

**Deepak Kumar Banka Vs. Headmaster, George High School and anr.**

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**Court :** Orissa

**Decided On :** Dec-22-1993

**Reported in :** 1994(I)OLR180

**Judge :** A. Pasayat and ;D.M. Patnaik, JJ.

**Acts :** Orissa Board of Secondary Education Act - Sections 1; Orissa Board of Secondary Education Regulations - Regulations 21, 22 and 23

**Appeal No. :** O.J.C. No 5807 of 1993

**Appellant :** Deepak Kumar Banka

**Respondent :** Headmaster, George High School and anr.

**Advocate for Def. :** A. Dash, Adv. for Opp. party No. 1 and ;C.A. Rao, Adv. (for Baord)

**Advocate for Pet/Ap. :** H.S. Misra, Adv.

**Disposition :** Application dismissed

**Judgement :**

**A. Pasayat, J.**

1. Petitioner, a student of George High School, Bargarh, has prayed for a direction to the said institution to promote him to Class 10 notwithstanding the fact that his

attendance was 59.2% in Class 9 for which he was not granted promotion.

2. The petitioner's case in short is that he has secured 112 marks in the Annual Examination, 1993 and students securing less marks than him have been promoted, and on the sole ground of having attended 59.2% of the total classes, he should not have been detained in Class 9 and should have been promoted to Class 10. It is submitted that there is no bar for such promotion as there is no statutory prescription that a student should attend a minimum percentage of classes before he is promoted to next Class while in School. The learned counsel for Board of Secondary Education (in short, the 'Board') submitted that there is no provision in the Regulations of the Board of Secondary Education, Orissa (in short, the 'Regulations') relating to promotion of a student from Class 9 to Class 10 and the Board has nothing to do with inter-class promotion.

The institution has, however, taken the stand that a student is not permitted to appear at the examination unless he is certified to have the requisite attendance in both Classes 9 and 10.

3. The petitioner places reliance on Regulation 8 (a) and states that since there is a provision for making up attendance by attending classes with the students of Class 9, there can be no impediment in the petitioner attending classes in Class 9 while he was in Class 10, Sub-rule (20) of Rule 285 of the Orissa Education Code is also referred to by the learned counsel for petitioner to contend that promotion from a class shall be determined by the Headmaster. Absence of any specific provision relating to attendance is highlighted to submit that it cannot be a ground to deny promotion.

4. Regulation 6 of Chapter X. Section I of the Regulation deals categories of student? who are to appear at the High School Certificate Examination and Regulation 6 (a) deals with regular students i.e., candidates who have satisfactorily prosecuted a regular course of study in Classes 9 and 10 at one or more high schools recognised by the Board, and who have been duly sent up for the Examination by the institution in question. Section II of Chapter X deals with regulations for regular, ex-regular and quasi-regular candidates. Minimum requirement eligibility to appear at the examination have been set out in various

clauses. In this section requisite attendance aspect is provided in Regulation 21. The said Regulation stipulates that application forms of all regular candidates should contain certificates of attendance stating that the candidate has attended school for not less than 66% of the working days in each of the Classes 9 and 10, and the attendance for Class 10 is to be based on classes held till the test examination. Regulation 8 of Section I of Chapter X deals with categories of students who are eligible to appear at the supplementary High School Certificate Examination. Regulation 8 (a) deals with Supplementary regular candidates. The relevant provision reads as follows ;

'3. The following categories of candidates are eligible to appear at the Supplementary High School Certificate Examination.

(a) Regular candidates ;

(b) (i) and

(ii) xxx xxx xxx (iii) Those who could not complete the attendance requirement provided they attend further classes with the students of Class 9 till the end of the school session and complete the attendance required ;

(iv) xxx xxx xxx.'5. In order to appreciate rival submissions it is necessary to refer to Clause 6 (a) of Sec. I and Regulations 21, 22, and 23 of Sec. II which are relevant for our purpose. So far as relevant, they read as follows :

'6 The High School Certificate Examination shall be open to the following categories of candidates.

(a) Regular candidates, that is, candidates who have satisfactorily prosecuted a regular course of study in Classes 9 and 10 at one or more High Schools recognised by the Board and who have been duly sent up for the Examination by the head of the institution last attended.

xxx xxx xxx'

'2. Application forms of all regular candidates should contain certificates of attendance stating that the candidate has attended school for not less than 66% of

the working days in each of the Classes 9 and 10 separately. This attendance for Class 10 will be based on classes held till the test examination.

xxx xxx xxx

NOTE : (A student who has studied in more than one school in Classes 9 and 10 should have his attendance counted on the basis of the combined attendance in the schools attended!.)

22. Every school should conduct additional classes for students of Class 10 who are sent up for the examination, after the test examination up to the end of February. Attendance at these additional classes shall be compulsory for the candidates. The name of candidates falling short of attendance below 60% in these classes shall be reported by the head of the institution concerned to the Secretary of the Board before the 15th of March and the Secretary shall, on the basis of this report, delete the names of such candidates from the alphabetical list of candidates for the examination and refund the fees of the candidates to the head of the institution.

23. The Examination Committee may condone the deficiency in attendance not exceeding 6% for special reasons like ill health or other extraordinary circumstances beyond the control of the candidates for which the candidate was unable to attend the school, on the recommendation made for the purpose by the Head of the Institution.'

6. Under Regulation 21 a candidate is required to attend school for not less than 66% of the working days in each of the Classes 9 and 10 separately. This attendance for Class 10 will be based on classes held till the test examination, Regulation 23 speaks about the powers of Examination Committee and the Board to condone deficiency in attendance up to a maximum limit of 5% for special reasons like ill health or other extraordinary circumstances beyond the control of the candidate for which the candidate was unable to attend the school. In other words 61% is the minimum percentage of attendance which is insisted upon. Admittedly the petitioner has attended 59.2 % of classes. Lack of any specific provision in Sub-rule (20) of Rule 285 of the Orissa Service Code cannot be read

in isolation. As indicated supra, Regulations 21 and 23 relate to minimum attendance. Attendance of a certain percentage is linked with eligibility to appear at the High School Certificate Examination. Attendance of a student reading in Class 10 is calculated on the basis of classes held till the test examination, In order to enable him to make up attendance, a relaxation is given in Regulation 8 (a) (iii) by permitting him to complete the attendance requirement by attending classes with the students of Class 9. This is the only possibility, because there will be no student in Class 10 at that relevant point of time after the test examination. In that view of the matter, the prescription is that a student may attend further classes with students of Class 9 to make up attendance. Such a relaxation cannot be extended to a student who has secured less than the requisite percentage of attendance in Class 9. it is not correct as submitted by the learned counsel for petitioner that there is no requirement for a student to have a minimum percentage of classes. The plea overlooks the specific provision in Regulation 21 which requires a certificate indicating that the candidate has attended school for not less than 66% of the working days in each of the Classes 9 and 10 (underlining for emphasis). Obviously therefore a student who has not attended school for the requisite number of days in each of the Classes 9 and 10 cannot be permitted to appear at the High School Certificate Examination. There is no provision for permitting a student of Class 10 to make up his attendance by attending classes with students of Class 9. Therefore, the action of the school authorities in not promoting the petitioner to Class 10 cannot be faulted.

The writ application is without any merit and is dismissed, but in the circumstances without any order as to costs.

**D.M. Patnaik, J.**

I agree.

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