

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.8437 of 2018
and WMP.No.10388 of 2018

K.Jayakaran

... Petitioner

Vs.

1. The Tamil Nadu Dr.Ambedkar Law University,
Rep. by its Registrar,
M.G.R.Salai, Near MRTS Railway Station,
Perungudi, Chennai - 600 096.

2. The Controller of Examinations,
The Tamil Nadu Dr.Ambedkar Law University,
M.G.R.Salai, Near MRTS Railway Station,
Perungudi, Chennai - 600 096.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the entire records relating to the impugned order dated 18.01.2018 made in Ref.No.1968/COE/C1/2017 on the files of second respondent herein and to quash the same and also direct the respondents to publish the results of all the five papers written by the petitioner in the 2nd semester L.L.M. (Constitutional Law and Human Rights) Examinations, April/May 2017.

For Petitioner : Mr.A.E.Chidambaram
for M/s.T.E.Krishna

For Respondents : Mr.V.Vasanthakumar

O R D E R

This Writ Petition is filed to quash the order dated 18.01.2018 made in Ref.No.1968/COE/C1/2017 on the file of second respondent and direct the respondents to publish the results of the petitioner.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

3. The brief facts that are necessary for disposal of the Writ Petition are as follows.

4. The petitioner was a student of the first respondent-University, who wrote his second semester P.G. Course examination in L.L.M. (Constitutional Law and Human Rights) along with one arrear paper in the first semester (totally 6 papers). The results of the petitioner was withheld and a show cause notice, dated 08.08.2017 was issued to the petitioner for cancellation of examinations on the ground that the petitioner disclosed his identity by writing his name and registration number in the answer script in one paper, viz., Judicial Process. Thereafter, enquiry was conducted by the Disciplinary Committee constituted by the Syndicate of the first respondent-University and an order was passed by the respondents cancelling all the papers written by the petitioner during April and May 2017 examinations. However, the petitioner was given liberty to appear for examinations in November 2017.

5. The petitioner filed a Writ Petition in W.P.No.27829 of 2017, challenging the order dated 31.08.2017 cancelling the papers. This Court allowed the said Writ Petition, partly by, restricting the punishment conferring to only one paper, viz., Judicial Process, for which, the show cause notice was issued. This Court, therefore directed the respondents to publish the results of other five papers. Aggrieved by the order passed in the Writ Petition, dated 09.11.2017, the respondents filed an appeal in W.A.No.1497 of 2017. The Division Bench of this Court allowed the Writ Appeal in the following lines:-

"10. With regard to other papers, it appears that results have not been published. Taking into consideration the submissions made by the learned Advocate General for the appellants and also the facts and Circumstances of the case, the second appellant-Controller of Examinations, Tamil Nadu Dr. Ambedkar Law University, is directed to issue notice to the respondent to appear before him on 17.01.2018 for personal hearing. If the act of the respondent by way of declaring his identify is found to be not intentional and it was only by way of ignorance, then, he may be warned and results shall be published. If the act of the respondent is found to be intentional, the punishment would be to cancel the examinations already written and to permit him to write the examinations in the next ensuing session. Appropriate order shall be passed in this regard, by the second

appellant on or before 19.01.2018.

11. With the above observations and directions, the writ appeal is disposed of. No costs. Consequently the connected miscellaneous petition is closed."

6. After the order was passed by this court, the Controller of Examinations conducted enquiry and the petitioner was directed to appear before the Controller of Examinations on 17.01.2018. After hearing the petitioner on 17.01.2018, the Controller of Examinations has passed the following order:-

"17. With reference to the orders passed by the Hon'ble High Court of Judicature at Madras dated 10.01.2018 in W.A.No.1497 of 2017 and C.M.P. No.19758 of 2017, and the compliance, a detailed enquiry was conducted on 17.01.2018 at 03.00 p.m. and the Controller of Examinations took notice of the written submission made by the petitioner, Thiru. Jayakaran K. (Reg. No.CHR1602) and also heard submissions made by the petitioner personally.

Upon the perusal of the documents related to the enquiry, it is found that the petitioner herein has committed this malpractice intentionally beyond any reasonable doubt.

Therefore, the Controller of Examinations (i/c) has come to the following conclusion:

" It is decided to cancel the following papers as mentioned in this Office Letter 2nd cited:

Name of the Subject & Subject Code:

[1] Comparative Constitutional Law (CHR216002)

[2] Media and Law (CHR216003)

[3] Right to Information - Law and Policy (CHR216E02)

[4] Soft Skills - II (COM216S02)

[5] Legal Education and Research Methodology (CHR216C01)

7. Challenging the above order passed by the Controller of Examinations, the petitioner has filed the above Writ Petition.

8. In this Writ Petition, the petitioner has raised the following grounds:

- (a) The impugned order has been passed by the person, who is in-charge of the Controller of Examinations and therefore, he is not a competent authority as per the direction of this Court or the Tamil Nadu Dr. Ambedkar Law university Act and Rules.
- (b) The second respondent, the person who was holding the post of Controller of Examinations as in-charge was the person who has issued the show cause notice, and

therefore the order passed is unsustainable.

- (c) The second respondent has not at all applied his mind while passing the order and the order has been passed mechanically without giving any reasons or without considering the submissions of the petitioner before the first respondent.

9. The second respondent has filed a counter affidavit extracting the order passed by the Division Bench of this Court in Writ Appeal in W.A.No.1497 of 2017. In the counter affidavit, the respondent has stated as follows:

"11..... it was found that the petitioner herein committed the malpractice intentionally beyond any reasonable doubt, therefore, the 2nd respondent has decided to cancel the following papers viz.,....."

10. It is further stated that the petitioner has filed a Review Application in Rev.Aplw.No.30 of 2018 to review the order passed by the Division Bench of this Court in W.A.No.1497 of 2017 and the same was disposed of by a Division Bench of this Court. It is submitted that before the Division Bench, the order impugned in this Writ Petition was shown and approved. It is seen that after recording the facts including the impugned order, the Review Application was dismissed. The Division Bench has made further observation that the candidate would be permitted to appear for the next examination. The Division Bench of this Court has disposed of the review on merits and found that there is no scope for reversing the order in Writ Appeal. It was only in that context it was found that the Review Application has been filed after the second respondent passed the impugned order interms of the order of the Division Bench, dated 10.01.2018. However, relying the order passed by the Division Bench, it has been stated by the second respondent that the present Writ Petition is hit by the Doctrine of Res-Judicata and it is liable to be dismissed.

11. The learned counsel appearing for the respondents reiterated the same point during his argument. When the matter was posted on 19.09.2018, this Court directed the counsel appearing for the respondents to atleast disclose the materials or the reasons for substantiating the findings of the second respondent that the conduct of the petitioner in disclosing his identity in the answer script, is intentional. Since no reason was stated for the conclusion, this Court thought of remitting the matter if there are justifiable reasons, but not stated in the order.

12. The learned counsel appearing for the second respondent reiterated the stand taken by the second respondent in the counter affidavit and submitted that the reasons recorded by the second respondent are sufficient. He also relied upon the order

passed by the the Division Bench, dismissing the Review Application and stated that the Writ Petition cannot be entertained, in view of the order passed by the Division Bench in the Review Application on the principle of Res Judicata.

13. The learned counsel for the second respondent also submitted that the petitioner has disclosed his identity not only in one paper, but in all the six papers written by him and therefore, the petitioner's conduct cannot be otherwise than intentional.

14. The impugned order discloses nothing but total non application of mind. The person who conducted enquiry is determined to pass the order, without disclosing any reasons for arriving at such conclusion. It is to be noted that the learned counsel for the respondents submitted that the Tamil Nadu State Council for Higher Education has prescribed certain guidelines for controlling malpractices in the University Examinations. As per the same, the punishment for indicating identity by writing the name of the candidate or registration number, is either warning or cancelling of the particular paper. So, the Division Bench of this Court, in its judgment in Writ Appeal in W.A.No.1497 of 2017, keeping in mind the same, has held that the second respondent has to hold enquiry and find out whether the disclosure of identity by the petitioner is intentional. If it is found intentional, the punishment suggested is to cancel the examinations already written by the petitioner and permit him to write examinations in the next session and if it is not intentional, but by way of ignorance, the punishment suggested was warning.

15. In the above circumstances, it can be seen that the impugned order has been passed by the second respondent without even realising the scope of the judgement of this Court in W.A.No.1497 of 2017. Without even considering the submissions of the petitioner, the second respondent has come to the conclusion that the conduct of the petitioner was intentional beyond any reasonable doubt. The order has been passed without assigning reasons and there is no subjective satisfaction. The impugned order can be fit into any kind of situation.

16. The learned counsel for the second respondent strenuously argued that the Writ Petition itself is not maintainable, in view of the order passed by this Court in the Review Application. The Review Application was filed only to review the order, dated 10.01.2018 in W.A.No.1497 of 2017. The impugned order is not the subject matter of the Review Application filed by the petitioner. In view of the subsequent order passed by the second respondent, pursuant to W.A.No.1497 of 2014, the Review Application was dismissed. That doesn't mean that the petitioner can be denied an opportunity to challenge

the impugned order on merits.

17. The observation of the Division Bench in the order dated 13.03.2018, is only in the context that the Review Application has no merits, and that the review need not be entertained in the light of the order passed by the second respondent, pursuant to the earlier order passed in the Writ Appeal. Certainly, the submission of the learned counsel appearing for the second respondent that the order passed in the Review Application will operate as Res Judicata has no legal basis. Writ Petition that has been filed challenging the order passed by the second respondent, dated 18.01.2018 has to be considered on merits.

18. In that view of the matter, the contentions of the second respondent cannot be countenanced.

19. The learned counsel appearing for the second respondent while taking adjournment on 19.09.2018, wanted to produce some records to show that the order of the second respondent is supported by some materials. However, no reason or material is disclosed in the order impugned.

20. This Court gave an opportunity to the second respondent, so that the matter can be remitted to the second respondent once again to conduct an enquiry and pass orders afresh, after considering the submissions and the materials, so that a reasoned order can be passed. However, the learned counsel for the second respondent could not produce any material, and he only reiterated the stand taken by the second respondent in the counter affidavit. Hence, this Court is not inclined to remit the matter once again to the second respondent, who seems to be biased and no purpose will be served by remitting the matter back, as no material has been produced or suggested by the second respondent before this Court even when the matter is heard. Hence, this Writ Petition is allowed and the impugned order is set aside. The respondents are directed to publish the results of all the five papers. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

pvs

To

1. The Registrar,
Tamil Nadu Dr.Ambedkar Law University,
M.G.R.Salai, Near MRTS Railway Station,
Perungudi, Chennai - 600 096.

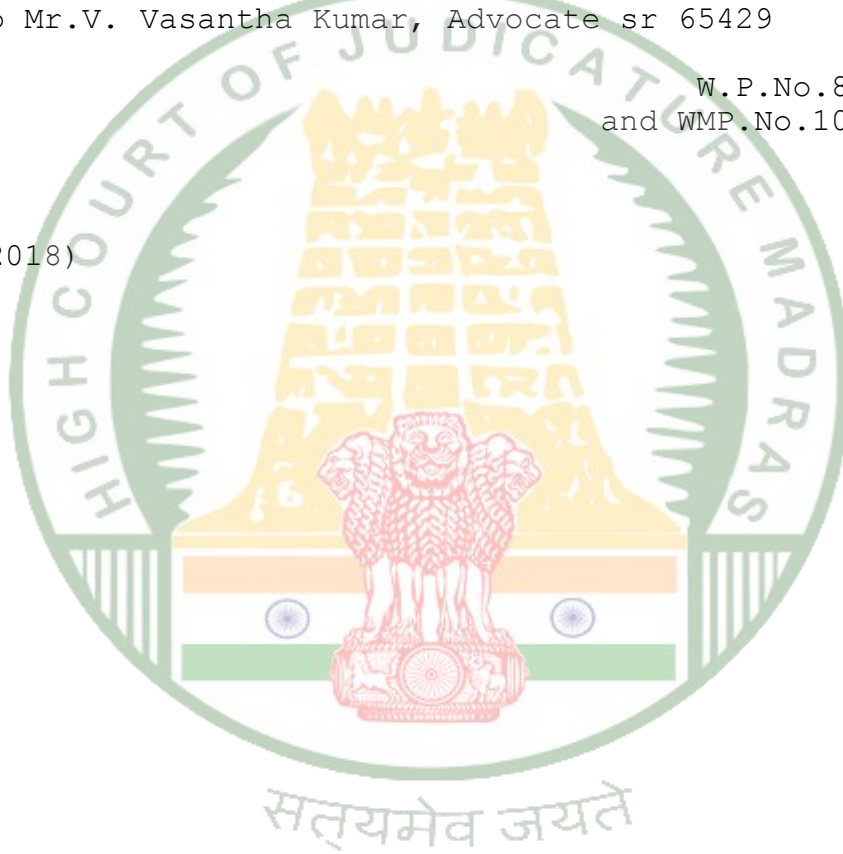
2. The Controller of Examinations,
The Tamil Nadu Dr.Ambedkar Law University,
M.G.R.Salai, Near MRTS Railway Station,
Perungudi, Chennai - 600 096.

+1 CC to Mr.T.E. Krishna, Advocate sr 65299.

+1 CC to Mr.V. Vasantha Kumar, Advocate sr 65429

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SP(08/10/2018)



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