

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Present

Ahmed Ali M. Shaikh, CJ
Adnan Iqbal Chaudhry, J

CP No.D-5373 of 2020

1. For hearing of CMA No.22921/2020
2. For hearing of main case

CP No.D-6383 of 2020

1. For hearing of CMA No.27369/2020
2. For hearing of main case

05.10.2021

Principal, Links School and another, petitioners in CP No.D-5373 of 2020 and Respondents No.4 and 5 in CP No.D-6383 of 2020 through Ms. Rukhsana Ahmed, Advocate

Adeel Ahmed Shah and Pir Ali Shah, petitioners in CP No.D-6383 of 2020 and Respondents No.3 and 4 in CP No.D-5373 of 2020 through Syed Farhan Ali Shah, Advocate.

Mr. Abdul Jalil Zubedi, AAG

AHMED ALI M. SHAIKH, CJ.- By means of this consolidated order we intend to disposed of the captioned Petitions as both culminate from one and same order dated 12.10.2020 passed by the Director General, School Education and Literacy Department, Directorate of Inspection & Registration of Private Institutions, Sindh, disposing of the complaint filed by Adeel Mehmood Shah and his son Pir Ali Shah against the management of Links School, Karachi, whereby Management of the Links School was directed to refund the amount of Rs.184,800/- to Adeel Mehmood Shah, after deducting necessary charges, if any.

2. Facts giving rise to these proceedings, as stated in CP No.D-6383, are that Pir Ali Shah, Petitioner No.2 in CP No.D-6383 and Respondent No.4 in CP No.D-5373 of 2020 (hereinafter referred to as “**the Student**”) joined the Links School (hereinafter referred to as “**the School**”) in August, 2011, when he was two years old. In the year 2016 when the Student reached Grade II, his father Adeel Mahmood Shah (hereafter referred to as “**the Father**”) decided to move alongwith family members to England for one year. The Father requested the School to keep a seat for the Student for following year 2017-18 as the Student will pursue his

studies in England to complete Grade II there whereafter he would be eligible for Grade III. As per the purported arrangement arrived at, the Father paid full fee of Rs.184,000.00 for the year 2016-17 on the promise/assurance of the School that a seat for his son for the following year is secured. However, on return to homeland when the Father approached the School to give a seat in Grade III to the Student, the School backtracked and refused to honour the agreement, inter alia, on the plea that in March, 2017 the School sent an e-mail asking for confirmation of their return which was not replied. Hence, the School and its Management failed to honour the arrangement made between the Father and the School, pursuant to which full fee was paid and that the Father never intended to remove the Student from the School. It is further averred that the unilateral action taken by the School is illegal, unfair and biased depriving the Student of his fundamental rights as enshrined in Articles 4, 10A, 25 and 25A of the Constitution of the Pakistan, 1973. Finally, the Father filed a complaint in terms of Rule 18 of the Sindh Private Educational Institutions Rules, 2005 (hereinafter referred to as the "Rules of 2005"), which was dismissed vide impugned order dated 12.10.2020.

3. The case of the School as set up in CP No.D-5373/2020 is that the Student was admitted in the School in August, 2011 and studied till 2016. The Student, pursuant to the Long Leave Policy of the School, proceeded abroad. As per the School's Administration Policy 2016-17 the Student voluntarily and following the Policy deposited the term's fee with the understanding that he may continue education abroad and after informing the School would be able to return pending his assessment and obtaining result. However, the Student without informing whether he wants to continue his education with the School came back in July, 2017 demanding enrolment. As per the School's long leave policy, the assessment test to verify the academic standing was conducted, which the Student failed to qualify to be promoted to Class III. It is further averred that irrespective of the fact that the academic year had started, registration was closed and no advance fee for the term was paid, the School offered the Student to repeat Class II to improve his foundation.

4. It is also averred that in June, 2020 the Father filed a complaint against the School in terms of Rule 18 of the Sindh Private Educations (Regulations & Control) Rules, 2005, against the Management of the

School and without waiting for its decision approached this Court with a Petition bearing No.D-3268 of 2020, which was disposed of on 05.08.2020 by a consent order directing the Respondent No.2 to decide the Complaint after hearing the parties. Ultimately, the Respondent No.2, while concurring with the recommendations of the Inquiry Committee, passed the impugned order dismissing the complaint but directed the School to refund back the retainer fee amount Rs.184,000.00 after deducting necessary charges. The grievance of the School in CP No.D-5373/2020 is to the extent of the order of refund.

5. The learned counsel for the Petitioners in CP No.D-6383 of 2020 submits that in terms of Rule 18 of the Rules the Father preferred a complaint, an Inquiry Committee was constituted to submit its report and on failure to submit requisite report within the stipulated period, CP No.D-3268 of 2020 was filed. This Court while disposing of the Petition directed the Respondent No.2 to decide the complaint within 30 days of the said order. Again, as no order was passed, a contempt application was filed whereafter the Respondent No.2 came out with the impugned decision. He further submitted that the Long Leave Policy of the School is meant to bypass the rule and regulations. He contended that as no one from the Civil Society was inducted as a member in the Inquiry Committee, it was not properly constituted and even otherwise the Inquiry Committee incorrectly framed the Terms of Reference and failed to mention the real reason given by the School for not allowing the Student to continue his education. He further submitted that even the one page Long Leave Policy of the School was never communicated either to the Student or the Father and the Inquiry Committee in its report did not consider the same at all.

6. Learned counsel further submitted that in terms of Clause 25 of the Fee Administration Policy of the School and before leaving the country the Father deposited full terms school fee for the year 2016-17 to retain the Student's seat for following year. But the School in violation of the said clause has failed to retain the Student's place in the next Grade. He further submitted that in terms of Section 6(1)(iii) of the Sindh Private Educational Institutions (Regulation and Control) Ordinance, 2001, the facilities allowed to a student at the time of his admission should not be reduced or withdrawn and the School while denying a place to the Student in the next Grade has withdrawn the facility allowed

to him which amount to violation of Section 6(1)(iii) *ibid*. According to him, as the School has contravened the provisions of aforesaid Section, its registration certificate be cancelled in pursuance of Section 8 of the Ordinance. He next submitted that once a full term term before proceeding to long leave is paid, the School cannot refuse a place to the Student in next merely on the ground that its email was not replied to. He prayed that in the circumstances the instant petition be allowed as prayed.

7. Ms. Rukhsana Ahmed, Advocate for the School, petitioner in CP No.D-5373 of 2020, submitted that the Student was admitted in the School in August 2011 and studied there till 2016. She submitted that the Father and the Student while following the School's long leave policy voluntarily deposited the full term fee of Rs. 184,800/- for the year 2016-17, which was for retaining a seat in the School, and pursuant to such commitment the School retained a seat for the Student by not admitting another student in his place in the session of 2016-17, and thus the order to refund that retainer fee was contrary to the agreement between the parties, the School Policy, and has been passed without assigning any reason. According to her, neither the Father nor the Student intimated the School about their return and when the next session started they came back demanding promotion of the Student from Grade II to Grade III. Learned counsel contended that though the Father and Student did not bother to intimate the School about their return, the School conducted an assessment test of the Student whether he meets the required/expected level and as he failed to qualify, the School in the larger interest of the Student allowed him to repeat Class-II. She submitted that in terms of the long leave policy of the School the parents are required to give a minimum two weeks' notice to the School before a student could resume after such leaves. However, in the instant case, even the email sent by the School in March, 2017 was not replied and without notice the Father for the first time contacted the School in July, 2017 on their return. She submitted that if in the circumstances the Student was promoted from Class II to Class III it would have been discriminatory and violation of the Article 25 of the Constitution.

