

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

(229)

CWP-7533-2022

Date of decision: - 07.07.2023

Lakshya

....Petitioner

Versus

Central Board of Secondary Education and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Puneet Kumar Bansal, Advocate
for the petitioner.

Mr. Beant Singh Seemar, Advocate
for the respondents.

VIKAS BAHL, J. (ORAL)

1. Present writ petition has been filed under Article 226 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents to release the result of the petitioner of Class-XII for the year 2021 as the result has been withheld and shown in the category of N.E. (Not Eligible) as per certificate dated 03.08.2021/23.02.2022 (Annexure P-6) issued by the respondent-Board. Further prayer has been made for quashing Clause 42(v) of Central Board of School Examination (hereinafter referred to as 'CBSE') Bye-laws, as amended vide notification dated 01.02.2018 (Annexure P-7). In effect the petitioner is challenging certificate (Annexure P-6) vide which the result of the petitioner of Class XII has been shown in the category of 'not eligible' by the respondent-Board.

2. Pledged case of the petitioner in the writ petition is that the

petitioner was a student of Shri Bala Ji Sr. Sec. School VPO Kalinga Bhiwani, Haryana, which is a school affiliated to CBSE and in the Class X examination which were held in the year 2019, the petitioner cleared five subjects and had compartment in the subject of mathematics. The result of Class X dated 06.05.2019 has been annexed as Annexure P-1 with the writ petition. It is further the case of the petitioner that he was admitted in Class XI in Shri Bala Ji Sr. Sec. School and the petitioner appeared in the examination for the subject of mathematics in which he had a compartment and result for the same was declared on 24.07.2019 (Annexure P-2) as per which also the petitioner did not pass. The particulars of all the students who were studying in Class XI were submitted by the school to the respondent-Board in the month of October, 2019 and the particulars with respect to the petitioner were also submitted and the relevant extract of the same wherein the petitioner was shown to be at serial No.26 has been annexed as Annexure P-3. It is further the case of the petitioner that he availed the second chance for clearing the paper in which he had a compartment and in the same the petitioner was declared as passed in the year 2020. The result/DMC dated 15.07.2020, regarding the same has been annexed as Annexure P-4 with the present writ petition. It is the case of the petitioner that in the meantime he was promoted to Class XII and thereafter migration certificate dated 01.07.2021 was also issued and that he had appeared in the Class XII examinations, but his result was withheld and he was put in the category of N.E. (Not Eligible) as per the result dated 03.08.2021/23.02.2022 (Annexure P-6). It is stated that the petitioner made inquiries and learnt that he has been put in the category of 'Not Eligible' on the ground that he had passed the

compartment in the second chance and not in the first chance and the same was in violation of the amended Clause 42(v) of the CBSE Examination Bye-laws which has been annexed as Annexure P-7 and as per which, it is stipulated that a candidate who is placed in compartment in the Secondary School Examination (Class-X) shall be admitted provisionally to Class XI, but he would be required to pass the compartment in the first chance which is to be held in July/August and in case, he does not clear the subject in which he has compartment in the first chance, then, his admission would be cancelled. In the present writ petition, the said clause is also sought to be challenged.

3. Learned counsel for the petitioner has submitted that a perusal of above-said Clause 42 would show that sub-clause (i) stipulates that a candidate who has been placed in compartment may reappear at the compartmental examination which is held in July/August and is also to be given a second chance in March/April next year and could further avail a third chance in July/August of the succeeding year. It is submitted that Clause 42 sub-clause (v) requires the petitioner to pass the compartment examination in the first chance and the said condition is arbitrary and against law, inasmuch as, once a person has been given three chances to clear the compartment so as to save him from repeating Class X, the same number of chances should be given to clear the compartment so as to save him from repeating Class XI. It is further submitted that at the time of Class-XII examination, the petitioner had cleared the Class X compartment examination, although, not in the first chance and thus, his result should not have been withheld.

