

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No. 6471 of 2018
and W.M.P.No.7987 of 2018

Prasanna Parkavi

... Petitioner

Vs.

1. The Secretary,
Health Department,
Govt. of Puducherry, Puducherry.
2. The Registrar,
Medical Council of India,
MCI Building Pocket - 14,
Sector 8, Dwarka Phase-I,
New Delhi - 110 077.
3. The Vice-Chancellor/Dean,
Puducherry University,
R.V.Nagar, Kalapet, Puducherry.
4. The Registrar,
Puducherry University,
R.V.Nagar, Kalapet, Puducherry.
5. The Controller of Examination,
Puducherry University,
R.V.Nagar, Kalapet, Puducherry.
6. The Dean,
Indira Gandhi Medical College &
Research Institute,
(A Govt. of Puducherry Institution)
Vazhuvur Road, Kathirkamam,
Puducherry - 605 009.
7. The Director,
Indira Gandhi Medical College &
Research Institute,
(A Govt. of Puducherry Institution)
Vazhuvur Road, Kathirkamam,
Puducherry - 605 009.

8. Dr.K.Balamurugesan,
H.O.D. Department of General Institute,
Indira Gandhi Medical College &
Research Institute,
(A Govt. of Puducherry Institution)
Vazhuduvur Road, Kathirkamam,
Puducherry - 605 009.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents 1 to 7 herein to take appropriate action against the 8th respondent herein on basis of the various complaints, culminating in the petitioner's representation dated 08.02.2018, filed against him.

For Petitioner : Ms.N.Mala
For Respondents 1,6 & 7 : Mr.C.T.Ramesh
Additional Govt. Pleader
For 2nd Respondent : Mr.V.P.Raman
For Respondents 3, 4 & 5 : M/s.A.V.Bharathi
For 8th Respondent : M/s. Radha Gopalan

ORDER

This Writ Petition has been filed for the issuance of a Writ of Mandamus to direct the respondents 1 to 7 herein to take appropriate action against the 8th respondent herein on the basis of various complaints, culminating in the petitioner's representation dated 08.02.2018, filed against him.

2. The case of the petitioner is that, she joined M.B.B.S. course in the year 2010 under the sports quota in the respondent/College and that but for the sports quota, she would not have got a seat in the said course. Since one Dr.R.Balasubramanian, who is the HOD (General Medicine) went on leave for a certain period, the eighth respondent was deputed in his place to function as HOD till his joining. The petitioner would further state that, even after the said Dr.R.Balasubramanian, resumed his duty, the eighth respondent for the reasons best known to the respondent/College, continued to remain as Head of the Department and so far, no action has been taken against him. It is pertinent to mention here that the eighth respondent, even before he was posted to function as HOD, used to harass the students and torture them, and there were many complaints received against him by the students, staff, junior and other faculty and lady Doctors, and the petitioner also annexed the copies of the complaints, which she was able to

obtain under Right to Information Act. Though several complaints are being received against the eighth respondent, he is somehow clinging on to the said post without any valid appointment order to the said post.

3. The petitioner would further state that the eighth respondent, while discharging his duty as HOD, ill-treated, humiliated and abused the petitioner using obscene language. Since the petitioner had to somehow come out successful from the College, as otherwise, the eighth respondent would not allow her to write the University Exams, the petitioner, tolerated the problems caused by the eighth respondent. However, due to the mala fide act of the eighth respondent, the petitioner was unable to appear for the University Exams, on the ground of lack of attendance, as the eighth respondent manipulated her attendance. The petitioner would further state that she would have completed the M.B.B.S Course in the year 2016 itself, but, for the harassment of the eighth respondent, who wantonly targeted her and her future is bleak.

4. Now the grievance of the petitioner is that, she is going to appear for the University Exams, which is scheduled to be held in May-June, 2018, and if the eighth respondent is allowed to appear as Internal or External Examiner, then, obviously, he would wreak vengeance on her again, by playing some tactics. Hence, the petitioner is constrained to file this Writ Petition, seeking for a direction upon the respondents 1 to 7 to take suitable action against the eighth respondent, based on the various complaints received against him.

5. M/s. Radha Gopalan, learned counsel appearing for the 8th respondent would submit that it is incorrect to state that the petitioner was harassed by the 8th respondent. Admittedly, the petitioner joined the M.B.B.S. Course under the sports quota. Since the petitioner suffered from want of attendance, she was not permitted to attend the University Exams. That apart, the petitioner has made more than one attempt in several papers to clear the subjects, and that, now she is in the 8th year and that she ought to have completed M.B.B.S Course in five years apart from 1 ½ years as House Surgeon. Since Dr.R.Balasubramanian, submitted his resignation letter dated 14.11.2016, the 8th respondent was appointed as H.O.D.

6. Since the petitioner did not come out with flying colours in the examination and since the eighth respondent has followed the Rules and Guidelines of the Colleges scrupulously, the petitioner has nursed grudge against the 8th respondent and that the allegations levelled against him are totally false. According to the learned counsel, the present Writ Petition is

nothing but a complaint by the petitioner. Though it is the contention of the petitioner that the 8th respondent was appointed as H.O.D. in the place of one Dr.R.Balasubramanian, only for a period of 10 days, and he was allowed to remain in the same post, is the matter of concern for the respondent/College and it is left to their discretion and the petitioner cannot expect to change the H.O.D. as per her volition.

7. Mrs.A.V.Bharathi, learned counsel appearing for the University would submit that in terms of the Regulation, the post of H.O.D. is constant and that the post of Associate Professors numbering four would be changed and that the list would be forwarded to the University by the college and the based on the communication, the University will act and then it is for the College to decide as to whether the said person should continue or not.

8. Heard the learned counsel appearing for both parties and perused the materials available on record.

9. It is not in dispute that the petitioner joined the M.B.B.S. course in the year 2010 and nearly eight years have passed and she is yet to clear her arrears. It is also not in dispute that in some of the papers, she made more than one attempt to clear the same. The fact that the petitioner got M.B.B.S. seat under sports quota is also not disputed. The appointment order issued to the 8th respondent on 23.11.2016 would make it clear that he is entitled to function as HOD until further orders. Even though on a reading of the office note, it is seen that the period, for which, the eighth respondent shall hold the post of HOD is only 10 days, subsequently, the same was annulled and the 8th respondent was appointed as H.O.D until further orders. It is also to be noted that the petitioner has made a complaint against the former H.O.D. Dr.R.Balasubramanian and others and the same is pending before the University and the College.

10. In the light of the above facts and circumstances of the case, as the relief sought for in this Writ Petition is very limited, without expressing any opinion with regard to the merits of the contentions expressed by the petitioner either in the Writ Petition or in the representation, this Court directs the respondents 1 to 7 to consider the representation of the petitioner and take a decision after hearing her and the 8th respondent, if so required, without being influenced by any of the observation made in the Writ Petition, as the aforesaid observations are made only for the purpose of disposal of the Writ Petition.

11. It is needless to say that it is open to the college to change the H.O.D. However, as per the Pondicherry Regulations of the year 2017-2018, more particularly 13(9), which is extracted below, when the H.O.D remains constant, and all other persons in the same cadre or equivalent shall be appointed as Internal Examiner on rotation basis.

13(9). Except Head of the department of subject concerned is a college/institution, all other with the rank of reader or equivalent and above with requisite qualifications and experience shall be appointed internal examiners by rotation in their subjects; provided that where there are no posts of readers, then an Assistant Professor of 5 years standing as Assistant Professor may be considered for appointment as examiner.

12. It is open to the College to send the list to the University and the University will consider the same. The exercise for withdrawing or appointing any other person as H.O.D. shall be communicated to the 8th respondent within a period of two weeks from the date of receipt of a copy of this order.

With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Health Department,
Govt. of Puducherry, Puducherry.

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2. The Registrar,
Medical Council of India,
MCI Building Pocket - 14,
Sector 8, Dwarka Phase-I,
New Delhi - 110 077.

3. The Vice-Chancellor/Dean,
Puducherry University,
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Vazhuduvur Road, Kathirkamam,
Puducherry - 605 009.

+1cc to Mr.A.V.Bharathi, Advocate Sr.No.28529

+1cc to Mr.V.P.Raman, Advocate Sr.No.28810

+1cc to M/s.S.Radhaagopalan, Advocate Sr.No.28687

+1cc to Government Pleader(Pondy) High court, Madras SR.No.28632

+1cc to Ms.N.Mala, Advocate SR.No.28551

VGII(CO)
sm:14.5.2018

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