

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.51 of 2018

S.P.Pritiviraaj

.. Petitioner

Vs.

1. The Registrar,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.
2. The Controller of Examinations,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
Guindy, Chennai-600 032.
3. Madha Medical College and Hospital,
Rep. by its Dean,
Thandalam, Kundrathur Main Road,
Chennai-600 069.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the respondents to grant 3 grace marks, one grace mark in Ophthalmology paper and two grace marks in Community Medicine (Written-I) and subsequently declare the petitioner as "pass" in the third year Part-I of MBBS Course to enable the petitioner to appear for third year Part-2 papers to be held in February 2018.

For petitioner : Mr.Raja Loganathan

For respondents: Mr.D.Ravichander for RR-1 and 2
No appearance for R-3

ORDER

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Mandamus to direct the respondents to grant three grace marks, one grace mark in Ophthalmology paper and two grace marks in Community Medicine (Written-I) and subsequently declare the petitioner as "pass" in the third year Part-I of MBBS Course to enable the petitioner to appear for third year Part-2 papers to be held in February 2018.

2. It is the case of the petitioner that the petitioner was enrolled in MBBS Course in the third respondent-College during

the Academic Year 2012-2013, which is affiliated to the first and second respondents/University. He appeared in the III Year Part-1 exams of the MBBS Course in August 2017. The registration number assigned by the respondent-University to the petitioner in the said Exam is 521224091, and the results of which was declared on 10.10.2017, as per which, he obtained 24 marks in Ophthalmology written including viva paper (subject Code: 525071) and failed by one mark and in Community Medicine written including viva paper (subject code: 525073 and 525074) and he obtained 63 marks and failed by two marks. The total average of the petitioner's mark for third year part-1 course is 55.75%. Though he passed the semester by obtaining more than 50% marks, the petitioner failed to obtain the minimum marks in the written examination in two subjects, namely Ophthalmology and Community Medicine and therefore, was declared "fail". As far as the other subject and practicals/clinics are concerned, the petitioner has obtained more than the minimum marks.

3. It is further stated by the petitioner that as per the decision of the respondent-University, vide 45th meeting of the Standing Academic Board, dated 15.11.2012, a maximum of five marks could be awarded as moderation to the failed candidates that can be distributed among all the failed papers either in theory or practical, wherever required for medical and dental U.G. courses. It is further submitted by the petitioner that these decisions are still in force and not over-ruled by any subsequent decisions of the Board. Hence, according to the petitioner, he is entitled to obtain 1 grace mark in Ophthalmology paper (written) and 2 grace marks in Community Medicine (written paper) in order to declare the petitioner as "pass" in his third year part-1 exams and subsequently entitle the petitioner to appear in the next exams that are forthcoming in February 2018.

4. It is the further stand of the petitioner that in Ophthalmology paper, single valuation was done as the petitioner had scored 24 marks. For Community Medicine including Humanities I and II, double valuation was made in written paper-1, as the petitioner had obtained 28 marks. In the first valuation, the petitioner obtained 25 marks. In the second valuation, 31 marks were obtained. Since the respondent-University considered the average of 25 and 31, the petitioner's mark was declared as 28. The respondent-University has erred in taking the average of 25 and 31 and they ought to have taken the highest of 25 and 31 and declared that the petitioner had obtained 31 marks in Community Medicine Paper-I. After two valuations, when two different marks are reflected, the respondents 1 and 2/University ought to have taken the highest rather than the average in the interest of justice.

5. Hence, the petitioner has sent a representation, dated 16.10.2017 to the respondents requesting for grant of grace marks in Ophthalmology and Community Medicine papers and to consequently declare the petitioner as 'Pass' and to permit the

petitioner to appear for Part-II third year examinations. Since there is no reply from the respondents on the said representation, the petitioner has filed this Writ Petition for the relief stated supra.

6. The respondents 1 and 2 have filed counter affidavit stating that the petitioner, vide Registration No.521224091, appeared for his III Year M.B.B.S. course for Part I during August 2017 Semester Examination and the petitioner has passed in ENT paper and had failed in Ophthalmology and Community Medicine by obtaining 24 and 25 marks respectively. It is further stated that the guidelines of the respondent-University, vide its 45th meeting of the Standing Academic Board, dated 15.01.2012 is not in force. From August 2013 session onwards, the respondent-University is adhering to the norms of the Medical Council of India (MCI) for conducting examinations, including the attendance requirements. As per Regulation 13(10) of the Medical Council of India Regulations, namely Graduate Medical Education, 1997, (amended upto July 2017), the grace marks upto the maximum of 5 marks may be awarded at the discretion of the University to a student who had failed in only one subject, but has passed in all other subjects. It is further averred in the counter that the petitioner has failed in more than one subject, i.e. Ophthalmology and Community Medicine in the III Year MBBS Part I examinations held in August 2017 and as per norms of the MCI, the apex regulatory body, which the respondent-University is following for the conduct of examinations, the petitioner is not eligible for grace marks.

7. It is also stated in the counter affidavit that as per the Resolution No.23, passed in the 231st meeting of the Governing Council, held on 28.10.2014, it was resolved to re-introduce the double valuation instead of re-valuation, and in the process of double valuation, the average of the two valuations would be considered. It is further stated that as per the Resolution No.40 passed in the 234th Governing Council Meeting held on 03.03.2015, it was resolved that the double valuation would be applicable for all UG and PG Courses, except BDS Course. This double valuation shall be done for all answer scripts that are awarded marks below the minimum required for a pass in the respective theory paper during the 1st evaluation. The average of the two evaluations or the 1st evaluation mark, whichever is higher would be taken as the final mark.

8. It is further categorically stated in the counter affidavit that in Ophthalmology, there is only one paper, in which the petitioner had obtained 21 marks and applying the above Resolution of the Standing Academic Board, since the petitioner had obtained 21 marks which is more than the required minimum pass mark, i.e. 20 marks and hence, the question of second valuation does not apply. As far as the Community Medicine paper is concerned, there are two papers, Paper-I and Paper-II in which the petitioner had obtained 25 and 31 marks respectively. Since 25 marks in Paper-I is lesser than the

minimum 29 marks, the second valuation was done and the petitioner had obtained 30 marks in the second valuation. By applying the above mentioned Resolution which states that the average of the two evaluations or the first evaluation marks, whichever is higher, will be taken as the final mark, the candidate was awarded the average of 28 marks. Since the petitioner had obtained 31 marks in Community Medicine-II paper, the question of second valuation does not arise.

9. Further it is stated in the counter affidavit that the final marks of the petitioner in his III MBBS Part-I August 2017 examinations are as follows:

(i) ENT paper : Pass

(ii) Ophthalmology paper: Theory 21 + Viva 3 = 24
(minimum pass mark required is 25) and hence, fail.

(iii) Community medicine (Part-I) : 28

Community medicine (Part-II) : 31

Viva : 4

63

Minimum pass mark required is 65: Hence, fail.

10. It is the stand of the respondents 1 and 2 in the counter that the prayer of the petitioner to consider the higher marks of Paper-I and Paper-II of Community Medicine, cannot be done by the respondents 1 and 2/University, since both are two different papers. As per Section 29 of the Tamil Nadu Dr.M.G.R. Medical University Act, the Standing Academic Board is empowered to frame the required guidelines/rules/regulations pertaining to the conduct of examinations. Hence, Resolution No.40 was passed at the 234th Governing Council Meeting held on 03.03.2015, and the modus-operandi of double evaluation is incorporated, which is a legal mandate as per law and hence, the respondents 1 and 2/University has rightly followed the same. Hence, the respondents 1 and 2 pray that the Writ Petition may be dismissed as devoid of merits.

11. Heard both sides and perused the materials available on record.

12. The learned counsel for the petitioner submitted that on a harmonious reading of the Regulations of the University, the petitioner ought to have been given the benefit of grace marks, when there are serious lapses in correction. He further submitted that in the event of the petitioner not being given the benefit of grace marks, he has to re-do the course as per the Medical University Regulations.

13. Learned counsel for the respondents 1 and 2/University relied on Resolution No.23, passed in the 231st meeting of the Governing Council held on 28.10.2014 and Resolution No.40 passed in the 234th Governing Council meeting held on 03.03.2015, wherein it has been mentioned as follows:

"Agenda 231 (23)

"To discuss and decide on the various representations received from students regarding re-evaluation of their answer papers:

Resolved to re-introduce double valuation instead of revaluation with a provision that double valuation should be done in failed papers below the zone of grace marks, if a candidate fails in one subject. Also resolved that double valuation should be done in all the failed subjects even within the zone of grace marks if the candidate fails in more than one subject and the average of two valuations will be considered."

"Agenda 234(40):

"To ratify the action of the University in re-introducing double valuation of answer papers with effect from February 2015 examination onwards with slight modification of Governing Council Resolution:

Resolved to ratify the action of the University in selecting the higher of the two marks in the double evaluation system introduced for all UG and PG courses, regular and arrear batches in February 2015 examination session.

The double evaluation will be applicable for all UG and PG courses except BDS course where Dental Council of India regulations are followed, from April 2015 examination session onwards for regular and arrear batches. This double evaluation shall be done for all answer scripts that are awarded marks below the minimum required for a pass in the respective theory paper during the first evaluation. The average of the two evaluations or the first evaluation mark, whichever is higher will be taken as the final mark."

14. According to the learned counsel for the respondents 1 and 2/University, the petitioner has failed in more than one subject, i.e. Ophthalmology and Community Medicine in III MBBS and as per the MCI Regulations, he is not even eligible for grace marks and not even entitled to double valuation, and therefore, as a matter of right, he cannot demand for double valuation/award of grace marks, and such contention could not be countenanced. Therefore, according to the learned counsel for respondents 1 and 2, the writ petition is liable to be dismissed.

15. Further, it is not in dispute that the petitioner joined MBBS course in the third respondent-College and appeared for the subjects in question and secured marks. Learned counsel for

the respondents 1 and 2/University relied on Regulation 13(10) of the MCI Regulations on Graduate Medical Education, 1997 (amended upto July 2017) of the MCI, which states that the 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. The above Regulation is meant only for the purpose of "pass" by taking into account the entire aggregate marks. If the student gets pass marks, but in aggregate, he is declared fail, then there shall be double valuation in the paper which he has secured more marks as per records, even though in the paper he is said to have been passed, for all purposes, he is declared fail. Further, as per the MCI Regulations on Graduate Medical Education, 1997 (amended upto January 2016), in Chapter IV Clause 4 relating to distribution of marks to various disciplines, and sub-clause (B) relating to professional examination, in sub-clause (d) therein in the headnote "pass", it is stated that in each of the subjects, a candidate must secure 50% in aggregate with a minimum, of 50% in theory including oral and minimum of 50% in practicals/clinicals. Thus, it is clear that the petitioner will not be entitled to re-valuation/grace marks, but however, he will be entitled for double valuation. Even after the introduction of double valuation, re-valuation no longer exists and the petitioner cannot seek for re-valuation.

16. With regard to the issue involved herein, the learned counsel for the petitioner placed reliance on the decision of this Court reported in 2016 (7) MLJ 678 (Dr.Ivan A.Jones Vs. Tamil Nadu Dr.MGR Medical University), wherein, in paragraphs 32 and 34, it is held as follows:

"32. Thus, the manner, in which, paper evaluation has been done appears to be not inconsonance with the regulation of MCI, and keeping aside for the moment the said issue, one other issue that arises for consideration is as to whether the decision of the respondent-University to extend the benefit of second evaluation to only those candidates, who secured less than 40% marks in an answer script, and not to the candidates, who have secured less than 50% marks in aggregate is proper and justified. In fact, there is challenge to the said Regulation also by the petitioners in W.P.Nos.28571 and 29031 of 2016. Before considering that aspect, it would be necessary to consider the qualification prescribed by MCI with regard to the Post Graduate Examination, which reads as follows:-

'The Academic Committee noted that the students are required to pass theory

and practical examinations separately in terms of the governing provisions pertaining to the scheme of examination in the Post Graduate Regulation, and recommended that an examinee should obtain minimum 40% marks in each theory paper, and not less than 50% marks cumulatively in all four papers for Degree examination and three papers in Diploma Examination to be cleared as 'passed', at the said Degree/Diploma examination, as the case may be".

"34. Though by virtue of the above Regulation, the respondent-University seeks to provide for second valuation only for candidates, who failed in the answer scripts in the first evaluation, it is conspicuous mistake, as the candidates, who have failed to secure 50% marks in the aggregate, as stipulated by MCI, will be denied the benefit of second valuation. The underlying test would be as to whether the candidates has been declared as pass or fail. If the above resolution of the respondent-University is given effect to, it will result in an anomalous situation, where the candidate, who has not secured minimum marks as stipulated by MCI in single paper, will be entitled to the benefit of second valuation and the candidates, who has failed to secure minimum marks in the aggregate is denied the benefit. This is clearly discriminatory. If the respondent-University has decided to make second valuation for the candidates, who failed, there should be no dichotomy/distinction between the candidates, who has failed in one answer script, or failed to secure minimum marks in the aggregate. Therefore, the contention raised by the petitioners in this regard, merits consideration."

