

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.11935 of 2011

M. Vivekananda Murthy,

...Petitioner

-Vs-

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

2. The Controller of Examination,
University of Madras,
Chepauk, Chennai - 600 005.

3. The Chairman,
Board of Studies for P.G. Courses in Law,
Office of University of Madras,
Chepauk, Chennai - 600 005.

...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order dated 05.07.2010 in case no.3083/Enquiry/2010 on the file of Tamil Nadu Information Commission and to quash the said impugned order and the same and consequently issue a Mandamus directing the respondents to furnish the copy of "Scheme of Valuation in the M.L. Examination held in 1983, Branch-III Crime and Tort, Non Semester in Paper-II, ' Development of Criminal Law and procedure in England and India.

For Petitioner : Mr.J.R.K. Bhavanantham

For Respondents-1-3 : Mr. L.P. Shanmuga Sundaram
(For Madras University)

O R D E R

This Writ Petition is filed praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 05.07.2010 in case no.3083/Enquiry/2010 on

the file of Tamil Nadu Information Commission and to quash the same and consequently to direct the respondents to furnish the copy of "Scheme of Valuation in the M.L. Examination held in 1983, Branch-III Crime and Tort, Non Semester in Paper-II, ' Development of Criminal Law and procedure in England and India.

2. According to the petitioner, in 1979, the first respondent introduced a rule to the effect that if a M.L. student governed under Revised Regulations (in short "R.R.") who had secured only an individual minimum of marks of 50% or more in any particular paper he would be declared to have passed in that particular paper and whereas for the M.L. students governed under Old Regulations (in short "O.R.") the minimum for a pass was fixed at 40% of marks. In view of the above, a separate question paper was set for O.R. and R.R. to maintain different standard. When the aforesaid Rules was in force in 1983, the petitioner appeared for the remaining papers II and III in the University Examinations held for Post Graduate Course in Law in July, 1983. During the said examination the M.L. Students governed under R.R. were asked to answer the question papers set for O.R. which was specifically captioned under "Non-Semester Old Regulations" and no separate question paper was set for M.L. students governed under R.R. for the Paper II and III in 1983. In the said examinations, even though the petitioner had obtained 41% marks in the paper-II, "Development of Criminal Law and Procedure in English and in India", he was declared as "Failed" for not having 50% marks as per the norms. Hence, on 30.12.1983, the petitioner made a representation to the first respondent seeking exemption from rewriting in the aforesaid subject and declaring him to have passed in the said subject under O.R. scheme. In this regard, there was no response from the first respondent. In the year 1984, 1985 & 1986, the students governed under R.R. made representations seeking clarification that notwithstanding two systems under R.R. and O.R. the candidates appeared for M.L. Examination may be treated on par with each other in the matter of maintaining the minimum marks for a "Pass" in each subject in the said course wherein several disadvantages of R.R. and the difficulties meted out by the students were pointed out. Too this, there was no response from the first respondent.

3. It is further stated that the petitioner along with other students requested the first respondent to give two more chances to complete the course and the same was rejected by the first respondent. However, after eight years, such candidates were given an opportunity by the first respondent to clear their papers in the year 1995 and 1996. In view of the above, the petitioner filed W.P. No.5692 of 1986 before this Court praying to declare that the petitioner had secured a pass in M.L. Examination in Branch III Crime & Tort, held in July, 1983,

treating him on par with Old regulation candidates. The same was dismissed by order dated 23.04.1996 of this Court. Challenging the aforesaid order, the petitioner filed Writ Appeal No.1136 of 1996 before this Court. The Division Bench of this Court rejected the same by order dated 16.12.1996. In this regard, the petitioner made several representations to the 1st respondent. As there was no response from the first respondent, the petitioner filed an application to the Public Information Officer (In short "P.I.O") on 11.05.2009 under Right to Information Act., requesting for the copy of instructions regarding the mode of valuation in the examinations held in the year 1983, the minimum marks required for a pass under the O.R. as well as R.R. sent by the Controller of Examinations to the Examiners who had valued the answer papers in Paper -II, "Development of Criminal Law and Procedure in English and in India" in M.L. (Non-semester) Revised Regulations Branch-III-Crime and Tort, Registration No.14 for the examination held in July 1983. The first respondent sent a letter dated 08.03.2010 enclosing a solemn affidavit wherein it was stated that " in spite of sincere and honest efforts made by the University of Madras the relevant records could not be traced." In view of the non-availability of the record sought for by the petitioner, the petitioner made a complaint in reference case No.3083/Enquiry/2010 to State Information Commission. In this regard, the State Information Commission has passed an order dated 05.07.2010 stating that " In this case the period of preservation of document as long since expired, and nobody can be held responsible, the case has to come to an unhappy closure." Aggrieved by this impugned order, the petitioner has filed the present writ petition stating that the order passed by the State Information Commission is per se illegal and error and the impugned order is contrary to law and liable to be set aside.

4. The learned counsel for the respondents relying upon the counter filed on behalf of the first respondent would submit that Tamilnadu Information Commission has passed a detailed order stating that in this case the period of preservation of document expired. The Scheme of valuation relating to the year 1983 is not available. In this regard, the first respondent had also requested Tamilnadu Information Commission to consider the aforesaid fact and the same was informed to the petitioner.

5. The learned counsel for the respondents would further submit that the petitioner did not obtain pass mark in the course of study admitted to the first respondent university within the time limit granted under the course of study and even though the first respondent clearly stated that all documents related to any examinations will be preserved till the commencement of next examinations, the petitioner is now

attempting to have a roving investigation not warranted in the circumstances. In any event the petitioner has no locus standi to seek such a claim when the University had replaced the regulations after providing sufficient and reasonable time limit for students admitted in the old regulations to complete the course of study. Therefore, the relief sought for by the petitioner is not sustainable in law and hence the Writ petition is liable to be dismissed.

6. Heard the learned Counsel for the petitioner and the learned counsel for the respondents.

7. A perusal of the records makes it clear that the W.P. No.5692 of 1986 filed by the petitioner was dismissed as early as on 23.04.1996 by this Court. Against which, W.A. No. 1136 of 1996 was filed by the petitioner. The Division Bench of this Court has rejected the appeal by order dated 16.12.1996. Under these circumstances, the petitioner has filed the present writ petition calling for the records of Scheme of Valuation in the year 1983, without any reasons, after a lapse of 16 years.

8. In view of the foregoing reasonings, there is no ground to grant the reliefs as prayed for in the writ petition. Hence, the writ petition stands dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

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

2. The Controller of Examination,
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3. The Chairman,
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Chepauk, Chennai - 600 005.

+lcc to Mr.L.P.Shanmugasundaram, Advocate Sr.82375

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