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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 02.09.2024+ **W.P.(C) 12066/2024****BABY RISHIKA (MINOR) THROUGH HER MOTHER MS.
MANJU VIMAL GOHERAPetitioner****Through: Ms. Monisha Handa, Advocate
(DHCLSC).****versus****GOVERNMENT OF NATIONAL CAPITAL TERRITORY
OF DELHI AND ANRRespondents****Through: Mr. Karn Bhardwaj (ASC,
GNCTD), Mr. Shubham
Singh, Mr. Rajat Gaba and Mr.
Saurabh Dahiya, Advs. for
DOE.****CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J. (ORAL)**

1. The present writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner, seeking following reliefs:

“(i) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 2 to grant admission to the Petitioner in academic session 2024-25; or

(ii) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 1 to allot an alternative School to the Petitioner as per the List of preferred Schools submitted by him in academic session 2024-25; and



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(iii) Issue a writ, order or direction in the nature of mandamus directing the Respondent No. 1 to implement the Order dated 04.07.2023 and ensure admission of the Petitioner in the allotted School or an alternative School; and...”

2. Brief facts of the case, as disclosed from the petition, are that on 02.02.2023, the respondent no. 1 i.e. Directorate of Education [‘DoE’] had issued a circular outlining guidelines for the admission of students under the EWS/DG and Disabilities categories for the academic year 2023-24. Between 10.02.2023 and 25.02.2023, the petitioner’s parents had applied for his admission under the Disadvantaged Category (DG) as he belongs to the Scheduled Caste category. His application listed eight schools within a 0-3 km radius as per the priority order. In March, 2023, a computerized draw of lots was conducted, and the petitioner was successfully allotted a seat in respondent no. 2 school i.e. Holy Innocents Public School Delhi, for the academic year 2023-24. Despite this, when the petitioner’s parents had approached the school for admission in March, 2023, the School had denied admission without providing any valid reason. It is stated that since the father of the petitioner did not get any response from the DoE, he had approached various authorities including the Delhi Commission for Protection of Child Rights, which had taken cognizance of the matter and directed the Deputy Director of Education to submit a response. It is also stated that on 18.05.2023, the DoE had passed an order directing all schools that had not granted admission to EWS/DG students to do so. In the meantime, the Deputy Director of Education had also submitted a response to



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the DCPCR on 19.06.2023. Thereafter, on 04.07.2023, the DoE had issued another order instructing the Deputy Director Education to advise students, who were successful in the draw of lots but did not gain admission, to take temporary admission in government schools, while ensuring their right to admission in the originally allotted school remained intact. However, it is stated that the petitioner's parents were not contacted, and the petitioner remained without admission. In 2024, the petitioner did not receive any notice from DoE regarding the adjustment round for allotment to alternative schools for those who were not admitted, even though other students in similar situations were accommodated. It is stated that respondent no. 2 School had also written to the DoE, thereby requesting it to allot an alternate school to the petitioner. Acting on the complaint of the petitioner, the GNCTD had also sought the explanation from the DoE. However, due to the lack of any adjustment or re-allotment to an alternative school, the petitioner once again applied for admission under the DG category for the academic session 2024-25 but was not selected.

3. Consequently, the petitioner has filed the present writ petition seeking admission in the allotted school or an alternative school.

4. **Learned counsel appearing on behalf of the petitioner** argues that despite being allotted the respondent School, the petitioner has been unable to get admission in the said School or in any other alternative school as per the list of preferred schools submitted by him for no fault of his and the allotment of the petitioner to the respondent School has been rejected by it solely on



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the ground that entry level of the School is Pre-Primary. It is stated that this shows that a wrong School Identification Number had been mentioned by the DoE while allotting the respondent no. 2 School to the petitioner. It is further submitted that while other students in similar situations have been allotted alternative schools, no such allotment has been made by respondent/DoE for the petitioner. Thus, it is argued that the petitioner has clearly been discriminated against other similarly situated students who have been allotted alternative schools. The petitioner is, therefore, entitled to admission in alternative school as per the preference list submitted by the petitioner. It is also contended that the right of the petitioner to allotment of a school for the academic session 2024-25 is also crystalised by virtue of being successful in the draw of lots for academic session 2023-24 and order dated 04.07.2023 issued by the DoE.

