

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION Nos.3769 to 3777 of 2017

K.Magesh ... Petitioner in W.P.No.3769 of 2017
A.Jayakumar ... Petitioner in W.P.No.3770 of 2017
S.Swathi ... Petitioner in W.P.No.3771 of 2017
C.Suriyarajan ... Petitioner in W.P.No.3772 of 2017
Gopal Archana ... Petitioner in W.P.No.3773 of 2017
Y.Rajkumar ... Petitioner in W.P.No.3774 of 2017
B.Ramprasanth ... Petitioner in W.P.No.3775 of 2017
Radhika G.Krishnan ... Petitioner in W.P.No.3776 of 2017
Abinaya.G ... Petitioner in W.P.No.3777 of 2017
vs.

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.
3. Sri Venkateswara Medical College Hospital &
Research Centre, Ariyur,
Puducherry - 605 102. ... Respondents in W.P.Nos.3769,
3770,3771 to 3777/2017

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 Two (2) Marks as grace marks towards the petitioner's practical test of General Surgery in the III Professional Part II M.B.B.S. held in November 2016 as per the Medical Council of India Regulations Chapter IV 13(10) & Pondicherry University Examination Regulations 2009-2010. (W.P.3769, 3770 of 2017)

Writ Petition 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 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 Petition 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.No.3772/2017, W.P.No.3773 & 3774 of 2017)

Writ Petition 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 Petition 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 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)

For Petitioner
in all W.Ps.

:

Mr.L.Chandrakumar
for M/s.A.Swaminathan

For 3rd Respondent
in all W.Ps.

:

Mr.Stalin Abhimanyu

COMMON ORDER

Since the issue involved in all the Writ Petitions is one and the same, the cases are taken up for disposal by a common order.

2. The petitioners are before this Court seeking respective grace marks to qualify for a pass in the practical test of General Medicine/General Surgery/Obstetrics & Gynaecology and Paediatrics in the III Professional Part II

M.B.B.S. held in November 2016 as per the Medical Council of India Regulations Chapter IV 13(10) & Pondicherry University Examination Regulations 2009-2010.

3. According to the petitioners, they are Medical students of the 3rd respondent College. They joined M.B.B.S. course in August 2012. They began the III Professional Part II Course in December 2015 and the practical examinations were conducted in December 2016. They are required to take examination in four subjects, viz. General Medicine, General Surgery, Obstetrics & Gynaecology and Paediatrics.

4. It is the case of the petitioners that the Examination Regulations of the Pondicherry University 2009-10 contemplates the grant of grace marks, in case of failure in one out of all the subjects for the particular semester and that the Medical Council of India Regulations on Graduate Medical Education, 1997 (Amended upto 8th October 2016) Chapter - IV Examination Regulations (13)(10) also provides the University to grant grace marks.

5. The further case of the petitioners is that although the previous Examination Regulations on Graduate Medical Education, 2008 for the 2nd respondent University provided that no grace marks could be added to the Practicals, the said provision has been omitted from the Examination Regulations, which has been adopted by the 2nd respondent University from 2009-2010 onwards. As a result of the said amendment, the 2nd respondent has granted grace marks in Practical examinations to several students in the past. According to the petitioners, the Circular dated 29.06.2016 issued by the Controller of Examinations, which states that there will not be any revaluation for MBBS answer papers and grace marks for Practical papers from the academic session May 2016 onwards will not apply to them, as they joined the Phase III (Part-2) academic session in December 2015.

6. Highlighting the great deal of urgency in the award of grace marks to them, the petitioners stated that if grace marks are not awarded, they would not be able to commence their one year Compulsory Rotatory Residential Internship Course by March 2018, when the Post-Graduate Entrance Examinations would be conducted. In this regard, the petitioners have also sent a representation dated 01.02.2017 to the 2nd respondent requesting them to consider the grant of Grace Marks to them. However, pending consideration of the same, petitioners are before this Court.

7. Heard the learned counsel for the petitioners and the learned counsel appearing for the 3rd respondent College and perused the material documents available on record.

8. The issue in question is squarely covered by an order dated 10.01.2017 passed in W.P.No.629 of 2017, wherein, this Court dismissed the said Writ Petition, holding as under:

"7. On a careful note, this Hon'ble Court has looked into this matter. Here is a case where a medical student in whose hands lies the life of a person now comes to the Court. Therefore, having failed should she be given grace marks to pass so that, she can deal with the life of the others. Can that be given. Definitely, the answer is no. In that background, when we analyze the order, the University, earlier, as opined by the MCI notification/ Regulations, taking into consideration the different credence or the different grades has recommended that grace marks upto five marks can be given for the purpose of passing a failed student and especially, if a student has failed in only one subject.

8.As rightly pointed out in the impugned order as well as in the arguments of the learned counsel appearing for the second respondent, that the direction clearly specifies 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. Hence, the MCI Regulation has very categorically stated that at the discretion of the University, grace marks can be given to a student who has failed. Now, the University in the Apex body meeting in the University, basing upon the quantum and merits of the student and passing of the student in that meeting, they have now come to a conclusion that here afterwards, they are not going to implement grace marks system. In that view of the matter, they have rejected the application of the petitioner.

9.Furthermore, as rightly pointed out, as far as the standard of a student in passing or going out of college is concerned, prerogative of the University to decide upon the merit of the student, as rightly pointed out, as I have stated earlier, a student who is going to deal with the

life of many persons even if she fails in only one subject, even in one mark, a failed candidate is a failed candidate. Therefore, the application of seeking grace marks has been rightly rejected.

10. Though an argument was raised that in earlier cases, as per the direction of this Hon'ble Court, the system was allowed, I think this Court can come to a right conclusion at a later point of time.

11. This Court do not find any reason to interfere with the impugned order and the writ petition deserves to be dismissed. Accordingly, the writ petition is dismissed. No costs."

9. As per the MCI Regulations, awarding of grace marks to students is the discretion of the University. Now that the Controller of Examinations of the 2nd respondent University has made it clear that there will not be any revaluation for MBBS answer papers and grace marks for Practical papers from the academic session May 2016 onwards vide Circular dated 29.06.2016, the petitioners cannot take a stand that the said Circular will not apply to them since they joined the course in the year 2012.

10. For better understanding, contents of the said Circular dated 29.06.2016 pertaining to Revaluation of MBBS paper and awarding of Grace marks for Practicals, are extracted hereunder:

"With reference to the subject indicated above, I am to inform you that 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 sessions 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.

This may be brought to the notice of all students."

11. In view of the decision rendered by this Court cited supra and also taking into account the Circular dated 29.06.2016 issued by the 2nd respondent University, this Court finds no merit to consider the case of the petitioners herein. Accordingly, the Writ Petitions are dismissed. No costs. Consequently, connected W.M.P.Nos.3819 to 3827 of 2017 are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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.

+1cc to M/S.Stalin Abhimanyu, Advocate Sr.10493
+9cc to Mr.A.Swaminathan, Advocate Sr.9744 to 9752
+1cc to Mr.C.S.Saravanan, Advocate Sr.12942

W.P.Nos.3769 to 3777 of 2017

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