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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 13391/2021 & CM APPL. 42181/2021(*interim relief*).

ARHAM HASSAN MINOR
THROUGH HIS FATHER ABID HASAN Petitioner
Through: Mr. M.A. Inayati and Mr. Khalid Ali,
Advocates.

versus

CENTRAL BOARD OF SECONDARY
EDUCATION & ORS. Respondents
Through: Mr. Ashok Kumar, Ms. Chavi Arora
and Mr. Ujjwal Goel, Advocates for
R-1/CBSE.
Ms. Nabeela Jamil, Ms. Ashi Shereen
Ahmed, Advocates for R-2 with Ms.
Sulekha Mehra, Principal (in-Person).

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
17.08.2022

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1. Petitioner, a student of Class-10th enrolled at New Horizon School [Respondent No. 2], affiliated to CBSE [Respondent No. 1], approached this court in November, 2021 seeking direction to CBSE and the school to allow him to appear in Class-10th Board examinations. Pursuant to interim directions dated 26th November, 2021, the Petitioner was permitted to appear in the Term-I Class-10th Board examinations. Thereafter, he has appeared for the Term-II Class-10th Board examination. However, the result has been withheld.

2. Counsel for CBSE has opposed the petition primarily on the ground of non-fulfilment of the eligibility criteria owing to lack of requisite/qualifying attendance. Petitioner has attributed the shortfall in attendance to the COVID-19 pandemic. Mr. M.A. Inayati, counsel for the Petitioner has argued that on account of inability in depositing the requisite school fee, Petitioner was not permitted to attend classes. The school flouted the circulars issued by the Directorate of Education, GNCTD dated 18th April, 2020 and 28th August, 2020 which mandated them to allow the Petitioner to attend the classes, notwithstanding the delay or default in payment of the fee.

3. In the hearing that took place on 26th November, 2021, Mr. Ashok Kumar, counsel for CBSE, argued that the Petitioner's attendance was falling short of the minimum required attendance of 75% for Term-I examinations. Taking note of the same it was directed as under: -

“7. Having regard to the fact that the examinations, so far as petitioner's papers are concerned, are due to commence from 30.11.2021, it is necessary to grant the petitioner some interim protection. The respondent-CBSE is, therefore, directed to permit the petitioner to participate in the first term examinations, subject to the result of this writ petition. It is made clear that this is purely an interim arrangement, without prejudice to the rights and contentions of the parties. The participation in the examination will not create any special equities in favour of the petitioner, and is only being permitted to ensure that he does not suffer irretrievable prejudice.

8. The result of the petitioner will not be declared but will be kept by CBSE in a sealed cover, subject to further orders to be passed in the writ petition.”

4. Now, that the Petitioner has appeared in the examination, his grievance relates to non-declaration of results.

5. Mr. Kumar reiterates that the Petitioner should not be afforded any benefit, owing to the shortage of attendance. He submits that although for Term-I examination, a request was received from the school to grant exemption to the Petitioner, no such request was received prior to Term-II examination. Now, on the basis of the information disclosed by the school, it transpires that the Petitioner does not fulfil the eligibility criteria. His attendance is merely 38.04%. Ms. Nabeela Jamil, counsel for Respondent No. 2-School, on the other hand has refutes the allegations made by CBSE *qua* the school.

6. That said, it is undisputed that the Petitioner has appeared in both the examinations. The court has also been informed that the Petitioner was allowed to attend online classes subsequent to court's intervention *vide* order dated 13th January, 2022, wherein counsel for the school was directed to *“ensure that the Petitioner's parents and the School coordinate towards the settlement of the disputed fees, so that the Petitioner is permitted to attend classes so that he can make up the shortfall in attendance prior to the next session of Class X examination.”* It was only in January 2022 that the Petitioner was added in the WhatsApp group of the school, wherein the link for attending the classes was shared by the school. This then enabled him to attend online classes.

7. Although there may be some merit in the contention urged by Mr. Kumar, but the fact remains that CBSE did allow the Petitioner to sit for the Term-II examinations. At that stage, no objection was raised regarding

shortage of attendance. The court also finds merit in the contentions of the Petitioner that the circulars issued by DoE, GNCTD ought to have been followed by the school and Petitioner should have been allowed to attend the classes notwithstanding the default in payment of the fees. The relevant portion of the circular dated 18th April, 2020 reads as under: -

“viii. *Heads of the schools shall, in no case, deny ID & Password to those students/parents for getting online access of educational facilities/classes/materials etc to those students who are unable to pay the school fee due to financial crisis arising out of closure of business activities in the ongoing lockdown condition.*”

8. Non-adherence to the circulars, deprived the Petitioner an opportunity to attend the classes and thus the shortfall in attendance has resulted due to mistake on the part of the school and not the Petitioner. Petitioner's economic background and the COVID-19 pandemic situation were also contributory factors which deprived the Petitioner of the means to attend the online classes. The court is mindful that attendance criteria must be met, as pre-condition for appearing in the examinations and this requirement should not be ordinarily diluted. However, the court is also conscious of the fact that COVID-19 pandemic affected several families who lost their sources of income, and plunged them into poverty. The immediate fallout was on the education of the children and the effect thereof is visible in the instant case. Default in payment of fee directly impacted the Petitioner, as he was without an access to attend online classes. Therefore, the Petitioner is entitled to be exempted from the condition of fulfilling the attendance requirement.

9. Mr. Kumar has also contended that the Petitioner had approached the court after much delay and costs should be imposed as heavy expenses were

incurred by CBSE to enable the Petitioner to appear in the examination. However, the court is not inclined to accept such a request considering the facts and circumstances of the case noted above.

10. Accordingly, the present petition is disposed of with a direction to CBSE to declare the results of the Petitioner for both the terms of Class-10th Board examinations by Tuesday i.e., on 23rd August, 2022.

11. Petitioner's counsel further undertakes to settle all the pending dues of the school within a period of two weeks from today. The said statement is taken on record and shall bind the Petitioner.

12. A copy of this order be given *dasti* under the signatures of the Ld. Court Master.

SANJEEV NARULA, J

AUGUST 17, 2022

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