

Divya Singh Vs. Chief Executive and Secretary, Council for Indian School Certificate Examination and ors.

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Court : Allahabad

Decided On : Jul-19-2002

Reported in : 2002(4)AWC2628; (2002)3UPLBEC2704

Judge : S.K. Singh, J.

Appeal No. : C.M.W.P. No. 7318 of 2002

Appellant : Divya Singh

Respondent : Chief Executive and Secretary, Council for Indian School Certificate Examination and ors.

Advocate for Def. : J. Nagar and ;S.D. Singh, Adv.

Advocate for Pet/Ap. : D.K. S. Rathor, Adv.

Disposition : Petition allowed

Judgement :

S. K. Singh, J.

1. Heard learned counsel for the petitioner, Sri J. Nagar learned advocate who appears for respondent Nos. 1 and 2 and Shri S. D. Singh, learned advocate who

appears for the respondent No. 3.

2. As pleadings are complete, on the request of the learned counsel for the parties, matter is being heard and finally decided.

3. Prayer in this petition is for issuance of a writ in the nature of certiorari quashing the order dated 31.1.2002 (Annexure-1 to the writ petition) passed by the respondent Nos. 1 and 2 by which petitioner has been deprived from appearing in I.C.S.E. Examination, 2002, on the ground of shortage of attendance.

4. There appears to be no dispute about the fact that the required attendance is to be not less than 60 per cent but so far the petitioner is concerned, the order impugned states that petitioner's attendance is just 50 per cent and for this reason, petitioner has been denied permission to appear in the concerned examination. When the writ petition was filed, on 20th February, 2002, petitioner was permitted to appear in the examination with a rider that result will be subject to the decision of this Court.

5. Learned counsel for the petitioner submits that on the facts of the present case, there was every Justification for consideration of the petitioner's claim for grant of special relaxation in respect to shortage of attendance. It has been stated in paras 3 and 12 of the writ petition that during her study, petitioner reported severe headache in November, 2001. upon which she was examined by Neuro Psychiatric Centre and she was diagnosed Hepatitis C anxiety and accordingly she was under expertise treatment right from November, 2001. It has been further stated that she was taken to Sir Sunder Lal Hospital, Varanasi, where her treatment continued and she remained bed ridden for about two months and in all, she has to take rest for about three months. It has been further stated in paras 8 and 9 of the writ petition that petitioner was allowed to appear in viva voce examination in Commerce and also appeared in S.U.P.U. (Socially Useful Productive Work) and the Principal of the Institution permitted to deposit examination fee and sent her examination form. Learned counsel submits that in view of the aforesaid fact, as shortage in attendance was beyond control of the petitioner and for unavoidable reason, respondent No. 1 was required to consider and take appropriate decision on consideration of aforesaid fact about the right of

the petitioner.

6. Learned counsel who appears for the respondents in response to the aforesaid submission argue that under the relevant Ordinance/provisions providing required attendance, a candidate must secure atleast 60 per cent attendance and it is after permissible condonation and, therefore, no further relaxation is legally permissible and in the event it is permitted to be further condoned, there will be no end to it. in the light of the fact as stated in the counter-affidavit, it was pointed out that the theory of ailment of the petitioner is not be taken a serious note as she has to not filed various medical prescription before the concerned authority and neither there was proper leave application along with medical prescription nor there was any material justifying the petitioner's claim of bed ridden for about three months and, therefore, on the facts of the present case also, petitioner is not entitled to get any consideration in the matter.

7. In view of the aforesaid submission as has come from both sides, it appears that the authority has every right to provide a particular percentage of attendance for the purpose of permitting the candidate to appear in the examination. The requirement of there being requisite number of attendance has co-relation with the discipline in the institution and in fact, it is for the benefit of the students itself as unless and until he/she attends the class regularly, it cannot be expected that he/she will have a bright career in future. Attending class regularly is for more and more benefit of students itself. If the authorities have prescribed a particular requirement of attendance, this Court feels that it is not for this Court to either reduce the required percentage of attendance or examine the fact of each case and permit further condonation/relaxation. Even required condonation is within the domain of the concerned authority, who in the fact of a particular case, after applying its mind is to take appropriate decision for which no guideline can be given by this Court. The only direction which can be given is that if the student is otherwise disciplined and shortage was beyond the control of the student for unavoidable reasons, then the concerned authority will have to consider the case of condonation sympathetically, even though condonation is provided upto a particular percentage. Power is always vested with the authority to come over the injustice if it is really to be occasioned in a bona fide and genuine case and to take

appropriate decision befitting in the fact and circumstances. Take a case where a student met with a serious accident and on the fact, it is established that he was confined in hospital for two months, three months or even for some more time, then it may be the case that shortage of attendance was beyond his control and otherwise student is disciplined and is possessed of sound academic record.

8. In view of this, it is in those cases in which, if it is found that lapse/shortage, if cannot be attributed to the student, then in that event, student will have to receive the discretion of the concerned authority. This power of the concerned authority will have to be accepted for the simple reason that time for everybody is very much precious and in the event, a particular student for no fault of his own, if otherwise he can succeed in the examination, is deprived for the shortage of attendance, it will result in frustration/depression, having an effect on his future. But the aforesaid exercise and discretion of the authority being based on factual foundation, it will have to be ascertained and adjudicated by the concerned authority himself and taking of decision either way will depend on screening the factual aspect and, therefore, that cannot be within the domain of this Court, unless there is very-very exceptional circumstance, which can be picked up on its face.

9. In view of the aforesaid, without going into the various kind of details in respect to the rival contention, i.e., about genuine absence or not, as concerned authority has not examined the matter from this angle and have deprived the petitioner from appearing in the examination straightway solely on the ground that attendance is less than 60 per cent, this Court feels that in the event the matter is remitted to the respondent No. 1 for taking appropriate decision after finding out the truth in the petitioner's version of her prolonged ailment, after giving opportunity to her, the interest of justice may be served. Consideration by the respondent No. 1 is also being permitted in view of the fact that petitioner was already permitted to appear in the viva-voce and practical examination much before the letter of the respondent Nos. 1 and 2 depriving her from appearing in the main examination and it has also come from the side of the respondent that complete fact and details in respect to the petitioner's ailment were not placed before taking the decision. It is made clear that respondent No. 1 will take appropriate decision either way,

independently without being influenced by any observation made in this judgment. As the petitioner has already appeared in the examination under the permission of this Court, it is provided that respondent No. 1 will take decision in the matter within a period of two weeks from the date of receipt of certified copy of this order along with which petitioner will give full details in respect to her ailment supported by medical prescription and other evidence on which she wanted to rely. Needless to say declaration of result of petitioner will depend on the final decision which has been directed to be taken by the respondent No. 1.

10. In view of the aforesaid, this petition succeeds and is allowed. The impugned order dated 31.1.2002, passed by respondent Nos. 1 and 2 (Annexure-1 to the writ petition) is set aside. The matter will be now re-examined by the respondent No. 1 in accordance with law.

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