

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9111 of 2018

Bharathi.S.

.. Petitioner

Vs.

1. Pondicherry University Represented
by its Controller of Examinations,
R.V.Nagar, Kalapet, Puducherry-605 014.

2. Sri Manakula Vinayagar Medical
College and Hospital,
Represented by its Dean,
Kalitheerthalkuppam,
Madagadipet, Puducherry-605 107.

3. The Medical Council of India,
Represented by its Secretary,
M.C.I. Building - Phase I,
Pocket-14, Sector-8, Dwarka,
New Delhi-110 077.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus to direct the first respondent to grant 3 (three) marks as grace marks in respect of the Ophthalmology Theory Paper of Part I of III MBBS November 2017 examinations in Register No.11770226 of the petitioner as per the Pondicherry University Examination Regulations 2009-10.

For Petitioner : Mr.Kamala Kumar
For 1st Respondent : Mrs.A.V.Bharathi
For 3rd Respondent : Mr.V.P.Raman

ORDER

The petitioner has come up with the present Writ Petition seeking a direction to the first respondent to grant 3 (three) marks as grace marks in respect of the Ophthalmology Theory Paper of Part I of III M.B.B.S. November, 2017 examinations in Register No.11770226 of the petitioner as per the Pondicherry University Examination Regulations 2009-10.

2. According to the Petitioner, she is pursuing M.B.B.S. course (III year) in the second respondent's Institute and she cleared all the papers in the I and II years. The III year consists of three subjects viz. (i) Community Medicine (ii) ENT and (iii) Ophthalmology. She appeared for III Professional - Part I M.B.B.S. Examination in June 2016 and cleared Community Paper and ENT paper. However, she failed in Ophthalmology Paper. Once again, she appeared in Ophthalmology subject in November 2017 and again she failed, even though she has secured minimum required score in the subject and she was declared fail for the reason that she did not fulfill the additional minimum requirement of 40% in the University Theory Exam. The marks published are:

University Exam: Theory: 29/80, Practicals 29/50, Viva: 14/20

Internal Exam: Theory: 17/20, Practicals: 16/30

The results are published on the basis of the composite method of securing marks 50% as per the working table provided by the first respondent-University in the Regulations. As per the same, for the paper of Ophthalmology, there will be one Theory paper of 80 marks and one practical paper of 50 marks. The internal assessment is further divided into 20 marks for theory and 30 marks for practical, including 5 marks for record. Further, to pass the said subject, one should secure 50% in aggregate with a minimum of 50% in theory including oral and minimum of 50% in practical. In addition, the candidate should also obtain minimum of 40% marks in the University theory examination. Further, it is stated that the petitioner has secured 29 marks in theory paper instead of 32 and she lacks by 3 marks, which is the obstacle for her to continue her studies and as such, to write the exams in the regular course along with regular batch.

3. The case of the petitioner is that if she is given grace marks in Ophthalmology subject, she will clear her III year M.B.B.S. Course. It is further stated by her that grace marks of 5 is applicable to all the University Examinations of M.B.B.S. course conducted semester-wise and that she lacks only 3 marks to secure pass mark. Her representation to the first respondent did not evoke positive response on the ground that compartmental candidates are ineligible to claim grace marks. As per the MCI Regulations, the first respondent-University is given discretion to award grace marks upto 5% of marks, when the student failed only in one subject. Therefore, she submitted that three grace marks may be granted to her to proceed with her studies in the regular course. The amendment to MCI Regulations of 2008 reads that a candidate undergoing the course can be allowed to take forthcoming professional examination only in compliance of Regulations under Regulation 12(3) of the Regulations, which is extracted below:

"I. Passing (in I Professional is compulsory before proceeding to Phase II training).

II. A student who fails in the IInd Professional Examination, should not be allowed to appear III Professional Part I Examination, unless he passes all subjects of IInd Professional Examination.

III. Passing in III Professional (Part-I) is compulsory for being eligible for III Professional (Part II) Examination."

4. According to the petitioner, as per the MCI Regulations, she is eligible for award of grace marks of 3 and hence, being deprived of joining the 4th year M.B.B.S. Course, the Petitioner is before this Court on the ground that retaining her is causing hardship and difficult to her and it may cause permanent incapability of coping with the syllabus of MBBS and the rejection of award of grace marks of 3 cannot supersede the MCI Regulations and it violates Article 14 of the Constitution of India.

5. The learned counsel appearing for the first respondent-University contended that the petitioner would not be entitled to grace marks, though she had failed in one subject, provided she had appeared for all the subjects in a particular semester and that she would not be entitled to grace marks, if she had appeared for the failed subjects in a compartmental manner.

6. Learned counsel for the first respondent-University further submitted that the petitioner failed in the subject Ophthalmology in June 2016 attempt and she could clear Community Medicine and ENT paper alone and that she is yet to clear 'Ophthalmology', though she attempted for that subject in November 2017. Hence, according to the learned counsel, the Writ Petition is liable to be dismissed.

7. In reply, learned counsel for the petitioner submitted that a Division Bench of this Court in the judgment dated 12.06.2017 made in W.A.No.291 of 2017, interfered with the order of the learned Single Judge on the ground that depriving of the benefit of granting of grace marks to the appellants based on the Circular dated 29.06.2016 of the second respondent therein, cannot be sustained, as the same cannot be made applicable retrospectively.

8. Referring to the Circular dated 29.06.2016 of Pondicherry University, learned counsel for the petitioner submitted that Pondicherry University has decided to amend its MBBS Regulations 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. Hence, according to the learned counsel, the petitioner would be entitled to the benefit of grace marks in view of the said Circular.

9. Learned counsel for the petitioner further relied on a Division Bench decision of this Court dated 11.04.2017 made in W.A.Nos.325 to 333 of 2017, wherein, the order of the learned Single Judge rejecting the claim of the Writ Petitioners therein, to direct the Controller of Examinations to grant grace marks (ranging 2 to 8 marks) for the practical test of the respective subjects in respect of III Professional Part II MBBS held in November 2016, wherein, they had failed, was set aside, based on the above Circular dated 29.06.2016 of the Pondicherry University.

10. Learned counsel appearing for the first respondent/University, in reply, submitted that the Division Bench decision dated 11.04.2017 made in W.A.Nos.325 to 333 of 2017 is with regard to grant of grace marks in practical examination and has nothing to do with the theory examination, as in the case on hand. As regards the Division Bench judgment dated 12.06.2017 made in W.A.No.291 of 2017, learned counsel submitted that in the said case, the petitioner had failed in only one subject, whereas, in the case on hand, though the petitioner has failed in one subject, it is only in the second attempt. Even otherwise, in the Circular dated 29.06.2016, it is clearly stated that there will not be any revaluation for MBBS answer papers and grace marks for practical papers from the academic session May 2016 onwards and the learned counsel contended that the said Circular has to be read in entirety. Hence, according to the learned counsel, the two decisions relied on by the counsel for the petitioner are not applicable to the case on hand.

11. Learned counsel appearing for the third respondent/Medical Council of India (MCI) drew the attention of this Court to the Examination Regulations of Pondicherry University 2009-10, which contemplates the grant of Grace Marks, and the same reads as under:

"Grace Mark in case of failure in ONE out of all subjects for the particular semester:

A passing board is constituted for finalizing the results of each phase. The Heads of the Departments or the members, the board allots grace marks maximum 5 for one subject. The grace mark of 5 will be added for one subject only after the marks obtained in the University examination are

scaled down to 100% in the particular subject - Theory. The grace mark of 5 is applicable to all the University examinations of MBBS conducted semester-wise. No Grace Marks will be added for Practicals.

Grace Mark will not be applicable when the candidate takes up the University Examination in a compartmental manner."

12. Learned counsel for the third respondent/MCI further drew the attention of this Court to the Medical Council of India Regulations, 1997, wherein, Clause 13(10) of the Regulations contemplates as under:

"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."

13. In view of the above Regulations of 1997, according to the learned counsel appearing for the third respondent/Medical Council of India, a candidate is entitled to grace marks only if he/she fails in one subject at a time and grace marks will not be applicable when the candidate takes up the University Examination in a compartmental manner, and in this case, the candidate has failed while writing the exams in compartmental manner.

14. Heard the learned counsel on either side and perused the material documents available on record.

15. On a reading of the Circular dated 29.06.2016 of the Pondicherry University and the Medical Council of India Regulations 1997 and the Examination Regulations of Pondicherry University 2009-10, extracted supra, it is clear that grace marks will not be applicable to a candidate, if he/she takes up the University Examination in a compartmental manner and further, grace marks will not be awarded for practical papers from the academic session May 2016 onwards. Even assuming that there is no ratification as per the Circular dated 29.06.2016, as per the Circular dated 24.05.2017 of the Pondicherry University, Grace marks will not be applicable when the candidate takes up the University Examination in a compartmental manner, though grace marks may be awarded to a student, who has failed in a single subject while appearing for all papers prescribed for that particular session.

16. The contention of the petitioner that Medical Council of India Regulations will not be applicable to students, who have joined the M.B.B.S. course prior to the amendment, may not be correct. Even assuming it is so, grace marks can be awarded only if the candidate fails in one subject and is not eligible if the candidate appears in compartmental manner. In the case on hand, the Petitioner had appeared in three papers, viz Community Medicine, ENT and Ophthalmology in the III Professional - Part I M.B.B.S. Examination and cleared only two subjects, that too in the second attempt and she could not clear the Ophthalmology paper in November 2017 attempt. Despite two attempts, the Petitioner could not clear the subject 'Ophthalmology' and she has approached this Court seeking grant of 3 marks as grace marks, as she had secured only 29 marks in theory paper instead of 32. Of course, appearing for the same paper again and again will undoubtedly make the candidate well-versed in the subject.

17. At this juncture, it is worth referring to a decision of the Supreme Court in the case of Padma Sundara Rao Vs. State of Tamil Nadu, reported in 2002 (3) SCC 533, wherein, it is held as follows:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington Vs. British Railways Board* (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

18. Though the petitioner can seek grant of grace marks, since she failed in two subjects earlier, she is certainly not entitled to grace marks, in view of the above Medical Council of India Regulations cited supra. The Regulations of Medical Council of India will prevail and the 1st Respondent/University is bound to follow the same. Furthermore, the Circular dated 29.06.2016 cannot be read in a truncated manner and it nowhere says that students, who have joined the Course prior to the MCI Regulations would have the benefit of grace marks and those who have joined after the amendment of the Regulations, would not be entitled to the benefit.

19. I find much force in the contentions of the learned counsel appearing for the first respondent/University and the third respondent/Medical Council of India. Thus, in view of the Regulations of the Medical Council of India and in the light of the observations made by the Apex Court in Padma Sundara Rao's case (cited supra), according to which, the Rules/Regulations/Decisions have to be applied based on the facts of each case, though the petitioner herein has failed in one subject in the III year M.B.B.S. Course more than one attempt, which fact has been admitted by her in the Affidavit, she is not entitled to the relief sought for in the Writ Petition, and that she appeared for the exam in compartmental manner.

20. Accordingly, the Writ Petition stands dismissed as devoid of merits. No costs.

21. Before parting with this case, it is observed that even though we are very attentive, many people are taking a citizen for a ride and if a person who is studying Ophthalmology, is allowed to clear the papers with grace marks, the patient's eye sight will be lost, if those persons are going to become Doctors and perform operation/surgery and the patients will have to regain the eye sight only with the Grace of the God and certainly, not with the grace marks that might have been granted to a Doctor when he was a student.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To:

1. Pondicherry University Represented
by its Controller of Examinations,
R.V.Nagar, Kalapet, Puducherry-605 014.
2. The Medical Council of India,
Represented by its Secretary,
M.C.I. Building - Phase I,
Pocket-14, Sector-8, Dwarka,
New Delhi-110 077.

+ 1 cc to M/s. A.V. Bharathi, Advocate Sr.27593

+ 1 cc to M/s. R. Saravanan, Advocate SR.280181

W.P.No.9111 of 2018

RSI(CO)

EU(18/05/2018)