

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6601 of 2018

G.Meganathan

.. Petitioner

Vs.

1. The Syndicate,
Anna University,
Chennai-600 025.

2. The Vice Chancellor,
(Now The Vice Chancellor Convener Committee),
Anna University,
Chennai-600 025.

3. The Registrar,
Anna University,
Chennai-600 025.

4. Controller of Examinations,
Anna University,
Chennai-600 025.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fourth respondent herein in his Memo No.CEG/COE/C25/2017-52104, dated 03.01.2018 and quash the same and consequently issue a direction directing the respondents herein to allow the petitioner to appear for the examination papers 1.P-MA1-26 Mathematics, 2.MA3-03 Mathematics-III and 3. MA5-10 Numerical Methods to be conducted in August 2018.

For petitioner : Mr.G.Bala for M/s.G.Bala and Daisy

For respondents: Mr.L.P.Shanmugasundaram

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the fourth respondent herein in his Memo No.CEG/COE/C25/2017-52104, dated 03.01.2018 and quash the same and consequently issue a direction directing the respondents herein to allow the

petitioner to appear for the examination papers 1.P-MA1-26 Mathematics, 2.MA3-03 Mathematics-III and 3. MA5-10 Numerical Methods to be conducted in August 2018.

2. According to the petitioner, by the impugned communication dated 03.01.2018, the petitioner did not satisfy the requirements and he should have been permitted to write the re-examination. The case of the petitioner is that he joined Anna University in the year 1994-1995 and completed 1998 and cleared all papers except three. He was unable to complete the said three papers due to unforeseen circumstances. On 22.11.2017, there was a Press Release wherein the Anna University has granted one time permission to students who have not appeared for the examination, but however, the upper limit was fixed as students joined after 2000. When the petitioner requested that he may be permitted to write the examination and clear the arrears, the same was rejected. If the petitioner is permitted, he would have the moral satisfaction of having cleared the B.E Degree.

3. The respondents have filed detailed counter affidavit wherein it has been stated that the petitioner was a part-time student and Regulation 3 of the year 1992 is applicable to him, which reads as follows:

"A candidate shall be eligible for the award of the degree only if he/she has undergone the course for a period of seven semesters in the Faculty of Engineering (CEG) and has passed all the prescribed examinations in all the seven semesters within a maximum period of 6 years reckoned from the commencement of the first semester to which the candidate was admitted."

4. The petitioner was aware of the said Regulation, as the same was handed over to him at the time of admission. After completion of six years, the petitioner appeared for the examination on the arrear courses upto May 2006, but he failed to appear for the examination, even though he has been facilitated upto November/December 2009 as a special case. The Syndicate in its Resolution dated 05.01.2018, permitted all the students to write examinations who had arrears under Regulation 1991, Regulation 1996 and Regulation 2000 for UG (Full time/part time) including Architecture. Regardless of the extension of time given, the petitioner had miserably failed to utilise the opportunities and therefore, he is given additional opportunity of appearing for his arrear examinations for nine years, i.e. 18 semesters as a special case. As there are several students who have not cleared the arrears examination from 2000, and that the

entire syllabi and the pattern of question paper etc., have changed, it has been decided to permit the students to take up the arrear examinations who have joined the course after 2000 and that there was a Notification of 2017 and accordingly, the students admitted from the year 2000 and exceeded the maximum duration, would be permitted to write the arrear examinations only for two semesters as a special case, namely in February 2018 and August 2018. Under the Regulation, the students for whatever reasons, is unable to complete the programme with the minimum duration prescribed for the programme, may be allowed two years period, and normally, the period to clear the back log to be qualified for the degree and the general formula should therefore be as follows:

(i) Time span = $N + 2$ years for the completion of programme, when N stands for the normal or minimum duration prescribed for completion of the programme and

(ii) In exceptional circumstances, a further extension of one more year may be granted. The exceptional circumstances be spelt out clearly by the relevant statutory body concerned of the University.

5. As the petitioner has joined the course in the year 1994 and completed it in 1998 and that he has not completed the papers for nine years, namely 18 semesters, the petitioner would not be entitled to the relief. The respondents in the counter, drew the attention of this Court to the judgment of the Karnataka High Court in W.P.No.2252 of 2016 and other related cases (W.P.No.2252 of 2016, etc., dated 24.03.2016, Sri Amrith Raj.V. Vs. Registrar, Visveswaraiah Technological University, Balgaum), wherein the Karnataka High Court negated the relief to various students of colleges of Visveswaraiah Technological University who sought extension of eight-year deadline to complete their engineering courses. The students had pointed out that VTU had made such relaxations in a couple of cases earlier and in fact, the High Court has put an end to any such extension in the future. Dismissing those Writ Petitions of the students, it was held by the Karnataka High Court as follows:

"It is settled that this Court cannot direct the University to extend the period for completion of the course contrary to the Regulations, even if the University had extended the period for completion of the course to some of the students on the ground of discrimination. Two wrongs do not make a right. A party cannot claim that since something wrong has been done in another case, direction should be given for doing another wrong. The concept of equal treatment on the logic of Article 14 of the Constitution cannot be pressed into service in such cases. What the concept of equal treatment presupposes is the existence of

similar legal foothold. The jurisdiction under Article 226 is not intended to perpetuate illegalities, but to strike at them. If a person who has a legal right is denied the benefit of it, while others having a similar right are given the benefit of such right, then there is discrimination, and a mandamus may be issued to ensure that he also gets a similar benefit. But if a person who does not have a right is given a benefit contrary to law, then the illegal act itself will be struck down and there can never be a mandamus to repeat the illegal act to favour others. I do not find any merit in these Writ Petitions. They are accordingly dismissed. No costs."

6. Further, in the counter, the decision of the Supreme Court reported in 2011 (4) SCC 606 (Visveswaraiiah Technological University and another Vs. Krishnendu Halder and others) was relied on, wherein it was observed that determination of such standards, being part of the academic policy of the University, is beyond the purview of judicial review, unless it is established that such standards are arbitrary or adversely affects the standards, if any, fixed by the Central Body under a Central enactment and in paragraph 17, the Apex Court in that decision held as follows:

" 17. No student or college in the teeth of the existing and prevalent rules of the State and the University can say that such rules should be ignored, whenever there are unfilled vacancies in colleges. In fact the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any, fixed by the central body under a Central enactment. The order of the Division Bench is therefore unsustainable."

7. It is further stated in the counter that the Syndicate has resolved to permit the students to write the examination inter-alia observing as follows: (Syndicate Resolution No.245.14, dated 17.10.2017):

" Category 1: Students of University Departments of Anna University, Chennai admitted in the Academic Year 2000 onwards (both UG & PG under Full Time & Part Time Mode).

Category 2: Students of Affiliated Colleges of Anna University and students admitted in the affiliated college at the time of admission i.e. during Academic Year 2001 (3rd Semester onwards) & 2002 (1st semester onwards) and currently in Autonomous ones including Distance Education offered by Anna University."

A detailed Notification based on the above decision, has already been issued on 09.11.2017, based on which, nearly 13000 students have registered their names for examination and examination has also commenced from 19.02.2018. It is decided to give another chance in August 2018 to the same category of students who are willing to write their arrear subjects.

8. In the counter affidavit, the respondents also rely upon the decision of the Supreme Court reported in 2009 (11) SCC 726 (All India Council for Technical Education Vs. Surinder Kumar Dhavan and others), wherein while allowing the Civil Appeal, the Supreme Court indicated the role of statutory and expert bodies on education and the limited role of Courts in such matters, by observing as follows:

"16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the Courts keep their hands off. "

Hence, for the above reasons, the respondents pray for dismissing the Writ Petition.

9. Heard both sides and perused the materials available on record.

10. The relief sought for by the petitioner is that he has not been permitted to take up the examination and that the impugned communication dated 03.01.2018 has got to be quashed. Admittedly, the Notification issued in 2017 has not been

challenged. That apart, the petitioner was already given a chance in 2006 and that in 18 semesters from the date of his admission to the college, he has not cleared the papers and he was even though a student for Engineering College, for the maximum period of six years to clear the arrears, he had been permitted to take up the examination for a period of nine years. When the petitioner had the benefit in 2006 and he has not benefited himself of the same, and that the petitioner has not challenged the Notification of the year 2017, even assuming that it is challenged, the petitioner would not be entitled to the relief sought for in the Writ Petition, and if the petitioner's case is accepted, then those students who have joined even prior to 1994, will knock at the doors of this Court and that they will not get a finality.

11. Permitting students to take up the arrear examinations is only a concession and it is given by the University on humanitarian grounds. When the student is not able to clear the arrears, except on genuine grounds, the respondents should not issue these kinds of Notifications, as it will always create unrest among the students and the University will always be litigating over the matters in Courts instead of the teachers taking classes for the students. The Karnataka High Court in the above decision relied on in the counter affidavit filed by the respondents, has clearly held that the wrong cannot be repeated every time. In this case, the Notification issued itself is a wrong one and yet another wrong has been there that the University has issued the Notification in 2017, however, by fixing the cut-off date for the students who had been admitted in 2000. When the petitioner has already been given a chance and if he is given another chance, and if the student is not qualified pursuant to the present Notification issued in 2017, it will require that there is a discrimination and that they should also be given one more chance. The concession/benefit cannot be demanded as a matter of right by a student while taking up the arrear examinations in clearing the course itself. When this Court expresses disagreement with regard to the contention of the petitioner, the petitioner stated that he has already preferred an appeal and the appeal is pending against the impugned order, before the concerned appellate authority. This Court is not willing to relegate the matter to the appellate authority on two grounds, namely (i) when the facts are not in dispute, the alternative remedy need not be a bar and this Court can entertain the Writ Petition, and (ii) when the petitioner approaches the Court stating that the alternative remedy is a bar at one time and contend that the alternative remedy is not a bar in another occasion, to suit his convenience. In the decision reported in 1999 (4) SCC 450 (Hindustan Petroleum Corporation Ltd. Vs. Dolly Das), the Supreme Court has held that when the facts are not in dispute, the alternative remedy is not a bar and the High Court can

entertain a Writ petition. In this case, as the facts are not in dispute, the petitioner will not have a locust-standi to demand as a matter of right that he should be permitted to take up the arrear examinations. The petitioner's contentions cannot be accepted and if it is accepted, it would amount to opening the Pandora's box.

12. For the above reasons, and the decisions of Courts stated thereunder, the Writ Petition is dismissed. Though it is a fit case for imposing costs of Rs.50,000/-, taking into consideration the fact that the petitioner wanted to avail the opportunity of appearing in the examinations, this Court is not imposing any costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Syndicate, Anna University, Chennai-600 025.
2. The Vice Chancellor, (Now The Vice Chancellor Convener Committee),
Anna University, Chennai-600 025.
3. The Registrar, Anna University, Chennai-600 025.
4. Controller of Examinations, Anna University, Chennai-600 025

+lcc to M/s.G.Bala & Daisy, Advocate Sr.No.27840

RK(CO)

sm:15.5.2018

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W.P.No.6601 of 2018

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