

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2588/2018 & CMP.No.21050/2018

C.Yazhini ... Appellant / Writ Petitioner

Versus

- 1 Tamil Nadu Dr.Ambedkar Law University
represented by its Registrar
Perungudi, Chennai 600 096.
- 2 School of Excellence in Law
represented by its Director
Perungudi, Chennai 600 096. ... Respondents / Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 15.11.2018 made in WP.No.29597/2018. Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents issue hall ticket to the petitioner herein for writing the III year LLB(Hons) Examination and to declare result for the same

For Appellant : Mr.T.Sivanandam

For Respondents : Mr.B.Vasanthakumar.V

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.B.Vasanthakumar, learned Standing counsel accepts notice on behalf of the respondents.

2 The appellant/writ petitioner, in the affidavit filed in support of the writ petition in WP.No.29597/2018, filed for

issuance of a writ of mandamus, directing the respondents to issue Hall Ticket to her for writing the third year LLB [Hons] Examination and to declare the result of the same, would aver among other things, that she is qualified with B.E., degree and also Master's Degree obtained from the University in the United States of America and after completion of the Master's Degree, she was desirous of becoming a Lawyer and after undergoing the selection process, got herself admitted to the 2nd Respondent - School of Excellence in Law, in the year 2016 and it is her claim that she is regularly attending the College during the academic years 2016-2018 and also performed extremely well in the examinations and she is having 70% marks on an average.

3 The appellant/writ petitioner would further aver that she got married in the year 2011 to one Thiru Vijay Rajesh Kumar and is blessed with twins [female children] in the year 2014 and thereafter, a matrimonial discard developed between her husband and the appellant/writ petitioner and on account of the same, she has been subjected to physical abuse as well as verbal abuse and since it has gone beyond the point of tolerance, she was compelled to leave the matrimonial home and went to her parental home. After getting admission in the 2nd respondent-College, she is staying in the hostel and pursuing her studies.

4 It is also stated by the appellant/writ petitioner that her husband filed a Habeas Corpus Petition before the Madurai Bench of this Court making untenable and false allegations and a Division Bench of the Madurai Bench of this Court, after making enquiries with her as well as her husband, has come to the conclusion that she is not under illegal custody.

5 The appellant/writ petitioner would further state that she was asked to pay her examination fees by the 2nd respondent-College and she also paid the same on 05.10.2018 and she was also given to understand that she may be permitted to write the examination despite the fact that on account of matrimonial discard and other related problems, she was unable to attend the College regularly. However, to her shock and surprise, the Hall Ticket was not issued to her on the alleged ground that she has put in less than minimum requirement attendance and left with no other option only, she was constrained to approach this Court by filing the writ petition.

6 Notices were ordered in the writ petition and it was taken up for final disposal on 15.11.2018 and vide impugned order, the learned Single Judge has dismissed the writ petition on the ground that the appellant/writ petitioner has secured only 36.66% of attendance against 75% and even for condonation of absence, at least 65% to 74% of the attendance is required and since the appellant/writ petitioner did not fulfil the

criteria, the prayer sought for by her, cannot be granted and challenging the legality of the said order, the present writ appeal is filed.

7 This Writ Appeal was moved by way of 'Lunch Motion' on 23.11.2018 and this Court has ordered notice and Mr.L.P.Shanmugasundaram, learned Standing Counsel accepted notice on behalf of the respondents and this Court directed the Registry to list the matter today [26.11.2018] and accordingly, it is listed today and Mr.B.Vasanthakumar, learned standing counsel appears on behalf of the respondents.

8 The learned counsel appearing for the appellant/writ petitioner has invited the attention of this Court to the typed set of documents and would submit that all along the appellant/writ petitioner is having a brilliant academic career and after completing Under Graduation in Engineering, she has done her Master's in an eminent University in USA and in order to pursue the legal career, had joined the course after performing well in the selection process and on account of matrimonial dispute and other related problems, she was not able to put the required attendance and this Court may take sympathetic note of the same and permit the appellant/writ petitioner to write her ensuing examinations with an appropriate direction, directing the respondents to issue the Hall Ticket. It is also the submission of the learned counsel for the appellant/writ petitioner that despite the reasons being recorded in the impugned order that the appellant/writ petitioner had put in less than minimum attendance, this is one of the fit and proper case, wherein this Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and condone the delay of putting in minimum required attendance and prays for appropriate orders.

9 Per contra, Mr.B.Vasanthakumar, learned Standing counsel appearing for the respondents on instructions, would submit that the minimum attendance required is 75% and since the appellant/writ petitioner had put in only 36.66% of the attendance and that too, below the condonable limits of 65% to 74%, in the light of the Statutes and Regulations, the respondents are unable to come to the aid of the appellant/writ petitioner and would further add that if the appellant/writ petitioner fulfills the norms contemplated under the relevant Rules and Regulations, she may be permitted to write the examination in future.

10 This Court has paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

11 The power of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is no longer res intergra in the light of the judgment rendered by a Division Bench of this Court reported in 2008 [3] Law Weekly 926 [A.Arulin Ajitha Rani Vs. The Principal, Film and Television Institute of Tamil Nadu, Tharamani, Chennai 600 113 and 2 others].

12 In the said case, the appellant therein was a student in film direction and screenplay writing in M.G.R. Film and Television Institute of Tamil Nadu, which is a Government Institute conducting diploma courses in different fields including the Film Direction and Regulations 3.2 and 3.3 of the said Institute prescribes a minimum of 80% of the attendance with condonable limit of 5%. The case of the appellant therein was that she was not able to put in the required minimum attendance as she was in her family way and reliance was also placed upon the judgment reported in 2008 [1] CTC 334 [Kavitha Rajagopal Vs. The Registrar, Tamil Nadu Dr.Ambedkar Law University, Chennai and another], wherein, it was held that in the absence of specific provision relating to condonation of delay in attendance, the Court can condone the delay. The Division Bench, in the above said decision, after considering the decisions rendered by the Hon'ble Supreme Court of India reported in AIR 1997 SC 3011 : 1997 [6] SCC 241 [Vishaka Vs. State of Rajasthan] and AIR 2000 SC 1274 : 2000 [3] L.W. 236 [Municipal Corporation of Delhi Vs. Female Workers [Muster Roll] and another] and two other decisions rendered by this Court as well as taking into consideration the 'convention of elimination of all forms of discrimination against women', has held in paragraphs 12 and 13, which reads thus:-

''.....

12 In the present case, the learned counsel for the appellant has contended that by applying the above provisions and the International Conventions, the shortage of attendance was required to be condoned as had been done in two earlier occasions by the learned Single Judges in the two decisions reported in 1006 Writ Law Reporter 802 [Nithya Vs. University of Madras] and 2008 [1] CTC 334 [Kavitha Rajagopal Vs. The Registrar, Tamil Nadu Dr.Ambedkar Law University, Chennai and another].

13 In the peculiar facts and circumstances of the case, we are unable to apply the ratio of the said decisions to the present case. Even assuming that such provisions can be made applicable, the concerned student could have availed maternity leave of six weeks before the birth of the child and six

weeks after the birth of the child. From the factual position, which has been elucidated clerally in the counter affidavit filed in the Review Appln.No.99 of 2006 and even from the averment made by the appellant herself, it is apparent that the appellant had claimed to have attended the classes till 17.09.2005 and only on that day she was admitted in the hospital and the child was born on 19.09.2005. In other words, it is not the case of the appellant that she was unable to attend the classes because of pregnancy before 17.09.2005. Similarly, the appellant has stated that she attended the classes after 15.10.2005. During the period from 17.09.2005 and 14.10.2005, 18 working days were available. Even giving full credit for those 18 days, as has been explained in the counter affidavit, the required percentage would come to about 71% [70.91%]. Minimum requirement is 80% with provision for condonation of delay upto 5%, i.e., a student having attended 75% or above, can be considered for condonation. No other power is envisaged under the rules and regulations for condonation of further period. Therefore, even assuming that such International Conventions or the provisions of the Maternity Benefit Act could be made applicable, yet the concerned student fell short of the attendance."

13 In the considered opinion of the Court, the proposition laid down in the said decision is fully applicable to the facts of the present case. No doubt, the appellant/writ petitioner had a brilliant academic career and after doing her Master's in Engineering in one of the Universities in USA and in order to pursue and fulfill her dream of becoming a Lawyer, has joined in one of the premier Institutions in the State of Tamil Nadu and on account of the matrimonial discard and other related problems, she was not able to put in the required attendance. It is also a settled position of law that insofar as prescribing qualification for the academic and other criteria is concerned, this Court normally will not interfere with such an opinion / regulations. As rightly pointed out by the learned Standing counsel appearing for the respondents, the minimum required attendance prescribed by the 2nd respondent-College as per the Regulations is 75% and between 65% and 74%, the 2nd respondent - College is having power to condone the delay and admittedly, the appellant/writ petitioner had put in only 36.66%, which is below the condonable limit.

14 In the light of the above facts and circumstances,

this Court is unable to come to the aid of the appellant/writ petitioner, despite the reasons assigned by her in the affidavit filed in support of the writ petition. It is also made clear that if the appellant/writ petitioner makes good the shortfall in attendance and subject to fulfillment of the relevant norms and Regulations, she may be permitted to write the examinations.

15 In the result, the writ appeal is dismissed, confirming the order dated 15.11.2018 made in WP.No.29597/2018 subject to the above observations. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

AP

To

1 The Registrar
Tamil Nadu Dr.Ambedkar Law University
Perungudi, Chennai 600 096.

2 The Director
School of Excellence in Law
Perungudi, Chennai 600 096.

+1cc to Mrs.D.Kamatchi, Advocate SR.No.80349

+1cc to Mr.V.Vasanthakumar, Advocate SR.No.80802

KJI (CO)

WA.No.2588/2018

GMV (30/11/2018)

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