

Court No. - 10

Case :- CIVIL MISC REVIEW APPLICATION No. - 474 of 2023

Applicant :- Gayatri

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Nipun Singh, Rishi Upadhyay

Counsel for Opposite Party :- C.S.C.

Hon'ble Kshitij Shailendra, J.

1. Heard Sri Nipun Singh learned counsel for the petitioner-applicant and learned Standing Counsel for the State.

2. This petition was dismissed as withdrawn by order dated 6.9.2023, mainly on the ground that it was found to be not maintainable in view of the following decisions referred in paragraph No.2 of the said order :

(i) M.K. Gandhi Vs. Director of Education (Secondary), U.P. reported in 2006 (62) ALR 27

(ii) Committee of Management, Delhi Public School and another Vs. M.K. Gandhi and others reported in 2015 (17) SCC 353

(iii) St. Mary's Education Society and another Vs. Rajendra Prasad Bhargava and others reported in 2023 (4) SCC 498.

3. Learned counsel for the applicant submits that the ratio laid down in the aforesaid authorities, particularly in the case of St. Mary Education Society (supra) has been misread by this Court and infact the counsel could not explain the said ratio in clear terms, at the time of hearing of the case.

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 paragraphs No. 59, 69, 75 of the said judgment and submits that private institutions 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 No. 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** and also the Full Bench judgment of this Court in the case of **Roychand Abrahman Vs. State of U.P. (2019) (3) ADJ 391** and he submits that an educational institution owns public duty and is under obligation to discharge that duty and under identical circumstances, writ petitions have been held to be maintainable.

6. He further submits that in fact non maintainability of the writ petition has been laid down in the aforesaid decisions in relation to service matters only but not in student matters, rather in student matters writ petition against private educational institutions has been specially held to be maintainable.

7. Considering the fact that merits of the case were not examined and certain authorities had not been appreciated by this Court in depth, the grievance raised falls within the meaning, import and category of 'error apparent on the face of the record'.

8. For all the aforesaid reasons and in the interest of justice, the application for review is allowed.

9. The order dated 6.9.2023 dismissing **the writ petition is reviewed and the writ petition stands revived.**

Order Date :- 24.11.2023

Kumar Manish.