



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.08.2019	Pronounced on: 28.08.2019
-------------------------	---------------------------

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.19081 of 2019
& W.M.P.Nos.18447 & 18449 of 2019

D.B.Abishwin Sundar,
S/o.Beauno Annie Lawrence,
No.05/01, 1st street,
East Colony, ICF, Chennai - 38.

... Petitioner

/versus/

1. The Secretary to Government,
Ministry of Health,
Government of Tamil Nadu,
Secretariat, Chennai - 9.
2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Tamil Nadu Dr.M.G.R Medical University,
No.69, Anna Salai, Little Mount,
Guindy, Chennai - 600 032.
4. Madha Medical College and Research Institute,
Rep.by the Dean,
Kundrathur Main Road,
Thandalam, Kovur, Chennai - 600 122.
5. The Secretary,
Medical Council of India,
New Delhi.
- 6.The Special Officer,
The Committee on fixation of fees in respect of self financing
professional colleges,
Anna University Staff Quarters,
Kotturpuram, Chennai - 85.

WEB COPY

7. The Committee consisting of Members,
Dr.Rajasekar, Deputy Director of Medical Education (MCI),
8. Dr.Indhumathy,
Deputy Director of Medical Education (PME),
Office of the Director of Medical Education,
Kilpauk, Chennai - 10. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Mandamus, directing the 7th respondent to submit the final enquiry report of the 6th respondent and the 6th respondent may be directed to fix the fees payable by the petitioner to the 4th respondent college and on such payment of fees the 4th respondent college be directed to allow the petitioner to sit for the 2nd (Three subjects), 3rd and 4th year examinations and pass orders.

For Petitioner : Mr.G.Justin

For R1 : Mr.N.Inbanathan,
Additional Government Pleader

For R2 & R6 : Mr.S.Suresh Kumar,
Government Advocate

For R7 & R8 : Mrs.P.Rajalakshmi,
Additional Government Pleader

For R4 : Mrs.Rita Chandrasekar
for Aiyar & Dolia

For R3 : Mr.P.Ilayaraj Kumar
for M/s.Ramalingam Associates

For R5 : Mr.V.P.Raman

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The case of the petitioner is that he joined 4th respondent College under Management Quota to peruse M.B.B.S course from the academic year 2013-2014. At the time his admission, the fees committee has fixed Rs.3,80,000/- Tuition fees per year. He paid 1st and 2nd year fees. After completion of the 1st year subjects, he is entitled to take up the 2nd year papers. While so, the 4th respondent College insisted payment of fees at the rate of Rs.7 Lakhs from the 1st year onwards. He mobilised Rs.6,00,000/- and paid it to the 4th respondent as 2nd year fees, leaving Rs.1,00,000/- as balance. During the 2nd year examination held during the month of August 2017, he was allowed to take up Forensic Medicine exam only but prevented from taking up other three subjects namely Pharmacology, Pathology and Microbiology. The reason for not allowing him to take up examinations of these three subjects not disclosed by the 4th respondent/College. Atleast for exams to be held during the month of August 2019, he must be permitted to appear for the 2nd year examination for the above said three subjects.

3. According to the petitioner, the 4th respondent/College demanded fees over and above the fees fixed by the 6th respondent/Special Office, Fees Fixation Committee, Anna University and already extracted Rs.6,00,000/- from him towards the 2nd year fees. However did not permit him to appear in the examinations held in the month of August 2017. The 7th respondent, enquired into his complaint about excess fees demand and permitted him to take up 2nd year examination during the month of February 2018. He was again deprived of the appearing for the examination on the score that he has failed in the internal assessment exam and also lack attendance. The 4th respondent/College demands Rs.9,00,000/- per annum for each year and have declared that they will not permit him to take up the examination, unless he pay the fees demanded. Therefore, for false reason that he has failed in the internal assessment and lack attendance, the 4th respondent trying to prevent him from taking up the 2nd year examination to be held during the month of August 2019. Hence, the Writ Petitioner prayers for the Mandamus to direct the 7th respondent to submit the final enquiry report to the 6th respondent and the 6th respondent may be directed to fix the fees payable by the petitioner to the 4th respondent college and on such payment of fees the 4th respondent college be directed to allow the petitioner to sit for the 2nd (Three subjects), 3rd and 4th year examinations.

