

Court No. - 2

Case :- SPECIAL APPEAL No. - 294 of 2022

Appellant :- Tanishk Srivastava, Lucknow Thru. Father Ranjeet Km. Srivastava (In Wric 2378 Of 2022)

Respondent :- State Of U.P. Thru. Prin. Secy. Prim. Edu. Civil Secrtt. Bapu Bhawan Lko And Others

Counsel for Appellant :- Satendra Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

Hon'ble Subhash Vidyarthi,J.

Heard Sri Satendra Kumar Singh, learned counsel for the appellant and Ms. Deepshikha learned Chief Standing Counsel for the State-respondents.

By means of instant special appeal filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, the validity of the judgment and order dated 27.04.2022 passed by the learned Single Judge in Writ-C No.2378 of 2022, Tanishk Srivastava Vs. State of U.P. & Others, dismissing the writ petition holding the same as not maintainable has been assailed.

The precise facts and circumstances of the issue in question is that the son of the deponent of the writ petition, namely master Tanishk Srivastava appeared in the entrance test on 20.03.2022 held for the admission as Resident Scholar in the educational institution in question i.e. La Martiniere Collage, Lucknow for taking admission in Class-VIII. Result of the entrance test was declared on 25.03.2022 and such candidate, namely, Tanishk Srivastava bearing Form No.215 was declared successful to get admission in Class-VIII as Resident Scholar. His name finds place at serial no.5 of such list, which has been enclosed as Annexure No.3 to the writ petition.

It appears that due to some compelling circumstances i.e. serious illness of the mother of the candidate and his father being out of town for the purposes of service, the student could not get admission in Class-VIII as Resident Scholar, therefore, an application was preferred by the father of the candidate to the Principal of the Institution on 04.04.2022 through e-mail (Annexure No.4 of the writ petition) that instead of treating his son as a Resident Scholar, he may be given admission as Day Scholar as he is ready to complete all required formalities including the fees. Along with the aforesaid application, the medical prescription of the mother of the candidate has been

provided. When the aforesaid application dated 04.04.2022 sent through e-mail was not disposed of, the father of the candidate preferred a representation dated 10.04.2022 (Annexure No.6) through e-mail to the District Magistrate, Lucknow, who is Member of the Governing Council of such institution making the same request but to no avail. Further, on the same date i.e. 10.04.2022, same application was preferred through e-mail to the Principal Secretary, Senior Secondary School Board, Lucknow (Annexure No.7) for the redressal of the same grievance, but to no avail.

As per learned counsel for the appellant/writ petitioner, the father of the candidate has not been informed about the fate of the admission of his son till 18.04.2022, therefore, he filed a writ petition before this Court bearing Writ-C No.2378 of 2022, Tanishk Srivastava Vs. State of U.P. & Others, making the prayers which have been reproduced in the order of learned Single Judge dated 27.04.2022. For the convenience, such prayers are being reproduced herein below:-

"(i) Issue a writ, order or direction in the nature of mandamus directing the opposite parties to allow applicant admission as day scholar in Class-VIII in place of resident scholar which has been qualified by entrance test result declared on 25.03.2022 by the La Martiniere College for resident scholars of Class 1 to IX as contained in Annexure No.1 with the petition.

(ii) Issue a writ, order or direction in the nature of mandamus directing the opposite parties to collect required fees and other formalities from the applicant for the admission of his son in Class-VIII as day scholar as per condition of brochure provided by La Martiniere College after declaration of the entrance test for admission.

(iii) Issue a writ, order or direction in the nature of mandamus directing the opposite parties to decide the representation dated 04.04.2022 and 10.04.2022 through email by the applicant to the opposite parties as well as govt. authorities such as District Magistrate, Principal Secretary of Primary Education and others."

The aforesaid writ petition of the appellant/writ petitioner has been dismissed on the ground that the said writ petition is not maintainable for the reason that the issue of the same institution has already been set at rest vide order dated 26.07.2016 passed by the Hon'ble Apex Court in Civil Appeal No.7030 of 2016, Committee of Management, La Martiniere College, Lucknow and Anr Vs. Vatsal Gupta and Others, whereby the Hon'ble apex Court has held that the institution being an unaided minority private institution, therefore, the writ petition against such institution may not be entertained. Before the Hon'ble Apex Court, the judgment and order dated 23.12.2015 passed by the Division Bench of this Court in Special Appeal No.5301 of 2015, Vatsal Gupta Vs. La Martiniere College was assailed.

