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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 26.07.2016

+ W.P.(C) 5652/2016 & CM No.23430/2016 (stay)

MASTER AAYAN DEV (MINOR) THR FATHER KAPIL DEV.

..... Petitioner

versus

BLUEBELLS SCHOOL INTERNATIONAL AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Anamika Ghai Niyazi with Mr. Manish Kumar and
Mr. Pulkit Chaudhary, Advocates.
For the Respondents : Mr Rajinder Dhawan and Mr. B.S. Rana, Advocates for
respondent No.1.
Dr. Rajeshwar Rao with Mr. Charanjeet Singh, Advocate
for respondent No.2.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The present writ petition has been filed seeking quashing of letter dated 12.05.2016 whereby the admission of the petitioner has been cancelled and name of the petitioner has been struck off from the rolls of the school on the ground that income certificate furnished at the time of seeking admission was fake and forged.

2. Learned counsel for the petitioner contends that the income of the parents of the petitioner is less than Rs. One lakh per annum which is below

the prescribed limit for the Economically Weaker Section (EWS) category. Fresh certificate dated 06.07.2016 has been filed along with the petition. The respondent no. 2 was directed to verify the correctness of the certificate. Learned counsel for respondent no. 2 has stated in its counter affidavit that the income certificate has been issued to the petitioner from the office of SDM, South-East District, Kalkaji, New Delhi. A copy of verification proof of income certificate has been annexed with the counter affidavit.

3. Learned counsel for the petitioner relies on various judgments passed by this Court in similar circumstances whereby the school authorities were directed not to cancel the admission of the minor child on the ground of misdeeds of the father of the child. Learned counsel for the respondent school states that the seats in EWS category are still available. One such Judgment relied upon is dated 22.03.2016 in W.P.(C) 2219/2016, titled as **‘Master Jai Raikwar & Ors. Vs. The Heritage School & Ors.’**.

4. Learned counsel appearing for respondent No.1 - School submits that the income certificate furnished by the father of the petitioner is not reliable as it shows an income of Rs.96,000/- per annum, which is way below the minimum wage prescribed for an unskilled worker. It is contended that the petitioner’s father claims to be working as a field Collector with a finance company and must be earning at least the minimum wage. Learned counsel contends that only those individuals, who are self-employed, would be eligible in this category as no person employed can earn less than the minimum wages.

5. The said contention of the learned counsel for the respondent No. 1 school cannot be accepted. Even if a person is in employment, it does not necessarily imply that the employee is in fact receiving the minimum wage. Further, if this contention of the learned counsel were to be accepted, then children of persons who are employed would not be entitled to seek admission under the EWS category. If the contention were to be accepted, then even though their actual income may be below the specified limit, they would be deemed to be receiving at least the minimum wage.

6. Learned counsel for respondent No.1 further contends that the address mentioned by the petitioner in the present petition shows that the distance of the residence of the petitioner from the School is more than one kilometre. He submits that at the time of seeking admission, the petitioner had provided a different address based on which the admission was granted.

7. Learned counsel for the petitioner submits that the petitioner at that point of time was residing at the address mentioned in the application but the father of the petitioner had to subsequently change the address because of financial constraints and have now shifted to the house of the grandfather of the petitioner. He contends that it is always permissible for the parents of the students to change their residence after the admission has been taken. He further contends that the ground for rejection was not that the address furnished was incorrect. Learned counsel for the respondent No.1 contends that the respondent No.1 was not aware of the said address till the notice cancelling the admission was received back undelivered.

8. The contention of the counsel for the respondent cannot be sustained. A student can always change residence midstream. If it is permissible for a student who is already admitted to change his address midstream, then to deny the petitioner to also do so would be too harsh and discriminatory. Furthermore, no prohibition has been shown in law that a student cannot shift to a residence that is beyond one kilometre.

9. As the issue involves the education of a minor and the minor falls in the eligible category and an income certificate certifying the said fact has been furnished and no fault can be attributed to the minor, in the facts of the case, a lenient view is required to be taken. In similar circumstances, relief has been granted by this court in the case of Master Jai Raikwar & Ors.(Supra) and several other writ petitions.

10. It is thus directed that the admission of the petitioner be restored and not cancelled, subject to deposit of a penalty of Rs. 5,000/- by the father of the petitioner with the Lok Nayak Jai Prakash Hospital, Delhi within two weeks. The hospital shall utilize the amount for providing treatment to the persons falling under the EWS category.

11. The petitioner shall also be entitled to all the benefits/entitlements under the said category. The writ petition is accordingly disposed of in the above terms.

12. However, it is clarified that no opinion has been expressed with regard to the criminal proceedings. It is further clarified that if the new income certificate furnished by the petitioner is found to be fictitious or not correct

on any account, it shall be open to the respondents to cancel the admission of the petitioner in accordance with law and no special equity shall be claimed by the petitioner by virtue of the present order.

Dasti under the signatures of the Court Master.

SANJEEV SACHDEVA, J

JULY 26, 2016/st

