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W.P. 23637(W) of 2018

**Panchu Gopal Mondal
Versus
The State of West Bengal Education
Department and others**

Mr. Sougata Bhattacharya,
Mr. Sunit Kumar Roy
... for the petitioner.

Ms. Sangamitra Nandy,
Ms. Manika Pandit
... for the State.

Mr. Santanu Mitra
... for the Board.

1. This is an application under Article 226 of the Constitution of India wherein the son of the writ petitioner has been denied admission in class XI in Mathurapur Arya Vidyapith (HS). It is to be noted that the son of the writ petitioner studied in the said school from class V to X and took his Madhyamik Pariksha, 2018 from the said school and successfully passed the said examination.

2. Sunit Kumar Roy, learned Counsel appearing for the writ petitioner, led by Mr. Sougata Bhattacharya, submitted that the Hon'ble Supreme Court has in unequivocal terms stated that once a student has passed class X examination successfully from a school, he cannot be denied admission into class XI by the

same school. He relied upon the judgments in the case of **Principal, Cambridge School and Anr. Vs. Payal Gupta (Ms) and Ors.** reported in **(1995) 5 SCC 512** and **Principal, Kendriya Vidyalaya & Ors. Vs. Sourabh Chaudhary & Ors.** reported in **(2009) 1 SCC 794.**

3. I have heard the learned Counsel appearing on behalf of the parties and perused the materials on record.

4. It is clear from the documents annexed to the writ petition that the son of the writ petitioner had passed the Madhyamik Pariksha, 2018 and, accordingly, he was very much eligible to join class XI. The judgments of the Hon'ble Supreme Court cited above deal with this aspect directly. In **Payal Gupta (supra)** the Hon'ble Supreme Court has specifically stated that the question of an admission test or the result in a particular class or school for purposes of admission would arise only if a student of one institution goes for admission in some other institution. The relevant portion is quoted hereinbelow:

“8. Now coming to the provisions of sub-rule (f) of Rule 145 which is the sheet-anchor of the appellant's case, we do not find anything in the said rule which contemplates or requires fresh admission or readmission of a student in the same school after he passes an examination from the said school. That the class X examination is a public examination does not make any difference. The question of an admission test or the result in a particular class or school for purposes of admission would arise only if a student of one institution goes for admission in some other institution. The question of admission test on the basis of result in a particular class will not be taken into account in the case of a student of the same school who passes the public examination. Learned counsel for the appellant was unable to produce or show any provision in the Act or the Rules which specifically contemplates that readmission or fresh admission is necessary to every next higher class after a student passes out a particular class nor could he show any provision of law authorizing the head of an educational institution to prescribe a cut-off level

of marks for continuance of further studies in higher class in the same school by a student who passes a public examination."

5. Subsequently, in **Sourabh Chaudhary & Ors. (Supra)**, the Supreme Court relying on **Payal Gupta (Supra)** has held as follows:-

"18. One can have no objection to a school laying down cut-off marks for selection of suitable stream/course for a student giving due regard to his/her aptitude as reflected from the Class X marks where there are more than one stream. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut-off marks in the Class X examination. After all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The school may of course give him the stream/course that may appear to be most suitable for him on the basis of the prescribed cut-off marks.

19. In the present case, it would have been perfectly open to the appellants to offer admission to the boy, Saurabh Chaudhary in Class XI in streams/courses other than Science stream with Mathematics on the basis of the prescribed cut-off level of marks, had such courses been available in Central School No. 2, AFS, Tambaram. But this school has only Science stream with Mathematics for Classes XI and XII. The decision in *Payal* [(1995) 5 SCC 512] forbids the school from turning down a student because he/she failed to get the cut-off level of marks for admission to Class XI. As a result of this fortuitous circumstance the boy must get admission in Class XI in Central School No. 2, AFS, Tambaram in Science stream with Mathematics.

20. In the light of the discussions made above, we come to the conclusion that the case in hand is fully covered by the earlier decision of the Court in *Payal* [(1995) 5 SCC 512] . The decisions of the three High Courts relied upon by Mr Patwalia insofar as they go contrary to the decision in *Payal* [(1995) 5 SCC 512] do not lay down the correct law. The decision of the Madras High Court coming under appeal takes the correct view of the matter and warrants no interference by this Court.

21. In the result the appeal is dismissed but with no order as to costs."

6. The ratio decidendi of the above two Supreme Court judgments makes it absolutely clear that a school cannot abandon its own student and leave him in the wilderness. It is, without doubt, permissible for the school authorities to make cut-off marks for different streams and subjects for the students who are

taking admission in class XI. It is axiomatic that a student having secured low marks and not qualifying for the cut-off marks for a particular stream cannot insist on obtaining admission in that particular stream. However, the school cannot outright reject the student who has been studying in the said school and has taken the Madhyamik Pariksha examination from the said school upon his having successfully passed the said examination. As succinctly pointed out in ***Saurabh Chaudhary and Ors. (Supra)*** the school must also share some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The choice of the course that may appear to be most suitable for the student may be given to be student based on the prescribed cut-off marks. The school should in fact not only give admission to the student who has secured low pass marks in the Madhyamik Pariksha examination but also endeavour to guide him so that the student can perform better in the higher classes.

7. In view of the above conclusion reached, I direct the respondent nos. 5 and 6 to immediately grant admission to the son of the writ petitioner so that he can continue his studies in class XI and XII in the said school. Needless to say, all formalities requires for the said admission including registration should be completed within a period of seven days from the date of communication of this order.

8. Since no affidavits have been invited, the allegations contained in the writ petition are deemed not to be admitted.

9. With the above direction, the writ petition being W.P.20945(W) of 2018 is disposed of.
10. There will be no order as to costs.
11. All parties are to act on the website copy of this order.

(Shekhar B. Saraf, J.)