

**Court No. - 50**

**Case :-** WRIT - C No. - 31168 of 2023

**Petitioner :-** Satendra Kumar And 2 Others

**Respondent :-** State Of U.P. And 6 Others

**Counsel for Petitioner :-** Ritesh Upadhyay

**Counsel for Respondent :-** C.S.C, Ashish Kumar Singh, Hridai Narain Pandey, Tarun Agrawal

**Hon'ble Ashutosh Srivastava, J.**

Heard Shri Shesh Kumar, learned counsel appearing along with Shri Ritesh Upadhyay, learned counsel for the petitioners, learned Standing Counsel for the State-respondent Nos. 1 to 4, Shri H. N. Pandey, learned counsel for the CBSE, New Delhi/respondent No. 5 and Shri Tarun Agarwal, learned counsel for the respondent Nos. 6 and 7.

A claim of Sibling Fee relief of 50% introduced by the respondent Nos. 6 and 7 institution for the Session 2022-2023-2024 and its denial on account of a solitary default leading to unpleasantaries being exchanged between the petitioner No. 1 and the school authorities respondent Nos. 6 & 7, lodging of complaints, police complaints, defamation suit and culminating in issuance of transfer certificates against the petitioner Nos. 2 and 3 has travelled to this Court.

The writ petition has been filed for issuance of a writ of mandamus commanding the respondent Nos. 6 & 7 to accept the fees of the petitioner No. 2 and 3, enroll their names in the school rolls and permit them to take their respective classes without any hindrance in the interest of justice.

The facts giving rise to the controversy involved in the instant writ petition briefly stated are that the petitioner No. 1 is an ex-serviceman having retired from the post of Sergeant in the Indian Air Force. The elder son of the petitioner No. 1, namely, Sushmit Dagar was a student of the school run by the respondent Nos. 6 and 7 and passed out in the academic session 2021-22 and is currently pursuing B.Tech course in IIT, Kanpur. The other children of the petitioner No. 1 i.e. the petitioner Nos. 2 and 3 took admission in the institution of the respondent Nos. 6 & 7 in classes 6th and 4th in the academic Session 2020-2021 and studying in

classes 8th and 6th in the academic session 2022-2023.

On 5<sup>th</sup> of August, 2021 the school administration introduced a Scheme/Circular for fee rebate under the head of COVID relief and Sibling Relief for the academic session 2022-2023-2024. The Sibling Relief Scheme provided 50% fee relief to parents who have admitted their two children to the school and such fee relief would be given to the younger sibling who is the biological offspring of the same parents. The relief process would be fully automated and once the application is received, processed and approved, credit note would be automatically posted to the younger ward's fee account. The credit note would be posted only upon timely payment of fee every quarter i.e. 5<sup>th</sup> April, 5<sup>th</sup> July, 5<sup>th</sup> October and 5<sup>th</sup> January. The scheme further provided that the relief would not be available to parents who wish to pay school fee in monthly installments or fee payment is received beyond due date. The relief would also be available to the parents who deposit the entire year fee in one go, on or before 5<sup>th</sup> April. The scheme further provided that the full fee of the older sibling and balance fee for the younger sibling must be deposited on or before the due date to avail the relief and would be available to one child only at a time. Apart from the above, the scheme provided that it would remain applicable for session 2023-2024 and that the school reserved its right to withdraw the relief post 2023-2024 or if a child is found guilty of disciplinary misdemeanor damages school property and is unable to pass exams or the parents is found misbehaving with school staff or his behaviour is questionable and any disrespect towards school or its staff by the parents or child would make the relief withdrawn.

Learned counsel for the petitioners submits that the combined fee of the petitioner Nos. 2 and 3 after taking into consideration the benefit of the Sibling Scheme and 10% COVID relief works out to a sum of Rs.52,704/- per quarter which the petitioner No. 1 deposited for the session 2022-2023. A detailed chart has been depicted in Para 12 of the writ petition giving the dates, cheque Nos. and amount deposited. It is contended that for the academic session 2022-2023 the fee of petitioner No. 3 was deposited to the extent of Rs.70,272/- while that of the petitioner No. 2 was deposited to the extent of Rs.1,40,544/- as per the circular dated 5.8.2021. The total fee deposited in respect of petitioner Nos. 2 and 3 is Rs.2,10,816/-. The respondent Nos. 6 & 7, however, demanded deposit of balance fee which according to them was Rs.76,122/-. The issue regarding the balance fee due could not be sorted out and the respondents insisted for deposit of the balance

