

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.33133 & 29002 of 2018
and WMP Nos.40199, 38432, 38433 & 33903 of 2018 and 866 of 2019

WP No.33133 of 2018
Minor M.D.Mukesh Sharoon
rep. by Mother and natural Guardian
Dr.S.Seethalakshmi ... Petitioner

Vs.

1. The Tamil Nadu Dr.Ambedkar Law University,
Rep by its Registrar,
New Campus: MGR Salai, Perungudi,
Chennai - 600 096.

2. The Controller of Examinations,
The Tamil Nadu Dr.Ambedkar Law University,
New Campus: MGR Salai, Perungudi,
Chennai - 600 096.

3. The Director (UG),
School of Excellence in Law,
The Tamil Nadu Dr.Ambedkar Law University,
New Campus: MGR Salai, Perungudi,
Chennai - 600 096.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of declaration, declaring Clause 6(c) of the Tamil Nadu Dr.Ambedkar Law University Ordinances framed under the Tamil Nadu Dr.Ambedkar Law University Act 1997, as un-constitutional and hence unenforceable.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents: Mr.Vijay Narayan, Advocate General
Assisted by, Mr.S.V.Vasanth Kumar

WP No.29002 of 2018

Minor M.D.Mukesh Sharoon
rep. by Mother and natural Guardian
Dr.S.Seethalakshmi

.. Petitioner

Vs.

1. The Tamil Nadu Dr.Ambedkar Law University,
Rep by its Registrar,
New Campus: MGR Salai, Perungudi,
Chennai - 600 096.

2. The Director (UG),
School of Excellence in Law,
The Tamil Nadu Dr.Ambedkar Law University,
New Campus: MGR Salai, Perungudi,
Chennai - 600 096.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents to permit the petitioner to write the 1st semester examinations for BCA.LLB(Hons) Degree Examinations, November 2018 commencing from 01.11.2018 and consequently to permit the petitioner to continue all subsequent semesters from the 2nd semester BCA.LLB(Hons) Degree Course for the Academic year 2018-2019 onwards.

For Petitioner : Mr.N.A.Nissar Ahmed

For Respondents : Mr.V.M.G.Ramakkannan
for R1 and R2

O R D E R

(Order of this Court was made by S.Manikumar, J.)

In WP No.33133 of 2018, petitioner-Minor M.D.Mukesh Sharoon, represented by his mother Dr.S.Seethalakshmi, has sought for a writ of declaration, declaring Clause 6(c) of the Tamil Nadu Dr.Ambedkar Law University Ordinances framed under the Tamil Nadu Dr.Ambedkar Law University Act 1997, as un-constitutional and hence unenforceable.

2. Considering the averments and submissions, on 12.12.2018, we passed the following orders:-

"Contending inter alia that the petitioner admitted to Symbiosis Law School, Pune, had already attended classes, from 2/7/2018 to 30/7/2018 in the said Institute and

thereafter, admitted to the School of Excellence in Law, in Tamil Nadu Dr. Ambedkar Law University, Chennai, and permitted to attend classes from 21/8/2018, on the submission of the transfer certificate, from Symbiosis Law School, Pune and started attending classes regularly, but due to illness, could not attend the classes, for which a medical certificate was produced, for the period between 1/10/2018 and 20/10/2018 and further contending that since the respondents have failed to award adequate attendance, for extra curricular activities, on other duties, the petitioner could not possess the required attendance, for appearing in the first semester examination, commencing from 1/11/2018.

2. When the petitioner was issued with a hall ticket, on 30/10/2018, on the ground that he lack attendance, submission has been that he was constrained to file W.P.No.29002 of 2018, for a direction to the respondents therein, to permit the petitioner, to appear for first semester examination and to continue the studies thereafter.

3. In W.M.P.No.33903 of 2018 in W.P.No.29002 of 2018, a learned Single Judge of this Court, by an order, dated 31/10/2018, while ordering notice of motion, granted permission to the petitioner, to appear for the first semester examination. Petitioner has further contended that clause 6 (c) of the Tamil Nadu Dr.Ambedkar Law University Ordinances, is contrary to Clause 2 (d) in Chapter 4 of the Conduct of examination of the University and the conditions, subject to which students shall be admitted to such examinations.

4. Clause 6 (c) of the Tamil nadu Dr.Ambedkar Law University Ordinances impugned in the present writ petition is as follows:-

Redo: A student who does not earn sufficient attendance in a class/semester and as a consequence gets disqualified to write the University examination in any particular year/semester, he or she shall be deemed to have been detained in the class for that year/semester and such a student shall also secure admission to redo the course in the same class/semester in which he/she did not earn sufficient attendance, and only after satisfactory completion of a lower semester, he/she shall be permitted to proceed to the next higher semester."

5. Clause 2 (d) of Chapter IV reads thus:-

"If a student earns any percentage of attendance less than 66%, he/she is not eligible to write the University examination, unless exemption is given otherwise by this University. In case of any student pursuing the study under the Semester pattern, he/she is not permitted to

write that semester examination, if that student does not earn the required percentage of attendance in that semester as said above. However, he/she may be permitted to proceed to the next semester subject to the condition that the candidate shall redo that semester in which he/she did not put in sufficient attendance, for which permission must also be obtained from the Head of the Department.

6. A bare reading of both the provisions, prima facie appears to be contrary. As per clause 2 (d), if a student earns any percentage of attendance, less than 66%, he or she is not eligible, to write the University examination, unless exemption is given otherwise by the University. However, he/she shall be permitted to proceed to the next semester, subject to the condition that the candidate shall redo that semester in which he/she did not put in sufficient attendance, for which permission must also be obtained from the Head of the Department.

7. By the orders of this Court, petitioner has been permitted to take up the first semester examination, for BCA LLB (Hons) Degree, conducted in November 2018. As rightly contended by the learned counsel for the petitioner, if the petitioner is not permitted to take up the classes in the second semester, certainly he would be losing attendance for the second semester.

8. In the light of the above discussion, while ordering notice in the instant writ petition, we direct the respondents, to permit the writ petitioner, to attend second semester classes, for BCA.LLB (Hons) Degree Course, which had already commenced, on 4/12/2018, pending disposal of the instant writ petition.

9. Mr.N.A.Nissar Ahmed, learned counsel for the petitioner submitted that in order to give quietus to the issue involved as to whether the attendance put in Symbiosis Law School should also be taken into consideration and as to whether the respondents have treated unequals as equals, in the matter of considering the attendance, for the purpose of taking up the examination, conducted by Dr.Amedkar Law University, through the Controller of Examinations of the said University, Chennai, we deem it fit that to avoid multiplicity, repetition of submissions and arguments, likelihood of divergent opinion, it would be appropriate that W.P.No.29002 of 2018 be tagged along with the instant Writ Petition No.33133 of 2018.

10. Registry is directed to place the matter before My Lord The Hon'ble Chief Justice, High Court of Madras, for joint hearing of both W.P.No.29002 of 2018 and W.P.No.33133 of 2018."

3. Subsequently, 12.12.2018, we directed the Registry to place the matter before My Lord the Hon'ble Chief Justice, High Court of Madras, for joint hearing of both WP.Nos.29002 of 2018 and WP No.33133 of 2019.

4. Thereafter, on 10.01.2019, when both the writ petitions came up for hearing, we passed the following orders:-

"Result of the petitioner be published. Petitioner is permitted to file application for Revaluation / Re-totalling, as per the University Rules.

2. The above are subject to the result of the writ petitions.

3. Post on 21.01.2019, immediately after motion."

5. Counter affidavits in WP No.33133 of 2018 and WP No.29002 of 2018, have been filed. We heard the learned counsel for the parties and posted the matter for orders.

6. Petitioner has filed an affidavit dated 11.06.2019, in W.P.No.29002 of 2018 and in W.P.No.33133 of 2018, and sought for a direction to respondents to permit him to pursue all the subsequent semesters from the 3rd Semester of BCA., LLB., (Hons) Degree Course.

7. Supporting the prayer sought for, petitioner has filed typed set of papers dated 11.06.2019, which shows the results of the petitioner in first semester examination BCA., LLB., (Hons) Degree Course examination, April 2019 and also the consolidated attendance of the writ petitioner for the second semester of the said course.

8. On the averments and the prayer sought for Mr.Vijay Narayan, learned Advocate General, appearing for the Tamil Nadu Dr.Ambedkar Law University, Chennai, submitted that the writ petitioner has passed out, all the papers in the first semester. He has acknowledged the submission of the petitioner that the petitioner has 100% attendance in the second semester. He further submitted that though the petitioner in the common affidavit dated 11.06.2019 has stated that the results have been published, he has not specifically averred, the number of papers written and cleared. As per the instructions of the Tamil Nadu Dr.Ambedkar Law University, Chennai, out of five papers in the second semester, the petitioner has cleared two.

