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

+ **W.P.(C) 4804/2024 & CM APPL. 19686/2024**

MASTER ARNAV SHARMA Petitioner
Through: Mr. Ashish Negi and Ms.
Sushila, Advs. with Mrs. Ritu, mother of
petitioner in person

versus

ST GEORGES SCHOOL ALAKNANDA & ANR.

..... Respondents
Through: Mr. Verghese, Adv. for R-1
Mr. Utkarsh Singh, Adv. for Mr. Santosh
Kumar Tripathi, SC (Civil) GNCTD for
DoE/R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

% **03.04.2024**

CM APPL. 19687/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application is disposed of.

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3. The challenge in this petition is two pronged.
4. The petitioner is a student of the Respondent 1 school which he

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joined in 2017. He appeared in the annual Class V examination in February 2024.

5. According to the assertions in para 3 of the writ petition, the school did not declare the result of the petitioner's examination and required him, instead, to appear in a re-test which was held between 6 March 2024 and 18 March 2024. The petitioner appeared in the re-test.

6. The respondent school declared the petitioner as having failed in the re-test and refused, therefore, to promote him to Class VI.

7. Prayer (ii) in the writ petition seeks quashing of orders dated 7 October 2022 and 22 August 2023 issued by the Directorate of Education (DoE) as violative of Section 16 of the Right of Children to Free and Compulsory Education Act 2009 (hereinafter referred to as "the RTE Act").

8. The petition is silent as to how the aforesaid circulars infract Section 16¹ of the RTE Act. Section 16(3) of the RTE Act specifically permits the appropriate government i.e., the Government

¹ 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 reexamination 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.



of NCT of Delhi through the DoE to allow schools to hold back children in the Vth or the VIIIth class or in both classes in such manner and subject to such conditions as may be prescribed. Section 16(1) envisages a regular examination being held at the end of the Vth and VIIIth classes. Section 16(2) requires a child, who fails in the terminal examination held in class V or VIII to be granted an opportunity for re-examination within two months from the date of declaration of the result. Mr. Negi submits that, in this case, the re-examination was held within 15 days of the final examination, which according to him was an inordinately short period, not allowing the child to prepare for the re-test.

9. That submission cannot be accepted. Section 16(2) only requires the re-test to be held within two months of the declaration of the result of the final examination. Two months is, therefore, set as the outer limit within which the re-test has to be held. The re-test can be held at any time within the said period of two months. It is difficult, therefore, for the court to opine on the number of days within which, or after which the re-test should be held. So long as the re-test is held within two months of declaration of the result of final examination, Section 16(2) cannot be said to have been breached.

10. Section 16(3) empowers the appropriate government, i.e. the DoE to allow schools to hold back a student who fails in the re-test held after the terminal examination in class V and class VIII in such a manner and subject to such conditions as may be prescribed. “Prescribed” is defined in Section 2(l) of the RTE Act as “prescribed



by rules made under the said Act”.

11. In exercise of the power conferred by Rule 21A of the RTE Rules, the DoE has issued the impugned Office Orders dated 7 October 2022 and 22 August 2023. The orders cannot, therefore, be said to be in excess to the jurisdiction vested in the DoE.

12. Mr. Ashish Negi sought to place reliance on the proviso to Section 16(3) of the RTE Act. The reliance is *ex facie* misplaced. The proviso to Section 16(3) is purely discretionary in nature. It states that the appropriate government “may decide not to hold back a child in any class till the completion of elementary education”. The proviso would apply, therefore, only *if such a decision has been taken by the appropriate government*. Mr. Negi, to a query from the Court, frankly acknowledges that he is not aware of any such decision taken by the appropriate government in exercise of the powers conferred by the proviso to Section 16(3), not to hold back any child till the completion of elementary education.

13. That being so, the proviso to Section 16(3) has no application.

14. Insofar as the main body of Section 16(3) is concerned, as already noted, it empowers the appropriate government to hold back a child in the Vth or the VIIIth class in such manner and subject to such conditions as may be prescribed.

15. To a query from the Court as to how the impugned orders dated



7 October 2022 and 22 August 2023 infract Section 16(3), Mr. Negi's only submission is that the passing criteria postulated in the Office Order dated 7 October 2022 are needlessly stringent. They read thus:

“8.1 Passing Criteria for Class-V:

8.1.1. In order to be declared "Pass" at the end of the session for promotion to the next higher class, a student must secure at least 33% marks in each subject studied by him /her during the session. He/she must secure overall 33% marks i.e. 33 marks out of 100 [Marks of the attendance of the student (05 marks) plus marks of Subject Enrichment (05 marks) plus marks of Project Based Activities (05 Marks) plus marks of Portfolio (05 marks) plus marks of Multiple Assessment (05 marks) plus marks of Unit Test/Periodic Tests (05 marks) plus marks of Mid Term Exam (20 marks) and Annual Examination (50 marks) put together].

8.1.2. The promotion to the next higher class is also subject to the condition that a minimum of 25% of marks must be scored in Mid Term Examinations plus Annual Examination i.e. 18 marks out of 70 in each subject.

8.1.3. A candidate not eligible to be declared "Pass" will be declared "Promoted" at the end of the session of a class provided he/she is entitled for grace marks as admissible under rule 8.1.4 of these rules.

8.1.4. Grace marks up to maximum of 10 in all, shall be awarded to a student to reach the minimum required 33% of marks in each subject, provided that:-

8.1.4. (i) A minimum of 25% of marks are secured in each subject in Mid Term Examination + Annual Examination i.e. 18 marks out of 70 Marks to make him/her eligible for promotion.

8.1.4. (ii) Provided that he/she does not require more than 05 marks in one subject to come up to the minimum required of 33% of marks in that subject.”

16. By no stretch of imagination can it be said that the afore-extracted criteria, envisaged in the order dated 7 October 2022, which are required to be fulfilled for a child to pass class Vth, are needlessly



stringent. They err, if anything, on the side of leniency as they only envisage obtaining of 33% marks in the final examination and 25% marks in the mid-term examination. That apart, the Court under Article 226 cannot sit in appeal over the discretion of the DoE, insofar as the criteria prescribed by it for passing the examination is concerned. Of course, if the criteria are unconsciously stringent or amount to colourable exercise of the powers vested in the DoE in that regard, the court is well within its powers to step in. It cannot be said, however, that the passing criteria for Class V, as envisaged in Clause 8.1 of the office order dated 7 October 2022, are so stringent as to invite interference by the Court; much less can it be said that it violates, in any manner of speaking, Section 16(3) of the RTE Act.

17. The challenge to the Office Orders dated 7 October 2022 and 22 August 2023, as being violative of Section 16 of the RTE Act, therefore, has necessarily to fail. Prayer (ii) in the writ petition is, therefore, dismissed.

18. However, the petitioner has, in prayer (i) of the writ petition, prayed that he may be promoted to class VI. There is a specific assertion in para 3 of the writ petition that the result of Class V terminal examination was never declared.

19. If that is so, the petitioner could not have been directed to undertake a re-examination, as Section 16(2) of the RTE Act envisages a re-examination as taking place *within two months of declaration of the result of the final examination in class V*.



20. Despite having been served with an advance copy of petition, Mr. Verghese, who appears for the respondent school, is unable to controvert this submission, but states that he would place his stand on an affidavit.

21. In that view of the matter, issue notice to show cause as to why rule *nisi* be not issued, limited to prayer (i) in the writ petition.

22. Notice is accepted on behalf of Respondent 1 by Mr. Verghese and on behalf of Respondent 2 by Mr. Utkarsh Singh.

23. Counter affidavit, if any, be filed within four weeks, with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, within four weeks thereof.

24. List for hearing and disposal on 4 July 2024.

25. No extension of time for filing of reply or rejoinder shall be granted.

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26. This application seeks interim relief. In view of the specific stand taken in para 4 of the writ petition, to the effect that the petitioner was made to undertake the re-examination without the result of his Class V examination being declared, a *prima facie* case for



grant of interim relief is made out. As the case involves the education of a young school going child, the principles of balance of convenience and irreparable loss would also be in favour of grant of interim relief, as grant of relief would not prejudice the school in any manner, whereas failure to grant relief is bound to prejudice the educational prospects of the child.

27. As such, issue notice on this application, returnable on 4 July 2024.

28. Notice is accepted on behalf of Respondent 1 by Mr. Verghese and on behalf of Respondent 2 by Mr. Utkarsh Singh.

29. Reply, if any, be filed within four weeks, with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, within four weeks thereof.

30. Pending further orders in this case, the petitioner shall be permitted to attend classes in Class VI. This is purely provisional and subject to the outcome of the writ petition.

C. HARI SHANKAR, J

APRIL 3, 2024

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Click here to check corrigendum, if any