

Court No. - 10

Case :- WRIT - C No. - 26945 of 2023

Petitioner :- Nishant Sharma

Respondent :- Union Of India And 5 Others

Counsel for Petitioner :- Shyam Shankar Mishra

Counsel for Respondent :- A.S.G.I.,C.S.C.,Hridai Narain
Pandey,Swarn Lata Suman

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Shyam Shankar Mishra, learned counsel for the petitioner, Sri Swarn Lata Suman, learned counsel for Respondent No.1 and Sri H.N. Pandey, learned counsel for Respondent No.2.

2. This Court, doubting the maintainability of the writ petition, passed the following order on 22.8.2023:

"1. Heard Shri Shyam Shankar Mishra, learned counsel for the petitioner, Ms. Swarn Lata Suman, learned counsel for respondent No. 1 and Shri Hriday Narain Pandey, learned counsel for respondent Nos. 2 and 3.

2. The reliefs claimed in the writ petition are basically meant for respondent Nos. 5 and 6.

3. Considering the judgment of Full Bench of this Court in the case of M.K. Gandhi vs Director of Education (Secondary) U.P. reported in 2006 (62) ALR 27 as discussed by the Apex Court in the case of Committee of Management, Delhi Public School and another vs M.K. Gandhi and others, reported in 2015 (17) SCC 353 and the latest decision of the Supreme Court in the case of St. Mary's Education Society and another vs Rajendra Prasad Bhargava and others, reported in 2023 (4) SCC 498, prima facie the writ petition appears to be not maintainable.

4. Learned counsel for the petitioner prays for time to study the aforesaid aspects.

5. Put up this case as fresh on 12.09.2023."

3.This petition has been filed for the following relief:

"Issue a writ, order or direction, in the nature of mandamus commanding the respondents specially Respondent No.5 and 6 to make admission of the petitioner in Class XII as Ex-student, during the pendency of the writ petition."

4. Learned counsel for the petitioner has explained before this Court the ratio of the decision of the case of St. Mary's Education Society (supra) as contained in paragraph Nos. 59, 69, 70 and 75 of the said judgment and submits that private Institution imparting education would fall within the meaning and ambit of instrumentality of the State and, therefore, the writ petition is maintainable.

5. Further reliance has been placed upon paragraph Nos. 268.3 of the judgment of Apex Court in the case of Kaushal Kishor vs State of Uttar Pradesh and others, reported in (2023) 4 SCC 1.

6. In view of the ratio laid down by the Apex Court in the aforesaid authorities, the writ petition is held to be maintainable.

7. Sri H.N. Pandey, learned counsel for Respondent No.2 submits that the relief as claimed by the petitioner has no concern with the Respondent No.2 and at the first instance the grievance, if any, can be entertained by the Institution.

8. Learned counsel for the petitioner submits that he has already submitted an application before the Principal of the Institution.

9. The Court has certain doubts with regard to submission of the application by the petitioner to the Principal. However, in the interest of justice, the writ petition is **disposed of** in the following terms:

(i) The petitioner is directed to approach the Principal along with a fresh application and certified copy of this order within three weeks from today.

(ii) The Principal of the Institution shall examine the grievance of the petitioner in accordance with the rules, regulations and guidelines etc. and shall pass appropriate order **on or before 5.1.2024**.

10. It is made clear that this Court has not examined the merits of the case. It is for the Principal to take appropriate decision as per his own wisdom and in accordance with law.

Order Date :- 23.11.2023

Kumar Manish.