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

+ **LPA 179/2024 & CAV 96/2024, CM APPL. 12602/2024**

**MASTER SHAURYA PRATAP SINGH AND ANR. (THROUGH
THEIR FATHER) Appellant**

Through: Mr. Mohinder JS Rupal, Mr. Hardik
Rupal, Mr. Vikas Kumar, Mr. A.N.
Shukla, Mr. Pradeep Kumar and Ms.
Ankita Sharma, Advocates

versus

**THE SOVEREIGN SCHOOL THROUGH ITS PRINCIPAL AND
ORS. Respondents**

Through: Mr. Awadh Kaushik and Mr. Rishabh
Kumar, Advocates for R-1 and R-2
Ms. Nikita Vir, Mr. Rishabh
Srivastava and Mr. Kartik Sharma,
Advocates for Mr. Santosh Kr.
Tripathi, Standing Counsel (Civil),
GNCTD for R-3/DOE (GNCTD).
Mr. Atul Kumar and Ms. Aditi Gupta,
Advocates for R-4/CBSE.

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Date of Decision: 29th February, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, ACJ: (ORAL)

CAV 96/2024



1. Since the learned counsel for the Respondent Nos. 1 and 2 has entered appearance, the caveat stands discharged.

2. Accordingly, this caveat stands disposed of.

CM APPL. 12603/2024 (for exemption)

3. Allowed, subject to all just exceptions.

4. Accordingly, the present application stands disposed of.

LPA 179/2024 & CM APPL. 12602/2024

5. This Letters Patent Appeal has been filed challenging the impugned judgment dated 26th February, 2024, passed in W.P.(C) 2760/2024, whereby the learned Single Judge dismissed the said writ petition *in limine*, holding that there is no provision in the order dated 9th October, 2019, issued by GNCTD, Directorate of Education ('DoE'), Exam Branch, Delhi, titled as 'Strengthening Assessment and Evaluation Practices and Promotion Policy for Classes IXth to XIIth with effect from academic Sessions 2019-2020' ('attendance policy'), which permits a student with less than 50% attendance to appear in final examinations of classes IXth and XIth.

6. The Appellant Nos. 1 and 2 are brothers and are studying in Class IXth and XIth respectively of Respondent No.1 - Sovereign School, Rohini, Delhi ('the School'). The Appellants herein were barred from appearing in their respective class examination on account of shortage of attendance and in these circumstances, the writ petition was filed seeking issuance of directions to the School to permit the Appellants to participate in examinations commencing from 1st March, 2024.

Submissions of counsel for parties



7. At the outset, learned counsel for the parties state that a clerical correction has been carried out by the learned Single Judge in the impugned judgment to the effect that Appellants are ‘brothers’ and not ‘brother and sister’ in relation.

8. Learned counsel for the Appellants states that learned Single Judge failed to consider the fact that Appellants were bullied and traumatized by certain students of the School, which in turn gravely affected the Appellants’ mental health and thus, their attendance. He states that various representations were made to the School in this regard, however, no action has been taken against the other students. In this regard, he refers to the representations dated 14th December, 2023 and 13th February, 2024, made by the Appellants’ father to the School.

8.1. He states that the learned Single Judge failed to consider that there is ambiguity in sub-clause (h) of Clause 18 (pertaining to ‘attendance criteria’) of the attendance policy, wherein it is stated that *“If the shortage of attendance at the time of the annual examination, for whatever reason or reasons, is more than 15%, i.e., the actual attendance of the student is less than 60% of the total attendance during the session, condonation of the shortage of attendance shall not be allowed, the student shall not be eligible to appear at the annual examination and shall be detained except in such circumstances as mentioned in the instruction.”* He states that no specific instructions have been provided in the attendance policy, as per which the students shall be eligible to appear for annual examinations when their attendance is less than 60%. He states that the said Clause 18(h) of the attendance policy does not mention any window of 50% to 60% for the purpose of condonation of shortage of attendance.



9. In reply, learned counsel for the Respondent No.1 – the School states that the Appellants have very less attendance for their respective academic sessions. He states that the parents of the Appellants were duly informed of the said fact, as is evident from the letters dated 6th September, 2023, 10th October, 2023, and 1st November, 2023, issued by the School informing the parents that Appellant No.2 is having short attendance. In this regard, he also refers to a letter dated 06th November, 2023, setting out the attendance of Appellant No.2 for the months of April, 2023 to October, 2023 as under and stating that that Appellant No.2 (as on date of letter) is having only 36.2% attendance.

