

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3611 of 2018

V.Harinath

...Petitioner

Vs

1. The Vice Chancellor,
Pondicherry University,
P.Venkatraman Nagar,
Kalapet,
Puducherry-605 014.
2. The Registrar,
Pondicherry University,
R.Venkatraman Nagar,
Kalapet,
Puducherry-605 014.
3. The Controller of Examinations-cum-
The Public Information Officer,
Deputy Registrar of Examinations,
Pondicherry University,
R.Venkatraman Nagar,
Kalapet,
Puducherry- 605 014.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondent Nos.1 to 3 to consider the petitioner's representation dated 25.01.2018 and thereby direct them to award B.Tech (ECE) Degree with distinction to the petitioner in the light of the observations made by this Court in Judgment dated 30.06.2017 passed in W.P.Nos.19260 of 2014.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mr.V.Balamurugane

O R D E R

The petitioner has come forward with the aforesaid Writ Petition seeking for a direction to the respondents 1 to 3, to consider his representation dated 25.01.2018, and thereby direct them to award B.Tech (ECE) degree with distinction to him in the light of the observations made by this Court in Judgment dated 30.06.2017 passed in W.P.No.19260 of 2014.

2. According to the petitioner after completing Higher Secondary Education, he joined in Pondicherry Engineering College, Pondicherry, in B.Tech (ECE) Degree course. Though, he secured very good marks in 10th and 12th standards, unfortunately due to the error committed by the Examiner, there was an arrear in Linear and Digital Control Systems theory paper in the fifth semester of B.Tech, in which he had performed extremely well. When a representation was made to the Vice Chancellor on 13.07.2012, the Head of Department has given good remarks. As there was no response from the said authority, the petitioner made an application to the third respondent under the Right to Information Act on 13.08.2012 seeking to furnish photocopy of the answer sheet. The third respondent vide reply dated 18.09.2012 has stated that it is not feasible to provide photocopies of the evaluated papers as it comes under Section 8 (1)(e) of the Right to Information Act. Feeling aggrieved, the petitioner preferred an appeal before the second respondent, pursuant thereto, the concerned officer by order dated 30.10.2012, permitted the petitioner to scrutinize the answer papers. The petitioner went through the papers and found that the answer paper shown was not his answer paper and it was written by some other failed student. The petitioner again wrote the said paper and passed with 'C' grade and he completed the course in May 2013 in First Class.

3. As the petitioner was not able to get I class with distinction due to the mistake committed by the University, the petitioner filed Writ Petition in W.P.No.19260 of 2014 before his Court, praying for a direction to the respondents 1 to 3 to furnish photocopy of the answer sheet pertaining to the theory subject viz., Linear & Digital Control System of the 5th Semester Examination for comparison. During the pendency of the said Writ Petition, the Pondicherry University has taken a decision to issue convocation and Degree certificates to all the students. The petitioner made a representation to the respondents on 04.06.2015 requesting them not to call for issuance of the convocation and degree certificate till the furnishing of photocopy of answer script of the theory subject viz., Linear & Digital Control System as requested by the

petitioner. As there was no response, the petitioner filed a Writ Petition in W.P.No.20956 of 2015 seeking for a direction to the respondents to consider and take appropriate action on his representation dated 04.06.2015.

4. This Court, by a common order dated 30.06.2017 made in both writ petitions, has observed as follows:

"8.A perusal of the records would go to show that the petitioner joined the 4th respondent College, namely, Pondicherry Engineering College (PEC), Pondicherry through proper channel of CENTAC (Centralized Admission Committee) for the course of B.Tech. (ECE) and up to final semester in all University Examinations, his overall grade of G.P.A. is 8.9. But, it is seen that in the V Semester Examinations for which results were published in April, 2012 by the 3rd respondent, the 4th respondent had declared that the petitioner had failed in one theory subject, namely, Linear & Digital Control System. But, it appears that the petitioner has secured good grade in some of the Mathematical/Analytical papers such as Mathematics-I, Mathematics-II, Mathematics-III, Numerical Methods and Techniques, Probability and Random Processes, Digital and Signal Processor and Signals and Systems. Therefore, the grievance of the petitioner is that there is some mistake in his results. Since his performance was outstanding, though there is no change in the result after revaluation, it is pertinent to note that on 13.07.2012, his Professor and Head of Department, namely, Dr.E.Srinivasan had written a letter to the 1st respondent to consider favourably the request of the petitioner for furnishing a photocopy of the answer script of the above stated paper to the petitioner. Since the said exercise has become futile, the petitioner was forced to make an application under RTI Act for asking them to furnish a photocopy of the

answer script. For that also, it appears that the 3rd respondent has not turned up. Therefore, the petitioner preferred an appeal under RTI Act on 03.10.2012. Thereafter, vide Letter PU/REGR/AR/RTI/2012 dated 30.10.2012, the appellate authority had permitted the petitioner to look into his answer script, but according to the petitioner, the answer script which was shown to him is not that of him. When the same was informed to the authorities, the petitioner was made to run pillar to post to have a look at his answer sheet. The petitioner was also with a fond hope of seeing his answer papers, obeyed all the instructions given by the respondents only to be humiliated. In this regard, though the petitioner has caused a Legal Notice through his Counsel, there is no use. In the meantime, the petitioner had completed his B.Tech. Degree including the failed subject in Linear & Digital Control System and passed in first class.

9. Now, the grievance of the petitioner is that if the answer sheets in Linear & Digital Control System written by him is shown to him, he would have definitely got distinction. The petitioner also came to know that the college is going to issue the degree by holding a Convocation. But, according to the respondents, the answer script with regard to the subject Linear and Digital Control System Theory Paper had been destroyed, soon after the inspection of the said paper by the petitioner. It is stated that after inspection of the paper, the petitioner did not raise any objection. Moreover, the petitioner's further appearance in the said arrears paper would automatically, absolve his right of agitation to the dispute. The said arguments are unacceptable. The petitioner cannot be expected to wait till the authorities show him the answer script. As he is constrained to

complete his course, he had to write the exam in the said paper again. The respondent authorities cannot taken advantage of their own mistake and tide over the problem on the ground of delay. Though, it is stated that in the Academic Council meeting held on 12.09.2007 vide Resolution No.2007.55.06 resolved that 'to consider and approve the retention of answer papers of a semester (except dispute cases) till the commencement of the examination of the subsequent semester and further resolved to retain the answer scripts for one year (two semesters), the same cannot be accepted because the petitioner has taken steps from the date of issuance of the results by one way or the other. When the answer script of the petitioner was shown to him after great efforts and when the petitioner had alleged that what was shown to him was not his answer script, the dispute confirmed. Hence the theory of the respondent for not retaining the paper does not hold water.

10. It will be wholly wrong to say that the court is making a pedantic approach to the problem of this nature as it is not isolated from the actual realities and gross root problems involved in the request of the petitioner. There are provisions given by the University for such revaluation or furnishing photocopy of the answer script. It is not the case of the University that the demand of the petitioner is unworkable. This is certainly a case which shows the judicial conscience calling for interference in the Writ Petition. The destruction of the answer paper by any stretch of such imagination will not render the writ petition infructuous.

11. In view of all the above, it is clear that there is a lapse on the part of the respondents to show the original answer sheets of the petitioner to him due to which he has

lost his distinction in B.Tech. In order to compensate the same, the respondents are liable to pay a cost of Rs.50,000/- (Rupees Fifty Thousand Only) to the petitioner within a period of four weeks from the date of receipt of a copy of this Order."

5. Relying on the said decision of this Court, the learned counsel for the petitioner prayed for disposal of this Writ Petition in the light of the observation made in the Writ petitions cited supra.

6. The respondents filed a counter affidavit stating that the petitioner joined the Pondicherry Engineering College in 2009 and completed the course in May 2013. He had an arrear in the theory subject viz., Linear & Digital Control System in the 5th semester. The petitioner made a representation on 13.07.2012 through the College, seeking photocopy of the answer script and thereafter on 13.08.2012 he applied for the same answer sheet, under Right to Information Act. On 18.09.2012, his request under Right to Information Act was rejected. Thereafter, an Appeal was preferred by the petitioner on 03.10.2012 under Right to Information Act and the Appeal was disposed of directing the authority concerned to provide an opportunity to the petitioner to peruse the answer sheet. The petitioner wrote the said examination and cleared the same in class 'C' and final results were published on 31.05.2013 and the petitioner was issued with consolidated mark sheet, provisional certificate and 8th semester mark sheet on 27.07.2013. On 15.12.2013, the petitioner issued a Legal notice for the very same relief, after a period of 21 months from the date of the so called incident and thereafter he filed a Writ Petition in W.P.No.19260 of 2014. Pending the said writ petition, the petitioner submitted a representation to the respondents on 04.06.2015, seeking for the same relief and on 09.07.2015 the petitioner filed the Writ Petition in W.P.No.20956 of 2015 to dispose of his representation dated 04.06.2015 and this Court passed the order which is extracted supra.

7. The learned counsel for the respondents submitted that the respondents have preferred an appeal with condonation of delay and the same is pending. De hors the appeal, the Academic Council in the meeting held on 12.09.2017 has held hereunder:

"To consider and approve the retention of answer papers of a semester (Except dispute cases) till the commencement of examinations of the subsequent semester. Resolved to retain the answer scripts for one year

(two semester). Hence the answer sheet with regard to subject in question, after a period of one year have been destroyed."

8. The learned counsel for the respondents also relied upon the Judgment of this Court in N.Amirthaguru Vs. The Deputy General Manager, Regional Office, Syndicate Bank reported in MANU/TN/0044/2013. The relevant portion is extracted hereunder:

"7. Section 8 (3) of the Right to Information Act, 2005, reads as follows:-

(7) Section 8 (3) of the RTI Act came to be considered by the Supreme Court vide its Judgment in Central Board of Secondary Education Vs. Aditya Bandopadhyay reported in MANU/SC/0932/2011 : (2011) 8 SCC 497. In paragraphs 54 to 58, the Supreme Court observed as follows:

54. The right to access information does not extend beyond the period during which the examining body is expected to retain the answer books. In case of CBSE, the answer books are required to be maintained for period of three months and thereafter they are liable to be disposed of/destroyed. Some other examining bodies are required to keep the answer books for a period of six months. The fact that right to information is available in regard to answer books does not mean that answer books will have to be maintained for any longer period than required under the rules and regulations of the public authority. The obligation under RTI Act is to make available or give access to existing information or information which expected to be preserved or maintained."

....

9. Undoubtedly, the petitioner joined in Pondicherry Engineering College, Pondicherry in B.Tech (ECE) course in 2012 and he failed in the theory subject viz., Linear & Digital Control System in the 5th semester. The request made by the petitioner to the Appellate authority under the Right to Information Act was considered and the petitioner was permitted

to go through his answer sheet . The case of the petitioner that the answer paper shown by the authority was related to some other person cannot be accepted for the reason that at no point of time, the petitioner has commented on that aspect. That apart, the petitioner made a representation and get his paper answer paper verified and if according to the petitioner he was made to run from pillar to post, without being shown his actual answer paper, he could have made another representation to the respondent or could have send a gentle reminder for consideration. But, having slept for over a year and pressurizing to produce the answer sheet even after destruction of the same and seeking for a direction to the respondent to grant distinction, is not correct on the part of the petitioner. The decision relied on by the learned counsel for the respondent applies to the facts of this case.

10. When the petitioner approached this Court in W.P.No.20956 of 2015, taking note of the fact that the answer sheets have been lost, this Court ordered payment of Rs.50,000/- (Rupees Fifty Thousand only) as compensation to the petitioner. Without the answer sheets, the petitioner cannot seek for distinction merely relying on the common order dated 30.06.2017 passed by this Court in W.P.No.19260 and 20956 of 2015. Nowhere, in the said order, the Court had ordered the authorities concerned to grant distinction to the petitioner. Hence, in the absence of Answer Sheets, that were destroyed after the preservation period, the relief sought for by the petitioner cannot be considered. Knowing well that Answer Sheets would not be preserved for a long time, the Petitioner has approached this Court with delay, which clearly shows the colour of the student.

With the above observation, this Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To:

1. The Vice Chancellor,
Pondicherry University,
P.Venkatraman Nagar,
Kalapet,
Puducherry-605 014.

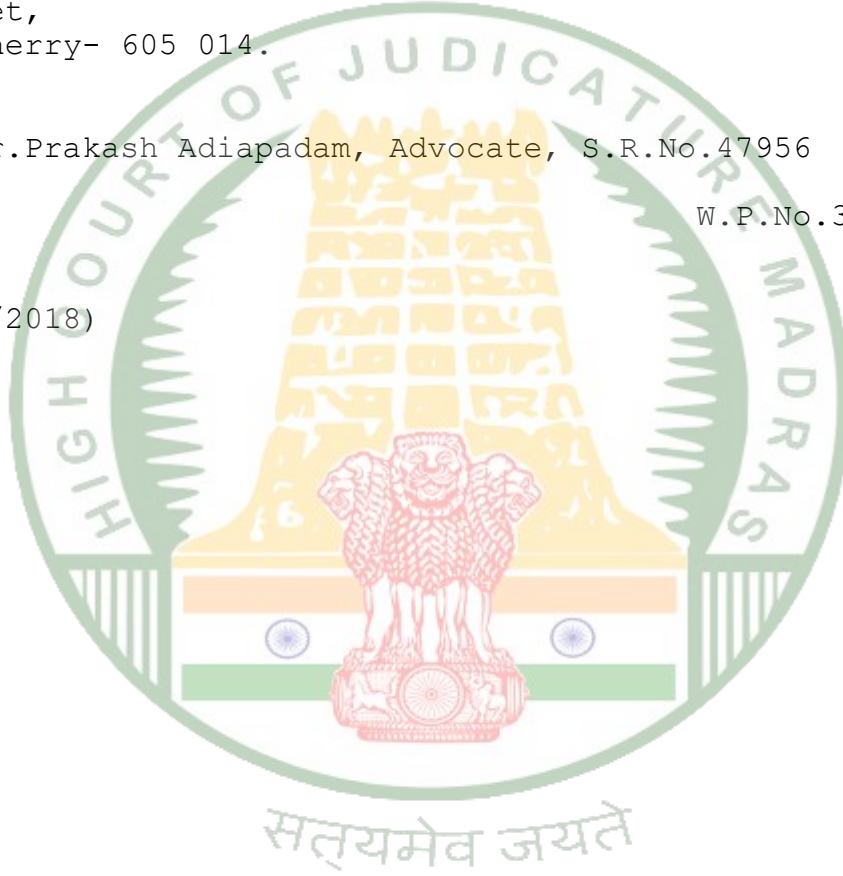
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+1cc to Mr.Prakash Adiapadam, Advocate, S.R.No.47956

W.P.No.3611 of 2018

KS (CO)
GSP (31/08/2018)



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