

CASE NO.:

Appeal (civil) 4468 of 2002
Appeal (civil) 4469 of 2002
Appeal (civil) 4470 of 2002

PETITIONER:

KUSUM LATA

Vs.

RESPONDENT:

STATE OF HARYANA & ORS.

DATE OF JUDGMENT: 31/07/2002

BENCH:

Y.K. Sabharwal & H.K.Sema.

JUDGMENT:

Y.K.Sabharwal, J.

Leave granted.

The question to be determined in these matters is regarding the eligibility of the appellant for seeking admission to the Diploma Course in Education in order of her merit. Does she satisfy the prescribed conditions or not? The answer would depend upon the interpretation of the clause prescribing eligibility condition.

The appellant passed the Senior School Certificate Examination from the Central Board of Secondary Education (CBSE). The educational qualification for admission to the Diploma in Education (D.Ed) in the State of Haryana is as follows:

"A candidate should have passed 10+2 Examination from Board of School Education Haryana or its equivalent examination from any other Board, recognized by Board of School Education, Haryana with at least 50% aggregate marks."

The appellant applied for the D.Ed course. The details of marks obtained in 10+2 Examination were furnished by the appellant in the application form and the respondents issued her admission card to appear in the written entrance test. She qualified the said test. Against the total number of 3200 seats, her rank was 1460th.

After the declaration of the result of the written entrance test the appellant appeared for interview. The appellant was told that she was not eligible to appear in the written entrance test having not secured 50% aggregate marks in 10+2 examination of CBSE. According to the appellant she had secured 50% aggregate marks which was required to be seen from five subjects as the sixth subject was optional as an additional subject, not necessary to be taken or passed for the purpose of qualifying 10+2 Examination. The appellant also showed to the respondents a letter dated 20th March, 2001 issued by CBSE stating that to qualify the 10+2 Examination a student is required to have requisite marks in five subjects and the sixth was an optional subject.

The denial of admission to the appellant resulted in her filing a writ petition before the High Court. The High Court has held that there is no error in the actions of the respondents in declining admission to the appellant as she did not satisfy the minimum prescribed percentage under the eligibility condition. The writ petition has been dismissed by the High Court. The judgment of the High Court is under challenge in this appeal.

It is a common ground that if marks in all the six subjects for which the appellant had appeared are taken into consideration she will not be eligible as her aggregate in that event w

ould be less than 50%. On the other hand, if marks of five subjects are considered, her aggregate marks would be more than 50% and she will satisfy the prescribed condition of securing at least 50% aggregate marks in 10+2 Examination and she would be eligible.

There can be no doubt that the terms and conditions for admission to such courses are binding and have to be strictly adhered to. The question, however, is what is the intent, purpose and true spirit of the clause providing for securing at least 50% aggregate marks in 10+2 Examination so as to be eligible for admission to D.Ed course. The requirement is of securing at least 50% aggregate marks in 10+2 Examination either from Board of School Education, Haryana or its equivalent examination from any other Board, recognized by Board of School Education, Haryana. It is not in dispute that the 10+2 examination conducted by CBSE is an equivalent examination recognized by the Board of School Education, Haryana. It is clear and cannot be disputed that as per the regulations of CBSE to qualify 10+2 examination, a candidate is required to obtain prescribed marks in five subjects and not six. The sixth subject is treated as additional and optional. It is up to a candidate to take or not the sixth subject. The relevant clauses in this regard read as under:

"3(a) To pass the examination, a candidate must obtain at least Grade D-2 in all subjects of internal assessment unless the candidate is exempted and 33% marks or Grade D-2 in each of the five subjects of external examination as per scheme of studies.

(b) The additional subject offered by the candidate is not taken into account for passing the examination."