S. No.	Month	Class Attendance	Attended	Total %
1	April – August	77	17	22%
2	September	101	37	37.3%
3	October	127	46	36.2%

He states that the Appellants' parents have not replied to any of the aforesaid letters.

9.1. He states that the Division Bench of this Court in ***Ashutosh Bharti and Ors. v. The Ritnand Balved Education Foundation and Ors.***¹, has explained the necessity to attend classes and that curriculum does not mean only examination, but it includes various other aspects as well. He states that in another judgment in ***Yash Yadav v. Central Board of Secondary Education and Anr.***², the Division Bench of this Court has held that minimum required attendance should be maintained by students and it

¹ W.P.(C) 19809/2004, decided on 14th January, 2005

² 2020 SCC OnLine Del 1890



should be kept in mind that Courts cannot do charity contrary to the legal position.

9.2. He states that with respect to the plea of bullying and harassment, a complaint was made before the Police in December, 2023, however, the same was settled when the parents of the other students tendered their apology and undertook that no such incident will happen again. He states that the said incident transpired outside the school premises and was resolved amicably, as far as the School is aware. He states that whereas, the issue of Appellants' absenteeism has been persisting in the academic year, since April, 2023 and in fact, the Appellants have not been attending classes even in the month of February, 2024.

9.3. He states that any leeway granted to the Appellants will send out a wrong message to the other students who have fulfilled the criteria of attendance. He states that other than the Appellants, few more students as well have been detained on account of short attendance.

Findings and analysis

10. We have heard the learned counsel for the parties and perused the record.

11. At the outset, it may be noted that admittedly, Appellant No.1 has attended only 43.6% classes in class IXth and Appellant No.2 has attended only 36.7% classes in class XIth. It is not disputed that as per the DoE's attendance policy, the requirement of attendance to be fulfilled by the student is 75%. The relevant period during which the Appellants had to record this attendance as per Clause 18(a) of the attendance policy is from April, 2023 to February, 2024, i.e., upto the date of the exams. The exams are scheduled to begin on 01st March, 2024.



12. A perusal of the record shows that the Appellants herein have registered a short attendance, consistently, and right from the beginning of the session in April, 2023. The School admittedly, sent nine reminders starting from the month of September, 2023 to the parents, bringing to their attention, the short attendance. The reminders were sent each month thereafter, until January, 2024. However, there is no explanation on the record for the inaction of the parents in ensuring the regular attendance of the Appellants

13. The learned Single Judge in the impugned judgment has examined the relevant clauses of the attendance policy and returned the following findings:

“9. The scheme of the aforesaid sub clauses of Clause 18 is clear and categorical. Normally, the requisite minimum percentage of attendance to enable a student to undertake the final examinations for Class IX to XII is 75%. The Head of the School is empowered to condone upto 10% shortage. If the shortage is between 10% and 15%, the Head of the School, if he is satisfied with the genuineness of reasons of the shortage submitted by the student, may recommend condonation of the shortage of attendance to the DDE (Zone), who is empowered to condone such shortage.

10. If the shortage in attendance is more than 15%, i.e. if the actual attendance of the student is less than 60% of the total attendance, condonation of attendance is ordinarily not to be allowed except in cases “as mentioned in the instructions”. Neither side has been able to draw my attention to any independent “instructions” governing the issue, other than the aforesaid Order dated 9 October 2019 itself. Para 20 of the order, however, significantly, refers to the provisions of the Order themselves as the “instructions” by providing thus:

“20. All the Govt, Govt Aided and Recognized Un-Aided Schools shall bring these instructions to the notice of the students and their parents/guardians immediately on the commencement of the session and in any case, by 15th of April or within 15 days of issuing this order for current academic session.”

11. The “cases as mentioned in the instructions”, to which sub clause (h) of Clause 18 refers are, therefore, to be found in sub-clauses (i) and (j) which follow. Sub clause (i) permits a further 10% condonation of shortage in



attendance, i.e., of allowing attendance upto 50%, if the student is suffering from a serious medical ailment. Clause (j) permits a further 10% reduction in the attendance requirement in the case of natural calamities like floods, earthquakes, epidemics or dislocation on account of factors such as riots etc.

