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

+ **W.P.(C) 12657/2024 & CM APPL. 52622/2024**

BABY ALIZA PARVEEN

.....Petitioner

Through: Mother of petitioner, present in
person

versus

DARBARI LAL DAV MODEL SCHOOL & ANR.Respondents

Through: Mr. Yogesh Kumar and Ms. Bharti
Kapil, Advocates for R-1/ school
Mr. Divyam Nandrajog, (Panel
Counsel, GNCTD) with Mr. Fateh
Singh Bhullar, Advocate for R-2/DoE

CORAM:

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

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09.09.2024

CM APPL. 52621/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 12657/2024

3. The instant petition under Article 226/227 of the Constitution of India has been filed on behalf of petitioner seeking issuance of appropriate writ, order or direction in favour of the petitioner and against the respondents thereby directing the respondents to admit/enrol and provide free books, writing material and dress to the petitioner in the respondent no.1 school in the allotted class under the EWS/DG/CWSN category for the Academic Session 2023-2024. The petitioner herein was allotted respondent no. 1 school pursuant to conduct of computerized draw of lots by the Directorate of Education ('DoE').



4. At the outset, this Court notes that the prayer of the petitioner pertains to the year 2023-2024 which is already over and therefore, the prayer has become infructuous.

5. Learned counsel appearing on advance notice for respondent no.1 school has placed on record judgment passed by a Co-ordinate Bench of this Court in case of *Ankit Kumar through his father Shyam Sundar 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 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 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 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...”

6. In view of above, the petitioner cannot, therefore, obtain any relief in this petition. The present petition thus stands dismissed.

7. The order be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 09, 2024/ns

Click here to check corrigendum, if any