

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

W.P.Nos. 25729 & 25401 of 2018
and
W.M.P.Nos. 29556 & 29927 of 2018

Suchithra

.. Petitioner in W.P.No.25729 of 2018

Ramya

.. Petitioner in W.P.No.25401 of 2018

Vs.

1. Tamilnadu Medical Council
rep. by it's President
New No. 914, Poonamallee High Road,
Arumbakkam, Chennai - 106.
 2. The Tamilnadu Dr.MGR Medical University
rep. by its Registrar
No.69, Anna Salai, Guindy,
Chennai -32.
 3. The Academic Officer (FAC)/Controller of Examination
The Tamilnadu Dr.MGR Medical University,
No. 69, Anna Salai, Guindy,
Chennai - 32.
 4. The Dean
Madras Medical College,
Chennai - 600 003.
- .. Respondents in both W.Ps.

Prayer in W.P.No. 25729 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Academic Officer/ Controller of Examination, third respondent herein to issue an Exam application for Post Graduate DLO Diploma Course Examination to be held in the month of October 2018 conducted by the Tamil Nadu Dr.M.G.R Medical University, second respondent herein considering the petitioner's attendance for entire course period from May 2016 to October 2018 and permit the petitioner to attend for the Examination to be held in the month of October 2018.

Prayer in W.P.No. 25401 of 2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the Academic Officer/ Controller of Examination, third respondent herein to issue an Exam application for Post Graduate DLO Diploma Course Examination to be held in the month of October 2018 conducted by the Tamil Nadu Dr.M.G.R Medical University, second respondent herein considering the petitioner's entire attendance of 336 days for second academic year and permit the petitioner to attend for the Examination to be held in the month of October 2018.

For Petitioners
in both W.Ps. : Mr.P.Thiagarajan

For 1st Respondent
in both W.Ps. : Mrs.V.Annalakshmi
Government Advocate

For RR 2 & 3 in both
W.Ps. : Mr. P. Dinesh Kumar
for Mr.D.Ravicander
Standing Counsel

COMMON ORDER

W.P.No. 25401 of 2018 has been filed seeking for issuance of a Writ of Mandamus directing the Academic Officer/Controller of Examination, the third respondent herein, to issue an application for Post Graduate DLO Diploma Course Examination to be held in the month of October 2018 conducted by the Tamil Nadu Dr.M.G.R. Medical University, the second respondent herein, considering the petitioner's entire attendance of 336 days for second academic year and permit her to attend for the examination to be held in the month of October 2018.

2. W.P.No. 25729 of 2018 has been filed seeking for issuance of a Writ of Mandamus directing the Academic Officer/Controller of Examination, the third respondent herein, to issue an application for Post Graduate DLO Diploma Course Examination to be held in the month of October 2018 conducted by the Tamil Nadu Dr.M.G.R. Medical University, the second respondent herein, considering the petitioner's attendance for entire course period from May 2016 to October 2018 and permit her to attend for the examination to be held in the month of October 2018.

3. The petitioners have completed their MBBS degree in the year 2014 and they were selected for two year PG Diploma DLO course for the academic year 2016-2018, which course has

commenced from May 2016 and it would extend upto October 2018. There is no midterm exam as the examination is conducted only after the completion of two year course.

4. The petitioner in W.P.No. 25401 of 2018 has completed her first year course with 98% of attendance and she has availed maternity leave during the second year course from 02.08.2017 to 28.02.2018. The third respondent / Academic Officer of the University (herein after called "the third respondent") has condoned the maternity leave on 28.02.2018 and the petitioner was permitted to rejoin the course on 01.03.2018 and she was continuously attending the classes.

5. The petitioner in W.P.No. 25729 of 2018 has availed maternity leave during the first year course from 23.07.2016 to 14.03.2017. The third respondent / Academic Officer of the University (herein after called "the third respondent") has condoned the maternity leave on 08.03.2017 and the petitioner was permitted to rejoin the course on 15.03.2017 and she was continuously attending the classes thereafter.

6. It is stated by the learned counsel appearing for the petitioners that as per the MCI guidelines, there should be 80% of attendance for the academic year to appear for the examination and since the petitioners have no sufficient percentage of attendance for the Examination held in April 2018 as per the MCI guidelines, they have not appeared. It is further stated that as on 30.10.2018, (i) the petitioner in W.P.No. 25401 of 2018 has 92% of attendance and (ii) the petitioner in W.P.No. 25729 of 2018 has 86% of attendance and hence, they are entitled to appear for the examination schedule to be held in October 2018. However the controller of examination has not issued the exam application. The last date for submission of application was also over by 27.09.2018. Since the petitioners' attendance prior to availing of Medical Leave was not considered, the petitioners have approached this Court with the above Writ Petitions.

7. The petitioner in W.P.No. 25729 of 2018 has joined the first year course on 23.05.2016 and she has availed maternity leave from 23.07.2016 to 14.03.2017. She attended the course after the maternity leave from 15.03.2017. Since the petitioner did not have 80% of attendance at the time of examination held in the month of April 2018, she was not permitted for the examination. However, the petitioner has continuously attended the classes and as on 30.10.2018, she is having 86% of attendance for the entire course period.

8. The petitioner in W.P.No. 25401 of 2018 has completed the first session of the course with 98% of attendance and she has availed maternity leave from 02.08.2017 to 28.02.2018 in the

second session of the course. She has attended the second year course from 1.5.2017 to 31.07.2017 and 1.3.2018 to 15.5.2018. Since the petitioner did not have 80% of attendance at the time of the examination held in the month of April -May 2018, she was not permitted for the examination. However, the petitioner has continuously attended the classes and as on 30.10.2018, she is having 92% of attendance for the second year course.

9. It is stated that as per Clauses 11 and 12 under the Heading "Attendance in PG Diploma Regulations from 2015 onwards", the petitioners have attended required classes. It is further stated by the petitioners that the eligibility criteria to apply for examination in " submission of Med ej (candidates admitted from A.Y. 2014-2015) - Med ej is the e-journal of the Tamilnadu Dr.M.G.R.Medical University, Chennai. The articles for this e-journal will be the scientific papers submitted by the Post Graduate Diploma students of this University. Submission of an article for Med ej mandatory for issue of hall ticket to the students."

10. It is stated by the petitioners that Med. ej with a specific title were submitted and that they were denied examination application without assigning any reason. It is further stated that the petitioners could gather the information only later that they are not entitled to appear for the examination in view of the maternity leave availed.

11. The following common grounds are raised in both the Writ Petitions:-

(a). There is no provision in the Medical Council of India Act 1956 and the Medical Council of India PG Medical Education Regulations 2000 in respect of the break of study and condonation of break of study by University. The only criteria prescribed in Clause 13.2 of the PG Medical Education Regulation 2000 is the mandatory attendance of 80% for each calendar year and the stipulation that candidates shall work as full time Residents during the period of training. Clause 14 stipulates that the examination for the diploma is at the end of two academic years. In such circumstances, the shortage of attendance during a particular year due to break in study can be allowed to be make up by attending the required classes for the next academic year rather than asking the candidate to attend the whole of the year.

(b) It is stated by the petitioners that the attendance over all should be taken for the purpose of calculating the over all attendance.

12. Since the policy of Government providing medical leave has been defeated by the self serving regulations of the University, it is further contended by the petitioners that the

regulations have to be read and construed in the light of the benefits given to the pregnant woman which has other social implications. It is also submitted by the petitioners that the Vice Chancellor has been vested with power to condone the break up study. When there is also a provision to condone the break of study and permit the students to attend the classes, it is further stated that it is necessary to permit the students to attend the examination on her completion of required attendance, for a period of two year irrespective of break in students on account of medical leave.

13. The Government has time and again framed several regulations with regard to the medical leave and this Court has also pronounced several Judgments to extend certain benefits to the woman folk in the event of availing maternity leave. It is the specific case of the petitioners that the respondents have failed to follow any of the norms and guidelines of the Central and State Government.

14. The learned counsel appearing for the petitioners has relied upon the proceedings of the University dated 22.10.2013. It is pointed out that the Governing Council in its meeting held on 26.09.2013 resolved to approve the changes in the break of study regulations. The break of study regulations which was framed in 2003-2004 has been followed without any break.

15. As per para 8 of the letter concerning post graduate of the Registrar to all deans/principals of Medical Colleges dated 22.10.2013, if a candidate after acquiring less than 50% of attendance in an academic year, goes on break, he/she has to undergo the course from the beginning of the year of study in which the candidate has entered on break after obtaining the condonation order from the University. If a candidate acquires more than 50% of attendance in an academic year, goes on break, he/she will be permitted to continue the balance period after obtaining the condonation order from the University.

16. Clause 13.2 of the Medical Council of India Post Graduate Medical Education Regulations, 2000 stipulates that all candidates joining the post Graduate training programme shall work as full time residents during the period of training and shall attend not less than 80% (eighty Percent) of the training during each calendar year.

17. As per Clause (1) of the amendment made in the break of study regulation which was framed and modified in 1st July, 2012 for post graduates, the Vice Chancellor is empowered to condone any break of study and to issue orders for permitting the candidate to continue the course if such absence is more than three months but below less than twice the duration of the course. Clause 3 stipulates that if the absence is more than three months, but less than twice the duration of the course, the candidate may be permitted to rejoin at the beginning of the

year of study in which the candidate discontinued the course and shall after fulfillment of the regulations of this University to the course concerned be admitted to the examinations. The candidates shall be exempted in the subjects he/she has already passed.

18. It is also brought to the notice of this Court with respect to the regulations of attendance for P.G. Courses (Medical) that 90% of attendance on 290 working days is mandatory for the students to appear for the University Examination in May/November 2012. It is further pointed out that there shall be no condonation of any kind of leave for any reason including pregnancy, Child Birth and Medical conditions of any nature. This is because incompleteness of the required term days will result in incomplete training, jeopardizing the list of human beings.

19. The learned counsel appearing for the petitioners reiterated the stand taken by the petitioners in the affidavit filed in support of the Writ Petitions and the grounds raised in these Writ Petitions. He also relied upon the Government notification regarding the Woman Resident Doctors to get maternity leave benefits. As per Section 5(2) of the Maternity Benefit Act, 1961, no woman shall be entitled to maternity benefits unless she has actually worked in establishment of the employer from whom she claims maternity benefits for a period of not less than one hundred and sixty days in the twelve months immediately preceding the date of her expected delivery. It has been decided that the Resident Doctors are entitled for maternity leave of 26 weeks and miscarriage leave of 06 weeks as per Maternity Benefit Act, 1961. The post graduate medical education regulations 2000 mandates all candidates joining post graduate training programme to work as full time Residents.

20. When the maternity leave has been extended to Resident Doctors, it is contended by the learned counsel for the petitioners that the petitioners, who were serving as resident doctors be denied the benefit of maternity leave.

21. The submissions of the counsel for petitioners have merits. It is not in dispute that the petitioners have attendance for more than 90% in one year. As per MCI Regulations, the petitioners after joining post graduate training programme are required to work as full time Resident Doctors. After having 98% of attendance in the first year, the petitioner in W.P.No. 25401 of 2018 has availed maternity leave during the second year course from 02.08.2017 to 28.02.2018. But before availing maternity leave and before the commencement of examination in April 2018, the petitioner in W.P.No. 25401 of 2018 had attendance for more than 36% for the next year. The Institution in which she joined the post graduate course

utilised the service during this period. However ignoring the period during which the petitioner was engaged as a Resident Doctors, asking the petitioners in these cases to undergo training programme once again in the third year despite her attendance in the second year immediately before and after the maternity leave is arbitrary and the regulation even if it mandates requirement of a pregnant woman, to attend her classes and work will be discriminating and opposed to Article 14 of the Constitution as this would amount unequals being treated equal. Absence of a pregnant woman due to maternity leave cannot be denied condonation of shortage of attendance on the ground by citing regulations of the University which never contemplated such a situation.

22. In these cases, it is admitted that post graduate course undergone by the petitioners is a course which has no separate syllabus or examination for each year of the course. Though the requirement of 80% attendance in each year is made applicable to this course by regulations of the University, the object behind such regulations is not clear or evident from the regulations. In such circumstances, the students, who were compelled to take maternity leave should be treated differently and the regulations, which are applicable to candidates, who went for a break in study, should not be made applicable to women in these category. As a matter of fact, the learned single Judge of this Court has considered this aspect in W.P.No. 440 of 2011 dated 09.07.2012 in the case of A.Arulin Ajitha Rani Vs. State represented by the Principal Secretary and others. The Writ Petition in the above case was filed challenging the communication issued by the Principal Secretary to Government addressed to the Tamilnadu State Woman Commissioner, re-fixing to grant maternity leave to girl students undergoing higher education in the state. After referring to the regulations applicable to different Institutions and some of the precedents, the learned Single Judge of this Court in the same Judgment, considered the fact that the Government of India ratified the convention on the elimination of all forms of discrimination against woman (CEDAW) and referred to the article of CEDAW, particularly Article 4.2 of the convention which declares that the adoption by State Parties of special measures, including those measures contained in the present convention, aimed at protecting maternity leave shall not be considered discriminatory. The principles taken from the other Judgments is discussed in Paragraph No. 21 to 23 of the said Judgment which reads as follows:-

"21. In Kavitha Rajagopal, student of Government Law College attended college only for 82 days as against the minimum requirement of 115 days out of a total number of working days of 154, due to confinement. She was denied permission to

write examination, as she fell short of 19 days even for condonation. In a writ petition filed by her, Prabha Sridevan, J took note of Articles 1, 2 and 3 of the Convention on the Political Rights of Women and Articles 1, 2, 7, 10 and 11(2) of CEDAW and held that the lack of attendance required to be condoned.

22. In Vandhana Kanthari, the student, whose shortage of attendance on account of advanced stage of pregnancy was not condoned by the University, filed writ petition. After referring to the decision of this Court in Nithya and also to the decision of the Delhi High Court in Neera Gupta and taking note of Articles 15(3) and 42 of the Constitution, the Delhi High Court held that a female student cannot be deprived of her right to take examination, when her shortage of attendance is due to advanced stage of pregnancy and that such students deserve relaxation under the mandate of the constitution.

23. Thus, it is seen that both this Court as well as the Delhi High Court have consistently taken the view that the girl students are entitled for condonation of the shortage of attendance occasioned due to pregnancy. Therefore, the stand taken by the first respondent cannot be taken to be in consonance with the Directive Principles of State Policy and the provisions of CEDAW."

23. Finally the learned Judge allowed the Writ Petition and set aside the impugned order. The State Government was directed to formulate a policy in general for all educational Institution and Universities in the State so as to ensure the girl students, whose attendance fall short of the prescription, on account of marriage and pregnancy, are granted the benefit of condonation of shortage of attendance, so that the natural biological process does not act as a hindrance to the education and empowerment of women.

24. As stated earlier, the petitioners have attendance for more than 90% in one year. Taking into consideration the over all attendance in the year in which the petitioners have successfully completed their training programme, the attendance of the petitioners for the other year, though falls short of 50%, if the number of days in excess of the required attendance

is added that will make the petitioners eligible to continue the course without break. Even assuming that the petitioners do not have 50% of the attendance in the second year, having regard to the fact that the petitioners were compelled to avail maternity leave which is and it is natural and a biological process maternity leave cannot be allowed to be a hindrance to the education of any woman. Even though the University has not framed any regulations to save women from such situation, it requires to be formulated in the light of Article 4.2 of CEDAW (convention on the elimination of all forms and discrimination against women).

25. The fact remains that the shortage of attendance for the petitioners in one of the years in the two year course was made good by undergoing subsequent training by the petitioners. As on today, the petitioners have attendance for more than 80% if the attendance in which there was a break is taken along with the attendance of the petitioners this year. In such a situation, this Court is of the view that the petitioners are entitled to succeed for the reasons stated in the above paragraphs.

26. Hence, these Writ Petitions are allowed with the following directions:

(i) The Academic Officer/ Controller of Examination, third respondent herein in W.P.No. 25729 of 2018 is directed to issue an Exam application for Post Graduate DLO Diploma Course Examination to be held in the month of October 2018 conducted by the Tamil Nadu Dr.M.G.R Medical University, second respondent herein to the petitioner considering the petitioner's attendance for the entire course period from May 2016 to October 2018 and permit the petitioner to attend for the Examination to be held in the month of October 2018;

(ii) The Academic Officer/ Controller of Examination, third respondent herein in W.P.No. 25401 of 2018 is directed to issue an Exam application for Post Graduate DLO Diploma Course Examination to be held in the month of October 2018 conducted by the Tamil Nadu Dr.M.G.R Medical University, second respondent herein considering the petitioner's entire attendance of 336 days for second academic year and permit the petitioner to attend for the Examination to be held in the month of October 2018.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

To

1. The President
Tamilnadu Medical Council
New No. 914, Poonamallee High Road,
Arumbakkam, Chennai - 106.
2. The Registrar
The Tamilnadu Dr.MGR Medical University
No.69, Anna Salai, Guindy, Chennai -32.
3. The Academic Officer (FAC)/Controller of Examination
The Tamilnadu Dr.MGR Medical University,
No. 69, Anna Salai, Guindy, Chennai - 32.
4. The Dean
Madras Medical College,
Chennai - 600 003.

+2cc to Mr.P.Thiagarajan, Advocate, sr.69306 & 69307

+1cc to Government Pleader, sr.69678

W.P.Nos. 25729 & 25401 of 2018
and

W.M.P.Nos. 29556 & 29927 of 2018

VSN(CO)
GSP(09/10/2018)



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