4. Learned counsel appearing for the respondents, on the other

hand, has vehemently opposed the present writ petition and has prayed for its dismissal. It is submitted that the examination bye-laws of CBSE which are sought to be challenged now are of the year 2018, which is prior to the date on which the petitioner had given the exams for the Class X. It is also submitted that as per Clause 7.4 of the Examination Bye-laws, admission to Class XI in a school is open to a student only in case he has obtained minimum Grade 'D' in at least five subjects (excluding additional 6th subject) and in the present case, the petitioner does not have Grade 'D' in five subjects excluding 6th additional subject and thus, is not entitled to have been admitted to Class XI as per the said clause. It is further submitted that however Clause 42(v) of the Examination Bye-laws provides that the provisional admission can be granted to a student subject to his/her clearing the compartmental examination in the first chance. The said bye-laws have not been challenged by the petitioner before appearing for the Class X examinations. It is submitted that apart from the fact that the petitioner is estopped from challenging the said bye-laws, the said bye-laws are absolutely legal and have been framed to maintain a certain standard of education. It is submitted that the same are universally applicable to all the students and there is no discrimination in its applicability to the students belonging to the same class. It is further submitted that in case a student is placed in compartment in Class X, then, the provision stipulates that he would be provisionally admitted to Class XI and would be granted one opportunity to clear the compartment examination to be held in July/August of that year and in case, the student clears the compartment examination in July/August of that year in the first chance, then, he would continue in Class XI. It is stated that while framing

these clauses, the CBSE in order to maintain educational standards thought it prudent not to give more than one chance for confirming of the provisional admission given in Class XI. The second and third chance which were given under sub-clauses (i) and (ii) of Clause 42 of the Examination By-laws are only to save a student from not repeating Class X, but the same cannot be extended to permit a student to get provisional admission in Class XI confirmed. In support of his argument, reliance has been placed upon the judgment of the Hon'ble Supreme Court in case titled as 'State of Maharashtra Vs. Vikas Sahebrao Roundale', **reported as 1992(4) SCC 435**, to contend that slackening the education standards would be detrimental to society and would also create a breeding ground for corruption and feeding source for indiscipline. It is submitted that in today's time every student is trying to score high percentages and the students who have compartment in Class X and are unable to clear the said compartment in the first instance should not be permitted to continue in Class XI as, in case, they are permitted to continue in Class XI, then, the same would result in weakening academic standards. It is submitted that in the present case, the petitioner could not clear the compartmental examination of Secondary School in his first attempt held in July, 2019 and as per the examination bye-laws, his admission was to be cancelled by the school, but however, the petitioner, in connivance with the school, concealed the said fact and gave a wrong declaration in the registration form for Senior Secondary Examinations and in the registration form for Class 10+2 by stating that the petitioner was eligible and thus, illegally obtained the admission card for appearing in Class 10+2 examinations.

Reference has been made by the learned counsel for the respondents-

CBSE to Annexure R-1/2 to show that the petitioner had in the column which required him to mention the details of the year in which the petitioner had passed Class X, the petitioner had stated "2019". The same is false, inasmuch as, in the year 2019 the petitioner was placed in compartment, as he had not cleared the examination for the subject-mathematics. Even with respect to Class 10+2 examinations, the same false statement was made and the petitioner was able to get the roll number issued for Class 10+2 examinations. It is submitted that the said document Annexure R-1/2 is duly signed by the petitioner and it has specifically been mentioned in the said document that the details have been filled up after thoroughly checking the same and in case any mistake is detected before or after the result, then, the petitioner would be solely responsible for the same. It is submitted that apart from the said false statement, there is also active concealment on the part of the petitioner while filling up form (Annexure R-1/2), inasmuch as, there was no mention that in the year 2019 the petitioner was placed in compartment. It is submitted that the case of the petitioner deserves to be dismissed solely on the ground of concealment and false statement and since even the school had connived with the present petitioner, inasmuch as, the said document was also signed by the Principal of the school, show cause notices have been issued to the school, copies of which are annexed as Annexure R-1/3 and Annexure R-1/4. It is submitted that the school has not been impleaded as a party in the present petition which further substantiates the connivance between the petitioner and the school. It is further submitted that a perusal of the result card (Annexure P-1) would show that the petitioner had scored 3 marks in theory in mathematics and

had a total of 21 marks and had got Grade 'E' in the said subject. It is submitted that even in the other subjects, the petitioner had only scored Grade 'D²/D¹' and had thus scored very less marks even in the other compulsory subjects. It is further submitted that in the first compartment examination the petitioner had scored only one mark in theory and had scored 18 marks in practical and got a total of 19 marks and the same clearly shows that the petitioner was not earnest & sincere towards his studies at that point in time. It is submitted that any sympathy extended towards the petitioner would set a bad precedent.

