

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.No.21777 of 2015
and M.P.Nos.1 to 3 of 2015

A.Vignesh

[Petitioner]

Vs

1 Saveetha University
Rep.by its Registrar No.162 Poonamallee
High Road Poonamallee Chennai-600 077

2 The Principal
Saveetha School of Law
Saveetha University
No.162 Poonamallee High Road
Poonamallee
Chennai-600 077

[Respondents]

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorarified mandamus calling for the records pertaining to the impugned circular dated 22.6.2015 issued by the 2nd respondent relating to break system from I Year to II Year of BABL (Hons) Course and the list published by the 1st respondent signed by the 2nd respondent on 22.6.2015 regarding failed candidates in more than 3 subjects and quash the same as far as the petitioner is concerned and consequentially direct the respondents to permit the petitioner to attend II Year course of BABL (Hons) without any break in all aspects and without hurdle or disturbance in any manner.

For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.S.Saravanan

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Saravanan,
learned counsel for the 1st respondent.

2. This writ petition has been filed challenging the impugned circular dated 22.6.2015 issued by the 2nd respondent relating to break system from I Year of BABL (Hons) Course and the list published by the 1st respondent signed by the 2nd respondent on 22.6.2015 regarding failed candidates in more than 3 subjects, as far as the petitioner is concerned and consequently to direct the respondents to permit the petitioner to attend II Year course of BABL (Hons) without any break in all aspects and without hurdle or disturbance in any manner

3. The petitioner joined in 5 year Integrated B.A.B.L.(Hons.) degree course in the academic year 2014-2015 in the 1st respondent College, which is a deemed University in terms of Section 3 of the University Grants Commission Act and hence it has its own regulations. According to petitioner, since the Course is a 5 year Integrated Course, conferring two degrees, the 1st three years are divided into trimesters and if he completes the same, he would be entitled to go for the 4th year and the respondent University has a Break System barring students from moving from the 3rd year to the 4th year, unless they clear all the subjects. However, there is no break system from entering into the 2nd year from 1st year. The petitioner appeared for the examination in the 1st Semester held in December 2014, but, unfortunately he failed in all the subjects. The 2nd semester examinations were held from 02.06.2015 to 06.06.2015 and on the same days in the afternoon, the 1st semester examinations were held, without even giving any gap. The petitioner appeared for the said examinations with great difficulty, however, as per the results declared in the College Notice Board on 22.06.2015, he failed in four subjects. But there is no mention about the marks obtained in the said notice board. On the same day, a circular was displayed in the notice board with the signature of the principal stating that no student can be permitted to carry over more than three failed subject of the I year to the II year of study. Aggrieved over the same the petitioner is before this Court.

4. The learned counsel appearing for the petitioner, on instructions, would submit that the petitioner is not feeling comfortable in continuing the studies in the respondent College and it would be suffice to direct the respondent to return the original certificates/testimonials along with Transfer and Character Certificate so as to enable him to join in some other college and pursue his academic career and prays for appropriate orders. In support of his submissions, the learned counsel appearing for the petitioner relied upon the following decisions:

(i) Order dated 10.07.2012 made in Crl.O.P.No.9920/2012 [A.John Paul and two others v. State and another]

(ii) Order dated 18.12.2012 made in W.P.(MD).No.14394 of 2012 [S.Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others]

(iii) Order dated 05.11.2014 made in W.P.Nos.27809 to 27811 and 27973 to 27975 of 2014 [D.Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others]

(iv) Vikrant Chourasiya v. State of M.P. And Others [W.P.No.12778 of 2013 dated 06.08.2014 - Madhya Pradesh High Court].

5. Per contra, Mr.S.Saravanan, learned counsel appearing for the respondents would submit that in the event of the petitioner being permitted to leave the college, the vacancy caused cannot be filled up till the duration of the entire course and since the petitioner institution is a self-financing institution, run on the fees collected from the students, the petitioner has to pay the entire course fees and in that event only, original certificates would be returned to him. In support of his submissions, the learned counsel for the respondent relied upon the following judgments:

(i) Irshad Mohammed Ali v. State of Kerala [CDJ 1996 Ker HC 271]

(ii) R.Gowthami v. The Regional Officer, All India Council for Technical Education and Others [CDJ 2012 MHC 1246 =2012 (1) CWC 798]

(iii) Order dated 22.01.2013 made in W.P.No.15881/2012 [Karnataka High Court]

(iv) Order dated 18.03.2014 made in W.P.No.13792/2009 [Karnataka High Court]

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. Though the prayer in the writ petition is to quash the circular dated 22.6.2015, the learned counsel appearing for the petitioner, on instructions, submitted that it would suffice to direct the respondents to return the original certificates/testimonials along with the Transfer Certificate and Character Certificate so as to enable him to pursue his academic career in some other institution. According to the learned counsel appearing for the respondents unless and until the petitioner pays the entire course fees, certificates will not be returned for the reason that the seat which will fall vacant, cannot be filled up till the completion of the entire course and one seat may also go vacant which in-turn would definitely cause hardship and financial loss to the respondent institution, which is a self-financing one. In the case of P.R.Rakesh vs. Directorate of Technical Education, (W.P.No.11477 of 2009 dated 16.07.2009), this Court after referring to

the public notice issued by the All India Council for Technical Education, wherein it has been stated as follows:-

"In the event of a student/candidate withdrawing before the starting of the courses, the wait listed candidates should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee of not more than Rs.1000/- (Rupees one thousand only) shall be refunded and returned by the institution/University to the Student/candidate withdrawing from the programme. It would not be permissible for the institutions and Universities to retain the School/Institution Leaving Certificate in Original. Should a student leave after joining the course and if the seat consequently falling vacant has been filled by another candidates by the last date of admission, the institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable".

directed the respondent to issue the transfer certificate and other original certificates if any submitted by the petitioner therein at the time of admission.

8. In the order dated 10.07.2012 made in CrI.O.P.No.9920/2012 [A.John Paul and two others v. State and another] passed by this Court, the facts of the case would disclose that the petitioners therein had resigned their job in a private school and approached the second respondent Management for return of the original certificates and it was declined to be returned and therefore, lodged a complaint and since no action was taken by the jurisdictional police, has filed the Criminal Original Petition for registration of a case on their complaint. The learned Judge, in the said decision, has taken into consideration Section 6 of the Transfer of Property Act and arrived at the conclusion that the certificates such as Mark Sheets, Conduct Certificates are all properties which cannot be transferred at all and even by means of an agreement, the property which cannot be transferred cannot be the subject of transfer under the guise of the said agreement and it is to be treated as void and held that retention of the certificates by the Management is unlawful. The learned Judge further held that entrustment of the certificates cannot be treated as a transfer and consequently, the Management therein has no authority to retain the certificates after the petitioners therein had resigned their job and therefore, directed the return of the certificates.

9. This Court, in the order dated 18.12.2012 made in W.P(MD). No.14394 of 2012 [S.Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others], has held that the certificates given at the time of admission, are not like fixed deposit receipt on which, banks claim a general lien in terms of

Section 171 of the Contract Act and therefore, it cannot be retained at any rate and issued a direction, directing the fourth respondent therein namely the Principal, Mount Zion College of Engineering, Pudukottai District to return all the original certificates to the petitioner therein.

10. In yet another order dated 05.11.2014 made in W.P.Nos.27809/2014 etc., batch [D.Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others], this Court has granted similar relief and also reserved the right of the institution to resolve the same independently in appropriate proceedings taken by both parties.

11. In Irshad Mohammed Ali v. State of Kerala [CDJ 1996 Ker 271], the Kerala High Court has held that the third respondent College therein is entitled to demand the payment of the entire fees for the course before Transfer Certificate is issued.

12. Similar view was taken by this Court in R.Gowthami v. The Regional Office, All India Council for Technical Education & Others [CDJ 2012 MHC 1246 =2012 (1) CWC 798].

13. A Division Bench of Karnataka High Court, in the order dated 18.03.2014 made in W.P.No.13792 of 2009 [Miss Smruthy v. DA Pandu Memorial R.V. Dental College & Hospital and another], has held that in advance for the whole course, the college cannot collect the fees and if the college is of the opinion that the student may leave in the midstream then it can demand a student to execute the bond/bank guarantee for the balance fees for the whole course.

14. In yet another decision in Mr.Sunoj Mathew v. New Navodaya Institute of Nursing and Others [Order dated 22.01.2013 made in W.P.No.15881/2012], the Karnataka High Court held that so far as the documents which are in possession of the college, the dispute could be resolved between the parties in a private negotiation or else approach the appropriate forum.

15. The learned counsel appearing for the respondents has placed heavy reliance upon the prospectus of the University relating to Saveetha School of Law and it is relevant to extract the same:

"Fee Structure

The candidates once selected for admission should pay the following fees at the time of Admission and therefore in the month of May every year. The fees once paid will not be refunded. In case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing.

Course	Annual Fee
B.A.B.L. (Hons.)	Rs.1,25,000/-
B.B.A.B.L. (Hons.)	Rs.1,25,000/-

Apart from the tuition fee, the following has to be paid at the time of admission:

Admission Fee	Rs.5,000/-
University Registration Fee	Rs.3,500/-
Eligibility Fee	Rs.1,500/-
Caution Deposit	Rs.5,000/-

(Refundable at the end of the course)"

The prospectus stipulates that the fees once paid will not be refunded and in case if a candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing.

16. In *Kesavan v. Director of Medical Education, Kilpauk, Chennai-600 010* and another [(2011) 8 MLJ 454], the petitioner joined BDS course at Tamil Nadu Government Dental College, Chennai during the academic year 2000-2009 and subsequently, discontinued the studies and requested the respondents therein to return the transfer certificate and his +2 mark sheet, so that he can secure employment and since it was not considered, filed the writ petition. The official respondents took a stand that since he has executed an agreement to pay a sum of Rs.2,00,000/- in the event of discontinuation, he was asked to pay the same and unless and until the said amount is paid, the certificates could not be returned. The learned Judge has taken note of the fact that there is no clause in the bond that the respondents could retain the certificates until the payment is made and held that for not paying the amount, they could at the most take recovery proceedings against the petitioner based on the bond and consequently, issued directions for return of the certificates.

17. Similar view has also been taken in the (i) Order dated 10.07.2012 made in Crl.O.P.No.9920/2012 [A.John Paul and two others v. State and another] ; (ii) Order dated 18.12.2012 made in W.P.(MD). No.14394 of 2012 [S.Muthulakshmi v. The Director of Technical Education, Anna University, Chennai and others] and in the (iii) Order dated 05.11.2014 made in W.P.Nos.27809 to 27811 and 27973 to 27975 of 2014 [D.Vinoth Kumar and Others v. The Principal Secretary to Government of Tamil Nadu and others]. The Madhya Pradesh High Court also, in the order dated 06.08.2014 made in W.P.No.12778/2013 [Vikrant Chourasiya v. State of M.P. and others] has held that there are no statutory rules, regulations or scheme which permit the institute to retain the documents.

18. In *Islamic Academy of Education vs. The State of Karnataka* reported in MANU/SC/0580/2003: (2003) 6 SCC 697, no reference has been made by the Hon'ble Supreme Court with regard to withholding of the transfer and other certificates.

19. In the considered opinion of the Court, the above cited decisions are fully applicable to the facts of this case and the ratio laid down in the said decisions is also in consonance with common sense and logic. Even as per the prospectus of the respondent College, the fees once paid will not be refunded and in case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing. The petitioner executed affidavit of undertaking stating among other things that in case of discontinuation of the course in the middle of any reason, he promises to pay the remaining entire course fees and his father has also counter signed the said affidavit of undertaking and stood as the guarantor for the affidavit of undertaking. It is pertinent to point out at this juncture that even in the said affidavit of undertaking, no promise/undertaking has been given by the petitioner to the effect that unless and until he pays the entire course fees, he is not entitled to get the certificates. Therefore, there is no clause either in the prospectus or in the affidavit of undertaking dated Nil executed by the petitioner, counter signed by his father, to the effect that the certificates cannot be returned unless and until the entire course fees is paid.

20. In the light of the reasons assigned above, the respondent is directed to return the original testimonials/certificates collected from the petitioner at the time of admission to B.A., B.L.(Hons.) course for the academic year 2014-15 along with the Transfer Certificate and Character Certificate to the petitioner within a period of two weeks from the date of receipt of a copy of this order and the respondent is also at liberty to initiate appropriate legal proceedings to recover the sums/fees from the petitioner and also from his father.

21. In the result, the Writ Petition is disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

-Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1 Saveetha University
The Registrar No.162 Poonamallee
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+1 CC to Mr.R.Neelakandan Advocate. Sr.No.54296
+1 CC to Mr.S.Saravanan Advocate. Sr.No.54331

W.P.No.21777 of 2015

CO-GR
JD 09/10/2015



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