

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2017

Delivered on : 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

W.A No.2182 of 2012

Dr.V.Kamalam

... Appellant/Petitioner

Vs

1.The State of Tamil Nadu,
Rep. by the Secretary to Government of
Tamil Nadu, Department of Higher Education,
Fort St.George, Chennai - 600 009.

2.The Tamil Nadu Dr.M.G.R.Medical University,
Rep. by the Registrar,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

3.Tamil Nadu Homeopathy Medical Council,
Rep. by its Registrar,
Arumbakkam, Chennai - 600 106.

4.The Correspondent,
Venkateswara Homeopathy Medical College,
6/117-A, Mount Poonamallee Road,
Porur, Chennai - 600 116.

5.The Principal,
Venkateswara Homeopathy Medical College,
6/117-A, Mount Poonamallee Road,
Porur, Chennai - 600 116.

... Respondents/Respondents

Prayer:- Writ Appeal filed under clause 15 of Letters Patent,
against the order made in W.P.No.11786 of 2012 dated 12.07.2012.

Prayer in W.P.No.11786 of 2012

This writ petition is preferred under Article 226 of the
Constitution of India praying for the issue of a writ of
mandamus to direct the respondents 4 and 5 to pay an adequate

compensation of Rs.30 lakhs to the petitioner for the deliberate delay due to vindictive motives in denying the 2nd provisional certificate, degree certificate and for issuing an incomplete transfer certificate and to direct respondents 1 to 3 to take action against the illegal acts of respondents 4 and 5.

For Appellant : Ms.A.Arulmozhi

For R1 : Mr.K.Dhananjayan
Special Government Pleader

For R2 to R5 : No appearance

J U D G M E N T

K.K. SASIDHARAN, J.

The learned single Judge, notwithstanding the specific finding that the Venkateswara Homeopathy Medical College (hereinafter referred to as "College") harassed the appellant on account of her failure to adhere to the dress code, awarded only a sum of Rs.25,000/- as cost in the nature of compensation for the harassment and mental agony. The appellant, therefore, filed this intra court appeal claiming higher compensation for the harassment and mental agony suffered by her, besides, the delay in giving her certificates and the deliberate incomplete entries made in the Transfer Certificate.

2. We have heard the learned counsel for the appellant. We have also heard the learned Special Government Pleader for the first respondent. None appeared on behalf of the respondents 2 to 5.

The facts and discussion :-

3. The appellant joined the Bachelor of Homeopathic Medicine and Surgery course (BHMS) offered by the College at Porur, Chennai. The BHMS course is for the duration of 5½ years with 4½ years study and another one year of house surgeoncy. The appellant passed her final examination in August, 2008. She received her Provisional Certificate on 20 October, 2008. During her internship training, the College introduced a dress code for women stating that they should wear Saree and no other dress is permitted. The request made by the appellant for wearing Salwar Kameez was not considered favourably. Since the appellant attended duty with Salwar Kameez, she was denied training from 11 November, 2008.

4. The writ petition filed by the appellant in W.P.No.5981 of 2009 for a direction to forbear the College from imposing the dress code was allowed by this Court vide order dated 30 June 2009. The judgment is reported in 2009 (7) MLJ 253 [V.Kamalam v. Tamil Nadu Dr.M.G.R.Medical University and others]. The High Court directed the Management of the College to permit the appellant to wear Salwar Kameez and to continue the internship. The college, thereafter, permitted her to attend the internship. Accordingly, the appellant continued her internship from 16 July, 2009. The appellant could not continue the internship from 11.11.2008 to 15.07.2009 on account of the undesirable attitude of the Management that she should wear only Saree. Even after completion of her internship, the appellant was not given the Provisional Certificate and other necessary certificates. Since the course completion certificate was not given, the appellant could not apply for registration for commencing practice.

5. The writ petition filed by the appellant in W.P.No.1204 of 2011 for a direction to issue Provisional Certificate and to grant her seniority in the registration of BHMS with effect from the date of completion of internship was allowed by this Court. During the pendency of the writ petition, the College issued the Provisional Certificate and Compulsory Rotatory internship certificate. The certificates were given 9 months after completing the course. Thereafter, the appellant met the Principal for issuance of her Transfer Certificate. The Transfer Certificate was issued after much persuasion. The College authorities deliberately omitted to mention the conduct and character and other material particulars in the certificate. The appellant therefore filed writ petition in W.P.No.11786 of 2012.

6. Before the learned single Judge, the College contended that the failure to fill up the relevant information in the Transfer Certificate was not deliberate. However, the learned single Judge disbelieved the said statement by giving reasons. The learned single Judge observed that as against Column No.14, in respect of student's conduct and character, it was not left blank, but on the contrary, a dash was found. The learned single Judge has drawn adverse inference against the Management of the College. The learned single Judge awarded a sum of Rs.25,000/- as cost, as against a sum of Rs.30 lakhs claimed by the appellant. Even though, a prayer was made to direct the University and the Medical Council to conduct enquiry in the matter, no such direction was given by the learned single Judge.

7. The order passed by the learned single Judge dated 12 July, 2012 in W.P.No.11786 of 2012 has become final. The findings recorded against the Management of the College remain unchallenged. The order passed by the learned single Judge

contained details of the harassment and mental agony suffered by the appellant. The appellant was made to file series of writ petitions to continue the internship and even to obtain the certificates. The College appears to have no concern to the welfare of the students. The College under the guise of discipline imposed the dress code. The dress code was set aside by this Court at the instance of the appellant. The appellant was engaged in series of litigations against the mighty Management of the Medical College. The Management tried their level best to delay the internship and issuance of necessary certificates. In view of the harassment and mental agony suffered by the appellant, we are of the view that the learned single Judge was not correct in awarding a sum of Rs.25,000/- as cost. The learned counsel for the appellant is also correct in her contention that such harassment should not be caused to other students and as such, enquiry should be conducted by the University and the Medical Council in the matter. We are therefore of the view that the intra court appeal deserves to be allowed.

Disposal :-

8. We direct the respondents 4 and 5 to pay a sum of Rs.5,00,000/- (Rupees Five lakhs only) as compensation to the appellant for the harassment and mental agony suffered by her. The amount shall be paid within a period of four weeks from the date of receipt or production of a copy of this judgment. We give liberty to the appellant to submit a comprehensive representation to the Tamil Nadu Dr.M.G.R.Medical University. The University is directed to conduct enquiry in the matter with notice to the appellant and the college and take appropriate action on merits and in accordance with law. Such exercise shall be completed within a period of three months from the date of receipt of representation.

9. In the up shot, we allow the intra court appeal. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

svki

To

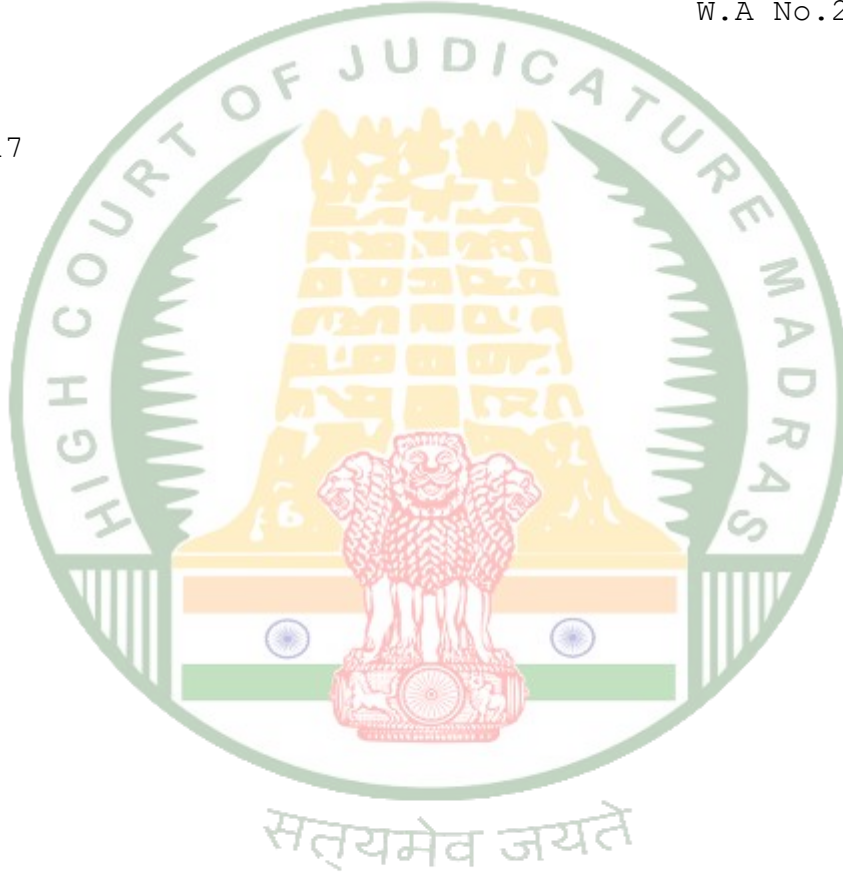
1. The Secretary to Government of Tamil Nadu,
The State of Tamil Nadu,
Department of Higher Education,
Fort St.George, Chennai - 600 009.

+1cc to Ms.A.Arulmozhi, Advocate, S.R.No.45485

+1cc to Mr.M.Shanmugavelu, Advocate, S.R.No.46317

W.A No.2182 of 2012

SKV(CO)
CS/14/07/17



WEB COPY