

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 11709 of 2014 (K)

PETITIONER:

MUHAMMED RAFSAL.K.V,
AGED 24 YEARS,
S/O.ABDULLAH, KUTTIVAYAL HOUSE, PUNNASSERY PO
NARIKKUNI, KOZHIKODE DISTRICT.

BY ADVS.SRI.C.A.NAVAS
SRI.C.J.SOLOMAN
SMT.C.S.SIMI
SRI.T.K.SASIKUMAR

RESPONDENT(S) :

1. UNIVERSITY OF CALICUT
REPRESENTED BY ITS REGISTRAR, THENGIPALAM
MALAPPURAM DISTRICT, PIN 673 635.

2. STATE OF KERALA
REPRESENTED BY THE SECRETARY, EDUCATION DEPARTMENT
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695 001.

R1 BY ADV. SRI.SANTHOSH MATHEW,SC,CALICUTY UNIVERSITY
R BY GOVERNMENT PLEADER NOUSHAD THOTTATHIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-07-2015, ALONG WITH WPC. 31541/2014, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 11709 of 2014 (K)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1 COPY OF THE APPLICATION FEE CHELAN RECEIPT DATED
29/8/2013.

EXHIBIT P2 COPY OF THE ALLOTMENT RECEIPT DATED 13/11/2013.

EXHIBIT P3 COPY OF THE PAPER PUBLICATION REPORTED IN MADHYAMAM DAILY
DATED 28/1/2014.

EXHIBIT P4 COPY OF THE JUDGMENT DATED 22/1/2014 IN UNNUMBERED ZWPC
53/2014 OF THIS COURT.

EXHIBIT P5 COPY OF THE ORDER DATED 10/1/2014 ISSUED BY THE NCTE.

EXHIBIT P6 COPY OF JUDGMENT DATED 24/2/2014 IN WPC NO. 3312/2014 OF
THIS COURT.

EXHIBIT P7 COPY OF THE INTERIM ORDER DATED 26/2/2014 IN WPC
NO.3312/2014 OF THIS COURT.

EXHIBIT P8 COPY OF THE ATTENDANCE CERTIFICATE NO.166/KET/2014 DATED
28/2/2014.

EXHIBIT P9 COPY OF THE TRANSFER APPLICATION DATED 7/3/2014.

EXHIBIT P10 COPY OF THE MEDICAL CERTIFICATE DATED 4/2/2014 ISSUED BY
THE MIMS HOSPITAL CALICUT.

EXHIBIT P11 COPY OF THE DELAY CONDONATION APPLICATION DATED
25/4/2014.

EXHIBIT P12 COPY OF THE FEE RECEIPT DATED 25/4/2014.

EXHIBIT P13 COPY OF THE COMMUNICATION ISSUED BY THE ORIENTAL COLLEGE
DATED NIL.

EXHIBIT P14 COPY OF THE APPLICATION DATED NIL.

RESPONDENT(S) ' EXHIBITS

NIL.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.11709 of 2014-K

Dated this the 7th day of July, 2015

JUDGMENT

The petitioner is a B.Ed student who completed his B.Ed Course in Oriental College of Teacher Education, Naduvannur. He had initially joined KET College of Teacher Education, Balussery on the basis of the allotment granted to him by the Government. He joined the college as per Exts.P1 and P2, on 21.11.2013 after remitting the prescribed fee. Subsequently he came to know from Ext.P3 news item that the said college in which he got admission in the process of centralised allotment in a Government seat, did not have recognition from the National Council for Teacher Education (NCTE). Ext.P4 is a judgment of a Division Bench of this Court which held that the students are solely responsible for joining colleges like KET College of Engineering having no affiliation for recognition. The authorities of the college, in which the petitioner had joined, had in the meanwhile, filed an appeal against the refusal of recognition; but the appeal of the college was dismissed by the NCTE.

