

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

Sr. No.214

**CWP-15750-2017 (O&M)
Date of decision : 14.02.2020**

Sanjeev Garg

..... Petitioner

VERSUS

Union Territory Chandigarh and others

..... Respondents

CWP-38098-2018 (O&M)

Bhagyesh Garg

..... Petitioner

VERSUS

Central Board of Secondary Education and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. H.P.S. Rahi, Advocate, for the petitioner in
CWP-15750-2017.

Ms. Hema Kakkar, Advocate, for the petitioner in
CWP-38098-2018.

Mr. Namit Kumar, Advocate, for respondents No.1, 2 and 4.

Mr. Ramdeep Pratap Singh, Advocate, for respondent No.5.

SUDHIR MITTAL, J.

1. This judgment shall dispose of CWP No.15750 of 2017 and CWP No.38098-2018 as they are inter connected. The relief claimed in CWP No.15750 of 2017 is that the son of the petitioner having been wrongfully suspended by respondent No.5-school, no fee should be charged for the period he remained under suspension and he

should be permitted to rejoin the school, take appropriate legal action against respondent No.5-school and to adequately compensate the petitioner for harassment meted out to him. In CWP No.38098 of 2018, the relief sought is for direction to the respondent-school to register the petitioner with the Central Board of Secondary Education (CBSE) for class 9 session 2018-19 or in the alternative to direct the CBSE to directly register the petitioner for class 9 session 2018-19.

2. For granting either of the reliefs, a finding of illegal suspension needs to be returned and thus, both the aforementioned petitions are being decided by a common judgment.

3. Educational institutions are nurseries for our future generations. They nurture our children so that they grow up to be responsible citizens. The role of parents, is however, far more important. A child spends more time in the comfort of his home than at school. Therefore, parents are more responsible for shaping their wards. Focus must be maintained on the interest of a child and if there appears to be a conflict between individual requirements of a child and the general requirements of maintaining discipline and good behavior in an educational institution, a cooperative approach needs to be adopted. Confrontation only harms the interest of the child as does an attitude of protectionism. Right to education though a facet of right to life, must be construed in the correct perspective. Discipline is an integral part of education and i.e. how the concept of education must be understood.

4. According to the averments made in the writ petition, the petitioner shifted from Rajpura to Mohali in the interest of education of his children. He got his son admitted in Nursery in respondent No.5-school. The daughter was also got admitted in the Mohali branch. Allegedly, when the son of the petitioner was in 2nd class, the head of the junior wing informed the petitioner that he would be shifted to the Mohali branch, but the petitioner refused. Thus, began a saga of victimization of the son of the petitioner. He was unlawfully punished and suspended vide letter dated 15.7.2013 for a period of one month. Three years later, the son of the petitioner was allegedly beaten up by some other students which prompted the petitioner to send a communication dated 11.5.2016 to the school, in which, concern was expressed regarding the security of his son and threat to his life. Reference was also made therein to an incident which took place an year earlier when the son of the petitioner allegedly wrote abusive language on the back of some other students, which was alleged to be a frame up. All these incidents were referred for blaming the school for causing mental depression to his son. It was also alleged that on account of the victimization done by the school, the son of petitioner consumed sleeping pills, although, there is no evidence in this regard apart from a bald assertion. Thereafter, the son of the petitioner was further victimized by making him attend classes with mentally challenged students, just to embarrass and humiliate him. On 23.12.2016, the mother i.e. wife of the petitioner was called to school

because allegedly, the son had been found in possession of cigarettes on the school premises. Thereafter, a communication dated 24.12.2016 was addressed to the petitioner that his son would not be permitted to join classes upon the re-opening of school in January 2017 till the end of the session February 2017. No fee would be charged for the quarter January-March 2017 and his son would also be permitted to take the final examination. A transfer certificate would be issued on the declaration of his final result. Immediately, the petitioner sent an email of even date to the authorities of the Punjab Government and to various newspapers informing them of the mental harassment caused by the school authorities with the aim of getting a seat vacated so that it could be filled up by charging donation. On 27.12.2016, the son of the petitioner allegedly informed him and his wife that false allegations of being in possession of cigarettes on 23.12.2016 were levelled against him and that in fact, he had been physically assaulted by the head of the junior wing, the school Principal and the Director of the school. The petitioner took his son to a Zirakpur dispensary for a medico legal examination and report dated 27.12.2016 was prepared. A perusal of this report shows that there was a complaint of pain in the left ear and difficulty in hearing because of which the patient was advised to seek ENT opinion. Complaint of vertigo was also made. There was however, no finding of bruises etc. on the face. It has further been averred that as a consequence of the MLR ENT opinion was taken and the doctor observed that there was swelling in the ear and if the child

