

IN THE HIGH COURT OF CALCUTTA

W.P. No. 3956 (W) of 2010

Decided On: 03.03.2010

Appellants: **Payel Sarkar**

Vs.

Respondent: **Central Board of Secondary Education and Ors.**

Hon'ble Judges/Coram:

Biswanath Somadder, J.

ORDER

Biswanath Somadder, J.

1. Heard the learned advocates for the parties.

2. The writ petitioner is a student of Class XII of Kendriya Vidyalaya, Fort William. Sometime during the last week of January, 2010, the mother of the writ petitioner was informed by the school that the writ petitioner would not be allowed to appear for the ensuing All India Senior School Certificate Examination (hereinafter referred to as AISSCE-2010), due to shortage of attendance in school. Thereafter, the writ petitioner's mother made several representations before the Principal, Kendriya Vidyalaya, Fort William; the Assistant Commissioner, Regional Office, Kendriya Vidyalaya Sangathan and the Regional Officer, Central Board of Secondary Education (hereinafter referred to as the said 'Board'), with a request to allow the writ petitioner to sit for the AISSCE-2010, upon condoning the shortage of attendance on medical grounds, so that her academic career was not jeopardised.

2A. In paragraph 18 of the writ petition, it has been specifically stated that the Principal of the school, on or about 17th February, 2010, asked the mother of the writ petitioner to come to school and was handed-over a letter dated 21st January, 2010, (being annexure P-4 of the instant writ petition), whereby the mother was informed by the Principal of the school that the writ petitioner's attendance was only 59% and therefore, as per CBSE Rule, she could not appear in the ensuing AISSCE-2010.

3. The writ petitioner, thereafter approached this Court by filing the instant writ petition praying, inter alia, for a direction upon the respondents to allow her to appear in the ensuing AISSCE-2010 which is scheduled to commence on and from 10th March, 2010.

4. While perusing the instant writ petition, including copies of documents annexed, it appear that since the year 2000, the writ petitioner has been undergoing medical treatment, and psychological counselling for her poor scholastic performance. She has been also subjected to Special Learning Assessment conducted by an educational therapist on 10th October, 2006. The conclusion reached by the therapist, upon conducting psycho-educational assessment on her, reads as follows:

Conclusion:

Payel's poor performance could be attributed to

--Poor reading skills resulted in low performance which in turn has made her motivation low.

--High level of impulsivity.

--Poor frustration tolerance.

--Inadequate development of study skills.

--Poor sense of responsibility.

5. In the same assessment report, the therapist has recorded the psycho-educational assessment tool for High School, which reads as follows:

Organization skill : Adequate Visual reasoning : Adequate Numerical concepts : Adequate Listening comprehension : Adequate Reading : Mildly deficient Written Expression : Poor for Grade X

6. The assessment made by a consultant psychiatrist on 4th September, 2009, shows her to be deficient in studies, coupled with irritability and mistakes, especially in respect of vowels. The same consultant, on 30th January, 2010, made a further evaluation, wherefrom it appears that the writ petitioner was exhibiting significant and high fear of the ensuing examinations, which is due to commence from 10th March, 2010.

7. Based on a broad conspectus of the facts as narrated above, it is more than clear that the writ petitioner is a student with special needs and may be suffering from 'Special Learning Disability'. Her poor attendance in the school can be attributed to her mental orientation, since it is clear from the psychiatric evaluation done by an expert that she has developed a sort of phobia, as the date of examination approaches near.

8. Now the issue that comes up for consideration before this Court is whether in such a fact-situation, the deficit of attendance could be condoned, otherwise, the writ petitioner will not be able to appear in the ensuing AISSCE-2010.

9. However, before deciding this aspect of the matter, I am of the opinion that the facts as stated in the instant writ petition, highlights the case of those children who study in general educational institutions, while suffering from various forms of special learning disabilities.

10. The learned advocate appearing on behalf of the Board invites this Court's attention to the Board's Examination Bye-laws, 1995. He specifically refers to Bye-law No. 24 under Chapter-4, which grants exemption to spastic, blind, physically handicapped and dyslexic children, who are permitted to use an amanuensis and an additional one hour time for each paper. The said Bye-law, in its entirety, is quoted hereinbelow:

24. Exemption to Spastic, Blind, Physically Handicapped and Dyslexic Children

- (i) Blind, Physically Handicapped and Dyslexic student appearing for the Secondary School Examination or Senior School Certificate Examination is permitted to use an amanuensis and shall be allowed an additional one hour (60 minutes) time for each paper.

(ii) The Board will consider the Physio-therapy exercises as equivalent to Physical and Health Education course of the Board.

(iii) Dyslexic, Spastic candidates and candidates with visual and hearing impairment have the option of studying one compulsory language as against two. This language should be in consonance with the overall spirit of the Three Language Formula prescribed by the Board. Besides one language any four of the following subjects be offered:

Mathematics, Science and Technology, Social Science, another language, Music, Painting, Home Science and Introductory Information Technology.

11. Even a glance at the above Bye-law goes to show that the Board is quite sensitive to the special needs of children who are differently-abled. However, in my belief, this is not enough. The case of the writ petitioner only strengthens my opinion in that regard. In this respect, it may be worthwhile to refer to the Affiliation Bye-laws of the Board, in particular, Bye-law No. 23 under Chapter-VI, which deals with the duties, powers and responsibilities of the Head of the school, which reads as follows:

23. Head of the School--Duties, Powers and Responsibilities

i) Head of the School/Principal will be the ex-officio. Hony. Secretary of the School Managing Committee.

ii) Will function as, the Head of the office of the school under his charge and carry out all administrative duties required of a head of office.

iii) Be the drawing and disbursing officer for the employees of the school except that in the case of an unaided school, he may perform only such function, as drawing and disbursing officer as may be specified in the instructions issued by the Society.

iv) Be responsible for the proper maintenance of accounts of the school, school records, service books of teachers, and such other registers, returns and statistics as may be specified by the Society/Board.

v) Handle official correspondence relating to the school and furnish, within the specified dates, the returns and information required by the State Government/Board.

vi) Make all payments (including salaries and allowances of teachers and other non-teaching staff) in time and according to the instructions governing such payment.

vii) Ensure that the tuition fees, as levied, are realised and appropriately accounted for and duly appropriated for the purpose for which they were levied.

viii) Make purchases of stores and other materials required for the school in accordance with the rules governing such purchases and enter all such stores in stock register and shall scrutinize the bills and make payments.

ix) Conduct physical verification of school property and stock at least once a year and ensure the maintenance of stock registers neatly and accurately.

x) Be responsible for proper utilization of the Pupils Fund.

xi) Make satisfactory arrangements for the supply of good drinking water and provide other facilities for the pupils and ensure that the school building, its fixtures and furniture, office equipment, lavatories, play grounds, school garden and other properties are properly and carefully maintained.

xii) Supervise, guide and control the work of the teaching and non-teaching staff of the school.

xiii) Be incharge of admission in the school, preparation of school time-table, allocation of duties and teaching load to the teachers, and shall provide necessary facilities to the teachers in the discharge of their duties and conduct of school examination in accordance with the instructions issued by the Government/Board from time to time, and he shall discharge these duties in consultation with his colleagues.

xiv) Plan the year's academic work in advance in consultation with his colleagues and hold staff meeting at least once a month, review the work done during the month and assess the progress of the pupils.

xv) Help and -guide the teachers to promote their professional growth and actively encourage their participation in courses designed for in-service education.

xvi) Promote the initiative of the teachers for self-improvement and encourage them to undertake experiments which are educationally sound.

xvii) Supervise class room teaching and secure co-operation and co-ordination amongst teachers of the same subject areas as well as inter-subject coordination.

xviii) Arrange for special remedial teaching of the children belonging to the weaker sections of the community, also of other children who need such remedial teaching.

xix) Arrange for informal and non-class room teaching.

xx) Plan and specify a regular time-table for the scrutiny of pupils written work and home assignment and ensure that the assessment and corrections are carried out timely and effectively.

xxi) Make necessary arrangement for organising special instructions for the pupils according to their needs.

xxii) Organise and co-ordinate various co-curricular activities through the house system or in such other effective ways as he think fit.

xxiii) Develop and organise the library resources and reading facilities in the school and ensure that the pupils and teachers have access to and use of books and journals of established value and usefulness.

xxiv) Send regularly the progress reports of the students to their parents or guardians.

xxv) Promote the physical well being of the pupil, ensure high standard of cleanliness and health habits, and arrange periodical medical examinations of the students and send medical reports to parents or guardians.

xxvi) Devote at least twelve periods in a week to teaching of the pupils.

12. The above bye-law makes it clear that the Head of the school must make arrangements for special remedial teaching of the children, not only belonging to the weaker sections of the community, but also for those children who need such remedial teaching. The Head of the school has a duty to make necessary arrangement for organising special instructions for the pupils according to their needs. It is also a duty of the Head of the school to arrange periodical medical examination of the students and send medical reports to the parents and guardians. The above duties and responsibilities of the Head of the school are pointers towards the fact that the Board is concerned about the students who require special remedial teaching and special instructions as also medical care and support.

13. The Board, however, has not evolved a process of identifying, through the medium of schools, such students having special learning disabilities or requiring special learning aids or specialised learning support or those students who require specialised psycho-educational counselling to overcome such disabilities, which result in their poor performance and low motivation skills and which, in turn, makes them develop an apathy for attending schools regularly. At present the applicable Bye-laws do not even provide for the schools to have psychological counselors/educational therapists to identify and take care of such students.

