

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-02-2016

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition Nos. 2936, 2937, 2938, 2939, 2940, 3098,
3099, 3875, 4414, 4415, 4416, 4417 and 4418 of 2016
and

W.M.P. Nos. 3243, 3761, 3762, 3763, 3764 and 3765 of 2016

A. Yuvasri @ Shanthini .. Petitioner in WP 2936/2016
R.Anusha Rebecca .. Petitioner in WP.2937/2016
A.Daisy Jean Marie .. Petitioner in WP.2938/2016
R.Nirmal Raj .. Petitioner in WP.2939/2016
J.Ivanna Jeniferry .. Petitioner in WP.2940/2016
P.Harsha Vardhini .. Petitioner in WP.3098/2016
A.Krishnaraj .. Petitioner in WP.3099/2016
Nakul Suresh .. Petitioner in WP.3875/2016
R.K.Ramanan .. Petitioner in WP.4414/2016
T.R.RajKumar .. Petitioner in WP.4415/2016
K.Sivaguru .. Petitioner in WP.4416/2016
B.Gopalakrishnan .. Petitioner in WP.4417/2016
S.Madhu Bala .. Petitioner in WP.4418/2016

Versus

1. Indira Gandhi Medical College and
Research Institute, Kadirgama
Pondicherry ..1st Respondent in WP.Nos.2936 to
2940/16

Pondicherry University of Medical
Sciences, No.20, Kalapet,
Kalathu mettu pathai,
Ganapathichettikulam village,
Puducherry-605 014 ..1st Respondent in WP.No.3098 &
3099/16

2. The Controller of Examinations
Pondicherry University
Kalapet
Pondicherry - 605 014 ..2nd Respondent in WP.Nos.2936 to
2940,3098 & 3099/16
..1st Respondent in WP.3875 & 2nd
Respondent in WP.444/2016,4415,
4416,4417,4418

3. The Medical Council of India
represented by its Secretary
MCI Building, Pocket - 14
Sector-8, Dwarka Phase-1
New Delhi - 110 077

...3rd Respondent in WP.Nos.2936
to 2940, 3098, 3099/16
3875 & 1st respondent in WP.NO.
4414/16, 4415, 4416, 4417,4418

Sri Manakula Vinayagar Medical
College and Hospital
madhagadiPet,
Puducherry- 605 107

...2nd Respondent in
WP.No.3875/16

Sri Venkateswara Medical college
Hospital and Research Centre, Ariyur,
Puducherry- 605 102

...3rd Respondent in
WP.No.4414 of 2016
4415, 4416,4417 & 4418/16

WP No. 2936,2937, 2939 of 2016:- Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the second respondent to award "3" marks to the petitioner as grace marks, in her practical test of Surgery in the III Professional Part II MBBS December 2015 examination as per the Medical Council Regulation.

WP.No.2938 of 2016 & 2940 of 2016:Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the 2nd respondent to award 2 marks to the petitioner as grace marks in her practical Test of General Medicine in the III Professional part II M.B.B.S. December 2015 examinations as per the Medical Council Regulation.

WP.No.3098 & 3099 of 2016: Petitions praying to issue a Writ of Mandamus directing the second respondent to award 7 marks and 1 marks respectively to the petitioner as grace marks in her practical Test of Pediatrics in the III Professional part II M.B.B.S November 2015 examinations as per the Medical Council Regulation.

WP.No.3875 of 2016: Petition praying to issue a Writ of Mandamus Directing the 1st respondent to grant 8 (Eight) marks as grace marks towards the Petitioner's Practical Test of General Surgery in the III Professional Part II M.B.B.S held on November 2015 Examinations as per Paragraph 3 of the Examination Regulations 2009-10 of Pondicherry University.

WP.Nos.4414 of 2016, 4415, 4416, 4417, 4418 of 2016:Petition praying to issue a Writ of Mandamus directing the 2nd Respondent to grant 6 (Six) '7'marks ,4 marks, 5 marks and 8 marks respectively as grace marks towards the petitioner practical test of General Surgery in the III Professional Part II M.B.B.S held on November 2015 Examinations as per paragraph 3 of the Examination regulations 2009-10 of the Pondicherry University.

.....

Mr.V.Raghavachari
for the Petitioners in WP.Nos.2936 to 2940 of 2016
and 3098 & 3099 of 2016

Mr.V.Sanjeevi
for the Petitioner in WP.No.3875 of 2016

Mr.A.Swaminthan
for the Petitioner in WP.Nos.4414 to 4418 of 2016

Mrs.A.V.Bharathi Advocate for the 1st Respondent in
WP.Nos.2939 to 2940 of 2016, 3875 and for the 2nd Respondent in
WP.Nos.2936 to 2940, 3098 and 3099/16, and 4414 to 4418 of 2016

Mr.V.P.Raman Advocate for the 3rd Respondent in
WP.Nos.2936 to 2940, 3098, 3099 and 3875/16 and for the 1st
Respondent in WP.Nos.4414 to 4418 of 2016.

COMMON ORDER

In all these writ petitions, the petitioners, who are pursuing M.B.B.S. course in various colleges which are affiliated to the second respondent herein namely Puducherry University, seek for issuance of a Mandamus to direct the University to award them grace marks in various subjects in which they have appeared as per the Medical Council Regulation. Thus, the issue which arise for consideration of this Court in these writ petitions are common, identical and inter-related, therefore, they are taken up together and are disposed of by this common order.

2. For the purpose of disposal of these writ petitions, the averments in WP No. 2936 of 2016 are taken up for consideration as a test case.

3. The petitioner in WP No. 2936 of 2016 joined the MBBS course in the first respondent college during the year 2011. The first respondent college is affiliated to the second respondent University and approved by the Medical Council of India. According to the petiitoner, in the final semester

examinations held in December 2015, results of which were published during January 2016, the petitioner has scored good marks in all the subjects, except in General Medicine i.e., practical test. The total marks to be awarded for the practical test is 50 but the petitioner was awarded only 47 marks, by reason of which the petitioner was declared "fail". On receipt of the mark sheets, the petitioner approached the University on 22.01.2016 and requested for revise the practical marks awarded to her in the General Medicine subject as per the Medical Council Regulations. However, the second respondent did not consider such request made by the petitioner for award of additional 3 marks in the practical test. Therefore, the petitioner in WP No. 2936 of 2016 has come up with this writ petition before this Court. Similar is the case of the other petitioners in these batch of cases, who were also declared failed for having secured lesser marks in the practical examination.

4. The learned counsel for the petitioners would submit that as per the ***Pondicherry University Examination Regulation**, the petitioners are entitled to get grace marks upto 5% of the total marks secured. By reason of the failure on the part of the University to follow the ***Pondicherry University Examination Regulation**, the petitioner could not pursue her higher education i.e., Post Graduate course. The learned counsel for the petitioners also relied on the identical orders passed by this Court on 16.02.2015 in WP No. 3272 of 2015 and the order dated 17.03.2015 in WP Nos. 7361, 7364 and 7365 of 2015 wherein similar issue was considered by this Court with a direction to the University to award grace marks by following the ***Pondicherry University Examination Regulation**. The learned counsel for the petitioners therefore prayed this Court to allow these writ petitions as well.

5. On the contrary, the learned standing counsel appearing for the Puducherry University vehemently opposed the relief sought for in these writ petitions. According to the learned standing counsel for the University, the earlier orders passed by this Court cannot be made applicable to the petitioners. It is further submitted that in terms of the regulations of the University for 2009-2010, grace marks can be awarded for only one subject and such marks shall be awarded only for the examinations conducted semester-wise and not for practical examinations.

6. I heard the learned counsel for the petitioners as well as the learned counsel for the respondents. It is not in

dispute that the regulations of the Puducherry University for 2009-2010 provides for grant of grace marks. Such grace marks can be awarded by the University in the region of 5% of the total marks secured. A distinction was sought to be made by the learned counsel for the second respondent that such grace marks can be awarded only in the semester examinations of other subjects and not for practical examinations. The very same question arise for consideration and this Court, by order dated 16.02.2015 in WP Nos. 3272 to 3277 of 2015 negatived such a contention urged on behalf of the second respondent. The findings rendered in para No.12 of the order dated 16.02.2015 can usefully be extracted hereunder:-

"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 marks of more than 5 in practical subject. By way 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.

7. Therefore, by following the findings rendered by this Court in an identical case as against the second respondent-University, I hold that there cannot be any distinction in awarding grace marks, either in practical or theoretical subjects.

8. It is an admitted fact that the University has been given discretion to award 5% of grace marks to facilitate the student to secure a pass. In the instant case, but for the award of eligible grace marks in the practical examinations, by exercising the discretion vested with the University, the students were declared fail and they could not pursue higher education. In order to tide over situation of this nature, the University has been given discretion to award marks upto 5% of the total marks secured by the student. Such discretion can be exercised by the University in the larger interest of the students, who have otherwise secured good marks in all other subjects. In the present batch of cases, all the petitioners have secured fairly good marks and they are only seeking to get grace marks in the practical test. Therefore, I am of the view that this is a fit case where this Court will be justified in issuing a Mandamus as prayed for by the petitioners to direct

the respondents-University to award eligible grace marks to the each of the petitioners as per the ***Pondicherry University Examination Regulation,**

9. Accordingly, all the writ petitions are allowed and there will be a direction to the second respondent - Puducherry University to award eligible grace marks to each of the petitioners and consequently declare their results within a period of 10 days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

Dated: 19.2.2016

*Correcte as per
the order of this court
dated 18.3.2016

Sd/

Assistant Registrar

Dated: 13.4.2016

True Copy

Sub-Assistant Registrar

To

1. Indira Gandhi Medical College and
Research Institute, Kadirgamm
Pondicherry

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

4. Pondicherry University of Medical
Sciences, No.20, Kalapet,
Kalathu mettu pathai,
Ganapathichettikulam village,
Puducherry-605 014

To be substituted
to the order
already despatched
on 19.2.2016

5. Sri Manakula Vinayagar Medical
College and Hospital
madhagadiPet,
Puducherry- 605 107
- 6 Sri Venkateswara Medical college
Hospital and Research Centre, Ariyur,
Puducherry- 605 102

+1 cc to M/S.V.Sanjeevi Advocate Sr.No.967

+1 ccs to M/s.A.V.Bharathi Advocate
sr.No.17320

+1 cc to Mr.V.P.Raman Advocat sr.17931

+5 ccs to Mr.A.Swaminathan Advocate
sr.Nos.9826 to 9830

3 ccs to M/S.V.Raghavachari Advocate
sr.Nos.17476

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4418 of 2016

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