12. The scheme, therefore, is thus:

(i) Normal requirement- 75%.

(ii) Relaxation upto 65% - by HOD if satisfied that the grounds for shortage are genuine.

(iii) Relaxation upto 60% - by DDE (Zone) on recommendation of HOD.

(iv) Relaxation upto 50% - by the Director (Education) in case the student is suffering from a serious medical ailment.

(v) Relaxation upto 40% - in the case of natural calamities like floods, earthquakes or where the study disrupted due to riots etc.

13. In no case, therefore, do the provisions applicable to shortage of attendance permit undertaking of the final examination by students in Class IX and XI, where the attendance of the students is less than 40%. Further, the entitlement of students with attendance below 50% to undertake the examination is also subject to the shortfall being attributable to natural calamities, riots or the like. No such case, quite obviously, exists in the present instance.

...

16. Mr. Rupal also drew my attention to Clause 18(k) of the Admission Policy, which reads thus:

“(k) Head of School will ensure that no student of classes IX to XII (Below the attendance of 60%) will appear in the examination without the approval of the Director (Education). As per Rule 35 of DSEAR-1973, the name of student may be struck off from the roll by head of school on account of continued absence without leave for six consecutive days by a student after giving the parents or guardian of such student a reasonable opportunity of showing cause against proposed action.”

17. Clause 18(k) cannot come to the rescue of the petitioners, as it merely states that no student of Classes IX to XII, who has attendance below 60% would appear in the examination without the approval of the DoE. Mr. Rupal submits that the School ought, at the very least, to have forwarded the petitioners’ representations to the DoE. Instead, they forwarded the representations to the CBSE, which has nothing to do in the matter.



18. Even if it is assumed that the petitioners' representations ought to have been forwarded to the DoE, the DoE could also not have done anything in the matter, as both the petitioners' attendance fell short of the minimum of 50%. Clause 18(k) obviously applies only to students who have, to their credit, attendance between 50% and 60%. In the case of such students, the Head of the School is required to ensure that the student does not appear in the examinations without the approval of the Director (Education)."

14. The Appellants have reiterated the submission as was made before the learned Single Judge and recorded at paragraph no. 17 of the impugned judgment. The Appellants contend that the discretion reserved in Clause 18(h) of the attendance policy does not pre-suppose that the student must record a minimum attendance of 50%. The Appellants contend that the range of 50% to 60% interpreted by the learned Single Judge is not apparent in Clause 18(h). The Appellants therefore, seek to contend that there is no criteria of minimum attendance, which the student must meet for being considered for relaxation.

15. We are of the considered opinion that the argument as advanced by the Appellants, if accepted, would result in the attendance policy being rendered meaningless and therefore, the interpretation proposed by the Appellants is not plausible. The interpretation given by the learned Single Judge at paragraph 12 of the impugned judgment is reasonable and succinctly brings out the limits of the powers to be exercised by each of the designated authority under the attendance policy. The hierarchy of the designated officials competent to deal with the relaxation of the attendance, as provided in the distinct sub-clauses of Clause 18 of attendance policy, is a clear indication of the fixation of the lower denominator of 50% as held by the learned Single Judge. Without fixing the lower denominator, the power



of relaxation granted under the sub-clauses of Clause 18 would be rendered meaningless.

16. The significance of regular attendance of classes by a student in an academic session cannot be emphasised enough. This Court has consistently held that failure of a student to attend requisite number of classes, as stipulated in the relevant rules/policy, can legitimately disentitle him/her to claim eligibility for appearing in the examination. The judgments relied upon by the learned counsel for the Respondent No. 1 duly brings out this aspect and the fact that the said judgments dealt with attendance in colleges or the board exam, would not dilute the ratio of judgments recognising the importance of regular attendance. We are in agreement with the judgment of the learned Single Judge that the attendance policy does not permit the Appellants to write the examination in view of their dismal attendance of 43.6% and 36.7% respectively.

17. Similarly, the allegations of conflict with other students in December, 2023, being disputed questions of fact can also not be adjudicated upon in writ jurisdiction as rightly held by the learned Single Judge.

18. Therefore, in view of the aforesaid observations, we do not find any merit in this appeal and the same is accordingly dismissed along with pending application.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 29, 2024/msh/aa