

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

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The Honourable Mr.Justice HULUVADI G.RAMESH,
and
The Honourable Dr.Justice S.VIMALA

W.A.No.291 of 2017

S.Gracy Priscilla

... Appellant/Petitioner

versus

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

Prayer : Writ Appeal is filed under Clause 15 of the Letters Patent, against the order of the learned single Judge dated 10.01.2017 in W.P.No.629 of 2017.

W.P.No.629 of 2017:- Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus call for the records on the in proceedings PU/ CE/ E5/ 2016-2017/895, dated 23.12 2016 on the file of 2nd respondent and quash the same illegal incompetent and further to direct the second respondent to award 2 marks to the petitioner as grace marks, in her practical Test of General Medicine (Practical) in the III Professional II M.B.B.S, June 2016, examinations as per the Medical Council Regulation.

For Appellant :	Mr.V.Raghavachari
For R2 :	Mr.Stalin Abhimanyu
For R3 :	Mr.V.P.Raman

JUDGMENT

(Judgment of the Court was made by Justice S.VIMALA)

The Writ Petition challenging the impugned order dated 23.12.2016, rejecting the application of the petitioner seeking grace marks was dismissed by the learned single Judge, by the Judgment dated 10.01.2017, which is under challenge in this Writ Appeal.

2. Brief Facts:

(i) The petitioner, who is a medical student, was able to get through in all the subjects in the final year except in only one subject and as per the Medical Council of India directions or regulations, up to maximum of 5 marks can be granted to a student, who had failed in only one subject. According to the petitioner, for want of two marks, she failed in only one subject, and therefore, it is a fit case for invoking the MCI regulations, to award grace marks (two only) and to declare that she has passed.

(ii) The petitioner relied upon the earlier Judgment passed by this Court in cases of similar nature, wherein, this Court has directed awarding of grace marks on the ground that the awarding of grace marks would be in tune with MCI regulations.

(iii) The contention of the respondent is that the grant of grace marks is at the discretion of the University and that the MCI regulation is only recommendatory in nature.

(iv) Accepting the contention of the respondent that it is a prerogative of the University to decide upon the merits of the student and that it is at the discretion of the University to reject the claim for awarding of grace marks, the writ petition has been dismissed by the learned single Judge. Challenging the same, the Writ Appeal has been filed.

3. The contention of the learned counsel for the appellant is that a) as per the Medical Council Regulation No.12, the appellant is entitled to get grace marks up to 5% of the total marks secured; b) the rejection of grace marks on the ground that, the Academic Council has approved the scrapping the grace marks on 3.10.2016 is not valid, especially after the declaration of the results of the appellant and that this scrapping would not apply to the case of the appellant as the examination was held in the month of June 2016, i.e. four months earlier to the decision taken regarding scrapping of grace marks

4. The Medical Council of India Regulation on Graduate Medical Education 1997 (amended up to 8.10.2016) enables the

University to grant grace marks and the relevant regulation reads as under:

"The grace marks up to a maximum of the 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."

5. It is also relevant to consider the examination regulation of the Pondicherry University 2009-2010, which contemplates the grant of grace marks. It is relevant to extract the relevant portion of the MBBS syllabus and regulations of the second respondent University, which reads as follows:

"Grace Marks in case of failure in ONE out of all subjects for the particular semester.

"A Board/Examination Committee is constituted for finalizing the results of examinations of each phase. The members would scrutinize 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 (viz., First professional, second professional, etc.,) examination.

For e.g.,

1. For the subject Anatomy, given the above guidelines, a maximum of eight marks (5% of maximum of theory examinations of 160) can be awarded.

2. For the subject of Pediatrics, given the above guidelines, a maximum of four marks (5% of maximum of theory examinations of 80) can be awarded.

The grace mark of 5% is applicable to all the Annual/Summative examinations of MBBS conducted semester-wise.

This addition of grace marks is applicable to students irrespective of First or subsequent appearances provided that he/she will be passing the annual/summative examinations in total with such considerations.

Split distribution or addition of grace marks to more than one subject, practicals and internal assessment is not permitted."

6. The university, on 29th June 2016, communicated to the students through the respective colleges, through a Circular that as per the existing regulations of the Medical Council of India and that of the Pondicherry University, there shall be no grace marks for MBBS practical examinations.

7. Whether this Circular is binding on the students, who got enrolled in the Institution during 2012 and wrote the examinations during June 2016 and more particularly, when the Academic Council has approved the scrapping of marks only on 03.10.2016, i.e. it was after the declaration of the results of the appellant. This is the main issue canvassed in the Writ Appeal.

8. It is pertinent to note that before passing the Circular dated 29.6.2016, the University, in exercise of its discretion vested in by virtue of Regulation 13(10) of the Medical Council of India, was awarding grace marks all along the years and only during the middle of the academic year in May, 2016, the University has decided to amend its MBBS Regulations to the effect that there would be no revaluation and awarding of grace marks to theory and practical examinations from May 2016 onwards and accordingly, the second respondent has issued Circular dated 29.6.2016 informing to all the students about the decision taken by the University. It is also to be noted that no final decision has been taken by the University so far by bringing a regulation or rule in order to amend MBBS Regulations and mere passing a Circular contrary to the practice which was followed years together, all of a sudden that too in the midterm of the course, giving it to retrospective effect, i.e. from May 2016 onwards, without assigning any good reason or rationale for the University for its decision in deviating from its earlier practice of granting Grace Marks up to 5 marks to a Student of MBBS, who was clearing all other subjects of the examination, is in our view without any basis or reasonableness, therefore, discriminatory and arbitrary in nature. In fact, this Court time and again examined the issue of granting grace marks and decided both in favour of the students as well as in favour of the University depending upon the facts of each case.

9. In this case, of course, it is true that award of grace marks under MCI regulation is completely left to the discretion of the University and the restrictions are that maximum shall not exceed 5 marks and such grace marks should be awarded to a student only in one subject to get a pass and such student should have passed in all other subjects. Further, we also find a reasonable force in the contention of the learned counsel appearing for the second respondent that award of grace marks is an exception and the Court should not permit dilution of educational standards in the University by ordering award of

grace marks. However, considering the peculiar circumstances of the present case, wherein, admittedly, the appellant has joined MBBS from the academic year 2012 onwards and since she had been informed that the evaluation of the examination would be in accordance with the MCI Regulations 2009-10, she would have had a legitimate expectation that such regulation shall be applicable till she completes the course. Granting of grace marks is part of the course and various facets leading to the conferment of a degree, that were in force at the time of admission of a candidate, must remain same till the students complete the course in accordance with those very rules. Law does not permit alteration of the same when the candidate is half way through. Therefore, depriving the benefit of granting grace marks to the appellants, who were at the last stage in completing their course, by the University which has to exercise its vested discretion keeping in view of the interest of the student, who performed well in all his subjects, but unfortunately, in one subject alone, was unable to get the pass marks. Therefore, we are of the view that the decision being taken as a matter of policy by the University to decline grace marks in the practical examination to any student in any subject is arbitrary.

10. In this regard, it is worthwhile to refer relevant decisions rendered by the various Courts. In the Tamil Nadu Dr. M.G.R. Medical University, Rep by its Registrar & Another Versus P. Anand & Others, reported in 2011 (6) CTC 801, the Division Bench has considered the guideline framed by the university and its implementation when the same was issued in the midterm of the course. It has been held in para 29, which reads as under:

"29. The grievance of the students both in the first M.B.B.S. as well as final M.B.B.S is that the guideline framed by the appellant University is inconsistent to regulation 12(4) of the MCI regulation and thereafter, the same is repugnant. Further it is contended that the impugned guideline is arbitrary and unreasonable and violative of Article 14 of the Constitution and the students having joined the course in 2006-07 having been informed that the evaluation of the examination would be in accordance with the MCI Regulation had a legitimate expectation that such regulation shall be applicable till they complete the course and therefore, the students in their writ petitions have pointed out various instances to justify their stand that the impugned guidelines suffer from the vice of gross discrimination and unreasonableness and violative of Article 14 of the Constitution.

11. In K.Nithish Kumar (Dr.) & Others Versus Dr.NTR University of Health Sciences, Vijayawada rep. by its Registrar, the High Court of Andhra Pradesh, has held as under:

"6. It has already been mentioned that the petitioners have been admitted into PG courses in the academic year 2006-2007. It is a matter of record that the rules and regulations, framed by the University that were in force when the petitioners were admitted, provide for addition of five grace marks by the University, in case such an addition would enable the candidate to pass the examination. It is not even necessary that a candidate being declared as passed in the subject concerned. Though it is mentioned as addition of grace marks, that process is part of the course and various facets leading to the conferment of a degree, that were in force at the time of admission of a candidate, must remain same till he completes the course in accordance with those very rules. Law does not permit alteration of the same when the candidate is half way through. Reference, in this context, must be made to the judgments in Motilal Padampat sugar Mills v. State of U.P. (1) (AIR 1979 SC 621) and Nimesh Mobta v. State of Maharashtra (2) (2005) 13 SEC 707). This view was expressed by this Court in A.Sundara Rami Reddy v. Principal, Guntur Medical College, Gunter (3) (1968 (1) An.W.R.56)"

12. In view of the above, we are constrained to interfere with the order passed by the learned Judge in the Writ Petition and accordingly, we set aside the same only on the ground that depriving of the benefit of granting grace marks to the appellants based on the Circular dated 29.6.2016 of the second respondent cannot be sustained as the same cannot be made applicable retrospectively.

12.1. In the result, the proceedings dated 23.12.2016 of the second respondent is quashed. Consequently, the respondents are directed to revise the declaration of the results of the appellant by following the regulation which was adopted on earlier occasion, i.e. which was in force on the date of admission of the candidate into the Institution and to carryout the consequent exercise of awarding grace marks, within a period of three weeks from the date of receipt of a copy of this Judgment.

13. With the above observation, this Writ Appeal is allowed.
No costs.

Sd/-

Asst.Registrar (CS II)

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Sub Asst. Registrar

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To

1. Indira Gandhi Medical College and
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+1cc to Mr.V.Raghavachari, Advocate Sr. 41341

+1cc to Mr.V.P.Raman, Advocate SR. 41801

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BR(CO)
VR(04/10/2017)