

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 1st OF FEBRUARY, 2024

WRIT PETITION No. 604 of 2024

BETWEEN:-

MUSKAN IVNATI

.....PETITIONER

(BY SHRI HITESH SHARMA, ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH
PRINCIPAL SECRETARY DEPARTMENT OF
SCHOOL EDUCATION VALLABH BHAWAN,
BHOPAL (MADHYA PRADESH)**
- 2. M.P. BOARD OF SECONDARY EDUCATION
THR ITS CHAIRMAN SHIVAJI NAGAR
BHOPAL (MADHYA PRADESH)**
- 3. SECRETARY M.P. BOARD OF SECONDARY
EDUCATION SHIVAJI NAGAR INDORE
(MADHYA PRADESH)**
- 4. COLLECTOR INDORE (MADHYA PRADESH)**
- 5. DISTRICT EDUCATION OFFICER INDORE
(MADHYA PRADESH)**
- 6. PRINCIPAL GOVERNMENT GIRLS HIGHER
SECONDARY SCHOOL RAU DIST INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI MUKESH PARWAL, G.A. WITH MS. SAPNA HUMAD, INCHARGE PRINCIPAL, GOVT. GIRLS HIGHER SECONDARY SCHOOL, RAU AND MS. CHITRALEKHA HARDIA, ADVOCATE FOR RESPONDENT NOS.2 AND 3)

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This petition coming on for admission this day, the court passed the following:

ORDER

Heard finally, with the consent of the parties.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

“It is, therefore, prayed that this Hon'ble Court may kindly be pleased:-

a) To allow this petition by issuing appropriate writ, order or direction and to direct the respondent no. 2 to 6 to permit the petitioner to appear in 12th Board Final Examination with subject Biology, instead of subject Mathematics and petitioner may kindly be permitted to carry out necessary consequential changes in examination form and other relevant documents in this regard; and

b) Any other relief which this court may deem fit in the interest of justice.”

3] In brief, the case of the petitioner is that she is a resident of Gram Pigdamber, Rau, District Indore and is presently studying in Government Girls Higher Secondary School, Rau in Class 12th with Biology as her main subject, and prior to that, she completed her Class 11th from Higher Secondary School, Bordehi, District Betul with Higher Mathematics and thereafter, after obtaining her Transfer Certificate from the said school she got herself admitted in the Government Girls Higher Secondary School, Rau.

4] The case of the petitioner is that at the time of filing the Form for Class 12th, she had given her choice of subjects as Physics,

Chemistry and Biology and she has also topped in attendance in class, and also gave the quarterly and half yearly examination in the subject Biology.

5] The petitioner's further case is that she has attended the school regularly and has the highest attendance of 105, the document regarding which is also placed on record, which was obtained by the petitioner through the Right to Information Act. But the problem occurred when the petitioner was issued a dummy admit card in which it was mentioned that she has taken Mathematics as the main subject, which is filed as Annexure-P/3. Thereafter, the petitioner submitted her representation contending that due to negligence on the part of the school in her dummy admit card, subject Mathematics has been mentioned as her main subject despite the fact that her main subject was Biology only, however, no action was taken in respect of the aforesaid representation. However, the Principal of the aforesaid school, vide his letter dated 26/12/2023 wrote to the Secretary, Board of Secondary Education informing that although the student had submitted her form taking Physics, Chemistry and Mathematics, however, according to her she was assured by the earlier Principal that her subject would be changed, but as per the Education Policy of 2023-2024, the subject could not be changed, hence the student is now threatening that she would commit suicide if her subject is not changed from Mathematics to Biology and thus, it was requested by the Principal of the school that looking to the future of the student, her subject may be allowed to be changed. Thereafter, the District Education Officer, vide his letter dated 27/12/2022, also wrote to the

Secretary of the Board of Secondary Education in which it was reiterated that under the facts and circumstances of the case when the student has also threatened to commit suicide, she may be allowed to change her subject so as to save from any unpleasant situation.

6] Counsel for the petitioner has submitted that the petitioner was given admission in Class 12th with Biology as her main subject and was allowed to appear in the quarterly and half yearly examination for the subject Biology, and there was no reason for her to take Mathematics subject and not attend the classes of Mathematics whereas, in her attendance sheet, she has the highest attendance in the entire class having 105 attendance. Counsel has submitted that the petitioner has also filed certain additional documents along with the rejoinder and the attention of this Court is also drawn to the document, Annexure-R/18 filed by the respondent Nos. 1, 4, 5 and 6, which is the admission Form of the school, and it is submitted that the last page of which provides for important rules and conditions, which also has the space for the signatures of the student and also of parents, but the signatures are missing and thus, it is submitted that the aforesaid page has been deliberately changed with a Form in which it is mentioned that the petitioner has been given Mathematics subject at the time of admission.

7] Counsel has also drawn the attention of this Court to the admission Form in which also the subject Biology has been ticked as the subject of the petitioner and beneath it, ticks have also been made in respect of Higher Mathematics. It is submitted that the tick on the subject Maths is made subsequently and is

manipulated/changed subsequently to suit the respondents reply.

