

09.02.2024  
Item No.13  
Court No.11  
Avijit Mitra

**MAT 218 of 2024  
with  
IA No. CAN 1 of 2024**

**Sumit Mandal  
- Versus -  
State of West Bengal & ors.**

Mr. Tarique Quasimuddin,  
Ms. Zainab Tahur  
...for the appellant  
Mr. Gourav Das,  
Mr. Hemanta Kr. Das  
...for the State  
Mr. Santanu Kumar Mitra,  
Mr. Amartya Pal  
...for the W.B.C.H.S.E.

By preferring this intra-court appeal, the writ petitioner/appellant (hereinafter referred to as the appellant) has assailed the order dated 18<sup>th</sup> January, 2024 passed in WPA 27421 of 2023 whereby the writ petition was dismissed.

The essential facts which are required to be adumbrated for effective adjudication of the appeal are that the appellant appeared in the Higher Secondary Examination, 2023 conducted by the West Bengal Council of Higher Secondary Education. He emerged to be a successful candidate by securing very good marks in compulsory subjects but he failed to secure pass marks in optional subject i.e. in Physics. The appellant approached the Council praying for permission to appear in the examination in the said optional paper as a

continuing candidate. Despite being so approached, no such permission was accorded by the Council and hence, the appellant was constrained to knock on the door of this Court by preferring the writ petition, which was dismissed by the order impugned in the appeal.

Mr. Quasimuddin, learned advocate appearing for the appellant submits that the appellant wants to appear in the Joint Entrance Examination and for such purpose he is required to secure pass marks in the optional paper i.e. Physics and as such, he prayed for permission to appear in the said examination as a continuing candidate. He submits that if this Court accords such permission, the Council shall allow the appellant to appear in the said examination. He submits that even the petitioner may be permitted to appear in the examination as special candidate.

Mr. Mitra, learned advocate appearing for the Council vehemently opposes such submission made on behalf of the appellant. He submits that if such permission is granted to the appellant, floodgate will open. He contends that the rules do not permit a candidate like the appellant who had passed out the High Secondary Examination to reappear in examination of any optional subject in which he/she failed to secure pass marks. In support of such contention he places reliance on regulations 7 and 8 of the West Bengal

Council of Higher Secondary Education Examination Regulation, 2006 (in short, the regulations).

Heard the learned advocates appearing for the respective parties and perused the materials on record placed before us.

The continuing candidate has been defined in regulation 2(h) which is as follows:

*“2(h)- Continuing candidate means a regular candidate who fulfils the conditions specified in regulation 7 or a special candidate, who opt to sit in the Higher Secondary Examination as a continuing candidate;”*

A special candidate has also defined in regulation 2(t) which is quoted as below:

*“2(t)- special candidate means a regular candidate who fulfils the conditions specified in regulation 8”.*

For clarity and convenience, it would be apt to reproduce the relevant portion of the regulations 7 and 8 which are as under:

***“7. Eligibility to appear in Higher Secondary Examination as continuing candidate:***

*(1) A candidate, who fulfils the conditions specified in sub-regulation (2) shall be entitled to appear in the Higher Secondary Examination as a continuing candidate till he passes such Examination or in four subsequent Higher Secondary Examinations, whichever is earlier :*

.....

.....

*(2) A candidate must fulfil the following conditions to be eligible for appearing in the Higher Secondary Examination as continuing candidate:*

*(a) he must have enrolled for the Higher Secondary Examination of previous years as regular*

*candidate, but did not appear or failed in more than two compulsory subjects;*

*(b) he must have submitted the enrolment form to sit in the subsequent Higher Secondary Examination as continuing candidate and paid the necessary fees thereof to the Council through his institution on or before the last date as may be announced from time to time by the Council.*

***(8) Eligibility to appear in Higher Secondary Examination as special candidate:***

*(1) A candidate, who fulfils the conditions specified in sub-regulation (2) shall be entitled to appear in the Higher Secondary Examination as a special candidate till he passes in such Examination or in four subsequent Higher Secondary Examination, whichever is earlier :*

*Provided that a special candidate may, if he desires to do so, enroll himself, and appear in the examination, as a continuing candidate by choosing the same subjects, which he had offered in the previous examination:*

.....

*(2) A special candidate must fulfil the following conditions to be eligible for appearing in the Higher Secondary Examination :-*

*(a) he must have enrolled for any Higher Secondary Examination of previous years, but appeared in maximum of two compulsory subjects or failed in maximum of two compulsory subjects;*

*(b) he must have submitted the enrolment form to sit in the subsequent Higher Secondary Examination as special candidate and paid the necessary fees thereof to the Council through his institution on or before the last date as may be announced from time to time by the Council.*

*(3) Notwithstanding anything contrary contained in any other provisions of these regulations, for finalising the result of a special candidate, the pass marks obtained by a special candidate in a subject, in the Higher Secondary Examination in which he is appearing, shall be taken into account along with the marks obtained by him in the subjects, in which*

*he has already passed in the previous Higher Secondary Examination.*

Regulation 7(2)(a) postulates that to appear as a continuing candidate in the Higher Secondary Examination must have enrolled for any Higher Secondary Examination of previous years, as regular candidate, but did not appear or failed in more than two compulsory subjects whereas the Regulation 8(1) says that a candidate, who fulfils the conditions specified in sub-regulation (2) shall be entitled to appear in the Higher Secondary Examination as a special candidate till he passes in such Examination or in four subsequent Higher Secondary Examination, whichever is earlier and a candidate may appear in Higher Secondary Examination as special candidate, if he had enrolled for any Higher Secondary Examination of previous years but to appear in maximum of two compulsory subjects or failed in more than two compulsory subjects.

On cursory reading of the above provisions, it is crystal clear that nowhere in the rule there is any prescription to empower and/or enable any candidate, who has passed the Higher Secondary Examination in all compulsory subjects but who had failed to secure pass marks in optional subject, to reappear in the examination to be held in the next year.

In such conspectus although we are sympathetic to the petitioner who is brave enough to face the challenge

to re-appear in the examination but since rule does not permit, we are of the considered view that the compass of judicial review should not be expanded to such extent to direct any statutory authority to act *de hors* or contrary to the statutory rules or regulation.

In view thereof, we do not find any error in the order impugned and accordingly, the same is affirmed. The appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

**(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)**