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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 2873/2015 & CM No.5151/2015 (for directions)
AKSHITA KOHLI Petitioner
Through: Counsel for the petitioner
(appearance not given)
Versus

DIRECTORATE OF EDUCATION & ORS. Respondents
Through: Ms. Nikhita Khetrapal, Adv. for
R-1&2.
Col. S.S. Bhandari (Retd.),
Honorary Manager of R-3.
Mr. A.K. Singh, Adv. for R-4.
Mr. Amit Bansal, Adv. for R-5.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **02.07.2015**

1. The petition (filed on 19th March, 2015) seeks a mandamus directing the respondent No.3 Guru Nanak Public School (GNPS), Punjabi Bagh, New Delhi and respondent No.5 Central Board of Secondary Education (CBSE) (wrongly impleaded as Central Board of Secondary School) to permit the petitioner to take the examination for Class XII for the academic session 2014-15 (and which examination commenced from 2nd March, 2015) as a regular student and to also allow her to appear as Eligible for Improvement of Performance (EOIP) candidate for examination in subjects already held. Further

relief of prohibiting the respondent No.3 GNPS from giving effect to their order detaining the petitioner in Class XI on the ground of shortage of attendance and absence in examination, is also claimed.

2. The writ petition is dated 18th March, 2015 and came up before this Court first on 23rd March, 2015. The counsel for the petitioner informs that by the time the writ petition was filed, the examination conducted by the respondent No.5 CBSE in two of the subjects were over.

3. Though notice of the petition was issued but no interim relief was granted.

4. A counter affidavit has been filed by the respondents No.1&2 Directorate of Education (DoE). No counter affidavit has been filed by the respondent No.4 Delhi Commission for Protection of Child Rights (DCPCR) or the respondent No.5 CBSE. Col. S.S. Bhandari (Retd.), Honorary Manager of GNPS, Punjabi Bagh, Delhi appears in person and has handed over a reply which is taken on record.

5. The counsel for the petitioner and the other appearing counsels and Col. S.S. Bhandari (Retd.) have been heard.

6. The counsel for the petitioner has argued, i) that the petitioner

had taken the Class X examination from S.D. Public School in the year 2012; ii) the mother of the petitioner was and is still a teacher in the said school; iii) owing to certain differences between the mother of the petitioner and the management of the said school, the said school wrongly withheld the result of the petitioner leading the petitioner to pursue the matter at different levels and whereafter her Class X result was ultimately declared making her eligible for admission to Class XI; iv) however in the process, the petitioner lost one year; v) that owing to the said conduct of the S.D. Public School, the petitioner was no longer interested in pursuing Class XI therein and took admission in the respondent No.3 GNPS in Class XI in the year 2013; vi) that the respondent No.3 GNPS also turned against the petitioner and marked the petitioner as absent in examination in several subjects taken by her in the first term examination of Class XI even though the petitioner had appeared in the said examination. Attention in this regard is invited to the first term report and the final report of the petitioner of Class XI and it is argued that there are inconsistencies between the final report and the first term report and which according to petitioner establish the falsity of the first term

report.

7. As per the final report of the petitioner of Class XI, the petitioner secured only 18.3% marks and was detained in Class XI. Aggrieved therefrom, this petition has been filed.

8. Though the petitioner was so detained at the end of the academic session 2014-15 but this petition was filed after about a year. The counsel for the petitioner states that the petitioner was approaching various authorities in the interregnum. It is also stated that the father of the petitioner passed away in the interregnum and the mother of the petitioner was ill.

9. I am unable to find any such inconsistencies in the first term report and the final report (supra) as to be able to conclude, it having been established beyond any doubt that the respondent No.3 school is anti petitioner and has intentionally wrongfully marked the petitioner as absent in the examination.

10. The counsel for the petitioner of course during the hearing has handed over purported answer sheets of final examination of Class XI in two subject and contends that the same also falsify the final report of the petitioner. On enquiry as to how the said answer sheets, which

ordinarily ought to be in possession of the school, are in possession of the petitioner, it is informed that the same were given to the petitioner for review and the petitioner has retained the same. However, the said answer sheets also have been produced only today and there is no plea with respect thereto in the petition.

11. The counsel for the petitioner of course states that on opportunity being given, he will file the same in this Court along with an affidavit.

12. The said grievances of the petitioner against the respondent No.3 School were examined by the respondent No.1 DoE also which conducted an inquiry and report whereof is also against the petitioner. No merit was found in any of the allegations made by the petitioner against the respondent No.3 GNPS.

13. The respondent No.3 School in its counter affidavit of course denied the said allegations.

14. The counsel for respondent No.4 DCPCR states that though the petitioner had approached DCPCR but had crossed the age of 18 years and DCPCR thus did not have jurisdiction over the matter.

15. The counsel for the respondent No.5 CBSE states that unless the

petitioner has passed Class XI, the question of her being entitled to appear in Class XII examination conducted by the CBSE does not arise.

16. I refrain from recording or dealing with certain other allegations made by the petitioner inasmuch as in my opinion, the petitioner cannot be allowed the relief sought without it being conclusively established that she indeed had appeared in the Class XI examination and had passed the same and that the respondent No.3 School is wrongly disputing the same and which conclusion cannot be reached in writ jurisdiction. The said conclusion can be reached only by examination and cross-examination of witnesses and proof of documents and which is a domain of a civil suit and not of writ jurisdiction. The counsel for the petitioner of course contends that the documents produced by him *prima facie* show a case pleaded to be made out. However, in my opinion a direction condemning the school as having indulged in falsehood and having victimised the petitioner and on the basis thereof declaring the petitioner as passed cannot be issued on a *prima facie* view of the matter but only on conclusive factual inquiry. It cannot be lost sight of that any such finding by the

Court, of a school having victimised its student, can be extremely detrimental to a school and can sound a death knell for the school, its Principal and teachers.

17. Not finding any plea in the petition, of the reason for the respondent No.3 School so targeting the petitioner, question in this respect was put to the counsel for the petitioner. All that he could say was that the Principal of S.D. Public School aforesaid with which the petitioner earlier had problems has moved to another Guru Nanak Public School. I find it rather intriguing as to why a school would pick a particular child and spoil his / her career.

18. Division Benches of this Court of which the undersigned was a member, in *Nishant Gupta Vs. University of Delhi* MANU/DE/5881/2012 and in *Heena Bahal Vs. University of Delhi* 197 (2013) DLT 469 have held that there is no reason to doubt the records of attendance maintained by all educational institution and a challenge to the record of attendance maintained by educational institution cannot be subject matter of judicial review. It was further held that such records have to be believed and the educational institution cannot be put to proof thereof and if so directed, will forever be

involved in same only rather than in academic pursuits. The said principle applies to present situation also.

19. The counsel for the petitioner at this stage states that the school should be directed to produce the answer scripts of the petitioner.

20. No such opportunity can be granted at this stage and in view of the above, will not serve any purpose.

21. There is no merit in the petition which is dismissed; however with the clarification that the same shall not preclude the petitioner from agitating the same issue by way of a civil suit.

I refrain from imposing costs.

RAJIV SAHAI ENDLAW, J.

JULY 02, 2015

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