

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

Coram

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

W.A.NOs.325 to 333 OF 2017 &
C.M.P.No.4888 to 4896 of 2017

K.Magesh	..	Appellant in
		WA 325 of 2017
A.Jayakumar	..	Appellant in
		WA 326 of 2017
S.Swathi	..	Appellant in
		WA 327 of 2017
C.Suriyarajan	..	Appellant in
		WA 328 of 2017
Gopal Archana	..	Appellant in
		WA 329 of 2017
Y.Rajkumar	..	Appellant in
		WA 330 of 2017
B.Ramprasanth	..	Appellant in
		WA 331 of 2017
Radhika G.Krishnan	..	Appellant in
		WA 332 of 2017
Abinaya G.	..	Appellant in
		WA 333 of 2017

versus

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

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

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

..Respondents
in all Writ Appeals

For Appellants : Mr.K.Mohanamurali
in WA 325 to
330 of 2017

For Appellants : Mr.L.Chandrakumar
in WA 331 to
333 of 2017

: Mr.Stalin Abimanyu for
3rd Respondents in all WAs

R1 & R3 : No appearance

Prayer: Writ Appeals are filed under Clause 15 of the Letters Patent, against the common order of the learned single Judge dated 15.2.2017 in W.P.Nos.3769 to 3777 of 2017.

Writ petition filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus, directing the 2nd respondent to grant 2 (Two) Marks as grace marks towards the petitioners practical test of General Surgery in the III professional Part II M.B.B.S held on November 2016 as per the Medical Council of India Regulations Chapter IV 13 (10) & Pondicherry University Examination Regulations 2009- 2010 (W.P.No.3769, 3770, 2017)

Writ petition filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus or any other directing the 2nd respondent to grant 3 (Three) Marks as grace marks towards the petitioners practical test of Paediatrics in the III professional Part II M.B.B.S held on November 2016 as per the Medical Council of India Regulations Chapter IV 13 (10) & Pondicherry University Examination Regulations 2009- 2010 (W.P.No.3771 of 2017)&

Writ petitions filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus or any other direction or order similar thereto, directing the 2nd respondent to grant (Five) Marks as grace marks towards the petitioners practical test of General Surgery in the III professional Part II M.B.B.S held on November 2016 as per the Medical Council of India Regulations Chapter IV 13 (10) & Pondicherry University Examination Regulations 2009- 2010 (W.P.3772/2017, W.P.No.3773)&

Writ petitions filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus directing the 2nd respondent to grant 5 (Five) Marks as grace marks towards the petitioners practical test of Paediatrics in the III professional Part II M.B.B.S held on November 2016 as per the Medical Council of India Regulations Chapter IV 13 (10) (W.P.No.3774) &

Writ petitions filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus or any other direction or order similar thereto, directing the 2nd respondent to grant 7 (Seven) Marks as grace marks towards the petitioners practical test of General Medicine in the III professional Part II M.B.B.S held on November 2016 as per the Pondicherry University Examination Regulations Medical 2009-2010(W.P.NO.3775, 3776 of 2017) &

Writ petitions filed under Article 226 of the constitution of India praying for the issuance of a writ of Mandamus or any other directing the 2nd respondent to grant 8 (Eight) Marks as grace marks towards the petitioners practical test of General Medicine in the III professional Part II M.B.B.S held on November 2016 as per the Pondicherry University Examination Regulations Medical 2009-2010(W.P.No.3777 of 2017)



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COMMON JUDGMENT

(Judgment of the Court was made by
HULUVADI G. RAMESH, J.)

These Writ Appeals have been directed against the common order passed by the learned Judge dated 15.2.2017 in W.P.No.s.3769 to 3777 of 2017 rejecting the claim of the writ petitioners, to direct the Controller of Examinations to grant grace marks (ranging 2 to 8 marks) for the practical test of the respective subjects in respect of III Professional Part II MBBS held in November, 2016 wherein, they had failed.

2. According to the appellants, they are the medical students joined MBBS course in the 3rd respondent College for the academic year August 2012. The said College is affiliated to the Pondicherry University/2nd Respondent. The appellants had successfully completed all the examination papers and reached final year and joined in III professional Part II course in December 2015. The appellants appeared examinations for four subjects, viz., General Medicine, General Surgery, Obstetrics & Gynecology and Paediatrics in December 2016. The examinations results were published in January 2017, wherein, while they cleared all the subjects with goods marks, but unfortunately failed in Practical Test of their respective subjects due to shortage of marks ranging 2 to 8.

3. The Examination Regulations of the Pondicherry University 2009-10 contemplates the grant of grace marks. It is relevant to extract the relevant portion of 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."

4. The Medical Council of India Regulations on Graduate Medical Education, 1997 (Amended upto 8th October 2016) also enables the University to grant grace marks upto five marks. The relevant regulation is extracted 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. In view of the above, it appears that the appellants made representations to the second respondent to award shortage of marks since they had failed in one subject while successful in all other subjects. However, the second respondent has not considered the same, which prompted the appellants to approach this Court by way of filing the above said Writ Petitions.

6. After advertenting to the rival submissions and taking note of the Circular issued by the 2nd respondent dated 29.6.2016, by which, the Prondicherry University has decided to amend its MBBS Regulations in respect of awarding grace marks to theory and practical examinations in line with MCI Regulations and as such, there would not be any revaluation of MBBS answer papers and grace marks for practical papers from the academic session May 2016 onwards, the learned Judge has dismissed the Writ Petitions. Aggrieved by the same, challenging the order of the learned single Judge, the appellants are before us.

7. 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. 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 students have joined MBBS from the academic year 2012 onwards and since they were informed that the evaluation of the examination would be in accordance with the MCI Regulations 2009-10, they had a legitimate expectation that such regulation shall be applicable till they complete 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 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. 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.

8. 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.

9. 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) "

10. For the foregoing discussion, we conclude that the claim of the appellants cannot be rejected based on the so-called Circular dated 29.6.2016 issued by the second respondent giving it to the retrospective effect. We noticed from the marks

obtained by the appellants that some have failed by shortage of even one mark and some have failed even on shortage of 2, 3 or so. If a student fails in one subject that too a minimum marks, having performed excellent and come out successful in all the subjects, he should not be driven to reappear for the said subject and in the meantime, he may lose his further career of education and in order to avoid this, the Medical Council of India, thought it fit to introduce of awarding grace marks to the students who passed in all subjects, but failed in one subject.

11. In view of the above, we are constrained to interfere with the order passed by the learned Judge in the Writ Petitions 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. Accordingly, the respondents are directed to revise the declaration of the results of the students by following the regulation which adopted on earlier occasion and carryout the consequent exercise, within a period of three weeks from the date of receipt of a copy of this order.

With the above observation, these Writ Appeals are allowed. No costs. Consequently, connected CMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

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

+ 1 cc to Mr.Stalin Abimanyu, Advocate SR.22653
+ 10 ccs to Mr.A. Swaminathan, Advocate Sr.21989, 21901, 21902, 21903, 21904, 21905, 21906, 21907, 21908, 21909

W.A.Nos.325 to 333 of 2017

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