

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

W.P.No.23809 of 2015 and M.P.No.1 of 2015

P.Divya

W/o.P.Sivakumar

No.15/4 Maakaliamman Koil Street,
Kalapatti Coimbatore 641 048

... PETITIONER

Vs.

- 1 Government of Tamilnadu
Rep. by the Principal Secretary to Government,
Higher Education Department,
Fort St. George, Chennai-9.
- 2 The Director of Technical Education
Sardar Patel Road, Chennai.
- 3 Prathyusha Institute of Technology and Management
Rep. by its Principal,
Aranvoyaluppam,
Poonamalle Thiruvallur High Road,
Thiruvallur 602 025
- 4 M/s.Akshya College of Engineering and Technology
Rep. by its Principal,
Bhagavathipalayam Road
Kinathukadavu, Coimbatore 642 109
- 5 The Registrar
Anna University,
Sardar Patel Road, Guindy,
Chennai-25

...

RESPONDENTS

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 2nd respondent to approve transfer in the second year M.E. (Applied Electronics) from the 3rd respondent college to the 4th respondent college in the light of order of this Honourable court in WP No.20340/2013 dated 16.9.2013 and representation dated 23.7.2015 award costs.

For Petitioner	: Mr.Dass Law Associates
For Respondents-1&2	: Mrs.P.Rajalakshmi, G.A.
For Respondents-3&4	: No appearance
For Respondent-5	: Mr.M.Vijayakumar

O R D E R

The petitioner is a student who studying at present in the fourth respondent College in M.E. (Applied Electronics). From the records, it is seen that petitioner got married on 22.5.2014 which is intercaste marriage. It also appears that marriage of the petitioner did not have the blessings of her parents. At the relevant point of time, petitioner was studying in the third respondent College. As her husband was in Coimbatore, the petitioner obtained transfer to the fourth respondent College from the third respondent College to live with him. Thereafter, she made request to the respondent No.2 seeking approval to the transfer of the petitioner to the fourth respondent College. As the same was not considered, the present writ petition has been filed.

2 The counsel for the petitioner submitted that the Government order which stands in the way of transfer being considered has been found to be illegal. The request has been made on the basis of the order passed by this Court in W.P.No.20340 of 2013, dated 16.9.2013.

3 The learned Government Advocate appearing for the respondents 1 and 2 submitted that the petitioner's request cannot be considered on the basis of the said order.

4 A perusal of the order, dated 16.9.2013 in W.P.No.20340 of 2013 would show that the very same order quashed the G.O.Ms.No.434, dated 23.10.2008. In the said order, this Court was pleased to held as follows:

"9. The petitioner has taken up a substantial contention with regard to the rationale behind taking such a decision restricting institutional transfer of PG Students.

10. The counter affidavit filed by the Commissioner of Technical Education indicates that only on account of the fact that PG course of study is of two years duration and transfer is normally accorded after completion of one year of study by the student, decision was taken not to permit transfer of PG students from one institution to another.

11. The deliberations of the Co-ordination Committee constituted by the

Government vide Government Order in G.O.Ms.No.434, dated 23 October 2008 does not contain any material as to the factors that contributed for taking such a drastic decision. The committee proceeded as if transfer is normally accorded after completion of one year of study by the student. There is no logic or reasoning with respect to the said finding. There would be cases in which students would be compelled to seek transfer from one institution to another on multiple reasons. The Government cannot take a decision to ban transfer of PG students in a generalised manner. The fact that PG course is of two years duration only and transfer is normally accorded after completion of one year of study by the student cannot be a valid reason to prohibit transfer of PG students from one institution to another. There are no other reasons given by the Committee or by the Commissioner of Technical Education in his counter affidavit justifying the ban imposed on transfer of PG students.

12. The situation has changed now in view of the formation of a unitary Anna University at Chennai. Both the Colleges are now affiliated to Anna University at Chennai. However that was not the case earlier, as there were five technical universities functioning in the State of Tamil Nadu. While taking a decision to prohibit transfer of PG students from one institution to another institution, the Government failed to address certain basic issues. There would be genuine cases requiring transfer. According to the petitioner, her mother was diagnosed with high diabetes and she is also suffering from vertigo. The petitioner is stated to be the only daughter and she has to take care of her mother. The petitioner wanted to study PG course as well as to look after her mother. It was only for the said purpose, she submitted application for transfer. The transferor college has agreed to permit transfer. Similarly, the transferee college has also agreed to take the

petitioner. The impugned Government order does not spell out any justifiable reason to impose restriction on transfer from one institution to another institution.

13. The classification made by the Government requires to be tested on the touchstone of Article 14 of the Constitution of India. To withstand the test of reasonable classification within the meaning of Article 14, such classification must satisfy the following essential test:

(i) classification must be founded on an intelligible differentia and

(ii) Such differentia which distinguishes persons placed in a group from those left out the said group must have a rationale relation with the object sought to be achieved. The authority in order to save a particular classification from the vice of arbitrariness or unreasonableness must demonstrate that there is a nexus between the basis of classification and the object sought to be achieved.

14. At present, there is only one technical university. There is only one set of syllabus applicable to all the colleges under Anna University. Such being the case, there is no rationale behind taking a decision to prohibit transfer of PG students from one institution to another within the State.

15. The impugned order denying transfer to the students of PG courses while permitting transfer of Engineering and other streams would amount to selective discrimination.

16. In the result, the impugned clause No.7(ix) in G.O.Ms.No.434, dated 23 October 2008 is quashed. The petitioner is given liberty to make an application before the second respondent to permit her to transfer from PSG College of Technology, Coimbatore to Sona College of Technology, Salem. The second respondent is directed to consider the said application taking

into account the consent given by the transferor and transferee institutions. Such exercise shall be completed within a period of two weeks from the date of receipt of such application.

17. The writ petition is allowed accordingly. Consequently, the connected MP is closed. No Costs."

5 In view of the said order passed which has become final against the second respondent, there cannot be any legal impediment in giving approval to the petitioner. This Court is not willing to direct the respondent No.2 to consider at this point of time since the petitioner is studying in the fourth respondent College. Thus, the respondent No.2 is directed to consider the peculiar case of the petitioner and approve the transfer of the petitioner within a period of four weeks from the date of receipt of a copy of this order.

6 Accordingly, the writ petition stands disposed of. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

14.8.2015

Index : Yes/No

Internet : Yes/No

Note: Issue order copy 17.8.2015

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To

- 1 The Principal Secretary to Government,
Government of Tamilnadu
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Fort St. George, Chennai-9.
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Sardar Patel Road, Guindy, Chennai-25

M.M.SUNDRESH J.

vaan

**W.P.No.24548 of 2015
and M.P.No.1 of 2015**

Dated: 14.8.2015