

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.17818 OF 2019

ORDER:

The present writ petition is filed under Article 226 of Constitution of India, being aggrieved by the action of the respondents 1 to 4 in not permitting the petitioner to appear for the final year P.G. M.D. Pharmacology examination to be held on and from 22.10.2018 and also questioning the action of the respondent No.1 in not allowing the petitioner to pay the examination fee and not providing the signed Intelligent Character Recognition (ICR) forms, as being illegal, arbitrary, unjust and violative of Articles 14 and 21 of the Constitution of India.

Counters on behalf of respondent Nos.1 and 2 college and on behalf of the 3rd respondent University have been filed.

Heard Learned Counsel for the petitioner, Learned Counsel for respondent Nos.1 and 2 and the Learned Standing Counsel for NTR Health University, for the 3rd respondent.

It is the case of the petitioner that, the petitioner has obtained admission into Post Graduation course in Pharmacology in the year 2014 in management quota with registration No.57828. The said course, in which the petitioner had sought admission, is a three year full time Post Graduate course with training. The grievance of the petitioner is that despite the petitioner attending to the college and also the hospital, the 1st respondent college is not allowing the petitioner to take 3rd year examination of M.D. by not allowing the petitioner to pay the examination fee and also by not sending the ICR forms to the 3rd respondent university. It is

the case of the petitioner that in normal course, the petitioner is eligible to write examination in the year 2017 which the 1st respondent college did not allow the petitioner on the ground that the petitioner has fallen short of attendance. Though, the petitioner attended the college regularly and also attending to the hospital duty which is evident from the log book, which a student is required to maintain in terms of the Post Graduate Medical Education Regulations 2000, the 1st respondent college did not allow the petitioner to sit for 3rd year M.D. examination. It is also the further case of the petitioner that the 1st respondent has been denying the opportunity of petitioner writing final year examination by manipulating the attendance register.

On the other hand, learned counsel for the 1st and 2nd respondents college on the basis of the counter-affidavit states that though the petitioner did not have the requisite percentage of attendance during the 2nd year to write the examination, the petitioner was permitted to write such examination on the undertaking given by the petitioner that he would cover the shortfall and maintain attendance of 80% subsequently. As the petitioner failed to have the requisite attendance, the 1st respondent authority has not forwarded the ICR forms making the petitioner eligible to take final year examination is the submission made by the learned counsel appearing for Respondent Nos.1 and 2.

The 3rd respondent through its counter only stated that since the 3rd respondent University is not in receipt of ICR forms to be forwarded by the Principal of the 1st respondent University, the

petitioner was not allowed to write final year examination since 2017.

As can be seen from the writ affidavit averments, the petitioner, who sought admission under the management quota, for pursuing the post graduate M.D. course in Pharmacology in normal course would be entitled to write to take final examination in April, 2017, being a three year full time course. However, on account of the respondent Nos. 1 and 2 in not permitting the petitioner to take final year examination which have been held not only in April, 2017 and subsequent thereto also, including the last examination held in October, 2019 by not issuing ICR forms and not allowing the petitioner to pay the examination fee, the petitioner is unable to complete the post graduate course even after five and half years after joining in the 1st respondent college.

As submitted by the Learned Counsel, even assuming the petitioner had short fall of attendance in the 2nd year, the letter addressed by the petitioner which has been forwarded by the Head of the Department in February, 2018 to the Principal of the 1st respondent college would make him eligible to take final year Post Graduation examination thereafter. However, in spite of the Head of the Department forwarding the said letter of the petitioner to the Principal, the 1st respondent instead of taking note of the same and issuing ICR forms, in turn forwarded the same to the Vice Chairman. Learned Counsel for the petitioner contends that such action on the part of the Principal is clearly illegal. Firstly, for the reason that it is the Head of the Department who would be monitoring the student with regard to the attendance and also with regard to the work which is being performed, as the student would

be under the direct control of the said Head of the Department. Inasmuch as the Head of the Department having recommended the request of the petitioner to take Post Graduation examination to be held in April, 2008, the Principal ought to have acted thereon instead of forwarding the same to the Vice Chairman. This, according to the petitioner, would show the conduct on the part of the 1st respondent college in trying to retain the petitioner on one pretext or the other till date.

Secondly, it is further contended by the petitioner that if the alleged ground on which the petitioner is being denied to take examination is genuine and correct i.e., the petitioner not having sufficient attendance during the year 2015-16, since, it is claimed that the petitioner had attended only for 19 days out of 292 days, the petitioner would not have been eligible for promotion to the 3rd year. The fact that the petitioner was promoted into 3rd year itself would indicate that the claim being put forth by the 1st respondent college is not genuine and such claim is invented only for the purpose of denying the right of the petitioner to take final year examination.

The Learned Counsel by drawing attention of this Court to the material papers filed along with the counter-affidavit of the respondent Nos. 1 and 2, by referring to the table which is furnished at page 223 of the material paper annexed to the counter-affidavit submits that the attendance of the petitioner as per said statement, signed on behalf of the 1st respondent by the Principal of the college wherein for the year commencing from June, 2015 to May, 2016 i.e., during the 2nd year of petitioners

Post Graduation course, the number of days present by the petitioner is shown as 19 as against the number of working days shown as 365. Similarly, the number of days which the petitioner attended during the 3rd year commencing from June, 2016 to May, 2017 is shown as five days, while by the letter addressed by the Principal of the 1st respondent college to the 3rd respondent University on 24.04.2018, the attendance of the petitioner for the 3rd year i.e., from May, 2016 has been shown as 63 days. By showing the contradiction between the statement which is provided in the material paper at page 223 and the statement is at page 225 of the counter-affidavit, it is submitted by the learned counsel for the petitioner that the 1st respondent college has shown the attendance differently at different places to suit its convenience and thus the claim of the 1st respondent college that the petitioner did not have attendance in the 2nd year cannot be believed coupled with the fact that the petitioner has been promoted into 3rd year which could not have been possible if the said reason given by the 1st respondent college is genuine.

As seen from the statement which is annexed at page 223 of the material paper along with the counter-affidavit filed by the Respondent No.1 & 2, the petitioner is shown to have been present in the 3rd year for five days from June, 2016 to May, 2017 and 85 days from June, 2017 to March, 2018 being the extension granted. Thus, taking the total number of days attended to 90 in the 3rd year based on the said certificate. While in the letter addressed to the 3rd respondent University on 24.04.2018 (Page No.225), it is stated as under: *“since starting of his 3rd year i.e., from May, 2016, he has put only 63 days of attendance till date.”*

A perusal of the above two documents clearly indicates that the 1st respondent college has resorted to show different attendance at different places and thus no credibility can be attached to the claim of the 1st respondent college with regard to the attendance of the petitioner being either only 19 days during the year 2016-17 or either 85 days during the extension period as per the table furnished or 63 days as communicated to the 3rd respondent University. Thus, the claim of the 1st respondent on this ground is liable to be rejected.

The claim of the 1st respondent college with regard to the petitioner's attendance being short during the 2nd year of the petitioner's course is moonshine for the reason that if such statement as claimed is correct, the petitioner could not have been promoted into the 3rd year as rightly contended by the counsel for the petitioner. If such short fall being there and petitioner having been permitted to 3rd year, it is not open for the 1st respondent college to show such deficiency as a ground to deny the petitioner from taking final year examination of the 3rd year.

As submitted by the learned counsel, even assuming the petitioner had short fall of attendance in the 2nd year, the letter addressed by the petitioner which has been forwarded by the Head of the Department in February, 2018 to the Principal of the 1st respondent college would make him eligible to take final year Post Graduation examination thereafter having made up the shortfall. However, in spite of the Head of the Department forwarding the said letter of the petitioner to the Principal, the 1st respondent instead of taking note of the same and issuing ICR forms, in turn

forwarded the same to the Vice Chairman. Learned Counsel for the petitioner contends that such action on the part of the Principal is clearly illegal. Firstly, for the reason that it is the Head of the Department who would be monitoring the student with regard to the attendance and also with regard to the work which is being performed, as the student would be under the direct control of the said Head of the Department. Inasmuch as the Head of the Department having recommended the request of the petitioner to take Post Graduation examination to be held in April, 2008, the Principal ought to have acted thereon instead of forwarding the same to the Vice Chairman. This, according to the petitioner, would show the conduct on the part of the 1st respondent college in trying to retain the petitioner on one pretext or the other till date.

The claim of the 1st respondent college with regard to shortage of attendance as the ground for not allowing the petitioner to take 3rd year examination is also in contradiction to the log book attested by the supervising faculty, which a student is required to maintain in terms of the prescription under the Medical Council of India Regulations. The said Regulations with regard to maintenance of log book under the Regulation reads as under:

a.....

b.....

c. Post Graduate students shall maintain a record (log) book of the work carried out by them and the training programme undergone during the period of training including details of surgical operations assisted or done independently by M.S./M.Ch. candidates.

d. The record books shall be checked and assessed by the faculty members imparting the training.”

As rightly pointed out by the Learned Counsel for the petitioner that the students would be under the control of the faculty imparting training and the Principal of the 1st respondent college would only be the supervising of the affairs would have to go by the certification issued by such faculty members and inasmuch as the students like petitioner would be reporting to the faculty member and not to the Principal and that when it is for the said reason the recommendation of a faculty member making a student eligible to take examination would have to be taken into consideration. Having regard to the said fact, the recommendation of the Head of the Department of the petitioner's request for taking examination in April, 2018 to the Principal of the 1st respondent college would have to be taken as the petitioner being eligible for taking the final year examination which, however, was denied by the 1st respondent college to be in clear violation of the Regulations and also not permitting the petitioner to take examination is clearly amounts to discrimination.

The contention on the part of the 1st Respondent college is that it had maintained biometric attendance and there cannot be any error in such attendance recorded is also liable to be rejected for the reason that the biometric attendance record which is produced before this Court along with the number of days the petitioner being present by respondent No.1 is at variance with the bio-metric attendance as per the 3rd Respondent University, as detailed in para 8 of the Reply Affidavit.

The Learned counsel for the petitioner thus submits that the above actions of Respondent No.1 & 2, would show the conduct of the 1st respondent college in trying to retain the petitioner on one pretext. It is also contended by the learned counsel for the petitioner that the 3rd respondent University made biometric system compulsory from August, 2017 and the claim of the 1st respondent college that it had implemented bio-metric attendance recording system even prior thereto appears to be a self-serving statement. It is seen that the 3rd respondent university in order to prevent the colleges from playing with the attendance of the students maintained at their end either by favouring or rejecting a particular student, has introduced recording of attendance of biometric recording system at each of the college and recording of such attendance is captured at the 3rd respondent University directly. Learned Counsel for the petitioner by placing reliance on the biometric attendance of the petitioner recorded at the 3rd respondent University during the period June 2017 to February, 2018 as against the attendance recorded by the 1st respondent college submits that the 1st respondent college has resorted to manually created attendance particulars to extend favourable consideration to some of the students and also subjecting unfavourable treatment to other students like petitioner by depriving students from taking examination.

As seen from the biometric attendance system maintained at the 3rd respondent University which has been filed into this Court along with the reply affidavit, in juxta position to the month-wise attendance shown by the 1st respondent college in the table

annexed at page 223 which is also stated to be on the basis of the biometric attendance recorded by the 1st respondent college does not inspire confidence in this Court, for being accepted. Another aspect would also show the conduct of the 1st respondent college not being genuine with regard to the claim of the petitioner being short in attendance during the 2nd year course is by reference to the dissertation submitted by the petitioner on 24.11.2016 as per the condition 13.2 of the prospectus issued for seeking admission to Post Graduation Medical degree for the academic year 2014-15 by the 3rd respondent University. If, as contended by the 1st respondent college that the petitioner attended only 19 days, during November, 2016 i.e., by which time the petitioner was permitted into 3rd year, the petitioner could not have been permitted to submit dissertation duly certified by the guide of the 1st respondent college to whom the petitioner was attached and being forwarded to the 3rd respondent University vide dissertation No.M/1457200854.

It is next urged by the learned counsel for the petitioner that the claim of the 1st respondent college that the petitioner did not attend college beyond 19 days in the 2nd year is also incorrect inasmuch as a student is allowed and is permitted to avail leave of 30 days in a year and at a stretch leave cannot be more than 18 days except in case of medical leave/maternity leave or any other leave or unauthorised absence is beyond 30 days in a year as specified in condition No.10.5.1 of the prospectus. If the claim of the 1st respondent college that as per the bio-metric attendance system, the petitioner attended only 19 days as shown in the table relating to the year 2015-16 and that the petitioner did not attend

a single day in June, July, November, December, 2015 and January, February, March, April, May, 2016, is correct, the petitioner having been permitted into the 3rd year course would negate the said claim of the respondent no.1 & 2. Further, in the prospectus issued by the 3rd respondent university in Regulation 10.6 of the Regulations specifies that continues absence for a period of 91 days or more would amount to break of study and would require permission from the 3rd respondent University by making an application in the prescribed format and also by paying the requisite fee with the recommendation of the principal and the same would be treated as readmission. Since, no such plea is taken by Respondent Nos.1 & 2, the said submission on behalf of the learned counsel for the petitioner that the petitioner despite attending college / hospital regularly, the Respondent No.1 & 2 did not record the attendance correctly / manipulated attendance of the petitioner merits acceptance by this Court. It is also for the reason that though the 1st respondent college claimed that it had put in place biometric attendance recording system, no material placed before this Court showing day-wise recording of biometric attendance not only that of the petitioner, but of any other student except a mere statement that college had introduced biometric attendance system from 2015 onwards, though the 3rd respondent University made it mandatory with linkage to the 3rd respondent University only with effect from August, 2017. Further, the claim of the 1st respondent college that the petitioner did not attend a single day during November, 2015 to May, 2016 also cannot be accepted in view of condition No.10.6 of the Regulations governing

the admission into Post Graduate medical degree for the year 2014-16 as noted above.

At this stage, it would also be necessary for the Court to take note of the situation prevailing with regard to Post Graduation admission in the medical field wherein the students like petitioner who are offered admission into Post Graduation course of the colleges like the 1st respondent under management quota would show the names of such students under the category "*Post graduate-cum-Tutor*" whereby the students who are given admission in Post graduation are shown as a faculty for teaching under graduation courses i.e., MBBS. Thus, the reason for not permitting a Post Graduate student for taking examination can only be for the reason that if such student qualifies and moves out of the college, the colleges would be required to show a replacement for MBBS faculty to the Medical Council of India. Thus, this Court should not lose sight of the said fact that this kind of practises are being resorted to by the colleges to over come the above situation. Even in the case of the petitioner, this court has verified from the information available in the public domain, that the petitioner is being shown as a "Tutor" for undergraduate course of MBBS (Copy made part of record).

Though, on behalf of the respondents, it is contended that the reason for not issuing ICR forms and not allowing the petitioner to pay the fees for taking examination is only on account of shortage of attendance as the student is required to maintain 80% of attendance for each academic year and on the basis of the statement annexed to the counter-affidavit, it is claimed that the

petitioner did not have 80% attendance both theory and practical during the year 2015-16 as stipulated in Regulation 13 of the Medical Council of India Regulations, 2000 as amended up to July, 2017.

The said submission of the learned counsel for the respondent Nos.1 and 2 is liable to be rejected on the following counts. Firstly, if the said Regulation prescribed 80% of attendance as being compulsory and if the petitioner had only attended 19 days as being claimed now, nothing prevented the college authorities for not granting the permission to the petitioner at the relevant point of time to write 2nd year examination and also not allowing the petitioner to submit the dissertation, on the contrary, the fact that the petitioner was promoted to the 3rd year and his dissertation being approved would, go to show that the petitioner fulfilled the required percentage of attendance. Though, it is sought to be contended by the learned counsel for the 1st respondent that upon the undertaking executed by the petitioner to fulfil the required attendance subsequently, the 1st respondent college allowed the petitioner to take examination appears to be an afterthought. Secondly, the said claim of the 1st respondent is also liable to be rejected, as the condition relating to a student requiring to have 80% of 292 working days has been brought in force with effect from July, 2017, while if the 1st respondent college acted bonafidely, the petitioner could have taken final year examination in April, 2017 itself. Thus, the amended Regulation cannot be made applicable in respect of attendance of the petitioner relatable to the year 2015-16.

Though the learned counsel for the 1st respondent college sought to justify the attendance record shown by the 1st respondent college filed along with the counter-affidavit claiming to be on the basis of the biometric attendance recording system, when asked by this Court to justify the discrepancy to the attendance recorded by the University and the attendance shown by the college after biometric attendance being connected to the University, the learned counsel for the petitioner does not dispute that there has been a discrepancy between the attendance shown by the 1st respondent college and the attendance shown by the 3rd respondent in the biometric. However, he would submit that it is relatable to the year 2017-18 and cannot be considered for the shortage of attendance for the year 2015-16. The said submission of the learned counsel for the 1st respondent is liable to be rejected only on the sole ground that no material is placed on record to show the existence of biometric attendance system during the relevant period or that the same has been made applicable to every student pursuing Post Graduate course in the 1st respondent college. Thus, having regard to the facts and discussions made hereinabove, the action of the 1st respondent in not permitting the petitioner to appear for the final year Post Graduation MD Pharmacology examination (2014-15 batch) is clearly illegal and arbitrary.

In view of the above discussion, the action of the 1st respondent authority is highly deplorable and the 1st respondent college is hereby directed to allow the petitioner to sit for 3rd year MD final examination as and when held hereafter by the 3rd

respondent university, by accepting the examination fee and also to issue ICR forms to the petitioner.

Accordingly, the Writ Petition is allowed. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 30.12.2019

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