4. In the counter filed by the 4th respondent, it is categorically stated that they are not demanding any excess fees than the fee fixed by the 6th respondent. The petitioner herein who joined the course in the year 2013 under the Management quota liable to pay Rs.4,55,000/- per year. The petitioner

cleared his 1st year subjects during the arrears examination conducted in the month of September 2014. The results were declared during the month of November 2014. Thereafter, the petitioner started attending the 2nd year classes. However, his attendance was irregular and due to lack of attendance, he was ineligible to write the 2nd year examination conducted in the month of February 2016. Among the four subjects in the 2nd year, he attended special classes for Forensic Medicine and got the required attendance. For the other three subjects, he lack attendance. So he was permitted to take up Forensic Medicine subject exam only and he was not permitted to take up the other three subjects namely Pharmacology, Pathology, Micro-Biology examinations. In the 3rd and 4th year also, he did not attend the college regularly and there was lack of attendance in the 3rd and 4th year also. As per the University rules, a candidate who cleared the 1st year shall continue the course till 4th year de hors of any arrears. The candidate will be permitted to take exams only if he has requisite attendance.

5. According to the petitioner, he was allowed to continue the course but he did not attend the classes and secured requisite attendance. To cover up his irregular attendance, he gave complaint before the Authorities against the Institute. As an interim measure, the Committee vide order dated 31.01.2018 permitted the petitioner to pay the examination fees and take up the examination. The committee directed the University to take appropriate action to permit the petitioner to appear for the 2nd year exams, for the subject, for which he is eligible as per the Medical Council of India norms and University regulations. Though the petitioner was directed to apply for 2nd year examination and pay the examination fees for the subjects which he is eligible to take up the examination, the petitioner did not apply through University for writing his 2nd year examination, despite the direction of the Committee vide order dated 31.01.2018. Instead of writing the exams after paying examination fees, the petitioner gave police complaint on 23.02.2018 against the Management. The petitioner, thereafter approached this Court in W.P.No.20103 of 2018 seeking Mandamus to accept the fees as recommended by the Fee Fixation Committee and to permit him to complete the course. This Court, vide order dated 29.01.2019 disposed the Writ Petition holding that if the petitioner secures requisite attendance, the respondent may forward the application to the University for issuance of Hall Ticket. Without adequate attendance, the petitioner is not entitled to take up the examination. The petitioner was given opportunity to attend special classes and make over the shortage of attendance, which he did not avail. When the committee permitted him to take up the examination on payment of fees, he did not pay the fees and wrote examination. Instead of attending the College and securing adequate attendance, the petitioner

herein under one pretext or another approaching the Authorities or the Court with false information and false accusation against the Management. If the petitioner is really interested to peruse his course, he must get himself eligible to write his 2nd year examination scheduled in the month of February - 2020, for which he has to attend the 2nd year classes, after remitting the fees. Without remittance of the fees and without attending the class the petitioner is not eligible to take up his examination.

6. The 3rd respondent/Tamil Nadu Dr.M.G.R.University, has also filed counter, wherein, the record of the petitioner herein narrated in paragraph Nos: 6 and 7 which are extracted below:-

"6. The Second year exams for the subjects Pharmacology, Microbiology, Pathology, Forensic Medicine were scheduled to be held in the month of February 2016. I further state that the petitioner was detained to appear in all the four examinations due to lack of requisite attendance. As per the Medical Council of India Regulations, any candidate who does not have eligible attendance is not permitted to appear or to write the concerned examination. Moreover, this respondent role is limited and the University will issue Hall Tickets to the candidates provided the college submits eligible attendance and Internal Assessment. In the present case, the petitioner does not have eligible attendance as prescribed under the Medical Council of India Regulation i.e., 75%, in the above subjects. Hence, he was detained to appear for the examinations held in February 2016 in the above subjects.

7. I state that in August 2016, another examination session for the above-mentioned four subjects were scheduled. However, the petitioner was still not eligible to appear for the examination of three subjects (Microbiology, Pathology, Pharmacology) out of the four subjects due to lack of requisite attendance. But the petitioner was eligible to attend the examination of Forensic Medicine since he has attended special classes in the said subject. But though the petitioner was eligible to attend the exam of Forensic Medicine, the petitioner did not appear for the exam and was marked as absent."

7. According to the University, the petitioner has cleared only his 1st year subjects and one paper in 2nd year. He has not even applied for examination of the other three subjects of the 2nd year, during the examination scheduled in February - 2018, August - 2018 and February - 2019. The petitioner will be eligible to appear for August - 2019 examination to clear his 2nd year arrears papers, if he has adequate attendance and pass mark in internal assessment. Unless, he clears entire 2nd year papers, he will not be eligible to take up his final year Part-I examination. Having not attended the examination for three consecutive sessions i.e., February - 2018, August 2018 and February - 2019, the University regulation regarding break of study gets attracted. The petitioner has to obtain condonation order for break of studies for the period through February - 2018 to February - 2019.

8. The affidavit of the petitioner and counter affidavit filed by the University as well as the 4th respondent Management perused. The petitioner was admitted in the 4th respondent College during academic year 2013 - 2014 so far he has cleared only 1st year subjects namely Anatomy, Physiology and Bio-Chemistry during the arrears exam held in the month of August - 2014 and one subject namely Forensic Medicine of the 2nd year paper.

9. To ascertain whether the allegation of the College Management regarding lack of attendance is true, this Court, directed the Management to produce the attendance register. The Attendance Registers were produced and perused. The petitioner had developed an habit of attending the college according to his convenience. His attendance is not regular. The attendance percentage given as an abstract by the Management indicates his attendance percentage is very low, which has dis-entitled him to take up the examination.

10. The learned Counsel appearing for the petitioner would submit that the petitioner is ready to pay the balance fees and ready to attend the College to make up the shortage of attendance for examination. After getting himself eligible to take up the 2nd year examination and he may be permitted to do so and also permitted to continue his course, after clearing his 2nd year examination and take up the 4th year Part -I examination.

11. In this connection, the learned counsel appearing for the 3rd Respondent University would submit that the petitioner has failed to take up the examination for three consecutive sessions i.e., February - 2018, August - 2018 and February - 2019. Even after the intervention of the committee permit him to take up August - 2018 examination, the petitioner

did not avail that opportunity. As per the University regulation, if the break in studies exceeds 6 months, the petitioner has to obtain condonation order. The relevant regulation of break of study of the University is extracted in the counter and same is re-produced below.

"2) The candidates having a break of study for more than six months but less than twice the duration of the course shall apply for rejoining the course in the prescribed form by remitting the stipulated fee for condonation of Break of study to the Academic Office of this University through the concerned Dean/Principal of the College for issue of necessary permission to rejoin the course. The Dean/Principal of the College concerned shall not permit any candidate with a Break of study as stipulated above to rejoin the course without obtaining the prior permission from this University."

3.....

4.....

5) If the absence of more than six months but less than three years, 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 fulfilment 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.

6.....

7..... सत्यमेव जयते

8.....

9) If the candidate after acquiring 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.

10). If the 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”.

12. In the light of the above Regulation, the prayer sought by the petitioner cannot be accessed. The petitioner herein has to approach the University for condonation of break in study as contemplated in the regulation cited above. If the break in studies is condoned by the University, thereafter, he can continue his studies, on payment of fees. The University Regulations regarding attendance and internal assessment has to be strictly followed by the candidate and the Management before applying for examination.

13. With this observation, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

bsm

To

1. The Secretary to Government,
Ministry of Health,
Government of Tamil Nadu,
Secretariat, Chennai - 9.
2. The Director of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Tamil Nadu Dr.M.G.R Medical University,
No.69, Anna Salai, Little Mount,
Guindy, Chennai - 600 032.
4. The Secretary,
Medical Council of India,
New Delhi.
5. The Special Officer,
The Committee on fixation of fees in respect of self
financing
professional Colleges,
Anna University Staff Quarters,
Kotturpuram, Chennai - 85.

6. The Deputy Director of Medical Education (PME),
Office of the Director of Medical Education,
Kilpauk, Chennai - 10.

7. The Deputy Director of Medical Education (MCI)
Kilpauk, Chennai 10.

+2 CCS to Mr. Raman Advocate sr 74789, 71376.

+1 CC to M/s. Aiyar and Dolia, Advocate sr 74791.

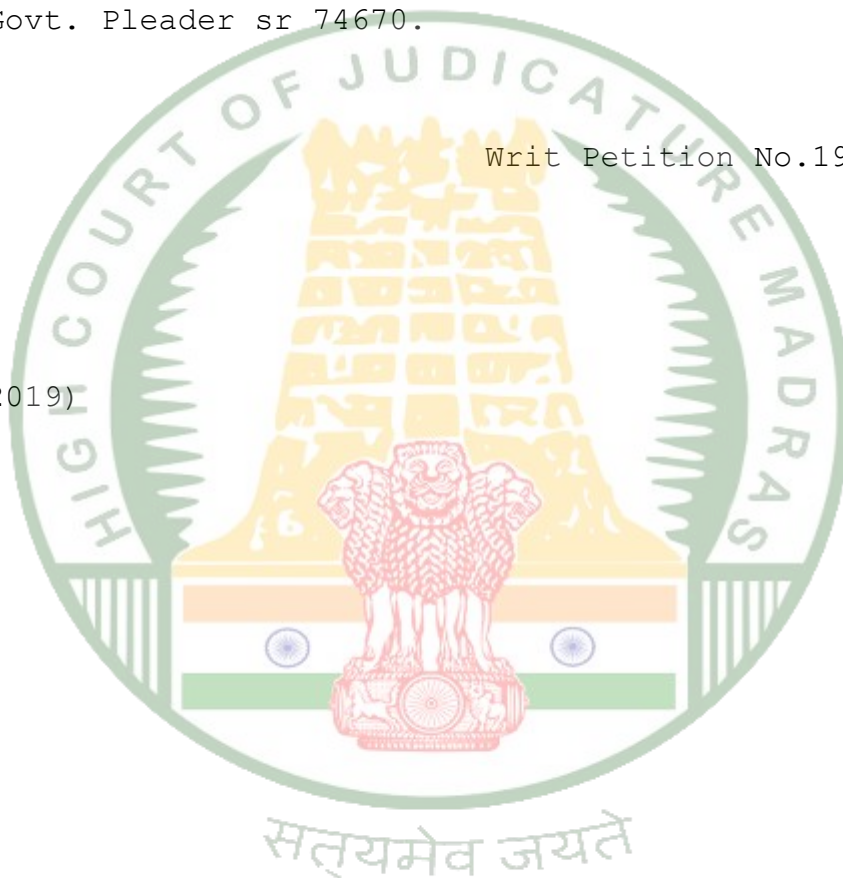
+2 CCS to M/s. Ramalingam Associates sr 74275.

+2 Ccs to Mr. Justin, Advocate sr 73901.

+1 CC to Govt. Pleader sr 74670.

Writ Petition No.19081 of 2019

MG (CO)
SP (26/09/2019)



WEB COPY