

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05/03/2021

PRONOUNCED ON : 31/03/2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.No. 17083 of 2020

Geetha R

...Petitioner

Vs.

The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram,
Cuddalore District,
Tamil Nadu - 608 002.

...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of writ of mandamus, directing the respondent to return the originals of X-Standard Marksheet, H.S.C.Marksheet, Transfer Certificate, H.S.C.Hall Ticket, Permanent Community Certificate, Nativity Certificate belonging to the petitioner, issue a transfer certificate, refund fees of Rs.16,360/- paid and pay compensation to the petitioner.

For Petitioner : Ms.V.Sriraksha for
Yogeshwaran

For Respondent : Mr.K.Sathish Kumar
Standing Counsel

O R D E R

The petitioner hailed from a small village in Nagapattinam District, is also economically poor, lost her mother and father is also helpless and pursued her studies with the help of her relatives. She is the first person in her family to pursue graduate studies. The petitioner applied for the Diploma in

Nursery and Midwifery course in the respondent University in the year 2019.

2. The petitioner was also selected in the counselling and was allotted a seat in Diploma in Nursery and Midwifery course for the academic year 2019-2022. The respondent University directed the petitioner to pay a sum of Rs.16,360/- towards the first year fee and the petitioner has also paid the said amount on 04.09.2019 along with the challan. She has also produced the original certificates such as;

- i) X Standard Mark sheet,
- ii) H.S.C Market Sheet (12th standard),
- iii) Transfer Certificate,
- iv) H.S.C. Hall Ticket,
- v) Community Certificate and
- vi) Nativity certificate.

Thereafter, the petitioner was provided with a Roll Number 1980070012. It appears that the respondent University have intimated the students about the commencement of the course with effect from 13.09.2019, which the petitioner did not noted and approached the respondent University belatedly, so that the respondent University did not permit her to pursue her studies. As against the same, she also made representations to the Hon'ble Chief minister and other authorities.

3. In this context, the petitioner when asked for return of her certificates, the respondent has demanded a further sum of Rs.16,000/- for returning the original certificates and therefore, the petitioner has approached this Court for a mandamus directing the respondent to return her original certificates of X-Standard Marksheet, H.S.C. Marksheet, Transfer Certificate, H.S.C. Hall Ticket, Permanent Community Certificate, Nativity Certificate, to issue a transfer certificate and for refund of fees paid along with a compensation.

4. The learned counsel appearing for the petitioner has relied on the order of this Court passed in the case of S.Muthukamatchi Vs. The Director of Technical Education, Anna University and Others reported in 2013 (1) CTC 595 and the Notification of the UGC dated 23.04.2007 in support of her contentions, which are extracted hereunder:-

4.1) The operative portion of the order of this Court in the case of S. Muthukamatchi Vs. The Director of Technical Education, Anna University and Others. reported in 2013 (1) CTC 595 is extracted hereunder;

" The Certificates of the Petitioner's daughter

represent her property. They cannot be retained by the College at any rate. Even if the College has any monetary claim, the rejection of the said Certificates is not the method by which, the claim can be enforced. There is no lien on the certificates of the petitioner's daughter. Those Certificates are not like fixed deposit receipt on which, banks claim a general lien in terms of Section 171 of the Contract Act. Therefore, the Certificates cannot be retained at any rate. Hence, this writ petition is allowed directing the fourth respondent to return all the original certificates deposited by the petitioner forthwith."

4.2) The public notice issued by the UGC dated 23.04.2007 on retaining the certificates by the Universities.

"F.No.1-3/2007 (CPP-II)

23rd April, 2007

PUBLIC NOTICE

It has come to the notice of the University Grants Commission that Institutions and Universities including institutions deemed to be universities are admitting students to various programmes of studies long before the actual starting of academic session; collecting full fee from the admitted students; and, retaining their schools / institutions leaving certificate in original. The institutions and Universities are also reportedly confiscating the fee paid if a student fails to join by such dates.

2. The Commission is of the view that the Institutions / Universities, by way of retaining the certificate in original, force retention of admitted students which limits the opportunities for the candidates from exercising other options of joining other institutions of their choice. However, it would not be permissible for Institutions and Universities to retain the School / Institution Leaving Certificate, mark sheet, caste certificate and other documents in original.

3. The Ministry of Human Resource Development and University Grants Commission have considered the issue and decided that the Institutions and Universities, in the public interest, shall maintain a waiting list of students / candidates. In the event of a student / candidate withdrawing before the starting of the course, the waitlisted candidates should be given admission against the vacant seat. The entire fee collected from the student, after a deduction of the processing fee of not more than Rs.1000/- (one thousand only) shall be

refunded and returned by the Institution / University to the student / candidate withdrawing from the programme. Should a student leave after joining the course and if the seat consequently failing vacant has been filled by another candidate by the last date of admission, the Institution must return the fee collected with proportionate deductions of monthly fee and proportionate hostel rent, where applicable.

4. The Universities / Institutions are requested to abide by the instructions issued by the UGC. The UGC, shall on its own or on receipt of specific complaints from those affected, take all such steps as may be necessary to enforce these directions.

5. Institutions / Universities are also required to convey these instructions to the colleges affiliated to them."

5. Mr.Sathishkumar, learned counsel appearing for the respondent University would submit the petitioner has filed an online application No.M80126 for admission to the course of Diploma in General Nursing and Midwifery (3years course) for the academic year 2019-20. On perusal of the online application the petitioner was in Overall Rank No.28 and as per the Community Rank No.12, the petitioner called for counselling on 26.08.2019. The petitioner, who participated in the counselling got selected in Diploma in General Nursing and Midwifery and paid a sum of Rs.16,360/- on 04.09.2019, her Roll Number was given as 1980070012 and the original 10th Marksheet, +2 Marksheet, Transfer Certificate, Community Certificate (online copy), Nativity Certificate (online copy), Income Certificate (online copy) were handed over to the Dean Faculty of Medicine on 04.09.2019 and it was informed to the student to follow the University website for commencement of classes.

6. The learned counsel for the respondent would further submit that the Diploma in General Nursing and Midwifery course was commenced on 13.09.2019, the said information was published in the University website. Based on the website publication, all the students reported and attended the classes, except the petitioner and she reported the University only on 10.12.2019. As per the prospectus in clause VIII (iii), if any students joined the course and discontinued in the middle of the Academic year shall has to pay the tuition fee in full up to the year of study. Since one seat was wasted by the petitioner and on the fault of the student, she has to compensate by paying the entire course fee.

7. This Court paid its anxious considerations to the rival submissions made and also perused the materials available on record.

8. The petitioner is hailing from a poor background from a village is the first person to pursue her Diploma and that too with the aid of her relatives. The petitioner was selected and she was also admitted for the diploma in Nursery and Midwifery (3 years course) offered by the respondent University. She has paid a sum of Rs.16,360/- on 04.09.2019 and according to the University, the Course was commenced on 13.09.2019 however, the petitioner reported only on 11.12.2019 and therefore, she was not allowed to continue her course. The difficulty expressed by the petitioner is that she has not been intimated, on the other hand the University has taken a stand that the commencement of the course was informed only by way of publication in the University website. The petitioner who hailed from a village background was not having any access to the University website, expect some SMS or some communication from the respondent and approached the University only on 11.12.2019. However, there is no impediment for the respondent to permit the petitioner atleast from 11.12.2019 but they did not do so and they have also retained the original certificates of the petitioner and demanding a further sum of Rs. 16,000/- to return the certificates by referring the prospectus.

9. There is no cut off date for admitting the students in these diploma courses. Even if the petitioner has approached belatedly, she would have attained 70% of the attendance and she could have very well appeared for the examinations but, unfortunately, the petitioner was not permitted to continue the course and the respondent without any valid reason and without following the guidelines issued by the UGC retained the certificates.

10. Relying on paragraph No.99 of the order, dated 6/10/2020, made in W.A.No.799 of 2019, etc., batch, Mr.K.Sathish Kumar, learned Standing Counsel appearing for the respondents would submit that the petitioner is not entitled for compensation. He has also conceded that they have not provided any job to the petitioner during the bond period. Paragraph No.99 of the order, made in W.A.No.799 of 2019 is extracted hereunder:-

"99. The learned Additional Advocate General contended that the process otherwise alone could not be completed because of the matter being sub judice. We do not find any impediment having been created by the matter being sub judice, except for a view orders having been passed for the release of

certificates. Nonetheless, to come forward with such a excuse is nowhere justified, in as much as it was always open to the State to have come forward with an affidavit issuing posting orders to all those candidates, including the writ petitioners, who had passed out their Post Graduate Course and were awaiting employment. Needless to say that the stakes of a medical student having passed his/her Post Graduate course and then to keep him/her unendingly waiting for employment mars the career of such a candidate either for future studies or even for any appropriate employment. It appears that it is for this reason that the Committee which was constituted after the directions of the Apex Court in the case of Association of Medical Superspeciality Aspirants and Residents and Others (supra) has reduced this waiting period upto one year for All India Quota candidates. However, the fact remains that in the present case, the State had made it conditional by keeping the said period as two years. The aforesaid two years period, therefore, was well known to all the writ petitioners and as such, we are of the opinion that the students who have passed out will have to await posting orders which can arrive within two years. This is not to say that they cannot pursue any study or get an employment in the interregnum period and have to compulsorily remain idle for two years. However, any such occupation being taken up by them may have to be given up if the State offers a job opportunity within the two year period, which they are liable to perform for the period for which they have filled up the bond. To that extent, we find that the writ petitioners are bound by the said conditions."

11. In view of the said discussion and the dictums laid by this Court in various judgments, this writ petition is allowed with a direction to the respondent to return the original certificates along with Transfer Certificate to the petitioner forthwith. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KKN

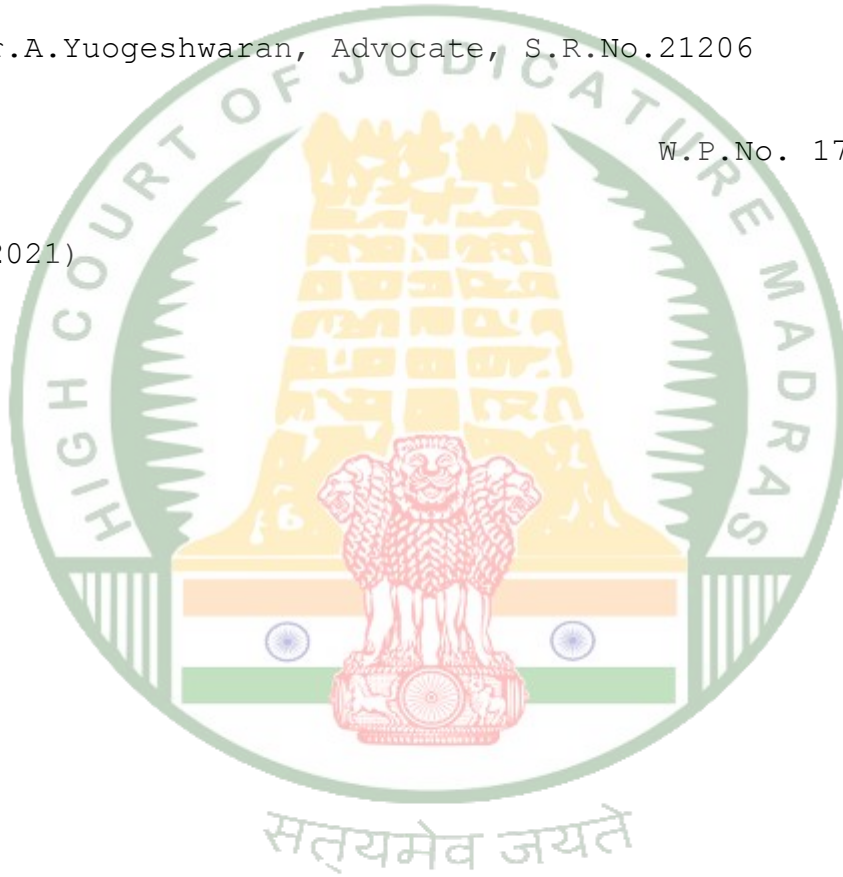
To:

The Registrar,
Annamalai University,
Annamalai Nagar,
Chidambaram,
Cuddalore District,
Tamil Nadu - 608 002.

+1cc to Mr.A.Yuogeshwaran, Advocate, S.R.No.21206

W.P.No. 17083 of 2020

PD(CO)
TE(27/04/2021)



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