

**\* The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

**+ Writ Petition No.29865 of 2012**

**% Dated 06.08.2015**

**Between:**

# Hangellapally Shilpa

**... Petitioner**

**and**

Dr.NTR University of Health Sciences  
rep. by its Registrar, Vijayawada and 2 others.

**...Respondents**

**! Counsel for the petitioner: Mr.S.Lakshmikanth**

**^ Counsel for respondents 1 & 2: Mr.A.Prabhakar Rao,  
SC for University**

**^ Counsel for respondent No.3: None Appeared**

**<GIST:**

**>HEAD NOTE:**

**? Cases cited:  
NIL**

**In the High Court of Judicature at Hyderabad  
for the State of Telangana and the State of Andhra  
Pradesh**

**Writ Petition No.29865 of 2012**

**Between:**

Hangellapally Shilpa

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**...Respondents**

**Date of Judgment Pronounced: 06-08-2015**

**Submitted for Approval:**

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

1. Whether Reporters of Local newspapers  
Yes/No  
may be allowed to see the judgments ?
2. Whether the copies of judgment may be  
Yes/No  
marked to Law Reporters/Journals
3. Whether Their Ladyship/Lordship wish to  
Yes/No  
see the fair copy of the Judgment ?

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

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**Counsel for respondents 1 & 2: Mr.A.Prabhakar Rao, SC for University**

**Counsel for respondent No.3: None Appeared**

**The Court made the following:**

**Order:**

This Writ Petition is filed for a Mandamus to declare the discriminatory attitude of respondent No.2 in issuing the Memo in Ref.No.2304/E6A/BPT/2012, dated 03-09-2012, as illegal and violative of Articles 14 and 16 of the Constitution of India and the Principles of Natural Justice. The petitioner sought for a consequential direction to the respondents to withdraw the said Memo.

The petitioner averred that she has joined in respondent No.3- College for pursuing the Batchelor of Physiotherapy (BPT) course in the year 2004; that the duration of the said course is four years besides six months of internship; that she has completed the course without any break as per the almanac of respondent No.1 in the year 2009; that the said respondent has issued the provisional

certificate on 11-01-2010 certifying that she has passed the BPT degree examination held in October/November, 2009 in second division; that thereafter, she has applied for a job in a hospital; that she has secured the job and has been working since 2010; and that thereafter, respondent No.2 has issued the impugned Memo *inter alia* asking her to return the BPT provisional pass certificate as she is not eligible to be granted the said certificate and the original degree unless she passes the PT Ortho subject in the sixth semester of BPT course.

On behalf of the respondents, respondent No.1- Registrar of Dr.NTR University of Health Sciences (for short 'the University') has filed a counter-affidavit wherein it is *inter alia* stated that the duration of BPT course is four years with six months internship; that the BPT course will have eight semesters; that the candidates, who did not pass all the subjects in the first and the second semesters, will not be promoted to the third semester and that for promotion to the eighth semester, the candidates should pass all the subjects upto and including the seventh semester. The counter-affidavit has given the details of

appearance of the petitioner in the examinations and her results in a tabular statement, which read as under:

| S.No. | Semester                | Month and year of appearance | Result                                                              |
|-------|-------------------------|------------------------------|---------------------------------------------------------------------|
| 1.    | I Semester              | April, 2005                  | Pass                                                                |
| 2.    | II Semester             | October/November, 2005       | Fail                                                                |
| 3.    | II Semester             | April, 2006                  | Pass                                                                |
| 4.    | III Semester            | February, 2007               | Pass                                                                |
| 5.    | IV Semester             | July, 2007                   | Pass                                                                |
| 6.    | V Semester              | April, 2008                  | Pass                                                                |
| 7.    | VI Semester             | October, 2008                | Passed in SPM & Clinical Ortho and failed in PT Ortho with 96 marks |
| 8.    | VI Semester<br>PT Ortho | April, 2009                  | Not registered                                                      |
| 9.    | VII Semester            | April, 2009                  | Pass                                                                |
| 10.   | VI Semester<br>PT Ortho | November, 2009               | Not registered                                                      |
| 11.   | VIII Semester           | November, 2009               | Pass                                                                |

The counter-affidavit has denied the allegation of the petitioner that she has completed the BPT course without a break. It is specifically averred that the petitioner has failed in the second semester and reappeared for the said examination in April, 2006.

As regards the plea of the petitioner that she has passed the sixth semester, the counter-affidavit denied the same. It is averred that the petitioner

has secured only 96 marks as against the pass marks of 100 in ORTC subject and that therefore, she has failed.

It is also averred that when a student of respondent No.3- College with registration No.0347107 has sought for permission to appear for the eighth semester examinations of BPT course scheduled to be held during October/November, 2011, a verification was made during which it was found that some candidates of respondent No.3- College including the petitioner had backlog subjects and accordingly, the University has asked all those candidates including the petitioner, who were given the provisional certificates, to return the same and that all of them except the petitioner have returned their respective provisional certificates.

It is further averred in the counter-affidavit that the Principal of respondent No.3- College has committed various irregularities in conducting examinations; that the University, after holding enquiry, cancelled the affiliation granted to respondent No.3- College; that respondent No.3 has filed WP.No.33294 of 2012 assailing the order of cancellation of affiliation; that this Court allowed the

said Writ Petition on imposition of fine of Rs.4 lakhs on the said College; and that on payment of the said fine amount, the affiliation of respondent No.3-College was restored. The counter-affidavit denied the allegation that the University has indulged in victimization.

Having regard to the respective pleadings of the parties, the only question that arises for consideration is, whether the impugned memo issued by respondent No.2 to the petitioner to return the provisional pass certificate suffers from arbitrariness or discrimination.

It is an admitted position that unless a student pursuing BPT course clears all the subjects upto and including the seventh semester, he will not be allowed to appear for the eighth semester examinations. However, the fact remains that the petitioner was allowed by the respondents to appear for the eighth semester examinations. If this fact is examined in isolation, the plea of the petitioner that she has passed all the subjects upto the eighth semester deserves acceptance. However, the petitioner's plea needs to be examined with reference to the stand of respondent No.1-

University.

In order to find out whether the petitioner has passed PT Ortho subject in the sixth semester, I have called for the relevant record from respondent No.1- University. Mr.A.Prabhakar Rao, learned Standing Counsel for the respondent- University, has placed before the Court, the computer generated marks statement of the students of respondent No.3- College during the relevant period. As can be seen from this statement, in her sixth semester examinations, the petitioner has scored 75 marks as against the pass marks of 50 in the SPM subject, 93 marks as against the pass marks of 75 in the ORT subject and 96 marks as against the pass marks of 100 in ORTC subject.

While showing that the petitioner has passed SPM and ORT subjects, she is shown to have failed in ORTC subject. In the last column, under the heading "6<sup>th</sup> semester TOT", the total marks of 264 are shown and the petitioner is shown to have failed.

I have no reason to doubt the authenticity of the statement of marks produced by the learned Standing Counsel for the University. The petitioner



has not made specific imputations of the malafides on any of the functionaries of respondent No.1. Though the petitioner claimed that she has passed all the subjects without any break, the respondent has proved that she has indeed failed in the second semester and reappeared in the said examination. Thus, the petitioner has the history of failing in the past.

Interestingly, the petitioner has filed the copies of marks memos pertaining to the seventh and the eighth semesters only. She has not explained as to why she failed to file the marks memo of her sixth semester. The very fact that the petitioner has received the marks memos for the seventh and the eighth semesters shows that the University was issuing the marks memos and it is therefore, reasonable to presume that she would have received the marks memo for the sixth semester also. Failure of the petitioner to produce the marks memo of the sixth semester further supports the case of the University that she has failed in one subject in the sixth semester.

The learned Counsel for the petitioner has placed reliance on the circumstance that the

University has not only allowed the petitioner to appear in eighth semester examinations but also issued provisional certificate in support of the petitioner's plea that she has passed all the subjects in the sixth semester. It is worth noteable that the respondents have stated in the counter-affidavit that the Principal of respondent No.3 indulged in several irregularities leading to cancellation of affiliation of respondent No.3- College and that in pursuance of the directions issued by this Court vide Order, dated 07-02-2013, in W.P.No.33249 of 2012, its affiliation was revived on payment of Rs.4 lakhs as fine. This circumstance itself is enough to accept the stand of respondent No.1- University that the Principal of respondent No.3- College would have played fraud in misleading the University that the petitioner had passed all the subjects in the sixth semester. Though details have not been given by respondent Nos.1 and 2, they have averred that, in addition to the petitioner, the memos similar to the impugned memo were issued to other similarly situated students and that all of them have surrendered their provisional pass certificates. Another circumstance,

which creates a serious doubt on the conduct of the petitioner, is that she has failed to apply for regular degree certificate for more than three years and she was satisfied only with the provisional certificate. Obviously, due to the reason that if she applies for degree certificate, respondent No.1 may detect the fact that she has failed in one subject, she would not have applied for degree certificate. In any event, for the mere reason that respondent No.1 has issued provisional pass certificate under mistaken impression that the petitioner has passed the sixth semester examinations, the petitioner cannot be allowed to be treated as having passed the subject. Lack of vigilance on the part of respondent Nos.1 and 2 has conferred an undeserving benefit on the petitioner as she seems to have secured employment based on the provisional pass certificate wrongly issued by respondent No.1.

In the above facts and circumstances of the case, the petitioner failed to make out any case for issue of a Mandamus to interdict the action of respondent No.1- University initiated for rectifying the mistake occurred in issuing the provisional

certificate.

On the analysis as above, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition, WPMP.No.38105 of 2012, filed by the petitioner for interim relief, is disposed of as infructuous.

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**(C.V.Nagarjuna Reddy, J)**

**Dt: 6<sup>th</sup> August, 2015**  
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