

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10965 of 2017

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Azhar Anwar, Son of Syed Mohammad Anwar Alam, resident of Naaz Villa, House No. 01, Road No. B/3, Ali Nagar, P.O. Anisabad, P.S. Gardanibagh, District- Patna, Pin Code- 800002.

... .. Petitioner/s

Versus

1. The Chancellor, B. N. Mandal University, Laloo Nagar, Madhepura, Bihar, Pin Code- 852113.
2. B. N. Mandal University, Laloo Nagar, Madhepura, Bihar, Pin Code- 852113 through its Vice Chancellor.
3. The Vice Chancellor, B. N. Mandal University, Laloo Nagar, Madhepura, Bihar, Pin Code- 852113.
4. The Registrar, B. N. Mandal University, Laloo Nagar, Madhepura, Bihar, Pin Code- 852113.
5. The Controller of Examination, B. N. Mandal University, Laloo Nagar, Madhepura, Bihar, Pin Code- 852113.
6. Katihar Medical College, through its Principal, Karim Bagh, P.O. Box- 23, Katihar- 854105.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Mishra, Advocate
For the Respondent/s	:	Mr. Rajendra kumar Giri, Advocate
For University	:	Mr. Mithilesh Kumar Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 01-09-2017

Heard learned counsel for the parties.

2. The petitioner seeks a direction for allowing a grace marks for the purpose of declaring him pass in Pathology paper of second MBBS Professional Examination (Theory).

3. The petitioner has secured altogether 42 marks out of 95 in the said theory paper. For being



declared pass, he was required to have secured 50% of marks, viz, 50. He had appeared for the said examination in the year 2016. This is not in dispute that to clear the same paper, he appeared again in the year 2017 and has again been declared 'fail'.

4. The petitioner is relied on certain Scheme under Regulation 11(C) of Regulations and Scheme of the B.Tec. Examination to contend that 5 marks ought to have been automatically awarded and the petitioner ought to have been declared pass in the 2016 examination itself.

5. I do not find any substance in the plea, which has been taken on behalf of the petitioner.

6. Regulation 11 (C) of the Regulations and Scheme, which has been relied on, has no application at all for Graduate Medical Education, which is governed by the Medical Council of India on Graduate Medical Education, 1997. The Division Bench of this Court in case of ***Roma Jha Vs. B.N.Mandal University, Madhepura and ors*** reported in ***2017(1) PLJR 323*** has dealt with Regulation 11(C) of the said Regulation and Scheme, which too cannot



be applied to consider the relief sought for in the present writ application. Regulation 13(10) of the Medical Council of India on Graduate Medical Education, 1997 provides that a grace marks up to 5 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.

7. There are two aspects of the matter. Firstly, when an authority is vested with certain discretion, the Court cannot command such authority to exercise discretion. Secondly, even if 5 marks were awarded to the petitioner, he could still have not been declared pass because his marks is less by 5.5., marks to achieve the pass marks.

8. As has been noted above, there is yet another aspect. The petitioner after having failed in the year 2016 in Pathology subject had again appeared in the year 2017 and he has failed again and he is said to have this time scored 37 marks only. The marks which he had scored in the year 2016 became inconsequential for all purpose after the petitioner appeared for the said examination in the year 2017. No relief in such



circumstance, can be granted.

8. This application is, accordingly,
dismissed.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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