8] Counsel has submitted that even otherwise, the respondent Board of Secondary Education could not have formed such Guidelines which allow a student to take only the same subject with which he/she has passed his/her's 9th and 11th Class examinations respectively for the 10th and 12th examinations respectively, as that would amount to applying the policy retrospectively, as the petitioner had already passed her Class 11th with Mathematics as the main subject in the year 2022-2023, and at that time, this policy was not in force, as the policy has come into force only on 28/06/2023.

9] In support of his submissions counsel has also relied upon the decision rendered by the Supreme Court in the case of *Assistant Excise Commissioner Kottayam & Ors. Vs. Esthappan Cherian & Another* reported as (2021) 10 SCC 210, passed in Civil Appeal No.5815 of 2009, relevant paras 16 and 17, as also in the case of *Union of India Vs. R.Redappa*, reported as (1993)4 SCC 269 relevant para 5.

10] On the other hand, the petition has been vehemently opposed by the respondent Nos.1, 4, 5 and 6 by filing a detailed reply, additional documents and additional affidavits contending that a false case is projected by the petitioner before this Court as there was no reason even for the ex- Principal of the school to assure the petitioner that she would be given admission in Higher Mathematics stream. It is submitted that the affidavit of the previous Principal has also been filed on record. Counsel has also submitted that although the petitioner might have appeared regularly in the class, but she has not

appeared in the quarterly and half yearly Mathematics examination. It is also submitted that the reason, the petitioner was allowed to give quarterly and half yearly examination in the subject of Biology is that the petitioner had opted for Biology as an additional subject and the students who opt for Biology as an additional subject are also taught the same syllabus, and the papers are also the same for the Mathematics and Biology students, but only the subject code changes. Thus, it is submitted that even after the petitioner appeared in the quarterly and half yearly examination with the subject Biology, it does not give her any right to contend that she is entitled to appear in the Biology stream in the 12th examination. So far as the applicability of the Guidelines issued for the examination is concerned which provides that a student has to opt for the same subject in class 10th and 12th respectively with which he/she has passed the 9th and 11th Class respectively, it is submitted that since the petitioner was admitted in the school subsequent to the date of Guidelines issued by the Board of Secondary Education, thus the aforesaid ground is also not available to the petitioner.

11] Counsel for the respondent Nos. 2 and 3 has also opposed the prayer and a separate reply has been filed opposing the petition and it is submitted that no case for interference is made out, as the petitioner was well aware right from the beginning that she cannot change the subject. Attention of this Court is also drawn to the letter dated 26/12/2023, in which all the principals of the schools were directed to rectify the error in respect of the subject opted by the students.

12] Heard counsel for the rival parties and perused the record.

13] In the considered opinion of this Court, the questions which fall for the consideration of this Court are whether the petitioner had opted for Biology at the time of admission in the respondent No.6 Government Girls Higher Secondary School, Rau and secondly, whether the Regulations and Instructions to submit the online applications issued by the Board of Secondary Education on 28/06/2023 can be applied retrospectively.

14] Since the application of the aforesaid Regulations goes to the root of the matter, it would be necessary to deal with the said issue before deciding if the petitioner was admitted in the Biology stream or in the Mathematics stream.

15] From the record it is found that so far as the Regulation 14 of the aforesaid Regulations issued by the Board of Secondary Education on 28/06/2023 is concerned, the same relates to the subject which a student is required to take in classes 10th and 12th, which reads as under:-

**“14. विषय /माध्यम/समूह का चयन एवं परिवर्तन
(मण्डल विनियम 2007)**

कक्षा 9 वीं के आधार पर 10वीं में तथा कक्षा 11वीं के आधार पर 12वीं में अर्थात् छात्र ने कक्षा 9वीं अथवा 11वीं में जो विषय भरे हैं, वही विषय कक्षा 10वीं एवं 12वीं में भर सकेंगे। विषय का चयन प्रचलित पाठ्यक्रमानुसार किया जाए। कक्षा 12वीं में डायवर्सिफ़ाईड समूह में विषयों का चयन सावधानीपूर्वक करें। पाठ्यक्रम का भली-भाँति अध्ययन कर छात्रों से विषय चयन करावें। ऑनलाईन आवेदन करते समय विषय कोड लिस्टअ से जांच कर विषय कोड भरा जावे। कक्षा 10वीं/12वीं में केवल माध्यम/भाषा विषय तथा 9वीं/11वीं में चयनित विषय/माध्यम/समूह में परिवर्तन निर्धारित शुल्क के साथ नियत अवधि तक Online संशोधित किया जा सकेगा।”

16] Admittedly, the petitioner passed her Class 11th examination in the year 2022-2023, whereas the aforesaid Regulations have come into

force with effect from 28/06/2023. So far as, the pleadings in this regard made by the petitioner are concerned, the same read as under:-

“6.4 That, during the above mention process of redressal of grievance, the petitioner came to know about the fact that on 28.06.2023 a circular was issued by the Board of Secondary Education to the effect that the students who has chosen a particular subject in the 9th standard will eligible to appear in the examination in the 10th standard with the same subject, that they have taken in the 9th standard and in the same manner and the student who has chosen the particular subject in 11th standard will appear with the same subject in the 12th standard, meaning thereby the student shall not be entitled to change her subject and the student who has taken particular subject in 11th standard shall continue the same subject of study in the 12th standard and such change of subject is impermissible. That, in pursuant to the above mention circular dated 28.06.2023 another circular dated 10.10.2023 was issued to the effect that if any discrepancy is found in this regard, then strict action would be taken against concerned School/ Principal.

