

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. SUDHANSHU DHULIA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

Advocate for the appellants : Mr. K.N. Choudhury, Senior Advocate assisted by
Ms. R. Pr. Kakati.

Advocate for the respondents : Ms. P. Chakraborty, standing counsel, Education
(Secondary) Department and Mr. T.C. Chutia,
standing counsel, AHSEC.

JUDGMENT AND ORDER (CAV)

(Soumitra Saikia, J)

1. The petitioners are students, who had appeared in the H.S. Final examination in the year 2020 conducted by the Assam Higher Secondary Education Council. Although they had cleared the H.S. Final examination 2020 but they were not satisfied with the marks they had secured in the said examination. Aspiring to obtain better marks in the respective subjects so as to make them eligible for higher studies in various institutions in the country, they had opted to appear for "Betterment examination" for the year 2021 conducted by the Assam Higher Secondary Education Council. But, because of the COVID-19 pandemic situation which was prevailing in the country including the State at the relevant point in time, the department of Education, Government of Assam

decided not to hold the Higher Secondary Final Examination for the year 2021. Instead a notification dated 01.07.2021 was issued by the department laying down the manner in which marks are to be allotted to the students under various categories who were scheduled to appear in the Higher Secondary Final examination, 2021. The petitioners were aggrieved by the process for allotment of marks as notified in the notification dated 01.07.2021. They represented before the department before the Chairman, Assam Higher Secondary Council on 10.07.2021 requesting for adoption of justified marking assessment process so that petitioners are able to obtain better marks in the subjects which they had opted for in the "Betterment examination". Their representation remained unattended and the results of the H.S. Final examination, 2021 were declared on 31.07.2021. According to the petitioners because of the faulty evaluation process and allotment of marks, the petitioners got very few marks in the subject in which they had appeared for in the "Better Examination". The petitioners, therefore, approached this Court by filing the instant writ petition. By the impugned Order dated 09.09.2021, the writ petition was disposed of without granting the relief prayed for.

2. Being aggrieved the present appeal has been filed by the petitioners assailing the order dated 09.09.2021 passed by the learned Single Judge in WP(C)/4400/2021 and WP(C)/4405/2021.

3. The learned Senior counsel, Mr. K. N. Choudhury assisted by Ms. R. Pr. Kakati urged before this Court that the entire process adopted by the Assam High Secondary Education Council as notified by the notification dated 01.07.2021, is faulty and has not treated the appellants at par with the other examinees appearing under other categories although they were similarly situated, being not able to appear in the H.S. Final examination, 2021 due to COVID-19 situation. The learned senior counsel urged that the appellants ought to have been evaluated at par with the failed / repeat category students. It is urged that the appellants did not fail in the earlier examination but have only sought to improve their marks in certain subjects. However, because of different methods of evaluation adopted by the H.S Council as notified vide the guideline dated 01.07.2021, the hopes and aspirations of the appellants that they would be able to improve upon the marks have been totally lost. Such adoption of different methods of evaluation for students who are similarly placed are discriminately and arbitrary. The learned senior counsel urged that the special

examination for 2021 although announced was not held as per schedule and this had left the student community more particularly the appellants in quandary. Had the appellants undertaken the special examination, then also the declaration of results would have taken sometime and as a consequence thereof the petitioners would have lost their opportunity of getting admitted in an institution of their choice. The learned senior counsel urged that for no fault of theirs, the appellants are not been treated at par with their peers because of the peculiar manner of allocation of marks. Such a disadvantage have been caused to the appellants as compared to their peers although they did not fail in any of the subjects but are merely seeking to enhance the marks which they had obtained earlier. The learned senior counsel submits that this aspect of the matter was not taken into consideration by the learned Single Judge and the writ petition was disposed of on the submissions made by the counsel for the department that if the candidates (the appellants herein) who are intending to appear for the betterment in respect of the examination held in the year 2020, can also appear in the special examination, if the petitioners submit their application within a period of 3 (three) days, the council will accept the same and

issue Admit Cards permitting the petitioners to appear in the special examination for the purpose of the betterment of the respective subjects.

4. The petitioners were permitted to furnish their application forms in physical form if they were unable to submit through the On-Line mode. Writ petition was accordingly disposed of. The learned senior counsel strongly urged that the core issue namely the discrimination being meted out to the appellants was not even decided by the learned Single Judge. He, therefore, submits that the impugned order is bad in law and he same should be interfered with, set aside and quashed.

