

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.Nos.9932 and 9659 of 2016

Ahswini Kumar.R.S. ... Petitioner in W.P.9932 of 2016

Velmurugan ... Petitioner in W.P.9659 of 2016

Vs.

1. Indira Gandhi Medical College and Research Institute, Kadigramam, Puducherry.
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.

... Respondents in both Writ Petitions

Writ Petition No.9932 of 2016 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent to award "1" mark to the petitioner as grace marks, in his practical test of Ophthalmology (Practical) in the III Professional Part of I MBBS November 2015 examinations as per the Medical Council Regulations.

Writ Petition No.9659 of 2016 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent to award "1" mark to the petitioner as grace marks, in petitioner's practical test of Ophthalmology (Practical) in the III Professional Part of I MBBS November 2015 examinations as per the Medical Council Regulations.

For Petitioners in : Mr.V.Raghavachari
both Writ Petitions

For Respondents in : Mr.Stalin Abhimanyu for RR-1 & 2
both Writ Petitions Mr.V.P.Raman for R-3

COMMON ORDER

In both these Writ Petitions, the petitioners, who are pursuing MBBS course in the first respondent-College, affiliated to the second respondent-Pondicherry University, seek for issuance of Writs of Mandamus to direct the University to award "1" mark to the petitioners as grace mark in their practical test of Ophthalmology (Practical) in the III Professional Part of I MBBS November 2015 examinations as per the Medical Council of India Regulations.

2. Thus, the issue which arises for consideration of this Court in both these Writ Petitions is common, identical and inter-related, and therefore, they are taken up together and disposed of by this common order.

3. Both the petitioners joined the MBBS course in the first respondent- college during the year 2011. The first respondent-college is affiliated with the second respondent-University and approved by the third respondent-Medical Council of India (MCI). According to the petitioners, the classes are conducted regularly and examinations conducted once in a year. It is their further case that the third year examination was held in November 2015. The Roll number of the petitioner in W.P.No.9932 of 2016 (Ashwin Kumar.R.S) is 11770619 and the Roll number of the petitioner in W.P.No.9659 of 2016 (Velmurugan) is 11770744.

4. It is further stated that both the petitioners appeared for all the examinations and the results were published on 10.03.2016; except the subject "Ophthalmology", both of them secured good marks. The examination is for 750 marks and Ashwin Kumar.R.S. secured 423 marks and Velmurugan secured 420 marks altogether. It is the further case of the petitioners that in the subject "Ophthalmology" (Practical), the pass mark required is 40 and both of them were given 39 marks only and declared "fail" on that particular subject alone.

5. On receipt of the mark statements, both the petitioners approached the second respondent on 11.03.2016 for revision of practical marks in the said subject "Ophthalmology" (practical) and sought for grant of grace marks based on the MCI Regulations, which states that "the grace marks upto a maximum of five marks may be awarded at the discretion of the University

to a student who has failed only in one subject, but has passed in all other subjects". The petitioners rely on the said regulation and asserts that they are entitled to grace marks, as they have passed in all the other subjects. In various cases, this Court uniformly extended the benefit to all the students, but the respondents are reluctant to act property.

6. It is further stated by the petitioners that even as per the Pondicherry University Regulations, with regard to the grace marks in case of failure in one out of all subjects for the particular semester, they are entitled to grace marks, and the said Regulation of the University reads that, "A Board/Examination Committee is constituted for finalising the results of examination 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."

7. It is the grievance of the petitioners that the second respondent-University ought to have followed the above said MCI Regulations and also the University Regulations. In spite of the representation(s) of the petitioners, the second respondent-University did not initiate any action. Hence, the petitioners have filed these Writ Petitions for the above relief.

8. Learned counsel for the petitioners relied on the identical orders passed by this Court: (i) on 16.02.2015 in W.P.Nos.3272 to 3277 of 2015, (ii) the order dated 17.03.2015 in W.P.Nos.7361, 7364 and 7365 of 2015 and (iii) the order dated 16.02.2016 passed in W.P.No.2936 of 2016, etc. batch, wherein similar issue was considered by this Court with a direction to the University to award grace marks by following the MCI Regulations. The learned counsel for the petitioners therefore prayed this Court to allow both these writ petitions as well.

9. On the contrary, the learned Standing Counsel appearing for the second respondent-Pondicherry University vehemently opposed the relief sought for in both these writ petitions. According to the learned Standing Counsel, the earlier orders passed by this Court cannot be made applicable to the case of the petitioners. It is further submitted that in terms of the Regulations of the second respondent-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.

10. Heard both sides and perused the materials available on record.

11. It is not in dispute that the Regulations of the second respondent-Pondicherry University for 2009-2010 provides for grant of grace marks and such grace marks can be awarded by the University in the range of 5 marks out of the total marks secured. A distinction was sought to be made by the learned Standing 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.

12. The very same question arose for consideration before this Court as stated supra and in one of the cases, by order dated 16.02.2015 in W.P. Nos.3272 to 3277 of 2015, this Court negatived such a contention urged on behalf of the second respondent-University. 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.

13. Therefore, by following the above 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.

14. It is an admitted fact that the second respondent-University has been given discretion to award 5 marks as 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 second respondent-University, the students were declared "fail" and this may lead the students not to pursue higher education. In order to tide over the situation of this nature, the second

respondent-University has been given discretion to award "5" marks out of the total marks secured by a student. Such discretion can be exercised by the second respondent-University in the larger interest of the students, who have otherwise secured good marks in all the other subjects. In both the present Writ Petitions, the petitioners have secured fairly good marks in all the other subjects 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 second respondent to award eligible grace marks to both the petitioners as per the MCI Regulations.

15. Accordingly, both the Writ Petitions are allowed and there will be a direction to the second respondent-Pondicherry University to award eligible grace marks to both these petitioners as sought for by 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.

Sd/-
Assistant Registrar(J)

//True Copy//

cs
To

Sub Assistant Registrar

1. Indira Gandhi Medical College and
Research Institute,
Kadirgama, Puducherry.
2. The Controller of Examinations,
Pondicherry University, Kalapet,
Pondicherry-605 014.
3. The Secretary,
Medical Council of India,
MCI Building Pocket - 14,
Sector - 8, Dwarka Phase - 1,
New Delhi - 110 077.

+2cc's to Mr.V.Raghavachari, Advocate, S.R.No.17266 & 17265
+2cc's to Mr.Stalin Abhimanyu, Advocate, S.R.No.17862 & 17861
+2cc's to Mr.V.P.Raman, Advocate, S.R.No.17549

W.P.9932 and 9659 of 2016

SVI (CO)
CA(01/04/2016)