



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

1. WRIT APPEAL No.11 OF 2023

1. Union of India, represented by the Secretary to the Government of India, Ministry of Defence, Room No.234, South Block, New Delhi, PIN – 110011.
2. The Sainik School Society, Room No.101, D-1 Wing, Sena Bhawan, New Delhi, PIN – 110011.
3. The Principal, Sainik School Goalpara, PO: Rajapara, District: Goalpara, PIN – 783133.
4. The Vice Principal, Sainik School Goalpara, PO: Rajapara, District: Goalpara, PIN – 783133.

.....Appellants

-Versus-

1. Mrs. Gitabali Singha,
Mother of Miss. KH. Deepika Singha,
resident of Swamiji Road, Itkhola,
Manipuri Para, PO: Silchar, PS: Silchar
(Sadar), District: Cachar, Assam, PIN –
788001.
2. Miss. KH. Deepika Singha (Minor),
Daughter of Gitabali Singha, resident
of Swamiji Road, Itkhola, Manipuri
Para, PO: Silchar, PS: Silchar (Sadar),
District: Cachar, Assam, PIN – 788001.

.....Respondents

2. WRIT APPEAL NO.394 OF 2022

1. Union of India, represented by the Secretary to the Government of India, Ministry of Defence, Room No.234, South Block, New Delhi, PIN – 110011.

2. The Sainik School Society, Room No.101, D-1 Wing, Sena Bhawan, New Delhi, PIN – 110011.

3. The Principal, Sainik School Goalpara, PO: Rajapara, District: Goalpara, PIN – 783133.

4. The Vice Principal, Sainik School Goalpara, PO: Rajapara, District: Goalpara, PIN – 783133.

.....Appellants

-Versus-

1. Mamoni Boro,
Mother of Master Jashant Boro,
resident of Village: Karnachara, PO:
Hudukhata, District: Baksa, PIN –
78131.

2. Master Jashant Boro (Minor),
Son of Mamoni Boro,
Mother of Master Jashant Boro,
resident of Village: Karnachara, PO:
Hudukhata, District: Baksa, PIN –
78131.

.....Respondents

3. WRIT APPEAL NO.15 OF 2023

1. Union of India, represented by the Secretary to the Government of India, Ministry of Defence, Room No.234, South Block, New Delhi, PIN – 110011.

2. The Sainik School Society, Room No.101, D-1 Wing, Sena Bhawan, New Delhi, PIN – 110011.

3. The Principal, Sainik School
Goalpara, PO: Rajapara, District:
Goalpara, PIN – 783133.

4. The Vice Principal, Sainik School
Goalpara, PO: Rajapara, District:
Goalpara, PIN – 783133.

.....Appellants

-Versus-

1. Mani Boro,
Father of Jessika Boro,
resident of Village & PO: 1 Katoligaon
in the district of Baksa (BTAD), Assam,
PIN – 781318.

2. Jessika Boro (Minor),
Daughter of Mani Boro, resident of
Village & PO: 1 Katoligaon in the
district of Baksa (BTAD), Assam, PIN –
781318.

.....Respondents

– B E F O R E –

**HON'BLE THE CHIEF JUSTICE (ACTING) MR. N. KOTISWAR SINGH
HON'BLE MR. JUSTICE SOUMITRA SAIKIA**

For the Appellants : Ms. A. Gayan,
Central Government Counsel.

For the Respondents : Mr. A.K. Baruah, Advocate.

Date of Judgment & Order : **25th January, 2023.**

JUDGMENT & ORDER (ORAL)

[(N. Kotiswar Singh, CJ (Acting))]

Heard Ms. A. Gayan, learned Central Government
Counsel appearing for the appellants. Also heard Mr. A.K.
Baruah, learned counsel appearing for the respondents in
Writ Appeal No.11/2023 and Writ Appeal No.394/2022.

2. These three writ appeals have been preferred by the Union of India against the common judgment & order dated 08.12.2022 passed by the learned Single Judge in WP(C) No.6696/2022; WP(C) No.6695/2022 and WP(C) No.6698/2022.

