

**06.01.
2025**

Ct. No. 08

Ab

**FMA 1202 of 2024
IA No. CAN 1 of 2024**

Miss. Madhurutu Mallik

Vs.

**The Deputy Secretary (Examination),
West Bengal Council of Higher Secondary Education
and others.**

**Mr. Sajal Kanti Bhattacharyya,
Mr. Sarthak Burman.**

... for the appellant.

Mr. Santanu Kumar Mitra.

... for the WBCHSE.

Re: CAN 1 of 2024

This is an application seeking condonation of delay of 20 days in preferring the instant appeal.

After hearing the respective Counsels and upon going through the averments made in the instant application, we are satisfied that the appellant was prevented by sufficient cause in preferring the appeal within the stipulated period of limitation.

Accordingly, the delay in filing the appeal is hereby condoned. The application for condonation of delay is allowed.

The office is directed to formally register the appeal.

Admittedly, the appellant appeared in the Higher Secondary Examination, 2024 conducted by the West Bengal Council of Higher Secondary Education and was declared as passed candidate, obviously on securing the minimum pass marks in all the compulsory subjects. However, she could not secure the pass marks in the optional subject for which an approach was made to the Writ Court for a direction upon the Council to permit her to appear in the optional subject as compartmental candidate for the ensuing Higher Secondary Examination, 2025.

Admittedly, she did not apply for review of the optional paper in which she could not score the pass marks, if permitted under the Rules, but directly approached the Writ Court seeking Mandamus of a nature as indicated herein above.

The Single Bench dismissed the writ petition on the score that the relevant Rules do not permit the candidate, who was declared successful in the examination, to appear as a compartmental candidate, as she failed to secure the pass marks in the optional subject.

The Counsel for the appellant submits that she intended to enhance the marks in the optional subject and should be permitted to appear in the ensuing Higher Secondary Examination, 2025 so that she may secure the pass marks in the said subject.

Rule 7 of the West Bengal Council of Higher Secondary Education Examination Regulation, 2006 (in short “said Regulation”) contained an exhaustive provision relating to the eligibility of a candidate to appear in the High Secondary Examination as continuing candidate. In order to appreciate the contention of the appellant, the said provision is quoted as under:

“7. Eligibility to appear in the 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 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 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.”

The meaningful reading of the language used in the aforesaid statutory provision mandates the fulfillment of the conditions specified in sub-regulation 2(a) of the said Regulation and conveys the manifest intention that the candidate, who was enrolled in the Higher Secondary Examination of the previous year as a regular candidate having failed to appear in more than two compulsory subjects, may be permitted to appear in an ensuing Higher Secondary Examination as a compartmental candidate. Even Clause (b) of sub-regulation (2) of Regulation 7 does not confer any right upon the candidate, who emerged successful in the said Higher Secondary Examination of the previous year, to sit as a compartmental candidate in the ensuing Examination as he/she failed to secure the pass marks in the optional subject.

The right to sit as a compartmental candidate emanates from the statutory provision and in the event such right is not conferred upon the candidate, the Court should not exercise its discretion in issuing the Writ of Mandamus upon the statutory authorities to act contrary to the statutory provisions.

The appellant was a successful candidate in the examination and having denuded of the right to secure review of the optional subject in which she could not secure its mark, she is not entitled to have any Mandamus to be issued upon the authorities to treat her as a compartmental candidate and appear in the ensuing examination in a particular optional subject.

We, thus, do not find any infirmity in the impugned order. The appeal is, thus, dismissed.

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

(Harish Tandon, J.)

(Prasenjit Biswas, J.)