The Principal Cambridge School & Anr vs Ms. Payal Gupta & Ors on 21 August, 1995

Equivalent citations: 1996 AIR 118, 1995 SCC (5) 512, AIR 1996 SUPREME COURT 118, 1995 (5) SCC 512, 1995 AIR SCW 3805, (1995) 6 JT 101 (SC), (1995) 4 SCT 594, (1995) 2 CURLJ(CCR) 364, (1996) 63 DLT 372, (1995) 4 SCJ 334

Bench: S.P Bharucha, S.B Majmudar

PETITIONER:
THE PRINCIPAL CAMBRIDGE SCHOOL & ANR

Vs.

RESPONDENT:
MS. PAYAL GUPTA & ORS.

DATE OF JUDGMENT21/08/1995

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
BHARUCHA S.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 118 1995 SCC (5) 512
JT 1995 (6) 101 1995 SCALE (4)811

ACT:

HEADNOTE:

JUDGMENT:

THE 21ST DAY OF AUGUST, 1995 Present:

Hon'ble Mr. Justice S.P. Bharucha Hon'ble Mr. Justice Faizan Uddin Hon'ble Mr. Justice S.B. Majmudar Mr. Bhimrao Naik, Sr. Adv. and Mr. M.P. Jha., Adv. with him for the Appellants.

Mr. S.R. Bhat, Adv. for the Respondents.

J U D G M E N T The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 5664 OF 1994 The principal Cambridge School and another v.

Ms. Payal Gupta & Ors.

JUDGMENT Faizan Uddin, J.

1. According to the appellants, the Central Board of Secondary Education introduced 10+2 scheme of education in the year 1977 providing general education up to the level of 10+2 class, visualizing two distinct stages one up to class x and the other up to class XII so that the students with certain competence should alone pursue education beyond class x. The applellant, Cambridge School, New Delhi, with a view to achieve the aforesaid objective and to upgrade the academic standard of each student through special programme prescribed a cut off level of 50 per cent marks for admission to class XI of the said school. Consequently, the Principal appellant addressed a circular dated 4.10.1993 to the parents of the students stating that the admission to class X would not be automatic but a cut off level was prescribed by the Cambridge School to the effect that a student of class X must obtain 50 per cent marks in aggregate in the Board examination for being granted readmission in class XI. In other words it would be a fresh admission even for those students who passed class X from the Cambridge School itself obtaining minimum marks of 50 per cent in aggregate as the qualifying percentage for being considered for readmission in class XI. A similar circular was again issued in February, 1994. As a consequence of the said circulars, after declaration of results of class X by the Central Board of Secondary Education will students who secured marks less than 50 per cent in aggregate were asked to obtain their school leaving certificates. It appears that the parents of such students who had secured marks less than 50 per cent in aggregate approached the Deputy Education Officer who by his letter dated 13.6.1994 directed that all students of class X should be admitted into class XI without any pass percentage. But the school authorities took the stand that no such direction could be issued by the Directorate of Education since the power to regulate admission under Delhi School Education Act, 1973 and Rule 145 of the Delhi School Education Rules vests in the head of the school.

2. In the facts and circumstances aforementioned the respondent herein and three other students of the Cambridge School filed the Civil Writ Petition No. 2788/1994 in the High Court of Delhi challenging the legality and propriety of the circulars aforementioned prescribing cut off marks for admission to XI class in the said school. A batch of ten students had also filed a Civil writ Petition No. 2977/1994 [Reema Goyal & Ors. Vs.Lt. Governor of Delhi & Ors.] challenging the validity of the said circulars prescribing the cut off marks for admission to class XI. In the mean while Civil Writ

petition No. 2977/1994 was withdrawn as the school authorities said down the aggregate of 50 per cent marks to 45 per cent and the students admitted in the school except one or two students who had secured about 35 per cent marks in aggregate but they also withdrew their petition with a view to either reappear in the examination to secure 50 percent marks or would seek admission in some other school. On the writ petition filed by the respondent herein and three others, two students had secured 45 per cent marks and, therefore, they were covered by the decision of the school in scaling down the aggregate percentage and, therefore, they also withdrew their petition and one student who had secured about 35 percent marks also withdraw his petition with a view to either reappear in the examination or to seek admission elsewhere. The respondent herein, however, pursued the petition as she had secured 44.5 per cent marks in aggregate and was not allowed to continue her studios in class XI in appellant's school.

