

GAHC010098852023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2591/2023

SULTAN MAHMUD AND ANR
S/O- CHAND MAHMUD,
FATHER OF UMME ABIHA FATIMA,
VILLAGE- BHARAL KUNDI PART-9,
P.O.- ASHOK PAPER MILLS,
P.S.- JOGIGHOPA,
DISTRICT- BONGAIGAON, PIN- 783388 (ASSAM).

2: UMME ABIHA FATIMA
DAUGHTER OF SULTAN MAHMUD

VILLAGE- BHARAL KUNDI PART-9

P.O.- ASHOK PAPER MILLS

P.S.- JOGIGHOPA

DISTRICT- BONGAIGAON
PIN- 783388 (ASSAM)

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY,
MINISTRY OF DEFENCE, ROOM NO. 234,
SOUTH BLOCK, MINISTRY OF DEFENCE,
NEW DELHI, PIN- 110011.

2:THE SAINIK SCHOOLS SOCIETY
ROOM NO. 101
D-1 WING
SENA BHAWAN

NEW DELHI

PIN- 110011.

3:THE PRINCIPAL
SAINIK SCHOOL
GOALPARA
P.O.- RAJAPARA
DISTRICT- GOALPARA

PIN- 783133.

4:THE VICE PRINCIPAL
SAINIK SCHOOL
GOALPARA
P.O.- RAJAPARA
DISTRICT- GOALPARA

PIN- 783133

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

12-05-2023

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned counsel for the respondents no.2, 3 & 4 and Mr. K. Gogoi, learned CGC for the respondent no.1.

2. The petitioner No. 2 is a student of Class-VII in Sainik School, Goalpara. The petitioner No. 1 is the father of petitioner No. 2. The petitioner No. 2 claims to be a brilliant student with a very good scholastic records and she has excelled in other extracurricular activities in the school as well. An incident involving certain students including the petitioner No. 2 occurred within the campus of Sainik School, Goalpara on 07.07.2022. The incident is described in detailed in

Para-7 and Para-8 of the writ petition.

3. It is submitted by the learned counsel for the petitioners that the petitioner No. 1 being the parent of petitioner No. 2 was summoned to the School to meet the Principal on the very next day. The petitioner No. 2 was forcibly made to write certain statements incriminating herself by the School authorities. Mental pressure was exerted upon the petitioner No. 2 by the School Authorities to write such statements incriminating herself in connection with the said incident which had occurred in the School. When the petitioner No. 1 visited the school on the next day, he was forced by the School authorities to apply for a transfer certificate in order that the girl child namely the petitioner No. 2 may get admission in some other school. The School authorities threatened to rusticate or expel the petitioner No. 2 from the School if the petitioner No. 1 did not apply for the transfer certificate. It is submitted that under such compelling circumstances, the petitioner No. 1 applied for a transfer certificate as he was put under apprehension by the school authorities that if the transfer certificate is not applied for, then the student, namely the petitioner No. 2 will be rusticated or expelled from the School and which will entail difficulty in securing admissions in any other school for the petitioner No. 2. Under such circumstances, the transfer certificate was issued by the School authorities.

4. The School authorities represented by Ms. A. Gayan, learned counsel for the respondents No. 2, 3 & 4, on the other hand urged before this Court that the allegations made by the petitioners that undue pressure was exerted by the School authorities of the petitioner No. 1 is totally unfounded and are incorrect statements. The learned counsel for the respondents No. 2, 3 & 4 submits that while it is true that the incident did take place and there are materials available

in the records of the school to suggest the involvement of the petitioner No. 2 in the said incident and such acts will have to be construed to be acts of gross indiscipline committed by the students concerned including the petitioner No. 2. The learned counsel for the respondents submits that it is at the request of the petitioner No. 1 that the transfer certificate has been issued.

5. Ms. A. Gayan, learned counsel for the respondents submits that the Transfer Certificate was issued at the request of the parents and therefore, the statement that the school authorities has forcefully issued the Transfer Certificate in respect of the petitioner no.2 is totally incorrect. Learned counsel further submits that new session has already commenced from April, 2023 and she is yet to clear her qualifying examination for being promoted to the new class i.e. Class-VIII. Therefore, the prayer for recalling of the Transfer Certificate will have no effect as she cannot be promoted to the next higher class.