Vide order dated 23.12.2015, the Division Bench of this Court had modified the order of the learned Single Judge passed on 16.10.2015 in Writ Petition No.4229 of 2015, Vatsal Gupta Vs. La Martiniere College and Ors., whereby the learned Single Judge considering the various judgments of the constitutional courts had observed that the writ petition against such institution is not maintainable. However, the Division Bench vide order dated 23.12.2015 modified the judgment of the learned Single Judge dated 16.10.2015 in exercise of the extraordinary jurisdiction of the Court considering the peculiar facts and circumstances of the issue relating to the admission of one student, namely, Vatsal Gupta clarifying that such judgment may not be treated as precedence. However, the Apex Court vide order dated 26.07.2016 was pleased to set aside the judgment and order dated 23.12.2015 passed by the Division Bench of this Court.

Learned Single Judge vide impugned order dated 27.04.2022 has considered aforesaid judgment of the Apex Court dated 26.07.2016 as well as some more judgments of the Hon'ble Apex Court and came to the conclusion that since a writ petition against La Martiniere College, Lucknow is not maintainable, therefore, the reliefs prayed in the writ petition may not be granted and the writ petition deserves to be dismissed.

On being confronted learned counsel for the appellant/ writ petitioner as to whether he is able to show any case law to the effect that in spite of the facts, circumstances and legal position so discussed above grievance of the appellant may be redressed by invoking extra-ordinary jurisdiction of this Court, no proper reply or case law has been cited to convince the Court that the prayers of the writ petition could be allowed.

We have perused the entire judgment of the learned Single Judge dated 27.04.2022 and we are in full agreement with the observations and findings of such judgment, therefore, the present special appeal is liable to be dismissed.

Accordingly, the special appeal is **dismissed**.

Before parting with, we find it appropriate to observe that if the admission of the student-appellant Tanishk Srivastava for Class-VIII for that he was admittedly qualified was not possible as Day Scholar student as he had qualified such entrance examination for Resident Scholar, at least specific information to this effect must be provided to the parents of such student at the earliest so that appropriate steps could be taken by the parents of such student. As contended in the writ petition that

father of the student has preferred representation dated 04.04.2022 to the Principal of the institution through e-mail and representations dated 10.04.2022 to the District Magistrate, Lucknow and the Principal Secretary, Senior Secondary School Board, Lucknow with the specific prayer that instead of treating his son Tanishk Srivastava as Resident Scholar for Class-VIII, he may be treated as Day Scholar for Class-VIII apprising his compelling circumstances but such representations have not been disposed of by the Principal of the institution or other authorities inasmuch as the father of the student could not receive any information.

This is not a case where the student has not qualified the entrance examination for getting admission in particular class i.e. Class-VIII but this is a case where such student has qualified such entrance examination as Resident Scholar but due to compelling and unavoidable circumstances he could not be able to get admission as Resident Scholar. Therefore, in such compelling circumstances, at least on the basis of principles of equity, it was bare minimum required on the part of the Principal of the institution to apprise the parents of the student that the institution would be unable to provide admission to their ward in Class-VIII as a Day Scholar student. This is a trite law that where there is no statutory prescription to redress the grievance of any aggrieved, the equitable principles would be applied inasmuch as no one should be left remediless.

Therefore, in alike situation, at least the fate of the issue must be communicated to the person aggrieved who has raised his/her grievance before the competent authority. In the present case, after declaring the result of the entrance test wherein the student-appellant Tanishk Srivastava was permitted to get admission in Class-VIII as a Resident Scholar but he could not get admission as Resident Scholar and requested through his parents to permit him to get admission in such Class as Day Scholar, so if that request of the student/parents of the student was not liable to be accepted, he/they should have been immediately informed about such fact so that such student could get his admission in any other institution for receiving proper education inasmuch as to receive proper education is a Fundamental Right enshrined under Article 21-A of the Constitution of India.

Hence, to that extent we show our displeasure towards the approach of the Principal of the institution. The competent authorities/ educational authorities must also ensure that the grievance relating to the admission in an institution is redressed with promptness and does not remain unattended. Whatever is possible under the law or under the principles of equities,

prompt decision should be taken and intimated to all aggrieved so that the consequential steps could be taken well in time.

Let the copy of this order be provided to all the following opposite parties by the Registry of this Court for information and necessary action:-

1. Principal Secretary, Primary Education, Civil Secretariat, Bapu Bhawan, Lucknow.
2. District Magistrate, Lucknow.
3. Director, Indian School Certificate Examination Board, Pragati House, 3rd Floor 47-48, Nehru Place, New Delhi.
4. Principal, La Martiniere College, Martin Purva Road, Lucknow-226001.

[Subhash Vidyarthi,J.] [Rajesh Singh Chauhan,J.]

Order Date :- 8.6.2022

RBS/-