8. The learned counsel maintained that as per oral arrangement and following the Clause 25 of the Fee Administrative Policy for 2016-17 the Father in order to retain a place at the School voluntarily deposited the

full term fee for the Student studying in Class II. She submitted that admittedly no fee for the following academic sessions was received by the School and the said clause in no way provides mechanical promotion to the next grade to a student who wishes to leave the School temporarily. She vehemently controverted that the School at any point of time has violated any provision of law more specifically the Section 6(1)(iii) of the Ordinance. She submitted that the Inquiry Committee and the Respondent No.2, who endorsed former's findings, have miserably overlooked that the Father filed the complaint against the School in June, 2020, after a lapse of three years, while he on his return contacted the School in July, 2017 and after failure of the Student to meet the required level promotion to Grade-III was not allowed. She submitted that in order to pressurize, harass and malign the School the Father has filed the complaint after passage of three years and neither in the complaint nor in the petition such delay was explained. Learned counsel submitted that on the ground of laches the petition merits no consideration and liable to be dismissed.

9. We have heard the learned counsel for the petitioners in both petitions and learned AAG, who supported the impugned order. In paragraph No.7 of CP No.D-6383 of 2020 it is averred that:-

“At this juncture, the Petitioner No.1 came to an arrangement with the Respondents No.3, 4 and 5. The arrangement was that since both the Petitioners were leaving for United Kingdom, they wanted the Respondents No.3-5 to keep a seat for Petitioner No.2 for the following year (2017-2018). In other words, the Petitioner No.2 would not study in Links School for one year (2016-2017) instead he would go to school in the United Kingdom and complete his Grade II there. Upon his (Petitioner No.2) return he would be eligible for grade III.”

10. Moreover, in paragraph No.3 of the complaint addressed by the Father (Petitioner No.1 in CP No.D-6383 of 2021) to the Directorate of Inspection and Registration of Private Institution, it is stated that:-

“The arrangement was that I will pay the full term fee for the year 2016-2017 (the year in which my family and I were in the United Kingdom) in order to secure a seat for the following year i.e. 2017-

2018. The aforementioned arrangement was made verbally as per Clause 25 of the Links Fee Administration Policy 2016/2017 (School Policy):

“(25) If you remove your child from school on a temporary basis and wish to retain a place at Links you will be required to pay the Full term fee.”

11. Prima facie, there was a verbal arrangement pursuant to which the Student with Father and other family members travelled abroad and in order to retain a place at the School, the Father deposited full term fee of Rs. 184,800/- for the year 2016-17 in terms of Clause 25 ibid. There is nothing on record or even pointed out during hearing to show that the School has given any assurance that on payment of the retainer fee the Student would be promoted from Grade-II to Grade-III on his return to Pakistan without following its policy.

12. So far as not reserving the seat for the Student in following academic year 2017-18, the School maintained that the parents of the Student neither replied the email sent in March, 2017 to them nor even intimated the School about his resuming the School after availing long leave. The learned Counsel for the Petitioners in CP No.D-6383 of 2020 contended that neither the School sent any email nor its Principal or Management discussed any policy or pointed out any rules except Fee Administration Policy of the School 2016-17 (Annexure A/13 to the Petition) at the time when the Student alongwith his Father was leaving Pakistan. According to him, the Long Leave Policy of the School is nothing but an afterthought. The said submission is misconceived. The Student had studied in the School from August, 2011 to June, 2016, and in this regard, submission of the learned Counsel appearing for the School carries weight that such policy/clause is very much part of the Parent Hand Book. For the sake of ready reference, the Long Leave Policy as noted in the Parent Hand Book of the School (Annexure E to Petition No.D-5373 of 2020) is reproduced hereunder:-

“Long Leave Policy

Parents who wish to retain their child’s seat at Links must submit a written application, which will be subject to approval by the Links Management.

If long leave is approved, parents must pay all subsequent term fees before the due date. If payment is not received by the due date, will be assumed that the seat is no longer required and the child's name will be removed from our list.

Parent may hold their child's seat at Links only until the end of class 9 after which the Long Leave Policy will not apply.

Parents must give the school a minimum of 2 weeks' notice before the student can resume school after long leave.

After returning from long, students are required to sit for the Links Admission Test to verify his/her academic standing and to ensure he/she is at the required level of the current class.

