

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.1477 of 2017

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The contents of the rejoinder filed by the appellant, wherein personal allegations are made against the Learned Senior Counsel, appearing on behalf of the 2nd respondent-school (hereinafter called "HPS"), are disturbing, and we understand the reluctance of the Learned Senior Counsel to continue to appear in the matter. We see no reason, however, to elaborate further, and are of the view that a quietus should be given to this sordid episode, in view of the submission of Sri Komireddy Ramulu, learned counsel for the appellant, that he would withdraw these allegations, and they be struck off from the rejoinder filed by the appellant. Consequently the averments at para-10 of the rejoinder filed on behalf of the appellant, in so far as personal allegations are made therein against the Learned Senior Counsel appearing on behalf of HPS, are struck off, and shall not form part of the record.

Heard Sri Komireddy Ramulu, learned counsel for the appellant, and Sri L. Ravi Chander, learned Senior Counsel appearing on behalf of HPS. This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 26727 of 2017 dated 21.8.2017. The relief sought for in the Writ Petition was to direct the respondents to demote the petitioner from 2nd class to 1st class; and to declare their failure to do so, despite a representation having been made in this regard vide letter dated 17.7.2017, as arbitrary and illegal.

The order under appeal refers to the learned Single Judge having perused the record produced before him on behalf of HPS, and to have noted that the petitioner had sought admission into the second standard; as she was found eligible, she was admitted into the second standard; and there was no possibility for the petitioner to be admitted into the first standard in view of age restriction, and the strength of students in the first standard. The learned Single Judge observed that, in the light of the submissions made on behalf of HPS, no relief could be granted to the appellant-writ petitioner.

Sri Komireddy Ramulu, Learned Counsel for the appellant-writ petitioner, would draw our attention to the letter dated 09.05.2017 addressed to the Deputy-Chief Minister-cum-Minister for Education, Telangana State (who is also said to be the Chairman of the Board of Management of HPS) by the Union Minister for State for Women & Child Development, Government of India, New Delhi, to contend that the petitioner had sought admission only into the first class; and HPS had, on its own accord, admitted the petitioner into the second class.

Sri L. Ravichander, Learned Senior Counsel appearing on behalf of HPS, would submit that the very fact that the petitioner did not participate in the process of selection for admission into Class – I, along with several hundreds of other children, itself shows that she was granted admission only for Class II; the application form, submitted on behalf of the petitioner, shows that she had only sought admission into Class II, and not in Class I; demoting her now to Class I would result in the petitioner being admitted into Class – I through the back door, without competing with other children; several children, who underwent a process of selection for admission into Class I were unsuccessful; demoting the petitioner, from Class-II to Class-I, would also result in students, in excess of the sanctioned strength, being admitted into

Class - I; if undue indulgence is shown to the petitioner, HPS would be flooded with similar requests in future; and parents of children, who failed to secure admission into the first class, would then take this route of seeking admission into the second class, and thereafter seek demotion of their child to Class - I.

It is not in dispute that the petitioner, a six year old child who was admitted to the 2nd standard in HPS, was born on 28.4.2011; and the maximum age, for admission into Class-I of HPS, is six years as on 1.6.2011. The petitioner was over aged, for admission into Class-I, by only 33 days. An elaborate process is prescribed for admission into Class-I of HPS, a school perceived by many (including the parents of the petitioner) as one of the best in the City of Hyderabad. The petitioner, as is evident from the application submitted on her behalf seeking admission in HPS, studied in Nursery during 2014-15; in Pre-Primary-I during 2015-16; and in Pre-Primary-II during the year 2016-17. It is also not in dispute that the petitioner did not study Class-I in any school, despite which she was admitted into Class-II by the management of HPS.

After she attended Class - II in HPS for a couple of months, realization appears to have dawned on her parents that the petitioner was unable to cope up with the subjects being taught in Class-II, evidently because she had not studied Class-I in any school. The parents submitted a representation dated 17.07.2017 requesting HPS to demote the petitioner to Class-I; and, as such a request was rejected, the jurisdiction of this Court, under Article 226 of the Constitution of India, was invoked. On the Writ Petition being dismissed by the order under appeal, our jurisdiction under Clause 15 of the Letters Patent has been invoked.

