

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20535 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, came to be filed seeking to declare the action of the 4th respondent in not promoting the son of the petitioner to V class and detaining him in IV Class, as illegal and arbitrary.

Heard the learned counsel for the petitioner and the learned Government Pleader for Education and Smt.A.Chaya Devi for R.3.

The facts in issue are as under:

The petitioner's son namely JVS Bhadrudu was studying IV class in The Akshara School-4th respondent and his annual exams were conducted in the month of March, 2017. While so, in the month of April, 2017, the petitioner was informed by the school authorities that the son of the petitioner was detained in IV class and was not promoted to V standard in view of his inadequate academic performance. Aggrieved by the said action of the school authorities, the present writ petition came to be filed.

Learned counsel for the petitioner would contend that in view of Section 16 of The Right of Children to Free and Compulsory Education Act, 2009, the son of the petitioner cannot be detained in IV class. In support of his contention, he also relies upon the judgment rendered by Kerala High Court in ***Kitty Sanil v. State of Kerala***¹.

¹ 2015 Law Suit (Ker) 801

Learned counsel for respondents opposed the same.

Section 16 of the Act reads as follows:

16. Prohibition of holding back and expulsion:-- No child admitted in a school shall be held back in any class or expelled from school till the completion of elementary education.

A reading of the said Section makes it clear that no child admitted in a school can be detained in any class till completion of his/her elementary education.

An identical situation came up for consideration before Kerala High Court in ***Kitty Sanil case*** (*referred supra*), wherein it was held as under:

“ ... It is apparent from a conjoint reading of the statutory provisions that they contemplate the admission of a student to a class corresponding to his age, between the ages of 6 and 14, and an unhindered progression of the student through various standards till he reaches the age (completes standard 8) that marks the culmination of his elementary education. The academic performance of the student in any year can be of no significance when the statutory mandate is only that the student must receive compulsory education during the years between class and class 8. The fundamental right of the child to elementary education, which is traceable to Article 21A read with the provisions of the RTE Act and Rules, cannot be made conditional on the child attaining minimum standards of academic performance as prescribed by the School or the affiliating Board. As a matter of fact, the provisions of Sections 3 and 4 of the RTE Act would indicate that a stand taken by a School that a student has failed to meet the minimum educational standards prescribed for a particular class can only be viewed as an admission by the School, of its failure in the matter of imparting sufficient training to the said student and thereby having inadequately discharged its obligation under the act.

Other than alerting the School concerned to the inadequacies of its training programme, the “unsatisfactory” academic performance of a student cannot act as a fetter to the pursuit by a student of his elementary education in the said School. Thus, I am of the view that, it is not open to the 3rd respondent School to detain the petitioner’s son in standard VI on the ground of inadequate academic performance.”

In view of the ratio laid down in ***Kitty Sanil case*** (referred *supra*) and Section 16 of the Act, the action of R-4 in detaining the son of the petitioner needs to be found fault with.

Having regard to the above, the Writ Petition is allowed directing the fourth respondent to promote the son of the petitioner to V class, in the said school, for the academic year 2017-2018.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

04.07.2017
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C. PRAVEEN KUMAR, J