

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 2ND DAY OF AUGUST 2023 / 11TH SRAVANA, 1945

W.P. (C) NO.24129 OF 2023

PETITIONER:

JAGANKUMAR K., AGED 19 YEARS, S/O.KRISHNAKUMAR N,
PALAPPURAM THERUVU HOUSE, PALAPPURAM P O., OTTAPPALAM,
SREERAMAKRISHNA NAGAR, PALAKKAD DISTRICT, PIN - 679 103
BY ADVS.

DINESH MATHEW J.MURICKEN
AHAMMAD SACHIN K.
VINOD S. PILLAI
MOHAMMED THAYIB N.M.
NAYANA VARGHESE

RESPONDENTS:

- 1 STATE OF KERALA, REP. BY SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
STATUE JUNCTION, THIRUVANANTHAPURAM GENERAL P.O.,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 001
- 2 THE CHAIRMAN, DIRECTORATE OF GENERAL EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM GENERAL P.O., THIRUVANANTHAPURAM DISTRICT,
PIN - 695 001
- 3 THE SECRETARY, BOARD OF HIGHER SECONDARY EXAMINATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM GENERAL P.O., THIRUVANANTHAPURAM DISTRICT,
PIN - 695 001
- 4 THE PRINCIPAL, GOVERNMENT HIGHER SECONDARY SCHOOL,
EAST OTTAPALAM, OTTAPALAM.P.O., PALAKKAD DISTRICT,
PIN - 679 102

GOVERNMENT PLEADER, SRI.V.K SUNIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.08.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)No. 24129 of 2023

JUDGMENT

(Dated: 2nd August, 2023)

The petitioner, while studying in the 11th grade during the academic year 2020-2021, appeared in the 1st year Higher Secondary Examination in the year 2021. He scored 24 marks in Physics, 19 marks in Chemistry, and 20 marks in Mathematics in the Terminal Evaluation (T.E). In the 12th grade, he appeared in the 2nd year examination in 2021-2022. The petitioner scored 10 marks in Physics, 4 marks in Chemistry, and 9 marks in Mathematics in the Terminal Evaluation (T.E). To be eligible for higher studies based on the result of the Higher Secondary Examination, a candidate has to obtain at least a D+ grade in all subjects. The petitioner, despite his efforts, got only D grades in Physics, Chemistry, and Mathematics. The petitioner, therefore, appeared in the improvement/supplementary examination for the 11th and 12th grades. According to the petitioner, as per Ext.P2, Clause No.4, candidates coming under the category of Compartmental candidates is eligible to

W.P.(C)No. 24129 of 2023

register either for the 1st year or for the 2nd year papers of the subjects for which they failed to attain D+ or above grade, and they can also register for both years simultaneously.

In Clause 4, it is stated that:

“In the case of Compartmental candidate registering for the 1st year’s papers only, the best scores obtained by the candidate for those papers at the previous 2nd year examinations shall be carried forward and vice versa”.

2. The petitioner, while attending the 1st year Higher Secondary Improvement Examination, obtained; 22 marks in Physics, 5 marks in Chemistry, and 30 marks in Mathematics. In the 2nd year improvement examination, he scored 13 marks in Physics, 20 marks in Chemistry, and 11 marks in Mathematics. When results were published, the marks obtained by the petitioner in the improvement examination were taken, disregarding the provision to carry forward the best grades obtained from previous examinations.

