

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

W.P.M.P.No.26795 of 2017
IN/AND
WRIT PETITION No.41918 of 2016

ORDER :

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue a Writ of Mandamus declaring the action of the respondents herein not permitting the petitioner to write her Physiology backlog subject examination to be held in December, 2016 or any other date and also discharging the petitioner herein in pursuing her BDS Course in the 4th respondent college, as illegal, arbitrary, violative of Article 14 of the Constitution of India consequently direct the respondents herein to permit the petitioner herein to appear for the One backlog subject Physiology in the supplementary examination scheduled to be held in December, 2016 or any other subsequent date and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

W.P.M.P.No.26795 of 2017 is filed seeking the following relief:

“...to direct the respondents to issue Hall Ticket for the supplementary examination scheduled to be held in the month of July, 2017 to clear one backlog subject and permit the petitioner herein to write the examination of the 1st year BDS course or any other date, and also to permit the petitioner to attend the class of the 2nd year BDS course, pending disposal of the above writ petition and pass such other order or orders may deem fit and proper in the circumstances of the case.”

2. Heard learned counsel for the petitioner, learned Government Pleader for Medical Health and Family Welfare appearing for respondents 1 and 2, Sri T.Nageshwar Rao appearing for respondent No.3 and Sri G.Madhusudhan Reddy, who offers to file vakalat for respondent No.4 from oral instructions he got and perused the prayer in the writ petition with supporting affidavit and other material on record, more particularly, an interim order

passed by the Division Bench of this Court in W.P.M.P.No.55742 of 2016 in W.P.No.45214 of 2016.

3. It is the averment in the affidavit in support of the prayer in the writ petition that in the first year B.D.S.Course consisting of three subjects, the petitioner passed in two subjects, but for, the one viz., Physiology & Bio-Chemistry, even she appeared for supplementary examination conducted in June/ July, 2015-16 and for that backlog remained she was not permitted to the said B.D.S. supplementary examination that was conducted in December, 2016, which made her to maintain the writ petition. In fact, she was as per the Court's order permitted, but could not complete. It is the say from the affidavit petition in the W.P.M.P.No.26795 of 2017 that now as per the examination schedule, the backlog examination supra is going to be held on 07.07.2017 and she is entitled to appear and clear the backlog. It is the submission that as per revised Regulation, 2015, in contradiction to earlier guidelines 2007 to clear within 3 years, she can complete within 9 years from date of admission in the Course. It is the submission by the learned Standing Counsel for respondent No.3-University and learned Goernment Pleader for Medical and Health that the revised guidelines of 2015 have no application to the petitioner as those are only prospective in operation and petitioner is bound by the old guidelines of 2007 as his admission was prior to 2015 revised guidelines came into force and he was rightly discharged for not

clearing the first year backlog within the stipulated period of three years.

5. In fact, an interim order passed by the Division Bench of this Court in W.P.M.P.No.55742 of 2016 in W.P.No.45214 of 2016, filed by one N.Mary Rupa against three respondents viz., 1.Dr.NTR University of Health Sciences, Hyderabad, 2. M/s.KLR Lenora Institute of Dental Sciences, Rajahmundry and 3. The Dental Council of India, New Delhi, reads as follows:

“ The Regulation, to the extent it stipulated that any student who did not clear the first year BDS examination in all subjects within three years from the date of admission should be discharged from the course, was substituted by the Regulation notified on 27.04.2015. The substituted Regulation stipulates that any student who does not clear the BDS course in all the subjects within a period of 9 years including one year Compulsory Rotatory paid internship from the date of admission, shall be discharged from the course.

The petitioners herein joined the BDS Course during the academic year 2013-14. As against the three subjects in the first year, they have passed two subjects.

While the earlier Regulation required them to be discharged from the course, as they did not clear the first year BDS course University Examination within three years, the amended Regulation permits them to clear the BDS Course within a period of 9 years which would expire only in 2022-23.

Sri P.Vishnu Vardhan Reddy, learned Standing Counsel for the Dental Council of India, would fairly state that the Dental Council has requested the Central Government to give the amended Regulation retrospective effect. If that be so, the Regulations would require the Dental Colleges to permit the petitioners to go to the next higher class (Second year), subject, however, to the condition that they shall be permitted to write the second year examination only if they clear all the subjects in the first year. Consequently, the petitioners shall be permitted to attend the second year BDS Course, as they have failed only one subject in the first year. They shall, however, not be entitled to appear for the second year examination without passing all the subjects of the first year BDS course.”

6. Having regard to the above and because of the revised Regulation of 2015 apply even to the candidates admitted prior to 27.04.2015 for not a case of the three year period was complete by

dated 27.04.2015 to bound by original guidelines of 2007, as rightly concluded by the Division Bench of this Court even it was held in an interim order, the petitioner is entitled to the same benefit. Hence, the 3rd respondent-Dr.N.T.R.University of Health Sciences, Hyderabad, is directed to issue hall ticket to the petitioner immediately and the 4th respondent-SVS Institute of Dental Sciences, Mahabubnagar, shall permit the petitioner to write said examination, being scheduled on 07.07.2017.

7. Accordingly, W.P.M.P.No.26795 of 2017 is allowed and consequently, the Writ Petition is also disposed of, as otherwise, practically, the relief of permitting the petitioner to write her backlog examination in December, 2016, since permitted, is served the purpose. Needless to say, the petitioner is bound by the Regulation including on the factum of without completing the first year three subjects, the question of permitting the petitioner to the second year B.D.S Course does not arise.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed. No order as to costs.

Dr. B.SIVA SANKARA RAO J,

Date:06.07.2017

Note:

Issue C.C. today.

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