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10-02-2020

AST 8 of 2020
(CAN 1293 of 2020)

Ct. 16

The Bolpur High School (H.S.) & Anr.
Versus
State of West Bengal & Ors.

Mr. Ekramul Bari, Adv.
Mrs. Tanuja Basak, Adv.
...for the appellants

Mr. Gourav Das, Adv.
Mr. Hemanta Kumar Das, Adv.
Mr. Nepesh Majhi, Adv.
Ms. Sumita Sarkar, Adv.
...for the respondent/writ petitioner

Mr. Biswabrata Basu Mallick, Adv.
...for the State

By consent of the parties, the appeal and the application are
taken up together for hearing and disposed of by this common order.

The appeal is directed against an order dated 3rd February,
2020 in a writ petition filed by the student of Bolpur High School
(H.S.) (hereinafter referred to as “the school”) challenging the decision
of the School Authorities in disallowing him to appear in the Higher
Secondary Examination (Class-XII) of 2020.

The petitioner was not allowed to fill up the required forms for
the said examination on the ground that he was caught cheating in the
test examination in an optional paper i.e. Computer Application.

The writ petitioner appeared in all the examinations in the test examination i.e. the examination to be given at the end of the academic session of Class-XII, which a student is required to pass and qualify and thereafter sit for the Higher Secondary Examination. The last paper was the Computer Application.

The allegation against the writ petitioner is that a particular invigilator found the student rising from his seat and walking some distance to another student and copying certain answers from the other student.

According to the School Authorities, the invigilator, upon noticing the same, took the answer papers from both the students and the students gave self-declaration of having cheated in front of some of the non-teaching and teaching staff. The incident of alleged cheating was thereafter reported to the Academic Council of the School, which decided not to allow both the students from appearing in the Higher Secondary Examination. Subsequently, the Managing Committee of the School also passed a similar resolution.

The father of the student thereafter, wrote several letters to the School Authorities between 7th December, 2019 and December 18, 2019 seeking justice. According to the School authorities, the student was verbally informed that the prayers in the letters had not been accepted by the School Authorities.

Under such circumstances, the father of the writ petitioner filed a writ application praying, inter alia, for a direction upon the respondent authorities to allow the son of the writ petitioner to participate in the ensuing Higher Secondary Examination conducted by the West Bengal Council of Higher Secondary Education.

The learned Single Judge, on consideration of the materials on record, allowed the writ petition. The reasoning of the said decision is summarised in paragraph 8 of the order of Justice Saraf. The said paragraph reads as follows:

*“8. The undisputed facts in the present case are firstly that there is allegation of cheating on the student in an optional paper, that is, Computer Application, in the test examination held internally by the School Authorities. Secondly, the School Authorities do not have any norms or rules with regard to the procedure to be followed in the event a student is caught cheating in an examination. Thirdly, students in the present academic year of the School who have failed in up to five subjects have been allowed to sit in the Higher Secondary Examination with an undertaking from the parents of such students. Lastly, no opportunity was given to the student and no mechanism was in place for confirming the said allegation of cheating by the student. It may be noted that in the case of **Miss Debopriya Ganguly (supra)** at paragraph 35, the coordinate Bench had held that each and every institution affiliated to the Council shall expressly prescribe their own norms and terms and conditions for holding examination and declaring the ‘qualified students’ who are allowed to thereafter*

appear in the Board examination. The Court had further directed that such norms and policy of each and every institution shall also be communicated to the Council. In the present case, no such norms and regulations are present and, therefore, none have been communicated to the Council.”

We have heard Mr. Ekramul Bari, learned Counsel appearing on behalf of the appellants and Mr. Gourav Das, learned Counsel for the writ petitioner.

Mr. Bari has emphasized before us that in the event the petitioner is allowed to participate in the said examination, it would send wrong signal to the society and encourage indiscipline in course of participation in the internal examination of the said School. Mr. Bari submits that in view of the unequivocal admission of guilt of the student as well as of the father of the student, there was no need for the School Authorities to give opportunity of hearing to the writ petitioner or his son. The other student who was also a culprit had accepted the commission of the wrong and he did accept the decision of the school in not allowing him to participate in the ensuing Higher Secondary Examination. Mr. Das, the learned Counsel appearing on behalf of the writ petitioner, however, support the findings.

The four considerations that weighed with the learned Single Judge, as quoted above, in our view, cannot be disregarded keeping in mind that the academic career of the student would be at stake in the

event the student is not allowed to sit for the examination. If the son of the writ petitioner had failed in the optional paper or remains an absentee, still then the son of the writ petitioner would not be disqualified in view of the resolution of the Staff Council of the School dated 6th December, 2019. The said decision of the school inevitably visits the son of the writ petitioner of civil consequences and affects his career. The Managing Committee could not have mechanically and blindly adopted a resolution without taking into consideration the resolution passed by the Staff Council on 6th December, 2019 and after giving an opportunity of hearing to the son of the writ petitioner with regard to punishment to be imposed for that alleged act of cheating.

The writ petitioner has different explanation to offer regarding alleged cheating but it is not necessary for us to go into the commission of the alleged offence. However, as observed by the learned Single Judge, apart from the fact that there is lack of hearing before imposing harsh punishment affecting the academic career of the student, the fact remains that the students who have failed in up to five subjects have been allowed to sit in the Higher Secondary Examination with an undertaking from the parents of such students. We could not appreciate the stand taken by the School Authorities in not allowing the son of the writ petitioner to fill up the required form. The student and his father have every right to represent their grievance

before any harsh punishment is imposed upon the writ petitioner considering the resolution of the Staff Council dated 6th December, 2019. The Managing Committee did not take into consideration that the paper in which the writ petitioner is alleged to have found cheating is in respect of optional paper and would have no bearing on the results on the test examination. The results of the examination on the said option paper would have no bearing in considering the candidature of the student for sending his name to the Council. The decision of the Managing Committee suffers from total non-application of mind.

We concur with the observation made by the learned Single Judge that any punishment imposed on the student in not permitting to take part in the Higher Secondary Examination would not only cause harm to his career in terms of the student losing a year but shall leave a permanent scar and stigma on his personality and academic career for the rest of his life.

On such consideration, we dispose of the appeal and application. We affirm the order under appeal.

Under the order of the learned Single Judge, the school was directed to allow the petitioner and his son to approach the school authorities on Monday, i.e. 10th February, 2020 for signing all requisite forms and completing all formalities. In view of the

pendency of the appeal, the Headmaster did not allow the student to fill up the forms and complete the formalities.

Under such circumstance, we extend the time to fill up the forms and complete all the formalities till day after tomorrow i.e. 12th February, 2020. The School Authorities shall assist the son of the writ petitioner in all possible manner so that the candidate can get his Admit Card without any further delay.

However, in view of the fact that the time to fill up the forms and complete all the formalities is expired today pursuant to the order of the learned Single Judge, we modify the order under challenge.

In spite of notices, the respondent nos. 2, 3 and 4 are not represented. The respondent nos. 2 and 3 are also directed to ensure that the Admit Card for the Higher Secondary Examination, 2020 is provided to the student before commencement of Higher Secondary Examination upon completion of all formalities.

We are passing this order affirming the order of the learned Single Judge considering the fact involved as we have narrated above as well as upon approach made by the writ petitioner in the Month of January, 2020 before this Hon'ble Court by filing the writ petitioner much before the date of commencement of the Higher Secondary Examination, 2020.

It is needless to mention that the decision of the Managing

Committee dated 11th January, 2020 insofar as it affects the academic career of the son of the writ petitioner is set aside.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)

