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

+ W.P.(C) 6113/2024, CM APPL. 25361/2024 & CM APPL. 41659/2024

RONEET

.....Petitioner

Through: Mr.Ashish Negi and Ms.Sushila,
Advocates (Through VC)

versus

MATA GUJRI PUBLIC SCHOOL

.....Respondent

Through: Mr.Shyamal Kumar, Advocate for R-1
Ms.Seema Dolo, Advocate for R-2/CBSE
Mr.Karn Bhardwaj, ASC for GNCTD with Mr.Rajat Gaba, Mr.Shubham Singh and Mr.Saurabh Dahiya, Advocates for R-3/DoE alongwith Mr.C.S. Verma, DDE, Zone-25, DoE and Mr.Tanvir Alam, OSD, Zone-25, DoE

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

31.01.2025

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1. The present writ petition under Article 226 of the Constitution of India has been filed by the petitioner, seeking a direction for the Respondent-School to immediately promote the petitioner from Class V to Class VI as the Respondent-School failed to declare the result of the Class V final examination, thereby violating Section 16(2) of the



Right of Children to Free and Compulsory Education Act, 2009
(‘RTE Act.)

2. Learned counsel for the petitioner submits that the petitioner appeared for the annual examination of Class V from 27.02.2024 to 14.03.2024. However, without officially declaring the result, the petitioner was orally informed that a retest was required. It has been submitted that despite repeated requests, the respondent-School failed to provide the result or marksheet of the annual examination of Class V and compelled the petitioner to reappear for the retest, which was conducted from 08.04.2024 to 16.04.2024.
3. It has been submitted that on 17.04.2024, the respondent-School declared the result for the retest examination without providing the marksheet of the retest examination. Consequently, on 29.04.2024, the petitioner filed the instant petition due to the non-disclosure of both the annual and retest examination result and the marksheets.
4. Learned counsel for the petitioner submits that such actions of the respondent-School are in clear violation of Section 16(3) of the RTE Act, which expressly prohibits the retention of any child in elementary education. Additionally, it has been submitted that the respondent-School has disregarded Order No. DE.5/212/Exam/16-17/Part-1/717-727 dated 07.10.2022, issued by the Directorate of Education, which lays down the Guidelines of Examination and Promotion for Classes III to VIII, effective from the Academic Session 2023-24.
5. The respondent-School, in its counter affidavit, has stated that the prescribed procedure under the Guidelines Regarding Promotion for



Classes III to VIII, effective from the Academic Session 2023-24, issued by the Government of NCT of Delhi, were duly followed. In accordance with these guidelines, the petitioner was granted sufficient opportunities to appear for the re-examination. However, the petitioner failed to secure the minimum prescribed marks required for promotion to Class VI and thus was placed in the category of "Essential Repeat" in Class V.

6. It is stated that the School conducted the Class V examination and declared the result on 26.03.2024, wherein the petitioner failed in all subjects. The Promotion List for Class V-B, Session 2023-24 was displayed on the School's notice board on the same day, listing the petitioner at S. No. 35, Adm. No. 7301, under the category of "Result Withheld."
7. The counter affidavit further states that the petitioner was given an opportunity to appear for the re-examination in all failed subjects. However, he again failed to obtain the required passing marks, and the re-examination result for Class V was declared on 03.05.2024. Consequently, as the petitioner failed in three main subjects, he was placed in the "Essential Repeat" category for Class V. It is stated in the counter-affidavit that the entire process was conducted in compliance with the prescribed guidelines, without any illegality or impropriety. It is also stated that the petitioner's parents were duly informed of the result via email dated 05.05.2024. A copy of the re-examination result has been placed on record along with the counter affidavit.



8. Additionally, the counter affidavit states that, upon receiving a complaint from the petitioner's parents, the respondent-School permitted a second re-examination. The petitioner was given the opportunity to appear for the second re-examination in EVS, English, and Punjabi on 02.05.2024, 04.05.2024, and 06.05.2024, respectively. However, instead of availing this opportunity, the petitioner chose to file the present writ petition.
9. Learned counsel for the respondent-School further submits that in the promotion list, appended as Annexure R-2, the petitioner's result was marked as "withheld" instead of "fail" to avoid demoralizing the student. However, it has been submitted that the result was also orally communicated to the petitioner's parents. Moreover, the first re-examination, conducted from 08.04.2024 to 16.04.2024, resulted in the petitioner failing again, as per the result declared on 03.05.2024. Despite being granted the opportunity for a second re-examination, the petitioner did not avail the same.
10. At this juncture, learned counsel for the petitioner submits that since there is a clear violation of Section 16 of RTE Act, the petitioner may be given the benefit of being promoted to Class VI, and he may be allowed to appear for the examination of Class VI, for which, he has attended for the entire year. Learned counsel has also invited the attention of the Court to the proviso of Section 16(3), which provides that the appropriate Government may decide not to hold back a child in any class till the completion of elementary education.
11. Mr. Karan Bhardwaj, learned ASC for respondent No.3/DoE, has drawn the attention of the court to Order No.



