

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.41495 of 2016

ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the proceedings bearing Lr.No.3179/PG/E2b/Exams, dated 23.11.2016, rejecting the request of the petitioner for awarding grace marks in MS General Surgery practical examination.

Heard Sri P. Gangainaidu, learned Senior counsel, representing the counsel on record for the petitioner, Sri N. Bharat Babu, and Sri Taddi Nageshwar Rao, learned Standing counsel for the respondent – Dr. NTR University of Health Sciences, Vijayawada.

According to the petitioner, he completed MBBS course during the years 2005-2011 with distinction and he appeared for post-graduation entrance in the year 2013 and secured a seat in MS General Surgery in Osmania University. He also appeared in the final examinations conducted in the month of May/June, 2016 and secured 239 marks out of 400 marks in the theory examinations and 149 marks out of 300 marks in clinical examinations.

There is no dispute with regard to the fact that the pass mark in theory examinations is 200 and admittedly, the petitioner got through the theory examination by securing 239 marks and he stood as No.2 in the theory examination in the University. The present dispute is only with regard to the clinical examinations. The maximum marks are 300 and pass mark being 150, the

petitioner admittedly secured only 149 i.e., one mark short of the pass marks. Pursuant to a request made by the students, the Executive Council of the respondent University passed a resolution in its 222nd meeting held on 31.08.2016, approving and resolving to award 5 grace marks in theory only to the students of the respondent University, who appeared for PG/Degree/Diploma examinations held in May/June, 2016. Petitioner submitted representations on 29.08.2016 and 02.09.2016, requesting for grant of grace marks in the clinical examinations wherein he could secure only 149 marks out of the pass marks of 150. The petitioner earlier filed W.P.No.33304 of 2016 before this Court, questioning the action of the respondent University in not adding 5 grace marks to the performance of the petitioner in practical/clinical/viva in post-graduation degree in the subject of Master of Surgery in General Surgery. This Court by way of an order, dated 26.10.2016, disposed of the said Writ Petition and the operative portion of the said order reads as under:

“I have given careful consideration to all the allegations in the affidavit, the marks secured by the petitioner in each one of the examinations held by respondent University. It is difficult to accept the submission of Mr. Nageshwar Rao that the resolution is a comprehensive resolution. Therefore, in the considered view of this Court, the issue on whether to exercise discretion for granting grace marks to the practical/clinical or not is still with the 1st respondent University. Therefore, to meet the ends of justice and to enable University to take a decision in accordance with law as per the guidelines of Medical Council of India, this Court is satisfied that the Writ Petition can be ordered as follows:

The 1st respondent is directed to consider the representations dated 29.08.2016 and 02.09.2016 made for grant of grace marks in accordance with the applicable guidelines/regulations. Learned Standing counsel submits that the University will do the needful within two weeks from the date of receipt of a copy of this order. The statement is placed on record and accordingly a decision on the representations referred to above shall be taken within two weeks from the date of receipt of a copy of this order. The petitioner is given liberty to resubmit copies of the representations along with this order.

The Writ Petition is ordered accordingly. No order as to costs.”

Subsequently, the respondent University issued the order under challenge, turning down the request of the petitioner by saying that the Executive Council resolution is intended only for those candidates, who failed in theory examination, but not in the practical examinations.

According to the learned Senior counsel, the said action on the part of the respondent University is highly arbitrary, illegal and unreasonable. The learned Senior counsel submitted that having extended the benefit for the theory examinations, there is no reason to deny the said benefit for the practical examinations also and placed reliance on the judgment of the High Court of Kerala in W.P.No.37955 of 2010, dated 17.02.2011.

On the contrary, it is submitted vehemently by the learned Standing counsel for the respondent University that taking into consideration the prevailing circumstances at the relevant point of time, the Executive Council passed a resolution in its 222nd meeting, resolving to award 5 grace marks only to theory examinations and as such the petitioner is not entitled for any relief in the absence of any illegality in the impugned action. It is further submitted that there are no regulations, authorizing to add the grace marks for post-graduation courses.

There is absolutely no dispute with regard to the fact that on the request made by the post-graduate students the Executive Council in its 222nd meeting extended the benefit of awarding 5 grace marks in the theory examination. According to the learned Senior counsel, the said action on the part of the respondent University is discriminatory and there is no rationale behind the

said action. In fact, the Kerala High Court in W.P.No.37955 of 2010 at paragraph 19, while dealing with an identical situation, held categorically that the respondent University therein could not have taken a decision or confined the award of grace marks only to theory alone. It also categorically observed that such action cannot be approved. Against the said judgment, an intracourt appeal vide W.A.No.409 of 2011 was filed by the University of Calicut and a Division Bench of the Kerala High Court at paragraph 13 held as under:

“Probably what the Director of Medical Education intends is that award of grace marks should not be a policy to be applied on a uniform basis but the Pass Board should consider the case of each and every student and the award of grace marks should be by way of an exception to save a student from failure, if he is otherwise excellent and is deficient only in one subject that too up to 5 marks. The only restriction introduced against the award of grace marks by the DME is in the internal assessment which according to the DME should not be subjected to any variation. We feel if the policy decision taken by the Pass Board in the case of appellant University against award of grace marks in practical examination is well founded, then it is up to the MCI to consider whether such a restriction should be introduced in the MCI regulations applicable to all Universities which will put an end to all controversies. We are of the view that the DME’s circular is the most reasonable one in as much as discretion is given to the Pass Board to consider award of grace marks considering each student as an individual case and it is absolutely within the discretion of the Pass Board to give grace marks either for the theory or practical in one subject and necessarily Pass Board has to keep in mind the general performance of the student in all subjects. However, we feel the decision taken, as a matter of policy by the Pass Board to decline grace marks in the practical examination to any student in any subject is arbitrary. We notice from the marks obtained by the respondents that some have failed by shortage of even one mark and some have failed even on shortage of 2 or 3 marks and the marks required for a pass is up to 5 marks for all the respondents.”

In the instant case also having extended the benefit in respect of theory examinations, this Court does not find any valid reason nor justification on the part of the respondent University in not extending the same for practical/clinical examinations. The contention of the learned Standing counsel that there are no regulations, authorizing the University to award the grace marks, having extended the same for theory examinations, can neither be

countenanced nor merits any consideration in the facts and circumstances of the case. Therefore, the only irresistible conclusion that can be arrived at by this Court is that the impugned action on the part of the respondent University in declining to extend the benefit of grace marks to the petitioner, who fell short of only one mark to get through the examination, is neither sustainable nor tenable in the eye of law.

For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned proceedings Lr.No.3197/PG/E2b/Exams, dated 23.11.2016, and consequently respondents are directed to award grace marks to the petitioner towards practical/clinical examinations held in the months of May/June, 2016.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 20.04.2017
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Note: Issue C.C. tomorrow.
(B/o)
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A.V.SESHA SAI, J