2. In the above circumstances, the petitioner approached this Court in W.P(C)) No.3312 of 2014 praying for a direction to transfer him to any other nearby colleges having recognition from the University and approval from NCTE. This Court by Ext.P6 judgment directed as follows:

“In the above circumstances, the petitioner would have the option to approach the University for a transfer and re-allocation. Despite the submission of the learned Standing Counsel for the University that the last date fixed for transfer and re-allocation application is already over, in the special circumstances, this Court is of the opinion, that it can be extended in the present case. The 1st respondent shall, hence, issue transfer Certificate and consent form along with the details of attendance, to the petitioner within a period of one week from the date of receipt of a certified copy of this judgment. The petitioner shall then, immediately approach the University, with an application for transfer and re-allocation with consent in the prescribed form issued by the 1st respondent College and also the host College. On grant of transfer and re-allocation, the petitioner shall then approach the Principal of the College to which admission is sought. The University shall also expedite the matter.”

3. In the meanwhile this Court by Ext.P7 interim order

dated 26.02.2014 directed the KET College of Teacher Education to issue transfer certificate to the petitioner along with attendance details, within a period of 3 days. The KET College issued an attendance certificate on 28.2.14 certifying that out of the 62 working days from 6.2.12 to 28.2.14, the petitioner attended the course for 32 days, only.

4. Ext.P6 judgment of this Court as well as Ext.P7 interim order will reveal that the petitioner was ventilating his grievances against the college which had to issue an attendance certificate to him, on directions from this Court. At the time of First Semester examination he was informed that the University cannot permit him to appear for the examination on account of the deficiency in the attendance by 11.9%. However, on the basis of the interim orders, the petitioner has appeared in the first semester examination. The petitioner had submitted Ext.P11 application for condonation of the shortage of attendance. The application was duly recommended and forwarded by the Oriental College, where he had been undergoing the B.Ed. course, as can be seen from Ext.P13. As the hall ticket was not issued, he filed this Writ Petition and as per the order of this Court he appeared in the examination of the

first semester. As far as the second semester is concerned, it is submitted that, he has got sufficient attendance.

5. The University has filed a statement dated 21.07.2014, according to which, the petitioner has got 11.9% of shortage in the attendance and the same is beyond the condonable limit as per the regulations. Including the 32 days of attendance marked in KET College, his total attendance in the first semester was only 64 out of 94. As per the statement, the condonation permissible is only upto 10%. Therefore the petitioner cannot be granted any relief in the Writ Petition.

5. The learned Standing Counsel, relying on a series of judgments including that of the Supreme Court in **Ashok Kumar Thakur v. University of Himachal Pradesh and others** [1973 KHC 567], asserted that this Court would not be justified in granting any order directing condonation of the shortage of attendance since it is beyond the admissible period of condonation specified under the regulation. He also relied on the judgment in **Ajith Chandran v. University of Kerala** [2013 (4) KLT 392].

6. Having heard the contention of the counsel on either side, I find that this is a peculiar case in which the petitioner had

to fight against the college in which he had to undergo his studies on the basis of an allotment given by the machineries of Government, which was found to be of without any recognition by the NCTE. It is only after directions were issued by this Court that the petitioner was granted admission in another college and the transfer certificate was issued from the KET College of Teacher Education which was definitely on inimical terms with him. The circumstances under which the attendance certificate was issued on the basis of the direction from this Court, are sufficient to accept the contention of the petitioner that the actual attendance is not shown in the certificate. I find that such circumstances were not available in any of the cases cited by the learned counsel for the respondent.

7. The learned Standing Counsel on instructions submitted that the petitioner has already passed the first semester examination, the results of which are not released on the basis of the pendency of this Writ Petition.

8. In the above circumstances, the University is directed to condone the shortage in the attendance of the petitioner for the First Semester B.Ed Course and to declare his result immediately.

It is made clear that this judgment is rendered in the peculiar circumstances of the case where the petitioner had to get an attendance certificate from the college which was inimical to him on account of continuous fight against it. Therefore it shall not be treated as a precedent.

With the above observations this Writ Petition is allowed.

Sd/-

(P.V.ASHA, JUDGE)

rtr/