

**CWP-11177-2014 (O&M)
CWP-17816-2010 (O&M)
CWP-12842-2011 (O&M) and
CWP-18214-2011 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Decided on : 13.9.2017

1. CWP-11177-2014 (O&M)

SAHIL(MINOR) THROUGH HIS FATHER RAJESH KUMAR

....PETITIONER

VS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

2. CWP-17816-2010 (O&M)

AMIT KUMAR SANGWAN

....PETITIONER

VS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

3. CWP-12842-2011 (O&M)

SACHIN MALIK

....PETITIONER

VS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

4. CWP-18214-2011 (O&M)

SAURABH (MINOR) S/O CHAND RAM AND ANOTHER

....PETITIONERS

VS

STATE OF HARYANA AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr. Kamal Mor, Advocate
for the petitioner(s) in CWP-12842-2011 and CWP-18214-2011

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Mr. Praveen Sharma, Advocate
for the petitioner in CWP-11177-2014.

Mr. Vinod Bhardwaj, Advocate
for the petitioner in CWP-17816-2010.

Mr. Anil Mehta, DAG, Haryana.

Mr. Harsh Aggarwal, Advocate
for the respondent-CBSE in CWP-17816-2010 and
in CWP-12842-2011.

AJAY TEWARI, J.(Oral)

By these petitions the petitioners are primarily challenging the demand of refund of the subsidy amount. In CWP 17816 of 2010 there is another point which we will take up later but the main issue would be taken up in the first instance.

Brief facts of the cases are that all the petitioners obtained admission in Motilal Nehru School of Sports, Rai which is a institution run by the Government of Haryana under the Sports Department. It is stated that the school was set up to promote excellence in sports and is governed by a Committee under the chairmanship of the Principal Secretary to the Chief Minister, Haryana and 'Special Board' whose Chairman is His Excellency, the Governor of Haryana. It has further been brought on the record that the students admitted in the school are divided into 4 categories on the basis of the income of their guardian. At the relevant time, those students whose guardians were not domicile of Haryana or were detainees and earned Rs. 20,000/- or more per month were considered to be full fee paying students and were charged annual fee of Rs. 52,000/-, Rs.

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54,000/- and Rs. 55,000/- as per their class. Below them was category which consisted of students whose guardians earned between Rs. 14,000/- to Rs.1,9999/- per month. They were given a different concession depending on the class they were in. Still below there was a category of students whose guardians earned between Rs. 8000/- to Rs. 13999/- per month who were charged even lesser fee and the last category was of those students whose guardians earned less than Rs. 8,000/- per month and they were given the largest concession.

In the meeting held on 11.2.2003 it was noticed that nearly 50% students left the school after class 10th which resulted in situations where it was difficult even to form team in senior group of certain games and it was decided that to check this henceforth, the parents of admission seekers be asked to execute a bond to the effect that they would refund the entire subsidy availed if they withdraw their ward after class 10th. It is not disputed that the guardians of the petitioners executed such bonds. It is also not disputed that it was only when the petitioners were being sought to be withdrawn from the school after class 10th that the respondents invoked the bond. The grouse of the petitioners was that their original certificates were being detained by the school authorities and it was communicated to them that they would not return those original documents till they deposit the subsidy amount and they were not issuing the School Leaving Certificates.

The first argument of the learned counsel for the petitioners is that this action of the respondents in refusing the issue of 'School Leaving Certificate' and to retain the original certificates of the petitioners till such time the subsidy

amount was deposited, was clearly illegal.

Learned DAG has sought to defend this action on the ground that the guardians of the petitioners had executed bond to refund the amount.

In my opinion, this argument of the DAG is misplaced. Nothing can authorise the respondents to retain the original certificates of the petitioners or to deny them the School Leaving Certificate. By executing a bond for repayment the guardians of the petitioners did not agree to create a lien or a charge on the original documents or the School Leaving Certificate. If a person executes a bond for repayment it only means that he accepts to repay the amount but it is not like a mortgage deed where he permits the other party to keep his documents or any other property as a surety.

I have been informed that during the time when these petitions were pending in motion hearing, under interim order of this Court the School Leaving Certificates/original documents were ordered to be released and have been so released. I hold that this retention of documents was illegal and not permissible.

Counsel for the petitioners have further argued that the respondents could not seek refund of subsidy availed.

Learned DAG has argued that the reason why the decision was taken shows that it is for a good and sufficient cause and moreover, the guardians of the petitioners had specifically agreed to this and if they had any reservations about this they should not have got admitted the petitioners to the school. I find merit in this argument. It cannot be lost sight of the fact that the school is a special school meant to foster excellence in sports and as a matter of

fact the criteria for selection is also based on the performance in a particular sport.

In the circumstances of the case, the decision dated 11.2.2003 cannot be declared to be arbitrary or unreasonable and it is held that the respondents would be entitled to recover the amount from the petitioner.

In CWP-17816-2010 another additional point which is raised is that for determining the income of the petitioner, respondents have not adopted the right criterion.

Learned DAG points out that when the income of the father of the petitioner was originally assessed only his basic pension was taken into consideration and, once the dearness allowance was added his income became more than Rs. 8000/-. Counsel for the petitioner countered by arguing that even if this is correct yet the bank statement Annexure P-2 shows that the pension of the petitioner was less than the requisite amount. Learned DAG points out that the bank certificate itself shows that the lower pension was given to the father of the petitioner on account of commutation and for the purpose of computing the income the full pension had to be taken into account and not that which remained after commuted portion was taken out. I find merit in this argument also. When a person gets commutation of pension it means that he has taken a portion of his income in advance and therefore cannot deduct that portion from his total income.

In the circumstances, it is declared that respondents have the right to claim the refund of subsidy availed if any student leave the school after class 10th

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but they cannot enforce this by retaining either School Leaving Certificate or any original documents but can only be recovered by procedure in accordance with law.

The petitions stand disposed of in the above terms.

Since the main cases have been decided, the pending civil miscellaneous application, if any, also stands disposed of.

13.9.2017
anuradha

(AJAY TEWARI)
JUDGE

-	Whether speaking/reasoned	-	Yes/No
	Whether reportable	-	Yes/No