6. A co-ordinate bench of this Court by judgment and order dated 08.12.2022 passed in WP(C) No.6695/2022 and other connected writ petitions had dealt with the similar issue and had passed an order holding that there was gross violation of the principles of natural justice in the part of the respondents (school authorities) in proceeding against the petitioners therein by suspending the petitioners from school and by issuing Transfer Certificates. The said actions were interfered with and the Transfer Certificates were directed not to be acted upon. Against the said order an intra Court Appeal was preferred by the School Authoriteis which was disposed of by the judgment and order dated 25.01.2023 passed by the Division Bench of this Court in Writ Appeal No.11/2023. The relevant paragraphs of the judgment and order of the Division Bench read as under:

“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 -10- 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 -11- 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."

7. The Division Bench by the said judgment and order dismissed the appeal and directed the school authorities to allow the students to resume their classes as has been directed by the learned Single Judge, which, however, was made subject to such action as the school authorities may deem it fit by following the principles of natural justice.

8. Ms. A. Gayan during the course of the hearing sought leave of this Court to obtain instructions in the matter from the school authorities. On the basis of such instructions received from the school authorities, Ms. A. Gayan, learned counsel for the respondents No. 2, 3 & 4 submits that this Court may dispose of the writ petition in the similar lines as has been done by the Division Bench of this Court in W.A. No. 11/2023.

9. It is not in dispute that the order passed by the learned Single Judge

passed in WP(C) No.6695/2022 vide order dated 08.12.2022 which was upheld by the Division Bench of this Court vide judgment and order dated 25.01.2023 passed in Writ Appeal No.11/2023 has not been reviewed or further appealed against. In that view of the matter, the authorities are duty bound to comply with the directions of the Single Judge read with the order of the Division Bench of this Court and proceed accordingly in the matter. It is trite to mention here that the incident referred to in this Writ Petition and in connection to which the Transfer certificate has been issued by the school authorities to petitioner no.2 is the same incident relating to which the writ petition i.e. WP(C) No.6695/2022 and other connected writ petitions were filed. As such, the issue being the same, this Court is of the view that the petitioner no.2 is also should be permitted similar relief. Upon hearing the learned counsel for the parties, this Court feels that no useful purpose will be served keeping the writ petition pending and accordingly, this Court proposed to dispose of the Writ Petition.

10. In view of the submissions of the learned counsel representing the School Authorities that the School will abide by the order dated 25.01.2023 passed in W.A. No. 11/2023 and also in view of the peculiar facts and circumstances of the case and also taking into account the fact that it concerns the future of the minor namely the petitioner No. 2, this Court is of the view that the writ petition can be disposed of in the following manner:

(i) As it is submitted by the learned counsel for the respondent-School authorities that no disciplinary proceeding has been initiated against the petitioner No. 2 as on date, it is therefore directed that the petitioner No. 2 shall be allowed to continue with her studies in Class-VII of Sainik School, Goalpara. If the authorities are of the view that any disciplinary proceeding is to be initiated against the petitioner No. 2 in connection with the incident alleged to

have occurred on 07.07.2022 in the School Campus and which in the view of the School authorities amounts to gross indiscipline, the school authorities may initiate such proceeding if permitted under the Rules and procedures prescribed by the School management. The said proceedings, if initiated, shall be completed in a time bound manner and adequate opportunities of being heard as well as opportunities of personal hearing be given to the petitioner No. 2 before any decision is arrived at by the school authorities in such contemplated disciplinary proceedings. Any such order that may be passed in such disciplinary proceeding may be communicated to both the petitioners.

(ii) Till the conclusion of such contemplated disciplinary proceedings and passing of any such orders as may be contemplated by the school authorities, the transfer certificate dated 03.12.2022 issued to the petitioner No. 2 shall not be enforced. Petitioner No. 2 will be permitted to regularly attend her classes in Class-VII and she shall also not be debarred from appearing in any promotional examination as may be scheduled till such time any such disciplinary proceeding as contemplated if initiated, is concluded and orders thereon are passed by the School Management.

11. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant