

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.7861 of 2016
and WMP.No.7019 of 2016

Guralarasan.G

... Petitioner

Vs

The Medical Council of India
MCI Building Pocket -14
Sector - 8, Dwaraka 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

Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the second respondent to grant 7 (seven) Marks as grace marks towards the petitioner's practical test of General Medicine in the III Professional Part II M.B.B.S. held in November 2015 Examinations as per paragraph 3 of the Examination Regulations 2009-10 of the Pondicherry University.

For Petitioner : Mr.A.Swaminathan

For Respondent : M/s.A.V.Bharathi for R2.

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O R D E R

With the consent of both sides, the Writ Petition is taken up for final disposal.

2. The petitioner joined the MBBS course in the third respondent college during the year 2011. The third respondent college is affiliated to the second respondent University and

approved by the Medical Council of India. According to the petitioner, 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 43 marks, by reason of which the petitioner was declared "fail". On receipt of the mark sheets, the petitioner approached the University on 27.02.2016 and requested to revise the practical marks awarded to him 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 7 marks in the practical test. Therefore, the petitioner has come up with this writ petition before this Court.

3. The learned counsel for the petitioner would submit that as per the ***Pondicherry University Examination Regulations**, the petitioner is 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 Regulations**, the petitioner could not pursue his higher education i.e., Post Graduate course. The learned counsel for the petitioner 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 Regulations**. The learned counsel for the petitioner therefore prayed this Court to allow this writ petition.

4. On the contrary, the learned standing counsel appearing for the Puducherry University vehemently opposed the relief sought for in this writ petition. According to the learned standing counsel for the University, the earlier orders passed by this Court cannot be made applicable to the petitioner. 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.

5. I heard the learned counsel for the petitioner 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.

6. 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.

7. 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 case, the petitioner has secured fairly good marks and he is 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 petitioner to direct the respondents-University to award eligible grace marks to the petitioner as per the ***Pondicherry University Examination Regulations.**

8. Accordingly, the writ petition is allowed and there will be a direction to the second respondent - Puducherry University to award eligible grace marks to the petitioner 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 petition is closed.

Sd/-

Assistant Registrar(CS III)

Dated:11/03/2016

*Amended as per the order dated 21.04.2016 made in W.P.No.7861/2016 of this Hon'ble Court.

Sd/-

Assistant Registrar[CS-III]

Dated:10/05/2016

//True Copy//

Sub Assistant Registrar

To

The Medical Council of India
MCI Building Pocket -14
Sector - 8, Dwaraka Phase - I,
New Delhi - 110 077.

To be substituted the order
already despatched on
14.03.2016

2.Controller of Examinations
Pondicherry University
Kalapet, Pondicherry-605 104.

3.Sri Venkateswara Medical College Hospital & Research Centre
Ariyur, Puducherry - 605 102.

+1cc to Mr.A.Swaminathan, Advocate, S.R.No.15214

+1cc to Mr.A.V.Bharathi, Advocate, S.R.No.24685

W.P.No.7861 of 2016

sns (CO)

srg (11/03/2016)

srg 11/05/2016