

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 08.03.2021
Judgment pronounced on : 11-03-2021
Coram:

The Honourable Mr. Justice R. Subbiah
and
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No. 675 of 2021
and
C.M.P. Nos. 3611 and 3613 of 2021

V. Rashwin Raj .. Appellant

Versus

1. The Dean
Sri Venkateshwaraa Medical College
Hospital & Research Centre
Ariyur, Puducherry - 605 102

2. N. Lenin .. Respondents

Appeal filed under Clause 15 of the Letters Patent against the order dated 30.07.2020 passed in WP No. 8544 of 2020 on the file of this Court.

PRAYER IN WP NO.8544 OF 2020:

Writ Petition filed under Article 226 of the Constitution of India, seeking Writ of Certiorarified Mandamus, to call for the records of the order of the Respondent in his proceedings No.290/AAO/SUMCH&RC/2020 dated 17/03/2020 and to quash the same as being illegal and unsustainable in law and for a consequential direction to the respondent to reinstate the petitioner to attend the classes and examinations without any break whatsoever and pass orders.

For Appellant : Mrs. Kavitha Nithyanandan
For Respondents : Mr. Abishek Jenasenan for R1

JUDGMENT

This appeal has been filed against the order dated 30.07.2020 passed by the learned Single Judge in WP No. 8544 of 2020 filed by the appellant herein.

2. The appellant has filed WP No. 8544 of 2020 seeking to issue a Writ of Certiorarified Mandamus to quash the proceedings

dated 17.03.2020 of the first respondent and to issue a consequential direction to permit him to attend the classes and to write the examinations without any break whatsoever.

3. The appellant herein was admitted in MBBS Course in the first respondent college during the academic year 2016-2017. During February 2020, the second respondent, who was a co-student, has given a complaint to the first respondent alleging that he was harassed and ragged by the appellant herein. The first respondent conducted an enquiry during which the appellant has given a letter of apology on 03.02.2020. Notwithstanding the same, the second respondent declined to withdraw the complaint given against the appellant and therefore, the first respondent constituted the Anti-Ragging Committee as per the guidelines issued by the Medical Council of India. The Committee conducted an enquiry, during which the statement of the appellant, the second respondent/complainant and the other students were obtained. Thereafter, the Committee submitted a report to the first respondent, based on which, the first respondent passed the order dated 17.03.2020, suspending the appellant from the college from 17.03.2020 to 01.01.2021. Challenging the same, the appellant has filed the Writ Petition for the relief stated supra.

4. The learned Single Judge, on hearing the submissions of the learned counsel for both sides and on a perusal of the records, had come to the conclusion that it is not necessary to interfere with the report submitted by the Anti-ragging Committee and the order of suspension passed by the first respondent. However, the learned Single Judge reduced the period of punishment imposed on the appellant from 17.03.2020 to 17.08.2020 instead of 01.01.2021. Assailing the aforesaid order of the learned Single Judge modifying and/or reducing the period of punishment, the present Writ Appeal is filed by the appellant/writ petitioner.

5. When the matter is taken up for consideration, the learned counsel for the appellant submitted that, even though the present appeal has been filed assailing the order passed by the learned Single Judge modifying and/or reducing the period of punishment, the appellant/writ petitioner is not inclined to prosecute this appeal for such a relief. However, even after the expiry of the period of suspension, by allowing him to write the final year examination, the appellant/writ petitioner was not permitted by the first respondent to complete the final year MBBS course. Thus, he sought for suitable direction to the first respondent.

6. Countering the same, the learned counsel for the first respondent submitted that during the period of suspension, the appellant was not permitted to attend the classes, and hence, he

did not possess the minimum required attendance. A minimum of 75% attendance in each subject is mandatory to write the examination. But the appellant/writ petitioner did not possess sufficient percentage of attendance as per the University norms. While so, the first respondent cannot expect the appellant/writ petitioner to permit him to write the examinations.

7. In response, the learned counsel for the appellant/writ petitioner submitted that, during the Pandemic period, the appellant attended the classes through on-line mode and therefore, it cannot be said that the appellant lacks attendance.

8. In reply, the learned counsel for the first respondent submitted that during the suspension period, he cannot attend the classes. Even for argument sake, if it is accepted, attending the classes on-line will not be taken into account to mark attendance for the appellant, especially during his suspension. As per the University Rules, a candidate who is having shortage of attendance, cannot be made eligible to appear for the semester examinations. Thus, the learned counsel for the first respondent sought for dismissal of the appeal.

9. Keeping the above submission of the learned counsel for both sides, we have gone through the records. As per the University Rules, if a candidate is having shortage of attendance, he is not eligible to appear for the examination. In this regard, the learned counsel for the first respondent submitted that as per the records, the percentage of attendance secured by the appellant is grossly insufficient to permit him to write the examination. Even the minimum requirement of attendance had not been fulfilled by the appellant. In this regard, the learned counsel for the first respondent has also produced the particulars of attendance secured by the appellant in each subject, which reads as follows:

- (i) General Medicine - Theory - 44% clinical - 46%
- (ii) General Surgery - Theory - 53% clinical - 52%
- (iii) Obstetrics & Gynaecology-Theory - 45% clinical - 43%
- (iv) Paediatrics - Theory - 60% - clinical - 67%

It is also contended that, the next semester examination will be conducted either during June 2021 or October 2021, as per the final decision of the University during which the appellant/writ petitioner can be permitted to write the examination.

10. Though the writ appeal has been filed challenging the order of suspension, now the period of suspension lapsed and the appellant undergone the currency of period of suspension. Therefore, the learned counsel for the appellant restricted his arguments only to permit the appellant to write the semester examination. For writing the examination, the basic requirement is minimum attendance. Admittedly, the appellant did not secure

the minimum required attendance. Even though he submitted that he attended classes on-line during Pandemic, it cannot be taken into consideration to permit him to write the examination. During the suspension period, even if the appellant attended the classes on-line, it will not enure to his benefit. The appellant might have attended the classes on his own accord, but that will not be a ground to permit him to write the examination. Therefore, in the absence of minimum percentage of attendance, the appellant cannot be permitted to write the examination.

11. In such view of the matter, we refuse to interfere with the order passed by the learned Single Judge. Accordingly, the Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

/TRUE COPY/

Sub-Assistant Registrar

rsh

To
The Dean
Sri Venkateshwaraa Medical College
Hospital & Research Centre
Ariyur, Puducherry - 605 102

+1cc to Mr.N.KAVITHA RAMESHWAR, Advocate, SR.NO.15364
+2CC TO Mr.ABISHEK JENASENAN, ADVOCATE, SR.NO.15376

WA No. 675 of 2021
11-03-2021

GSM(CO)
KKN 19.04.2021

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