



W.P(MD)No.16223 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.16223 of 2019

and

W.M.P(MD)Nos.12899 & 12900 of 2019

M.Irshad Kamil

... Petitioner

Vs

1.The State represented by
The Principal Secretary,
Department of Higher Education,
Fort St.George,
Chennai.

2.The Anna University,
Represented by
The Controller of Examinations,
Anna University Campus,
Chennai – 600 025.

3.The Manonmaniam Sundaranar University,
Represented by its
Controller of Examinations,
University Buildings,
Abishekapatti,
Tirunelveli District – 627 012.

... Respondents



W.P(MD)No.16223 of 2019

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Lr.No.9632/COE/C37/2017-52205 dated 27.12.2017 on the file of the second respondent and consequential Memoranda issued by the third respondent dated 29.06.2018 and quash the same as illegal and consequently direct the respondents 2 and 3 to allow the petitioner to write the arrears in Mathematics II Subject Code 212 and complete his B.E Course within time frame stipulated by this Court.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Shaji Bino
Special Government Pleader for R.1

Mr.J.John Rajadurai
Standing Counsel for R.2

Mrs.H.Jasima Yasmin
for M/s. Ajmal Associates for R.3

ORDER

Heard the learned counsel on either side.

2.The writ petitioner joined PET Engineering College, Valliyoor, Tirunelveli District to undergo B.E Electronics and Communication Engineering Course in the year 2001. When the petitioner joined the College, it was affiliated to Manonmaniam Sundaranar University. Subsequently, the College came under the control of Anna University, Chennai. When the



W.P(MD)No.16223 of 2019

petitioner completed four years, he had to his credit 15 arrears. He could not secure any degree. The petitioner is said to be from very poor back ground. He therefore had to leave for Dubai to eke out his livelihood. He returned in the year 2016 and subsequently applied for writing the arrear papers. Anna University gave him permission to write the arrear examinations and the petitioner was able to clear 11 subjects in the year 2016. However, he still had to clear Mathematics II paper to get his degree. Anna University however could not permit him to write his examination because the said paper was one of the subjects during the first semester. When the petitioner did his first semester, the college was affiliated to Manonmaniam Sundaranar University.

3.In these circumstances, the petitioner had to approach the third respondent seeking relief. The third respondent by the impugned order rejected the petitioner's request. Questioning the same, this writ petition has been filed.

4.The learned counsel appearing for the writ petitioner took me through the averments set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and allow the writ petition as prayed for.



W.P(MD)No.16223 of 2019

WEB COPY

5.The third respondent strongly opposed the writ prayer. She argued that the petitioner is guilty of laches. Admittedly, the petitioner had written the subject way back in the year 2001. He cannot be allowed to write arrear examination after a gap of 21 years. She also would point out that the Engineering Colleges are no longer affiliated to Manonmaniam Sundaranar University and therefore, the University is not in a position to hold the arrear examination. Her primary attack was on the aspect of delay.

6.The contentions advanced by the learned Standing Counsel appearing for the University are definitely sound and having force. However, the issue will have to be approached from a different angle. The petitioner belongs to Backward Class. His economic condition was such that he had to leave India even without completing his degree course. Right to education is definitely a human right. These are not matters in which delay can be put against the person who had to leave the country to eke out his livelihood without completing his studies. The Engineering course has eight (8) number of semesters comprising sixty one (61) number of subjects. The petitioner has successfully cleared all but one. If the petitioner is granted relief in this writ petition, he would be able to clear the remaining paper and acquire Engineering



W.P(MD)No.16223 of 2019

Degree also. If I sustain the order passed by the University, then the hardship caused to the petitioner will be truly irreparable. The petitioner obviously cannot once again undergo an Engineering Degree at his point of time.

7. My attention is drawn to the order dated 27.08.2021 made in W.P(MD)No.15412 of 2021 (*G.Shailaja Vs The Manonmaniam Sundaranar University and others*) wherein this Court had directed Manonmaniam Sundaranar University to permit the student concerned to take arrear examination. The learned counsel appearing for the petitioner also drew my attention to the notification dated 23.11.2022 issued by the office of the Controller of the Examinations, Anna University, Chennai which enables the students who were admitted in the academic year 2001-2002 to write their arrear examinations. If Anna University can permit similarly placed students to write arrear examinations, I fail to understand as to why the petitioner should be denied similar relief. That apart, it would not be difficult for Manonmaniam Sundaranar University to hold an examination for Mathematics paper. Of course, the University will incur extra expenditure for holding the examination. The cost estimated will be paid by the petitioner. The petitioner is directed to pay the same along with examination fee as condition precedent for writing arrear examination.



W.P(MD)No.16223 of 2019

8. In this view of the matter, the order impugned in the writ petition is set aside. The writ petition is allowed. The third respondent is directed to hold arrear examination in Mathematics – II subject for the petitioner. This will be done within a period of six months. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.12.2022

Index : Yes / No

Internet : Yes/ No
mga

To

1. The Principal Secretary,
Department of Higher Education,
Fort St. George, Chennai.
2. The Controller of Examinations,
Anna University, Anna University Campus,
Chennai – 600 025.
3. The Controller of Examinations,
Manonmaniam Sundaranar University,
University Buildings, Abishekapatti,
Tirunelveli District – 627 012.



WEB COPY



W.P(MD)No.16223 of 2019

G.R.SWAMINATHAN, J.

mga

W.P(MD)No.16223 of 2019

and

W.M.P(MD)Nos.12899 & 12900 of 2019

07.12.2022