fee and the class teachers of the children required the petitioner Nos. 2 and 3 to get the balance fee deposited. The petitioner No. 1 lodged a complaint against the respondent Nos. 6 & 7 on the IGRS portal and also before the District Fee Regulatory Committee under the U.P. Self Financed Independent School (Fee Regulation) Act, 2018. It is contended that the Regulatory Committee has imposed a penalty of Rs. One Lac upon the respondent nos. 6 and 7 for not providing the details asked for. Learned counsel for the petitioners submits that on account of the above action initiated the respondent nos. 6 and 7 have now struck off the names of the petitioner nos. 2 and 3 from the school rolls and issued ante dated Transfer Certificates on 23.03.2023.

A short counter affidavit has been filed on behalf of the respondent no. 7 and the factual controversy is sought to be cleared by submitting that the controversy has been blown out of proportions and the petitioner nos. 2 and 3 have suffered entirely on account of the recalcitrant attitude of the petitioner no. 1 and his wife. The Sibling Fee Rebate Scheme admittedly is subject to certain terms and conditions. It was clearly mentioned in the Scheme that the benefit would be available only upon timely deposit of the fee i.e. on or before 5<sup>th</sup> April, 5<sup>th</sup> July, 5<sup>th</sup> October and 5<sup>th</sup> January. The fee for the first quarter of the academic session 2022-23 beginning April 2022 was paid before 5<sup>th</sup> April 2022 and petitioners were extended the benefit of the Scheme. However, for the next quarter beginning July 2022, the fee was got deposited in two installments i.e. on 05.07.2022 and 08.07.2022. As total fee was not deposited before 05.07.2022, the sibling benefit was not extended to the petitioners. In the absence of any rebate in the fee, the total fee payable for second quarter came to be Rs.78,078/- against which only a sum of Rs.52,704/- was got deposited and consequently, there was a default of Rs.25,374/-. This default dis-entitled the petitioners to the sibling rebate in the subsequent quarters. The cumulative default worked out to Rs.76,122/- which was being demanded.

The petitioner No. 1 instead of depositing the balance amount, insisted for fee waiver and benefit under the Sibling Fee Relief Scheme. The petitioner No. 1 even began calling up one of the lady teachers of the institution late in the night and misbehaved with her. The said teacher issued a legal notice to the petitioner through her Advocate seeking written apology from the petitioner No. 1. The petitioner No. 1 also approached the police authorities against the Principal for demanding balance fee though no FIR was registered. The parents of the petitioner Nos. 2 & 3 have also

written offensive letters marked to various dignitaries of the State and also filed a complaint before the Fee Regulatory Committee constituted under the U.P. Self Finance Independent Schools (Fee Regulations) Act, 2018. In respect of the complaint lodged by the petitioner No. 1 before the Police Authorities, the parties were called to settle/discuss the issue on 21.3.2023, but the complainant did not present himself and only the representative of the respondent No.7 was present. The representative of the respondent No.7 consented to settle the controversy by waiving the outstanding balance of Rs.76,122/- due and payable towards the account of student fee and issue the transfer certificates. The transfer certificates were not collected by the parents and they continued to send their wards to attend the institution.

Learned counsel for respondent No. 6 and 7 has further submitted that there is a deep resentment amongst the teaching staff for not acting against the written complaint of the lady teacher and have also conveyed their strong displeasure at any attempt to re-admit the petitioner Nos. 2 & 3.

A short rejoinder affidavit has been filed by the petitioners essentially reiterating the stand taken in the writ petition.

In the aforesaid backdrop, this Court has been called upon to consider the relief prayed for in the writ petition.

I have heard learned counsel for the parties and have perused the record.

I find that the Sibling Fee Relief under the Circular dated 5.8.2021 issued by the respondent No. 7 is a benefit offered to the parents whose two children are studying in the institution subject to certain riders and cannot be claimed as a matter of right.

In the opinion of the Court, this unfortunate situation has arisen on account of misunderstanding of the terms of the Sibling Fee Relief Scheme. According to the petitioner No. 1, he was entitled to the benefits under the Scheme as the institution had accepted the fee for 2<sup>nd</sup> quarter in part. Admittedly, the first deposit towards the fee of the 2<sup>nd</sup> quarter was made on 5.7.2022 by depositing a sum of Rs.25,000/- and the second deposit towards the said quarter was made on 8.7.2022 for Rs.27,704/-. The total amount deposited was Rs.52,704/- which was the amount required to be deposited towards the fee for both petitioner Nos. 2 & 3 after adjusting the Sibling Fee relief and 10% COVID relief. However, the 2<sup>nd</sup>

deposit was made on 8.7.2022 and not on or before 5.7.2022 as provided under the Scheme and as such, the respondent No. 7 was justified in not extending the benefit of the Sibling Fee Relief to the parents. No benefit of the Scheme has been extended for the deposits made in respect of the subsequent quarters.

