

Ramesh Babu Vs. the Controller of Examination, Tamil Nadu M.G.R. Medical University, Chennai and Another

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Court : Chennai Madurai

Decided On : Aug-30-2012

Judge : S. Manikumar

Appeal No. : W.P.(MD).No.1919 of 2009 and M.P.(MD).No.1 of 2009

Appellant : Ramesh Babu

Respondent : The Controller of Examination, Tamil Nadu M.G.R. Medical University, Chennai and Another

Advocate for Pet/Ap. : For the Petitioners: M. Karunanithi for M/s. S. Deenadhayan, Advocates. For the Respondents: R1, Mrs. J. Padmavathi Devi, Advocate, R2, T.S. Mohammed Mohideen, Addl. Govt. Pleader.

Judgement :

(Prayer: Writ petition filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Mandamus directing the respondents herein to allow the petitioner to complete the Course of P.G. in D.A. (Diploma in Anesthesia) within the Academic year (2007-2009).

1. An in-service M.B.B.S. Doctor has applied for admission to Post Graduate Diploma in Anesthesia (DA) for the academic year 2007-2008. He has been admitted to Thanjavur Medical College, Thanjavur. According to the petitioner, he

has been regular in attending the classes. However, however, due to illness, for some period, he did not attend the classes, for which he has produced medical certificate to the Head of the Department. The petitioner has further submitted that due to some internal departmental problems between the Heads of the Departments, the Medical Certificate produced by him was wantonly not produced by the Head of the Department (Anesthesia) Mr. Dr. Muthukumaran to the college office. Practical examinations was due to commence on 16.03.2009. ON 13.03.2009, hall tickets were issued to the candidates. To his shock, the petitioner was not issued with any hall ticket. Therefore, he was constrained to approach this Court for a Mandamus, directing the respondents to allow the petitioner to complete the Post graduate Diploma (Anesthesia). On 14.04.2009, when the matter came up for hearing, this Court directed the respondents namely, the Controller of Examinations, Tamil Nadu Dr. MGR Medical University, Chennai, the Dean, Thanjavur Medical College, Thanjavur to permit the petitioner to take up the examination commencing from 16.03.2009 and further directed the results need not be published. Unfortunately, the Writ Petition has been listed after a period of 3 years and 5 months for final disposal. The interim direction has been granted by me on 14.2.2009, and that the petitioner ought to have taken effective steps to expedite the disposal.

2. A counter affidavit has been filed by the Dean, Thanjavur Medical College, Thanjavur to the effect that the petitioner did not possess sufficient attendance as prescribed by Tamil nadu Dr. MGR Medical University, Chennai and that therefore he was not issued with hall ticket to write the exam scheduled in March 2009. According to him, as per the rules of the University, the student should possess a minimum of 80% of attendance, whereas, the petitioner had only 60% of attendance. He also submitted that the petitioner did not produce any medical certificate, for the period of absence. The Dean, Thanjavur Medical College, Thanjavur has further submitted that merely because, salary for the entire course had been paid to the petitioner, that does not mean that he had attended all the classes. According to him, the petitioner is not entitled to the relief sought for in the Writ Petition.

3. The University has submitted that the second respondent/college had sent the attendance particulars of the petitioner to the University. As per the schedule, the petitioner was eligible to appear for the final examination to be held in March 2009 in three papers. On verification the attendance particulars, it was found that the petitioner had obtained only 60% of the attendance as against 80%, as prescribed by the University. Since the petitioner was lacking attendance, the University did not issue the hall ticket. It is the further case of Tamil Nadu Dr. M.G.R. Medical University, Chennai that the reason, for non-issuing the Hall Ticket, was also communicated to the second respondent/Medical Collage. It is stated that as per the directions of this Court, the petitioner has been permitted to take up the examinations. On the aspect of condonation of attendance, the Registrar, Tamil Nadu Dr. MGR Medical University, Chennai has stated that there is no provision in the regulations to condone the attendance for Post graduate diploma course in Anesthesia. Therefore, the first respondent has prayed to cancel the examination in respect of the petitioner.

4. When the matter came up for hearing, an additional typed-set of papers has been filed on behalf of the petitioner. Inviting the attention of this Court to the contents thereof, Mr. Karunanithi, learned counsel for the petitioner, submitted that being aggrieved by the irregularities committed by the then Head of the Department (Anesthesia), Mr. Dr. Muthukumaran, in the attendance registers, done with a malafide intention, to prevent the petitioner from taking up the final examination, a complaint was lodged with the Inspector of Police, Thanjavur Medical College Police Station, Thanjavur. Finding prima facie, it was taken up on record in Crime No.311/09, under Sections 465, 466 and 167 r/w 34 of IPC. He further submitted that lateron, the crime registered was transferred to District Crime Branch, Thanjavur. Inviting the attention of this Court to the details of investigation conducted by the District Crime Branch, Thanjavur, statements recorded from various persons, including the Dean of Thanjavur Medical College, Thanjavur, learned counsel for the petitioner submitted that though Dr. R. Thenmozhi, Chief Doctor, Anesthesia Department, Thanjavur Medical College, Thanjavur was examined as one of the witnesses under Section 161(3) of Cr.P.C., having regard to the irregularities committed by the Chief Doctor, in the records, the said Doctor has also been implicated, as an accused and that a final report

has been submitted by the Inspector of Police, District Crime Branch, Thanjavur, to the learned Judicial Magistrate No.II, Thanjavur. He took this Court through the statements of the Dean, Thanjavur Medical College, Thanjavur and others.

5. As per the procedure, an in-service candidate would be paid up monthly stipend and if for any reason, he had not attended the classes, monthly attendance would be sent by the Dean to the employer and that, the stipend would be proportionately reduced. Taking this Court to the statement of one Mr. S. Sivakumar, Assistant, Office of the Thanjavur Medical College, Thanjavur recorded under Section 161(3) of Cr.P.C, learned counsel for the petitioner submitted that there was absolutely nothing on record to indicate that any letter had been sent by the Medical College, to the employer, to substantiate that the petitioner had absented from attending the classes. In the light of the facts, deduced during investigation by the Police, he submitted that the Head of Department had abused his official position and victimized the petitioner to prevent him from taking part in the final examination.

6. Both the State Counsel, as well as the learned counsel representing Tamil Nadu Dr. MGR Medical University submitted that filing of the charge-sheet, against the Head of the Department (Anesthesia), Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur by the Inspector of Police, District Crime Branch, Thanjavur in Crime No.311 of 2009 under Sections 465, 466, 469 and 167 r/w Section 34 IPC, have been placed before this Court for the first time, at the time of hearing of the Writ Petition and that therefore, they have no occasion, to rebut the same in their counter affidavits. Mrs. J. Padmavathi Devi, learned counsel for the University submitted that the University did not issue the hall ticket, on the basis of attendance particulars furnished by the Dean and that therefore they cannot be blamed for any irregularities committed in the college. She further submitted that the University would abide by any directions to be issued by this Court. Her submission is placed on record.

7. Heard the learned counsel for the parties and perused the materials available on record.

8. The petitioner, an in-service candidate has been admitted to Post-graduate diploma (Anesthesia) in Thanjavur Medical College, Thanjavur for the academic year 2007-2008. The duration of the course is two years. The Examination was scheduled on 16.03.2009 and when the petitioner came to know that hall-ticket was not issued by Tamil Nadu Dr. M.G.R. Medical University, Chennai, he has chosen to approach this Court on 14.3.2009 and pursuant to the interim directions, he had written the examinations. According to the petitioner, he had attended the classes and that, there was no complaint by the Dean, Thanjavur Medical College to the petitioner's employer, regarding lack of attendance, and that on the basis of the monthly attendance Certificate, sent by the Head of the Department/Dean, stipend has been paid periodically, without any reduction. The said averment is fortified by the statement of Mr. S. Sivakumar, Assistant, Thanjavur Medical College, Thanjavur given to the Inspector of Police, District Crime Branch, Thanjavur. Perusal of the statement of Mrs. Dr. R. Thenmozhi Chief Doctor Anesthesia, Thanjavur Medical College, Thanjavur given to the Inspector of Police under Section 161(3) of Cr.P.C. also shows that on the directions of the Head of the Department, she had altered the attendance particulars. The statement of the Chief Doctor Anesthesia, is extracted hereunder:

“Tamil”

9. The Dean, Thanjavur Medical College, Thanjavur examined as a witness, has stated as follows:

“Tamil”

10. Statements have been recorded under Section 161(3) Cr.P.C. from (1) Dr. A.L. Meenakshi Sundaram, Chief Doctor, (2), Dr. S. Ramu, (3) Dr. Kiruthika (4) Vijaya Vardana, Civil Assistant Surgeon, Thanjavur Medical College, Thanjavur, and attendance registers for the period June 2007-March 2009 of the Anesthesia Department and the following documents have been, considered by the police.

“Tamil”

11. The Inspector of Police, District Crime Branch, Thanjavur has laid a final report against Dr. Muthukumaran, Head of the Department (Anesthesia), Thanjavur Medical College, Thanjavur and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur to the learned Judicial Magistrate No.II, Thanjavur and it is as follows:

“Tamil”

12. Material on record categorically shows that Dr. Muthukumaran, Head of the Department (Anesthesia) and Dr. R. Thenmozhi, Chief Doctor Anesthesia of Thanjavur Medical College have committed grave irregularities like tampering with attendance registers and records, to prevent the petitioner from taking up the final year examination, commencing from 16.03.2009 and thus caused inexplicable agony, hardship, as well as postponement of results. Prima facie police have found that the abovesaid doctors has committed offences under Section 465, 466, 469 and 167 r/w Section 34 of IPC. During the course of hearing, learned Additional Government Pleader was posed with a question, as to whether any departmental action was taken against the erring doctors, On instructions, Mr. T.S. Mohammed Mohideen, learned Additional Government Pleader submitted that both the doctors are still in service.

13. On instructions from Mr. Somasundaram, Inspector of Police, Thanjavur Medical College Police Station, Thanjavur, learned Additional Government Pleader further submitted that the criminal case is taken on file, by the learned Judicial Magistrate No.I, Thanjavur has been challenged in this Court and that the said proceedings have been stayed. His submission is placed on record.

14. Rule 17 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules deals with disciplinary action to be taken against Government servant in case of misconduct. As per rule 17 e(1)(i) and (ii) of the said rules i) an enquiry into grave charges against him is contemplated or is pending, or ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. In the case on hand, the two doctors who have played with the education and life of the petitioner, in tampering with the attendance registers and particulars, to prevent the petitioner from appearing in

the final year examinations are still allowed to be continue in service, notwithstanding registration of criminal case under Sections 465, 466, 469 and 167 r/w Section 34 of IPC and even after, filing of the charge-sheet on the file of the learned Judicial Magistrate No.II, Thanjavur District. It is not known whether any disciplinary action has been taken against them. Even if the trial is stayed by this Court, it is not a bar, for initiating disciplinary proceedings, for such acts of misconduct in leading to filing of a charge sheet, for offences under Sections 465, 466, 469, and 167 r/w. Section 34 IPC.

15. Having given a statement before the Police, the Dean has failed to bring it to the notice of the Controller of Examinations, Tamil Nadu Dr. MGR Medical University, about the irregularities, committed by the above said doctors. Had the petitioner been permitted to take up the examination, on the basis of the attendance put in by him in the normal course, by this time, the results would have been published. Had he passed out the subjects, his prospects would have been better. The same has been scuttled by the grave irregularities. The authorities themselves being doctors, have failed to perceive the agony of another doctor, a budding anesthetist undergone for all these years. He would have even pursued higher education. On the facts and circumstances of this case, this Court is of the view the petitioner appropriate damages, have to be awarded, against the two doctors. However, they are not parties to this lis, which is for a limited prayer. It is open to the petitioner to seek appropriate remedy under private law.

16. Considering the prima facie case and the records produced before this Court, it is manifestly clear that from the statements recorded by the Police, that, in order to prevent the petitioner from appearing in the final year Post graduate diploma (Anesthesia) examinations, the attendance registers have been tampered with. The attendance details given earlier, by the Dean, Thanjavur Medical College to the University did not reflect the correct particulars. The petitioner had written the examinations in the year 2009 and waiting for the results for three years and five months. Even assuming that the petitioner had failed in any one of the three subjects, by this time, he would have chances, to clear the same. Considering the pram facie materials produced before this Court, in the typed-set of papers and the hardship undergone by the petitioner, a direction is issued to the Controller of

Examinations, Tamil Nadu Dr. MGR Medical University to publish the results of the examination, written by the petitioner from 16.03.2009 and on subsequent dates, within a period of ten days from the date of receipt of a copy of this order. Registry is directed to send a copy of this order to the Secretary, Health and Family Welfare Department, Chennai for taking appropriate action against Dr. Muthukumaran, the then Head of the Department (Anesthesia) Department, and Dr. R. Thenmozhi, Chief Doctor Anesthesia Department, Thanjavur Medical College, Thanjavur and also against those who are responsible for tampering with the petitioner's attendance particulars. Mrs. J. Padmavathi devi, learned counsel for the University shall communicate the result of this case to the Controller of Examinations, Tamil Nadu Dr. MGR Medical University, Chennai, so as to facilitate publication of results within ten days from the date of receipt of a copy of this order.

17. With these directions, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

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