5. This Court has heard learned counsel for the parties and has perused the paper-book.

6. The undisputed facts in the present case are that the petitioner had appeared in Class X exams conducted by CBSE in the year 2019 and had secured the following marks: -

<i>Sub Code</i>	<i>Subject</i>	<i>MARKS OBTAINED</i>				<i>POSITIONAL GRADE</i>
		<i>Theory</i>	<i>I.A.</i>			
184	English LNG & LIT.	024	018	042	Forty Two	D2
002	Hindi Course-A	038	018	056	Fifty Six	D1
041	Mathematics	003	018	021	Twenty One	E
086	Science	013	020	033	Thirty Three	D2
087	Social Science	033	020	053	Fifty Three	D1
	Additional subject					
034	Hind. Music Vocal	002	075	077	Seventy Seven	D1

A perusal of the same would show that in the subject of Mathematics, the petitioner had scored 3 marks in theory and 18 marks in practical and in total 21 marks and was thus given Grade 'E' in the said

subject and even in the other compulsory subjects, the petitioner had secured only Grade 'D²/D¹'. As per Clause 7.4 of the Examination By-laws of CBSE, admission to Class XI is open to a student who has obtained a minimum Grade 'D' in at least 5 subjects (excluding the 6th additional subject) and since the petitioner in the present case had not got Grade 'D' in five subjects excluding additional subject, the petitioner was not entitled to be admitted/promoted to Class XI. Clause 7.4 is reproduced herein below:-

“7.4 Admission to Class-XI in a School shall be open to such a student who has: -

- (a) Obtained minimum Grade-D in atleast 5 subjects (excluding the 6th additional subject) under Scholastic Area A as per the Scheme of Studies and a Qualifying Certificate/Gradesheet-cum-Certificate of Performance at the Secondary School (Class-X) Examination conducted by this Board/School affiliated to this Board;*
- (b) Has passed an equivalent examination conducted by any other recognized board of Secondary Education/Indian University and recognised by this Board as equivalent to its secondary school examination.”*

Clause 7.4(b) is admittedly not applicable in the present case.

7. Clause 42(v) of the Examination Bye-laws of CBSE provided that a student who has been placed in compartment in Class X should be provisionally admitted to Class XI, subject to his passing the subject in which he had a compartment, in the first chance, in the compartmental examinations which were to be held in July/August of that year. The petitioner in view of the said Clause 42(v) of the Examination Bye-laws of CBSE was provisionally admitted to Class XI by the school and the said admission in view of the said regulation was thus subject to his clearing

the compartmental examination in the first chance. The petitioner availed the said chance, but failed to clear the exam and a perusal of the result card dated 24.07.2019 (Annexure P-2) would show that the petitioner secured only one mark in theory and since he had 18 marks in practical, thus, the total marks that the petitioner scored in mathematics were 19, which were even lesser than the marks he had secured in the said subject in Class X Board examination. Clause 42(v) of the Examination Bye-laws of CBSE further stipulates that in case a candidate is not able to clear the subject in which he had compartment in the first chance, then, his/her provisional admission to Class XI would stand cancelled and thus, in view of the same the school should have cancelled the provisional admission given to the petitioner. Instead of doing the same, the school forwarded the details of the students including that of the present petitioner for registering the said students for Class XI/10+2 by making false statements and concealing material facts. The information with respect to every student bore the signature of that student and was apparently supplied by the student themselves under their signature and was forwarded by the school and the same have been annexed as Annexure R-1/2 along with the written statement filed by the respondent-Board. An extract of the said document has also been annexed as Annexure P-3 by the petitioner in the present writ petition. A perusal of Annexure R-1/2 (running page 40 of the paper-book) would show that with respect to Class XI, a specific column required the candidate to mention the details of the year, roll number etc. of passing the Secondary Board Examination. The petitioner had mentioned the year '2019' in the said column, although, he had never cleared Class X in the year 2019 as the year when the petitioner had

