

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 09.03.2016

Pronounced on : 28-03-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 5207 of 2016
and

W.M.P. No. 4589 of 2016

D. Jerdson ... Petitioner

Versus

1. The Vice-Chancellor
Karunya University
Karunya Nagar
Coimbatore - 641 114
2. The Registrar
Karunya University
Karunya Nagar
Coimbatore - 641 114
3. The Deputy Registrar
(Students Affairs)
Karunya University
Karunya Nagar
Coimbatore - 641 114
4. The Director
Department of B.Tech
Electronics and Communication
Karunya University
Karunya Nagar
Coimbatore - 641 114
5. The Head of Department of B.Tech
Electronics and Communication
Karunya University
Karunya Nagar
Coimbatore - 641 114
6. The University Grants Commission
Rep. by its Secretary
New Delhi - 110 002

7. The All India Council for Technical Education
Rep. by Member Secretary
7th Floor, Chanderlok Building
Janpath, New Delhi - 110 001 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to Ku/REG/ATT/Nov.15/ URI4EC061/2015/ dated 16.11.2015 on the file of the second respondent and quash the same and direct the respondents to permit the petitioner to complete the B.Tech (EC) course in entirety and issue all consequential certificates.

For Petitioner : Mr. M.S. Soundara Rajan
For Respondents : Mr. D. Shivakumaran
for RR1 to 5

ORDER

The petitioner has come forward with this writ petition questioning the correctness of the order dated 16.11.2015 passed by the second respondent by which the second respondent disqualified the petitioner to attend the III semester examinations during the academic year 2015-2016 for want of requisite percentage of attendance.

2. The brief facts which are necessary for disposal of this writ petition are as follows:-

(i) The petitioner is a student of the respondents-University where he is pursuing B.Tech (Electronics and Communication) degree course from the academic year 2014-2015. While the petitioner was pursuing his III semester, he could not attend the college due to his ailment and therefore he has taken leave for two days from 07.07.2015 to 10.07.2015 for which he has submitted Medical certificate issued by the Karunya community hospital. Subsequently, he had taken half a day medical leave on 27.08.2015 and one day medical leave on 31.08.2015 for which also he has produced the medical certificate issued by Karunya community hospital.

(ii) According to the petitioner, the college is a residential college and the students are under the control of the mentor. At the end of III semester, due to abnormal pain suffered by him, the petitioner went to the residence of his local guardian at Avinashi with the permission from the mentor from 26.10.2015 and returned on 29.10.2015. To substantiate his medical ailment, he has produced a medical certificate issued by the Assistant Medical Officer, Government Medical Hospital, Government Primary Health Centre, Cheyyur. Subsequently, he

extended the leave on medical grounds for 4 days from 29.10.2015 to 03.11.2015 and he has also produced medical certificate to prove his absence owing to medical ailment. Thereafter, during the study holidays, the petitioner approached the second respondent with medical certificates, but he was not permitted to write the III semester which commenced on 12.11.2015. The petitioner was however permitted to write one arrear examination on 24.11.2015. In the meantime, the petitioner was served with an order dated 16.11.2015 which was served on him on 23.11.2015 stating that he did not secure the requisite attendance to qualify for the III semester examinations during the academic year 2015-2016 and consequently he is not eligible to the next semester. Thus, the petitioner has to repeat the III semester during the academic year 2016-2017 and directed him to rejoin on the first working day of III semester during the month of June/July 2016. Challenging this order passed by the second respondent, the petitioner has come up with this writ petition.

3. The learned counsel for the petitioner states that the petitioner has secured 68% of attendance as against the requisite 75% of attendance to write the III semester examinations. According to the counsel for the petitioner, the petitioner could not secure the requisite attendance owing to his ailment which are substantiated by medical certificates issued by the Doctor. The second respondent has failed to take into consideration the medical certificates produced for the period from 26.10.2015 to 29.10.2015; 29.10.2015 to 03.11.2015 including the sanctioned medical leave taken earlier from 07.07.2015 to 10.07.2015, 27.08.2015 and 31.08.2015. Had the second respondent accepted the medical leave certificates on the aforesaid dates, the petitioner would have qualified to write the III semester examination but the second respondent refused to do so. According to the learned counsel for the petitioner, the petitioner along with his father met the Mentor and submitted a representation to consider the medical leave taken by the petitioner on health grounds and the Mentor also made an endorsement recommending to the second respondent to consider the leave taken by the petitioner owing to ailment. However, the second respondent refused to re-consider the impugned order. The petitioner's father also sent representations on 02.01.2016 and 17.01.2016 to the respondents 1 and 2 but the respondents have not passed any order on those representations. The learned counsel for the petitioner submits that the absence of the petitioner is not owing to any other reasons but due to his ill health. The petitioner's father also affirmed the ailment suffered by his son which prevented him from attending the college. While so, the second respondent ought to have taken a liberal approach instead of disqualifying the petitioner to attend the III semester examinations during the academic year 2015-2016 for want of requisite percentage of attendance.

4. On the other hand, the learned counsel for the respondents 1 to 5, relying upon the counter affidavit of the second respondent, would vehemently contend that the impugned order is based on the Regulations of the University. As per the Regulations, a student will be deemed to have completed any semester only if he/she secures not less than 80% of class attendance (OD and ML corrected) and 80% of assembly attendance in that semester. However, it is mandatory for a student to maintain a physical attendance of 70% only after which the attendance correction for all kinds of official duty (OD) and Medical Leave (ML) will be effected at the end of semester. Those students who do not complete the semester as per the Regulation will not be permitted to write the end semester examination and to proceed to the next semester. While so, the petitioner, whose physical attendance is only 63.7% cannot be permitted to proceed to the next semester and the impugned order of the second respondent is on the basis of the Regulations of the University. According to the counsel for the respondents 1 to 5, the allegation that the petitioner suffered ailment on 07.07.2015 and went to hospital is untrue. As per the attendance data base available, on 07.07.2015, the petitioner was physically present and not availed medical leave as alleged. Similarly, the petitioner went to the residence of his local guardian on 26.10.2015 is untrue. On the other hand, the petitioner was physically present in the college campus on that day, as could be evident from the attendance records maintained in the hostel. The medical certificate issued by the petitioner to that effect is false and fabricated. The counsel for the respondents 1 to 5, relying on the tabulat statement of the attendance of the petitioner in para No.8 of the counter affidavit, would vehemently contend that even as per the letter written by the petitioner to the University, which is available in page No.12 of the typed set of papers, he has secured only 63% of attendance. Since the petitioner did not secure 75% attendance (with mandatory 70% phyusical attendance) he is not eligible to write the III semester. The second respondent, before passing the impugned order, has considered the on-duty and permissible medical leave attendance of the petitioner and therefore, interference of this Court is not warranted. The learned counsel for the respondents 1 to 5 would contend that the petitioner made a false claim as if he was sick and produced bogus medical records. In such view of the matter, the learned counsel appearing for the respondents 1 to 5 prayed for dismissal of the writ petition.

5. In reply, the learned counsel for the petitioner submitted that one Thomas Chennaukara (UR 14CS262) had secured 61% of physical attendance but he was permitted to write III semester. Further, persons who have secured 60% of attendance were permitted to write III semester. According to the counsel for the petitioner, one Ashid D Lijo (UR 14CS019) has secured

40% of physical attendance and Marie (UR 14CS128) who has secured 60% of attendance were permitted to continue the next semester. Therefore according to the petitioner, the respondents have not followed the Regulations of the University uniformly and the petitioner alone is discriminated. As regards the averments that the petitioner did not visit his local guardian house, rather he stayed in the hostel itself, the counsel for the petitioner submitted that the petitioner did not stay in the house of the local guardian, which is 60 kilometer away and he returned on the same day to the college. According to the counsel for the petitioner, the petitioner, after reaching his local guardian house has taken treatment for the stomach pain from the Government Siddha Doctor, Cheyyur and therefore the contra averments made in the counter affidavit are contrary to truth. Similarly, as regards the allegations relating to submission of bogus medical records, it is submitted that the petitioner's mentor has made specific endorsement in the leave application to the effect that he has been suffering from health problem which itself will prove the genuineness of medical ailment claimed by the petitioner. If really the petitioner produced bogus certificates, the mentor of the petitioner would not have recommended to the second respondent for reconsideration of his claim. It is further stated that the averments in the counter affidavit of the second respondent that the petitioner attended the classes from 26.10.2015 to 05.11.2015. The fact remains that the petitioner went to his local guardian residence on 26.10.2015 and returned to the college on the same day. Once again, the petitioner went to Cheyyur and taken treatment with the Assistant Medical Officer, Siddha Government Primary Health Centre and extended the medical leave. Therefore, it is incorrect to state that the petitioner attended the classes for some period and stayed in the hostel. The learned counsel for the petitioner also, relying on the rejoinder of the petitioner, submitted that there are discrepancies in the attendance records furnished by the second respondent in the counter affidavit and therefore it is stated that the second respondent has not submitted the correct and accurate details in the counter affidavit.

6. The learned counsel for the respondents 1 to 5, as a reply to the rejoinder of the petitioner, filed an additional counter affidavit of the second respondent. By relying on the additional counter affidavit, the learned counsel for the respondents 1 to 5 would contend that the second respondent university is following a uniform procedure in the matter of enforcing discipline among the students. The petitioner is in no way discriminated and the same yardstick is being followed by the university among all the students. The alleged discrimination among some of the students is incorrect. The University, while strictly following the Rules and Regulations, consider certain genuine cases, however, the University will

ensure that such students fulfil the Regulations of the University to some extent. In the additional counter, the details of the attendance secured by Mr. Ashok D. Lijo, Mr. Maria John Crossington were tabulated by the second respondent to substantiate that there is no discrimination in passing the impugned order against the petitioner. In the additional counter affidavit, the second respondent reiterated the factum of production of bogus certificate by the petitioner and his physical present in the college on those days where he alleged to have been sick. Therefore, according to the counsel for the respondents 1 to 5, in a matter of this nature, if indulgence is shown to the petitioner, it will set a bad precedent among the other students and in such event, the respondents - University could not enforce discipline among the students.

7. In support of his contention, the learned counsel for the respondents 1 to 5 relied on the decision of the Honourable Supreme Court in (i) (Prestige Lights Limited vs. State Bank of India) (2007) 8 Supreme Court Cases 449 and (ii) (General Manager, Haryana Roadways vs. Jai Bhagwan and another) (2008) 4 SCC 127 to contend that this Court, in exercise of the discretionary powers conferred under Article 226 of The Constitution of India must exercise restraint in interfering with the internal administration of the respondents University. Further, if the petitioner has suppressed certain material facts or twisted the facts to suit his convenience, the Writ Court shall refuse to entertain such petition and dismiss it without entering into the merits of the matter.

8. The learned counsel for the respondents 1 to 5 also relied on the decision of the Karnataka High Court in (H.S. Ashwini versus Pre-University Education and another) CDJ 2014 Kar HC 437 to contend that when a student lacks attendance and miserably failed to substantiate his or her case by any supporting material document, the Writ Court should not ordinarily interfere with the internal administration of the educational institution in enforcing orderliness.

9. I heard the counsel for both sides and perused the materials placed on record. The petitioner is pursuing B.Tech (Electronics and Communication) degree course in the respondents-University from the academic year 2014-2015. While he was pursuing his III semester, he has taken leave for two days from 07.07.2015 to 10.07.2015, half a day on 27.08.2015, one day on 31.08.2015 and from 26.10.2015 to 03.11.2015. To substantiate his medical ailment, he has produced a medical certificate issued by the Medical Practitioner. By reason of such leave taken by the petitioner, he was not permitted to write the III semester which commenced on 12.11.2015, by serving the order dated 16.11.2015 on him. This order of the second respondent is challenged in this writ petition on very many

grounds namely the second respondent has not taken into consideration the medical ailment suffered by the petitioner and the medical certificates produced by him to show his nature and extent of ailment. Further, the second respondent has considered the claim of similarly placed persons but the petitioner alone was discriminated. Such a plea raised by the petitioner was countered by the respondent on the ground that the petitioner did not suffer any medical ailment as alleged and the medical certificates produced by him are bogus. It is further countered that when the petitioner lacks requisite attendance, as per the Regulations of the University, he cannot be permitted to attend the III semester examinations during the academic year 2015-2016. To substantiate such contention, the second respondent has filed a counter affidavit and an additional counter affidavit wherein the percentage of attendance secured by the petitioner has been tabulated. In the counter affidavit as well as the additional counter affidavit, the second respondent has also come up with details relating to the percentage of attendance secured by similarly placed persons referred to by the petitioner and the circumstances under which they were permitted to proceed to the next semester.

10. It is pertinent to point out here that the second respondent in the counter affidavit, narrated the various events in which the petitioner attended the classes selectively for few hours and cut the classes in the remaining hours. Of course, this is denied by the petitioner by stating that he did not attend the classes owing to his medical ailment and in fact stayed away from the classes on those days. The second respondent also furnished in detail the total number of hours of attendance required, total number of hours attended by the petitioner, the eligible medical leave approved in favour of the petitioner and the on duty leave etc., In other words, there were several disputed facts raised on behalf of the petitioner and the respondents 2 to 5 relating to the presence of the petitioner in the college on certain days and the respondents 2 to 5 denied that the petitioner did not suffer any medical ailment, as alleged. Thus, the plea raised on behalf of both sides relating to disputed questions of fact cannot be adjudicated by this Court in this writ petition.

11. It is not out of place to mention that the respondents-University follows certain norms and procedures in order to enforce discipline in the college campus. These norms and procedures or set of guidelines are being followed by the respondents University in the form of approved Regulations. As per the Regulations of the University, a student will be deemed to have completed any semester only if he/she secures not less than 80% of class attendance (OD and ML corrected) and 80% of assembly attendance in that semester. However, it is mandatory for a student to maintain a physical attendance of 70% only

after which the attendance correction for all kinds of official duty (OD) and Medical Leave (ML) will be effected at the end of semester. Those students who do not complete the semester as per the Regulation will not be permitted to write the end semester examination and to proceed to the next semester. This regulation, according to the respondents 1 to 5, is being uniformly followed and applied by them among all the students and there is no discrimination as alleged by the petitioner. In this context, it is necessary to mention that the petitioner, in his own letter addressed to the respondents University, which is available in page No. 12, admits that he has secured only 63% of over all attendance. When such being the case, the petitioner lacks requisite percentage of attendance as stipulated in the Regulations of the University. When that being so, this Court cannot issue any direction or compel the respondents University to accept the claim of the petitioner contrary to their own Regulations. In such view of the matter, this Court cannot interfere with the order, which is impugned in this writ petition, and direct the respondents to consider the claim of the petitioner as it would amount to interfering with the internal administration of the University. In this context, it will be useful to refer to the two decisions relied on by the counsel for the respondents 2 to 5 reported in (i) (Prestige Lights Limited vs. State Bank of India) (2007) 8 Supreme Court Cases 449 and (ii) (General Manager, Haryana Roadways vs. Jai Bhagwan and another) (2008) 4 SCC 127. In both the cases, the Honourable Supreme Court held that this Court, in exercise of the powers conferred under Article 226 of The Constitution of India must exercise restraint and caution in interfering with the internal administration of the University by substituting it's own opinion by appreciating the merits of the matter. Therefore also, I hold that the order impugned in this writ petition needs no interference by this Court.

12. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The University Grants Commission
Rep. by its Secretary
New Delhi - 110 002
2. The All India Council for Technical Education
Rep. by Member Secretary
7th Floor, Chanderlok Building
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+1 cc to Mr.M.S.Soundarajan Advocate sr.19204

+1 cc to Mr.D.Sivkumaran Advocate sr.19255

WP No. 5207 of 2016

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