had been hit a little harder, he could have ruptured his ear drum. However, the report of the ENT specialist has not been annexed in support of this averment. Further, reports were made to the police and officials of the Education Department, but to no avail. Accordingly, a complaint was made to the Chandigarh Commission for Protection of Child Rights (CCPCR) on 4.1.2017, which passed an interim order dated 6.1.2017 directing respondent No.5-school to permit the son of the petitioner to attend classes without a break. Thereafter, although, the school re-opened on 9.1.2017, the petitioner sent his son to school on 11.1.2017, when he was again bullied by a senior student resulting in a complaint dated 11.1.2017 to the school Principal. A perusal of this complaint shows that alongwith the complaint of assault by a fellow student, the school was blamed for not having taken action upon earlier complaints made by the petitioner. The son of the petitioner did not go to school till 14.2.2017 when allegedly the school management did not permit him to attend classes. An email dated 14.2.2017 has been annexed with the writ petition, through which, the Principal of the school was informed that the petitioner had not sent his son to school till then as there was a conspiracy against him because of which he was under mental depression. However, he had agreed to rejoin classes with the efforts of the parents and that he would attend school from 16.2.2017. The school responded vide email dated 15.2.2017 stating therein that the decision mentioned in letter dated 24.12.2016 was final and that notes of the work done after winter vacations could be

collected on the coming Friday at 2.30 p.m. Meanwhile, the CCPCR had completed its enquiry upon the complaint of the petitioner and had submitted a report dated 16.2.2017 finding therein that the incident of corporal punishment was not established. Directions were given to the school to permit the petitioner's son to join classes as suspension for any act of indiscipline was held to be disproportionate. The parents as well as the school authorities were advised to submit the child to professional counselling so that he could over-come his deficiencies. It may be noted that equal responsibility was placed upon the parents. The petitioner then addressed an email dated 19.2.2017 to the school that his ward would be joining school w.e.f. 20.2.2017 and that proper care should be taken. Allegedly, the school refused permission to the son of the petitioner to sit in class on account of which a DDR dated 20.2.2017 was got registered at Police Station, Sector 39, Chandigarh. The National Commission for Protection of Child Right (NCPCR) was also approached and it directed the Secretary (Education), Chandigarh Administration to ensure compliance with the order of CCPCR. As the petitioner was finding it difficult to get the order of CCPCR executed, he approached the Court through an application under Section 156 (3) Cr.P.C. for registration of an FIR against the school management and consequently, an FIR No.90 dated 29.3.2017 was registered under Sections 323, 352, 506 and 120-B IPC and Sections 75 and 82 of the Juvenile Justice Act, 2015 and Sections 16 and 17 of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter

referred to as 'the 2009 Act'). Meanwhile, the petitioner was continuing with his efforts to get his son to rejoin school, whereupon, a meeting was called in the office of Secretary (Education), Chandigarh Administration on 21.4.2017. The petitioner was asked whether he wanted his son to continue in respondent-school, but he sought time to make up his mind. However, he failed to communicate his decision and thus, a communication dated 28.4.2017 was addressed by the Registrar, Education (Schools) asking him to convey his decision. Vide email dated 29.4.2017, the petitioner communicated his decision to continue the education of his son in the respondent-school. Thereafter, a communication dated 2.5.2017 was addressed by the school to the petitioner informing him that his son may continue in the school provided all previous dues were cleared, a report was submitted from the Department of Psychology, PGIMER, Chandigarh that his son was no longer under depression and the school was indemnified in case his ward was caught stealing, cheating, smoking, drinking, carrying a weapon such as knife and causing injuries to other children or harassing them. The petitioner responded vide email dated 7.5.2017 stating that the conditions imposed in the letter dated 2.5.2017 were unreasonable, impractical and impossible to fulfill and thus, a demand was made to stop the harassment of his son so that he could join classes keeping aside the legal fight. Thereafter, the present writ petition was filed.

