

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM

THE HON'BLE MR.JUSTICE **T.S.SIVAGNANAM**

Cont.P.No.349 of 2017

M.Viswanath

... Petitioner

Vs.

1.P.David Jawahar
The Registrar,
The University of Madras,
Chepauk, Chennai - 600 005.

2.Dr.S.Thirumurugan
The Controller of Examinations
University of Madras,
Chepauk, Chennai - 600 005.

3.V.Chandrasekar
The Principal
Government College of Fine Arts
Chennai - 600 003.

... Respondents

Petition filed under Section 11 of the Contempt of Courts Act to punish the respondents for wilful disobedience of the order dated 20.02.2015.

For Petitioner : Mr.Prashanth Rajagopal

For Respondents : Ms.G.Thilagavathy
Senior Counsel for
Mr.R.Gopinath

ORDER

This contempt petition has been filed alleging wilful disobedience of the

order and direction issued by this Court in W.P.No.33166 of 2014 dated 20.02.2015. The said writ petition was filed by the petitioner herein, praying for the issuance of a direction upon the respondents 1 and 2 University, to issue him the first and second year mark sheets, Provisional certificate and Degree certificate pertaining to the Bachelor of Fine Arts - Visual Communication Design Branch completed in May 2004 for the academic year 2000-2004 from the Government College of Fine Arts, Chennai.

2. The petitioner's case is that inspite of the third respondent College having forwarded the particulars, the respondent University delayed the matter and did not give mark sheets and Provisional Certificate for 10 long years and he has been put to irreparable hardship and lost employment opportunities. Further, it is stated that the petitioner was directed to pay Rs.10,000/- vide proceedings of the University dated 20.08.2008 and he has paid the amount immediately. Yet the respondent University has not released the mark sheets or Provisional Certificate.

3. When the writ petition was heard, the University took a stand that the petitioner studied B.F.A.Degree (Visual Communication) Course in the Government College of Fine Arts, Chennai -3 during the academic session 2000-2001 and wrote the First and Second year examinations in April 2002. Further, it was stated that the internal marks and external marks for practical was not forwarded by the College in respect of the petitioner and the Principal

of the College had forwarded the internal marks on 29.07.2008, but he had not forwarded the external marks for practical. Therefore, the University requested the Principal to forward the external marks for practical, vide letter dated 12.09.2012 and the Principal complied with the direction on 22.12.2014. On receipt of the external marks for practical, the University processed the results of April 2002 for the petitioner and out of 12 subjects, the petitioner has qualified in 11 subjects only and had secured 3 marks lesser than the pass mark in respect of the subject History of Arts (FZA). Therefore, the University stated that the Provisional Certificate cannot be issued. The petitioner's case was that for no fault committed by him, he was denied mark sheets and if the petitioner had been awarded 3 more marks, he would have been declared pass.

4. Considering the facts and circumstances, the Court was of the view that the respondent University should award marks to the petitioner since the examination for which the petitioner appeared was during April 2002 and at this point of time, the petitioner cannot be directed to reappear for the examination as the syllabus would have also been changed. With these observations and findings, the following direction was issued:-

"6. In the light of the above, the petitioner is directed to receive the Statement of Original Mark Sheet produced before this Court by making acknowledgement and the petitioner is directed to apply to the respondent University for revaluation of the marks or in the alternative to grant of grace marks. If such representation is made, the respondent University shall

consider the same and take pragmatic view of the matter in respect of the marks of the written examination in April 2002 and award 3 marks in the theory subject History of Arts (FZA), since the petitioner requires 3 marks in the history subject to secure pass. The above direction shall be complied with within a period of three weeks from the date of receipt of representation of the petitioner along with the copy of this order.

7. The learned counsel for the petitioner submitted that the petitioner has lost all the employment opportunities and he has incurred financial loss and suffered mental agony. If the petitioner choose to sue for compensation, it is always open to the petitioner to approach the appropriate forum. The learned counsel for the petitioner also submitted that the First Year mark sheet has not been issued to the petitioner. Hence, there will be a direction to the second respondent to issue first year mark sheet to the petitioner within the above said period.

8. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed."

The respondents having not complied with the above direction, the petitioner has filed this contempt petition.

5. The Registrar-in-charge of the respondent University has filed a counter affidavit. While stating that he has great regards and respect towards the orders of the Court, has expressed certain genuine difficulty for being unable to comply with the direction. The bottleneck that appears to have occurred is because of the fact that grace marks could be granted only by the Board of Examiners which would be constituted on the date when the examinations are conducted and therefore, at this juncture, the said Board of

Examiners cannot be reconstituted and as a result, they are unable to award grace marks. Thus, it appears that practical difficulty has been put forth by the respondents for not being able to comply with the Court order.

6. As mentioned above, the Court has already recorded a finding that the petitioner should be granted 3 grace marks. This finding has become final, as the respondent University has not filed any appeal against the order in the writ petition dated 20.02.2015. The University only pleads inability to comply with the order for certain reasons set out in the counter affidavit. As already pointed out in the order in the writ petition, the petitioner cannot be directed to re-appear for the examination, which was conducted in April 2002. Further, the Court has brought out various dates and events, which clearly shows that the petitioner was not at fault for the belated forwarding of marks obtained by him, by the College to the University.

7. In view of the above, the contempt petition is disposed of, by directing the respondent University to award 3 grace marks to the petitioner in the concerned subject and subsequently, declare him as pass in the subject and issue necessary certificate. The above direction shall be complied with, within a period of two weeks from the date of receipt of a copy of this order.

26.07.2017

Index: Yes/No
Internet: Yes/No

T.S.SIVAGNANAM,J.

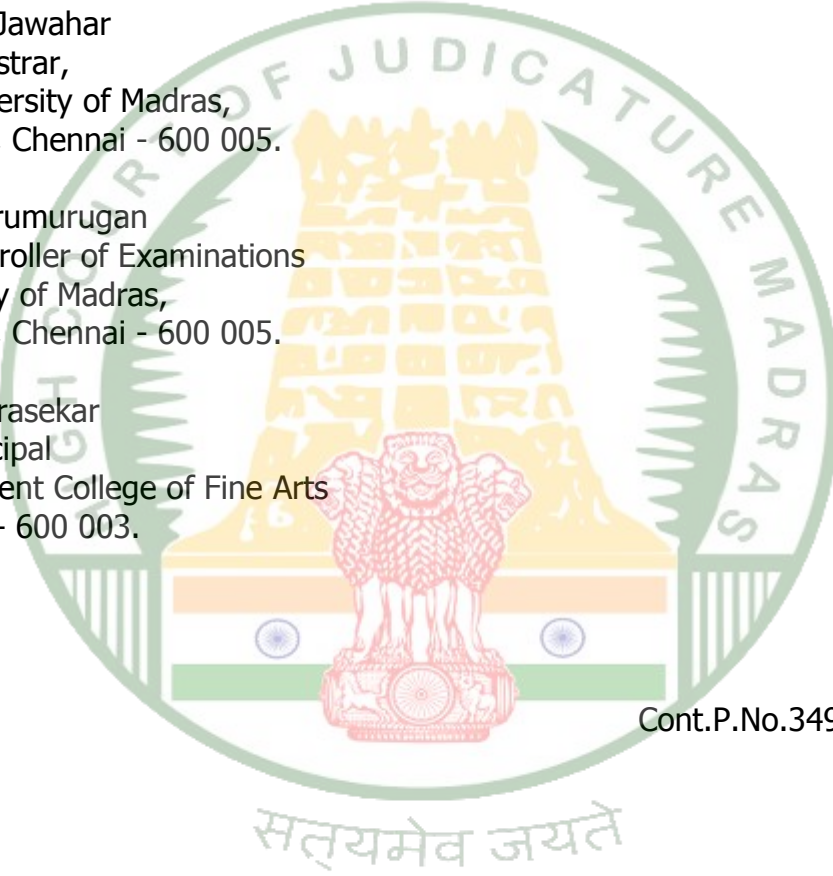
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To

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