3. The petitioner also submits that he appeared for the Kerala Medical and Engineering Examinations (KEAM) and qualified for

W.P.(C)No. 24129 of 2023

engineering and is awaiting the allotment process. Because of not getting the best scores of the petitioner in both the 11th and 12th grades, he is precluded from obtaining admission to higher studies. Therefore, he has filed this writ petition for the following prayers.

i. issue a writ of mandamus or any other appropriate writ or direction to 3rd respondent to declare the results of the petitioner combining the best score attained by the petitioner in the first year higher secondary examination held in 2021 and in the second year higher secondary examination held in 2023,

ii. issue a writ of mandamus or any other appropriate writ or direction to 3rd respondent to issue the mark list of the petitioner considering the best score attained by the petitioner,

iii. issue a writ of mandamus or any other appropriate writ or direction to 3rd respondent to allow the petitioner to retain their original mark secured in the first year higher secondary examination in the year 2021,

iv. issue a writ of mandamus or any other appropriate writ or direction to the 4th respondent to consider Exhibit PS representation submitted by the petitioner,

v. dispense with the production of English translation of vernacular documents, and

vi. grant such other reliefs which this Honourable Court may deem fit and proper in the circumstances of the case.

W.P.(C)No. 24129 of 2023

4. A statement has been filed by the 3rd respondent, stating that to qualify for higher studies, a Higher Secondary student of the science stream has to obtain 36 marks for a subject in aggregate for the 1st year and 2nd year examinations. As such, the marks taken together for Physics in the supplementary/improvement examination will come to (22+13), a total of 35 marks for Physics, (5+20), a total of 25 marks for Chemistry, and (30+11), a total of 41 marks for Mathematics. Therefore, the petitioner has only secured minimum marks for one subject, namely Mathematics, and therefore is not entitled to higher studies. The petitioner's 11th standard regular examination was conducted in March 2021, and an improvement examination was conducted in January 2022, but the petitioner did not avail of that opportunity. The Examination Board conducted the 1st year Higher Secondary Improvement/Supplementary Examination in October 2022, and the petitioner registered himself as a Compartmental candidate. The examination conducted under Ext.P2 notification, so far as the petitioner

W.P.(C)No. 24129 of 2023

and other similar students are concerned, was not an improvement examination but a supplementary examination for students who were disqualified for higher studies in the previous years' examinations. Ext.P2 states that in the case of a Compartmental candidate registering for the 1st year paper only, the best scores obtained by the candidate for those papers at the previous 2nd year's examination should be carried forward and vice versa. If the candidate had registered for both the 1st year and 2nd year papers, the best score option is not available to him, and it can only be the final score obtained in the supplementary examinations. Ext.P2 has been clarified by Annexure-R3(a). The clarification in Ext.R3(a) is in tune with Ext.P2. Going by Ext.P2 and Annexure- R3(a), even if marks obtained in the 2nd year supplementary examinations were lower than those obtained in the previous year's regular examination, the candidate is not eligible to retain the best score of the previous year's regular examination.

W.P.(C)No. 24129 of 2023

5. Ext.P2 is a notification issued by the Directorate of General Education, Higher Secondary, for the 1st-year Higher Secondary Improvement/Supplementary examination in October 2022. It is not in dispute that the petitioner has appeared as a Compartmental candidate. The candidates who have appeared earlier in Higher Secondary Examination and became ineligible for higher studies are allowed to write the examination under the category of Compartmental examination. The intention was to give the candidates a chance to improve their scores and to obtain a D+ grade or more so that they could join for higher studies.

6. As argued by the learned Government Pleader, Clause 4 in Ext.P2 only refers to those candidates who appear for the 1st year papers only, the best scores obtained by the candidates for those papers at the previous 2nd year examination shall be carried forward, and vice versa. The purpose of improvement/supplementary examination is to help the candidates with less score in the subjects to improve and to obtain

W.P.(C)No. 24129 of 2023

higher marks than in the regular examination. In Ext.P2, what is stated for the Compartmental candidates registering for the 1st year papers alone, the best courses available by the candidates for those papers at the previous 2nd year examination shall be carried forward and vice versa. It does not speak about a candidate who has appeared for both the 11th and 12th-grade supplementary examinations. Merely because a student has appeared in both the supplementary examinations, it cannot be said that the best course obtained by the candidate cannot be taken as the guidelines fully relate to persons who appear for the 1st year papers only. It is to be borne in mind that the intention is to help those candidates who could not achieve D+ grades in the regular examinations. So, in order to achieve the intention of the supplementary/improvement examination is to see that the candidates obtained higher grades, it is not logical that a person who appears for the 1st year examination alone will be entitled to the best course obtained by him and a person who has

W.P.(C)No. 24129 of 2023

appeared for improvement examination for the 1st year and 2nd year is not entitled to the best score is discriminatory and illogical.

