

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.5709 of 2016

A.Sundaresan

.. Petitioner

Vs.

1.The Principal,
Adhiparasakthi Dental College & Hospital,
Cheyyur Taluk, Melmaruvathur-603 301.

2.Tamilnadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai.

3.The Director of Medical Education,
Poonamalli High Road,
Kilpauk,
Chennai-600 010.

.. Respondents

(R3 impleaded as per the order dated
08.06.2016 made in WMP.No.8450/2016
in WP No.5709 of 2016)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Mandamus directing the first respondent to return all the
original certificates submitted by petitioner's daughter
during the admission period and consider the petitioner's
representation dated 26.12.2015.

For Petitioner : Mr.J.Paul Nobel Devakumar

For Respondents: Mr.A.S.Balaji for R1

Mr.D.Ravichander for R2

Mrs.P.Rajalakshmi, Govt. Advocate for R3

O R D E R

By consent, this writ petition is taken up for final
disposal.

2. The daughter of the deponent of the affidavit filed in
support of this writ petition was studying in first year
B.D.S. course in the first respondent College during the

academic year 2015-2016 and it was through Government quota. The petitioner's daughter joined the said college after paying necessary fees and also hostel fees of Rs.80,000/- for the first year. It is further stated by the petitioner that after joining the college, his daughter was unable to continue her studies due to tease/torture from other students and as a consequence, she developed mental agony and depression and she was advised to take treatment in the hospital and therefore, the petitioner took a conscious decision to discontinue her studies in the first respondent college and requested the first respondent to return the original certificates/testimonials submitted by his daughter at the time of admission. However, the said request has not been acceded to. The petitioner, in this regard, has submitted a representation dated 26.12.2015 to the first respondent praying for return of the original certificates and once again he has not been favoured with any response and hence, came forward to file this writ petition.

3. Mr.J.Paul Nobel Devakumar, learned counsel appearing for the petitioner has drawn the attention of this Court to the materials placed and would submit that on enquiry, the petitioner came to know that for the purpose of return of certificates, the petitioner has to pay the fees due and payable to the institution and unless the said amount is paid, the first respondent is not inclined to return the original certificates and would further submit that for the purpose of recovery of money, original certificates cannot be retained as lien and prays for appropriate orders.

4. Per contra, Mr.A.S.Balaji, learned counsel appearing for the first respondent, on instructions, would submit that admittedly the petitioner has left the college after undergoing the first year studies and on account of the same, the seat which fallen vacant, cannot be filled up for the next three years and therefore, the petitioner is liable to pay the fees as claimed by the first respondent and unless the petitioner pays the amount, the original testimonials submitted by the petitioner's daughter at the time of admission cannot be returned.

5. Heard Mr.D.Ravichander, learned counsel, who accepts notice on behalf of the second respondent and Mr.P.Rajalakshmi, learned Government Advocate, who accepts notice on behalf of the third respondent.

6. The matter in issue is no longer res integra. A single bench of this Court in the common order dated 05.11.2014 made in W.P.Nos.27809 to 27811 and 27973 to 27975 of 2014 [D.Vinodh Kumar and others v. The Principal Secretary to Government, Government of Tamil Nadu, Chennai and others] has considered the very similar issue and held as follows:

"9. Keeping aside the question of entitlement of the petitioners to the imposition of such a

condition, it should be pointed out that certificates belonging to students, cannot be retained as a security by the universities or colleges. I had an occasion to consider a similar issue in W.P.(MD).No.14394 of 2012 on the file of the Madurai Bench. By the order passed therein on 18.12.2012, I have held that certificates cannot be retained as a bait by the universities. Therefore, on the entitlement of the petitioners to the first part of the prayer, there cannot be any dispute. The petitioners are entitled to take back their certificates, as the certificates belong to them and no security is created on such a property.

10. But, in so far as the entitlement of the petitioners to the refund of tuition fees and the entitlement of the second respondent to claim the amount as per the agreement bond are concerned, there are dispute. These disputes have to be resolved independently in appropriate proceedings taken by both parties."

7. This Court in yet another decision in Kesavan v. Director of Medical Education, Kilpauk, Chennai-10 and another [(2011) 8 MLJ 454] has considered the case of execution of bond for non-payment of amount and the prayer for return of the testimonials, wherein it has been held that for not paying the bond amount it is open to the respondents to initiate recovery proceedings and in the light of the said judgment, there cannot be any impediment on the part of the first respondent to return the original certificates/testimonials to the petitioner's daughter.

8. In the result, this Writ Petition is disposed of with a direction to the first respondent to return the original certificates/testimonials either to the petitioner or to the petitioner's daughter within a period of one week from the date of receipt of a copy of this order. The first respondent is also at liberty to initiate appropriate recovery proceedings, if so advised, against the petitioner for recovery of amounts alleged to be due and payable. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jvm

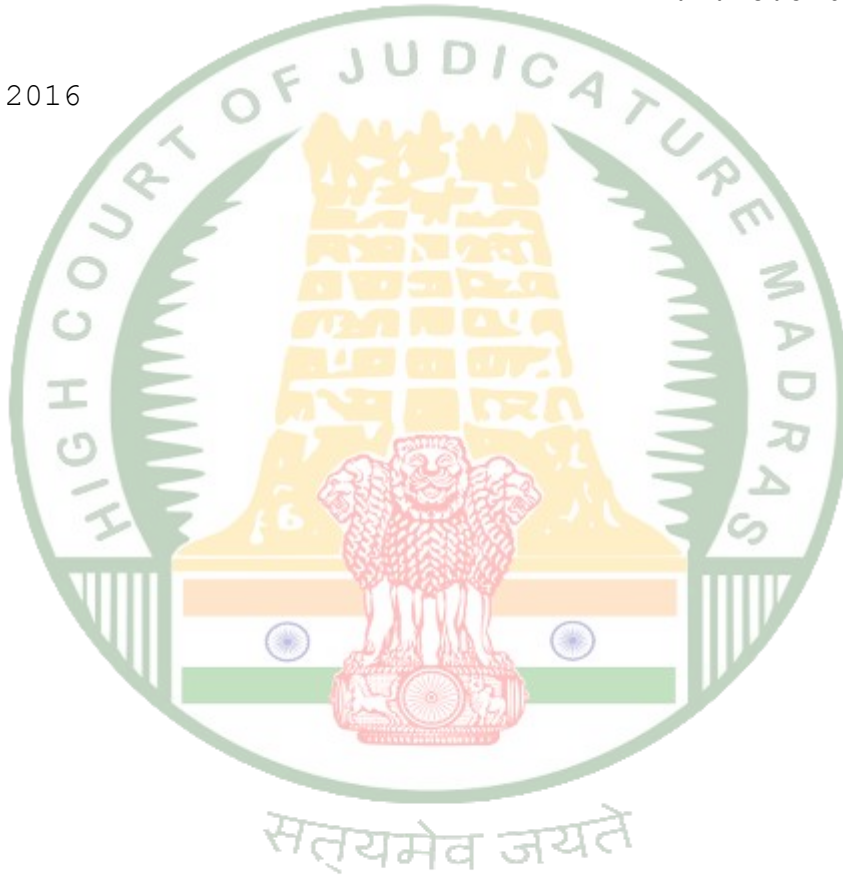
To

The Director of Medical Education,
Poonamalli High Road,
Kilpauk,
Chennai-600 010.

1 cc to Mr.A.S.Baalaji, Advocate, sr.32147
1 cc to Mr.I.Paul Noble Devakumar, Advocate, sr.32133
2 ccs to The Government Pleader, sr Nos.32436,32468

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