Failure to meet the expected level will result in the student being admitted to a lower class." (emphasis added)

13. The Long Leave Policy of the School, reproduced herein above, clearly manifests that parents must give the school a minimum of two weeks' notice before the student can resume school after long leave and he would be required to sit in the School admission test to verify his academic standing and assess the required level.

14. Even otherwise, the Father claimed that only one page Fee Administration Policy 2016-17 of the School was provided to him when he alongwith the Student approached the School for long leave. Perusal of the Fee Administration Policy 2016-17 of the School reveals that annual fee of the School was divided in three payment instalments and fee for the first quarter i.e. July, August, September and October was to be made in March, 2016. Besides, the parents are obliged to contact the school office regarding non-receipt of bills. However, neither during arguments nor even in the pleadings it has been maintained that the Father/Mother of the Student during the long leave period ever contacted the School for payment of the School fee for following academic year (2017-18) in case the Student wished to continue education with the School after long leave. Even so, the School, on return of the Student from long leave, conducted re-test, as per its policy, which the Student failed to qualify. On the one hand, the Student participated in the re-test and on the other the Father after failure of the Student in the assessment, filed complaint purporting that the re-test was biased. In the circumstances, no exceptions can be taken to the findings of the Inquiry Committee that the School has not violated the Section 6(1)(iii) of the Ordinance.

15. The contention of Syed Farhan Ali Shah, Advocate was that the refusal of the School to take the Student in Grade III is illegal, arbitrary, and in violation of fundamental rights enshrined in the Constitution such as right to education and equal treatment. There is nothing on record or even argued that during the long leave period the parents of the Student had made any attempt to contact the School or they even raised any objection to the re-test of the Student before his failure to qualify the same. So far as equal protection of law as enshrined in Article 25 of the Constitution is concerned it is pertinent to mention that equal protection of law does not envisage that everyone is treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike.

16. Be that as it may, the fact of the matter remains that the School did in fact take a test of the Student to consider him for Grade III in the academic session of 2017-2018, but since the Student did not pass such test, the School offered to take the Student back in Grade II for the academic session 2017-2018. Therefore, it cannot be contended by the Father that the School had refused the Student a seat in the academic session 2017-2018 after taking the retainer fee of Rs.184,800/-, but only that the School had refused to take him into Grade III for that session. As already discussed above, there was no commitment by the School nor was it School Policy that the payment of a retainer fee would ensure the Student an automatic promotion to Grade III in the academic session 2017-2018 after he returned from long leave. Admittedly, the admission of the Student thereafter to another school was also in Grade II. Therefore, the contention that the School acted with malafides in offering to take the Student back into Grade II, also has no force. There is also no explanation for the delay of almost three years in filing the Complaint before the Authority. For all of the aforesaid reasons, CP No.D-6383 of 2020 merits no consideration and is accordingly dismissed.

17. This brings us to the grievance of the School in CP No.D-5373 of 2020, viz. that the impugned order passed by the Authority for refunding the fee of Rs. 184,800/- was without justification. It was the Father's own case that the said fee was paid to retain a seat for the Student in the School for the session of 2017-2018 on his return from long leave in line with the School Policy (the retainer fee). It is also an admitted fact that the School had offered to take the Student back in the School for the

session 2017-2018, just not in Grade III but in Grade II, however that offer was not accepted by the Father. This establishes that the School had in fact retained a seat for the Student in the preceding School session 2016-17, which seat the School would otherwise have filled by giving admission to another in Grade II during the session the Student remained abroad. Such aspect of the matter was not considered by the Authority in passing the impugned order. Rather, the School has been directed to refund the retainer fee "in the larger interest of justice". In our view that is no justification or reason for directing the refund when the finding of the Authority was that the School did not contravene the provisions of the Ordinance and the Rules. Therefore, we allow CP No.D-5373 of 2020 by setting aside the direction of refund of Rs. 184,800/- given in the impugned order.

Chief Justice

Judge