

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P No.18825 of 2017

G.Dharshini

... PETITIONER

Vs.

1.The Controller of Examinations,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

2.The Medical Council of India,
Pocket-14, Sector-8, Dwaraka,
New Delhi - 110 077.

3.The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.

... RESPONDENTS

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to promote the petitioner (Register No.341511351) in the qualifying examination held in May 2017 for the Post Graduate Diploma in Obstetrics and Gynaecology.

For Petitioner : Mr.P.Jagadeesan

For Respondents: Mr.P.R.Gopinathan [For R1 & R3]

Standing Counsel

Mr.V.P.Raman [For R2]

O R D E R

The petitioner, who underwent Post Graduate Diploma in Obstetrics and Gynaecology, in P.S.G.Institute of Medical Sciences and Research, Coimbatore has approached this Court seeking a Writ of Mandamus directing the respondents to promote the petitioner (Register No.341511351) in the qualifying examination held in May 2017.

2.The case of the petitioner is that she had completed her undergraduation degree in Medicine and got admitted in Post Graduate diploma in Obstetrics and Gynaecology, which is a two years course and the exams used to be conducted at the end of

the second year. In the examination conducted, the petitioner had secured 182 marks out of 300 marks in practical /clinical and viva whereas, she had secured only 149 marks out of 300 marks in theory papers, which workes out to 49.66%. But, the pass percentage is 50%. Hence, she was declared as fail.

3.Though the petitioner had secured only 149 marks out of 300 marks and the percentage would be 49.66%, which is 0.34% lesser than the qualifying cut-off mark for passing the examination, it was contended that she should be declared as pass in the Post Graduate Diploma in Obstetrics and Gynaecology in view of the fact that 49.66% should be rounded off to 50%.

4.Heard Mr.Jagadeesan, learned counsel appearing for the petitioner who would submit that the petitioner is a meritorious candidate and she secured 182 marks out of 300 marks in practical /clinical and Viva, whereas, the minimum marks to be obtained in clinical and Viva is 150 marks. As per the Medical Council of India Post Graduate Medical Education Regulations 2000(hereinafter called as "The Regulations") if 49.66% is the percentage obtained by the petitioner, it should be deemed that the petitioner obtained 50% as the nearest number has to be taken into consideration and he relied upon the Judgments of the Hon'ble Supreme Court in State of U.P and another Vs. Pawan Kumar Tiwari and others, reported in (2005) 2 SCC 10, wherein it has been held that fraction, if one half or more, its value shall be increased to one and if part is less than half, then its value should be ignored, and in State Bank of Punjab and another Vs. Asha Mehta, reported in (1997) 11 SCC 410, wherein it has been held that the procedure adopted by the Public Service Commission to round off 32.5% to 33% is fair. The other Judgment is in W.P.No.10212 of 2001 in the Case of M.Ramprakash Vs. Pondicherry University and three others wherein a learned single Judge of this Court held that if, while calculating percentage of the qualifying marks, there is a fraction or decimal point which is more than a half or 0.5, it is the usual practice to round off such fraction or decimal point to the nearest round figure. Relying upon these Judgments, the learned counsel for the petitioner would submit that fraction should be rounded off to 50%.

5.On the other hand Mr.V.P.Raman, learned counsel appearing for the Medical Council of India would submit that qualifying in Post Graduate Diploma is a serious one and any dilution of marks would only compromise the health of our public. If rounding off is going to be accepted, it will be a perennial problem and anybody, who gets lesser marks would approach this Court. Further, he would insist that there was no provision for grace mark. The petitioner got 149 marks, one mark less than 150 marks, which is the minimum mark for passing and if one mark is added, then only the petitioner gets qualified, but in the

absence of provision for any grace mark, the claim of the petitioner has to be negatived.

6. Similarly, Mr. Gopinathan, learned counsel appearing for the third respondent/Tamil Nadu Dr. M.G.R. Medical University would submit that the rounding off has never been followed by the University. It is only to test the calibre and merit of the student to have Post Graduate Diploma in Medicine and therefore rounding off would definitely bring down the standards and therefore opposed the writ petition.

7. Clause 14 of the Medical Council of India, Post Graduate Medical Education Regulation 2000 states that "Obtaining a minimum of 50% marks in 'Theory' as well as 'Practical' separately shall be mandatory for passing examination as a whole to be conducted in the second academic year for the Diploma Courses. Clause 14 is extracted hereunder:

"14. Examinations

The examinations shall be organised on the basis of grading or marking system to evaluate and certify candidates level of knowledge, skill and competence at the end of the training and obtaining a minimum of 50% marks in theory as well as practical separately shall be mandatory for passing the whole examination. The examination for M.S., M.D, M.Ch shall be held at the end of 3 academic years (six academic terms) and for diploma at the end of 2 academic years (four academic terms). The academic terms shall mean six months training period.

The above clause 14 is substituted in terms of Gazette Notification published on 20.10.2008 and the same is as under:-

"The examinations shall be organised on the basis of 'Grading' or 'Marking system' to evaluate and to certify candidate's level of knowledge, skill and competence at the end of the training. Obtaining a minimum of 50% marks in 'Theory' as well as 'Practical' separately shall be mandatory for passing examination as a whole. The examination for M.D./MS, D.M., M.Ch shall be held at the end of 3rd academic year and for Diploma at the end of 2nd academic year. An academic term shall mean six month's training period."

8. Regulation only speaks about the percentage to be obtained by the candidate in the qualifying examination. It is very clear from Clause 14 at the end of the 2nd academic year Diploma Course, there shall be an examination and in the examination, the candidate has to get minimum 50% marks in theory as well as in the practical separately and that is mandatory. The petitioner obtained 182 marks out of 300 in

clinical and Viva which is practical whereas she secured only 149 marks out of 300 marks in theory papers which is one mark short of 150 which is the minimum mark for passing the examination. Though it may look as if the petitioner lacks one mark to reach 150 marks namely, the minimum marks for passing the examination, as per the regulation, it is only the percentage which has to be taken into consideration.

9.As the regulation speaks about the percentage and not any marks, if 149 marks out of 300 marks is converted into percentage, it would be 49.66% which is a higher fraction that is more than 0.5% and in normal circumstances, it should be rounded off to the nearest number. In that event 49.66% would become 50%.

10.No doubt, Medical Council of India Regulations does not speak about awarding any grace marks. It only speaks about percentage of marks. Therefore, if the percentage is taken into consideration, the petitioner has got 49.66% and the fraction obtained by the petitioner is more than 0.5, namely 0.66 and therefore, it should be rounded off to the nearest round figure namely 49.66% to 50%. The Hon'ble Supreme Court held in the case of State of U.P and another Vs. Pawan Kumar Tiwari and others, reported in (2005) 2 SCC 10 states that rounding off is based on logic and common sense. If one half or more, its value shall be increased to one and if part is less than half, then its value should be ignored. Paragraph 7 of the Judgment is extracted as follows:-

"7.We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignore. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment."

11.Though the Judgment arises out of the issue regarding reservation, still the rounding off concept could be taken from the Judgment. Similarly, it is the dictum of the Hon'ble Supreme Court in the case of State Bank of Punjab and another Vs. Asha Mehta, reported in (1997) 11 SCC 410 wherein it has been stated that rounding off 32.5% to 33% is purely an arithmetical calculation, a procedure which the Public Service Commission, in fairness has been adopting. Similarly, the learned Single Judge of this Court categorically held in W.P.No.10212 of 2001 that rounding off the fraction to nearest round figure is possible. In view of that case, a student who

secured 49.66% in the relevant subjects got admitted in the B.Tech Course even though he has to get 50% marks. Even after conclusion of the first semester examination and when the student was preparing for the second semester examination, he was informed about the cancellation of his admission on the ground that he had got only 49.66% marks against 50% marks which is the minimum required qualifying mark and that order was challenged. While dealing with that matter, the learned Single Judge of this Court held that while calculating percentage, if there is a fraction or decimal point which is more than, 0.5, it is the usual practice to round off such fraction or decimal point to the nearest round figure. Paragraph 7 is extracted hereunder:-

"7.A perusal of the provisions contained in the prospectus makes it clear that a candidate has to secure 50% marks in aggregate in the specified subjects. It is obvious that to find out percentage of marks in specified subjects, the marks secured in those subjects are to be added and percentage of marks is to be calculated. If while calculating such percentage there is a fraction or decimal point which is more than an half or 0.5, it is the usual practice to round off such fraction or decimal point to the nearest round figure. If such a procedure is adopted, it is seen that the petitioner who had secured 49.67% in the subjects in question, can be said to have secured 50% of marks by rounding off the decimal 0.67 to whole number. It is obvious that the petitioner was allowed to appear at the Joint Entrance Test and obviously after being selected in such joint entrance text, he was given admission. The petitioner has already taken admission on the basis of such calculation and had appeared in first semester examination. Subsequently by virtue of the interim order passed by this Court, he was allowed to appear in the subsequent semester examinations. In the peculiar facts and circumstances of the case, I feel interest of justice would be served by permitting the petitioner to continue the course."

12.The petitioner already obtained 149 marks out of 300 marks and she lacks only 0.34% to get a pass.

13.Usually, only those who are more meritorious in the UG examination, would be selected for Post Graduate Diploma Course or Post Graduate course. The petitioner should have been a very meritorious candidate, during the UG medical course and that is the reason why she was admitted in Post Graduate Diploma. The credentials of the petitioner would be proved by her securing 180 marks out of 300 marks in clinical and Viva and it is not as if the petitioner lags behind and there is not much difference

between the minimum mark to be obtained and the cut-off marks obtained. It is only a fraction of 0.33% to be made out to get a pass namely 50%. Therefore, though usually this Court would not resort to rounding off the marks to enable a student to qualify which is always the work of the experts in the field, however, taking into consideration, the overall merit of the candidate and also the point that 0.33% alone is needed, so that the marks could be rounded off to 50%, and the petitioner could be declared as pass in the Post Graduate Examination.

14. Since, this Court consider it as an extraordinary case, for the reasons given above, as an exceptional case, this Court directs the respondents to round off the marks obtained by the petitioner in theory paper from 49.66% to 50% and declare as pass in the Post Graduate Diploma Examination with registration No.341511351 within two weeks from the date of receipt of a copy of this order. Though this Court is not for diluting the standards especially in medicine, taking into consideration, the merit of the candidate and also lack of 0.33% to get qualified, this Court under Article 226 of the Constitution of India can grant extraordinary relief. Hence, the writ petition is allowed. No costs.

s/d-
Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The Controller of Examinations,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
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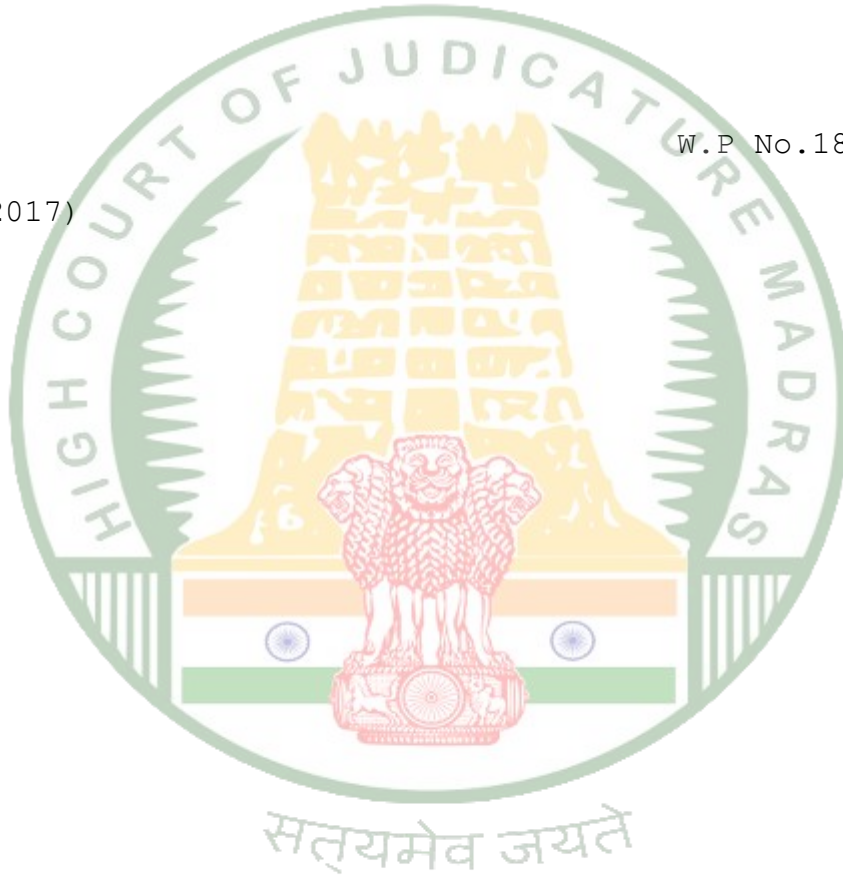
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+1 CC to Mr.P. Jagadeesan, Advocate sr 71249.
+1 CC to Mr.P.R. Gopinathan, Advocate sr 71235.
+1 Cc to Nr.V.P. Raman,Advocate sr 71093.

SP(23/10/2017)

W.P No.18825 of 2017



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