

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017
CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.17774 of 2017
and
W.M.P.Nos.19279 and 19280 of 2017

Biruntha

... Petitioner

vs

1.The Government of Tamilnadu,
Rep. By its Secretary,
Higher Education Department,
Chennai.

2.The University of Madras,
Chennai.
Rep.by its Registrar,
University of madras,
Chennai.

3.The Director of School Education,
College Road,
Chennai.

... Respondents

Prayer:- Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of certiorarified Mandamus to call for the records of the 2nd respondent proceedings No.D2/Ph.D(Admn)/Misc/October 2016/2017/212, dated 08.02.2017 and quash the same as illegal and direct the 2nd respondent to admit the petitioner in the Ph.D., programme full time (Non Stipendiary) October 2016 session.

For Petitioner : Mr.S.Muthu Krishnan

For Respondents : Mr.R.Gopinathan for R2
: Mr.T.M.Pappiah
Special Government Pleader
For RR1 & 3

O R D E R

This writ petition is filed for issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent's proceedings No.D2/Ph.D(Admn)/Misc/October

2016/2017/212, dated 08.02.2017 and quash the same as illegal and direct the 2nd respondent to admit the petitioner in the Ph.D., programme full time (Non Stipendiary) October 2016 session.

2. The petitioner Studied +2 Course in Government Higher Secondary School at Puliur in Karur District and cleared 3 papers in the examination conducted in March 2001 and failed in English, Chemistry and Botany. Therefore, the petitioner again wrote the above three subjects in March 2002 and she was successful and secured 97 marks in English, 70 marks in Chemistry (26 marks in theory + 44 marks in Practicals) 96 marks in Botany (50 marks in theory + 46 marks in Practicals). Thereafter, the petitioner joined B.Sc. Zoology Degree Course (Vocational) in MVM Women's College, Dindigul, affiliated to Mother Teresa Women's University, Kodaikanal and completed the course with a I Class in the year April 2006. Thereafter, she joined Master's Degree in Zoology and M.Sc. Computer Science (IT) in Arulmigu Palani Andavar Arts College for Women, Palani, affiliated to Mother Theresa Women's University and obtained I Class in M.Sc (Zoology) in the year 2008 and M.Sc (IT) Degree in the year 2010. Then, she joined M.Phil course in Loyola College, Chennai and completed the same in the year 2013. Subsequently, she applied for Ph.D Programme Full time (Non-Stipendiary) to the University of Madras in the month of October, 2016. When the certificates of the petitioner were forwarded to the 2nd respondent University for verification, it was found that the petitioner did not get required marks in Chemistry theory paper for passing Plus Two Examination i.e, minimum of 40 marks in theory and had obtained only 26 marks and that she got 44 marks in Practicals as against the required minimum of 30 marks. Though, totally, in Chemistry, the petitioner secured 70 marks (26 marks in theory + 44 marks in Practicals), which is the minimum required marks for passing the examination, she failed to secure the minimum marks prescribed for theory paper. This was not noted by the other Universities and when the 2nd respondent University found out this mistake, the petitioner, by the impugned proceedings dated 08.02.2017 was directed to obtain Plus Two Pass Certificate from the 3rd respondent and submit the same to the 2nd respondent within 15 days from the date of receipt of the communication for pursuing her higher studies failing which her application to Ph.D Programme would be treated as cancelled. Hence, the present writ petition.

3. Heard Mr. S. Muthukrishnan, learned counsel for the petitioner and Mr.T.M. Pappiah, learned Special Government Pleader for respondents 1 and 3 and Mr.R. Gopinathan, learned counsel for the 2nd respondent.

4. A perusal of the records would reveal that though the petitioner failed in Plus Two Examination conducted in March, 2001, in three subjects, subsequently, she is said to have passed the examination in March, 2002. Thereafter, the petitioner got admission to B.Sc (Zoology) (Vocational) Course in MVM Women's College affiliated to Mother Theresa Women's University and completed the same with a I Class and went onto complete M.Sc (Zoology) (I Class) and M.Sc (IT) in 2008 and 2010 respectively. Even Loyola College admitted the petitioner in M.Phil Course and she successfully completed the same in 2013. Only when the petitioner applied for Ph.D Programme to the 2nd respondent University and when her certificates were sought to be verified by the 2nd respondent University, it was found that the petitioner got only 26 marks in Chemistry Theory paper in the Plus Two Examination while the required minimum marks for a pass in theory is 40 marks. However, it is seen that the petitioner secured 70 marks, combining both theory and practicals, which is the minimum required marks for a pass in the said subject. In normal course, this Court would have directed a student like the petitioner to write the examination again whereas in this case, the petitioner had, at first, written the Plus Two Examination in March, 2001 and again in March, 2002 and thereafter, she successfully completed her Bachelor's Degree, Master's Degree and also M.Phil in Zoology, by which time, about 15 years have gone by. At this distance of time, the petitioner cannot be directed to write the Chemistry Paper again, in which event, all the degrees obtained by her, would be rendered futile and would amount to getting no degrees at all. Therefore, the clock cannot be put back, that too, prejudicial to the interest of the petitioner.

5. When the petitioner applied for Bachelor's Degree and Master's Degree, the Mother Theresa University should have verified the marks obtained by the petitioner, which was not done. While admitting the petitioner for M.Phil Degree, the Loyola College should have verified, which was also not done. Only after completion of M.Phil Course, in Loyola College, now, when the certificates are sought to be verified for considering her application for Ph.D Programme in the 2nd respondent University, the above factum of the petitioner securing 26 marks alone in Chemistry theory in Plus Two Examination has been noted. The right got accrued to the petitioner based on the above marks and the above marks have been recognised and acted upon by the Universities and the Colleges as pass mark. Therefore, the petitioner is deemed to have passed the Chemistry subject in Plus Two Examination conducted in March, 2002. Though the petitioner got only 26 marks in Chemistry Theory as against the minimum requirement of 40 marks for a pass in theory, the higher marks obtained by her in Practicals, namely,

44 marks , offsets the lesser marks obtained by her in theory. But, the total minimum marks required for passing the examination had been obtained by the petitioner in 2002 itself and as stated above, that has been accepted and acted upon by the Universities and Colleges. Therefore, the Director of School Education is directed to issue a Plus Two pass certificate to the petitioner stating that she has passed in Chemistry paper also to enable her to pursue higher studies. The 3rd respondent is directed to issue the said certificate within a period of one week from the date of receipt of a copy of this order. The writ petition is allowed with the above direction. No costs.

6. It is made clear that this order is passed in the aforesaid facts and circumstances of the case and it cannot be treated as a precedent. Connected W.M.P.s are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nv

To

- 1.The Secretary,
Higher Education Department,
Chennai.
- 2.The Registrar,
University of Madras,
Chennai.
- 3.The Director of School Education,
College Road,
Chennai.

+1cc to Mr.R.Gopinath, Advocate, S.R.No.88005
+1cc to Mr.S.Muthukrishnan, Advocate, S.R.No.87949
+1cc to The Govt.Pleader, S.R.No.88509

W.P.No.17774 of 2017

RJ(CO)
RRK(29/01/2018)