3. As these appeals arise from the common judgment & order, they have been tagged, heard and disposed of together by this common judgment & order. The respondents No.2 in all the writ appeals are the minor students of Sainik School, Goalpara, who are represented by their parents, i.e. respondent No.1 in these appeals.

4. Brief facts for deciding the present appeals are that on certain alleged ground of misconduct, disciplinary actions were initiated against all the respondent No.2, i.e. the students (writ petitioner No.2 in all the writ petitions), by the school authorities for which they were placed under suspension and the enquiry was initiated against them. However, after they were placed under suspension before conclusion of the enquiry, Transfer Certificates were issued to them which have been challenged in three different writ petitions on the ground that the said Transfer Certificates were issued in violation of the principles of natural justice and also against the wishes of the guardians.

5. It was specifically pleaded by the writ petitioners (respondents herein) before the learned Single Judge that on certain alleged misconducts and the acts of indiscipline committed by these three students alongwith two others,

they were compelled to write self incriminating statements against themselves and were suspended from the school and their parents were called to the school to take their ward to the Children Home till the School Disciplinary Committee looks into the matter.

6. It was alleged by the petitioners that before the petitioners were suspended, no show cause notice was issued and no opportunity was given to them to explain their stand before the School Disciplinary Committee. It was also the specific case of the students that their parents were forced to apply for Transfer Certificates with the threat that if they do not do so, they will issue Transfer Certificates with certain remarks which would create difficulties for them to continue their further studies in other institutions. Faced with such a situation, the parents were compelled to apply for the Transfer Certificates and accordingly the Transfer Certificates were issued. It has also been alleged by the petitioners that the school authorities did not inform them under what charges they had been proceeded.

7. The stand of the school authorities was that the petitioners did not challenge the order of suspension which preceded issuance of the Transfer Certificates and further, the Transfer Certificates were issued to the students on the applications being made by their parents. It was also contended that enquiry was conducted against the students and actions were taken against them. However, the parents of the petitioners themselves had in the

meantime applied for the Transfer Certificates which were issued to them without any adverse remarks. It has been submitted that the school authorities were within their right and authority to proceed against any student for the act of indiscipline and take necessary actions.

8. The learned Single Judge after hearing the parties took the view that after certain incident of misconduct and acts of indiscipline on the part of the students, they were suspended from the school and subsequently they were given the Transfer Certificates. The learned Single Judge also accepted the plea that the students were compelled to write certain self incriminating statements against themselves and their parents were summoned which was followed by their suspension. Later on, they were also asked to apply for Transfer Certificates but not out of their own volition but being compelled to do so. The learned Single Judge took the view that since under normal circumstances in a mid-session nobody would apply for the Transfer Certificates, it would indicate that there were compelling circumstances for applying the Transfer Certificates as contended by the petitioners.

9. The learned Single Judge held that issuance of the transfer certificates was an offshoot on the alleged incident of misconduct and the suspension of the writ petitioners/students. The learned Single Judge after perusing the records found that the Standing Committee on discipline of the school recommended withdrawal of all students who have found to be involved in the indiscipline

including the three writ petitioners/students. The said report which was laid before the Principal was approved by the Principal. However, before the withdrawal letter could be issued to the students, the Transfer Certificates were issued to the students.

10. The learned Single Judge on perusal of the records also observed that there is nothing to show that the writ petitioners were given opportunity to explain under what circumstances they have left the school and under the facts and circumstances, it was held by the learned Single Judge that it cannot be ruled out that the self incriminating statements were written under some threat or influence. Accordingly, it was held that the school authorities have issued the withdrawal letter without following the principles of natural justice. The learned Single Judge has also relied upon the decision of the Hon'ble Supreme Court in ***Dr. Rash Lal Yadav -Vs- State of Bihar & Ors.***, reported in ***(1994) 5 SCC 267***, wherein it was emphasized that the procedural reasonableness must be maintained and even if the rules are silent on the aspect of proper and fair procedure to be followed, the same must be adhered to.

