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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5600/2017 & C.M. Nos.23500-01/2017**
ABHISHEK CHOUDHARY AND ANR

..... Petitioners

Through Mr. Karan Pal Singh, Adv.

versus

THE JOINT COMMISSIONER (ACADEMIC) AND ORS

..... Respondents

Through Mr. S. Rajappa, Adv

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **23.08.2017**

1 The petitioner No.1 is a student of Kendriya Vidyalaya having qualified 10th standard from the Kendriya Vidyalaya, Pitam Pura. He had secured 7.2 CGPA in his 10th class in the academic session 2016-2017. He had opted for science stream in his preference form. He is aggrieved by the circular dated 07.06.2017 issued by the respondent vide which the cut-off of 7.6 CGPA has been laid down for admission to the science stream. Contention is that this cut-off enjoined in terms of the aforementioned circular is bad as the circular for the previous year had a reduced cut-off for entrance to the science stream; that cut-off was CGPA 7.4. Submission is that by laying down such a criteria, the fundamental right of the petitioner has been abridged; his right to free education has also been curtailed. By way of this petition, he is seeking admission in the science stream.

2 Counter affidavit of the respondent has been filed. It is stated that as on date there are no vacant seats. The counter affidavit was

filed 2 days ago. The statement of the respondent as on today is also taken on record which is categorical and informs this Court that as on date there is no seat available in the science stream in any Kendriya Vidyalaya in the country. On merits, it is pointed out that the petitioner has admittedly obtained 7.2 CGPA; to be admitted in the science stream, he requires 7.6 CGPA.

3 On the perusal of the record, it is noted that the admittedly CGPA of the petitioner in class 10th was 7.2. It is also an admitted fact that the cut-off for science stream is 7.6 CGPA which has been laid down in part 'C' of the admission procedure in Kendriya Vidyalayas. For a science stream, a minimum of 7.6 CGPA is required and this is reflected at page 106 of the paper book which lays down the method of admission in class 11th. Contention of the petitioner that this cut-off is illegal is neither here nor there; on what count, it can be described as illegal has not been explained. Admittedly at the time when the petitioner had given his preference, the requirement of CGPA was 7.6; his CGPA falls short of the said requirement. It is also an admitted position that no seat is available in the science stream in any Kendriya Vidyalaya; detail of this finds mention in para 4 of the counter affidavit.

4 The judgment relied upon by the petitioner reported as 2008 Law Suit (SC) 1612 Principal, Kendriya Vidyalaya Vs. Saurabh Chaudhary in fact reads against him. Para 16 of the said judgment reads herein as under:-

“One can have no objection to a school laying down cut off marks for selection of suitable stream/course for a student giving due regard to his/her aptitude as reflected from the class X marks where there are more than one stream. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut off marks in the class X examination. After all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The school may of course give him the stream/course that may appear to be most suitable for him on the basis of the prescribed cut off marks.”

5 It is not the case of the petitioner that he has not got admission in the Kendriya Vidyalaya in any subject or that he has been thrown out; as on date, he is admitted in the 11th class with subject of Commerce and Computer Science; he could not be granted science stream for the reasons as explained. It is not as if the petitioner has been ousted from the school. This judgment of the Apex Court was in appeal against the judgment delivered by the Madras High Court. At the cost of repetition, the ratio of law laid down by the Supreme Court (culled supra) does not help the case of the petitioner.

6 Petition is without any merit. Dismissed.

7 Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

AUGUST 23, 2017

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