

(2003) 12 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No. 24453 of 2001 (Edn-Ex)

R. Srikanth Reddy

APPELLANT

Vs

The Registrar (Evaluation) and Others

RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Citation : (2004) ILR (Kar) 684 : (2004) 1 KCCR 92 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : A.N. Venugopala Gowda, for the Appellant; R.U. Goulay, for R1 and R3, Ashok B. Hinchigeri, for R2 and B. Manohar, AGA for R4, for the Respondent

Judgement

Patil, J.—The petitioner, assailing the legality and validity of the impugned order dated 7th June 2001 on the file of the first respondent in case No. KU/EXAM/PROF.N. 1/ L & M/130 vide Annexure G, has presented the instant Writ Petition.

2. The brief facts of the case are that the petitioner is an MBBS student studying in the second respondent - College. After the petitioner appeared for the Examination, the first respondent University, has declared his result as "passed" and issued the marks card on 24th August 2000 vide Annexure A. Thereafter, the provisional registration certificate was issued by the Karnataka Medical Council by its register dated 24th October 2000 and the second respondent College has also issued the Certificate for successful completion of Bachelor of Medicine, Bachelor of Surgery (MBBS) on 26th May 2001. After completion of the MBBS course, the petitioner joined the house-man ship in the second respondent - College. When he was prosecuting his housemanship, the petitioner filed an application for re-totalling and revaluation of OBG and surgery subjects. When the request of the petitioner was under consideration, the first respondent found that there is some insertion in the answer scripts pertaining to the petitioner. Accordingly, proceedings were initiated by the University regarding mal practice, alleged to have been committed by the petitioner. Accordingly, enquiry was conducted and an order was passed by the first respondent on 7th June 2001

vide Annexure G, wherein the petitioner has been imposed punishment by cancelling the petitioner's performance in the present (then) Examination, and debarring him from appearing for five consecutive Examinations to be held in December 2000, May 2001, December 2001, May 2002 and December 2002. Further, it was made clear that the petitioner was entitled to appear for the May 2003 Examination. Feeling aggrieved by the impugned order passed by the first respondent, the petitioner has presented this Writ Petition.

3. The Writ Petition filed by the petitioner had come up for preliminary hearing before this Court on 26th June 2001 and the Counsel for the first respondent was directed to take notice for Respondent No. 1 and emergent notice was ordered to Respondent No. 2 and an interim direction was issued to the respondents to permit the petitioner to continue his house-man ship, subject to further orders from the Court. In pursuance of the interim order granted by this Court, on 26th June 2001, the petitioner continued his house-man ship and completed the same. It is the further case of the petitioner that, during the pendency of the Writ Petition, the first respondent has reconsidered/reviewed the punishment imposed on the petitioner and modified the punishment imposed earlier, by its order dated 30th January 2002 stating that, the petitioner is eligible to take up the Examination to be held in the month of May 2002 and the same was communicated to the second respondent - College to that effect. In view of the modified order passed by the first respondent - University, dated 30th January 2002, referred above, this Court, after hearing both sides, permitted the petitioner to appear for the Examination subject to the result of the Writ Petition. In pursuance of the interim order granted by this Court, the petitioner appeared for the examination and the result was not announced. Thereafter, the main matter had come up for orders on 16th July 2003 and this Court, after hearing and taking into consideration, the stand taken by the petitioner in the application, directed the respondent - University to declare the result of the Examinations appeared for by the petitioner and the same would be subject to the result of the Writ Petition. In pursuance of the direction issued by this Court, the result of the petitioner was declared as "passed" in the said subject.

4. The principal submission canvassed by the learned Counsel appearing for the petitioner is that, in pursuance of the interim order granted by this Court and in view of the subsequent development that has taken place, the petitioner has completed his house-man ship during the pendency of the Writ Petition. But, the respondents have not issued the Completion Certificate of housemanship and therefore, appropriate direction may be issued to the respondents to issue the Completion Certificate. To substantiate his case, he submitted that, the second respondent - College has also sent a communication to the registrar of the University, requesting as to whether the Government has considered the request of the petitioner for issuing internship Certificate. The said request is pending adjudication before the concerned authority.

5. It is not in dispute that the petitioner has appeared for the Examination and

has been declared "passed". Subsequently, when the petitioner has applied for re-totalling and re-valuation of the paper, since it was found that, there were certain insertions in the answer scripts pertaining to the petitioner, the matter was referred to the Mal Practices Committee. The Committee in turn has taken a decision recommending imposition of punishment against the petitioner. Having regard to the facts and circumstances of the case, the learned Counsel appearing for the petitioner submitted that, the petitioner should not be penalized for no fault of his. Therefore, he submitted that, appropriate direction may be issued to the University to issue the Completion Certificate and also the Degree Certificate.

6. Per contra, the learned Counsel appearing for the respondents, inter alia, contended that justified the decision taken by the University. He vehemently submitted that, the decision taken by the University having regard to the gross error committed by the concerned and the petitioner is, only after conducting a thorough enquiry on the recommendation of the Mal Practices Enquiry Committee and the same has been accepted by the Syndicate. Further, he submitted on instructions that, the request of the petitioner will be considered subject to fulfilling the completion of the house-manship after obtaining necessary clarification from the College authorities. The Counsel for the second respondent submitted on instructions that, the petitioner has completed the house-man ship by virtue of the interim order granted by this Court and the request of the petitioner has not been considered because of the pendency of this petition before the Court and also because of the fact that, the second respondent had sought for clarification from the University for considering the request of the petitioner.

7. I have heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondents. After careful perusal of the material available on record and after thorough evaluation of the material available on file, with the assistance of the learned Counsel appearing for the parties, in view of the modification order passed by the University and the interim direction issued by this Court, the petitioner has appeared for the Examination and passed in the failed subject. Therefore, I am of the view that, the prayer sought for by the petitioner does not survive for consideration. Hence, it is liable to be dismissed as having become infructuous.

8. The only question that arises for consideration in the instant Writ Petition is, as to whether the petitioner is entitled for issue of Completion Certificate of the houseman ship by virtue of the interim order granted by this Court and whether, during the pendency of the Writ Petition, the petitioner is entitled to obtain the necessary Completion Certificate from the respondents? It is not in dispute that, the petitioner has appeared for the Examination and completed his MBBS course and his result also has been announced and necessary marks card has also been issued and thereafter Provisional Certificate is also issued by the competent authority to the petitioner and accordingly, the petitioner has joined the house-man ship in the second respondent - College. When he was prosecuting his

house-man ship, he filed an application for re-totalling and re-valuation of the third phase OBG and surgery subjects. It appears that, the request of the petitioner is under consideration and it is found by the respondent - University that, there is some mal practice committed by the petitioner and others and therefore, the University is constrained to refer the matter to the Enquiry Committee. It is seen that the Enquiry Committee, in turn, has taken a decision and imposed the penalty. Against the said order, the petitioner has filed the Writ Petition and obtained the interim order permitting him to continue his house-man ship in the second respondent - College. It is significant to note here itself that, the University, after realising the punishment imposed against the petitioner, during the pendency of the instant Writ Petition, has issued the modified the order dated 30th January 2002, stating that the petitioner is eligible to appear for OBG and Surgery subjects pertaining to III phase in the month of May 2002. In pursuance of the said notification order issued by the University, the petitioner has filed an interlocutory Application in No. I.A.I/2003. This Court after hearing both sides and after taking into consideration the facts and circumstances of the case and the career of the student, has permitted the petitioner to appear in the failed subject and thereafter, directed to announce the result. The result of the petitioner has been announced and declared as "passed".

9. Yet another reason as to why the respondent - University has to consider the request of the petitioner for issue of Completion Certificate is, in view of the well settled principles of law laid down by the Apex Court and this Court. In host of judgments, it has been observed that, if a candidate, by virtue of the interim order granted by this Court, has completed the course, such candidate is entitled for declaration of result and issue of necessary Certificates. In the instant case, by virtue of the interim order granted by this Court, the petitioner has completed the course and his result has been declared as "passed". Therefore, the University cannot make discrimination between the students who have completed the course as per the regulations of the University and the students who have completed the course by virtue of the interim order granted by this Court. Further, it is significant to note that the intention of the University is ultimately to maintain academic excellence and to impose a just and reasonable punishment to show that, the students should not repeat the same in future and it is definitely not the intention of any authority to ruin the career of the students. If all these factors are taken into consideration, the principle laid down by the Division Bench of this Court and the Apex Court squarely applies to the facts and circumstances of the instant case.

Therefore, in my considered view, taking into consideration the totality of the case in hand, it is just and proper to issue appropriate direction to the respondent - University to consider the request of the petitioner for issue of Completion Certificate as expeditiously as possible, within the reasonable time to be fixed by this Court.

10. Having regard to the facts and circumstances of the case, as stated above,

the Writ Petition filed by the petitioner stands disposed of with the following directions.

1) The second respondent - College herein is directed to send the completed internship Certificate of the petitioner to the first respondent - University, as expeditiously as possible, within one week from the date of receipt of a copy of this order.

ii) After receipt of the completed Internship Certificate sent by the College, the first respondent - University herein is directed to consider the request of the petitioner and issue necessary completion of the House-manship Certificate to the petitioner.

iii) If, in cases the petitioner files an application for issue of the Degree Certificate, the said request may be considered and Degree Certificate may be issued to the petitioner, if he is otherwise found eligible.

12. For the foregoing reasons, the Writ Petition filed by the petitioner stands disposed of.