cleared the mathematics exam, in which he had compartment in the year 2019 was 2020. It is a settled position, which is not disputed that a candidate is considered pass in Class X after he/she has cleared all the subjects. The date on which the entry based on the information supplied with respect to Class XI was made was 15.10.2019 and thus the said information supplied was apparently false. The petitioner had signed the said document, which is also apparent from Annexure R-1/2 (at page 41 of the paper-book). A similar false statement was also made while getting registered for Class 12th as, in the said document also (at page 41 of the paperbook), it was mentioned that Class X examination had been cleared in the year 2019. The said document was also signed by the petitioner and the said documents specifically contained an undertaking that the petitioner had checked all the details and that in case any mistake was detected before or after the declaration of the result, the petitioner would be responsible for the same and the petitioner in connivance with the school, by giving the false statement, succeeded in wrongly getting the roll number for the Class 10+2 examinations, although, as per the bye-laws prevalent at the relevant time, provisional admission of the petitioner to Class XI should have been cancelled by the school. It is the case of the respondent-CBSE Board that they discovered the false statement and concealment made by the petitioner only while preparing the result of the petitioner for class 10+2 and thus, in the result, the petitioner was put under the category 'Not Eligible' for the Senior Secondary examinations (10+2 Class). It is further the case of the respondent-Board that the school was also in connivance with the petitioner as the Principal had signed the said documents and the same had been forwarded by the school and thus,

show cause notices dated 11.03.2022 and 08.04.2022 (Annexures R-1/3 and R-1/4) had been issued to the school. To the specific averments made in the writ petition with respect to concealment and false statement made by the petitioner, no replication has been filed to counter the same. As has been stated herein above, an extract of the said document (Annexure R-1/2) has also been annexed in the writ petition as Annexure P-3. Even a perusal of Annexure P-3 would show that the information with respect to the year of passing of the Class XI exam has been given as “2019”. No explanation has been given in the writ petition as to why false information had been provided. This Court, on the basis of above-said facts and circumstances, is of the view that there is false representation and active concealment on the part of the petitioner while filling up the documents (Annexure R-1/2) and thus, on the said ground alone, the present writ petition deserves to be dismissed.

8. From a perusal of Clause 7.4 of the Examination Bye-laws of CBSE which has been reproduced herein above and also from the facts of the present case, it is apparent that the petitioner was not entitled to be admitted in Class XI. The only clause referred to by both the parties which provides for provisional admission is Clause 42(2) of the amended Examination Bye-laws, which clause now after much delay is sought to be challenged in the present writ petition.

9. Clause 42 of the Amended Examination Bye-laws of CBSE including Clause (v), is reproduced herein below: -

***“42. Compartment Examination for Secondary/Senior
School Certificate Examination***

42 (i) (b) & (c), 42(ii) (b), 42(v)

- (i) *A candidate placed in compartment may reappeared at the compartmental examination to be held in July/August same year and may avail himself/herself for the second chance in March/April next year and may further avail himself/herself for the third chance at the compartmental examinations to be held in July/August of that year.*
- (ii) *A candidate who does not appear or fails at one or all the chances of compartment shall be **treated to have failed in the examination and shall be required to reappeared in all the subjects at the subsequent annual examination of the Board as per syllabi and courses laid down for the examination concerned in order to pass the examination.***
- (iii) *Syllabi and Courses for the Compartmental candidates in March Examination shall be the same as applicable to the regular candidates of full subjects appearing in the March examination.*
- (iv) *For subjects involving internal Assessment, in case the candidate has passed in Internal Assessment, he/she shall appear only on theory part and previous Internal Assessment marks will be carried forward.*
- (v) ***The candidate who is placed in Compartment in the Secondary School Examination (Class-X) shall be admitted provisionally to Class XI till he passes the first chance Compartmental Examination to be held in July/August of that year. His/her admission shall be cancelled if he/she fails to pass at the first chance Compartmental Examination.***

10. The petitioner in view of the above-said sub-clause (v) was provisionally admitted to Class XI. Since, the petitioner did not pass the subject in which he had compartment at the first chance and rather, secured lesser marks than he had secured in the board examination, the admission of the petitioner to Class XI should have been cancelled by the school as is specifically provided in the above-said sub-clause (v). The petitioner in collusion with the school had forwarded false information of him having cleared Class X examinations in the year 2019 and thus, by

suppressing material facts, got the roll number for Class 10+2 examinations. When the respondent-Board found out the same, they rightly made an entry of 'Not Eligible' in the result certificate (Annexure P-6) issued to the petitioner and the said act of the respondent authority was in consonance with the bye-laws and deserves to be upheld and the petitioner does not deserve any relief in the present writ petition.