7. The counsel for the petitioner relies on the judgment of the Apex Court in ***Sukriti and others v. Central Board of Secondary Education and another*** in Writ Petition (C) No.1214 of 2021, whereby a condition incorporated by the CBSE as Clause No.28 was held to be arbitrary and irrational. In the above case, the issue was that, as per the CBSE Original Scheme, the better of the two marks obtained by the candidate was to be considered for the final declaration of results, but vide notification dated 17.06.2021, the Central Board of Secondary Education insert Clause No.28, whereby the policy was changed and as per the new Clause the marks scored in the later examination would be considered as final. The Apex Court held that the said Clause is manifest, arbitrary, and irrational as the CBSE could not justify the deviation from the original policy. Therefore, it was held that the better of the two marks obtained in the subject for the final declaration of results should be taken. Though

W.P.(C)No. 24129 of 2023

on facts, the case in hand and the case decided by the Apex Court are different, the logic that the better marks must be taken more so when it is a supplementary/improvement examination is applied to the facts of this case. Therefore, the petitioner, though appeared in the supplementary examinations both in the 11th and 12th grades, obtained different marks for the same subjects, the respondents ought to have taken the best marks he obtained in the regular examination as well as in the supplementary examination. Then only, the intention of conducting a supplementary/improvement examination can be brought to a logical conclusion. Hence, I am of the opinion that the petitioner is entitled to succeed in this writ petition and the 3rd respondent is directed to declare the result of the petitioner combining the best scores obtained by the petitioner in the 1st year secondary examinations both in regular and supplementary as well as the 2nd year higher secondary examinations both regular and supplementary. The 3rd respondent is

W.P.(C)No. 24129 of 2023

also directed to issue a mark list to the petitioner taking into consideration the best scores obtained by him in the examinations.

The writ petition is allowed as indicated above.

Sd/-

**BASANT BALAJI,
JUDGE**

ss

W.P.(C)No. 24129 of 2023

APPENDIX OF WP (C) 24129/2023

PETITIONER EXHIBITS:

- Exhibit P1 TRUE COPY OF THE MARK LIST ISSUED BY THE 3RD RESPONDENT DATE NIL
- Exhibit P2 TRUE COPY OF THE NOTIFICATION NO.EX-II-1/14200/HSE/2022 DATED 31.08.2022 WITH RESPECT TO THE FIRST YEAR HIGHER SECONDARY IMPROVEMENT EXAMINATION, OCTOBER 2022 ISSUED BY THE 3RD RESPONDENT
- Exhibit P3 TRUE COPY OF THE ADMISSION TICKET ISSUED TO THE PETITIONER BY THE 4TH RESPONDENT DATE NIL
- Exhibit P4 TRUE COPY OF THE COMBINED RESULT OF THE PETITIONER IN FIRST YEAR HIGHER SECONDARY IMPROVEMENT EXAMINATION AND SECOND YEAR HIGHER SECONDARY EXAMINATION, MARCH 2023 DOWNLOADED FROM THE WEBSITE DATE NIL
- Exhibit P5 TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DATE NIL

RESPONDENT ANNEXURES:

- ANNEXURE R3(a) True Copy of the Circular No.EX-II/14200/HSE/2022 dated 24/09/2022.

PETITIONER EXHIBITS

- Exhibit P6 TRUE COPY OF THE RESULT OF THE PETITIONER IN KERALA MEDICAL AND ENGINEERING EXAMINATION (KEAM) DOWNLOADED FROM THE WEBSITE