17. It cannot be disputed that the third respondent-College will have to maintain guidelines with regard to the double valuation and that the contention of the respondents 1 and 2/University would be correct, if each theory paper is going to be valued separately and treated as separate paper without reckoning aggregate, whereas, if the aggregate of two papers should be taken into account like that of the case on hand,

naturally there is no bar for the petitioner to have double valuation with regard to the respective papers, irrespective of the fact that he has secured marks, lest, the purpose of granting aggregate marks for clearing the papers, would become otiose. As long as the aggregate of the total marks of two papers are taken into consideration for the purpose of declaring the result of the petitioner, both the theory papers will have to be subjected to double valuation, enabling him to have aggregate of marks in both the papers.

18. There can be no hard and fast rule, hurdle or bar that the papers which is not double valued earlier, has to be subjected to double valuation, to ascertain as to whether the petitioner has passed in the respective papers/subjects by taking into account the aggregate of the marks secured.

19. As long as the petitioner is declared as fail by taking note of the aggregate of two papers, he will have to write the examination in both the papers. Unless double valuation is done in respect of the paper, which is yet to be valued again, the aggregate cannot be decided, as the petitioner is deemed to have been declared as fail, even though he has secured necessary marks in one paper.

20. In such perspective of the matter, though the prayer in this Writ Petition is for grant of grace marks, taking into consideration the above facts and circumstances of the case, and to subserve the interest of justice, this Court directs the first and second respondents/University to double value the paper in which the petitioner has failed, if not done earlier, and award correct marks and declare the result of the petitioner with respect to the relevant subjects/papers.

21. The Writ Petition is disposed of in the above terms. No costs.

Sd/-

Assistant Registrar(CS V)

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सत्यमेव जयते

Sub Assistant Registrar

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To

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

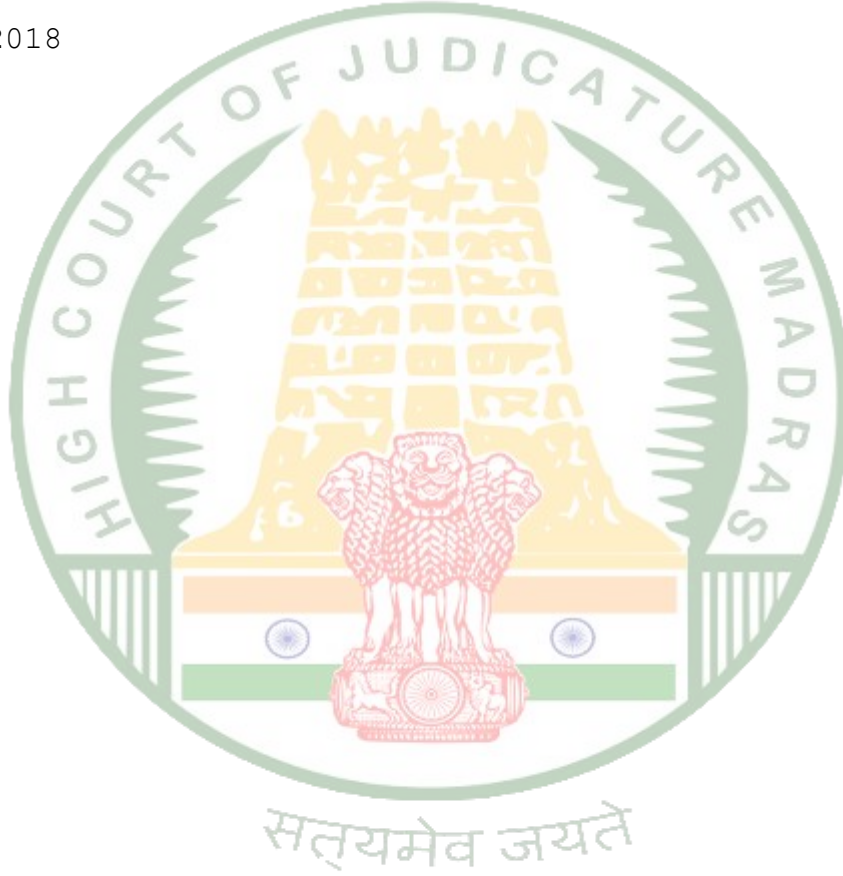
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2. The Controller of Examinations,
Tamil Nadu Dr.M.G.R. Medical University,
No.69, Anna Salai,
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+1cc to Mr.G.Ilangovan, Advocate, S.R.No.28762
+1cc to Mr.D.Ravichander, Advocate, S.R.No.28732

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