F.No.DE.15(1025)/PSB/2023/7435-7439, dated 22.08.2023, which provides that in cases like the present one, the student falls under the “Essential Repeat” category. He further submits that under Section 16(1) of the RTE Act, the examination for Class V is mandatory.

12. The Right of Children to Free and Compulsory Education Act, 2009 was enacted with the primary objective of strengthening elementary education and enhancing the quality of learning. The Right of Children to Free and Compulsory Education Bill, 2008 was introduced to establish the following key principles:

- a. Every child has the right to receive full-time elementary education of satisfactory and equitable quality in a formal school that meets prescribed norms and standards.
- b. The concept of compulsory education has been introduced, which places an obligation on the appropriate Government to ensure the admission, attendance, and completion of elementary education for all children.
- c. Free education was wanted which guarantees that no child—except those admitted by their parents to a school not supported by the Government—shall be required to pay any fee, charges, or expenses that could hinder them from pursuing and completing their elementary education.

13. The Act also defines the duties and responsibilities of the appropriate Government, local authorities, parents, schools, and teachers in ensuring the provision of free and compulsory education. A framework has been provided for protecting children's rights and establishing a decentralized grievance redressal mechanism.



14. There is no denying that every child has the fundamental right to elementary education, and in the formative years, both schools and the Government have a binding duty to extend full support. They must create a conducive environment through appropriate rules and policies that foster a child's growth and learning.
15. Notably, Section 16 was incorporated into the Act through an amendment in 2019 to further reinforce these objectives. Section 16 of RTE Act provides as under:-

“16. Examination and holding back in certain cases.—

- 1) There shall be a regular examination in the fifth class and in the eighth class at the end of every academic year.*
- 2) If a child fails in the examination referred to in sub-section (1), he shall be given additional instruction and granted opportunity for re-examination within a period of two months from the date of declaration of the result.*
- 3) The appropriate Government may allow schools to hold back a child in the fifth class or in the eighth class or in both classes, in such manner and subject to such conditions as may be prescribed, if he fails in the re-examination referred to in sub-section (2) Provided that the appropriate Government may decide not to hold back a child in any class till the completion of elementary education.*
- 4) No child shall be expelled from a school till the completion of elementary education.”*

16. Before proceeding further, it is also necessary to refer to the order of the GNCTD dated 22.08.2023, which reads as under:-

“F. No.DE.15(1025)/PS3/2023/7435-7439

Dated:- 22/ 08/23

ORDER



Sub: Regarding promotion of students of Class V and VIII w.e.f. Academic Session 2023-24.

1. Refer Order No. DE.5/212/Exam/16-17/Part-1/717-727 dated 07/10/2022 (Copy Enclosed) issued by the Exam Branch on the subject "Guidelines of Examination and Promotions for Classes III to VIII w.e.f, Academic Session 2023-24"

2. The Guidelines will be implemented in all the Govt., Govt. Aided, Municipal Corporation of Delhi, New Delhi Municipal Council, Delhi Cantonment Board and Recognized Un-Aided Schools within NCT of Delhi from the Academic Session 2023-24. It is the responsibility of all the Recognized Un-Aided Private School to disseminate the guidelines mentioned in the above mentioned order dated 07/10/2022 to the students and their parents/guardians.

3. Further, it is pertinent to mention here that as per order dated 07/10/2022 following point are given below in respect of exam of class V and VIII:

a. There shall be a regular examination in the fifth class and in the eighth class in the academic year.

b. If a child fails in the examination of class V and VIII. He/She shall be given additional instructions and granted opportunity for Re-examination within a period of two months from the date of declaration of the result.

c. In Re-examination if a student of class V and VIII is not eligible for pass and promotion will be placed in the category of "Essential Repeater". Essential Repeater will be held back in the same class during the next session.

4. It is further directed to all the Recognized Un-Aided Private School to apprise/disseminate the above information mentioned at point 3 to the students and their parents/guardians so that the students of these classes get ready for the examinations.

5. If students/Parents of EWS/DG/CWSN category have any grievances regarding examination they may approach to the concerned district/ Zone. In this regard, it is hereby directed that a Grievance Committee as under shall be constituted by the DDE District at the zonal level under the Chairmanship



of DDE Zone to look into grievances of students admitted in EWS/DG/CWSN category Recognized Un-Aided Private Schools.