11. Challenge to Clause 42(v) of the Examination By-laws of CBSE is completely devoid of merit and deserves to be rejected in view of the following reasons: -

- (i) No rule, regulation, bye-law or law has been referred to by the learned counsel for the petitioner to show that the petitioner had any legal right to be given more than one chance for confirming his provisional admission to Class XI.
- (ii) Clause 7.4 as well as Clause 42(v) of the Examination Bye-laws were in force on the date when the petitioner had given the examination for Class X. No challenge was made to any clause by the petitioner prior to him giving the said examination. It is after being admitted in Class XI in view of the said Clause 42(v) of the Examination Bye-laws and after the petitioner had failed to comply with the condition mentioned in the said sub-clause that the said sub-clause is sought to be challenged at this belated stage and thus, as per settled law, the principle of estoppel operates against the petitioner.
- (iii) In the prayer clause of the writ petition, challenge is not to a condition contained in Clause 42(v) of the Examination Bye-laws of CBSE, but to the whole sub-clause. In case, the relief sought in

the prayer clause of the writ petition is granted and the entire Clause 42(v) of the Examination Bye-laws is set aside, then, the same would not in any way further the case of the petitioner as it is only the said sub-clause which provides for provisional admission in Class XI, in spite of the student(petitioner in the present case) having a compartment in the main examination and setting aside of the same would result in the petitioner not even being eligible for provisional admission in Class XI in view of Clause 7.4 of the Examination Bye-laws of CBSE (to which no challenge has been made).

- (iv) During the course of arguments, it has been submitted by learned counsel for the petitioner that the condition incorporated under clause 42(v) of the Examination Bye-laws, with respect to provisional admission being subject to the compartmental examination being cleared, in the first chance, should be replaced and a candidate should be provided with multiple chances. The said argument deserves to be rejected as in case the same is accepted, then, the same would in effect amount to rewriting the said clause. No law or judgment has been cited by the learned counsel for the petitioner to show that the Court, more so in the present facts and circumstances has the power to rewrite a clause formulated by an expert body in the field. The Division Bench of the Bombay High Court in ***Writ Petition No.5896 of 2020*** titled as **'Mansi Vs. Union of India through Ministry of Human Resource Development, New Delhi and others'**, reported as 2021(1) ALL MR 446, while considering a challenge to Circular dated

12.08.2020 and Clause 41.2 of the Examination Bye-laws issued by CBSE, whereby, the candidates, who did not appear in the main examination held in February/March, 2020 as regular candidates were excluded from appearing in the compartment examination, observed that the bye-laws cannot be struck down by Court on the ground of unreasonableness merely because the Court thinks that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome, nor the Court can say that a bye-law is unreasonable merely because it has carved out certain categories and also cannot be invalidated by the Court on the ground of unreasonableness and that the body entrusted with the powers to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair. While making the said observations, the Division Bench had also taken into consideration the judgment of the Hon'ble Supreme Court passed in case titled as “**Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth'**”, reported as **1984 (4) Supreme Court Cases**, wherein, the Hon'ble Supreme Court had observed that it was not within the legitimate domain of the Court to determine as to whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate. It was further observed that it was within the competence of the Board, to apply its mind and decide matters of policy relating to the conduct of the examination and that the Court should not substitute its own views in relation to

academic matters. Relevant portion of the judgment of the Division Bench of the Bombay High Court in **Mansi Vs. Union of India (supra)** is reproduced herein below: -

*“22. Mr. Deshpande, the learned counsel for respondent No.2 CBSE has referred to decision in the case of **Maharashtra State Board of Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth, reported in 1984 (4) Supreme Court Cases**, wherein the the Hon'ble Supreme court has held as under:*

*"The question whether a particular piece of delegated legislation- whether a rule or regulation or other type of statutory instrument- is in excess of the power of subordinate legislation conferred on the delegate has to be determined with reference only to the specific provisions contained in the relevant statute conferring the power to make the rule, regulation, etc. and also the object and purpose of the Act as can be gathered from the various provisions of the enactment. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the statute, **it is not within the legitimate domain of the Court to determine whether the purpose of a statute can be served better by adopting any policy different from what has been laid down by the Legislature or its delegate. Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act for its efficacious implementation. Any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and there is no scope for interference by the Court** unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.*

None of the above vitiating factors are shown to exist in the present case and therefore, Regulation 104(3) cannot be held to be ultra vires. Instead of confining itself to a consideration whether the impugned regulation fall within four corners of the Act and

particularly Section 36 thereof, the High Court erred in embarking upon an investigation as to whether the prohibition against the disclosure and inspection of answer books and other documents imposed by Regulation 104(3) would, in practice, effectively serve the purpose of the Act ensuring fair play to the examinees.

Having regard to the provisions of section 36, especially clauses (c), (d), (f) and (g) of sub-section(2) thereof, as also those of Section 19(f) and (g), it is clear that a duty is cast on the State Board to formulate its policy as to how the examinations are to be conducted, how the evaluation of the performances of the candidates is to be made and by what procedure the results are to be finalised, compiled and released. It was perfectly within the competence of the Board, rather it was its plain duty, to apply its mind and decide as a matter of policy relating to the conduct of the examination as to whether disclosure and inspection of the answer books should be allowed to the candidates, whether and to what extent verification of the result should be permitted after the results have already been announced and whether any right to claim revaluation of the answer book should be recognized or provided for. All these are matters which have an intimate nexus with the objects and purpose of the enactment and are, therefore, within the ambit of the general power to make regulations conferred under sub-section (1) of Section 36. In addition, these matters fall also within the scope of clause (c), (f) and (g) of sub-section (2) of the said section.

The Hon'ble Supreme Court further held that:

"The Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and departments controlling them. It will be wholly wrong or the curt to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate it a purely idealistic view as opposed to a pragmatic one were to be propounded.

23. Having regard to the landmark judgment of the Hon'ble Supreme Court in the case of Maharashtra State Board of

Secondary and Higher Secondary Education and another Vs. Paritosh Bhupeshkumar Sheth (supra), the legal position is now well established that even a bye law cannot be struck down by Court on the ground of unreasonableness merely because the Court thinks that it goes further than "is necessary" or that it does not incorporate certain provisions which, in the opinion of the court, would have been fair and wholesome. The Court cannot say that a bye-law is unreasonable merely because it has carved out certain categories. It cannot be said that the byelaw and circular under challenge are manifestly unjust, capricious, inequitable or partial in its operation. It cannot be invalidated by the Court on the ground of unreasonableness. The responsible representative body entrusted with the powers to make bye-laws must ordinarily be presumed to know what is necessary, reasonable, just and fair.

24. The experts in the education field have framed the policy and accordingly, made amendment in the Examination Bye-laws of CBSE and on that basis, impugned circular has been issued, which provides categories of students who are eligible for compartment examination.

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There is no scope for interference. We have sympathy for the petitioner-student who could not appear for February-March, 2020 examination (main) because of her prolonged illness. But, we cannot permit the petitioner to appear in compartment examination to be held in the month of September, 2020 in view of the circular dated 12.08.2020 and the Clause 41.2 of the Examination Bye-laws. The petitioner does not fit in the categories of candidates/ students made in the circular and as such, we deem it fit not to exercise our extraordinary jurisdiction by invoking Article 226 of the Constitution of India.

27. Having regard to the above reasons, we are not inclined to grant any relief in favour of the petitioner.

28. Writ petition stands dismissed."

In the above-said case, the petitioner could not appear as a regular student of Class X on account of the fact that she had to undergo surgery and was not keeping good health, which fact was

not disputed by the respondents and the petitioner therein wanted to appear in the compartmental examination stated to be held in the month of September, 2020. Since the petitioner therein was not permitted to appear in the compartment examination on the basis of a circular issued by the CBSE and also in view of Clause 41(2) of the Examination Bye-laws, the same were sought to be challenged in the above-said writ petition. The Division Bench, after making the above-said observations, dismissed the writ petition and observed that there was no scope for interference, even though the Court had sympathy for the petitioner therein who could not appear for February-March, 2020 examination (mains) because of her prolonged illness.

- (v) It is not the case of the petitioner that similarly placed students are being discriminated against by virtue of the said sub-clause and thus, the said clause cannot be stated to be discriminatory. Clause 42(i) of the Examination Bye-laws extends a benefit to students in order to save them from repeating Class X. Sub-clause (v) of Clause 42 of the Examination Bye-laws is with respect to confirmation of provisional admission granted to a student with respect to Class XI and thus, the said two clauses have been framed for two different purposes and the said clauses cannot be stated to be arbitrary, illegal or in violation of law. The plea raised by the petitioner to the effect that grant of three chances be read into in Clause 42(v) on the ground of compassion also deserves to be rejected as it is the settled law that where a person does not have a legal right, then, misplaced compassion will not meet the

ends of justice. A Co-ordinate Bench of this Court in *CWP No.14584 of 1999* titled as '**Puneet Chopra and others Vs. Central Board of Secondary Education and another**, reported as **2000(3) S.C.T. 339**, after taking into consideration the submissions made by the petitioner therein to the effect that the petitioner had studied for one year in Class XI, reiterated the above position of law. Relevant portion of the said judgment is reproduced herein below: -

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A person only passes 10th class examination, when he clears all the subjects. It is, therefore, rightly thought that only one chance should be given to pass the examination in the month of July/August, 1999. Admittedly, the petitioners failed to pass their examination in the first attempt. They still remained compartmental candidates. Thus, they cannot make any grievance in this regard.

7. On behalf of the petitioner it was submitted that these rules will not apply to the petitioners because at that time they were studying in Class 10. The said argument is fallacious. The amendment was effected in the year 1998. ***It would apply to all the candidates who passed Class 10. The petitioners only took the examination in Class 10 in March/April, 1999. The rules were already enforced. It would, therefore, apply with all its vigour to the petitioners.***

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9. Confronted with that position it had been pointed that since petitioners have almost studied for one year in Class 11, their academic session should not be disturbed. In this regard the plea is totally devoid of any merit. ***The reason being that if a person does not have a right, then misplaced compassion will not meet the ends of justice. It would only be defeated. The Supreme Court in the case of Guru Nanak Dev University v. Parminder Kr. Bansal, AIR 1993 Supreme Court 2412, in this regard held :-***

"From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to

the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse into academic life. Admission cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions."

Same was the view expressed subsequently in the case of *Central Board of Secondary Education v. Nikhil Gulati*, AIR 1998 Supreme Court 1205. It was stated :-

"Occasional aberrations such as these, whereby ineligible students are permitted, under Court orders, to undertake Board and/or University examinations, have caught the attention of this Court many a time. To add it further, the Courts have almost always observed that the instance of such aberrations should not be treated as a precedent in future. Such casual discretion by the Court is nothing but an abuse of the process; more so when the High Court at its level itself becomes conscious that the decision was wrong and was not worth repeating as a precedent. And yet it is repeated time and again. Having said this much, we hope and trust that unless the High Court can justify its decision on principle and precept, it should better desist from passing such orders for it puts the 'Rule of Law' to a mockery, and promotes rather the 'Rule of Man'."

As pointed and referred to above, the petitioners did not have a legal right. Since they did not have the legal right, the above said argument based on compassion must lose significance.

10. For these reasons, the writ petitions being without merit must fail and are dismissed. The parties are left to bear their own costs.

Petitions dismissed.