5. From the aforementioned narration, it is clear that the petitioner blames respondent No.5-school for victimizing his son and

causing him undue mental and physical harassment. The entire blame has been placed upon the school authorities and it has been projected that the son of the petitioner is without blame. Incidents of misbehavior in the school have been labelled as false and the reason for the victimization of the son of the petitioner has been alleged to be a refusal of the petitioner to get him transferred to the Mohali branch when he was in 2nd class. The last incident of 23.12.2016 of alleged possession of cigarettes is also alleged to be a frame up. The son of the petitioner was then in class 7th and thus, the allegation is that there was a systematic victimization over a period of five years. Email dated 24.12.2016 sent by the petitioner to the officials of Punjab Government as well as various newspapers, however, indicates that the petitioner felt that the school authorities wanted to get a seat vacated so that they could make money by admitting another student after charging a hefty donation.

6. A short reply has been filed on behalf of respondents No.1 and 2, in which, it has been stated that a committee was constituted on 11.1.2017 on instructions of the Director, School (Education) to enquire into the allegations of corporal punishment. The said committee submitted a report dated 20.2.2017, according to which, the incident of corporal punishment was not established. Further, it was found from the disciplinary record of the son of the petitioner provided by the school from 2008 onwards that a large number of warning letters had been issued, meetings were held with parents and counseling

sessions were conducted. It was also found that the class-mates of the son of the petitioner blamed him for creating problems for everyone, whereas, the teachers said that he was very irregular in attending school and completing his homework. The parents did not attend the enquiry proceedings, but sent an email dated 30.1.2017 demanding de-affiliation of the school, the stripping of the school of its minority status and for getting their son admitted in Bhavan Vidyalaya, Saint John or Saint Anne School. Further, it has been stated that the school submitted its objection against the report dated 16.2.2017. The Director, School Education had made all efforts to get the decision of the CCPCR implemented. It has also been submitted that the son of the petitioner did not report to school in the new academic session nor did he deposit the fee for quarter January-March, 2017. He took his final exams for class 7th and has been promoted to the next class in accordance with the promotion policy of the school. The parents were advised to make payment of the arrears of fee so that the education of the child does not suffer. Thus, all efforts have been made to redress the grievance of the petitioner.

7. A parawise reply on behalf of the CCPCR has also been filed, wherein, it has been stated that the complaint of the petitioner was examined and report dated 16.2.2017 was submitted and that efforts have been made for implementation of its recommendations.

8. The detailed written statement filed on behalf of respondent-school indicates that there is a long list of complaints

against the son of the petitioner. On 15.9.2010, a letter was written by the school to the petitioner informing him that his son uses foul language is indisciplined and uninterested in class activities and therefore, checks should be put in place. The petitioner and his wife thereafter, requested for a change of section as they felt that their son was being victimized. Accordingly, son of the petitioner was shifted to another section w.e.f. 1.10.2010. Counseling sessions were held, wherein, it was observed that the behavior of 'using abusing language and spiting on others' was still persisting but when under observation, his manners would improve. The parents were asked not to be over protective. In a counseling session in January 2011, it has been noted that the son of the petitioner is irregular in attending school and that he does not bring necessary books and stationery to school. The parents were accordingly, advised. A communication dated 11.7.2013 has been placed on record, according to which, a student from the United States of America of Chinese descent attending the school under an exchange programme was humiliated by the son of the petitioner by taunting him with respect to his race and by spitting upon him. Communication dated 2.2.2016 has been annexed through which the petitioner was informed by the school authorities that he had written abusive words on the school uniform of a fellow student. Accordingly, he was being suspended w.e.f. 3.2.2016 till 26.2.2016. He could, however, come to school to collect work schedule once a week accompanied by his parents. Subsequently, counseling sessions were held and in the

counseling session on 10.2.2016, it has been recorded that the son of the petitioner would be permitted to come to school w.e.f. 11.2.2016 and that he would contribute by interacting with the students of 'Jagriti' under the supervision of two facilitators. 'Jagriti' is the section of the school dedicated to mentally challenged children. Thus, the latter period of suspension was converted to interaction with mentally challenged students. Upon completion of interaction with 'Jagriti' students, a report was submitted which indicated that the son of the petitioner had enjoyed the period as he was courteous, caring, helpful and showed initiative. He completed his assignments efficiently and presented a positive outlook. At the time when the petitioner complained of assault of his son by fellow students i.e. 11.5.2016, there were complaints against the son of the petitioner by other class-mates that he had hit other students and accidentally had hit the class teacher also. Thereafter, he was counseled and he reacted positively to the counselling. Vide letter dated 23.7.2016, the petitioner was informed that his son had gone through the contents of the school bags of other students and had removed some stationery. This was on the basis of complaints received from various students, which have also been annexed. After the incident of 23.12.2016, a meeting of the school Principal, Vice Principal, Administrator, Class Counselors from Nursery to class 7th was held and it was felt that the petitioner and his wife had lost faith in the school and that a change in the environment would benefit the son of the petitioner as well as the parents.

Accordingly, letter dated 24.12.2016 was issued informing the petitioner that his son need not attend classes in the session after the winter vacations, but could take the final examination. Fee for the quarter would also not be charged. It has also been submitted that FIR dated 29.3.2017 was ultimately cancelled by the competent Court.

9. No rejoinder has been filed to the respective written statements.

10. From the written statement of respondent No.5-school, it transpires that complaints against the son of the petitioner have been made since the year 2010 i.e. since, he was in class 1. He was frequently counseled, but his behavior did not improve. It also indicates that the petitioner and his wife were overly protective of their son and would not acknowledge his shortcomings. For short periods, the son of the petitioner would behave in an exemplary manner, probably, when he experienced a sense of self-fulfillment. However, these periods of good behavior did not last nor did they extend to longer periods of time because the petitioner and his wife chose to be over protective and confrontationist. They would blame the school authorities rather than cooperating with them and ultimately, the situation came to a head when cigarettes were found on the person of the petitioner on 23.12.2016. The petitioner was advised not to send his son to school in the January-March, 2017 session and to change his school.

11. Under directions of this Court, the son of the petitioner completed his Class 8 from another school and thereafter, is being home schooled.

12. Learned counsel for the petitioner has relied upon Section 16 of the 2009 Act for grant of relief. According to him, a child undergoing elementary education cannot be expelled from school and the letter dated 24.12.2016 issued by the school amounts to expelling the son of the petitioner. Thus, directions be issued to permit him to rejoin the school with consequential relief. Reliance has been placed upon 'M.S Grewal Vs. Deep Chand Sood 2001 (8) SCC 151' to argue that compensation can be granted even by a Writ Court as the Courts have to be responsive to the demands and needs of the society. A justice oriented approach should not be thwarted on technicalities.

13. Learned counsel for the UT Administration submits that the frequent complaints of the petitioner regarding corporal punishment have been found to be false. Although, the petitioner has sought directions to permit his son to rejoin school, during the meeting held on 21.4.2017, when an offer was given to the petitioner to continue the education of his son in the respondent-school, he sought time to respond to the offer. Thereafter, a reminder had to be sent to him to convey his decision, whereafter, he consented to continue the education of his son in the respondent-school. However, the conditions imposed by the school were not complied with. This shows that the petitioner's mind is wavering and that he is trying to bargain with the school.

14 Learned counsel for respondent No.5-school submits that the petitioner has left no stone unturned to malign the school and its management. No efforts have been made by him to instill a sense of discipline in his child, which is causing great harm to his personality. The school management had to seek bail on account of registration of the FIR and keeping in view the attitude of the parents, the school is not in a position to permit the son of the petitioner to continue his education with it. The petitioner is a trouble creator. The daughter of the petitioner was also a student of the Mohali branch of the school and after passing out from class 10, she took admission in another school in Mohali. Various complaints have been made by the petitioner against the management of the said school also, which shows the mind-set of the petitioner.

15. The Act of 2009 was passed to ensure free and compulsory elementary education. The said Act came to be passed after Article 21-A was inserted in the Constitution of India by virtue of the Constitution (86th Amendment) Act, 2002. Thus, the 2009 Act gives effect to the fundamental right of free and compulsory education to all children between 6 to 14 years of age i.e. elementary education is a fundamental right. Accordingly, Section 16 has been enacted prohibiting expulsion of a child till the completion of elementary education. The provision is reproduced below:-

‘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.’

16. The aforementioned provision prohibits expulsion of a student till he completes his elementary education. The reason is obvious. Elementary education being a fundamental right, cannot be curtailed/denied by virtue of an order of expulsion. Is the communication dated 24.12.2016 an order of expulsion ? The said communication indicates that the son of the petitioner was found in possession of cigarettes on the last day of school before winter break i.e. 23.12.2016. Accordingly, keeping in view the past record of the son of the petitioner as well as the conduct of his parents, a decision was taken not to permit the son of the petitioner to attend classes for the session January-March, 2017. However, his education was not curtailed as he was permitted to take the final exams without payment of fee for the said quarter. The stipulation of issuance of transfer certificate on completion of the session may amount to expulsion, if it resulted in immediate termination of education of the son of the petitioner. However, a period of more than three months was given to the petitioner to make alternate arrangements for his child. Under the circumstances and keeping in view the conflicting claims of the parties, I would not hold it to be an order of expulsion. In fact, it was an opportunity granted to the petitioner to conform to the norms of

behavior and discipline of the school so that his son could continue with his education uninterrupted. Had the petitioner adopted such an approach, in all probability, the school would have permitted the son of the petitioner to continue with his education and in the event of failure to do so, appropriate relief could have been granted.

17. Moreover, as noticed earlier, the son of the petitioner has completed his elementary education and was aged about 15 years at the time of filing of CWP-38098-2018. Thus, at this stage, no direction can be given to the school to permit him to join classes.

18. Regarding the claim of the petitioner for taking action against respondent No.5-school and for compensation, before such relief can be granted, a finding of some illegal act having been committed by the school or victimization of the son of the petitioner has to be returned. Under the 2009 Act, corporal punishment is prohibited as is mental harassment of a child. The CCPCR in its report dated 16.2.2017 has returned a finding that corporal punishment could not be established. A similar finding has been returned in the report dated 20.2.2017 submitted by the committee constituted by the Director, School (Education). There is no doubt expressed in the writ petition regarding the fairness of these enquiries and thus, I have no hesitation in accepting their finding and holding that allegations of corporal punishment are false. So far as the allegations of mental harassment are concerned, from the written statement of the school it is evident that complaints have been made against the son of the

petitioner since, he was in class 1. The school authorities have made efforts to counsel the child as well as the parents on many occasions and the child has shown improvement after counseling sessions. But, his parents have not cooperated with the school authorities. Resultantly, the incidents of indiscipline and mis-behavior continued over the years. The specific instances given in the written statement of the school have not been denied by the petitioner by way of rejoinder and thus, the averments of the school in this regard have to be accepted. In fact, these incidents have been admitted by the petitioner himself, although, he has labelled them to be cases of false implication and victimization. Had it been so, a specific rejoinder to the averments in the written statement of respondent No.5 would have been filed. Further, the reason given by the petitioner for victimization is that he did not accept the proposal of the school to shift his ward to Mohali branch. This has been denied by respondent No.5-school in its written statement and there is no other material available on the record to accept this assertion. It appears to be very far-fetched that a school would victimize its student for such a minor reason. Moreover, the petitioner is not even sure of the reason as in communication dated 23.12.2016, it has been alleged that the victimization is on account of the effort to get a seat vacated so that it could be filled up by charging exorbitant donation. Thus, the allegations of mental harassment have not been established. Consequently, no direction can be issued for taking action against the school authorities nor any compensation can

be awarded to the petitioner. There is no quarrel with the ratio of M.S Grewal's case (supra). However, the said judgment is not applicable to the facts of this case. In that case, 14 students of a school had lost their lives during a school picnic and findings of negligence had been returned against the school officials. The observations of the Hon'ble Supreme Court were made in the said context.

19. For the aforementioned reasons, there is no merit in the writ petitions and the same are dismissed.

(SUDHIR MITTAL)
JUDGE

14.02.2020
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No