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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9528/2019 & CM APPL. 39153/2019**

Date of Decision: 28.01.2020

DEEPAK MISHRA Petitioner
Through Mr. Narendra Kumar Upadhyay, Adv.

versus

THE PRINCIPAL DE INDIAN SCHOOL AND ANR.
..... Respondents
Through Mr. Anjum Javed, Addl. Standing
Counsel with Mr. Devendra Kumar
and Mr. Faran Ahmed, Advs.
alongiwith Mr. M.P. Singh, Dy.
Director of Education.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

1. The substantive prayer made in the writ petition is as follows:
“a. Issue a Writ of Mandamus or any other appropriate writ in favour of the petitioner and against the respondent thereby directing the respondent's especially respondent no.1/school “to allow admission” to MANVI MISHRA in CLASS Pre-School/nursery under EWS/DG category in the academic session 2019-20 in the said school without any further delay.”

2. Notice in this petition was issued on 12.9.2019 when respondent no.2 i.e. Directorate of Education was represented by Mr. Anjum Javed, advocate.

3. On that date, I had directed the respondent no.1 school to reserve one seat in pre-school (nursery) in case it was available for the Petitioner's ward.

3.1 Accordingly, the matter was directed to be re-listed for further proceedings on 23.10.2019.

4. On 23.10.2019, respondent no.1 school was represented by Ms. Milan Chauhan, Front Desk Executive.

4.1 The assertions made by Ms. Milan Chauhan, *albeit*, orally at the bar were recorded in the order passed on 23.10.2019. The relevant extract of the order dated 23.10.2019 are set forth hereinafter:

"1. Ms. Milan Chauhan who claims to be the employee of respondent no. 1 and says that she looks after the administration in the respondent no. 1 school contends that upto 31.08.2019, in the General Category, in Pre-school, 57 students have been admitted while in the EWS category 16 students have been admitted.

2. It is stated that EWS category seats are determined on the basis of the admissions made in the General category.

3. In sum, it is the stand of the respondent no. 1 school that there are no seats available in the EWS category.

4. Let an affidavit be filed in that behalf.

5. The needful will be done within 10 days from the date of the receipt of a copy of the order."

5. The respondent no.1 school has filed an affidavit in the matter. The affidavit only elaborates the position taken before me by

respondent no. 1 school on 23.10.2019.

6. In this context it would be relevant to note that the record shows in the course of the proceedings held on 24.12.2019, one of the issues which arose for consideration (given the stand by respondent no.1 school on 23.10.2019 that no seats were available), was as to whether a candidate by the name Ms. AaroHi who had already been admitted continued to remain interested in holding on to her admission.

6.1 It is in this backdrop, that DOE was directed on 24.12.2019 to carry out a field inquiry as to whether Ms. AaroHi was desirous of continuing with her admission. DOE was, accordingly, directed to file a report in that behalf.

6.2 Furthermore, DOE was also directed to glean information as to how many seats in the general category had been initially declared by respondent no.1 school and as to whether seats lying vacant in the DG category could be allotted to a candidate falling under the EWS category.

6.3 These two aspects were also directed to be detailed out in the affidavit which DOE had been called out to file.

6.4 Unfortunately, DOE has not filed an affidavit as directed.

7. However, Dr. M.P. Singh, Zone-13, DOE is present in the Court today alongwith his counsel. Learned counsel for the DOE informs me, based on the instructions received from Dr. M.P. Singh that a field inquiry was carried out which revealed that Ms. AaroHi was interested in continuing with her admission in respondent no.1

school.

7.1 The father of Ms. Aaroahi, one, Mr. Badan Singh had submitted a letter dated 20.1.2020 to the DOE; a copy of which has been placed on record.

8 A perusal of this letter shows that Ms. Aaroahi was admitted to respondent no.1 school on 18.1.2020, *albeit*, after directions issued by this Court on 21.2.2019.

9. Besides this, learned counsel for the DOE informs me that, initially, respondent no.1 school had declared a total number of 105 seats, out of which, 26 seats were to be earmarked for EWS/DG category.

9.1 Learned counsel further informs me that respondent no.1 school without informing the DOE filled up only 73 seats, out of which, 57 seats were filled up in the general category and the remaining 16 seats were filled up in the EWS/DG category.

9.2 According to the counsel for the DOE, Ms. Aaroahi's seat also falls in the EWS category.

10. Therefore, in all, respondent no.1 school has filled up 74 seats, which includes 17 seats, which fall in the EWS/DG category.

11. Mr. Saurabh Arora who is also the person who has sworn the counter-affidavit on behalf of respondent no.1 school and is present in court has affirmed the aforesaid position.

12. According to Mr. Saurabh Arora, he is not aware of any circular which required respondent no.1 school to inform the DOE about its decision to fill up lesser number of seats than which were

initially declared.

13. In response to this assertion, the learned counsel for the DOE has placed before me a circular dated 23.5.2019.

13.1 The relevant part of the circular reads as follows:

“As regard the plea, being taken the schools regarding lesser number of general category admissions so far, the circular dated 27/02/2019 is referred which states as under:

“It is clarified that clause 18 of the circular dated 27/02/2019 is applicable only for those schools which have obtained the permission from Directorate of Education to admit lesser number of students by showing that they have made all possible efforts for admitting the requisite number of students under general category if the same are forwarded by Directorate of Education. The clause is applicable only for such schools where this Directorate has verified and confirmed the claim of the school and permitted them to admit lesser number of a students as stated in their order by Hon’ble Delhi High Court in W.P.(C) No.3358 of 2013 and W.P.(C) No.5172 of 2013. In the case, a school does not have specific permission to admit less number of students, the school is bound to comply with notification dated 28.02.2012 and the school shall admit each and every student allotted to the school through the computerized draw of lots subject to verification of documents.”

(emphasis is mine)

14. The record shows that based on the initial declaration of seats by respondent no.1 school, the petitioner was informed that his ward i.e. Ms. Manvi Mishra had been allotted in respondent no.1 school for admission to nursery/pre-school i.e. nursery grade.

15. This aspect comes to fore on a perusal of annexure B, appended on page 35 of the paper book. This document has not been put in issue by the respondents.

16. As noted hereinabove, the only reason that the petitioner's ward has been denied admission by respondent no.1 school is that it did not have any vacancy in the EWS/DG category.

17. It is not disputed by the respondents that the petitioner's ward falls in the EWS category. Therefore, having regard to the fact that respondent no.1 school has *suo motu* decided to reduce the number of seats initially declared by it from 105 to 74, thereby truncating the number of seats *inter alia* available for DG/EWS category, in my view, the petitioner's plea would have to be accepted. Based on respondent no.1 school's declaration petitioner's ward was allotted respondent no.1 school for admission in pre-school (nursery) grade. This offer could not have been withdrawn as it was based on a representation of respondent no.1 school. Respondent no. 1 school would have to admit the petitioner's ward since it did not take permission of the DOE to reduce the number of seats initially declared by it to the DOE.

18. Given these circumstances, the writ petition is allowed.

19. Respondent no.1 school is directed to admit the petitioner's ward i.e. Ms. Manvi Mishra in pre-school (nursery) in academic session 2019-20.

20. The petition is disposed of in the aforesaid terms.

21. The Registry, for the sake of good order and record, will scan and upload the letter dated 20.1.2020 addressed by Mr. Badan Singh to the DOE, Zone-13 and the circular dated 23.5.2019.

RAJIV SHAKDHER, J

JANUARY 28, 2020
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