

GAHC010157472022



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

Case No. : WA/292/2022

THE DEPUTY COMMISSIONER, KENDRIYA VIDYALAYA SANGATHAN AND
ANR.
GUWAHATI REGION, KHANAPARA, GUWAHATI

2: THE PRINCIPAL
KENDRIYA VIDYALAYA TEZPUR
NO. IV
CENTRAL UNIVERSITY
TEZPUR
PO NAPAM
PS TEZPUR
DIST SONITPUR
ASSAM

VERSUS

ABUL KACHEM AND ANR. F
S/O MAHIRUDDIN, RESIDENT OF VILLAGE BONGURI PO NAPAM, PS
TEZPUR, DIST SONITPUR, ASSAM.

2:THE UNION OF INDIA

THROUGH THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HUMAN RESOURCES DEVELOPMENT
DEPARTMENT OF SCHOOL EDUCATION AND LITERACY
124-C SHASTRI BHAWAN
NEW DELHI 11000

Advocate for the Petitioner : MR. S C BISWAS

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

BEFORE

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

ORDER

19.01.2023

[N. Kostiswar Singh, CJ (Acting)]

Heard Mr. S.C. Biswas, learned counsel for the appellants. Also heard Mr. R. Majumdar, learned counsel for the respondent no.1 and Ms. B. Sarma, learned CGC for the respondent no.2.

2. The present appeal has been preferred against the impugned order dated 22.06.2022 passed by the learned Single Judge of this Court in WP(C) No.3145/2022, by which the learned Single Judge had disposed of the writ petition directing the present appellants to admit the son of the respondent no.1 to Class-I in Kendriya Vidyalaya-IV (Central University, Tezpur) and permit the petitioner's son to join the class and pursue his studies.

3. The impugned order dated 22.06.2022 passed by the learned Single Judge of this Court in WP(C) No.3145/2022 reads as follows:

“Heard Mr. R. Majumdar, learned counsel representing the petitioner as well as Mr. S.C. Biswas, learned standing counsel, Kendriya Vidyalaya Sangathan (KVS), appearing on behalf of the respondent Nos. 1 and 2.

Pursuant to an advertisement for admission in Class-I for the Session 2022-23 at Kendriya Vidyalaya Tezpur No. IV (Tezpur University), the petitioner, who is a retired employee of the Government employee of the Government of Assam, applied online for admission of his minor son, namely, Siddique Shajan Ahmed, to Class-I. The said application was accepted. In the application form, the petitioner entered his status as ex-serviceman. Thereafter, the Kendriya Vidyalaya-IV (Central University Tezpur), published the first provisional list for admission to Class-I (2022-23), wherein the name of the petitioner's son was placed at Rank-5 under Category-4. Admission to Kendriya Vidyalaya No. IV (Central University Tezpur) was held on 29-04-2022. However, the name of the petitioner's son was not called for admission to Class-I. On query, the petitioner was informed that the son of the petitioner has been wrongly placed at Category-4 instead of Category-6 and the said Kendriya Vidyalaya-IV (Central University Tezpur) refused admission of the petitioner's son to Class-I. On perusal of the records, it is seen that it is the Kendriya Vidyalaya Sangathan, who makes the category of candidates after scrutiny of applications being submitted for admission to Class-I.

It is noticed that in the admission form with regard to the petitioner's son, the petitioner has clearly mentioned that he is an ex-serviceman and, therefore, it was for the respondent Nos. 2, 3 and 4 to have categorized the son of the petitioner under Category-6. However, the answering respondents had made a mistake by putting the name of the petitioner's son in Category-4 instead of Category-6.

On instructions, Mr. S.C. Biswas, learned standing counsel for the Kendriya Vidyalaya Sangathan submits that academic session for Class-I has already been started and the answering respondents have advertised for filling up of one seat under SC Category, five seats under ST Category and Nine seats under OBC (Non-Creamy Layer) Category. He, however, submits that only one seat has been filled up under OBC (Non-Creamy Layer) Category insasmuch as none has come forward seeking for admission in terms of the advertisement made for the aforesaid seats.

On consideration of the materials available on record, this Court is convinced that the petitioner's son has been deprived of admission to Class-I due to the fault of the answering respondents/Selection Committee of the Kendriya Vidyalaya Sangathan. Accordingly, this writ petition is disposed of directing the respondent Nos. 3 and 4 to admit the petitioner's son to Class-I in the Kendriya Vidyalaya-IV (Central University Tezpur) forthwith and permit the petitioner's son to join the class and pursue his studies. In terms of the aforesaid direction, this writ petition is disposed of.

4. Considering the fact that there are still seats which have remained unfilled, as also not denied by the learned counsel for the appellants, we do not wish to exercise our discretionary appellate power to interfere in this appeal, particularly, keeping in mind the Right of Children to Free and Compulsory Education Act, 2009, which guarantees right to education to a child between 6 -14 years.

5. For the reason discussed above, the appeal stands dismissed.

6. We also make it clear that since this appeal has been dismissed at the admission stage without deciding on the legal issues raised, these are kept open for consideration in appropriate case.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant