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

+ **Date of Decision: 14.02.2025**

% LPA 113/2025 & CM APPL. 9253/2025, CM APPL. 9254/2025
CM APPL. 9255/2025

MD ARAM

.....Appellant

Through: Mr. Md. Azam Ansari with Mr.
Shahkaar Alam, Advs.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Ashok Kumar and Ms. Chhavi
Arora, Advs. For R-2.
Mr Sheeshpal, Adv. for R-3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

DEVENDRA KUMAR UPADHYAYA, C.J. (ORAL)

1. This intra-Court appeal has been preferred against the order dated 13.02.2025 passed by the learned Single Judge, whereby the Civil Miscellaneous Application No. 7605/2025 in W.P.(C.) No. 10462/2024 filed by the appellant/petitioner has been rejected. The prayer made in the said miscellaneous application was to give a direction to the Central Board of Secondary Education (hereinafter referred to as the 'CBSE') to permit the appellant/petitioner to appear in the Class 12th Annual Board Examination, 2025 (hereinafter referred to as 'Examination, 2025') being conducted by the CBSE which are commencing from tomorrow i.e. 15.02.2025.



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2. The learned Single Judge while rejecting the prayer made by the petitioner has observed in the order under challenge herein that the appellant/ petitioner may be eligible to appear in the Examination, 2025 as a private student, however, since, he did not fill up the form as was required for students desirous of appearing in the examination as private students, no such direction as has been prayed for by the appellant/ petitioner can be issued.

3. It has been argued on behalf of the appellant/petitioner that as a matter of fact, the only impediment been urged by the CBSE for not permitting the appellant/petitioner to appear in the Examination 2025 is that any change at this juncture in the portal governing the examination would not be technically feasible and possible. Accordingly, his submission is that, in case, the appellant/ petitioner is permitted to appear in the Examination, 2025, the issue pending for determination before the learned Single Judge may not be required to be adjudicated, if the petitioner is declared pass in Examination, 2025.

4. Opposing the prayers made by the appellant/ petitioner, *per contra*, learned counsel representing the CBSE has submitted that on the basis of the Examination, 2024, the petitioner was declared as Essential Repeat (hereinafter referred to as 'ER'), that would mean that the appellant/ petitioner was declared to have failed in the said examination and in terms of the bye-laws of the CBSE such a student is permitted to appear in the examination of the next year only as a private student. He has further stated that for taking the examination as a private student, such students were required, by means of a notice dated 11.09.2024, to make an application on



the link available at the website of the CBSE and since the appellant/petitioner did not apply to appear in the examination as a private student, he cannot be permitted to appear in the examination which are commencing from tomorrow.

5. We have considered the submissions of learned counsel for the respective parties and have also perused the records available before us on this appeal.

6. The appellant/ petitioner had appeared in the 2024 Annual Board Examination conducted by the CBSE where he was declared as ER. On certain grounds, the appellant/ petitioner challenged the said action on the part of the CBSE by means of filing a writ petition being W.P. (C.) No.8610/2024, which was finally disposed of by this Court by an order dated 12.06.2024 with a direction to the CBSE to consider the writ petition as a representation of the appellant/petitioner.

7. After the said order was passed by the Court on 12.06.2024, the matter was considered by the CBSE, which rejected the claim of the appellant/ petitioner by means of an order dated 25.06.2024. It is this order dated 25.06.2024 which is under challenge before the learned Single Judge in W.P.(C.) No.10462/ 2024.

8. The appellant/ petitioner moved C.M. No. 7605/2025 in W.P.(C.) No.10462/2024 with the prayer to give a direction to the CBSE to permit him to appear in the examination commencing on 15.02.2025. The said application has been rejected which has necessitated the appellant/ petitioner to institute the proceedings of the instant intra-court appeal.

9. As per rule 17(i) of the amended bye-law, a candidate who has failed



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at the examination conducted by the Board is eligible to re-appear in the subsequent examination only as a private candidate in the syllabus and text books as prescribed for the examination of the year in which he/she will reappear. Thus, as per the said amended bye-law, the appellant/ petitioner is eligible to appear in the Examination, 2025 only as a private candidate. However, appearance of the appellant/ petitioner as a private candidate in the Examination, 2025 is dependent on his response to the notice dated 11.09.2024 which was issued by the CBSE whereby the students desirous of appearing as private students were required to make an application on the link provided in the website of the CBSE. The notice clearly mentions that the students of the session 2023-24 who were declared ER in the result of the 2024 Examination as being eligible to appear in the Examination, 2025 as a private student. Another requirement of the said notice was that such a student was required to apply on the link provided on the website provided in the said notice. Admittedly, the appellant/ petitioner, pursuant to the said notice dated 11.09.2024 has not made any application.

10. It is noticeable that the claim of the appellant/ petitioner of either having passed the 2024 Examination or being declared as ER or to take compartmental examination stood rejected by the CBSE by means of an order dated 25.06.2024. Accordingly, the fact that he shall be eligible to take the Examination, 2025 only as a private student was known to him since 25.06.2024. Despite the said fact being in his knowledge, he did not make any application pursuant to the notice dated 11.09.2024. Instead, he is said to have made some representation only in February, 2025.

11. In our view of non-fulfillment of the requirement of having applied



pursuant to the notice dated 11.09.2024, the appellant/petitioner does not have any right to be permitted to take the examination commencing from 15.02.2025.

12. For the reasons aforesaid, we are in complete agreement with the order passed by the learned Single Judge which is under challenge.

13. The appeal is, therefore, dismissed. We, however, make a request to the learned Single Judge to expedite the proceedings of the writ petition pending before him and conclude the same, if possible, within a period of six weeks.

14. This order shall be brought to the notice of the learned Single Judge by the Registry as well as by the learned counsel appearing for the parties.

15. We may, at this juncture, observe that nothing in this judgment shall be construed to be our opinion on the merits of the claim of the respective parties which to be decided by the learned Single Judge.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

FEBRUARY 14, 2025

N.Khanna