, they were admitted to Class-XII, the final examination for which was to be held in March, 2021. However, on account of Covid-19 pandemic, off-line exams were not held and students were evaluated on the basis of a policy framed in this regard. Prior thereto, the petitioners' names were registered for the Class-XII examination and admit cards/roll numbers were also issued. They were also permitted to take the practical examination. However, when the result was finally declared, 'NE' i.e. not eligible was mentioned against the names of the petitioners in the relevant column. Their schools submitted representations dated 06.08.2021 and 20.08.2021 to the Central Board of Secondary Education (CBSE) but nothing was done. Thus, the present writ petition has been filed for a direction to the CBSE to declare the final result of Class-XII.

3. On behalf of the petitioners, it has been submitted that the petitioners were not guilty of any concealment. Their admission to Class-XI was well-known as a list of all students registered for the said class was sent to the CBSE. Thereafter, the petitioners not only took the Class-XI examination but were also promoted to Class-XII. They were even registered for the Class-XII examination and were issued a roll

number. The petitioners were permitted to take the practical examination and thus, non-declaration of their final result is arbitrary. The action is also discriminatory because the result of one student namely Jatinder Kumar s/o Ajit Kumar was declared although he was identically situated as the petitioners. A copy of his Class-XII result is annexed as Annexure P-14 on the record. Reliance has been placed upon judgment dated 12.11.2021 passed by this Court in CWP No.18881 of 2021 '***Rohit Kapoor vs. Central Board of Secondary Education and others***'.

4. On behalf of the CBSE, it has been submitted that the admission of the petitioners to Class-XI was contrary to the examination bye-laws. Clause 42 of the said bye-laws prescribes that only a student who is placed in compartment in Class-X examination and clears the same in the first chance for clearance of compartment examination, can continue in the class. The petitioners admittedly, cleared the compartment examination in the second chance in March, 2020 and thus, their continuation in Class-XI was illegal. Further, promotion to Class-XII is in connivance with the respective schools and is illegal. A communication dated 23.07.2021 was sent to Principals of all the affiliated schools to examine their records and check the eligibility of candidates registered for the examination so that ineligible candidates are weeded out. The facts of this case show that the concerned schools did not pay heed to this notice resulting in the present situation. Show cause notice dated 22.10.2021 has also been issued to the concerned schools for taking further action under Clause 12.1 of the affiliation bye-laws. Since the petitioners were not even eligible to take admission to Class-XI, they

could surely not have taken the Class-XII examination and thus, they were rightly declared 'NE'.

5. List of students registered for Class-XI has been handed over in Court. Its veracity has not been doubted by counsel for the CBSE and thus, the same is taken on record. Registry is directed to tag the same at the appropriate place.

6. A perusal of the above said list shows that the petitioners have been shown to have passed their Class-X examination in the year 2019 whereas they actually did so in the year 2020.

7. From the facts aforementioned, it is evident that the students are not guilty of making any misrepresentation or of concealment of facts. The CBSE was well aware that they had passed the Class-X examination in the year 2020 as their certificates for the said class were issued in July, 2020. Even at the time of registration for Class-XII, the CBSE did not raise any objection and in fact permitted the petitioners to take the practical examination after issuance of roll numbers. The list of students registered for Class-XI contains an incorrect fact. The year of passing Class-X is mentioned as 2019 but the CBSE failed to take notice. It is thus, obvious that the respective schools have succeeded in hoodwinking the CBSE. No fault can however be attributed to the petitioners and thus, the question arises whether they can be penalized.

8. Clause 42 of the examination bye-laws clearly states that only students of Class-X who clear the compartment examination in the first chance can be permitted to continue in Class-XI. From a technical point of view, the admission to Class-XI was illegal as was the admission

to Class-XII. However, this has to be balanced against the fact that the petitioners have actually passed Class-X as well as Class-XI before taking the Class-XII examination. Weighed in the balance of law and considered through the prism of equity and good conscience, the scales tilt in favour of the petitioners because substantially they fulfill the requirement of taking the Class-XII examination. In my considered opinion, technicalities have to give way to substantial justice.

9. In ***Rohit Kapoor (supra)***, the petitioner had migrated to an affiliated school after passing his Class-X from an un-affiliated school. He was admitted to Class-XI and cleared the examination and was further promoted to Class-XII. The Class-XII result was ultimately not declared on the ground that he was ineligible to take admission to an affiliated school as the school from which he had cleared his Class-X was neither a recognized school nor an affiliated school. This Court relied upon '***Surinder Singh Vs. Gaini Zail Singh College of Engineering and Technology, 1998(4) SCT 642***' and invoked the doctrine of waiver and acquiescence to grant relief to the petitioner therein despite the examination bye-laws being against the petitioner. A similar situation exists in this case too and thus, the doctrine of waiver and acquiescence would be attracted here as well.

10. In view of the above, the writ petitions are allowed and the action of the respondents declaring the petitioners not eligible is quashed. CBSE is directed to declare the results of the petitioners as early as possible and in any case, not later than four weeks from the date of receipt

of a certified copy of this order. The CBSE may proceed against the concerned schools in accordance with the relevant rules.

11. A copy of this order be placed on the file of another connected case.

February 22, 2022
'Ankur Goyal'

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes