

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.1089 of 2018
and
W.M.P.No.1315 of 2018

M.S.Tharani .. Petitioner

Vs.

1. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
#69, Anna Salai,
Guindy, Chennai-600 032, Tamil Nadu.
2. The Principal,
JKK Muniraja Institute of Health Science,
College of Pharmacy,
T.N.Palayam, Gobi Taluk,
Erode District-638 506,
Tamil Nadu.
3. The Principal,
Sri Vijay Vidyalaya College of Pharmacy,
Nallampalli Post and Taluk,
Dharmapuri-638 807, Tamil Nadu.
4. The Registrar-cum-Secretary,
Pharmacy Council of India,
Combined Council Building,
Kotla Road, Aiwan-E-Canelilb Marg,
New Delhi-110 002.

(Fourth respondent suo-motu impleaded
as per order dated 18.07.2018 in
W.P.No.1089 of 2018)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the first respondent to allow transfer of the petitioner bearing Reg.No.561694051 from the second respondent college to the third respondent college and to complete her Bachelor of Pharmacy degree course.

For Petitioner : Mr.D.Prabhu Mukunth Arunkumar
For respondents : Mr.P.R.Gopinathan for R-1
Mr.B.Rabu Manohar for R-3
Mr.M.T.Arunan for R-4
No appearance for R-2

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Mandamus to direct the first respondent to allow transfer of the petitioner bearing Reg.No.561694051 from the second respondent college to the third respondent college and to complete her Bachelor of Pharmacy degree course.

2. The case of the petitioner is that she has joined B.Pharm course in the second respondent-College during the academic year 2016-2017. She wanted to get transfer or migrated to the third respondent-College. It is further submitted that the second respondent has no objection for relieving the petitioner and the third respondent has no objection for accepting the petitioner as a student of the third respondent-College. The petitioner has completed the first year of the Course and remitted necessary fee for transfer from the second respondent-College to the third respondent-College. It is further stated that necessary forms with regard to the No Objection Certificate for transfer of Life Health Science student from one college to another, have been duly forwarded by the second respondent to the University. In that process, it is categorically stated that the third respondent was willing to take the petitioner as a student. It is further stated that when the relevant Act/Regulations framed by the Pharmacy Council of India (PCI) are silent with regard to the migration/transfer, the University has no right to fix the norms for migration/transfer. It is also stated that having made a request which has been accepted by the third respondent, the University cannot have any objection with regard to the transfer of a candidate from one College to the other.

3. According to the learned counsel for the first respondent-University, when the PCI Regulations are silent with regard to the migration/transfer, the University is empowered to frame Rules and Regulations. If the Regulations/Guidelines prescribed by the University contain certain conditions that are not contrary to the PCI Regulations, the petitioner and the respondents 2 and 3 are bound to follow the said Regulations/Guidelines of the University. Learned counsel for the first respondent-University further submitted that it is true that the representation has been made along with the application for transfer of college which is duly attested by the Principal, and the NOC was obtained from both the institutions, namely the

second and third respondents/Colleges, and that necessary fees have also been paid. But, on verification, it was found that the candidate has not successfully completed the first year course. Hence, the petitioner has no right to get transfer from one College to another.

4. Learned counsel for the first respondent-University drew the attention of this Court to the guidelines for transfer, more particularly in the form of Minutes of the 41st Meeting of the Standing Academic Board of the University dated 14.06.2011, wherein it has been stated in the Resolution to Agenda No.2 as follows:

"Agenda No.2:

The Minutes of the Meeting of the Expert Committee to frame Guidelines for Migration/Transfer of Dental, Indian Medicine and Homoeopathy and Allied Health Science courses from one institution to another institution.

Resolved to approve the guidelines framed by the Expert Committee with regard to Migration/Transfer of Dental, Indian Medicine & Homoeopathy and Allied Health Science course candidates from one institution to another institution.

The above resolution will come into effect from 1st July 2011 onwards."

"Minutes of the Meeting of the Expert Committee for Migration/Transfer from one institution to another in respect of Indian Medicine and Homoeopathy and Allied Health Science Courses.

Migration/Transfer of Candidates from one recognized institution to another recognized institution of this University shall be granted on the following conditions:

(i) Both the institutions (i.e.) the institution in which the student is studying and the institution to which the Migration is sought for should be recognized by the concerned Central Councils.

(ii) The applicant shall submit No Objection Certificate from both the institutions (i.e.) the institution where he/she is studying for the present and the institution to which the transfer is sought

for.

(iii) Application for Migration/Transfer will be entertained only after the successful completion of I Year professional course.

(iv) Migration/Transfer shall be effected during any year of study (except first year) after fulfilment of Regulations of the concerned courses.

(v) Migration/Transfer shall be effected only at the beginning of the concerned year of study.

(vi) The application for Migration complete in all respects should be submitted to all the authorities concerned within a period of one month of passing Professional Examination.

(vii) If the candidate has applied for Migration/Transfer during the intervening period of course of study such transfer shall be effected only to the subsequent year of course of study.

(viii) The Candidate has to produce a letter from the Principal of the transferee institution that the total number of students including the student for whom the No Objection Certificate has been issued has not exceeded the sanctioned intake for that academic year as approved by the University.

(ix) The candidates are not eligible for mutual transfer from one institution to another and such requests shall be rejected summarily.

(x) The candidates seeking Migration/Transfer on medical and compassionate grounds will only be entertained.

(xi) Issue of No Objection Certificate for Migration/Transfer are subject to the approval of the Vice Chancellor."

Learned counsel for the first respondent-University denied the contention of the learned counsel for the petitioner that the above said Minutes of the Meeting, dated 14.06.2011 may not be applicable to the Allied Health Sciences. He further contended that the above conditions for migration/transfer comes under the Allied Health Science and hence, the guidelines prescribed will have to be adhered to in respect of B.Pharm course also.

5. Learned counsel for the first respondent-University further contended that in terms of Section 29(1) of the Tamil Nadu Dr.M.G.R.Medical University Chennai Act, 1987 (Tamil Nadu Act 37 of 1987), there shall be a Standing Academic Board of the University which shall, subject to the provisions of this Act, Statutes and Ordinances, co-ordinate and exercise general supervisions over the academic affairs of the University. He therefore submitted that in terms of the above said Section 29 (1), the Standing Academic Board can exercise the general supervision over the academic affairs of the University and they are empowered to decide about the transfer/migration as per the Minutes of the meeting that had been held by the Expert Committee. He further submitted that the students, having failed in the subjects, is not entitled to get the transfer/migration from one College to another, as she has not successfully completed the first year course.

6. There is no representation for the second respondent-College. Learned counsel appearing for the third respondent-College submitted that if any orders are passed by this Court, permitting the third respondent-College to induct the writ petitioner, they are willing to take the student/petitioner.

7. Learned counsel appearing for the fourth respondent/PCI submitted that the Regulations of the PCI are silent with regard to the migration/transfer.

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

9. The sum and substance of the case on hand is that whether the petitioner would be entitled to get transfer/migration from the second respondent-College to the third respondent-College. The petitioner has joined the B.Pharm Course in the academic year 2016-2017 batch. It is not in dispute that the petitioner has duly filled in necessary applications and that the NOC has been obtained from both the institutions after paying necessary fees. It is also not in dispute that the petitioner has obtained NOC from the second respondent-College to join the third respondent-College. The petitioner submitted that she has not taken any Transfer Certificate, but has obtained only NOC. Not only the PCI Regulations, but also the Statute of the year 1987 of the University and the Regulations, are silent with regard to migration/transfer. The Minutes of the Meeting extracted supra with regard to the migration/transfer, cannot by any stretch of imagination, be a substitute for the Rules/Regulations. A reading of Section 29(1) of the said Act of 1987 makes it clear that the Standing Academic Board of the University shall co-ordinate and exercise general supervisions over the academic affairs of the University, subject to the provisions of this Act, Statutes and

Ordinances. Moreover, Section 29(3) (a) of the said Act provides that subject to the provisions of this Act, Statutes and Ordinances, the Standing Academic Board shall have the powers to make Regulations and amend or repeal the same.

10. As there is no Regulation with regard to the migration/transfer, the Minutes of the Expert Committee cannot have any statutory force. Though the said Minutes are produced before this Court by the University, unless these guidelines are incorporated as Regulations, it has no binding effect and even if such Regulations are incorporated, it can take effect only prospectively and not retrospectively. The Resolution cannot be a substitute for the Regulations. As the Regulations and the Statutes of the year 1987 are silent with regard to the migration/transfer, this Court is of the view that even though the student has not completed the first year course successfully, failed in almost all subjects, that may be the reason for the second respondent to relieve the petitioner/student from that institution so that they may not get a bad name as long as student was entitled to get migration.

11. Hence, for the reasons stated supra, the Writ Petition is disposed of and the petitioner shall be transferred from the second respondent-College to the third respondent-College. No costs. Consequently, W.M.P. is closed.

Sd/-
Assistant Registrar(cS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar,
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New Delhi-110 002.

+1cc to M/s.P.R.Gopinathan, SCGC Tamilnadu Dr MGR

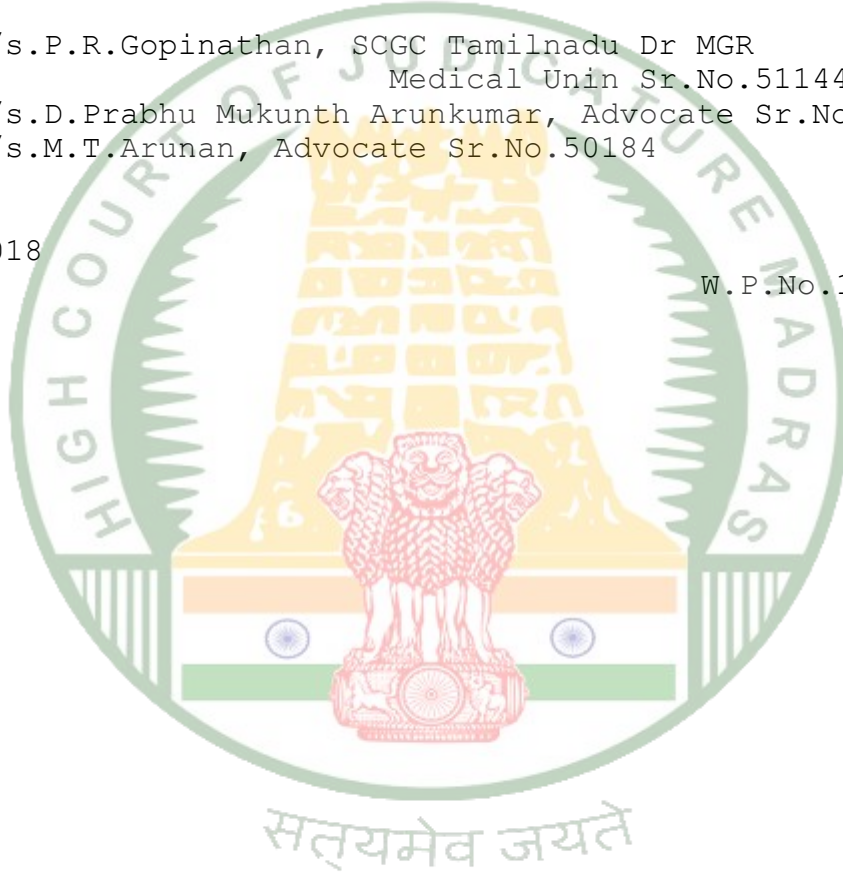
Medical Unin Sr.No.51144

+1cc to M/s.D.Prabhu Mukunth Arunkumar, Advocate Sr.No.50299

+1cc to M/s.M.T.Arunan, Advocate Sr.No.50184

VSN-II (CO)
sm:20.8.2018

W.P.No.1089 of 2018



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