

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI

Writ Appeal No.717 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the Learned Single Judge in W.P.M.P.No.28270 of 2016 in W.P.No.13418 of 2016 dated 14.03.2017. The appellants herein are respondents 3 and 4 in the writ petition.

The 1st respondent herein, who was working as a Civil Assistant Surgeon in the Primary Health Centre, Vizianagaram, was admitted as an in-service candidate in the Andhra Medical College, Visakhapatnam to undergo Masters Degree in Anaesthesia. He was not permitted to sit for the examination on the ground that his attendance was 50%, 49% and 71% in I, II and III years respectively, as against the minimum attendance requirement of 80% each year.

By an interlocutory order dated 21.04.2016 the 1st respondent-writ petitioner was permitted to sit for the examination, aggrieved by which the appellants-University filed a vacate stay petition in W.V.M.P.No.3432 of 2016. Even though the vacate stay petition was still pending consideration, the Learned Single Judge has, in the order under appeal, recorded the submission of Sri C.V.Mohan Reddy, learned Senior Counsel, that, if the 1st respondent-writ petitioner succeeds in the examination, he would pursue the writ petition further; and otherwise he need not pursue the writ petition. Having recorded the submission of the Learned Senior Counsel, the Learned Single Judge directed the respondents in the writ petition to declare the results of the P.G.Medical Examination, of the 1st respondent-writ petitioner, which was held on 24.05.2016.

It does appear that the 1st respondent-writ petitioner was permitted to sit for the examination, even though he is said to lack the minimum required attendance, only by way of an interim order passed by the Learned Single Judge on 21.04.2016 and the appellants were directed not to declare the results. The Learned Single Judge had further held, in the order dated 21.04.2016, that the 1st respondent-writ petitioner should not claim any equity, and his being permitted to appear in the examination should not be construed as the petitioner having fulfilled the rigor of the Regulations. Yet, on the mere asking of the learned Senior Counsel, the appellants were directed by the order under appeal to declare the results, despite the pendency of the petition filed by them to vacate the earlier interim order dated 21.04.2016.

The question, which necessitates examination in the writ petition, is whether the respondent-writ petitioner could be permitted to appear in the written examination despite shortage of attendance. Permitting him to appear in the examination, and withholding his result, may have resulted in the respondent-writ petitioner not suffering prejudice in case the writ petition is allowed later, and at the same time protecting the interest of the appellant as the results need not be declared in case the writ petitioner is dismissed later. However, the order under appeal directing the results to be declared, even without considering whether or not the petitioner has shortage of attendance rendering him ineligible to appear in the examination, is wholly unjustified. We are satisfied that the order under appeal necessitates being set aside.

The Writ Appeal is, accordingly, allowed and the order under appeal is set aside, making it clear that we have not expressed any opinion on whether or not the 1st respondent-writ petitioner has shortage of attendance. As the issue relates to the career of a student, it is but appropriate that the writ petition be heard early. We have no reason to doubt that, on an application being made either by the appellant-

University or by the 1st respondent-writ petitioner for an early hearing, the Learned Single Judge would give his serious consideration to the said request. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

16th June, 2017
JSU

(T.RAJANI, J)



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Date: 16.06.2017

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