We do find considerable force in the submission of Sri L. Ravi Chander, learned Senior Counsel appearing on behalf of HPS, that the petitioner did not undergo the process of selection for admission into Class-I, and demoting her to Class-I would not only result in students, in excess of the sanctioned strength, being admitted into the said class, but would also result in her admission through the back door without her having gone through the selection process for admission into Class-I of HPS. We cannot, however, lose sight of the fact that HPS has admitted the petitioner straight away into Class-II, even though she never studied Class-I in any school.

Sri L. Ravi Chander, learned Senior Counsel appearing on behalf of HPS, would contend that the best judge, to assess the child's ability to study in a higher class, is the school faculty; and the very fact that the petitioner was admitted into Class-II is proof that HPS had found her suitable for admission into the second standard, even though she did not study first standard in any school. No material has been placed before us to show the basis on which HPS came to the conclusion that the petitioner would be able to cope up with the pressure of studying Class-II without having studied Class-I in any school. It does appear that the request made by the Union Minister of State to the Deputy Chief Minister of Telangana State, vide letter dated 09.05.2017, persuaded HPS to admit the petitioner into Class-II, evidently because they could not have admitted her into Class-I without making her undergo the rigor of selection, competing with all other children.

While the parents and the guardian of the petitioner appear to have spared no efforts to secure her admission into HPS, and to have ignored the mental pressures a small child aged just six years would undergo on being forced to study Class-II, even without studying Class-I

in any school, HPS cannot absolve itself of blame either as it has admitted the petitioner straightaway into Class-II, despite her not having studied Class-I in any school. The claim of HPS to be the best judge, to assess the talent of the petitioner, is merely an attempt to cover up their lapse in admitting her straightaway in Class-II.

A six year old child is caught in the middle of this unseemly fight between the parents and guardian of the petitioner on the one hand, and HPS on the other. The anguish caused to a small child, as a result of her inability to cope up with the pressure of studying second class (for which she is ill equipped as she did not study Class-I in any school), must be addressed. The interest of the child is paramount and, as she is said to be unable to cope up with the high standards of the subjects taught in Class-II and lags far behind other students in the said Class, we cannot turn a blind eye, and permit HPS to make her undergo the ordeal of studying subjects she is not able to comprehend, and make her life at school unduly burdensome.

While the consequence of her demotion to Class-I could be construed as permitting the petitioner to secure admission into Class-I through the back-door, without undergoing the process of selection which all children, who seek admission into Class-I at HPS, are required to go through, HPS is equally responsible for the sorry situation it finds itself in, for it chose to admit the petitioner to Class-II even though she did not study Class-I in any school. As neither party can absolve themselves of blame, and as the complaint of the petitioner's parents that their child is unable to cope up with the subjects taught in Class-II of HPS finds support from the fact that the petitioner did not study Class-I in any school, we are satisfied that the request for the petitioner to be demoted to Class-I should be acceded to. While we are conscious of our lack of expertise in these matters, and we

cannot state with certainty that the petitioner is not capable of comprehending the subjects taught in Class-II of HPS, we would rather err on the side of caution in such matters, as a small child's inability to cope up with the stress and strain of understanding the subjects taught in Class-II of HPS, as she did not study first class in any school, may scar her for life, besides causing permanent and irreparable damage to her mental well-being.

While we would, ordinarily, have directed HPS to consider the appellant-writ petitioner's request for being demoted to Class-I, a positive direction is being issued in the present case, since HPS has already rejected such a request. We, therefore, direct HPS to demote the petitioner, and permit her to attend Class – I forthwith. To avoid the possibility of back door entry into Class-I of its school in future, HPS would be well advised to re-visit its admission procedure, and re-examine the issue of admitting students, who have not studied Class-I in any school, straightaway into Class-II in HPS.

The order under appeal is set aside. The Writ Appeal is allowed. Miscellaneous Petitions pending, if any, shall also stand closed. However, in the circumstances, without costs.

(RAMESH RANGANATHAN, ACJ)

(J. UMA DEVI, J)

25th October, 2017

Note:
Furnish c.c. by 30.10.2017.
b/o
pnb

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Ms. JUSTICE J. UMA DEVI**



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Date: 25.10.2017

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