

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.25556 of 2017

R.Bhavya

... Petitioner

Vs

1.Indira Gandhi Medical College and
Research Institute (IGMCRI)
Rep. by its Dean,
Kadhirkamam, Pondicherry.

2.The Controller of Examinations,
Pondicherry University,
Kalapet,
Pondicherry.

3.Medical Council of India,
Rep. by its Secretary,
MCI Building, Pocket-14,
Sector -8, Dwarka Phase - 1,
New Delhi 110 077.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the Respondents 1 and 2 to award grace marks to the petitioner for the subject Forensic Medicine (MBBS Semester-II) and to declare her "Pass" in the said subject.

For Petitioner : Mr.R.Neelakandan

For Respondents : Mr.C.T.Ramesh (for R1)
Additional Government Pleader (P)

Mr.Stalin Abhimanyu (for R2)
Standing counsel

Mr.V.P.Raman (for R3)
Standing counsel

O R D E R

The petitioner was selected by the CENTAC for admission into medical course in the academic year 2014-15. The petitioner wrote the second year examination and in one paper namely forensic medicine, the petitioner was declared failed as the petitioner secured only 59 marks out of 120 in theory. However, the University clarified by communication dated 24.05.2017 addressed to the various medical colleges regarding awarding of grace marks that the grace marks would be awarded for papers only if the candidate failed in single subject while appearing for all subjects prescribed for that particular session and if the candidate clears one paper of a particular session and sits for remaining papers in the subsequent sessions he/she would not be eligible for grace marks. The said communication dated 24.05.2017 is being challenged before this Court.

2. Heard Mr.C.T.Ramesh, learned counsel for the first respondent; Mr.Stalin Abimanyu, learned standing counsel for the second respondent and Mr.V.P.Raman, learned standing counsel appearing for the third respondent.

3. There is no doubt regarding awarding of grace marks for single subject, provided the student had cleared the other papers in the single examination for that session and the grace marks should not be granted to those students who appears for the examination in compartment.

4.As per the Pondicherry University Examination Regulations, the minimum marks for declaration of pass is given in the following tabular column:

	University	Internal Assessment	University + Internal Assessment aggregate + Viva
Theory	40%	35%	50%
Practical / Clinical (minimum)	50%	35%	50%

5.A perusal of the records would show that in respect of forensic medicine, the petitioner has got the following marks:

Theory	-	39/80
Oral	-	13/20
Practical	-	35/50
IA. Theory	-	7/20
IA. practical	-	22/30

If the internal marks are taken into consideration, the petitioner would be failing in theory by obtaining 59/120 only viz., $39/80 + 13/20 + 7/20 = 59/120$, as the marks required for passing the paper is 60/120. Therefore, the petitioner is short of 1 mark as per the above said Regulations.

6. However, as per regulation 12 of the Medical Council of India regulation, internal assessment marks cannot be clubbed with the University examination (external) marks to ascertain whether a candidate has passed in the Examination. Medical Council of India regulation 12 (4) is extracted as follows:

"Pass: In each of the subjects, a candidate must obtain 50% in aggregate with a minimum of 50% in theory including oral and minimum of 50% in Practical/clinicals"

7. Therefore as per regulation 12 of Medical Council of India Regulations, the internal marks namely $7/20 + 22/30 = 29/50$ cannot be clubbed with the external marks namely $52/100 + 35/50 = 87/150$. If the Medical Council of India regulation prohibits clubbing internal marks with the external marks, in deciding the candidate as pass, the Pondicherry University cannot have a regulation contrary to the Medical Council of India's Regulation. Therefore, practical marks taken by the University to club it along with the external marks is erroneous. If internal assessment marks are eschewed and external marks are alone taken as factor to decide the result of the particular candidate, then the petitioner would be passing theory namely petitioner would be getting $52/100 + 35/50 = 87/150$. The minimum marks for passing in theory including oral is 50/100. As far as practical is concerned, 25 is the minimum mark, whereas the petitioner obtained 35/50. Therefore, the total marks obtained by the petitioner in external is 87/150. At this stage, only internal marks have to be added and the internal marks obtained by the petitioner is 29/50. Totally the petitioner has got 116/200, whereas the minimum mark for passing is 100/200. Therefore, without application of any grace marks, the petitioner has to be declared as pass in the paper. The above method is also supported by the judgment of the Hon'ble Supreme Court in Maharashtra University Health Sciences, Rep. by Deputy Registrar Vs. Paryani Mukesh Jawaharlal and others reported in (2007) 10 SCC 201 Paragraph 27 of the judgment is extracted as follows:

27. We, therefore, accept the interpretation put forth by the University in respect of MCI Regulation 12 as correct and hold that Clauses 56(2) and 57 of amended University Ordinance 1 of 2002 are in consonance with Clauses (2) and (4) of MCI Regulation 12. We also hold

that internal assessment marks cannot be clubbed with University examination (external) marks to ascertain whether a candidate has passed in theory with orals, and practicals. We further hold that the clarification given by MCI in its letter dated 17.09.2002 and the clarification in its reply-affidavit are contrary to MCI Regulation 12(4). Consequently, a student has to secure marks as follows to pass in a subject:

- (i) 35% in internal assessment (for eligibility to appear for University examination)
- (ii) 50% of the total marks for theory with orals (only externals)
- (iii) 50% of the marks for practicals/clinicals (only externals)
- (iv) 50% of the aggregate (total of externals and internals)

8. The guidelines given in the above judgment have been employed to declare that the petitioner has passed in forensic medicine. Though the petitioner has challenged the clarification dated 24.05.2017 by which it is clarified that no grace marks would be awarded to the student who is appearing for examination in compartment and the question of awarding grace marks would arise only in a single subject, provided the candidate cleared all the papers in the examination in one session, except one paper. Further it is found that the petitioner has got the required marks as per Medical Council of India regulation and considering the judgment of the Hon'ble Supreme Court and moulding the prayer, this Court declares the petitioner as having passed forensic medicine and the respondent University is directed to give the mark sheet declaring her as "pass". In view of the declaration that the petitioner has passed the paper namely forensic medicine, there should not be any prohibition for the petitioner to go for the third year and write the examination. The respondent/university is directed to receive the fees from the petitioner and allow the petitioner to write the third year examination.

With the above directions, this writ petition is disposed. No costs.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

sai/tkp

To

1.The Dean,
Indira Gandhi Medical College and
Research Institute (IGMCRI)
Kadhirkamam,
Pondicherry.

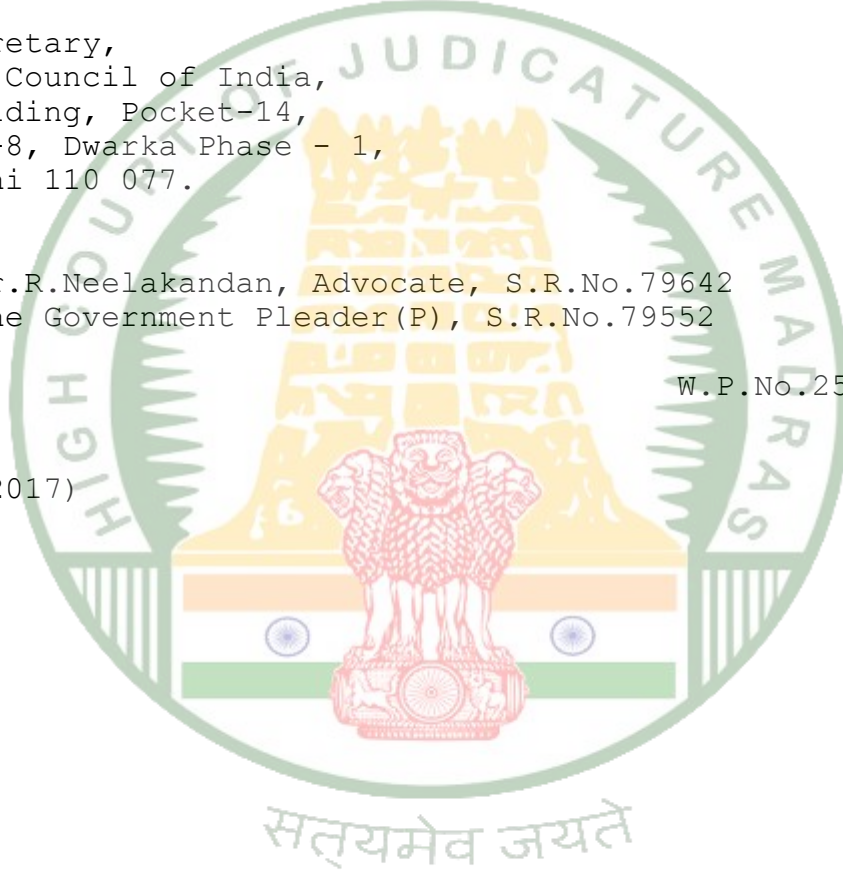
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3.The Secretary,
Medical Council of India,
MCI Building, Pocket-14,
Sector -8, Dwarka Phase - 1,
New Delhi 110 077.

+1cc to Mr.R.Neelakandan, Advocate, S.R.No.79642
+1cc to the Government Pleader(P), S.R.No.79552

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RV(CO)
CA(14/11/2017)



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