

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.04.2015

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. Nos.10080 to 10083 of 2015

S.Anbarasan ... Petitioner in W.P.No.10080/2015
M.Archana ... Petitioner in W.P.No.10081/2015
A.Aravind ... Petitioner in W.P.No.10082/2015
Suganya Mohan Kumar ... Petitioner in W.P.No.10083/2015

- Vs -

1. Indira Gandhi Medical College and Research Institute, Kadirgamm, Puducherry
2. The Controller of examinations, Pondicherry University, Kalapet, Pondicherry - 605 014
3. The Medical Council of India, Represented by its Secretary, MCI Building Pocket - 14 Sector-8, Dwarka Phase-1, New Delhi - 110 077. ... Respondents in all W.Ps.

Prayer in all the W.Ps. : Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 2nd respondent to award 2 marks, 7 marks, 3 marks and 7 marks to the petitioner as grace marks, in their practical test of General Surgery in the III Professional Part II M.B.B.S November 2014 examinations as per the Medical Council Regulation.

For Petitioner in
all the W.Ps.

: Mr.V. Raghavachari

For Respondents in
all the W.Ps.

: Mr.V. Balamurugan, for R1&R2
Mr. V.P.Raman, for R3

COMMON ORDER

By consent, the Writ Petitions are taken up for final disposal. Since the issue involved in these writ petitions are one and the same, this common order is being passed.

2.The petitioner in W.P.No.10080 of 2015 joined in the MBBS course in the year 2010 in the first respondent institution, the same is affiliated to the second respondent. According to the petitioner, the classes are regularly conducted and so also the examinations once in every year and the final year semester examination was conducted during November 2014 and the petitioner appeared for all the examinations and results of the same were also published during January 2015 and he secured good marks in all subjects except in General Surgery (Practical). It is the claim of the petitioner that as per the regulations framed by the Pondicherry University, grace marks in case of failure in one out of all subjects for the particular semester can be awarded and it is relevant to extract the same;

"A Board/Examination Committee is constitute for finalizing the results of examination of each phase. The members would scrutinize and review of the marks and results of the examination. The Board/Examination committee can consider grace marks, if the student has failed in only one subject and has passed in all the other subjects of a particular session/semester. Grace marks of up to 5% of Theory marks can be added for one subject only, provided that by such an addition the student passes the annual/summative."

3. According to the petitioner, in the light of the said regulations he has to be awarded in 2 marks in the practical test of General Medicine in the Professional Part II M.B.B.S in November 2014 and since it has not been done he has already last two months of intenship in his career. Hence, he approached this court.

4.The petitioner in W.P.No.10081 of 2015 joined in the MBBS course in the year 2010 in the first respondent institution and she has also attended all the conducted classes regularly and so also the examinations during November 2014 and the results were published during January 2015 and she secured good marks in all subjects except in General Surgery (Practical). Petitioner claims that she should be awarded 3 marks as grace marks in the practical test of General Medicine in the Professional Part II M.B.B.S in November 2014.

5. The petitioner in W.P.No.10082 of 2015 joined in the MBBS course in the year 2010 in the first respondent institution and he has also attended the classes conducted regularly and so also the examinations during November 2014 and the results were published during January 2015 and he secured good marks in all subjects except in General Surgery (Practical). Petitioner claims that he should be awarded 3 marks as grace marks in the practical test of General Medicine in the Professional Part II M.B.B.S in November 2014.

6. The petitioner in W.P.No.10083 of 2015 joined in the MBBS course in the year 2010 in the first respondent institution and she has also attended the classes conducted regularly and so also the examinations during November 2014 and the results were published during January 2015 and she secured good marks in all subjects except in General Surgery (Practical). Petitioner claims that she should be awarded 3 marks as grace marks in the practical test of General Medicine in the Professional Part II M.B.B.S in November 2014.

7. Mr. Lakshmi Narayanan, learned counsel for the petitioner invited the attention of this Court to the common order dated 16.02.2015 made in W.P.Nos.3272 to 3277 of 2015 and the orders in W.P.No.8308 of 2015 dated 24.03.2015 and W.P.No.8705 of 2015 dated 26.03.2015 and would submit that the issue involved in these writ petitions are squarely covered by the above said orders passed by this Court and in the light of the same, prayed for a suitable directions in these writ petitions also.

8. Mr.V. Balamurugan, learned Standing Counsel for the second respondent would submit that since the regulations are not in consistent with the regulations of the Medical Council of India, several efforts were taken to and amend the regulations and would further add that the second respondent has contemplated to file appeals against the above said orders.

9. Mr.V.P.Raman, learned counsel appearing for the third respondent would contend that the regulations pointed out by the learned counsel for the petitioner is in consistent with the regulations framed by the Medical Council of India and it is for the second respondent to take appropriate action to amend the regulations suitably on par with the regulations framed by the Medical Council of India.

10. In response to the same, learned counsel for the petitioners would submit that all the orders have been implemented and the writ petitioners have to be awarded with grace marks and on principle of parity, claim of these petitioners have to be considered. This Court

upon perusing the records and materials is of the view that these writ petitions are squarely covered by the above said orders.

11. In the light of the above, it is relevant to extract paragraph 13 to 16 of the order made in W.P.Nos.3272 to 3277 of 2015 on 16.02.2015:

"13. Learned counsel for the 2nd respondent University produces before this Court the decision of the Honourable First Bench of this Court in Vetriselvan and others Vs. Registrar, Tamilnadu Dr. MGR Medical University and others reported in (2014) 3 MLJ 306 and submitted that the regulations of the Medical Council of India will prevail and there has to be consistency. The respondent University is bound to follow the regulations of the Medical Council of India. It is to be pointed out that in the said Writ Petition, challenge was made to the regulation issued by the Tamilnadu Dr. MGR Medical University being inconsistent with that of the regulations of the Medical Council of India. In those circumstances, this Court considered the provisions of the Medical Council of India Act and held that regulation which is inconsistent with the regulation of Medical Council of India is invalid.

14. In the instant case, admittedly, there is no challenge to the regulation of the respondent which provides grant of grace marks in practicals being 5 %. In such circumstances, the decision relied on by the learned counsel for the 2nd respondent University is of little avail to support the stand taken by the University. Even assuming the stand taken by the respondent University is correct and if the regulations of Medical Council of India are applied, then, there will be no difficulty for the petitioner in W.P.No.3276 of 2015 as he requires only one grace marks in general medicine practical test.

15. In the light of the above reasoning, this court is fully satisfied that the regulation which is prevailing is the regulation produced by the petitioners and uploaded in the official website which provides for grant of 5% grace mark and there is no distinction made for practical or theory examination. The past practice of the Respondent University shows that the University has granted grace mark for

practical examination held during November 2013 and the mark statement clearly establishes the same.

16. In the light of the above, the petitioners are entitled to succeed and accordingly, the Writ Petitions are allowed and there will be a direction to the 2nd respondent University to award the grace mark to each of the petitioners and consequently declare the results of the petitioners within a period of 10 days from the date of receipt of a copy of this order. No costs. Consequently, all the connected M.P.s, if any, in all the writ petitions are closed."

12. In the light of the above said reasons, these writ petitions are allowed and the second respondent is granted two weeks time to award grace marks and take further steps in this regard, from the date of receipt of a copy of the order. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

smi/nvi

Sub Assistant Registrar

To

1. Indira Gandhi Medical College and Research Institute, Kadirgama
Puducherry
2. The Controller of examinations,
Pondicherry University,
Kalapet, Pondicherry - 605 014
3. The Medical Council of India,
Represented by its Secretary,
MCI Building Pocket -14
Sector-8, Dwarka Phase-1,
New Delhi - 110 077.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.19496
+1cc to Mr.V.Balamurugane, Advocate, S.R.No.19599
+1cc to Mr.V.P.Raman, Advocate, S.R.No.19738

W.P.Nos.10080 to 10083 of 2015

VGI (CO)
CA(10/04/2015)