

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.08.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M. SUNDRESH

W.P.No.16947 of 2015

S.Saravana Kumar

... Petitioner

- Vs -

1. The Registrar

Tamil Nadu Dr.M.G.R.
Medical University
No.69, Anna Salai, Guindy,
Chennai-600 032.

2.The Controller of Examination

Tamil Nadu Dr.M.G.R.
Medical University
No.69, Anna Salai, Guindy,
Chennai-600 032

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing the respondent authorities to re-evaluate the answer sheet of the petitioner having Regn.No.52091970 in the subject Paediatrics including Neonatology in respect of August 2014 final year MBBS examination within a time to be fixed by this Court.

For Petitioner : Mr.S.Thanka Sivan

For Respondents : Mr.Anand David (R1 and R2)

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O R D E R

This Writ Petition has been filed seeking for a direction to the respondent authorities to re-evaluate the answer sheet of the petitioner having Regn.No.52091970 in the subject of Paediatrics including Neonatology in respect of August 2014 final year MBBS examination within a time to be fixed by this Court.

2. Heard both sides.

3.The petitioner wrote final year M.B.B.S. examination in the month of August 2014. The Registration of the petitioner is 52091970 In the results published by the respondents, the petitioner was declared as fail in two subjects viz., Obstetrics Gynaecology and Family Welfare and Paediatrics including Neonatology. From the Mark sheet, it is seen that the marks awarded to the petitioner in respect of the subject Paediatrics including Neonatology was 49 out of 100 and the pass mark is 50/100. In the photocopies of the answer sheets, it is seen that for the question No.1, the marks was entered as 6 and thereafter it was corrected as 5 and the total marks was entered as 10. The petitioner has got total of 21 marks for which the pass mark is 22. The instructions to the paper evaluators dated 07.05.2013 is stated to be still in force and the instruction "f". reads as follows:

"f.Overwriting should not be done while awarding marks. In case, if a paper valuator wants to correct/change the marks awarded, he has to strike the marks and write the fresh marks clearly and should sign near it."

4. Since the said instruction was not followed, the petitioner has come forward to file this Writ Petition seeking for the aforesaid relief.

5. The learned counsel for the petitioner has submitted that admittedly the instructions have not been followed. The marks was corrected and there is no sign in the answer sheet and thus there is a overwriting contrary to instruction "f". The learned counsel for the petitioner has placed reliance upon the Judgment of Division Bench of this Court in W.P.No. 29035 of 2011 dated 02.02.2015 involving the identical facts and a decision of the Apex Court in Sahiti and others Versus Chancellor, Dr.N.T.R. University of Health Sciences and others reported in (2009) 1 SCC 599 in support of his contentions.

6. The learned counsel for the respondents submitted that the total marks are awarded correctly and therefore the petitioner cannot seek for revaluation. He placed reliance on the Judgment of the Division Bench of this Court in W.P.No.3207 of 2012 dated 05.03.2012.

7. The facts are not in dispute. A perusal of the marks awarded would go to show that for question No.1, the marks was entered as 6 and thereafter it was corrected as 5 and the total marks is 10. The instructions which ought to have been followed by the examiner was not followed. The examiner has not struck off the marks already entered and enter the fresh marks and there is no signature for the marks corrected. Considering the very same issue, Hon'ble Division

Bench of this Court in W.P.No.3207 of 2012, on 05.03.2012 has passed the following order

"On a perusal of the answer sheet, we are surprised to find that the examiner, who evaluated the answer sheet, has not even followed the instructions given at the bottom of the answer sheet. We fail to understand as to why the University appoints such examiner, who does not even follow the instructions. Hence, the answer sheet is returned back to the learned standing counsel for the University for evaluation by another examiner.

Let the answer sheet be evaluated and the marks be placed on 09.02.2012"

8. The Apex Court while dealing with the plea of specific provision for re-evaluation in a decision in Sahiti and others Versus Chancellor Dr, N.T.R.University and others reported in (2009) 1 SCC 599 has held as follows:

"32. The plea that there is absence of specific provision enabling the Vic-Chancellor to order re-evaluation of the answer scripts and, therefore, the judgment impugned should not be interfered with, cannot be accepted. Reevaluation of answer scripts in the absence of specific provision is perfectly legal and permissible. In such cases, what the Court should consider is whether the decision of the educational authority is arbitrary, unreasonable, mala fide and whether the decision contravenes any statutory or binding rule or ordinance and in doing so, the Court should show due regard to the opinion expressed by the authority."

9. In view of the same, this Court is of the view that the petitioner is entitled to succeed. It is true that the candidate cannot seek for re-evaluation as a matter of course. However, when the examiner has not followed the procedure which is otherwise mandatory, this Court can pass orders as passed by the Division Bench on this Court in Sahiti and others Versus Chancellor, Dr.N.T.R.University of Health and Sciences and others reported in (2009) 1 SCC 599. Though there is no malafide that can be attributed to the respondents, the failure of the examiner to follow the procedure would lead to unreasonableness. Thus, considering the peculiar facts of the case and the similar situation

having been taken note of by the Division Bench of this Court while passing orders in a case in Sahiti and others Versus Chancellor, Dr. N.T.R. University of Health and Sciences and others reported in (2009) 1 SCC 599., this Court is inclined to direct the authorities to re-evaluate the answer sheet of the petitioner. Accordingly, the respondents are directed to re-evaluate the answer sheet of the petitioner having Registration No.52091970 in the subject of Paediatrics including Neonatology in respect of August 2014 final examination within a period of three weeks from the date of receipt of a copy of this order. No costs.

Accordingly, this Writ Petition is allowed. No costs. Consequently,

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

arr
To

1. The Registrar
Tamil Nadu Dr.M.G.R.
Medical University
No.69, Anna Salai, Guindy,
Chennai-600 032.
- 2.The Controller of Examination
Tamil Nadu Dr.M.G.R.
Medical University
No.69, Anna Salai, Guindy,
Chennai-600 032

+1 cc to M/s.Anand David, Advocate, sr.45446
+1 cc to The Govt.Pleader, sr.45505

ug(co)
kra(2/9)

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