

(2015) 09 MAD CK 0319

In the Madras High Court

Case No : Writ Petition No. 27252 of 2014, M.P. Nos. 1 to 3 of 2014, M.P. Nos. 1 and 2 of 2015

K. Panjamurthy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Citation : (2015) 09 MAD CK 0319

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : S. Sathia Chandran, for the Appellant; S.V. Durai Solaimalai, Additional Government Pleader, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J—The petitioner herein is a student of Dr.Ambedkar Government Law College, Chennai. The allegation against him is that while writing eighth semester examination in May 2014, he misbehaved with the investigating officer who found him having in possession of bits in his pant pocket. As a result, the results of the eighth semester examination as well as results of the petitioner for all the papers were withheld. Thereafter, the petitioner gave a representation on 11.08.2014 to the third respondent requesting him to publish his results. He was asked to appear before the disciplinary committee for enquiry on 03.09.2014. The Disciplinary Committee proceeded with the disciplinary enquiry and submitted a report to the third respondent. Based upon the report of disciplinary committee a decision was made to cancel examination written by him for eighth semester and debarred him for one more semester. The petitioner earlier filed Writ Petition in W.P. No. 26249 of 2014 before this Court. This Court along with W.P. Nos. 26250 and 26251 of 2014 which has been filed by the similarly placed persons that of the petitioner that of the petitioner, by an order dated 07.10.2015, has passed the following order:

"As per the directions issued on 25.09.2014, the writ petitioners are present in

Court. They have realised their folly and that their first priority should be to study well in college and perform well. Therefore, I am of the view that better method of streamlining their conduct and making them come around, is to permit them to continue in Madras and this Court can keep a watch on their performance in the forthcoming examination. Therefore, the Respondents are directed to permit the petitioners to continue their study in Madras Law College and attend the classes. The petitioners should do well in the examinations. Since the examinations are scheduled to be commenced from 2nd November, 2014, the writ petitions are directed to be posted on 24.11.2014. If the examinations continue beyond the said date, the petitioners need not appear on that day. But, the performance of the petitioners in the examination will be watched."

2. The impugned order dated 23.09.2014 was passed before the said order was passed by this Court, wherein it has been stated as follows:

" The authorities of the University have considered the reported malpractice in respect of Thiru.Panjamurthy K (Reg No. 510A0118) candidate of 5 year B.A.,B.L. Degree Examinations, May 2014 at Dr.Ambedkar Government Law College, Chennai. The authorities decided to cancel all the papers written in this session and debar one more session. He is eligible to appear for the May 2015 Examinations."

3. Challenging the same, the present Writ Petition is filed.

4. Learned counsel for the petitioner primarily contended that the principles of Natural Justice have not been followed and invigilator has not been examined and the report of the disciplinary committee has not been furnished to the petitioner. The impugned order does not disclose any reason preceded by appropriate charges. A reliance has been made on the following decisions:

1. S.Ganesh Ram Vs The Vice Chancellor & Others reported in CDJ 2014 MHC 050

2. V.Sunil Kumar Kallempudi Vs Anna University reported in (2006) 2 M.L.J. 741

3. Registrar Vs. Annavajjala Aghamaarsh(2015) 2 MLJ 36 .

5. Mr.V.M.G. Ramakkannan, the learned counsel for the University submits that principles of Natural Justice were indeed followed as per the rules and as per the Judgment of this Court in W.P. Nos. 27115 of 2008 etc., dated 1.12.2008. The petitioner was allowed to participate in the enquiry conducted by the disciplinary committee preceded by show cause notice in which he has not given any reply. Thus, no interference is required.

6. The same facts have been reiterated by the learned Additional Government Pleader appearing for the respondents 1 to 3. A reliance has been made on the regulation which states that appropriate punishment would be cancellation of examination as well as debarring for one more semester.

7. It is stated that the petitioner has completed the ninth and tenth semester. Therefore, at time this Court does not want to put the clock back. The only

question is with respect of the 8th semester. The records produced by the learned counsel for the university would go to show that the petitioner has passed in three examinations out of four. This Court can infer that the charge against the petitioner is one of the misbehaviour against the invigilator. There is nothing on record to show that invigilator has been examined or the one who made complaint about misbehaviour. In the decision of the Division Bench of this Court reported in Registrar Vs. Annavajjala Aghamaarsh(2015) 2 MLJ 36 , it is stated as follows:

26. In so far as the present cases are concerned, formal charge sheets containing imputations/accusations against the 1st Respondents (Writ petitioners) were not issued by the Appellant alleging commission of misconduct/malpractice, after all a charge sheet is not an order and a reply is to be called for and as and when the charge sheet is issued to the concerned deviant/delinquent as the case may be. Moreover, a charge sheet is a prima facie material constituting the misconduct/offence committed by a certain individual/individuals for proceeding further in the matter.

27. It cannot be gainsaid that the object of holding an enquiry is to protect person/persons from arbitrary and capricious exercise of power by the concerned authority and from imposing punishments in violation of principles of natural justice.

28. Be that as it may, on a careful consideration of respective contentions and in view of the fact that the 1st Respondent (in all the Writ Appeals) had taken a plea that notice of charges levelled against them were not provided and the proceedings of the Enquiry Report were not served on them and also the order of expulsion passed by the Appellant was issued without conducting any proper enquiry and by violating the principles of natural justice and also this Court, on an overall assessment of the entire attendant facts and circumstances of the present case in an integral manner, without expressing any opinion one way or other on the merits of the subject matter in issue and also not delving deep into the same, simpliciter, to prevent an aberration of justice and to promote substantial cause of justice, disposes of the Writ Appeals, by directing the Appellant/Institute to conduct a de novo enquiry against the 1st Respondent in all the Writ Appeals, in the manner known to law and in accordance with law, of course by adhering to the principles of natural justice, by providing necessary opportunities to them and also by following the well established enquiry procedures. Viewed in that perspective, this Court is of the considered view that the observations of the Learned Single Judge, in para 16 of the order dated 11.09.2014, to the effect that "... At the most, they can be only re-admitted to the first year of the course for the current academic year. Hence, the respondents are directed to admit the petitioners" are hereby set aside by this Court, in furtherance of substantial cause of justice. Liberty is granted to the 1st Respondent (in all the Writ Appeals) to raise all factual and legal pleas before the concerned authority at the time of conducting de novo enquiry and to seek

appropriate remedy, if they so desire/advised. No costs. Consequently, connected Miscellaneous Petitions are closed."

8. This Court is not inclined to remit the matter back at this point of time. The petitioner has suffered sufficiently. In the normal course, he would have completed the failed paper at this time. This Court cannot give him pass mark as he has failed in one paper for which a chance can be given to rewrite that subject. In any case, fate of the 9th Semester examination written by him is unknown. If the petitioner fails in those paper he has to re write the same. Thus even otherwise that would be the sufficient punishment for the petitioner. The learned counsel for the petitioner submitted that the petitioner who is present before this Court would move forward by making an endeavour to re-write the examination of the failed paper and then to become a good lawyer of repute.

9. Considering the facts and circumstances of the case, this Court is not inclined to continue the stigma that is prevailing as itself today, instead an opportunity is to be given to the petitioner to become a better citizen and a good lawyer.

10. Accordingly, this Writ Petition is allowed and the order impugned 23.09.2014 passed by the second respondent is set aside and the respondents are directed to publish the results of the petitioner for the eight, ninth and tenth semester,,within a period of two weeks from the date of receipt of a copy of this order, considering the peculiar facts of the case and since the petitioner has already suffered and all other students who have studied along with him might have passed by this time and the respondents are also directed to give opportunity of writing the arrears papers, if any, after the results are published. Consequently, connected M.P."s are closed.