9. Having regard to the orders of this Court, granting permission to the petitioner to write the examination and that the petitioner has cleared all the papers, in the first semester, Mr.Vijay Narayan, learned Advocate General contended

that the instant case must not be quoted as a precedent to be followed in future and the questions raised, be left open and taking note of the performance of the student/petitioner, issues raised and prayer sought for, in the writ petitions, need not be gone into and answered, except to direct the respondents to consider the prayer sought for in the common affidavit dated 11.06.2019, i.e., to pursue all the subsequent semesters from the 3rd Semester of BCA.,LLB., (Hons) Degree Course, on the basis of the Statute, Regulations and Rules in force. Submissions of the learned Advocate General is placed on record.

10. Petitioner has cleared all the papers in the First Semester. Realising that adequate attendance is required, he has put in 100% attendance in the Second Semester. Having regard to the orders of this Court, performance of the candidate in the first semester, 100% attendance in the second semester, and the submission of the learned Advocate General, Government of Tamil Nadu, we deem it fit to dispose of the writ petition, as hereunder.

11. No impediment has been pointed out to the Court, as to whether the candidate can pursue his Third Semester, BCA., LLB., (Hons) Degree Course. Thus, without going into the rival contentions of the parties to the lis, we deem it fit to direct the respondents to consider the case of the writ petitioner, to pursue all the subsequent semesters from the 3rd Semester of BCA.,LLB., (Hons) Degree Course. In the light of the submissions made by the learned Advocate General, Government of Tamil Nadu, we make it clear that, based on the peculiar circumstances of this case and the submissions made by the learned counsel for the parties, the above directions are granted. We also make it clear that the order passed in this case should not be cited as a precedent.

12. Accordingly, the writ petitions are disposed of. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ars/pkn

To

1. The Registrar,
Tamil Nadu Dr.Ambedkar Law University,
New Campus: MGR Salai, Perungudi,
Chennai - 600 096.

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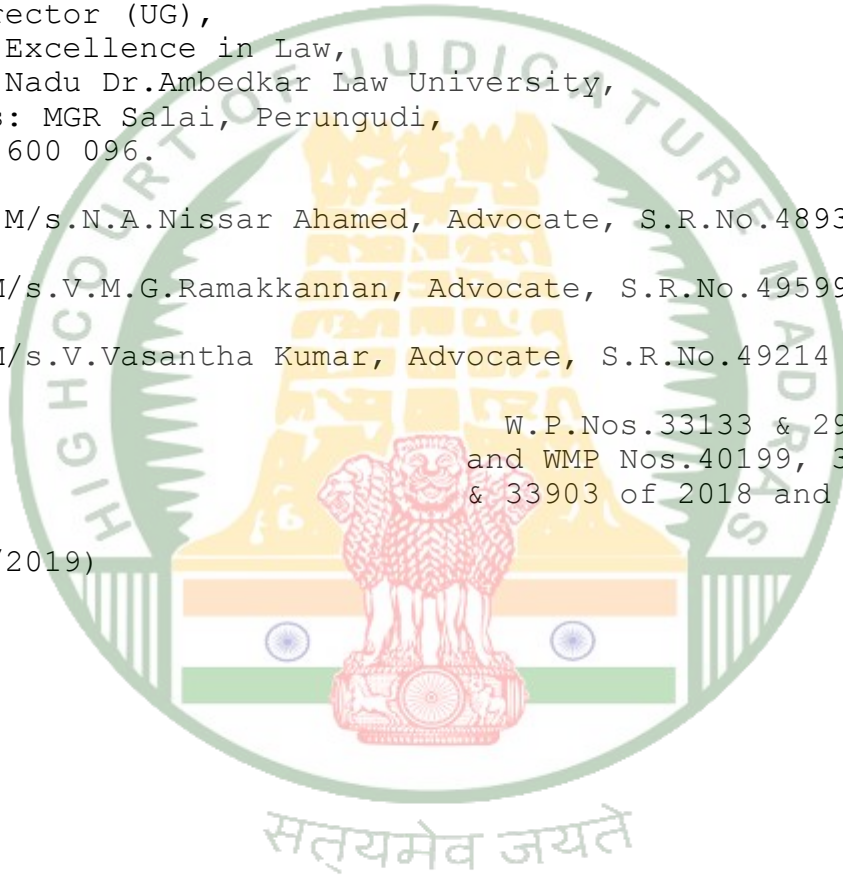
+3 ccs to M/s.N.A.Nissar Ahamed, Advocate, S.R.No.48934, 49692

+1 cc to M/s.V.M.G.Ramakkannan, Advocate, S.R.No.49599

+1 cc to M/s.V.Vasanth Kumar, Advocate, S.R.No.49214

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& 33903 of 2018 and 866 of 2019

SKV(CO)
SSM(19/07/2019)



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