

23
16.07.2024
Ct. No. 18
adeb

W.P.A. 17704 of 2024

**Miss Madhurutu Mallik
Vs.
The Deputy Secretary (Examination),
West Bengal Council of Higher Secondary Education
& Ors.**

Mr. Saptarshi Dutt
Mr. Kajal Mukherjee
...for the petitioner

Mr. Santanu Kumar Mitra
...for the WBCHSE

Affidavit of service filed on behalf of the petitioner is taken on record.

Petitioner participated in Higher Secondary Examination 2024 conducted by the West Bengal Council of Higher Secondary Education (hereinafter referred to as 'Council'). It is the contention of the petitioner that Mathematics is her optional subject in the said examination but she has not been awarded pass marks in the said subject. Petitioner has been awarded 33 out of 100 in Mathematics which has led this petitioner to approach this Court with the present writ petition seeking mandamus thereby directing the Council to permit her to appear in compartmental examination in Mathematics. In order to buttress the point urged in this writ petition reliance has been placed on a document which is at page

31 of the writ petition and according to the petitioner such document supports her contention to appear in compartmental examination in Mathematics on compliance of formalities.

Mr. Santanu Kumar Mitra, learned advocate representing the Council has opposed the prayer made in this writ petition upon placing reliance on Regulation 7(2) (a) of the West Bengal Council of Higher Secondary Education (Examination) Regulations, 2006. It has further been submitted on behalf of the Council that in terms of Regulation 7(2)(a) only those candidates who can participate in compartmental examination when the said candidates either did not appear or failed in more than two compulsory subjects. In addition thereto reliance is placed on the judgment and order passed by the Hon'ble Division Bench on an intra Court appeal being **MAT 218 of 2024 (Sumit Mandal Vs. State of West Bengal & Ors.)**.

Having considered the submissions made on behalf of the parties and taking note of Regulation 7(2) of the West Bengal Council of Higher Secondary Education (Examination) Regulations, 2006 it appears that only the candidate either who did not appear or failed in more than two compulsory subjects can participate in the Higher Secondary Examination as continuing candidate. For better appreciation of the issue Rule 7 is quoted below:-

“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 as earlier:

Provided that a continuing candidate, who has offered a subject consisting of theoretical and practical paper should attend practical classes on the subject in the Institution from where he has passed the Test Examination, for a period of not less than three months before appearing at the Higher Secondary Examination:

Provided further that a continuing candidate offering four elective subjects may interchange any one of the three compulsory elective subjects with the optional elective subject at the time of submission of his enrolment form as continuing candidate.

- (2) A candidate must fulfill 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 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.”*

In the present case it is undisputable that Mathematics was petitioners' optional subject not compulsory elective subject. Biological Science, Chemistry and Physics were compulsory elective subjects of the petitioner. It further appears from the mark sheet at page 25 that in all the aforesaid three compulsory elective

subjects petitioner obtained pass marks excepting Mathematics where petitioner failed. In terms of aforesaid Regulation 7(2)(a) participation of the petitioner as prayed for in compartmental examination is found to be impermissible in view of the provisions as embodied in the said regulation wherein it has been specifically prescribed that only candidates who did not appear or failed in more than two compulsory subjects can participate in such examination.

In this regard reliance is placed on **Sumit Mandal** (supra) wherein the Hon'ble Division Bench has observed that in the relevant rule nowhere it is prescribed to empower 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. Such observation of the Hon'ble Division Bench fortifies the case of the said Council.

Though much reliance has been placed on a document which has been obtained from an online platform which has been placed before this Court during course of hearing but in view of the statutory provisions as contained in Regulation 7(2)(a) as discussed above no credence can be given to such document.

In aforesaid conspectus no relief can be granted to the petitioner.

Accordingly, the writ petition stands dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)