

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8130 of 2015

And

M.P.No.1 of 2015

A.Clinton Jude

... Petitioner

Vs.

1.The Medical Council of India

MCI Building Pocket - 14

Sector - 8, Dwarka Phase - I

New Delhi - 110 077.

2.Controller of Examinations

Pondicherry University

Kalapet, Pondicherry - 605 104.

3.Sri Venkateswara Medical College Hospital & Research Centre

Ariyur, Puducherry - 605 102.

... Respondents

Prayer: Petition filed under section 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent to grant 1 (one) mark as grace mark towards the petitioner's practical test of Pediatrics in the III Professional Part II M.B.B.S held on November 2014 Examinations as per Paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University.

For Petitioner

: Mr.K.Rajasekaran

For Respondents

: Mr.V.P.Raman for R1

Mr.V.Balamurugan for R2

O R D E R

Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents 1 and 2. With the consent of both the parties, this writ petition is taken up for final disposal.

2.The petitioner has filed this writ petition seeking for issuance of Writ of Mandamus directing the second respondent to grant 1 (one) mark as grace mark towards the petitioner's practical test of Pediatrics in the III Professional Part II M.B.B.S held on November 2014 Examinations as per Paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University.

3.This Court has considered an identical issue in W.P.Nos.3272 to 3277 of 2015 and has passed an order dated 16.02.2015 which reads as follows:

"Heard Mr. Vijay Narayan, learned Senior Counsel for petitioners and Mr.V.Balamurugane, Standing Counsel appearing for Respondents 1 and 2 and Mr.V.P.Raman for 3rd respondent.

2. In all these Writ Petitions, the petitioners are students of the 1st respondent Institution pursuing their M.B.B.S Course sought for grant of grace marks in the practical tests in various subjects, in which they have attended by complying the regulations of the Respondent University.

3. The prayer sought for in all these Writ Petitions are identical, except for the subjects in which, petitioners seek for grace marks. It is not in dispute that all the petitioners seek for granting grace marks only in one subject in practical examination. In the affidavit filed, in support of the Writ Petition, the petitioners have stated about their academic distinction which prima facie shows that all the candidates have consistently scored good marks in the previous examinations. Further, all the petitioners have been declared fail in the practical examination in one of the subjects and the petitioners would require grace marks to be added to enable them to be declared as pass. Petitioner in W.P.No.3272 of 2015 requires 8 marks in general medicine practical test, petitioner in W.P.No. 3273 of 2015 requires 7 marks in general medicine practical test, petitioner in W.P.No.3274 of 2015 requires 6 marks in general medicine practical test, petitioner in W.P.No.3275 requires 6 marks in general surgery practical test, petitioner in W.P.No.3276 of 2015 requires one mark in general medicine practical test and the

petitioner in W.P.No.3277 requires 6 marks in general medicine practical test.

4. Learned counsel for the petitioners would state that the regulations of the respondent for 2009-2010 provides for grant of grace marks and the relevant portion of the regulation reads as follows;

"Grace Marks in case of failure in ONE out of all subjects for the particular semester.

A Board/Examination Committee is constitute for finalising the results of examinations of each phase. The members would scrutinise 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 (viz., First Professional, Second Professional, etc.) examination. For eg.,

(A) For the subject of Anatomy, given the above guidelines, a maximum of eight marks (5% of maximum of theory examinations of 160) can be awarded.

(B) For the subject of Pediatrics, given the above guidelines, a maximum of four marks (5% of maximum of theory examinations of 80) can be awarded.

The grace mark of 5% is applicable to all the Annual/Summative examinations of MBBS conducted semester-wise.

This addition of grace marks is applicable to students irrespective of First or subsequent appearances provided that he/she will be passing the annual/summative examination in total with such consideration. Split distribution or addition of grace marks to more than one subject, practicals and internal assessment is not permitted."

5. By relying upon the aforesaid regulations, the learned counsel for the Petitioners would state that grace marks at 5% could be added and if the same is added for the petitioners in the respective practical

subjects, all of them would be declared as pass. However the respondent University published the marks of the petitioner without adding the grace mark and declared them as fail. On receipt of the mark statements, the 1st respondent Institution, where the petitioners are pursuing their course addressed the 2nd respondent University by letter dated 5.1.2015 stating that the grace marks of 5% in practicals for MBBS professional courses has not been added for the petitioners and the same had been provided during the November 2013 Session. Copy of the mark statement for November 2013 session was enclosed to show that 5% grace marks were added in the practical examination. Therefore it was stated by the 1st respondent that the petitioners are eligible for adding grace marks in the respective subjects and requested the University to do the needful. Since, no action was taken by the 2nd respondent, petitioners have approached this court by way of filing these Writ Petitions.

6. This Court, by order dated 10.2.2015, directed the learned counsel for petitioners to serve notice on the respondents and accordingly, the respondents entered appearance and they appeared before this Court when the matter was taken up for hearing on 12.2.2015.

7. The learned Standing counsel for the 2nd respondent University pointed out that in terms of the regulations of the University for 2009 - 2010 submitted that the Heads of the Department or the members, the board allots grace marks of maximum 5 for one subject and the grace mark of 5 will be added for one subject only after the marks obtained in the University examination are scaled down to 100% in the particular subject - Theory.

8. Further, by referring to the regulations, it is submitted that grace mark of 5 is applicable to all the University examinations of MBBS conducted semester-wise. Further no grace marks will be added for practicals and that will not be applicable when the candidate takes up a single subject in the University Examination. Thus, by relying

upon the regulations aforementioned, the learned counsel for the 2nd respondent submitted that all the petitioners, except the petitioner in W.P.No.3276 of 2015 requires more than 5 marks and they are not entitled to the same since there is no provision to add grace marks in practicals.

9. Confronted with these regulations, learned counsel for the petitioners sought time to get appropriate instructions in this regard and the matter was posted today in the list. Today, the learned Senior counsel for the petitioners submitted that the regulations which has been posted in the official web site of the respondent University does not match with the regulations which has been produced before this Court by the learned counsel for the 2nd respondent. In fact, the regulations uploaded in the website was produced before this Court in a Laptop which shows that the regulations referred to by the petitioners and extracted above is the notified regulation in respect of award of grace mark. As per the regulation, which is uploaded in the official website of the 2nd respondent, grace mark of 5% is applicable to all the annual/summative examination of MBBS conducted semester wise and there is no bar for awarding grace mark in practical subjects. The only embargo being subject distribution was addition of grace marks to more than one subject, practicals and internal assessment is not permitted.

10. Further, it is seen from the website, the regulation which has been produced by the learned Standing counsel for the Respondent University has been shown in the "archives" and the notified regulation is the regulation which is relied on by the petitioners. If the said regulations is applied, then all the persons are entitled for award of grace marks.

11. Learned counsel for the Medical Council of India submitted that the regulation as shown to be applicable to the petitioners is consistent with the regulations of the Medical Council of India and therefore there may be a need for amending said regulations.

12. In reply, the learned counsel for the petitioners submitted that the stand taken by the respondent University is incorrect, since in the results, in the examination held during November 2013 in III Professional Part II M.B.B.S., candidates have been awarded grace mark of more than 5 in practical subject. By way of illustration the provisional result sheets dated 23.12.2013 has been produced before this Court and it is seen that in respect of two candidates, bearing Registration No.106475041 and Registration No.106475055 grace marks of 6 and 7 have been added in the practical subjects respectively. Therefore, it is seen that the respondent University has followed the regulations which has been produced by the petitioner and which finds place in the official web site of the respondent University.

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."

4.The writ petition is allowed in terms of the decision referred supra. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-

Asst.Registrar (CO)

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Sub Asst. Registrar

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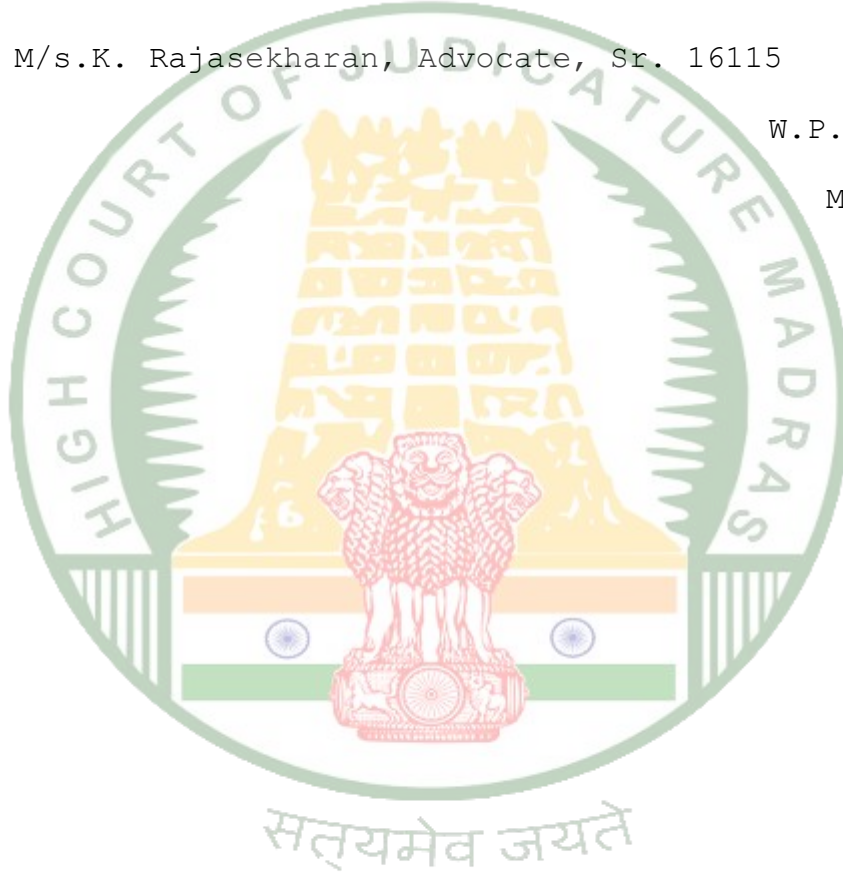
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1 cc to M/s.K. Rajasekharan, Advocate, Sr. 16115

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CA (CO)
kk 23/3



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