5. Mr. T. C. Chutia, learned standing counsel appearing for the Higher Secondary Council submits that there is no infirmity in the order impugned in as much as the guidelines had been issued by the counsel on the basis of the report of the alternative method committee which had deliberated upon the evaluation of marks for H.S. Final examination, 2021. The Committee's report had also been approved by the Government. The learned Standing counsel submits that it is not mandatory for the appellants to appear for betterment examination. It is an option offered and which had been availed of by the appellants. They also had the option to

appear for the special High Secondary Examination, 2021 which however they did not avail of. The appellants were given the opportunity to apply and submit their forms for the special examination in terms of the order passed by the learned Single Judge, however, they have failed to appear. Therefore, there is no infirmity in the order passed by the learned single judge and in the guidelines.

6. It is further submitted that the guidelines are prepared on the basis of the report of the committee which was duly approved by the Government. There is no challenge to the said guidelines by the petitioners.

7. We have heard the learned counsels for the parties. We have also perused the pleadings on record as well as the Judgment impugned in the present writ appeal. In the said notification dated 01.07.2021 the allocation of marks for students seeking "Betterment examination" and those for unsuccessful students are extracted as under:-

"(a.i) Betterment (Maximum in four subjects):

Enhancement of marks be done on the basis of marks obtained in the last HS Final Examination and marks be allotted as shown below...

10% for Third Division

7% for Second Division

5% for First Division

(b) For repeat (unsuccessful candidate):

**50 marks be calculated from 50% marks secured by the students in the best three subjects in the HSLC or equivalent examination.*

**40% marks (Maximum) be calculated from the First Year Annual examination conducted by the Institutions/AHSEC.*

**10 marks be allotted on the basis of consideration of the marks obtained by the students out of 90 (Ninety) in earlier 2 (Two) components and 10% of marks out of 90 be allotted accordingly”.*

8. The appellants are aggrieved that the allocation of marks for unsuccessful candidates provides an opportunity to those candidates to score better marks. However, so far as the appellants are concerned, the evaluation process prescribed in the notification will not enable them to score better marks. This according to the appellant is arbitrary and discriminatory in as much as this is an unjust classification amongst to similarly situated student groups.

9. The Notification dated 01.07.2021 reveals that this system of evaluation was decided by the Alternative Method Committee (AMC). The report of the said committee is stated to have been approved by the Government. That apart as per Clause-7 of the said notification, the students who are dissatisfied with the assessment done by the council for the year 2021 is also provided for an option for appearing in a special examination to be conducted by the Council whenever the situation become conducive for holding the examination. The performance of the students in that examination will be assessed as per existing norms of the Council.

10. It is pleaded by the appellants that they did not opt for the special examination because of the uncertainty involved towards the date of examination. The learned Single Judge while disposing of the writ petition, in terms of the submissions made by the learned Standing counsel of the department, permitted the appellants to file their forms within the specified period mentioned in the impugned order in physical form if they failed to do so in the On-line mode. Such opportunity has not been availed of by the appellants. There grievance is that availing of such

opportunities will lead to further uncertainty. Therefore, they opted for the “betterment examination” held by the Council.

11. It is a well settled in law that unless it is shown to be contrary to a statute or the Rules, the academic authorities should be given their liberty to frame the policies which are based suited for conducting their functions and in the interest of the student community. It is not the pleaded case that the guidelines or the notification are contrary to any existing statute or Rules of the department. Perusal of the notification reveals that the steps have been taken by the department in the peculiar circumstances under the COVID-19 situation. A committee on alternative method had evaluated the matter and which was approved by the department. The said notification is also not specifically under challenge. In deciding matters relating to Education or academics, writ courts should normally be slow to pass orders and the educational authorities should be normally left to their decision. Interference is called for only in the interest of justice¹.

12. No material has been placed before us to suggest that the guidelines/notification relating to the process of evaluation has been arrived at without taking into consideration the relevant

¹ (1992) 2 SCC 220 Bhushan Uttam Khare Vs Dean, B.J. Medical College and Others.

factors. There is also no material to suggest that the Alternative Method Committee (AMC) did not take into account relevant factors in the interest of student community in the report which have also been subsequently rectified by the department education and only pursuant to which the notification dated 01.07.2021 was issued.

13. Under the circumstance, we do not find any infirmity in the orders of the learned Single Judge so as to warrant any interference. The Writ Appeals are devoid of any merit and the same are accordingly dismissed.

14. Interim order, if any, stands vacated.

15. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant