

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 8th September, 2022**

+ W.P.(C) 1839/2018

SHREYA BHARDWAJ THROUGH HER GUARDIAN.....

Petitioner

Through: Mr. D. K. Devesh, Advocate

versus

SANSKRITI SCHOOL AND ANR.

..... Respondents

Through: Mr. Srijan Sinha, Mr. Naveen Soni
and Ms. Parul Dhurvey, Advocates
for R-1

Mr. Gautam Narayan, ASC for
GNCTD with Mr. Unmukt Gera
Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a. Pass a writ of mandamus or any other appropriate writ, order or directing the Respondent No. 1 to accept the candidature of the petitioner in the category of government category as a ward of officers of eligible civil service and/or;

b. Pass an order or direction directing the Respondent No. 1 to take admission of petitioner in the nursery class under government category if otherwise eligible.

c. Pass any other further order which this Hon'ble Court may deem fit and proper in the present case.

2. The respondent no. 1 is a school affiliated to CBSE, offering education from Nursery to Class XII primarily to the wards of certain classes of Government Officers. The Government Quota in the admission process of the respondent school is 60% quota, which has been reserved for children of officials of Civil Services/ Defence Cadre and allied Services like Group-A Civil Service. The father of the petitioner joined the Delhi Judicial Service and became a permanent member of the Service after completion of probation period.

3. The respondent School invited applications for admission to pre-school for the admission year 2018-19, and accordingly, the petitioner, through her guardian, applied for admission in Class Nursery under Government Category vide application registration no. 1450 on 5th January 2018.

4. Through a draw of lots, the petitioner was successfully shortlisted in the list of candidates under Government Category at Serial No. 49. Thereafter, the School called parents/guardians of successful candidates for verification of documents vide its letter dated 17th February 2018. The parents of the petitioner appeared before the School, however, the School refused to acknowledge Delhi Judicial Service as Civil Service on the ground of its members not being recruited by Union Public Service Commission and hence, expressed their opinion that the petitioner is not eligible for being considered under the category of ward of Civil Service Group A Officer and orally denied to accept the candidature of the petitioner in the category as ward of officers of civil service.

5. Learned counsel appearing on behalf of the petitioner that the father of the petitioner is holding Civil Group A Gazetted Post by virtue of Rule 3(c) of the Delhi Judicial Service Rules, 1970 (hereinafter “DJS Rules”). Rule 33 of DJS Rules warrants that the rules or orders applicable to government servant holding corresponding post in connection with affair of Union of India shall regulate the residuary matters of the Delhi Judicial Service. It is submitted refusal to acknowledge Delhi Judicial Service as civil service on the inconsolable ground of its members not being recruited by the UPSC is contrary to law and rules.

6. It is submitted that the officials of respondent School collected the requisite documents and also found them sufficient but illegally denied the admission under Government Category orally, without assigning any cogent reasons, while saying the father of the petitioner does not belong to eligible group of officers on transfer/deputation to Delhi.

7. Learned counsel for the petitioner submitted that the petitioner has successfully applied for admission and her name appeared in the list prepared through a lottery draw, as notified by the respondent School, and as such she is entitled to admission. It is submitted that quality education is a fundamental right of every child and the same cannot be denied on any flimsy ground or by giving hostile treatment tainted with biasness be it departmental one or otherwise without any lawful basis.

8. Reliance has been placed upon the judgment of the Hon’ble Supreme Court in *Union of India v. Court on its Own Motion through Registrar, High Court of Delhi at New Delhi and Ors.*, SLP (C) No. **35077/2015** decided on 21st January 2016.

9. It is submitted that the petitioner has been denied admission by the
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respondent School without communicating anything in writing and without affording reasonable opportunity for explanations and hearing, which is in clear violation of principles of natural justice. Hence, it is prayed that the instant petition be allowed and the candidature of the petitioner be accepted.

10. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that at the very outset the petition is not maintainable against the respondent School since, being a private institution, it is not amenable to the writ jurisdiction of this Court.

11. It is submitted that the respondent School grants admission under the aforesaid guidelines strictly in terms of the Order passed by the Hon'ble Supreme Court in **SLP (C) 35077/2015**, as has been reproduced above. The father of the petitioner does not fall under the category of Officer of the Central Government Group A Officers/Defence Cadre or any category mentioned in the Order of the Hon'ble Supreme Court dated 21st January 2016.

12. It is submitted that the Delhi Judicial Service is not a 'Civil Service' as there exists no relationship of master and servant between the State and the person holding the post. Under DJS Rules, the Selection Committee consists of (a) the Chief Justice or a Judge of the High Court deputed by him; (b) Two Judges of the High Court nominated by the Chief Justice; (c) Chief Secretary, Government of National Capital Territory of Delhi; (d) A Secretary of the Government of National Capital Territory of Delhi nominated by the Administrator; and (e) Registrar of the High Court. Also, under DJS Rules the administrative control over members of the

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service including their posting and promotion and the grant of leave vests in the High Court. Therefore, the Delhi Judicial Service is not an eligible Civil Service as it does not fall within the above-mentioned criteria.

13. It is further submitted that the admission process of the respondent School stood concluded on 31st March 2018 and hence, the writ petition became infructuous. Moreover, the petitioner did not fulfil the eligibility criterion which was required for admission to the School under Government quota, her candidature was rejected by the competent authorities. Therefore, there has not been any hostile discrimination between two equally placed persons *vis-a-vis* wards of similar category of officers. Therefore, the instant petition is liable to be dismissed.

14. Heard learned counsel for the parties and perused the record.

15. The limited issue before this Court is whether the oral denial of the admission to the petitioner by the respondent School on the ground that the service of the father of the petitioner does not fall under the Government Quota is a finding in accordance with law or not.

16. Both the parties have relied upon the order/judgment of Hon'ble Supreme Court in ***Union of India v. Court on its Own Motion through Registrar, High Court of Delhi at New Delhi and Ors., SLP (C) No. 35077/2015*** decided on 21st January 2016, the relevant portion of which is reproduced hereunder:-

“It is directed that the children of the following officers shall be included into 60 percent quota, which has been reserved for children of officers of Civil Services/Defence Cadre and allied Services:

“(i) All India Service Officers coming on transfer to Delhi on central deputation under the Central Staffing Scheme.

(ii) Indian Foreign Service officers coming to Delhi to man the posts in the Ministry of External Affairs.

(iii) Other eligible Central Service Officers (Group A) on transfer to Delhi under the Central Staffing Scheme.

Wards of (i)(ii)&(iii) coming on transfer to Delhi, should not be denied admission in any class and even during middle of the academic session on first cum first serve basis provided there is vacancy.

(iv) Officers from the Defence and other officers coming to Delhi on transfer.”

The Appellant- Sanskriti School is directed to act accordingly.”

17. Admittedly, the admission in the respondent School is granted on the basis of the directions issued by the Hon’ble Supreme Court to it. A bare perusal of the guidelines/directions suggests that the reservation made by the respondent School for admission is in the nature of welfare measures for a limited category of Government Officers. The categories included in Quota do not specify, in its bare language, the services of Delhi Judicial Service. Moreover, even if interpreted in accordance with the DJS Rules, Rule 3(c), the services under Delhi Judiciary cannot be included in the category of the “*eligible Central Service Officers (Group A)*” as has been provided for as per the Central Staffing Scheme.

18. The instant case is not one where the respondent School has issued

impugned Notice or Order denying the admission to the petitioner which can be adjudicated upon and set aside or upheld and hence, there are no detailed grounds to be considered by this Court. The extent of scope of this Court is limited to the aspect of the oral ground taken by the respondent School. The petitioner is seeking a writ of mandamus for directions to the respondent School for admission under the Government Category, however, the Delhi Judicial Service, certainly does not find mention in the reservation scheme and neither can be included even in the wider representation of Civil Services or the Defence Services. The respondent School has the liberty to maintain the reservation in accordance with requirements as well as in accordance with the directions of the Hon'ble Supreme Court.

19. This Court does not find force in the challenge raised on behalf of the petitioner. The petitioner is ineligible to apply under the reserved category of the respondent School and hence, was denied admission.

20. In light of the aforesaid facts and circumstances, the instant writ petition is dismissed along with pending applications, if any.

21. The order be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

SEPTEMBER 8, 2022
dy/ms