6.5 That, the petitioner respectfully submits that, the petitioner took admission with biology subject before the issuance to circular dated 28.06.2023 and such circular does not provide for the retrospective effect and if the petitioner has given admission in particular stream before issuance of such circular, then the petitioner would be governed by the circulars, which were in effect at the time of admission and any subsequent circular, post the admission of the petitioner which takes away the right of the petitioner or affect prejudicially to the petitioner would not be given effect against the petitioner.”

17] A perusal of the aforesaid averments reveal that although the petitioner has taken a ground that she took admission with Biology subject before issuance of Circular dated 28/06/2023 however, the record which has also been requisitioned by this Court reveals that she was given the admission subsequently, i.e., on 26/07/2023. However, this Court is of the considered opinion that the date of the petitioner’s admission is not relevant to decide the issue and what is relevant, is the date or year in which she passed her 11th, and the date of issuance of the Regulations which is 28/06/2023, as admittedly, the Regulation

13 provides that a student has to opt for the same subject in class 10th and class 12th respectively, with which he/she has passed the 9th and 11th Classes respectively, meaning thereby, the Regulation is applicable on those students who have already passed the 9th and 11th Class in one or the other subject, and apparently, when they pass Class 9th or 11th, as the case may be, the aforesaid Regulation was not in force.

18] At this juncture, it would be relevant to refer to the decision relied upon by the counsel for the petitioner in the case of *Esthappan Cherian (supra)*, para 16 and 17 of which read as under:-

“16. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In Commissioner of Income Tax v Vatika Township this court, speaking through a Constitution Bench, observed as follows:

“31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow’s backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in Phillips vs. Eyre[3], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

32. The obvious basis of the principle against retrospectivity is the principle of ‘fairness’, which must be the basis of every legal rule as was observed in the

decision reported in L' Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd [4]. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later."

17. Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the form of rules or regulations, cannot operate retrospectively. In Union of India v M.C. Ponnose this rule was spelt out in the following terms:

"The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

(Emphasis Supplied)

19] In the considered opinion of this Court, if the facts of the case are tested on the anvil of the aforesaid dictum of the Supreme Court, it makes it more than clear that the respondents have tried to apply the Regulations issued on 28/06/2023, retrospectively, which in the considered opinion of this Court cannot be done and is contrary to law. In such circumstances, when the aforesaid Regulation 14 itself cannot

be applied in the case of the petitioner, the respondents cannot compel her to opt for Mathematics subject only with which was her subject in Class 11th.

20] So far as the factum of the petitioner's admission in biology stream in Class 12th, in the respondent No.6 School is concerned, this Court had also requisitioned the original record of the school and it is found that although in her Form, on which her and her father's signature have been appended, it appears that she had opted for the Biology as her subject, on either side of which a cross and a tick have been made, whereas, in respect of Mathematics, ticks have been made on both the sides. Thus, it cannot be said with certainty if the petitioner opted for Mathematics while filing the Form whereas, in the another page of the aforesaid Form, in which the important rules and conditions of the School have been given, there is a space for the signature of the student and his/her parent and both these spaces are blank, and in this Form it is mentioned that the petitioner is admitted in Class 12th in Mathematics subject. It gives a reasonable doubt in the minds of this Court about the veracity of the contentions made by the respondents that the petitioner opted for Higher Mathematics. Otherwise also, it is found that the petitioner has the highest attendance in the class and has given the quarterly and half yearly examination with the Biology, which also makes it clear that the petitioner was also under the impression that she had opted for Biology only as her main subject and not the Mathematics. It might be that due to some error on the part of the then officials of the school, the petitioner was given admission in Biology subject, however,

subsequently some window dressing appears to have been done to undo the said error. In such circumstances also, this Court has no hesitation to hold that the petitioner had opted for subject Biology only at the time of taking the admission in the respondent No.6 School.

21] Resultantly, the petition stands **allowed** with the result that the Guidelines issued by the respondent on 28/06/2023 shall be applicable prospectively and would not be applicable in the case of the petitioner, and secondly, the petitioner is also held to have taken admission in the respondent No.6 School in Biology stream and is entitled to appear in the examination for Class 12th for the said stream. The respondents are directed to ensure that the petitioner appears in the Class 12th examination with Biology as her main subject, and shall allow her to complete all such procedural formalities which are required, as expeditiously as possible.

22] Needless to say, the respondents shall also ensure that the petitioner appears in the examination without any difficulty and delay.

23] With the aforesaid, the petition stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Bahar