3. The case of the respondent before the High Court was that the Principal and the school authorities were not justified to deny admission to its own students who had passed class XI examination which is a public examination and as neither the Act nor the Rules prescribe any cut off level of marks for promotion to XI class in the same school after passing class X examination and, therefore the act of issuance of the impugned circulars was arbitrary, illegal and without authority. The appellant contested the said petition by contending that the Education Commissions while recommending general education at the secondary stage suggested that it should be followed by two years of diversified and vocational education and, therefore, it was necessary to prescribe a cut off level of marks. The appellant further took the stand that when a candidate is admitted to class XI it is a fresh admission and in fact a case of readmission and not merely a case of promotion which is apparent from the scheme of 10+2 examination. The High Court, however,did not agree with the stand taken by the appellant and took the view that an unaided recognised school cannot of its own fix a criteria of not admitting its own students to class XI unless they secure certain minimum percentage of marks in class X examination which is a public examination and if a school lays down any such criteria it would be arbitrary, unreasonable and irrational. The High Court, therefore. directed the appellant to admit the respondent herein to class XI of their school which led to the filing of the present appeal.

4. Learned counsel appearing for the appellant vehemently urged before us that Rule 145 of Delhi School Education Rules. 1973 distinctly provides that the Head of any unaided recognized school shall regulate admissions to the school or to any class thereof on the basis of admission test or on the basis of result of a particualr class or school and the said rule thus not only takes within its fold the cases of readmission but the cases of promotion are also covered and, therefore, the issuance of circulars by the Principal of the school who is the need of the school, prescribing the criteria for readmission to class XI was in conformity with the ambit and scope of Rule 145 and, as such, the Principal was fully within his powers in issuing the aforementioned corculars. Learned counsel for the appellant sought to support his arguments by an earlier decision rendered by a Division Bench of the Delhi High Court in the case of Km. Renuka Khurana & Ors. Vs. Delhi Administration [44 (1991) Delhi Law Times 634]

5. In view of the facts and circumstances stated above the short question that arises for our consideration is whether the Head of a private unaided school has the power to regulate admission

by prescribing the criteria of cut off level of marks under Rule 145 and on that basis may deny admission to the students of its own school to class XI who had passed class X, Central Board of Secondary Education with marks less than 50 per cent in aggregate. A further question may arise whether in the aforementioned situation a student who passes class X would be entitled to automatic promotion to the next higher class i.e. XI class or it would be a case of fresh or readmission to the next higher class in the same school.

6. There is no dispute that the appellant, Cambridge School is an unaided recognised school under the provisions of Delhi School Education Act, 1973 (hereinafter the Act). At the very out-set it may be stated that Section 16 of the Act deals with admission to recognised schools. Sub-section (3) of Section 16 contemplates that "admission to a recognised school or to any class thereof shall be regulated by rules made in this behalf". Further Section 28 relates to the rule making power of the Administrator and clause (q) of sub-section (2) of Section 28 relates to the rule making power of the Administrator for admissions to a recognised school. In pursuance to the aforementioned rule making power the Delhi School Education Rules, 1973 (hereinafter the Rules) were framed. Chapter XII of these Rules relate to the admission to recognised schools which contains Rule 131 to Rule 145. Rule 131 to 134 deal with admissions of students in aided schools and are not relevant for the purpose of this appeal as the appellant school is an unaided recognised school. Rule 135 prescribes the manner of admission and contemplates that no student shall be admitted unless an application in the prescribed form signed by his parent or guardian has been submitted to the school. Rule 136 relates to the entry of the name of the students on the roll of the school on the date on which he first attends his class. Rule 137 contemplates that admission shall ordinarily be made once a year and shall not be made after 31st day of August of the year except under certain circumferences permitted by the Director. Rules 139 to 143 are not relevant for the purposes of this appeal. Rule 138, 144 and 145 are relevant and the same read as under:-

"138. Admission of failed students not to be refused A student who fails at any public examination shall not, on that account, be refused re-admission in the school or class by the school from which he had appeared at such examination.

