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W.P. No.11342 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.DHANDAPANI**

W.P. No.11342 of 2023  
and  
W.M.P. No.11243 of 2023

G. Nishanth (Minor),  
Rep. By his father and Natural Guardian,  
S.Gnana Subhramanya Aiyyer ... Petitioner

Vs

1. The Chairperson,  
Central Board of Secondary Education (CBSE),  
'Shiksha Kendra',  
2 Community Centre,  
Preet Vihar,  
New Delhi – 110 092.

2. The Joint Secretary,  
Central Board of Secondary Education (CBSE),  
Regional Office,  
Chennai,  
Plot No.1630A,  
'J' Block,  
15<sup>th</sup> Main Road,  
Anna Nagar West,  
Chennai – 600 040.



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3. The Principal,  
Padma Seshadri Bala Bhavan,  
Senior Secondary School (PSBB),  
No.29, Alagiri Sami Salai,  
K.K.Nagar,  
Chennai – 600 078.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to consider the petitioner's representation letter dated 01.04.2023 to permit G.Nishanth/Petitioner, to take up XI Standard Examinations in the subjects, Physics & Chemistry, in the 3<sup>rd</sup> respondent / School, consequently, if the Petitioner clears the XI Standard Examinations, the 3<sup>rd</sup> respondent shall issue Transfer Certificate to the petitioner to enable the petitioner to join XII Standard in some other School.

|                 |                                                                                 |
|-----------------|---------------------------------------------------------------------------------|
| For Petitioner  | : Mr.V. Arunagiri                                                               |
| For Respondents | : Mr.G. Nagarajan for R1 & R2<br>Mr.N.B.N. Swamy<br>for Mr.. Janardhanam for R3 |

### **ORDER**

This writ petition has been filed by a minor petitioner seeking for a direction to the respondents to consider his representation letter dated 01.04.2023 to permit him to take up XI Standard Examinations in the



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subjects, Physics & Chemistry, in the 3<sup>rd</sup> respondent / School and for consequential direction for issuance of Transfer Certificate to him to enable him to join XII Standard in some other School.

2. It is stated that the petitioner is a student of the 3<sup>rd</sup> respondent School and completed his X standard successfully. While so, due to an injury sustained by him on 10.02.2023, he underwent a surgery and due to mental trauma, he could not perform well in the final examinations of XI standard. Thereafter, on 28.03.2023, it was informed by the 3<sup>rd</sup> respondent to the petitioner's father that the petitioner has not performed well in the Annual Examination and as such, he will not be promoted to XII standard and he has a choice to redo his XI standard. Immediately, the petitioner's father has approached the 3<sup>rd</sup> respondent by way of representations through e-mail seeking for providing a chance to the petitioner to appear for retest for XI Standard Annual Examination. As the representations have not been responded by the 2<sup>nd</sup> respondent, the petitioner's father along with the parents of other candidates, whose children were also detained have sent a representation to the 2<sup>nd</sup> respondent seeking for retest. It is the case of the petitioner that the conduct of retest would enable the students to clear the



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failed examinations and consequential issuance of Transfer Certificate so as to enable the said students to join in any other School. However, the grievance of the petitioner and others similarly placed has not been considered till date. Hence, he is constrained to file this writ petition with the aforesaid prayer.

3. Learned counsel for the petitioner submits that the petitioner is a sports person and got outstanding marks in the X standard. But due to surgery on petitioner's left shoulder, he could not perform well and failed in two subjects of XI standard. He further submitted that it would suffice, if this Court issues direction to the 3<sup>rd</sup> respondent to conduct retest for XI standard in respect of the petitioner and upon successful completion, the School may be directed to issue Transfer Certificate to the petitioner so as to enable him to join any other School.

4. Replying to the contentions of the learned counsel for the petitioner, the learned counsel for the 3<sup>rd</sup> respondent /School submitted that CBSE Regulations does not permit a student to take up re-examination for



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more than one subject and since the petitioner failed in two subjects, he is not entitled for retest. Hence, he submits that the prayer in this writ petition is not maintainable and therefore, this writ petition may be dismissed.

5. Learned counsel for the respondents 1 and 2 also sails along with the 3<sup>rd</sup> respondent and has raised his serious objection for conducting XI standard re-examination.