As per the scheme of examination of CBSE the marks obtained in the additional subjects are not taken into consideration in the passing of the examination. The additional subject is optional. A candidate may take it or not. The requirement is that a candidate should obtain 33% marks or Grade D-2 in each of the five subjects of external examination as per the scheme of the studies. When the eligibility clause stipulates that a candidate should have passed 10+2 examination with at least 50% aggregate marks, it is implicit that the aggregate marks are required to be calculated keeping in view only the subjects which are necessary to pass 10+2 examination and not the marks of the additional subject which is not taken into account for passing the examination. This is the only reasonable interpretation having regard to the spirit of the clause providing for eligibility conditions. The relevant factor is to see what is necessary to pass 10+2 examination conducted by CBSE and on that basis decide whether a candidate fulfils or not the requirement of the eligibility clause. If seen from

this perspective, the aggregate marks would have to be worked out having regard to the marks obtained in five subjects and not in the additional subject which is not taken into account for passing the examination.

The admission card for appearing in written test was issued to the appellant who had furnished with her application the details of the marks secured by her in 10+2 examination, she qualified that test. Further, the scheme for the examinations conducted by the Board of Secondary Education, Haryana also shows that even in Haryana total of five subjects is taken and the sixth is treated as additional subject. The only difference is in the proforma in which the certificate in relation to examination is issued by Haryana and CBSE. By way of illustration we reproduce herein the proforma of the certificate issued by the Board of School Education, Haryana.

DETAILS OF MARKS

Subject Code

Subject

Marks Obtained

Maximum Marks

Minimum Pass Marks

502

HINDI CORE

046

100

033

501

ENGLISH CORE

063

100

033

900

COMMERCE
047
100
33
903
ACCOUNTANCY
046
100
33
576
ECONOMICS
058
100
33

TOTAL
260
500

ADDITIONAL
SUBJECT
XXXXXXX

100
33

Total Marks obtained (in words) TWO HUNDRED SIXTY ONLY
MORAL EDUCATION THR PRT 036 045 081/100
SUPW GRADE EXCELLENT
(Details of Grading given on back)

Note: 1 Marks in additional subject and Moral education are not included in the total .
2. Indicates that the candidate has obtained distinction in the subjects.
BHIWANI

It would be seen from the above that the aggregate of five subjects is taken. The marks statement issued by CBSE to the appellant is as follows:

CODE
SUBJECT
TH
PR
TOTAL
TOTAL IN WORDS
POSITION GRADE
002
Hindi Elec.
xx
xx
50
Fifty five
B2
027
History
xx
xx
45
Forty five
C1
028
Political Sc
xx
xx
39
Thirty nine
D1

048
Physical Edu.
21
35
56
Fifty six
D2
064
Home Sc.
41
27
68
Sixty eight
B2
301
English Core
xx
xx
33
Thirty three
D2
500
Work Experience

A2
502
Phy.and Health
Edu.

A2
503
General Studies

B1

The only difference in the marks-sheet issued by the CBSE is that it does not show total after five subjects and in fact no total is shown. The relevant consideration is not the manner of issue of the marks-sheet or the different proforma which may be adopted by one Board or the other but to go into real object behind the clause. As already stated, the object of the clause prescribing the eligibility condition is that the qualifying examination shall be passed by a candidate with at least 50% marks. A candidate on securing requisite marks would pass without taking the sixth subject. There would have been no difficulty if the proforma of CBSE was similar to the one adopted by Haryana. In that eventuality it would not have been possible to decline admission to the appellant on the ground for her not satisfying minimum prescribed percentage under the eligibility condition. This kind of approach would be arbitrary and discriminatory. Thus, the interpretation placed by the High Court is hyper-technical and erroneous. We are unable to sustain the said interpretation. The appellant satisfies the eligibility stipulation and the respondents committed serious illegality in declining her admission to D.Ed course.

For the aforesaid reasons, we set aside the impugned judgment of the High Court and hold that the appellants satisfy the prescribed condition of securing 50% aggregate marks and were thus eligible. Therefore, we direct the respondents to grant admission to the appellants in diploma course in education. The appeals are accordingly allowed. The parties are left to bear their own costs.

JUDIS