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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 30.09.2021

PRONOUNCING ORDERS ON : 05.10.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.Nos.27310 and 27311 of 2016

and

WMP Nos.23505, 23506, 23507 and 23508 of 2016

V.Thalapathy ... Petitioner in W.P.No.27310 / 2016
P.Dharuman ... Petitioner in W.P.No.23711/2016

.Vs.

- 1 State of Tamil Nadu
The Principal Secretary to Government
Department of Higher Education Fort St.
George Chennai-9.
- 2 The Vice Chancellor
Thiruvalluvar University Serkadu-632 115
Vellore District
- 3 The Thiruvalluvar University
Rep. by its Registrar, Serkadu-632 115
Vellore District
- 4 Dr.P.Asokan
Controller of Examinations Thiruvalluvar
University Serkadu-632 115, Vellore District
- 5 The Head of the Department
Department of English Thiruvalluvar
University, Serkadu-632 115, Vellore District

... Respondents in both WPs

PRAYER in W.P.No.27310 of 2016: Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus Calling for the entire records connected with the impugned order of the 4th respondent in Office Memorandum No.COE/ MP/APR 2016/201 dated 28.6.2016 and quash the same and consequently permit the petitioner to write the subject of English Language Teaching (PDEN42) of IV Semester as and when the same is held



PRAYER in W.P.No.27311 of 2016 : Writ Petitions filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus , Calling for the entire records connected with the impugned order of the 4th respondent in Office Memorandum No.COE/ MP/APR 2016/201 dated 28.6.2016 and quash the same and consequently permit the petitioner to write the subject of English Language Teaching (PDEN42) of IV Semester as and when the same is held immediately in future.

For Petitioner :Mr.S.Sathia Chandran
(in Both WPs)

For Respondents :Mr.A.Selvendran, Government Advocate
(in Both Wps) - for R1
Mr.M.C.Swamy, Standing Counsel
- for RR 2 and 3

COMMON ORDER

The issue involved in both these writ petitions are common and hence they are taken up together, heard and disposed of through this common order.

2. The petitioners were studying M.A.(English) at the third respondent University during the Academic Year 2014-16. There were totally four semesters for this course and according to the petitioners, they have cleared three semesters and took the fourth semester during the examination that was conducted during April-May 2016.

3. The results of the fourth semester were published on 18.06.2016 and the petitioners realised that they had failed in the 'English Language Teaching' subject (PDEN42) by securing 25 marks and 28 marks respectively out of 100 marks. This claim is made by the petitioners based on the result gally sheet which was affixed in the notice board of the University. The petitioners applied for the photocopy of the answer sheet in order to apply for revaluation. According to the petitioners, there was no proper response from the Head of Department and hence the petitioners decided to take the instant examination in the failed subject, which was fixed to be held on 23.07.2016. The petitioners paid the requisite fees and approached the Head of Department to get their hall tickets. It is at this point of time, the Head of Department informed them that they will not be issued with the hall tickets as they have been awarded the punishment of cancellation of all the written examinations held during April-May 2016. The petitioners were also issued with the office memorandum dated 28.06.2016 which was passed by the fourth respondent viz., Controller of Examinations. The further case of the petitioners is that, only at that point of



time they were informed that they have indulged in some malpractice during the examinations held during April-May 2016 and that is why they have been given the punishment by the fourth respondent through office memorandum dated 28.06.2016. Aggrieved by the same, the petitioners have approached this Court.

4. The third respondent has filed a counter affidavit. In the counter affidavit, a specific stand has been taken to the effect that, the petitioners had indulged in malpractice in the examination that was held on 26.04.2016 and they were in possession of incriminating material relating to the examination. That apart, they also misbehaved with the Chief Superintendent when they were questioned. Based on the complaint given by the Chief Superintendent to the fourth respondent, the office memorandum dated 26.04.2016 was issued and it was sent to the Head of Department to inform the petitioners to appear before the disciplinary committee. The matter was thereafter placed before the disciplinary committee on 28.06.2016 and the committee took a decision to cancel all the written examinations that were taken by the petitioners during April-May 2016 session. This decision taken by the committee was placed before the Syndicate during the meeting held on 01.08.2016 and the Syndicate also ratified the action taken against the petitioners. The third respondent has therefore taken a stand that the University was completely justified in taking such a decision on the ground that the petitioners were in possession of incriminating materials relating to the examination and they had also threatened the Chief Superintendent.