6. Heard learned counsel on either side and perused the materials available on record.

7. Petitioner is a student of the respondent CBSE School. It is the stand of the respondents that students who failed in one subject are entitled to undergo retest while the students who failed in more than one subject are not entitled to write supplementary examination. However, the basis on which such a benefit is granted to students who failed in one subject in comparison with students who failed in more than one subject is not placed before the Court.



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8. In this backdrop, the parimateria provision available in the Assessment and Evaluation practices in Kendriya Vidyalala School, provides as under :-

*“3.Students failing in one of the five subjects in Class XI will be placed under Compartment in that subject and students failing in more than one subject will be treated as '**Essential Repeat**'.”*

9. In similar circumstances, this Court made in W.P. No.10540 of 2018, dated 28.04.2018 in respect of a student of Kendriya Vidyalaya School, had passed the following order :-

*8. Taking note of the said submissions of the learned counsel on either side and considering the facts and circumstances of the case, **the minor Petitioner is permitted to take up XI Standard Examinations in the subjects, Physics, Chemistry and Mathematics on 21.05.2018, 23.05.2018 and 25.05.2018, respectively, in the 3<sup>rd</sup> Respondent/School.***

*9. It is made clear that if the Petitioner clears the XI Standard Examinations, the 3<sup>rd</sup> Respondent/School shall issue Transfer Certificate to her to enable her to join XII Standard in some other School. If she fails in all the three subjects or in any one of the subjects, Transfer Certificate shall be issued to the Petitioner with the remarks 'Detained'. It is further made clear that the Petitioner has been permitted to take up the Examinations only for the purpose of getting Transfer Certificate and joining in some other School, as CBSE Regulations/Guidelines are against the Petitioner.”*



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10. As stated above, the basis on which the classes of failed students are discriminated is not placed before this Court. In this backdrop the order in W.P. No.10540 of 2018 assumes significance and the decision in the said case could be squarely imported to the present case, as in the said case, the examinations were directed to be conducted for the student only for the purpose of issuing Transfer Certificate subject to the outcome of the exams so as to enable the students to pursue their higher education elsewhere in some other school by issuing Transfer Certificate.

11. In the aforesaid circumstances, failure of a student in multiple subjects cannot be allowed to stand on a different footing from the student who has failed in one subject in XI standard. It is to be pointed out that failure should not be the basis to create a class within itself, be it failure in one subject or multiple subjects, which is an inequality and is a direct affront on Article 14 of the Constitution. When there is no provision / guideline pointed out which differentiates the students on the basis of the number of subjects in which they have failed, ensuring equality as



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adumbrated in the Constitution is of paramount importance and therefore, this Court feels that the interests of all the students should be taken into consideration for the purpose of their movement to the next higher standard viz., XII standard without reference to the number of subjects in which a student has failed, as it is the life of the students which is at stake.

12. In such view of the matter, Article 14 warrants an equal treatment to be meted out to all the students, irrespective of the number of subjects in which they have failed. Therefore, as a one time measure, this Court directs the respondent / CBSE School to conduct re-examination for all the students, who have failed in more than one subject, to enable them to come out successful and upon successful completion, the respondent /CBSE school shall issue them with Transfer Certificate to enable them to join other School in XII standard. The respondent / CBSE School is further directed to conduct re-examination, within a period of three weeks from the date of receipt of a copy of this order. Further, it is made clear that if any students who takes the re-examination fails in one or all the subjects, Transfer Certificate, if asked for be issued to them with the remarks “Detained”.



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However, this case cannot be quoted as a precedent.

**WEB COPY** 13. With the aforesaid directions, this writ petition is disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

**26.04.2023**

**Note : Issue order copy on 05.05.2023.**

Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

vsi2

To

1. The District Collector,  
Office of District Collector of Salem,  
Salem.

2. The Superintending Engineer,  
Tamil Nadu Generation & Distribution  
Corporation Limited,  
Operation and Maintenance,  
Kamarajar Nagar Colony,  
Udayapatty,  
Salem – 14.

3. The Assistant Executive Engineer,  
Operation and Maintenance,  
Tamil Nadu Generation and Distribution  
Corporation Ltd., Suramangalam,  
Salem District – 5.



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**M.DHANDAPANI, J.**

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4. The Divisional Engineer,  
Tamil Nadu Generation & Distribution Corporation Ltd.,  
Kanankurichi,  
Salem – 8.

5. The Assistant Engineer,  
Tamil Nadu Generation & Distribution Corporation Ltd.,  
Sivadhapuram,  
Salem.

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