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

+ **W.P.(C) 3265/2024**

**MASTER HRDYANSH OHRI THROUGH HIS FATHER AND
NATURAL GUARDIAN SHRI CHARANJEET KUMAR**

..... Petitioner

Through: Ms. Payal Jain, Mr. Anish Poddar,
Mr. Sumit Kumar & Mr. Mohd.
Naved, Advocates.

versus

**GOVT OF NCT OF DELHI THROUGH ITS DIRECTOR OF
EDUCATION AND ANR.**

..... Respondents

Through: Mr. Utkarsh Singh, Ms. Prasansha
Sharma, Advocates for respondent/
DOE.
Mr. Ketan Malhotra, AR for
respondent No.2.

**CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

ORDER

% **06.03.2024**

(The proceeding has been conducted through Hybrid Mode)

1. The matter has been received on transfer.
2. This writ petition is under Article 226 of the Constitution of India seeking, *inter alia*, the following prayers:

“(a) To direct the respondent no.2 to allow/permit the petitioner to appear in VIII-G of the annual exam of 2023-2024 of respondent no.2 and also further prayed that the subject in which the petitioner could not appear due to arbitrary actions of the respondent no .2, the petitioner be permitted to appear for exam in those subjects;



(b) Cost of the petition may also be passed in favour of the petitioner

(c) Any other further order, which this Hon'ble court may deem fit and proper may also be passed in favour of the petitioner and against the respondents."

3. Ms. Payal Jain, learned counsel appearing for the petitioner submits that the petitioner is a student of Class-VIII in Bal Bharati Public School and has not been permitted to appear in the annual examination of the year 2023-24 on account of shortage of attendance. According to Ms. Jain on 19.02.2024, the respondent No.2 school had called the parents of the petitioner in regard to the shortage of attendance and on 12.02.2024, the father of the petitioner had explained the reasons in respect of shortage of attendance which was the fact that the petitioner who is a young child of 13 years of age had lost his grandmother which was traumatic experience for the child. She submits that, on account of that, the petitioner was unable to attend regular classes on a regular basis and which was informed to the school.

4. Ms. Jain submits that on an apprehension as to whether the petitioner would be able to sit for the examinations or not, the petitioner through his parents had approached the Deputy Director, Zone-28 with the representation dated 23.02.2024 seeking a direction to the respondent school to permit the petitioner for appearing in the annual examinations of the year 2023-24. The DDE had appended a note saying "*please consider in favour of the student on the same day*". She further submits that despite the same being appended to the respondent school, the respondent school on 26.02.2024 had refused the petitioner from sitting for the examination on the ground that they do not have any power of condoning the shortage of



attendance since he was having only 42% attendance.

5. Learned counsel submits that the petitioner is young child of 13 years old and as such the trauma of the loss of the grandmother may have affected on a psychological level which would not be ascertainable at this stage. In any case, she submits that the petitioner be permitted to give at least the remaining two examinations (Hindi on 07.03.2024 and Social Science on 11.03.2024) subject whereof the petition can be disposed of by this Court.

6. The Legal Officer of the respondent No.2 school draws attention of this Court to various memos sent to the parents of the petitioner commencing July 2023 through till January 2024, whereby repeatedly the school had been intimating and warning the parents of the petitioners that the petitioner has very low attendance and unless his attendance reaches above 75%, he could possibly be permitted to sit for examination. Despite so many correspondences and WhatsApp messages etc, the parents of the petitioner appear to have not taken the letters seriously.

7. The next reference to the letter dated 07.10.2022 issued by the GNCTD, Directorate of Education, Examination Branch which under the powers vested by the Rule 21A of the Right of Children to Free & Compulsory Education Rules 2011 and the Right of Children to Free & Compulsory Education Act 2019 had framed certain rules & regulations under which the students could be permitted to sit for examination. According to guideline No.11, particularly guideline 11.1, 11.6, 11.7, 11.9, 11.11 & 11.12, the Head of the School could only condone the shortage of attendance to the extent of 10%. Any shortage of attendance beyond that percentage has been rejected by the said regulations. He submits that the rejection or denial of the petitioner to sit in examinations, therefore, cannot



be mulcted upon the respondent No.2 inasmuch as the rules themselves do not give any leverage to the respondent No.2 to condone any shortage of attendance beyond 10%.

8. He also relies upon the judgment of this Court in W.P.(C.) No.2760/2024 captioned ***Master Shaurya Pratap Singh & Anr. Vs. The Sovereign School & Anr.***, delivered on 26.02.2024. Even in the said judgment, the learned Single Judge of this Court had noted the said regulations and dismissed the same. He submits that the school is bound by both the regulations as also the judgment passed by this Court.

9. He also invites attention to page 6 of the compilation handed over to the Bench today, to submit that the undertaking was also tendered by the petitioner to give the assessment psychological assessment and handed over to the school which also was not done till date.

10. Mr. Utkarsh Singh, learned counsel appearing for the DOE submits that the entire scheme of the Act is not to deprive the student for sitting in examinations and the regulations are also framed in such a manner so as to ensure that the children are aware of the seriousness of the academic pursuit. He submits that no doubt that the Head of the School in accordance with the guidelines annexed where the shortage of attendance is below 60% has no authority and the student will not be permitted to sit for examination without the approval of the Director of Education. He submits that in terms thereof the Director, DDE vide the endorsement dated 23.02.2024 had in fact directed the school to permit the petitioner to sit for the examination. Despite that the respondent No.2 school appears to have disregarded the same. Mr. Malhotra submits that the school could not have disregarded since the DDE could not condone shortage of more than 15% of attendance



and was not the competent authority to put any such endorsement.

11. This Court has considered the aforesaid arguments and having regard to the fact that there is urgency in the matter as also the fact that no regulation/ guideline 11.12 does stipulate that the HOD will ensure that any student of Classes 5 & 8 below the attendance of 60% will appear in the examination without approval of the Director of Education, it appears that the Director of Education has the discretion to consider any such situation subject to guideline 11.10. According to guideline/ regulation 11.10, the Director of Education at his discretion may further condone the minimum attendance, only in exceptional circumstances accorded on medical grounds like Cancer, AIDS or similar serious diseases requiring long period of hospitalisation “*or any other extraordinary situations.*”

12. Having regard to the above, though it appears to be a case where the child or the parents of the child have not been able to give satisfactory explanation to the school as to why the child was unable to attend the school and there was an acute shortage of attendance, however, keeping in view the fact that on a prima facie view of clause 11.10 read with clause 11.12 it appears to this Court that the Director of Education would have a power to condone the delay in case of such exceptional or extraordinary situations.

13. Even otherwise, there is no material before this Court to show as to what the exceptional or extraordinary situations and as such this Court is of the opinion that the petitioner can be permitted to approach the Director of Education today itself with the relevant documents and the Director of Education shall pass an appropriate orders today itself so as to ensure that the petitioner is able to sit for his examinations on 07.03.2024 and 11.03.2024.



14. The present writ petition may be taken up as a representation along with any other medical documents, etc which the petitioner may have.
15. Mr. Utkarsh Singh submits that he will immediately inform the Director of Education to be available when the petitioner will approach him today.
16. It is made clear that this order has been passed in the peculiar facts & circumstances of the case and shall not be treated as a precedence in any other case.
17. The documents handed over by the petitioner and the respondent in Court today are taken on record.
18. The petition stands disposed of in the aforesaid terms.
19. Order Dasti under signatures of the Court Master.

TUSHAR RAO GEDELA, J

MARCH 6, 2024
B.S. Rohella