5. **Learned counsel appearing on behalf of the respondent/DoE**, on the other hand, argues that no relief can be granted to the petitioner at this stage since the allocation of the respondent School to the petitioner pertains to the previous academic year and the petitioner has approached this Court now, i.e. after the academic session 2023-2024 is already over. Thus, as per settled law, admission or provisional admission cannot be granted to the petitioner now on the basis of previous years' allotment.

6. This Court has **heard** the arguments advanced on behalf of the parties and perused the record.

7. At the outset, this Court notes that the petitioner herein was



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allocated a seat in respondent no. 2 school i.e. Kulachi Hansraj Model School, Delhi, for the academic year 2023-24, pursuant to computerized draw of lots was conducted by the DoE. The petitioner however was denied admission by the School.

8. However, it is pertinent to note at this stage that the petitioner herein has approached this Court, seeking redressal of his grievance, by way of the present petition in August, 2024 i.e. when the academic year 2023-24, for which the petitioner was allotted respondent no. 2 School, is already over.

9. In these circumstances, it would be apposite to take note of the decision of the Coordinate Bench of this Court in case of *Ankit Kumar v. Government of NCT of Delhi & Anr. W.P. (C) 5523/2024*, wherein it has been held as under-

“4. Unfortunately, the 2023-2024 academic year is over. The allotment made by the DoE consequent on the computerised draw of lots was for the year 2023-2024.

5. The petitioner has not submitted any application for the year 2024-2025, and there is no allotment in his favour in any school as an EWS student for the 2024-2025 academic session.

6. I may note, here, that students who approached the Court seeking admission on the basis of an allotment made by the DoE consequent on the computerised draw of lots fall into three categories.

7. The first two categories relate to students who approach the Court during the academic year in respect of which the allotment is in their favour. Of these students, one category of students would be those in whose favour the court passes an interim order of provisional admission. The second category of students would be those in favour of whom there is no order of provisional admission, but the court passes an order reserving a seat for the student concerned in the class in respect of which the allotment has been made by the DoE.

8. In both these cases, even if the writ petition is taken up after



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the academic year is over, it is possible for the Court to direct admission of the student in the next academic year.

9. Take a student who applies for admission as an EWS candidate to KG/Pre-Primary class for the academic year 2023-2024. A computerized draw of lots is conducted by the DoE, in which her name is shortlisted for admission to KG/Pre-Primary, as the entry level class, in School X. A. Petition instituted during the 2023-2024 academic session, but comes up for final hearing after the 2023-2024 academic session is over.

10. School X refuses to admit the student, whereupon she institutes a writ petition before this Court, before the end of the 2023-2024 academic session. The writ petition, however, comes up for hearing after the 2023-2024 academic session is over.

11. In such a situation, the Court cannot, quite obviously, direct School X to admit the petitioner in the 2023-2024 academic session. Can the Court, then, direct the petitioner to be admitted in Class I (the next higher class) in the 2024-2025 academic session, though the petitioner never applied for, and does not have in her favour, any allotment by the DoE to Class I in School X for 2024-2025?

12. The issue is tricky, and decisions of learned Single Judges of this Court have not all been one way.

13. If the Court passes an interim order directing provisional admission of the student in accordance with the result of the DoE allotment, there is no difficulty, as the student would, during the pendency of the writ petition, also be entitled to progressive promotion to higher classes, of course subject to the outcome of the writ petition. If, therefore, the Court finds the denial of admission to the student by the school to be legally unsustainable, it can allow the writ petition by finally directing admission of the student in the class in which the student is studying, in School X, at that point of time, thereby making the interim order absolute.

14. Even if the Court passes an interim order not directing provisional admission, but directing reserving of a seat in KG/Pre- primary for the petitioner, and the writ petition is taken up after the academic year 2023-2024 is over, the Court may nonetheless be in a position to finally direct the school to grant admission to the student in Class I for the academic year 2024-2025. This is because the unfilled KG/Pre-primary EWS



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seats in the school for the academic year 2023- 24 would be carried forward to the year 2024-2025. If, among those seats, the Court has already reserved a seat for the petitioner in KG/Pre-primary in 2023-2024, that seat would remain reserved for the petitioner among the carried forward seats of 2023-2024. That seat would not, therefore, be available to the general EWS applying public for admission. As that seat would remain reserved in the petitioner's name in Class I for the year 2024-2025, the Court is empowered to finally direct the school to admit the petitioner in class I against that seat in 2024-2025.

15. If, however, there is neither any interim order of provisional admission or directing reserving of a seat for the petitioner passed by the Court, then, after the academic year is over, the right of the student to be granted admission to the school would perish with the coming to an end of the 2023-2024 academic year. The petitioner would not have any seat allotted by the DoE in her favour in Class I in the school for 2024-2025. Further the unfilled seats in Kg/Pre-primary in 2023- 2024, even if carried forward, would then be available for all EWS students who seek admission in class I for the academic year 2024- 2025, as no seat has been reserved for the petitioner under any interim order of the Court. It would be unfair, therefore, to deny such EWS applicants for the 2024-2025 academic year one seat merely because there was an allotment in KG/Pre-primary in 2023-2024 in favour of the petitioner which did not fructify. That seat, even if carried forward, would be available for being filled by all EWS students who would have to apply and compete in the computerised draw of lots held by the DoE.

16. This position would apply, equally, where the petitioner has approached the Court, on the basis of an allotment to KG/pre-primary by the DoE for 2023-2024, but after the 2023-2024 academic year is over. The present petitioner falls in this last unfortunate category. Though the petitioner was allotted a seat by the DoE in its computerised draw of lots for 2023-2024 in the respondent-school, the petitioner did not seek to enforce that right, by approaching this Court, in the 2023-24 academic year, during which alone the right subsisted.

17. Accordingly, the seat in the respondent school, which was allotted in favour of the petitioner by the DoE would now be carried forward to Class I in the respondent school. As that seat has not been reserved in favour of the petitioner by any order passed this Court, the seat would be available along with all other carried forward seats in class I in the respondent school



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to be filled by the entire pool of EWS students who seek admission to class I.

18. Needless to say, the petitioner would also be at liberty to apply as an EWS student in class I for the academic session 2024-2025 with the DoE...”

10. In the above-quoted decision, it was held that the allotment made by the DoE for the academic year 2023-2024 was only valid for that year. It was further observed that the students who approach the court, based on an allotment made by the DoE after a computerized draw of lots, fall into different categories, depending on the timing and type of court order obtained. If a student files a writ petition for admission during the relevant academic session, but the case is heard after the session has ended, the court cannot direct admission for the academic session which has already concluded. In such situations, the court must determine whether it can direct admission in the next academic year, even if the student did not have an allotment for that year. However, it was observed that if there is no interim order reserving a seat for the petitioner or directing provisional admission during the relevant academic session, the student’s right to admission ends with the conclusion of that academic year. The unreserved seat, even if carried forward, becomes available to other applicants for the following academic year.

11. Thus, from the aforesaid decision, it is evident that the relief, claimed by the petitioner in the present writ petition, pertaining to the allotment made by DoE for the previous academic year i.e. 2023-2024, unfortunately, cannot be granted at this stage.

12. The respondent DoE, however, is requested to ensure that



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petitioner herein secures admission in a nearby government school this year, as per rules and procedure in this regard, and that the petitioner is advised to apply for the draw of lots to be conducted for the next academic session, if she so wishes.

13. Having observed so, no relief as prayed for in this petition can be granted to the petitioner. Accordingly, the present petition stands dismissed.

14. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 2, 2024/A