

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.4497 of 2018

S.Srisakthish

.. Petitioner

Vs.

1. The Medical Council of India,
MCI Building Pocket -14, Sector-8,
Dwaraka Phase-7,
New Delhi-100 007.
 2. The Controller of Examination,
Pondicherry University, Kalapet,
Puducherry.
 3. Pondicherry Institute of Medical Sciences,
Rep. by its Registrar,
Kanagachetty Kulam, Kalapet,
Puducherry.
- .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the second respondent to issue fresh mark list to the petitioner by awarding the Improved Internal Assessment Marks secured by the petitioner in November 2017 in Community Medicine as per the representation of the petitioner, dated 15.02.2018.

For petitioner : Mr.M.Rajasekhar

For respondents : Mr.V.R.Raman for R-1
Mrs.A.V.Bharathi for R-2
Mr.A.Jenasenan for R-3

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus to direct the second respondent to issue fresh mark list to the petitioner by awarding the Improved Internal Assessment Marks secured by the petitioner in November 2017 in Community Medicine as per the representation of the petitioner, dated 15.02.2018.

2. It is the case of the petitioner that he has completed 12th Standard in 2010 by securing 946 marks out of 1200 marks; thereafter, he joined MBBS in the third respondent's institution under Management Quota in July 2010 and has completed his first year in May 2013 and wrote the second year in November 2014 and cleared all his second year papers in November 2016. The petitioner was continuing his third year classes and appeared for the third year examination for three subjects, namely Community Medicine, ENT and Ophthalmology. It is the further case of the petitioner that the Community Medicine subject consists of two papers, Paper-I, Paper-II Oral, Theory, Internal Assessment and Practical Internal Assessment and similarly, ENT subject consists of one paper - Theory, Oral, Practical, Theory and Practical Internal assessment and the last Ophthalmology subject consists of one paper Theory - Oral, Practical, Theory Internal Assessment and Practical Internal Assessment and failed in all the three papers in May 2016 and again in November 2017, the petitioner has passed Ophthalmology papers and failed in other two papers. However, he secured 25 marks out of 40 in theory Improved Internal Assessment and 18 marks out of 30 in clinical Improved Internal Assessment Marks in Community Medicine. The last Improved Internal Assessment Marks in the grade sheet will be added and the results will be declared as per the marks secured by the candidate. However, when the mark list for November 2017 was uploaded in the website, the Improved Internal Assessment Marks secured by the petitioner in November 2017 Exam in respect of theory and clinical papers of Community Medicine subject, had not been taken into consideration while calculating the total and the petitioner had been declared fail in respect of the said Community Medicine paper. As per the first respondent's guidelines, there is no restriction in appearing for supplementary examination and hence the petitioner approached the second respondent to bring to his knowledge about the Improved Internal Assessment Marks secured by the petitioner in the supplementary examination conducted in November 2017, which is not reflected in the Internal Assessment Marks awarded to the petitioner. They have taken the Internal Assessment Marks secured by the petitioner in May 2017 alone and issued the mark list. Hence, the petitioner has filed the above Writ Petition for the relief stated supra.

3. The petitioner has filed additional affidavit stating that the second respondent's counsel has taken up a categorical stand and furnished communication dated 12.04.2017 stating that Improvement of Internal Assessment Marks can be considered on only one time basis and the frequent requests for improvement for the same student whenever repeating the examinations, cannot be considered. Hence, the learned counsel for the second respondent verbally submitted to the Court that the petitioner

is not eligible to get the Internal Assessment Marks secured in November 2017. Further, the learned counsel for the second respondent furnished the list of candidates who have got the Improvements of Internal Assessment in November 2017 session of the said list from Serial Nos.6 to 9 and 11, who have all been joined along with the petitioner in the third respondent-College in the year 2010. The second respondent-University has picked up and chosen the candidates from Sl.Nos.6 to 11 to their whims and fancies which is contrary to the stand taken up by them. The candidates referred to in Sl.Nos.6 to 11 of the list produced by the respondent's counsel, had made more than one attempt for their Improved Internal Assessment. The following is the said list of attempts made by the candidates:

Sl.No.	Reg.No.	Name	Attempts
1	10770039	Kavya Sanjive	6
2	266475040	Karthick Ramanathan	5
3	10770050	Priyanka.C.	6
4	10770035	Juila Balachandar	3
5	10770044	Manoj Kumar.K.	3
6	10770033	Jayapreetha.R.P.	3

4. It is the further stand of the petitioner in the additional affidavit that each and every attempt the candidates will improve the marks in the Internal Assessment and similarly, the petitioner has also improved his marks in each and every Internal Assessment. The second respondent, without any basis, denied the very same benefit which was extended to the candidates in Sl.Nos.6 to 11 of the list produced by them. Hence, the petitioner is unable to concentrate on his studies and is suffering from mental agony. Hence, the petitioner prayed that the second respondent may be directed to extend the very same benefits which was shown to the similarly placed candidates in Sl.Nos.6 to 11 of the list.

5. Even though no counter affidavit has been filed by the respondents, Mrs.A.V.Bharathi, learned counsel for the second respondent-Pondicherry University produced a communication, dated 17.10.2017 of the University addressed to the Director/Dean/Principal IGMC/ SMVMC/SVMC/PIMS, Puducherry, with regard to the approval of the University for Improvement of the Internal Marks of failed students of MBBS Examination held during June 2017 session and it has been categorically stated that the performance of the candidates is based on the specified number of tests in the subject concerned and communication of the marks to the University for necessary action. It is further stated in that communication that as already communicated vide letter dated 12.04.2017, the improvement of I.A. marks is

considered only for the first time seekers. It is the further contention of the learned counsel for the second respondent-University that the other students have been given the Internal Assessment Marks and the contention that more than once, the Internal Assessment Marks had been revised and the students have been declared pass, may not be correct.

6. When there is a categorical decision taken by the second respondent-University that the Internal Assessment Marks for Improvement will be considered on only one occasion, and the petitioner has also availed of the same, the petitioner would not be entitled to any relief prayed for in the Writ Petition, when the fact remains that only later, the petitioner has cleared the Ophthalmology paper and failed in ENT and Community Medicine papers.

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

8. The petitioner, in the third year of M.B.B.S., has failed in three subjects, viz., Community Medicine, ENT and Ophthalmology in three attempts held in May 2016, November 2016 and May 2017 and in November 2017, he passed Ophthalmology and failed in the other two subjects.

9. When there is a categorical decision taken by the second respondent-University that no Internal Assessment Marks shall be granted with regard to the Improvement of Internal Assessment of marks and the same is considered only for the first time seekers, even though the petitioner is entitled to write theory papers any number of times, there cannot be any Improvement of Internal Assessment with regard to every attempt he may make. Except the contention that the other students have been granted the Internal Assessment Marks more than once, which fact has been denied by the second respondent-University, I am of the view that in terms of the decision taken by the second respondent-University, the Improvement of Internal Assessment Marks can be considered only for the first time seekers and that no student can, as a matter of right, is entitled to seek the improvement of Internal Assessment Marks periodically.

10. With the above observations, the Writ Petition is dismissed. No costs.

11. Before parting with the case, it has to be observed that some of the Doctors have become commercial brokers having nexus with pharmacists. This Court has come across number of attempts availed of by the students undergoing the medical course and the first respondent-MCI will have to take a decision and ensure that the number of attempts made by the Doctors will have to be

displayed in the website and also in the concerned hospital/clinic, in order to enable the patients to know the performance of the Doctor as a student in his career. This will safeguard the interest of the patients.

12. In the case on hand, the petitioner's father being a Doctor, instead of sending the representation dated 15.02.2018 to the second respondent asking for grace marks, ought to have asked his son to study well and secure good marks, more particularly, in the interest of the patients and medical profession.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

CS

To

1. The Medical Council of India,
MCI Building Pocket -14, Sector-8,
Dwaraka Phase-7,
New Delhi-100 007.
2. The Controller of Examination,
Pondicherry University, Kalapet,
Puducherry.
3. The Registrar,
Pondicherry Institute of Medical Sciences,
Kanagachetty Kulam, Kalapet,
Puducherry.

+1cc to Mr.M.RAja Sekhar, Advocate, S.R.No.26347

+1cc to Mr.A.V.Bharathi, Advocate, S.R.No.25896

+1cc to Mr.V.P.Raman, Advocate, S.R.No.25883

W.P.No.4497 of 2018

RK(CO)

RRK(13/04/2018)