In the above-said case, prayer was made for quashing of the instructions of the CBSE Board, on account of which, the petitioner therein had been denied to continue studying in Class XI

for having failed to clear the compartmental examination in the first chance with respect to Class X. The said instructions were challenged being illegal, unlawful, arbitrary and discriminatory and being in violation of the principles of natural justice. Co-ordinate Bench of this Court, after taking into consideration the arguments raised by the parties, observed that a student passes Class X when he/she clears all the subjects and thus, it has been rightly stipulated by the CBSE-Board to give only one chance for clearing the exam, in which, a student has a compartment and once the said student had failed to pass the said exam in the first attempt, then, the said student would remain as a compartmental candidate and could not be promoted to Class XI. Coordinate Bench placed reliance on judgments of the Hon'ble Supreme Court in case titled as 'Guru Nanak Dev University vs. Parminder Kr. Bansal', reported as AIR 1993 Supreme Court 2412 and in case titled as 'Central Board of Secondary Education vs. Nikhil Gulati', reported as AIR 1998 Supreme Court 1205 and after considering the same, the writ petitions filed by the students were dismissed. The facts of the abovesaid case are very similar to the facts of the present case.

- (vi) In case the benefit of second chance as well as third chance is extended to a student, who has been provisionally admitted to Class XI, then the same would create an anomalous situation, inasmuch as, the third chance under sub-clause (1) of Clause 42 of the Examination Bye-laws to save the candidate from having to repeat Class X would be given in the month July/August of the

next year, whereas, the annual examinations are to be held in March/April and thus, a student who has not even cleared examinations of Class X would be eligible for appearing for the examinations Class XI. Sub-clause (v) of Clause 42 of the Examination Bye-laws stipulates that the compartmental examination be cleared in July/August of the same year in the first chance and thus, even for all practical purposes, is legal and valid.

Thus, keeping in view the above-said facts and circumstances, this Court is of the opinion that Clause 42(v) of the Examination Bye-laws of CBSE is legal and valid and deserves to be upheld.

12. The Hon'ble Supreme Court of India in **Vikas Sahebrao Roundale's case (supra)** has held as under: -

“xxx xxx xxx xxx xxx xxx

*12. Article 51A enjoins every citizen by clause (h) to develop the scientific temper, humanism, the spirit of inquiry and reform and clause (j) enjoins as the fundamental duty to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; (a) respect of national flag and national anthem; (e) to promote harmony and spirit of common brotherhood amongst all the Indian people transcending religious, linguistic and regional or sectional diversities to renounce practice derogatory to the dignity of woman; (f) to value and preserve rich heritage of our composite culture, etc. are some of the basic duties with which the budding students need to be inculcated and imbibed. They should be sowed in the receptive minds in their formative periods so that they take deep roots at maturity. The teacher needs, not only the training at the inception, but also periodical orientations in this behalf so that the children would reap the rich benefit thereof. xxx xxx xxx The disregard to statutory compliance would amount to letting loose of innocence and unwary children. xxx xxx xxx xxx **Slackening***

the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education. The directions to the appellants to disobey the law is subversive of the rule of law, a breeding ground for corruption and feeding source for indiscipline. The High Court, therefore, committed manifest error in law, in exercising its prerogative power conferred under Art 226 of the Constitution, directing the appellants to permit the students to appear for the examination etc.”

Any interference by this Court in favour of the petitioner would send a wrong message and would result in lowering of educational standards.

13. Keeping in view the above-said facts and circumstances, the present writ petition being sans merit deserves to be dismissed and is, accordingly dismissed.

14. Before parting with the present judgment, it would be relevant to note that on 18.05.2023, this Court had passed the following order: -

“Learned counsel for the petitioner prays for a short adjournment to get instructions on the aspect as to whether the petitioner is ready to take admission in 11th class.

Learned counsel for the respondents is also directed to get instructions with regard to said aspect.

Adjourned to 26.05.2023.

To be taken up at 02:45 PM.

(VIKAS BAHL)
JUDGE

May 18, 2023”

15. In pursuance of the above-said order, learned counsel for the respondent-CBSE has got instructions to the effect that in case the petitioner is ready to take admission in Class XI, then, the respondent-CBSE would have no objection to the said course of action.

16. Learned counsel for the petitioner, however, prayed that he wanted to press the writ petition on merits.

17. Although, the present writ petition has been dismissed, but it would be open to the petitioner to seek admission in Class XI to which the respondents-CBSE would have no objection, but the same would be subject to the norms formulated by the State and the applicable Rules & Regulations.

18. In view of the above, the present writ petition is dismissed with the above-said observations.

July 07, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes