

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 12TH DAY OF MARCH 2015/21ST PHALGUNA, 1936

WA.No. 168 of 2015 ()

(AGAINST THE JUDGMENT IN WP(C).NO. 35306/2014 DATED 13-01-2015)

APPELLANT/PETITIONER :

**INDUJA K., AGED 20 YEARS,
D/O.VISWANATHAN.K, KALLINGALTHODY HOUSE, VENAYIKODE,
EDAVANNAPPARA, CHERUVAYUR P.O, MALAPPURAM -673 645.**

**BY DR.K.P.SATHEESAN,SENIOR ADVOCATE
ADVS. SRI.M.R.JAYAPRASAD
SRI.P.MOHANDAS (ERNAKULAM)
SRI.ANOOP.V.NAIR
SRI.S.VIBHEESHANAN
SRI.N.MANU THAMPI**

RESPONDENT(S)/RESPONDENTS :

- 1. KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY ITS REGISTRAR, THRISSUR- 680 596.**
- 2. THE VICE CHANCELLOR,
KERALA UNIVERSITY OF HEALTH SCIENCES,
THRISSUR -680 596.**
- 3. THE CONTROLLER OF EXAMINATIONS,
KERALA UNIVERSITY OF HEALTH SCIENCES,
THRISSUR- 680 596.**
- 4. EXAMINATION PASS BOARD- 2014,
KERALA UNIVERSITY OF HEALTH SCIENCES,
REPRESENTED BY ITS CHAIRMAN, THRISSUR -680 596.**
- 5. THE DIRECTOR OF MEDICAL EDUCATION,
MEDICAL COLLEGE P.O, THIRUVANANTHAPURAM -695 011.**
- 6. THE PRINCIPAL,
KUHITHARUVAI MEMORIAL CHARITABLE TRUST MEDICAL COLLEGE,
MANASSERRY P.O, MUKKOM, KOZHIKODE -673 602.**

**R1 TO R4 BY ADV. SRI.P.SREEKUMAR,SC
R5 BY SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 09-02-2015, ALONG WITH WA.NO. 174/2015 AND WA.NO. 270/2015,
THE COURT ON 12-03-2015 DELIVERED THE FOLLOWING:**

WA.NO.168/2015

APPENDIX

PETITIONER'S ANNEXURES:

- ANNEX 1** **COPY OF THE NOTIFICATION NO.0274/ACII/BOS/2012(MEDICAL) DATED 19/11/2013.**
- ANNEX II** **COPY OF THE RELEVANT PAGE OF THE GAZETTE NOTIFICATION DATED 1/7/2002 OF THE GOVERNMENT OF INDIA**
- ANNEX III** **COPY OF THE CLARIFICATION GIVEN BY THE MEDICAL COUNCIL OF INDIA TO THE REGISTRAR, VINAYKA MISSION UNIVERSITY, SALEM DATED 26/3/2009**
- ANNEX IV** **COPY OF THE RELEVANT PAGES OF THE AMENDED REGULATIONS 2012 ISSUED BY THE MEDICAL COUNCIL OF INDIA.**
- ANNEX V** **COPY OF THE JUDGMENT DATED 28/03/2011 IN W.A.NO.409/2011**

RESPONDENT'S ANNEXURES: **NIL**

/TRUE COPY/

P.A.TO.JUDGE

sts

**ASHOK BHUSHAN, Ag.CJ
& A.M.SHAFFIQUE, J.**

W.A.Nos.168, 174 & 270 of 2015

Dated this the 12th day of March 2015

J U D G M E N T

Shaffique,J

These appeals have been filed by the writ petitioners against the common judgment dated 13/01/2015 in W.P.C.Nos.35305 and 35306 of 2014.

2. The writ petitions were filed by the appellants, who are hereinafter referred to as the petitioners, inter alia contending that they were not given grace marks in the practical examination conducted by the Kerala University of Health Sciences. The facts involved in the writ petition would disclose that the petitioners being first year students of MBBS course for the academic year 2014-2015 failed in Physiology practical examination alone. The minimum marks required for the practical examination in Physiology was 40. The petitioners were deficient in one or two marks.

According to them, as per Medical Council of India Regulations on Graduate Medical Education, 1997, (hereinafter referred to as 'MCI Regulations') Clause 13(10) provides that it shall be open for the University to provide grace marks upto a maximum of 5 marks to a student who has failed only in one subject but has passed in all other subjects. The aforesaid regulations have been recognised and adopted by the University also in terms with the regulations framed by the University. Clause 6.5 of the Regulations indicated that grace marks upto a maximum of five may be awarded for an examination at the discretion of the passing board for a student to pass one subject (theory only) provided the student has passed in all other subjects. It was mentioned that the grace marks will not be awarded to change internal assessment marks. It is their contention that when the Medical Council of India (for short 'MCI') had permitted to grant grace marks upto a maximum of five marks to a student in one subject, there was no reason for the University to restrict the grant of grace marks only to

theory paper, which according to the petitioner, is unconstitutional and arbitrary. Reliance is placed on the judgment in W.A.No.409/2011 to contend that grace marks cannot be restricted to theory paper alone. Learned Single Judge, having taken note of the fact that when the University has offered grant of grace marks only for theory, it would not be proper for this Court to command the University to extend the benefit to the petitioners and accordingly the writ petitions were dismissed.

3. The learned counsel for the appellants, brought to our notice the MCI Regulations which provides for grant of grace marks. Specific reference has been made to Regulation 13(10) coming under Chapter IV which reads as under:

"The grace marks upto a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects."

4. It is argued that MCI Regulations clearly intended the grant of grace marks upto five in one subject. The

subject includes theory and practical and therefore restricting the award of grace marks by the University only to theory paper is clearly contrary to the MCI guidelines and therefore grace marks is to be awarded for the practical examination also, ignoring the restricted clause in the University Regulations. Annexure III letter dated 26/03/2009 issued by the MCI to the Registrar, Vinayaka Mission University giving a clarification in respect of Regulation 13(10) indicates that grace marks upto a maximum of five marks may be awarded either in theory or in practical examination at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects.

5. On the other hand, the learned counsel appearing for the University submits that it is clear from Ext.P5, the Regulations, Curriculum and Syllabus for the course, that *"Grace marks upto a maximum of five in total may be awarded for an examination at the discretion of the passing board for a student to pass one subject (theory only)*

provided the student has passed in all other subjects. Grace marks will not be awarded to change internal assessment marks." It is therefore argued by the learned Standing Counsel that MCI Regulations clearly provides for a discretion to the University to award grace marks and while exercising that discretion, it is open for the University to restrict the award of grace marks only to theory paper and therefore there is no unconstitutionality or arbitrariness in the decision taken by the University. The students, having written the examination on the basis of the Regulations, Curriculum and Syllabus, cannot now turn around and submit that they should be awarded grace marks for practical examination also.

6. The short question to be considered in this writ petition is whether the University was justified in restricting the award of grace marks to theory paper alone and whether they were bound to award grace marks for theory and practical also in the light of MCI Regulations. The MCI Regulations clearly indicate that grace marks can be granted

upto a maximum of five marks at the discretion of the University. It is not a mandate that all Universities should award grace marks. The discretion is left to the University to decide whether grace marks should be awarded or not. The University, while making the Regulations, thought it fit to grant grace marks only for theory paper. When such a modification has been made by the University taking into consideration their discretionary powers, it cannot be stated as arbitrary or unreasonable. That apart, even from Annexure III relied upon by the appellants, the view of MCI is clear that grace marks could be awarded either in theory or in practical examination at the discretion of the University. Therefore, the discretion is left open to the University in the matter relating to award of grace marks and the only restriction is that the maximum grace marks shall be five and that too only in one subject and on condition that the student has passed all other subjects. If the University exercises its discretion not to award any grace marks also, it cannot be termed as arbitrary or unreasonable. Under such

circumstances, the argument regarding unconstitutionality and arbitrariness is not justifiable.

7. Reliance has been placed by the learned counsel for the appellants in the judgment of the Division Bench in W.A.No.409/2011. That was a case in which the students failed in one out of four subjects in the Final Year MBBS examination and shortage of marks ranged from one to five in the practical examinations. The Pass Board constituted by the University decided not to grant grace marks in the practical examination. The matter came to be challenged contending that the decision was arbitrary. They relied upon the MCI Regulations referred above which permitted award of grace marks upto five. Reference was also made to a circular issued by the Director of Medical Education indicating that grace marks could be granted for a student to pass one subject either theory, practical or oral, on certain conditions. It was observed that no circular was issued by the University and each time a decision on award of grace marks is taken by the Pass Board. For the relevant year, it

was mentioned that no moderation for practical examination shall be given. The learned Single Judge, directed the University to award eligible grace marks to the students for practical examination also. The Division Bench found that award of grace marks under MCI Regulations is completely left to the discretion of the University. It was observed that the Director of Medical Education has indicated that grace marks could be awarded to the student who has not passed in one subject. However, the Pass Board did not introduce any specific prohibition from 2005-2009 and only in 2010 that such a decision has been taken. In such circumstances, it was held that the decision taken by the Pass Board to decline grace marks in the practical examination to any student is arbitrary. Therefore, that was a case in which there was no University Regulations, whereas every year the Pass Board had to take the decision after the examinations are over. Under such circumstances, the Division Bench formed an opinion that based on MCI Regulations and by the circular issued by the Director of Medical Examinations, the

denial of grace marks in practical examination will be unjust and inequitable and thereby confirmed the view expressed by the learned Single Judge. The said decision has no application to the facts of the present case as statutory regulations have been framed by the University exercising the discretion in the matter of grant of grace marks. It is the settled proposition of law that the Courts will not generally interfere with the minimum criteria fixed by the University in the matter relating to academic qualifications and minimum standards. The learned Single Judge has rightly relied upon the judgment in **Maharashtra State Board of Secondary & Higher Secondary Education v. Amit and another** [(2002) 6 SCC 153] where the Supreme Court held that the award of grace marks must be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority.

8. Having said so, we do not think that this Court will be justified in granting any concession to the petitioners as

it will amount to dilution of the standards fixed by the University. It might be true that the petitioners were only deficient for a few marks to have the minimum pass marks and they might have scored better marks in the other subjects as well, but that does not mean that a writ court should interfere and grant concessions which would amount to nullifying the regulations issued by the University.

Under such circumstances, we do not think that the appellants have made out a case for interference by this Court in the exercise of appellate jurisdiction and accordingly the appeals are dismissed.

(sd/-)

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(sd/-)

(A.M.SHAFFIQUE, JUDGE)

jsr