During the course of the arguments, considering the nature of the dispute, this Court had required the parties to amicably settle the dispute amongst themselves. In furtherance thereof, the respondent No. 7 has expressed its intention to settle the dispute through an e-mail addressed to Shri Tarun Agarwal, learned counsel for the respondent. Shri Tarun Agarwal, learned counsel for respondent has placed the e-mail dated 15.1.2024 before this Court which is taken on record. According to the e-mail, the conditions imposed are:-

1) School agrees to take both admissions, however, two issues needs to be addressed.

(a) CBSE registration has been closed on the portal.

(b) Attendance is drastically short. The children be enrolled for new session 2024-25 as only four weeks of the current session are left before final exams.

2) The parents to submit an unconditional written apology addressed to the Faculty and Management of the school for their past behaviour and conduct and ensure good conduct in future.

3) The parents shall pay the waived fee along with future fee.

4) The parents shall withdraw their complaint filed by them under the U.P. Self Financed Independent Schools (Fee Regulation) Act, 2018 with information to the Appellate Authority before applying for admission.

Shri Shesh Kumar, learned counsel for the petitioners is agreeable to the aforesaid terms, however, has expressed some reservations to condition No. 2 and submits that the entire fault cannot be attributed to the parents alone and the conduct of the respondents has been equally not above board. He submits that the apology should be mutual from both sides. He further submits that the petitioner No. 2 and 3 may be taken back on the Rolls of the school for the academic session 2023-2024 by relaxing the requirement of attendance so that the valuable year may be saved. The School Authorities have permitted the petitioner Nos. 1 and 2

to attend their respective classes upto August, 2023. He further undertakes to deposit the balance fee and future fee.

Shri Tarun Agarwal, learned counsel for the respondent No. 7 has vehemently opposed the said prayer and submits that the petitioners under no circumstances can be permitted for the session 2023-2024 inasmuch as they have not studied in the said session nor any fee has been accepted from them as the Transfer Certificate had already been issued to them in March, 2023.

I have given a thoughtful consideration to the respective submissions of the learned counsels.

From the record, I find that the Transfer Certificates were issued to the petitioner Nos. 2 and 3 on 23.3.2023. Though the names of the petitioner Nos. 2 and 3 were struck off from the Rolls of the school, their ID cards withdrawn. Yet, the petitioner No. 2 and 3 continued to be sent to the school by the parents. The final report card for their respective classes were handed over in March, 2023 and they were not promoted to the next higher class. The School Authorities did not prevent them from attending school presumably on the ground that the enquiry by the District Fee Regulatory Authority was underway at the relevant time. The School Authorities did not mark the attendance nor accepted any fee from the petitioners. I also find that the session 2023-2024 is virtually on the last leg with only 04 weeks remaining whereafter the final exams are scheduled to take place. In view of above facts, this Court is constrained to permit the petitioner Nos. 2 and 3 to be re-admitted in the current session.

In the opinion of the Court, ends of justice shall stand sub served if the writ petition is disposed of in the following terms:-

The petitioner No. 1 shall withdraw all proceedings initiated against the School Authorities which include the complaint filed by him under the U.P. Self Financed Independent Schools (Fee Regulation) Act, 2018, Complaint before the Police Authorities as also Complaint on the IGRS portal against the institution and its teaching staff and submit an undertaking that such conduct shall not be repeated in future. The petitioner No. 1 shall also deposit the defaulted fee (waived fee) as also the future fee as and when the same shall falls due. The respondent No. 7 in turn will withdraw the defamation case and / or any other cases instituted against the parents of the petitioner Nos. 2 and 3. The respondent No. 7 shall withdraw the transfer certificates dated 23.3.2023 accept the fee in respect of the petitioner Nos. 2 and 3, restore their

names on the school rolls and readmit them for the academic session 2024-2025.

Ordered accordingly. No order as to costs.

**Order Date :-** 17.1.2024

Ravi Prakash

(Ashutosh Srivastava, J.)