

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

RP.No. 941 of 2012 () IN WP(C).12272/2006

**AGAINST THE ORDER/JUDGMENT IN WP(C) 12272/2006 of HIGH COURT OF KERALA
DATED 07-06-2012**

REVIEW PETITIONER/RESPONDENTS 1 AND 2 IN WP(C):

- 1. THE REGISTRAR, SCMS SCHOOL OF TECHNOLOGY AND MANAGEMENT,
SCMS CAMPUS, PRATAP NAGAR, MUTTAM ALUVA.**
- 2. HEAD OF THE DEPARTMENT,
MASTER OF COMPUTER APPLICATIONS
SCMS SCHOOL OF TECHNOLOGY & MANAGEMENT, SCMS CAMPUS
PRATAP NAGAR, MUTTAM, ALUVA.**

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS/PETITIONER AND RESPONDENT NO.3 IN WRIT PETITION.:

- 1. SHEETHAL K.SURESH,
D/O K.G.SURESH, KULANGARA HOUSE, KUMARANASAN NAGAR
KADAVANTHARA, KOCHI-20.**
- 2. MAHATMA GANDHI UNIVERSITY,
REPRESENTED BY THE REGISTRAR, KOTTAYAM-686 562.**

**R1 BY ADV. SRI.P.SANTHOSH KUMAR (PANAMPALLI NAGAR)
BY SRI.VARUGHESE M.EASO, SC, M.G. UNIVERSITY**

**THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 29-09-2015, THE
COURT ON THE SAME DAY PASSED THE FOLLOWING:**

A.M. SHAFFIQUE, J.

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Dated this, the 29th day of September, 2015

O R D E R

This review petition is filed by respondents 1 and 2 in the writ petition *inter alia* contending that Clause IV (d) of Ext.R1(b) does not apply to the fact situation in the case since the petitioner had applied for transfer during the second semester and not in the second year.

2. The writ petition was filed by a 2nd Semester MBA student in SCMS College. She applied for a transfer certificate. The transfer certificate was not given since she did not remit certain amounts demanded by the College. After considering the respective contentions, this Court directed the 1st respondent College to refund to the petitioner liquidated damages, if any, paid by the petitioner within a period of one month.

3. Learned counsel for the review petitioners submits that since the inter institutional transfer was sought for during the first year itself and not in the second year, Clause IV(d) has no

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application.

4. The short question involved in the writ petition was whether the College was entitled to recover liquidated damages from the student who sought for an inter institutional transfer in the same University. Appropriate provision has been made in the prospectus which restrained recovery of liquidated damages if the institutional transfer is made in the second year. There cannot be any dispute about the aforesaid fact. But when such a waiver of payment of liquidated damages has been permitted during the second year in respect of institutional transfer, there is no reason why it should not be permitted during the second semester also. It is pointed out by the learned counsel for the review petitioners that if on account of institutional transfer during the second year the College suffers certain losses, it is taken care of by payment of liquidated damages.

5. Having regard to the fact that institutional transfers are permitted by the State Government and the concerned University, there is no reason for recovering the liquidated damages. Reference is made to Clause IV (c), which reads as under;

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***“IV (c):** If any candidate discontinues/leaves the institution after the closing of admissions in the same year or in subsequent years to join other courses or for other purpose he/she is liable to pay a liquidated damage of Rs.30,000. Candidates belonging to SC/ST/OEC are exempted from payment of such liquidated damage.”*

6. The liability to pay liquidated damages applies only in a situation as envisaged under Clause IV (c) where the candidate after closing of admissions in the same year or in subsequent years joins other courses or other purposes. Then alone the liability for payment of liquidated damages arise. A situation as warranted in the present case does not enable the College to recover liquidated damages. Under such circumstances, I do not think that the judgment calls for any review as there is no error apparent on the face of record.

Review petition is, therefore, dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

30/09/2015

//True Copy//

PS to Judge