



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

% **Date of order: 10th October 2022**

+ **W.P.(C) 13246/2022**

UNNATI GOYAL

..... Petitioner

Through: Mr. K.C. Mittal, Mr. Yugansh Mittal and Mr. Keshav P Singh, Advocates

versus

CENTRAL BOARD OF SECONDARY EDUCATION & ANR

..... Respondent

Through: Mr. M.A. Niyazi, Standing Counsel with Ms. Nehmat Sethi, Advocate for CBSE.
Ms. Monika Arora, CGSC with Ms. Mahamaya Chatterjee, SSC and Mr. Shivam Raghuwanshi, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking *inter alia* the following reliefs:

“A. Issue a writ of Mandamus or any other appropriate Writ or order or directions for setting aside/quashing of the impugned order



CBSE/LEGAL-HQ/77/2022/578 dated 09.09.2022 rejecting the representation of the petitioner to award pro rata i.e Term I marks in Physics paper in the Term II examination based on the policy decision of the Respondent no.1 and the webinar conducted by the respondent no.1, erroneously holding that the medical condition of the petitioner ie Uveitis is not a serious illness as the same is arbitrary and against Doctrine of Legitimate Expectation, And

B. Issue a writ of mandamus or any other appropriate orders or directions to Respondent No.1 to include score of improvement exam in final consolidated marksheet of the petitioner....”

2. The petitioner is a student of Class XII at the Delhi Public School, Vasant Kunj and she appeared for Board examination for the academic year 2021-22. The petitioner is seeking the abovementioned reliefs on the ground that despite appearing she was unable to attempt/complete her examinations for the subjects of Physics and Mathematics due to her serious illness of Uveitis, which caused her vision to blur in the middle of the examination. The petitioner seeks relief under a Scheme of the respondent no. 1/CBSE dated 22nd July 2022 as well as the webinar conducted by the respondent no. 1, whereby it was stipulated that results will be prepared based on the performance of Term I examinations for students who suffered from Covid/ were participating in international/national sports events and those who were seriously ill requiring long hospitalisation, who have communicated to the CBSE



through proper channel on time. She prays for quashing of the impugned order dated 9th September 2022 bearing no. CBSE/LEGAL-HQ/77/2022/578, whereby her representation was considered, pursuant to the order of this Court in W.P. (C) 12730/2022 directing the respondent no. 1 to afford her an opportunity of hearing and pass a speaking order, and rejected. The petitioner is aggrieved by the said rejection order.

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner had made an application/representation with the respondent no. 1 requesting it to award marks of Term I and Term II examinations in the subjects of Mathematics and Physics on pro rata basis in accordance with the Scheme, since, she was unable to attempt/complete the said papers due to the sudden onset of Uveitis causing her vision to be severely blurred in the middle of the examination. It is submitted that the problem of blindness or loss of vision was caused to the petitioner only during her two examinations, however, the problem has been subsisting for a long time. Other than the said two examinations, the petitioner appeared for and scored well in all.

4. It is submitted that the impugned order is arbitrary and unreasonable as the respondent has erroneously held that case of the petitioner does not fall within the ambit of serious illness. The respondent no.1 has erred in understanding the gravity of the medical problem of the petitioner. The said illness comes without warning suddenly and can worsen quickly and may even lead to permanent loss of vision. It is submitted that the Scheme of the respondent no. 1 provided for cases of



students were suffering from Covid, participating in international/national sports, were seriously ill requiring long hospitalisation and those who had communicated to the CBSE through proper channel on time, however, the circular is silent on the onset of sudden illness.

5. It is further submitted that the respondent no.2 has declared the result of the improvement exam given by the petitioner the same has not been added to her mark sheet as a result her PCM score is below 75 which is affecting her admission in BITS Pilani. The petitioner is a meritorious student and has cleared her BITSAT examination and has scored a high score of 354/390 marks in BITSAT-2022 , for the course B.Tech Computer, however, the petitioner is not able to meet the minimum criterion of 60% marks each in PCM as she could not write anything in her Physics Term II paper conducted in May, 2022 as she suffered from a case of 'Uveitis' and temporary blindness during the paper. It is submitted that marksheet issued to the petitioner on 9th September 2022 has been issued on the basis of 50:50 ration in accordance with the order of the Division Bench of this Court in LPA 517/2022. Moreover, the marks for improvement examination given by the petitioner for the subject of Mathematics, the petitioner seeks that the improvement marks may be reflected in her marksheet.

6. It is strongly urged that the petitioner had a Legitimate Expectation that her case would be covered in the Scheme of the respondent no. 1, however, the impugned order passed arbitrarily is violative of the Fundamental right under Article 14 of the Constitution of India of the



petitioner on the basis of Doctrine of Legitimate Expectation. It is, therefore, submitted that the impugned order is liable to be set aside since the same suffers from severe illegalities and gross errors.

