

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

WRIT PETITION No.4565 OF 2018

R.Kangadevi

... Petitioner

vs.

1. The Controller of Examinations,
Pondicherry University,
Kalapet, Puducherry - 605 014.
2. The Medical Council of India,
MCI Building Pocket-14,
Sector - 8, Dwaraka Phase-1,
New Delhi - 110 077, India.
3. Indira Gandhi Medical College
and Research Institute,
represented by its Director - Principal,
Kandiragamuchan, Puducherry. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus directing the 1st Respondent to grant 3 marks as grace marks towards the Theory Test of Ophthalmology in the III Professional Part I MBBS, November 2017 examination of the Petitioner's Registration No.12770658 and declare the results.

For Petitioner	:	Mr.Gnanasekar for Mrs.Lesi Saravanan
For 1st Respondent	:	Mrs.A.V.Bharathi
For 2nd Respondent	:	Mr.V.P.Raman
For 3rd Respondent	:	Service awaited

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O R D E R

The Petitioner has come up with the present Writ Petition seeking a direction to the 1st Respondent to grant 3 marks as grace marks towards the Theory Test of Ophthalmology in the III Professional Part I MBBS, November 2017 examination written by her, vide Registration No.12770658 and declare the results.

2. According to the Petitioner, she is pursuing M.B.B.S. course (III year) in the 3rd Respondent's Institute and she cleared all the papers in the I and II year. 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 2017 and cleared ENT subject. However, she failed in Community Medicine and Ophthalmology. Once again, she appeared in Community Medicine and Ophthalmology subjects in November 2017 and she passed Community Medicine. She failed in the third paper Ophthalmology, as she secured only 57 marks, when the Pass mark is 60.

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 marks of 60. Though she made a detailed representation to the 1st Respondent requesting to award grace marks and declare 'pass' in Ophthalmology subject, her request was not considered and hence, being deprived of joining the 4th year M.B.B.S. Course, the Petitioner is before this Court.

4. Though the 1st Respondent/Controller of Examinations, Pondicherry University, has not filed counter, learned counsel appearing for the 1st Respondent contended that the Petitioner would be entitled to grace marks, if she had failed in any one subject, provided she had appeared for all the subjects continuously 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.

5. Learned counsel for the 1st Respondent further submitted that the Petitioner failed in the subjects, viz. Community Medicine and Ophthalmology in June 2017 and appeared for those papers in November 2017. However, she could clear 'Community Medicine' paper alone and that she is yet to clear 'Ophthalmology'. Hence, according to the learned counsel, the Writ Petition is liable to be dismissed.

6. 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.

7. 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.

8. 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, 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.

9. Learned counsel appearing for the 1st 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, the Petitioner has failed in two subjects and has cleared only one subject 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.

10. Learned counsel appearing for the 2nd Respondent/Medical Council of India 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."

11. He 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."

12. In view of the same, according to the learned counsel appearing for the 2nd 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.

13. Heard the learned counsel on either side and perused the material documents placed on record.

14. 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 and that 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.

15. 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. 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 held in June 2017 and could clear only ENT subject in the first attempt. She appeared for the remaining two papers in November 2017 and could clear only Community Medicine in the second 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 57 marks in 'Ophthalmology'. Of course, appearing for the same paper again and again will undoubtedly make the candidate well-versed in the subject.

16. 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."

17. The Petitioner can seek grant of grace marks as a matter of right, if she had failed in only one subject among the three papers she appeared in June 2017. Since, she failed in two subjects, 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.

18. I find much force in the contentions of the learned counsel appearing for 1st Respondent/University and the 2nd Respondent/Medical Council of India. Thus, in view of the Regulations of the Medical Council of India and in the light of the observation made by the Apex Court in Padma Sundara Rao's case (cited supra), as the Petitioner herein has failed in more than one subject in the III year M.B.B.S. Course, which fact has been admitted by her in paragraph 4 of her Affidavit, she is not entitled to the relief sought in the Writ Petition.

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

Sd/-
Deputy Registrar(CO)

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Sub Assistant Registrar

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To:

1. The Controller of Examinations,
Pondicherry University,
Kalapet, Puducherry - 605 014.
2. The Medical Council of India,
MCI Building Pocket-14,
Sector - 8, Dwaraka Phase-1,
New Delhi - 110 077, India.

+1cc to Mr.A.V.Bharathi, Advocate, S.R.No.26303

+1cc to Mr.Lesi Saravanan, Advocate, S.R.No.26620

+1cc to Mr.V.P.Raman, Advocate, S.R.No.26835

W.P.No.4565 of 2018

RRK(17/04/2018)