

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
WRIT PETITION No.26652 of 2011

% 09.7.2015

Between:

Dr.Subhangi T.H.,
D/o Dr.Thakur Hameer Singh

..... **Petitioner**

And:

\$ N.T.R. University of Health Sciences,
Vijayawada, reptd by its Registrar
and five others.

.....**Respondents**

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> Head Note:

! Counsel for the Petitioner: Sri S.Srinivas Reddy

For Sri C.Sumon

^ Counsel for Respondent Nos.1 to 4: Sri A.Prabhakar Rao

Counsel for Respondent Nos.5 % 6: Sri G.Madhusudhan Reddy

? Cases Referred:

NIL

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For Sri C.Sumon

Counsel for Respondent Nos.1 to 4: Sri A.Prabhakar Rao

Counsel for Respondent Nos.5 % 6: Sri G.Madhusudhan
Reddy

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to declare the action of respondent No.3 in awarding second division to the petitioner in the M.B.B.S Degree Certificate, vide his proceedings No.E1c/Exams/2322/2008, dated 12.01.2011 and 18.07.2011, contrary to the entry in the Provisional Certificate showing the petitioner as having passed in first division, as illegal and arbitrary. The petitioner sought for a consequential direction to respondent No.1 to correct the M.B.B.S. Degree

Certificate in consonance with the Provisional Certificate by awarding first division to her.

The petitioner averred that she has obtained 2,090th rank in the Medical Entrance Test (EAMCET) in the year 2004; that based on her rank, she was given admission in M.B.B.S course in Medciti Institute of Medical Sciences, Ghanpur, Medchal, Ranga Reddy District; and that she was regular in attending the classes. She has further averred that after paying the examination fees for first year M.B.B.S. course scheduled to be held in the month of September, 2005, she has fallen seriously ill and could not appear for the said examinations and has appeared in the Supplementary examinations held in the month of April, 2006 and secured 65 % in Biochemistry, 74.5% in Anatomy and 77% in Physiology, but, in the results put on the Internet by respondent No.1, she was shown to have secured second division instead of first division.

The petitioner further averred that she made a representation to respondent No.5 stating that though she has secured a total of 433 marks out of 600 marks in M.B.B.S. examinations held in the year 2006, and consequently secured first division, the results showed that she has secured second division and in furtherance of the said representation, respondent No.5 addressed letter, dated 02.06.2006, to respondent No.2 stating that she did not appear for the first year M.B.B.S examinations held in September, 2005 due to her sickness, but, appeared in the examinations held in April, 2006 for the first time and secured a total of 433 marks out of 600 marks and she has also achieved distinction in the subject of Physiology. Respondent No.5 has, accordingly, recommended that the petitioner be awarded first division.

The petitioner further averred that she secured first division in the second and third year M.B.B.S. examinations and was issued Provisional Certificate, wherein she was shown to have passed M.B.B.S. Degree in first division, but in the comprehensive memo of marks, dated 19.01.2011, issued by respondent No.1 for all the three years of M.B.B.S examinations as well as in the Degree Certificate, dated 30.11.2010, she was shown to have passed in second division contrary to the first division shown in the Provisional Certificate.

That the petitioner's father made representations on 09.02.2011 and 22.6.2011 to respondent Nos.2 and 3; that respondent No.3 has once again in his letter informed respondent No.5 that the petitioner was detained in all the three subjects of first year M.B.B.S examinations and hence, she was awarded second division in the M.B.B.S. Degree Certificate.

The petitioner has placed reliance upon Regulations-XVI(2) and XVII of the M.B.B.S Course Regulations (for short "the Regulations") in support of her plea that she is entitled to be awarded first division.

No counter-affidavit is filed by the respondents.

I have heard Sri S.Srinivas Reddy, the learned counsel representing Sri C.Sumon, the learned counsel for the petitioner and Sri A.Prabhakar Rao, the learned Standing Counsel for Dr. N.T.R. University of Health Sciences.

Regulation-XVI(2) of the Regulations reads as under:

"First Class in a particular phase may be

awarded to a candidate who secures 65% or more of aggregate marks in all the subjects of the phase and passes all the subjects in the first regular appearance.”

Regulation-XVII of the Regulations reads as under:
“There shall be one main and one supplementary examination in a year and the supplementary exam to be held not later than 6 months after the publication of results of main examination.”

As rightly submitted by the learned counsel for the petitioner, the above Regulations, which appear to be relevant in the present context, do not lay down that if a student has appeared in the Supplementary examinations, he/she is not entitled to be awarded first division.

Sri A.Prabhakar Rao, the learned Standing Counsel, however, placed before me letter, dated 29.02.2012, of respondent No.2, whereby he has informed all the affiliated Medical Colleges of the recommendations of the Academic Senate approved by the Executive Council of respondent No.1-University in its 198th meeting held on 29.02.2015. In the column ‘Agenda’, the subject matter is mentioned. The copy furnished to the Court appears to be incomplete as some of the words are found missing in the column ‘Agenda’. However, it appears that the subject placed before the Executive Council was to define “an attempt” for declaring first class and for other reasons.

Resolution No.6 mentioned in the said letter reads as under:

“If the candidate fails to utilize the given opportunity for any reason that may be

treated as an attempt.”

As rightly pointed out by Sri S.Srinivas Reddy, the purported resolution on which reliance is placed by the learned Standing Counsel was passed after the petitioner has completed her course of study and that therefore, the same cannot be made applicable to her. It is not the pleaded case of the respondents that the said resolution was given retrospective operation.

The very fact that the resolutions, which are mentioned in the above-mentioned letter of respondent No.2, were passed for the first time on 29.02.2015 shows that no specific Regulation treating the absence of a candidate in the main examinations, for any reason, as an attempt to deny first division was in existence prior to passing of the aforesaid resolutions by the Executive Council. When specific Regulation did not exist, it is wholly arbitrary on the part of the respondents to deny first division to the petitioner by applying the resolution which came into existence after the petitioner had written the examinations.

In my opinion, the action of the respondents in denying the petitioner first division in M.B.B.S examinations, in spite of her satisfying Regulation-XVI(2) of the Regulations and in the absence of any specific Regulation for such denial, cannot be sustained.

For the above-mentioned reasons, the Writ Petition is allowed. Respondent Nos.1 and 2 are directed to issue a fresh M.B.B.S. Degree Certificate to the petitioner showing her as having passed in first division within one month from the date of receipt of a copy of this order.

As a sequel to disposal of the Writ Petition

WPMP.No.32887 of 2011 filed by the petitioner for interim relief is disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

09th July, 2015

Note:

LR copies to be marked.

B/o

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