

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

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THE HON'BLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.3169 of 2017 and

W.M.P.No.3106 of 2017

Lakshmi Sowjanya Alamuru .. Petitioner

vs

1. The Union of India
rep. by its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi-110 011.
2. Medical Council of India,
Pocket 14, Sector 8,
Dwaraka Phase I,
New Delhi-110 077.
3. Pondicherry University
rep. by its Registrar,
R.V.Nagar, Kalapet,
Puducherry.
4. The Controller of Examinations,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry.
5. Pondicherry Institute of Medical
Sciences rep. by its Registrar,
Ganapathichettikulam,
Village No.20, Kalapet,
Puducherry-605 014. .. Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the proceedings in PU/CE/E5/MBBS/2016/650 dated 29.06.2016 on the file of the 4th respondent and to quash the same as illegal and without jurisdiction in so far as it seeks to deny the grant of grace marks in practical subjects to the students of the MBBS Course

and to consequently, direct the 3rd and 4th respondents to award 5 grace marks to the petitioner in her practical examination in Obstetrics and Gynecology in line with the regulations of the 2nd respondent and for consequential orders.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.A.K.Manojkumar for R1
Mr.V.P.Raman for R2
Mr.Stalin Abhimanyu for
R3 and R4

ORDER

Challenging the proceedings in PU/CE/E5/MBBS/2016/650 dated 29.06.2016 on the file of the 4th respondent so far as it seeks to deny the grant of grace marks in practical subjects to the students of the MBBS Course and seeking consequential direction, directing the 3rd and 4th respondents to award 5 grace marks to the petitioner in her practical examination in Obstetrics and Gynecology in line with the regulations of the 2nd respondent, the present Writ Petition has been filed.

2. The petitioner is a final year MBBS student in the 5th respondent institution. She has successfully finished the I, II and III year of the MBBS Course. But, she was declared to have failed in the practical component of one paper viz. Obstetrics and Gynecology by 5 marks in the final Year (III Prof Part II MBBS) Examination which is comprised of 4 subjects, namely, General Medicine, General Surgery, Obstetrics and Gynecology and Pediatrics. In that, each subject has three components, namely, theory, practical and viva voce. The maximum marks in each of these three components are 200, 130 and 20 respectively totalling to 350 marks. Therefore, the petitioner has given a representation on 31.01.2017 to the respondents 3 and 4 to consider her case leniently thereby awarding grace marks. However, her request was rejected by the 4th respondent vide their order dated 29.06.2016 which is impugned in this Writ Petition.

3. The contention of the learned Counsel for the petitioner is that as per Medical Council of India Regulations on Graduate Medical Education, 1997 (Amended up to 8th October 2016), Regulation 13(10) states that the grace marks up to 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 further contention of the learned Counsel for the petitioner is that though the

respondent University issued the impugned letter stating that it had decided not to award grace marks for practical examinations, it is, however, contrary to the provision of the MBBS regulations framed by the MCI which make no distinction between practical and theory components of a subject and if the impugned letter is quashed, then the petitioner comes within the zone of consideration for grant of 5 marks as per the MCI Regulation. Hence, the present Writ Petition.

4. Per contra, the learned Counsel appearing for the Pondicherry University would contend that a decision has been taken with regard to the provision of grace marks in various professional examinations of MBBS Course and additional attempts in the meeting of the Medical Council of India held on 09.01.2012 as follows:

'The Board of Governors considered with regard to Provision of Grace Marks in various professional examinations of MBBS Course and additional attempts. The Board deliberated on the suggestions of the Vice-Chancellor, Chhatrapati Shahuji Maharaj University, Lucknow and recommendations of the UG Committee and observed that suggestions to allow students to pass the examination without any further examination based on their previous performance as they had been falling for over many years is contrary to Regulations laid down by the Council, therefore, cannot be considered. The Board also took a serious view as such a recommendation from a Vice Chancellor is not warranted. One of the main objectives of MCI is to maintain standard of education and Graduate Medical Education Regulations are statutory and mandatory to follow. Regarding appointment of a panel of examiners for conducting theory and practical examinations, so that the students do not allege castes basis discrimination by the University, the Board decided that it does not come under the purview of MCI. This matter may be taken up by the University itself. Regarding the matter grant of grace marks, the Board decided to follow existing regulation of five grace marks in one subject.'

Therefore, the present Writ Petition is liable to be dismissed.

5. This Court has considered the submissions made on either side and perused the materials available on record.

6. On the face of the records, it appears that the petitioner, who is a final year MBBS student in the 5th respondent institution, though successfully finished the I, II and III year of the MBBS Course, failed in the practical

component of one paper viz. Obstetrics and Gynecology by 5 marks in the final Year (III Prof Part II MBBS) Examination which is comprised of 4 subjects, namely, General Medicine, General Surgery, Obstetrics and Gynecology and Pediatrics. It also appears that the petitioner has given a representation on 31.01.2017 to the respondents 3 and 4 to consider her case leniently thereby awarding grace marks of 5 by following the MCI Regulations. But the same was rejected by the 4th respondent by his letter dated 29.06.2016 stating that the Pondicherry University has decided to amend its MBBS Regulation with respect to revaluation and awarding of grace marks to theory and practical examinations in line with the MCI Regulations and to give effect to the same from the academic session May 2016 onwards, pending ratification by the Academic Council of the University. As such, there will not be any revaluation for MBBS answer papers and grace marks for practical papers from the academic session May, 2016 onwards. However, the Medical Council of India Regulations specifically recommends grant of grace marks in anyone subject, provided, the student has passed in all the other subjects.

7. Further, as per the decision reported in (2014) 3 MLJ 3076 (Vetriselvan and others vs. Registrar, Tamil Nadu Dr. MGR Medical University and others), the regulations of the Medical Council of India will prevail and there has to be consistency and the respondent University is bound to follow the regulations of the Medical Council of India. The Regulation 13.10 though gives a discretion to the University, it is not open to the University to pick and choose the candidates to be awarded the grace marks. So far, there is no challenge to the regulation of the Medical Council of India, which provides the award of grace mark of 5 in practicals. Under such circumstances, the submission of the learned Counsel for the Pondicherry University that it lies within the discretion of the University to award or not award grace marks is of no avail. As stated earlier, the Regulations of Medical Council of India will prevail in favour of awarding the grace marks in the practical examination to the petitioner, subject to other conditions. In the light of the above, the petitioner is entitled for the grace marks of 5.

8. In the result, the impugned order of the 4th respondent is quashed and the Writ Petition stands allowed with a direction to the 3rd and 4th respondents to award 5 grace marks to the petitioner in her practical examination in

Obstetrics and Gynecology in line with the regulations of the 2nd respondent. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Union of India,
Ministry of Health and Family Welfare,
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New Delhi-110 011.
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Puducherry-605 014.

+1cc to Mr.A.K.Manoj Kumar, Advocate, S.R.No.26208
W.P.No.3169 of 2017

SKV(CO)
RS(10/05/2017)