5. The fourth respondent viz., the Controller of Examinations has also filed an additional affidavit. The fourth respondent has taken the very same stand in the counter affidavit. It is further stated in the counter affidavit that a total of 151 students from various colleges including the petitioners had committed malpractices during the examination held during April-May 2016. Out of the 151 students, 93 students attended the disciplinary enquiry and 58 students including the petitioners did not attend the enquiry. The committee had recommended the punishment only based on the gravity of the allegation and the decision taken by the committee was also subsequently ratified by the syndicate.

6. The fourth respondent has further stated that except the petitioners, all the other students accepted the punishment awarded to them and no one has challenged the same.



7. Heard Mr.S.Sathia Chandran, learned counsel for the petitioners, Mr.A.Selvendran, learned Government Advocate appearing for the first respondent and Mr.M.C.Swamy, learned Standing Counsel appearing for the second respondent.

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8. The above writ petitions were filed in the year 2016. Considering the interest of the students, this Court passed an order on 28.04.2017 and the same is extracted hereunder.

"Heard both sides.

2. Due to malpractice indulged by the petitioners, they were given the punishment of cancellation of the written examinations of that session, by the fourth respondent vide order dated 28.06.2016. The said order is challenged in these writ petitions.

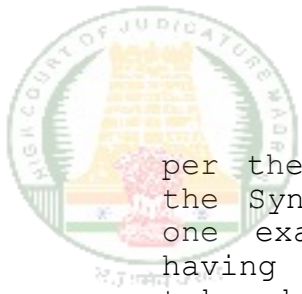
3. The learned counsel for the University though had sufficient time could not produce the notice served on the individuals, within time, may be, due to communication gap.

4. As the time is running, the respondents concerned are directed to permit the petitioners to sit for the examinations for which they are entitled to and issue the hall tickets well in advance. It is made clear that this order shall not confer any additional rights, either on the students or on the University, nor they can make any further claims based on equity.

Post on 21.06.2017."

9. Pursuant to the above order, both the petitioners took the examination for the 'English Language Teaching' subject and it is clear both from the result gally sheet as well as the marksheet that, they have passed the examination by securing 66 marks and 65 marks respectively.

10. When the matter was taken up for final hearing, this Court posed a question to the learned Standing Counsel appearing on behalf of the University as to whether the subsequent event can be taken into consideration and the petitioners can be declared as passed and consequently can be issued with the necessary certificates. The learned Standing Counsel appearing on behalf of the University submitted that, the petitioners ought to have written all the examinations as



per the punishment imposed by the committee and ratified by the Syndicate and instead, the petitioners had written only one examination and therefore they cannot be declared as having cleared the fourth semester. In view of this stand taken by the learned Standing Counsel appearing on behalf of the University, this Court proceeded to hearing the case on merits.

11. The learned counsel for the petitioners submitted that the decision taken by the respondents is vitiated mainly on the ground that no notice was issued to the petitioners and they were not given any opportunity and hence it is violative of principles of natural justice. The learned counsel submitted that the Head of Department being informed about the alleged malpractice that is said to have been indulged by the petitioners, cannot be construed as a notice to the petitioners. It was further submitted that as per the result gally sheet that was affixed in the notice board, the petitioners had failed only in subject code PDEN42. This subject code pertains to 'English Language Teaching'. However, a stand has been taken by the respondents to the effect that, the petitioners had indulged in malpractice in the examination held on 26.04.2016 which pertained to subject code PDEN43B. This subject code pertains to 'General Essay'. This stand taken by the respondents is on the face of it not sustainable since the petitioners had cleared this particular subject by securing 60 and 67 marks out of 100 marks respectively. For this purpose, the learned counsel for the petitioners relied upon the result gally sheet. The learned counsel further submitted that the subject in which the petitioners were declared as failed as per the gally sheet, which is 'English Language Teaching', this examination was supposed to be conducted on 21.04.2016, but however it was postponed and it was conducted only on 06.05.2016. If really the petitioners had indulged in malpractice on 26.04.2016 as claimed by the respondents, the petitioners would not have been allowed to write the examination on 06.05.2016. Therefore, according to the learned counsel for the petitioners, the stand taken by the respondent University is an utter falsehood and cannot be sustained. The learned counsel for the petitioners submitted that, the respondent University cannot disown the result gally sheet that was affixed in the notice board and take a completely contradictory stand. The learned counsel, in order to substantiate his submission, relied upon the judgments in "V.Sunil Kumar Kallempudi -Vs-Anna University rep.by its Registrar" reported in 2006(2) MLJ 741, "S.Ganesh Ram -Vs- The Vice Chancellor and Others" reported in CDJ 2014 MHC 050 and "Registrar, Vellore Institute of Technology, Katpadi, Vellore -Vs- Annavajjala Aghamarsh and Others" reported in 2015(2) MLJ Page 36.



12. Per contra, the learned Standing Counsel appearing on behalf of the respondent University produced the original answer papers of the petitioners pertaining to subject code PDEN43B along with the alleged incriminating material. The learned counsel submitted that, these answer sheets along with the incriminating material were seized and it was not even evaluated and therefore, there is no question of awarding any marks for this paper. The learned counsel completely disowned the result gally sheet and submitted that the marks found therein is false since the paper itself was not evaluated. The learned counsel further submitted that the petitioners have not alleged any ill-will or malafide on the part of the respondents and there was no necessity for the respondents to have targeted the petitioners alone when the fact remains that action was taken as against nearly 151 students including the petitioners, since they indulged in malpractices. The learned counsel submitted that the punishment that was awarded against the petitioners was very reasonable and the examination written during that particular session viz., April-May 2016 alone was cancelled and the petitioners were directed to once again write those examinations. The learned counsel submitted that the petitioners could have utilized the opportunity that was given to them by this Court while passing an interim order in the year 2017 by writing all the papers. Instead, the petitioners took a decision to write only one paper and this will not in any way help the petitioners to wriggle out of the situation. The learned counsel concluded his arguments by submitting that, there are absolutely no reasons to interfere with the decision taken by the respondents and hence these writ petitions are liable to be dismissed.

13. This Court has bestowed its attention to the submissions made on either side and the materials available on record.

14. The present case is an illustration of the sordid state of affairs that were prevailing in the respondent University at the relevant point of time. The same is clear from the fact that the result gally sheet is said to have been affixed in the notice board and the University is disowning the same. The University has not taken a stand that the result gally sheet produced before this Court is a forged / fabricated document. The only ground on which the University wants this Court to disregard the result gally sheet is on the basis of the original records produced before this Court, wherein the answer sheets of the petitioners for the subject code PDEN43B pertaining to 'General Essay' was not even evaluated after it was seized by the Chief Superintendent. Therefore, the marks shown in the gally sheet as if the petitioners have secured 60 and 67 marks respectively in that subject is totally unacceptable. It becomes difficult for this Court to come to a definite conclusion in this case, since the matter involves appreciation of evidence on the



contradicting stand taken by the parties. This could have been easily resolved if the petitioners had been issued with notice and called for an enquiry. However, the admitted case of the respondent University is that notice was given only to the Head of Department and there is no material to show that the Head of Department had informed the petitioners regarding the same. The issue gets even more complicated since the alleged malpractice and the threat to the Chief Superintendent is said to have taken place on 26.04.2016 and whereas the petitioners have been allowed to write the examination for the subject code PDEN42 pertaining to 'English Language Teaching' on 06.05.2016. If really such malpractice had taken place and the papers were seized with the incriminating material on 26.04.2016, there was absolutely no reason for allowing the petitioners to write the examination on 06.05.2016. The judgments that have been cited by the learned counsel for the petitioners have consistently held that in cases of this nature, some opportunity must be given to the students / candidates before awarding any punishment. That could have been easily done in the present case. In the absence of the same, this Court is not able to come to any final conclusion and give a reasoned justification to either concur with the petitioners or reject the same by agreeing with the stand taken by the respondents.

15. The petitioners were given an opportunity to write all the examinations in the fourth semester during the year 2017 by virtue of the interim orders passed by this Court. However, the petitioners have chosen to write the examination only for the 'English Language Teaching' subject and it is clear from the marksheet that they have cleared this examination by securing 65 and 66 marks respectively out of 100 marks. Curiously, while declaring the result, a result gally sheet was affixed and the respondent University does not disown this gally sheet. This contradicting stand on the side of the respondents makes it difficult for this Court to hold against the petitioners that they indulged in malpractice while writing the 'General Essay' subject (PDEN43B). This Court is of the considered view that the decision taken by the fourth respondent through office memorandum dated 28.06.2016 is vitiated on the ground that it is in violation of principles of natural justice. Just because the petitioners have not alleged any ill-will or malafide against the respondents, that does not mean that this Court can give a go-by for compliance with the principles of natural justice. In the present case, the decision making process is vitiated due to violation of principles of natural justice and hence it necessitates this Court to interfere with the ultimate decision.

16. There is yet another difficulty for this Court when it comes to granting the final relief to the petitioners. On the one hand, the result gally sheet shows that the



petitioners have cleared PDEN43B, subject code which pertains to 'General Essay' subject. However, the original papers have been submitted before this Court which shows that the papers have not even been evaluated. This actually puts this Court in a quandary. However, in view of the fact that this Court had already given a finding that the decision taken by the fourth respondent through office memorandum dated 28.06.2016 is in violation of principles of natural justice, this Court has to necessarily grant a relief to the petitioners.

17. Taking into consideration the facts and circumstances of the case and considering the interest of the students, the office memorandum issued by the fourth respondent dated 28.06.2016 is hereby quashed. It is declared that the petitioners have passed in the following subjects.

- Literary Theory and Criticism (PDEN41)
- English Language Teaching (PDEN42), and
- Project (PDEN 44)

18. In view of the fact that the original answer sheets of the petitioners pertaining to 'General Essay' subject (PDEN43B) has been produced before this Court and this Court finds that there is no valuation was done for this subject, this Court is not able to go by the marks as found in the gally sheet that was affixed in the notice board for April-May 2016 session. Hence, the petitioners shall be permitted to write this subject by the respondent University at the earliest examination conducted by the University. The petitioners shall take the examination for this subject and on clearing the same, they shall be declared as having completed the Post Graduate Course viz., M.A.(English) and necessary marks statement and degree certificate shall be issued to them by the respondent University.

19. Both the writ petitions are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

KST



To

- 1 The Principal Secretary to Government
Department of Higher Education Fort St.
George Chennai-9.
- 2 The Vice Chancellor
Thiruvalluvar University Serkadu-632 115
Vellore District
- 3 The Registrar,
Thiruvalluvar University
Serkadu-632 115
Vellore District
- 4 The Controller of Examinations
Thiruvalluvar University
Serkadu-632 115 Vellore District
- 5 The Head of the Department
Department of English
Thiruvalluvar University
Serkadu-632 115, Vellore District

+1 C.C. to GOVERNMENT PLEADER, SR.NO.52348/2021

+2 C.C. to MR.S.SATHIA CHANDRAN, ADVOCATE,
SR.NO.51891/2021

Pre Delivery Common Order in
W.P.Nos.27310 & 27311 of 2016

PL(CO)
RA 21/10/2021