S.No.	Designation	Will act as
1	DDE Zone	Chairman
2	DE Nominee of the concerned school	Member
3	One HOS of the zone	Member
4	One Exam In-charge of any school of the Zone	Member

6. Grievance Committee will address grievances received from the parents/students regarding detention in Class or VI. The Committee will address the cases intricately regarding the result re-evaluated, if required. If the Committee found any variation/irregularity during re-evaluation or school has deliberately failed the students, Committee may recommend DDE (District) for issuance of necessary directions to the school.

7. Further, DDE (District) will issue directions to Private Schools to provide additional assistance to students admitted under EWS/DG/CWSN category who are appearing for re-examination, In Re-examination if a student of class V and VIII is not eligible for pass and promotion will be placed in the category of "Essential Repeater"

8. However, if Grievance Committee found no change in status of absent "Essential Repeater" after re-examination/re-evaluation of the case, then DDE (District) shall get the child admitted in the nearby Government school to secure his Right to Education as per RTE Act, 2009.

This issue with the prior approval of the Competent Authority.

(BIMLA KUMARI)
Dy. DIRECTOR OF EDUCATION (PSB)



To

1. Principal/HOS/Manager

All Private Unaided Recognized School of GNCT of Delhi

2. All DDE(District/Zone), Directorate of Education, GNCT of Delhi with the directions to ensure strict compliance of the above said directions.

Dated: 22/08/23

F.No.DE.15 (1025) /PSB/2023/ 7435 - 7439

Copy to:

1. PS to Director (Education), Dte. Of Education, Govt. of NCT of Delhi.

2. PA to Addl. Director (Education), Dte. Of Education, Govt. of NCT of Delhi

3. Incharge (Computer Cell) with the request to upload the Circular on official website of this Directorate.

4. Guard file.

From the desk of

BIMLA KUMARI

Dy. DIRECTOR OF EDUCATION
(PSB)''

17. The basic grievance of the petitioner is that the respondent-School did not declare the result in pursuance of the Section 16(2) of RTE Act. On the contrary, the plea taken by the respondent-School is that the result was duly declared and promotion list was displayed immediately after the declaration of the result. It has also stated that the marksheet dated 26.03.2024 was also provided to the students. The aforesaid factum has been denied by the learned counsel for the petitioner.

18. It is a settled principle of law that Courts while exercising the writ jurisdiction cannot go into the disputed question of fact. On one hand, the respondent-School has made a categorical averment in the counter



affidavit that the marksheet was duly prepared and given on 26.03.2024 and the promotion list was displayed. Be that as it may, it is mandatory and obligatory for the school to strictly comply with the provisions of the Right of Children to Free and Compulsory Education Act, 2009. Any deviation or failure to comply with the said rules may lead to the adverse consequences on the action to be initiated by the Directorate of Education.

19. In the present case, an unusual situation has arisen. Upon the filing of the petition, the Court vide order dated 01.05.2024, permitted the petitioner to attend classes in Class VI. However, it was explicitly stated that this arrangement was purely provisional and subject to the outcome of the writ petition. Subsequently, no effective order was passed. However, in the interregnum, the petitioner was allowed to appear for the re-examination, in which he could not obtain the required marks and the second opportunity for re-examination was not availed by the petitioner for reasons best known to him. As it stands now, the petitioner has not cleared Class V, yet he has been attending Class VI in the current academic year.
20. The petitioner cannot be permitted to take the Class VI examination unless he is formally promoted from Class V. The interim order dated 01.05.2024 was merely a provisional arrangement, and it does not provide a basis for the Court to direct the respondent-School to promote the petitioner to Class VI.
21. The Court is mindful that an order promoting the petitioner without ensuring his academic preparedness would not be in his best interest. A weak foundational understanding could adversely impact his future



studies. Though, the situation is unfortunate, but, the endeavour of Court is to ensure an outcome that best serves the petitioner's educational development.

22. Thus, without making this a precedent and purely on the basis of the peculiar facts and circumstances of this case, the Court directs respondent No.1/School to allow the petitioner to take the Class V examination in the upcoming session scheduled for 18.02.2025. Additionally, the respondent-School is directed to arrange special classes, as required, to support and prepare the petitioner for this examination. Given the present circumstances, the Court considers this to be the most suitable arrangement to assist the petitioner in his academic progress.

23. With the aforesaid directions, the present petition alongwith pending applications stand disposed of.

24. Copy of the order be given *dasti* under the signatures of the Court Master.

DINESH KUMAR SHARMA, J

JANUARY 31, 2025

Dy/smg..