7. *Per Contra*, learned Standing Counsel appearing on behalf of the respondent no. 1 as well as CGSC appearing on behalf of the respondent no. 2 have vehemently opposed the instant petition and submitted that the case of the petitioner is not covered under the Scheme of the respondent no. 1. It is submitted on behalf of the respondent no. 1 that admittedly, the petitioner appeared and scored marks in both the terms in all papers. She also appeared in Mathematics in the compartmental examination for improving her score. It is submitted that the Scheme shall only apply to people who did not appear in either of the term examinations. Therefore, the petitioner having appeared in both the terms cannot take advantage of the Scheme. Moreover, the petitioner's case cannot be considered in the ambit of serious illness since she was never hospitalised and has appeared in all examinations. It is submitted on behalf of the respondent no. 1 that the petitioner cannot choose to avail the benefits under the Scheme for only the two subjects she could not perform well in.

8. It is submitted that the Scheme also stipulated that in case of the students suffered from Covid/participating in International/National sports events and are seriously ill requiring long hospitalisation and who have communicated to the CBSE through proper channel on time, their results will be prepared based on the performance of Term-I Examination and vice versa. In the case of the petitioner herein, there was no serious



illness and long hospitalization was not required neither was any representation made through the proper channel which could be considered at the relevant time. Moreover, it is submitted that there are provisions in place for arrangement of a scribe on prior request, however, despite the alleged knowledge of the illness no such request was made on behalf of the petitioner either in advance or even thereafter. It is submitted that the petitioner on her own volition appeared for all the examinations.

9. Learned counsel for the respondents, in light of the above contentions submitted that there is no merit in the relief sought by the petitioner and therefore, the instant petition is liable to be dismissed.

10. Heard learned counsel for both the sides and perused the record. I have perused the impugned order dated 9th September 2022.

11. The Scheme/ Policy decision of the respondent no. 1 was introduced with the intention and objective to provide a relief to the students who may have suffered in their academics in the unprecedented times of Covid and online as well as objective type examinations. The Scheme clearly provides that relaxation provided therein was aimed to benefit those students who were unable to perform to the best of their potential due to extraneous circumstances. The category of students who could invoke the benefits under the Scheme includes those who were suffering from Covid, those who participating in international or national sports events, or other students who were seriously ill and required long



hospitalisation. The petitioner had represented her case for declaration of result on *pro rata* before the respondent no. 1 owing to her inability to attempt/complete the Mathematics and Physics examinations due to an unusual illness of Uveitis. However, it is a fact that she came to know about her illness sometime in February, 2022, yet she was in the physical and mental capacity to appear in all the examinations and attempt all of them except the two subjects of Mathematics and Physics and did not require hospitalisation at any point, let alone long hospitalisation. Although whether the said illness of the petitioner as alleged falls under the category of ‘serious illness’ is an issue which remains unresolved due to lack of experts’ opinion, and which can also not be appreciated by way of appreciating evidence at this stage under the writ jurisdiction, the opinion of this Court is that the case of the petitioner certainly did not fall in the category of ‘serious illness requiring long hospitalisation’ as was the eligibility under the Scheme of the respondents.

12. Further, the factum of her illness was admittedly known to the petitioner much prior to the conduct of examinations, however, despite such knowledge she failed to approach the concerned department/authority to make a representation requesting any assistance for appearing in the examinations. Moreover, the Scheme required the interested and aggrieved students to approach the respondents through a proper channel which too was not taken by the petitioner to avail the reliefs of the Scheme. Therefore, in the absence of necessary actions and measures on the part of the petitioner, despite her having the knowledge



of her illness much prior to the conduct of examinations, there did not remain much relief which could be granted on behalf of the respondents to the petitioner, especially when the disputed fact of her illness being a serious illness requiring long hospitalisation remains to be established.

13. A perusal of the record and after hearing and considering the contentions and arguments advanced on behalf of the parties, this Court does not find any cogent reason to invoke its writ jurisdiction and interfere with the order dated 9th September 2022. The concerned authority considered the representation of the petitioner and after appreciation of all other facts, circumstances, and material on record, passed the order rejecting the representation of the petitioner in accordance with the policy decision and the Scheme.

14. Keeping in view all the facts, circumstances, material on record, as well as the discussion in the foregoing paragraphs, this Court does not deem a fit case to exercise its writ powers and allow the reliefs sought on behalf of the petitioner.

15. Accordingly, the instant petition is dismissed for being devoid of merit.

16. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 10, 2022

Aj/Ms