Power to issue departmental instructions. The Director may issue instructions with regard to any matter, not covered by this Chapter, relating to aided schools.

145 Admission to recognised unaided schools-

(1) The head of every recognised unaided school shall regulate admissions to a recognised unaided school to any class thereof either on the basis of admission test or on the basis of result in a particular class or school.

(2) Subject to the provisions of sub-

rule (1), the provisions of this Chapter shall, so far as may be, apply to admission to a recognised unaided school as they apply to admissions to an aided school."

A reading of sub-rule (2) of Rule 145 reproduced above will go to show that all the provisions of Chapter XII shall, so far as may be apply to admission to a recognised unaided school as they apply to admission in aided school with the distinction that in the case of aide schools it is the Director who can issue instructions with regard to any matter not covered by Chapter XII relating to admissions to aided school while in the case of admissions to recognised unaided schools it is the head of the recognised unaided school who is authorised to regulate such admissions. That being so, the provisions of Rule 135 will apply in the case of admission to aided as well as unaided schools. Rule 135, as said earlier, directs that no student shall be admitted to an aided school unless an application in the prescribed from signed by his parent or guardian has been submitted to such a school. Learned coursel for the appellant therefore contended that after the student passes a particular class there is fresh or readmission to the higher class even in the same school. We are unable to persuade ourselves to accede to this proposition. If it were so. the appellant school would have supported the contention by producing various applications made by the parents or guardians of students for such fresh admission from one class to the next higher class but no such material was placed either before the High Court or before this Court. It may, however, be pointed out that it is common knowledge that once a student is given an admission on any educational institution by making an application in the manner prescribed by Rule 135, he is not required to submit fresh application forms after he passes a class for his admission to the next higher class, Once a student i given admission in any educational institution the same continues class after class until he leaves the school. In these facts and circumstances it is difficult to accept that after a student passes his tenth class of a public examination his admission to the next higher class i.e. eleventh class would be a fresh or readmission.

7. Further it may be seen that Rule 138 reproduced above contemplates that even a student who fails at by public examination hall not, on that account, be refused readmission in the school or class by the school from which he had appeared at such examination. If a student who fails at any public examination could not be denied readmission in the school or class then it is beyond comprehension as to how a student who passed the public examination can be denied admission in a higher class in the same school from which he had appeared at such examination. That being so, the right of student to continue his studies further in the higher class, in the same school, after passing any public examination, cannot be worse than the right of a student who fails at any such public examination. The scheme of the Act and the Rules made thereunder and a combined reading of Sections 16(3), 28(2) (a) and Rules 135.137 and 138 will go to show that once a student is admitted to a school the same admission continues class after class until he passes the last examination for which the school gives training and no fresh admission or readmission is contemplated from one classes to the other. Therefore, in a Higher Secondary School such as the one in question, the examination of tenth class cannot be regarded as a terminal examination for those who watt to continue their study in eleventh and twelfth classes of the said school. No separate criteria has been laid down in the rules for the students passing class X and wishing to continue their studies in eleventh and twelfth classes.

8.Now coming to the provisions of sub-rule (1) 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 or readmission of a student in the same school after the 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 dome 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 he could show any provision of law authorising 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.

8.The decision rendered by the Division Bench of the High Court in the case of Km. Renuka Khurana (supra) and relied on by the learned counsel for the appellant. ie not of any assistance to the appellant as the question of power of the Director to issue instructions to unaided schools alone was the point in controversy and the question of power of Head of the school to regulate admission on either of the two basis i.e. on the basis of the test or on the basis of result in previous class was not directly in issue. It was not a case of admission or readmission in the same school but in a different institution altogether.

9. In view of the above discussion the appeal fails and is hereby dismissed. No order as to costs.