

(2015) 09 MAD CK 0332

In the Madras High Court

Case No : Writ Petition No. 26130/2015, Cont. P. No. 1835/2015, M.P. Nos. 1, 2 and 3 of 2015

S. Deepa

APPELLANT

Vs

Tamil Nadu Dr. Ambedkar Law University and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Contempt of Courts Act, 1971 — Section 11

Citation : (2015) 5 CTC 793 : (2015) 4 LLN 147

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : N.G.R. Prasad for R. Thirumoorthy, for the Appellant; Aravind Pandian, AAG assisted by Nallathambi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

R. Mahadevan, J—The Writ Petition is filed to issue a Writ of Mandamus, directing the respondents to allow the petitioner to continue her III Year B.A.B.L. (Hons) in Five Year Integrated Degree Course on condition that to clear First Year arrear papers in the forthcoming examination.

2. The Contempt Petition is filed to punish the respondents under Section 11 of the Contempt of Courts Act, 1971 for deliberately and wilfully disobeying the order of this court dated 20.08.2015 made in MP.No. 1/2015 in WP.No. 26130 of 2015.

3. The brief facts of the case are as follows:-

The petitioner is a Law student, studying B.A.B.L (Hons), a Five Year Integrated Law Degree Course in the Tamil Nadu Dr.Ambedkar Law University. The petitioner joined the course in the academic year 2013-14. Each year is divided into two semesters. The petitioner appeared for the first semester exams during November 2013-14 and passed two out of five papers. She had failed in Torts, Legal Method and History-1. She undertook the arrears papers along with her

second semester papers in May 2014. However, her results were withheld, as she had failed to pay the condonation fee for lack of attendance. After the payment of the condonation fee, her results were published and a mark sheet was given indicating that she had failed in Legal Methods, History -I and Sociology-I. As per the petitioner's claim, she was informed that she had passed in legal method and failed in torts as per the statement disclosing her marks, however in the marksheet, it was indicated as if she passed in Torts and failed in Legal Method. As per the instructions of the college authorities, she gave a representation, requesting to furnish a revised mark sheet along with her original mark sheet. The Director had also forwarded her request to the Controller of Examinations. Subsequently, she applied for the second year 1st semester examination along with arrears papers in the first year. A hall ticket was also issued to her indicating the subjects including torts. However, she was not permitted to write the Torts paper as the examiner informed her that she had already passed in Torts. Subsequently, she requested the 2nd respondent to issue the mark statement for Torts subject. Thereafter, she appeared for the second semester papers in the second year. She paid the admission fees for the third year on 05.08.2015 and attended the classes for few days. However, the 2nd respondent informed her that she cannot attend the classes, as she had not cleared all the subjects of the first year. Under these circumstances, the petitioner has approached this court by filing this Writ Petition for appropriate directions

4. The petitioner has also filed two miscellaneous petitions in MP.Nos. 1 and 2 of 2015, along with the main Writ petition, seeking for interim directions, namely, (1) to permit her to attend the classes and (2) to direct the respondents to produce the original tabulated mark statement in respect of the petitioner.

5. At the time of admission, this court granted interim direction, directing the respondents to permit the petitioner to attend the third year classes. Since the same was not complied with, the petitioner has come up with the Contempt Petition.

6. Refuting the charges, the respondent has filed a counter affidavit, contending that there is no error in the mark statement and the 2nd respondent has forwarded the request letter of the petitioner without verification and it cannot be the basis of any claim. The requisition of the petitioner was turned down and the mark statement was returned on 22.12.2014. The petitioner is misleading the facts to suit her case. The respondents have also claimed that instead of paying the fees for legal method, she had paid the fees for torts and hence, she was not permitted to write the examination. Further, she had also failed in Sociology-I paper in the second semester. Further, she had voluntarily remitted the admission fees in the Bank for the third year without getting the counter signature from the University and hence, she has not been admitted to the third year and she was not permitted to attend the classes even for a single day. As per the promotion scheme in the regulations of the University in vogue from

1997 onwards, for promotion of a student from 2nd year to 3rd year of the course, the student must have completed all the papers in the 1st and 2nd semesters. The respondent also contended that the petitioner with a group of persons armed with the interim directions of this court threatened the office of the registrar and also misbehaved with the 1st and 3rd respondents. The respondent has further contended that the petitioner has never taken any steps to clear the legal Methods paper and in view of the policy decision of the University regarding the promotion, the petitioner cannot be permitted to attend the third year classes.

7. The learned counsel for the petitioner vehemently contended that the petitioner was informed that she has passed in the Legal Method paper while the results were published and that the stand now taken by the respondents is vindictive. The learned counsel also contended that it is only because she was informed by the college authorities that she had passed in legal Methods and failed in torts, she had applied for writing torts paper. Even in the hall ticket, the subject code of the torts paper was mentioned. The learned counsel also contended that in view of the fact that the petitioner was informed that she had failed only in torts, she presumed to have failed in torts. The learned counsel also contended that such a regulation is arbitrary. The learned counsel also contended that having accepted the fees for the third year and permitted the petitioner to attend the class for few days, she cannot be denied admission. The learned counsel further contended that the confusion has arisen purely because of the contradictory communications of the authorities and therefore, the petitioner cannot be made to suffer. In support of his contention, the learned counsel has relied upon the decision of the Honourable Supreme Court reported in *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, AIR 1989 SC 823 : (1989) 1 JT 177 : (1989) 1 SCALE 166 : (1989) 1 SCC 399 : (1989) 1 SCR 230 : (1989) 1 UJ 322 . The learned counsel further contended that despite the orders of this court, the respondents have not permitted the petitioner to attend the classes, thereby wilfully disobeyed the orders of this court and committed contempt of court and hence, they ought to be punished.

8. Per contra, the learned Additional Advocate General, appearing for the respondents has contended that the regulations have been in force from 1997 onwards and many students, who have not complied with the promotion scheme, have been detained and any such permission would disrupt the system and it is the policy decision of the University to formulate such a scheme and the same has to be adhered to by all the students. The petitioner has misled the court by giving false facts. The petitioner was never admitted to the third year and the receipt was also not admitted. Further, the petitioner has admittedly not cleared the legal Methods till date and never took any steps for the same. The learned Additional Advocate General also contended that after the interim orders of this court, the petitioner along with a group of persons misbehaved with the Staff of the University and threatened the 1st and 3rd respondents and that the story of having passed in legal Methods and failed in torts is created by the petitioner and

in reality and as evinced in the mark sheet, she had failed only in legal Methods. No mark sheet indicating that the petitioner passed in Legal Methods was issued. The learned counsel also pointed out that the orders of this court was brought to the knowledge of the authorities on 21.08.2015, a Friday. On 24.08.2015, the papers were collected and the vacate stay application with correct facts were placed before this court on 25.08.2015 and hence there is no contempt. The learned Additional Advocate General also pointed out that the letter of the 2nd respondent forwarding the request of the petitioner does not have any force and in fact, after verification, the petitioner was informed that there is no change in her mark statements vide letter dated 20.12.2014 and the same was received by her on 29.12.2014. Having not cleared in all the subjects of the first year, the petitioner is not entitled to be admitted for the third year and relying upon the order of this Court made in WP.Nos. 28687 to 28689 of 2014, sought for dismissal of this Writ Petition and the Contempt Petition.

9. This Court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

10. The theory of presumption is always based on justifiable foundation. It can be invoked to put the burden on the opposite party to prove the opposite. This is a case, where the petitioner has presumed to have cleared legal Methods. The presumption has been supported by her requisition letter to interchange the marks. The said letter has been mechanically forwarded by the 2nd respondent. Instead of presumption, the best recourse the petitioner could have taken is to resort to the theory of assertion at the earliest point of time.

11. Upon perusal of the records, it is seen that admittedly the petitioner has failed in legal Methods as found in the mark statement. Even though the petitioner has claimed that she was informed that she had passed in legal Methods and a mark statement was revealed to that effect in para 2 of the affidavit, no such statement has been furnished before this court. Therefore, even the theory of presumption is without any foundation. As rightly pointed out by the Learned Additional Advocate General, the petitioner could have ascertained the status of legal Methods even before payment of examination fees for writing the third semester papers. It is also clear from the records that the petitioner was affirmed that she had failed only in legal Methods in December 2014 itself, which the petitioner has not enclosed here. At least, after that, the petitioner must have taken steps to write the arrear paper along with her fourth semester papers.

12. Now coming to the regulations, the very basis for break system is Regulation 6: Promotion Scheme, which reads as under:-

"6. Promotion Scheme:-

I. B.A.B.L., (Hons) and B.Com. B.L., (Hons) Five Year Integrated Degree Course.

At the School of Excellence in Law, the Promotion Scheme to be followed for the

B.A.B.L., (Hons) and B.Com. B.L. (Hons) Five Year Integrated Degree Course is as follows:-

A student will be eligible for promotion from 1st year to 2nd year irrespective of arrears in the 1st and 2nd Semester Papers.

For promotion of a student from 2nd year to 3rd year of the course, the student must have completed successfully all the papers in the 1st and 2nd semesters.

Similarly for promotion of a student from 3rd year to 4th year of the Course, the student must have completed successfully all the papers in the 3rd and 4th Semesters.

Similarly for promotion of a student from 4th year to 5th year of the Course, the student must have completed successfully all the papers in the 5th and 6th Semesters."

13. The learned Additional Advocate General has relied upon the order of this court dated 9.12.2014 made in W.P. Nos. 28687 to 28689 of 2014 to contend that under similar circumstances, this court has dismissed the writ petitions relating to another University. It is relevant to extract relevant paragraphs of the said order as under:-

"5. Unfortunately, the petitioners herein appear to have failed in one or more subjects in one or more of the first 9 trimesters. Therefore, they were not permitted to move over to the 4th year of the Course. Hence, they have come up with the above writ petitions seeking the issue of a writ of Mandamus to direct the respondent-University to permit them to attend the 4th year Integrated B.A., B.L. (Honours) Degree Course and allow them to complete the 5 year Course without imposing the Break System.

6. But, unfortunately for the petitioners, the Break System prescribed by the respondent-University was already upheld by me in two other writ petitions, one in W.P. No. 31718 of 2013 dated 10.9.2014 [J.Prajoy v. Bar Council of India] and another in W.P. No. 3444 of 2014 dated 19.9.2014 [V.G. Arun v. Bar Council of India]. The purpose of the Break System is to ensure that it is only those who become qualified to acquire a basic Degree in Arts/Science/Commerce, can be permitted to move over to the 4th year of the Course.

11. All the petitioners herein got admitted to the 5 year Integrated Law Course, only when the above Regulation was in force. At the time of admission, the students also filed a declaration that they would conform strictly to all the Rules and Regulations. A declaration is also signed by the parents of the students to the same effect. Therefore, apart from the fact that the Regulation is actually for enhancing the academic standards and that the students have no right to question the fixation of higher academic standards, the petitioners and their parents are also estopped from seeking to destroy the Break System. Therefore, the relief sought by the petitioners to set at naught the Break System cannot be granted, both in the interest of the students and in the interest of the University.

14. The petitioners cannot feign ignorance of the above Regulation. The above Regulation was brought in pursuance of a resolution of the Academic Council and it has taken effect from the academic year 2011-12. Therefore, the petitioners cannot contend that the respondent-University should not demand overall minimum of 50% in the aggregate of the written examination and internal assessment taken together, apart from demanding a pass percentage in the theory and the internal assessment separately."

The above judgment is squarely applicable to the facts of the case. The introduction of break system will only improve the educational standards. It is for the university to impose such restrictions to ensure higher standards and it cannot be termed as arbitrary and unconstitutional. Such a break system would not only improve the standards, but would also discipline the students and prevent them from becoming procrastinates in their life. The University also has regulations to condone the deficiency in attendance. It is also advisable that the University takes steps to ensure that the students do not absent themselves without any justification by communicating with the parents of the students. As observed by this court in a batch of Writ Petitions in W.P Nos. 28687 to 28689/14, the parents of the students must ensure that the students attend the classes properly and encourage them to study well.

14. The learned counsel for the petitioner has relied upon the the decision of the Honourable Supreme Court reported in Ashok Chand Singhvi Vs. University of Jodhpur and Others, AIR 1989 SC 823 : (1989) 1 JT 177 : (1989) 1 SCALE 166 : (1989) 1 SCC 399 : (1989) 1 SCR 230 : (1989) 1 UJ 322 to contend that for the fault of the authorities, the student must not be made to suffer. In the said decision, it is held as under:-

17. It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention. It has been already noticed that both the Dean and the Vice-Chancellor considered the objections raised by the Officer-inCharge, Admissions, and thereafter direction for admitting the appellant was made. When after considering all facts and circumstances and also the objections by the office to the admission of a candidate, the Vice-Chancellor directs the admission of such a candidate, such admission could not be said to have been made through mistake. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. In this connection, we may refer to a decision of this Court in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, AIR 1986 SC 1448 : (1986) 1 SCALE 981 : (1986) 1 SCC 740 Supp : (1986) SCC 740 Supp : (1986) 2 SCR 912 : (1986) 2 UJ 639 . In that case, the appellants were admitted to certain private engineering colleges for the B.E. Degree Course, although they were not eligible for admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At the same time, this Court took the

view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice- Chancellor and the Dean of the Faculty of Engineering."

In the above case, the student was not at fault and the University had committed a mistake. In the present case, this court does not find any mistake on the part of the University. The trouble is self-invited by the petitioner. She herself invoked the presumptive theory and has created this clutter. Her presumption is in stark contrast to the reality. With regard to the fact that she had paid the fees for the third year, it is to be noted that anyone can remit the fees with the challan in the bank and it cannot give any right to the petitioner, unless she has complied with the conditions in regulations. The petitioner was aware that she had failed in legal Methods on 27.06.2014 itself. But, she has never made any queries regarding the said paper even after her request to interchange the mark was turned down. Nevertheless, she did not even attempt to write the paper again. It is also worthwhile to mention here that the recommendation of the 2nd respondent for interchanging the marks also would not confer any right to the petitioner. The actual marks secured by the petitioner cannot be ignored just because there has been a recommendation by a Director. The 2nd respondent, occupying a very responsible post ought not to have issued such a letter without verification. Such acts are regrettable and would pay way for frivolous litigations like the present one.

15. In the present case, the results of the petitioner were after the second semester exams, initially withheld as she did not have the required attendance. She had to pay the condonation fee to get her results published. It reflects that she was irregular to the College. Upon perusal of the mark statements, it is evident that she has cleared only the fourth semester papers in first attempt. In addition, she has also behaved boisterously with the authorities without even keeping in mind that she has to continue her education in the very same Institution. Hence, this court, under these circumstances, is not inclined to grant any relief to the petitioner in the Writ Petition and accordingly, this Writ Petition is liable to be dismissed.

16. In so far as the Contempt Petition is concerned, it can be seen that the respondents have approached this court at the earliest possible time to place the true facts. The interim orders were granted by this court on 20.08.2015 and the application to vacate the direction was filed on 25.08.2015 itself after collecting the papers on 24.08.2015. In view of the above facts and considering that there is no merit in the Writ Petition, this Contempt Petition is also liable to be

dismissed.

17. In the result, the Writ Petition and the Contempt Petition are dismissed. No costs. Consequently, the connected MPs are closed.