

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.17193 of 2018

L.Kabildev

... Petitioner

Vs

1.The Secretary to Government,
Health & Family Welfare Department,
Secretariat,
Chennai - 600 009.

2.The Tamil Nadu Dr.MGR Medical University,
Rep. By the Registrar,
69, Anna Salai, Guindy,
Chennai - 600 032.

3.Directorate of Indian Medicine and
Homeopathy,
Arumbakkam,
Chennai - 600 106.

4.Tamil Nadu Homeopathy Medical Council,
Arignar Anna Govt. Hospital Campus,
Arumbakkam,
Chennai - 600 106.

5.The Chairman,
Maria Homeopathic Medical College,
Perai,
Thiruvattar Post,
Kanniyakumari District.

6.The Principal
Maria Homeopathic Medical College,
Perai,
Thiruvattur Post,
Kanniyakumari District.

..
Respondents

Prayer:- This Writ Petition has been filed under Article 226 of the Constitution of India for a writ of Mandamus to direct the

5th and 6th respondents to issue the Transfer Certificate to the petitioner based on his representation dated 25.06.2018.

For Petitioner : Mr.M.Rajendiran

For Respondents 1 & 3: Mr.A.Rajaperumal,
Additional Government Pleader

For 2nd Respondent : Mr.D.Ravichandar

For 4th Respondent : No Appearance

For Respondents 5 & 6 : Mr.C.K.M.Appaji

ORDER

This writ petition has been filed seeking a direction to the respondents 5 and 6 to issue Transfer Certificate to the petitioner.

2.According to the petitioner, he joined the Bachelor of Homeopathic Medicine and Surgery (hereinafter referred to as "B.H.M.S.,") course in the sixth respondent college for the academic year 2016 - 2017 and at the time of joining in the said course, the petitioner has paid a sum of Rs.1,05,000/- towards tuition fee and hostel fee. That apart, the college Management also insisted the petitioner to pay a sum of Rs.1,35,000/- as donation and which has also remitted by the petitioner in the sixth respondent college Trust account.

3.After completion of first year B.H.M.S., course, due to his health and financial problems, the petitioner is not able to pay the second year fees and hence, he has discontinued the course. Thereafter, the petitioner approached the respondents 5 and 6 to issue Transfer Certificate to him. But the respondents 5 and 6 insisted the petitioner to pay the entire fees for the remaining 3 ½ years and they are also pressurized the parents of the petitioner to get the Transfer Certificate on payment of penalty.

4.In the above circumstances, the petitioner made a representation dated 25.06.2018 to the District Collector, Kanniyakumari District and the sixth respondent herein. Since, his representation has not been considered so far, he has come up with the present writ petition.

5.Heard Mr.M.Rajendiran, learned counsel for the petitioner; Mr.A.Rajaperumal, learned Additional Government Pleader appearing for Respondents 1 & 3; Mr.D.Ravichandar, learned counsel for the second respondent and Mr.C.K.M.Appaji, learned counsel for the respondents 5 & 6. There is no representation

for the fourth respondent.

6.The respondents 5 and 6 have filed a counter stating that in the counseling held by the third respondent for the academic year 2016-2017 for B.H.M.S., course, the petitioner was allotted to the respondents 5 and 6 college. The petitioner has paid a sum of Rs.45,000/- towards tuition fee and Rs.1,35,000/- towards hostel fees inclusive of food and AC room accommodation. In the counter affidavit, the respondents 5 & 6 have also denied the allegation that the college management insisted the petitioner to pay Rs.1,35,000/-. The petitioner attended first year B.H.M.S., course and failed in Anatomy I and II subjects. Thereafter, he failed to attend the classes of second year B.H.M.S., and left the college.

7.According to the respondents 5 & 6, B.H.M.S., course is 4 ½ years duration. As per the prospectus issued by the respondent College for B.H.M.S., course, if any candidate who left the college in the middle or after completion of first year course, he has to pay Rs.1,00,000/- as penalty to the college. However, a close reading of the above condition in the prospectus would go to show that there is no clause in that, in the event if the student failed to pay the penalty, the college has right or power to withhold the certificates of the students. This Court in similar circumstances, after surveying the various judgments, in Sarfarraz Ali A.S.Y v Saveetha School of Law (W.P.No.14471 of 2015 dated 09.09.2015) has held as follows:-

"20. In the considered opinion of the Court, the above cited decisions are fully applicable to the facts of this case and the ratio laid down in the said decisions is also in consonance with common sense and logic. Even as per the prospectus of the respondent College, the fees once paid will not be refunded and in case the candidate wants to discontinue/withdraw during the middle of the course, he/she has to pay the entire course fee (for five years) before discontinuing. The petitioner executed affidavit of undertaking stating among other things that in case of discontinuation of the course in the middle of any reason, he promises to pay the remaining entire course fees and his father has also counter signed the said affidavit of undertaking and stood as the guarantor for the affidavit of undertaking. It is pertinent to point out at this juncture that even in the said affidavit of undertaking, no promise/undertaking has been given by the

petitioner to the effect that unless and until he pays the entire course fees, he is not entitled to get the certificates. Therefore, there is no clause either in the prospectus or in the affidavit of undertaking dated Nil executed by the petitioner, counter signed by his father, to the effect that the certificates cannot be returned unless and until the entire course fees is paid."

8.As there is no clause in the prospectus or in the affidavit of undertaking executed by the petitioner to the effect that the certificates will be returned only after payment of penalty, the respondents 5 and 6 cannot withhold the certificates of the petitioner. If at all the respondents 5 & 6 want to recover the penalty amount from the petitioner, it is always open for them to work out their remedies before the appropriate Court for seeking recovery of penalty amount.

9.In view of all the above, the writ petition is allowed and the respondents 5 & 6 are directed to issue the Transfer Certificate and other certificates, if any, to the petitioner, within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Secretary to Government,
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Chennai - 600 009.

2.The Registrar,
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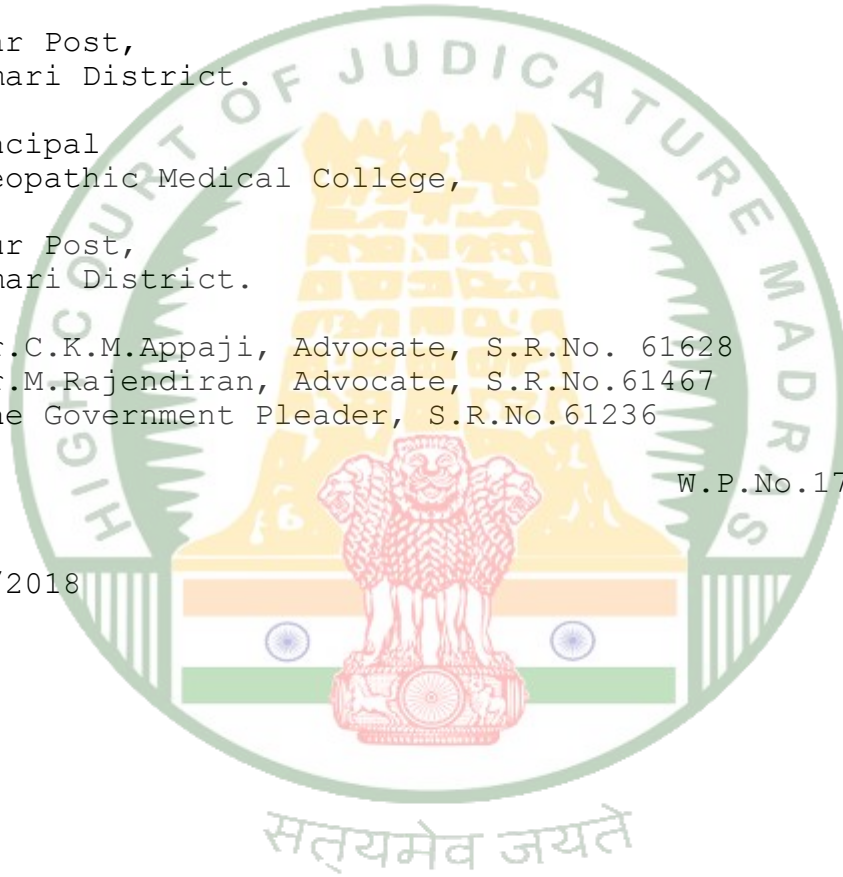
6. The Principal
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+lcc to Mr.C.K.M.Appaji, Advocate, S.R.No. 61628
+lcc to Mr.M.Rajendiran, Advocate, S.R.No.61467
+lcc to the Government Pleader, S.R.No.61236

W.P.No.17193 of 2018

SS(co)

rrs 10/09/2018



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