14. The general educational system, in my view, should be wide and all encompassing so as to remove disparities and bring within its fold those students, who, for no fault of theirs, suffer from such disabilities which are required to be overcome by means of specialised learning support. An endeavour should be made by evoking regulations which would sensitise and equip the schools affiliated under the Board to cater to the needs of such students, by identifying them and providing them with an adequate and effective support system, to enable them to overcome their disabilities and bring them at par with the general students to the best extent possible. The rigidity of attendance should be relaxed in such cases and the Principals/Heads of Institutions should be given adequate power by the Board to condone deficit attendance in case of such students, so that they are not deprived of an opportunity to appear with the other students in the competitive examinations conducted by the Board. It is this Court's earnest desire that the Board considers issuance of necessary guidelines to the schools affiliated under it and, if required, introduce new regulations/bye-laws which would cater to the interest of such students who suffer from special learning disabilities or require special learning aids or specialized learning support in view of their inadequate learning skills.

15. In the facts of the instant case, the learned advocate for the Board submits that the Principal of the school vide letter dated 5th February, 2010, informed the Board that the case for condonation of shortage of attendance had not been recommended since the writ petitioner remained irregular throughout the session without any valid reason and that she was not suffering from any of the diseases mentioned in the C.B.S.E. Bye-laws. The learned advocate for the Board further submits that since the Principal of the school did not consider the writ petitioner's case for condonation of shortage of attendance and make a recommendation, the Chairman of the Board could not use his discretionary power and allow the writ petitioner to appear for the ensuing AISSCE-2010. In this regard, learned advocate refers to Rule 14 of the Examination Bye-laws, 1995, relating to condonation of shortage of attendances, which reads as under:

14. Rules for Condonation of Shortage of Attendances

(i) If a candidate's attendance falls short of the prescribed percentage, the Head of the School may submit his name to the Board provisionally. If the candidate is still short of the required percentage of attendance within three weeks of the commencement of the examination, the Head of the Institution shall report the case to the Regional Officer concerned immediately. If in the opinion of the Head of the Institution, the candidate deserves special consideration he may submit his recommendation to the Regional Officer concerned not later than three weeks before the commencement of the examination for condonation of shortage in attendances by the Chairman/CBSE, who may issue orders as he may deem proper. The Head of the School in his letter requesting for condonation of shortage in attendance should give the maximum/possible attendance by a student counted from the day of commencing teaching of Classes X/XII (beginning of the session) up to the 1st of the month preceding the month in which the examination of the Board commences, attendance by the candidate in question during the aforesaid period and the percentage of attendance by such a candidate during the aforesaid period.

(ii) Shortage up to 15% only may be condoned by the Chairman. Cases of candidates with attendance below 60% in class X or class XII, as the case may be, shall be considered for condonation of shortage of attendance by the Chairman only in exceptional circumstances created on medical grounds, such as candidate suffering from serious diseases like cancer, AIDS, TB similar serious diseases requiring long period of hospitalization.

(iii) The Principal shall refer a case of shortage within the above prescribed limit of condonation to the Board, either with the recommendations or with valid reasons for not recommending the case.

(iv) The following may be considered valid reasons for recommending the cases of the candidates with attendance less than the prescribed percentage:

(a) prolonged illness;

(b) loss of father/mother or some other such incident leading to his absence from the school and meriting special consideration; and

(c) any other reason of similar serious nature.

(d) Authorised participation in sponsored tournaments and sports meets of not less than inter-school level and at NCC/NSS camps including the days of journeys for such participation shall be counted as full attendance.

16. In view of what has been observed hereinbefore, I am of the opinion that condonation of shortage of attendance by the Chairman, only in exceptional circumstances created on medical grounds, such as candidates suffering from serious diseases like cancer, AIDS, T.B. or similar serious diseases requiring long period of hospitalisation, in terms of the above-quoted Bye-law, is wholly inapplicable in the facts of this case. This Bye-law is merely indicative or illustrative and not exhaustive. This, indeed, is a special case which brings out an extraordinary situation and cannot be dealt with or said to fall squarely within Bye-laws 14(i)&(ii) of the Examination Bye-laws, 1995. The words, "medical grounds", in the referred context, should be read in its generic form. Special learning disability, per se, may not be a life-threatening 'serious disease', but it is definitely a disability of such a nature which the Chairman can consider as an exceptional one, for condonation of shortage of attendance. The Principal of Kendriya

Vidyalaya, Fort William, is, therefore, directed to treat the case of the writ petitioner as a special case, in view of the observations made hereinbefore and forward her recommendation for condonation of shortage of attendance to the Chairman of the Central Board of Secondary Education forthwith, so as to enable him to take a decision in the matter.

17. Since it has been informed that the admit card of the writ petitioner has already been issued by the Board and is lying in the office of the Principal, Kendriya Vidyalaya, Fort William, the Principal is further directed to hand-over the admit card to the writ petitioner, who shall participate in the ensuing AISSCE-2010, pending final decision of the Chairman of the Board, in terms of this order.

18. Since no affidavits have been called for, allegations made in the writ petition shall be deemed to have been not admitted by the respondents.

19. The writ application stands disposed I of accordingly.