11. The learned Single Judge accordingly observed that though Clause 3.22 of the Sainik School Society provides for withdrawal of students on disciplinary ground, but it does not contain a provision for issuing a show cause notice to the students. Yet the principles of natural justice would require that the students be given notice before any

such pre-judicial action is taken against them. The learned Single Judge held that there had been a gross violation of the principles of natural justice on the part of the respondent authorities (appellants herein) in deciding the proceedings against the students by suspending them from school and thereafter issuing them Transfer Certificates and held the same to be unsustainable and directed the school authorities to allow the writ petitioners/students to resume their respective classes and their place in the school. It was also directed by the learned Single Judge not to act upon the Transfer Certificates issued to each of the writ petitioners/students.

12. Ms. A. Gayan, learned counsel for the appellants has more or less reiterated the grounds taken earlier by the appellants before the learned Single Judge which have been contested by the learned counsel for the writ petitioners/students with equal vehemence.

13. Upon hearing the parties, it appears that the writ petitioners/students were accused of indulging in certain serious acts of misconduct or indiscipline in the school premises which the school authorities found unacceptable and accordingly, the Disciplinary Committee of the School initiated certain actions against them which were also accepted by the Principal.

14. In the meantime, the school authorities issued the Transfer Certificates in respect of the students. The specific pleas of the writ petitioners/students in the writ petitions

were that first of all, there was no proper enquiry held as regards the charges levelled against them by not giving them opportunity of being heard and secondly, the Transfer Certificates were issued after their parents/guardians were compelled to apply for the same.

15. From the records, it appears that the enquiry was held in a summary manner. As regards the disciplinary proceedings against the students, no specific rules have been laid down as to how such disciplinary proceeding has to be conducted as regards framing of charges, hearing of the students, etc. We have also noted that the present three students were actually not directly involved in the act of indiscipline or misconduct but appeared to have collaborated with the perpetrators in their misconduct or act of indiscipline. Though it is not the case that the students did not participate in the enquiry proceedings, but it would be desirable that, in such an enquiry held, if it may result in serious consequences of withdrawing from the school, which literally amounts to expulsion from the school, adequate opportunity ought to have been granted to them to explain their position, more so when they have taken the specific plea that they were compelled to write the self incriminating statements.

16. Further, we have also noted that the writ petitioners/students have made specific pleadings in their writ petitions that their parents were compelled to apply for Transfer Certificates which has not been specifically denied by the appellants (respondents) in the proceedings before

the learned Single Judge. Therefore, the submission advanced by the writ petitioners/students that their parents were compelled to apply for Transfer Certificates cannot be brushed aside lightly and under these circumstances, we are not inclined to interfere with the findings of facts recorded by the learned Single Judge that the disciplinary proceedings against the writ petitioners/students were not conducted by giving proper opportunity to the students to explain their position and also that the Transfer Certificates were issued under compulsion.

We are of the view that before the school authorities takes any steps which would have serious consequences for a student, utmost care ought to have been taken. Accordingly, we are not inclined to interfere with the decision of the learned Single Judge.

17. However, we are also mindful of the fact that there cannot be any impediment or hurdle on the school authorities to take such appropriate actions to maintain discipline in the school in accordance with law, and the order of this Court should not come in the way of the school authority to take such appropriate steps as it may deem fit for maintaining discipline in the school. However, as discussed above, the same ought to be done with care, caution and after giving proper and adequate opportunity to the concerned students.

18. Accordingly, we decline to entertain these appeals and are disposed of, however, with the observation that the school authority shall be at liberty to take such

appropriate steps as it may deem fit for maintaining discipline in the school which, however, has to be done by strictly adhering to the principles of natural justice.

19. The school authorities are directed to allow the students to resume their classes as directed by the learned Single Judge which, however, shall be subject to any such action as the school authorities may deem fit by following the principles of natural justice as discussed above.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant