



W.P.No.32272 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 19.03.2025

CORAM

THE HON'BLE **Mrs.JUSTICE N.MALA**

W.P.No.32272 of 2024
and
W.M.P.No.35064 of 2024

1.S.Swaminathan
2.S.Hinashree

... Petitioners

Vs.

1.The Dental Council of India,
National Dental Commission Building,
Plot No.14, Sector-9,
R.K.Puram, New Delhi-110022.

2.The Principal,
Mahe Institute of Dental Sciences & Hospital,
Chalakkara, Palloor,
Mahe-673310.

3.The Dean,
Mahatma Gandhi Post Graduate Institute of Dental Sciences,
Puducherry-605 006.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to permit the Migration of the 1st petitioner's daughter



W.P.No.32272 of 2024

S.Hinashree studying 2nd year BDS from the 2nd respondent Institute to the 3rd respondent Institute.

For Petitioners : M/s.M.Gnanasekar
For R1 : M/s.Subramanian Vaidyanathan
For R2 : Mr.V.Vasanthakumar,
Additional Government Pleader
For R3 : No appearance

ORDER

The writ petition has been filed seeking a direction to the 1st respondent to permit the migration of the 1st petitioner's daughter S.Hinashree, who is studying 2nd year BDS, from the 2nd respondent Institute to the 3rd respondent Institute.

2. The petitioners are permanent residents of Puducherry. The 2nd petitioner is a second year BDS student in the 2nd respondent institute. She was diagnosed with “Rheumatic Pain” an Auto Immune disease and was also tested positive for the RA factor. She was experiencing severe, unbearable joint pain due to the condition. Therefore, the attending doctor advised her to undergo regular medical treatment for the above



W.P.No.32272 of 2024

WEB COPY

disease and she was also advised to take prescribed diet and physiotherapy treatment regularly without fail.

3. As the 2nd petitioner was staying in the college hostel at Mahe, she was not able to take regular treatment. She therefore, decided to take separate accommodation, outside the college campus so as to enable her to take regular treatment and for the said purpose Mr.Thomas and Mrs, Lilly Thomas, family friends acted as local guardians. Unfortunately, on 02.04.2024, the local guardian, Mr.Thomas passed away. The 2nd petitioner's studies were affected as without any assistance, she was not able to manage her treatment on her own.

4. The 1st petitioner, therefore, applied for transfer from the 2nd respondent institute, to the 3rd respondent institute. On the petitioner's request, the 2nd respondent issued a 'No Objection Certificate' on 22.07.2024, for migration of the 2nd petitioner. Similarly, the 3rd respondent also issued 'No Objection Certificate' on 29.07.2024, for accommodating the 2nd petitioner, in the second year BDS course in their institution.



W.P.No.32272 of 2024

WEB COPY

5. The 2nd respondent also issued a certificate certifying that the 2nd petitioner had a local guardian, while her parents resided in Puducherry. While so, by a letter dated 02.09.2024, the 3rd respondent informed the petitioner that the Executive Committee of Dental Council of India, declined to consider the petitioner's request for migration from the 2nd respondent institution to the 3rd respondent institution, on the ground that the applicant “had not furnished any valid documentary proof of her guardianship under Mr.Thomas, and her parents are alive”.

6. The petitioner submitted a detailed representation to the 3rd respondent on 04.09.2024. Along with the representation, the petitioner enclosed the supporting documents, including proof of local guardianship of Mr.Thomas. In the representation, the petitioner requested the 1st respondent to consider the migration of his daughter on compassionate grounds and to permit her transfer from the the 2nd respondent institution to the 3rd respondent institution. However, since no action was taken on the petitioner's representation, the petitioner filed the above writ petition for the aforesaid relief.



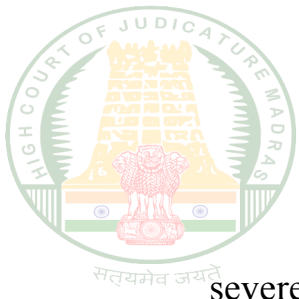
W.P.No.32272 of 2024

WEB COPY

7. The respondent filed a detailed counter denying the averments raised in the writ petition. According to the 1st respondent, the petitioner's request could not be considered as he had not furnished any valid proof of guardianship of Mr.Thomas. The 1st respondent further stated that migration from one institution to another institution was permissible only after the completion of the 1st year and at the beginning of the 2nd year of BDS course. However, as neither of these two conditions for granting migration were fulfilled, the petitioner's request was rejected. The respondents therefore, stated there were no merits in the writ petition and it was liable to be dismissed.

8. Heard both counsels and perused the records.

9. The 2nd petitioner was admitted to the BDS course in the 2nd respondent institution and while pursuing the course, she was diagnosed with “Rheumatic Pain” an Auto Immune disease. She also tested positive for the RA factor. Due to the disease, the 2nd petitioner experienced



W.P.No.32272 of 2024

WEB COPY

severe, unbearable joint pain and without regular treatment, prescribed diet and physiotherapy, her condition worsened. As she was unable to undergo regular treatment while staying in the hostel, the 1st petitioner decided to arrange separate accommodation for her treatment with the help of a family friend, Mr.Thomas, who acted as her local guardian. However, on 02.04.2024, Mr.Thomas passed away leaving the 2nd petitioner without any assistance or guidance to continue her treatment, in Mahe.

10. Under the circumstances, the 1st petitioner requested for transfer/migration of the 2nd petitioner from the 2nd respondent institution to the 3rd respondent institution. Both the 2nd and 3rd respondents issued no objection certificates, agreeing for the transfer/migration. However, when the request for migration was submitted to the 1st respondent for approval, it was rejected on the grounds that proof of Mr.Thomas's guardianship was not submitted and the 2nd petitioner's parents were alive. Only in the counter for the first time, it is stated that the 1st petitioner's request did not comply with the BDS Course Regulations,



W.P.No.32272 of 2024

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2017 of the Dental Council of India. The relevant BDS Regulations concerning Migration are as follows:-

“IV Migration:

(1) Migration from one dental college to other is not a right of a student. However, migration of students from one dental college to another dental college in India may be considered by the Dental Council of India. Only in exceptional cases on extreme compassionate ground, provided following criteria are fulfilled. Routine migrations on other ground shall not be allowed.

Note 1:

(i) Migration is permitted only in the beginning of II year BDS Course in recognized Institution.

(ii) All applications for migration shall be referred to Dental Council of India by college authorities. No Institution/University shall allow migrations directly without the prior approval of the Council.



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W.P.No.32272 of 2024

(iii) Council reserved the right, not to entertain any application which is not under the prescribed compassionate grounds and also to take independent decisions where applicant has been allowed to migrate without referring the same to the Council.

Note 2: Compassionate ground criteria:

- (i) Death of supporting guardian.*
- (ii) Disturbed conditions as declared by Government in the Dental College area.”*

11. A reading of the said regulation makes it clear that migration can be considered in exceptional cases on extreme compassionate grounds. The regulation also outlines the criteria for determining compassionate grounds. One such criterion is the death of the supporting guardian and it is recognized as a valid ground for migration under exceptional circumstances. However, the objection raised by the 1st respondent for grant of permission for the migration of the second petitioner was that valid supporting documents in proof of guardianship of Mr.Thomas were not furnished.



W.P.No.32272 of 2024

WEB COPY

12. It is pertinent to note here that the 2nd respondent institution itself issued a certificate certifying that Mr.Thomas was the petitioner's local guardian. The learned counsel for the 1st respondent contended that “supporting guardian” referred to in the regulations relates to a natural guardian or a Court appointed guardian and not a local guardian. I am afraid, when the regulations speak only of a supporting guardian, it cannot be restricted only to a natural guardian or Court appointed guardian. In my view giving such a narrow interpretation to the term “supporting guardian” will frustrate the purpose of the regulations, which is to help students to migrate on exceptional and extreme compassionate grounds. If the drafters of the regulation intended to restrict the meaning of the term “supporting guardian” to natural and Court appointed guardians, as contended by the learned counsel for the respondent, then the same would have been explicitly stated. By way of interpretation words cannot be added to a statute / regulation is a settled legal position.

13. Therefore, even a local guardian who supports the student will be included in the term “supporting guardian”. Moreover the reason

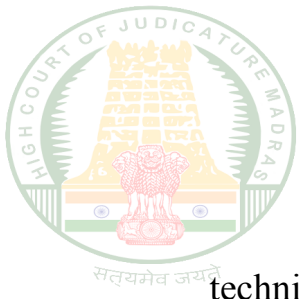


W.P.No.32272 of 2024

WEB COPY

for rejection of the petitioner's request was not that Mr.Thomas, was not a Court guardian or natural guardian, but that there was no proof of his guardianship. In any event, even in the counter no such plea is raised and therefore, I am not inclined to countenance it. In my view when the institution itself certified that Mr.Thomas, was a local guardian, the 1st respondent ought to have accepted the certificate as proof of local guardianship.

14. The facts also reveal that Mr.Thomas acted as a local guardian solely for the purpose of facilitating the treatment of the second petitioner and he supported her until his death. The request for migration was made only after the death of the local guardian, Mr.Thomas. The 1st respondent even without considering the 2nd respondent's certificate and oblivious of the circumstances under which migration was requested, mechanically rejected the request. When the regulations provide for migration on compassionate grounds, the 1st respondent, who is vested with the discretion to either grant or decline the migration ought to have considered the 2nd petitioner's case sympathetically without sitting on



W.P.No.32272 of 2024

WEB COPY

technicalities. It is pertinent to note here that the petitioner also produced the NOC from both the 2nd and 3rd respondents for migration. I am therefore not inclined to accept the 1st respondent's stand on the issue.

15. The other objection in the counter for rejection of the request was that the same ought to have been made in the beginning of the 2nd year. Here again I find that no such ground was raised while rejecting the request and hence I am not inclined to approve the same.

16. The apprehension if any of the 1st respondent that the petitioner's case may open the flood gates for migration by other students, in my view, is baseless because the regulation vests as discretion in the 1st respondent which discretion, normally would be exercised on an assessment of the facts prevalent in each case.

17. On a conspectus of the facts of the present case, the Dental Council of India's Regulations, and the petitioner's medical condition, I am inclined to issue a direction to the 1st respondent to pass orders approving the migration of the 2nd petitioner from the 2nd respondent institution to the 3rd respondent institution, within a period of four weeks



W.P.No.32272 of 2024

from the date of receipt of a copy of this order.

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18. With the above directions, this Writ Petition is allowed.

Consequently, the connected Miscellaneous Petition is closed. No Costs.

19.03.2025

rpl

Index: Yes/No

Speaking/Non Speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The Dental Council of India,
National Dental Commission Building,
Plot No.14, Sector-9,
R.K.Puram, New Delhi-110022.

2.The Principal,
Mahe Institute of Dental Sciences & Hospital,
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N.MALA, J.

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WEB COPY



W.P.No.32272 of 2024

W.P.No.32272 of 2024

19.03.2025