

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2018

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.5731 of 2018

S.Anantharaman

.. Petitioner

Vs.

1.The Registrar,
Tamil Nadu Dr. M.G.R. Medical University,
No.69, Anna Salai,
Guindy,
Chennai - 600 025.

2.The Dean,
Melmaruvathur Adhiparasakthi Institute
of Medical Sciences and Research,
Melmaruvathur,
Kancheepuram District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Mandamus, to direct the first respondent to revalue the Paper -I and II of Biochemistry and to award correct marks for the answers written by the petitioner with due verification with approved textbook materials and to award appropriate marks for the same and consequently, declare the petitioner pass in Biochemistry Paper -I and II and to permit the petitioner to join the Second Year MBBS course in 2nd respondent college within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For R1 : Mrs.P.Rajalakshmi

For R2 : Mr.A.S.Balaji

ORDER

The petitioner has preferred this writ petition for a Mandamus directing the first respondent to revalue the Paper -I and Paper -II of Biochemistry and to award correct marks for the answers written by him with due verification with approved textbook materials and consequently, declare the petitioner as passed in Biochemistry Paper -I and Paper -II and permit him to

join the Second Year MBBS course in the 2nd respondent college within a time frame.

2.A few facts may be recapitulated as under:

2.1 The petitioner initially joined B.E (Mechanical Engineering) in Panimalar Engineering College. Thereafter, he attended NEET Examination and joined MBBS course in the 2nd respondent college for the academic year 2016-17. According to the petitioner, he has written the following papers for the first year:

- (i)Anatomy (paper - I and Paper -II)
- (ii)Physiology including Bio-Physics (paper -III and Paper -IV)
- (iii)Bio-chemistry (Paper -V and Paper -VI).

2.2 As per the Medical University Regulations, a student has to clear all the aforesaid papers in a single attempt, failing which, he/she has to redo the course. Further, the maximum marks for Bio-chemistry is 200, in which, 120 marks is for theory and 40 marks is for practical, apart from 40 marks for internal assessment. The student has to secure minimum marks of 60 in theory including oral and 20 marks in practicals.

2.3 On publication of the results, it was found that the petitioner was declared as failed in Bio-chemistry on the ground that he has secured 51 marks in theory and 21 marks in practical, added with 20 marks for internal assessment and 92 marks in aggregate.

2.4 The petitioner applied for furnishing of answer books in respect of Biochemistry Paper - I and Paper - II. On verification, it was found that he has written the answers correctly, but, unfortunately he was not awarded deserved marks.

2.5 While so, the first respondent University introduced double valuation in February 2012 for the candidates, who have obtained less than 50% marks in theory in all UG courses of Medicine, Dental, AYUSH and Allied Health Sciences. In view of the same, the question of revaluation does not arise.

2.6 When there are two papers in a subject and one paper carries more than 50% marks, it will not be subjected to double valuation. The final pass marks must be 50% of the total marks in aggregate of the marks secured in two papers in a single subject. In such event, when there are serious lapses in the valuation in respect of one paper out of two papers in a subject, in which, the candidate secured 50% of marks, then, it will not be subjected to double valuation. In such circumstances, the candidate will be prejudiced, if he is losing marks due to defective valuation in one paper, where he secured 50% marks in the absence of double valuation, notwithstanding

the fact that the pass mark is based on aggregate of marks of both papers in a single subject.

2.7 According to the petitioner, for the first year examination, in Biochemistry, he has secured 25 marks out of 50 in theory Paper-II, whereas, he has scored 15 marks out of 50, after double valuation in theory Paper-I and in aggregate, he has obtained less than the minimum pass marks and hence, he has come up with the present writ petition for the aforesaid relief.

3.The learned counsel for the petitioner submitted that on a harmonious reading of the Regulations, the petitioner ought to have been given the benefit of double valuation, when there are serious lapses in correction. Further, in Paper -I, the petitioner has secured less than 50% marks even after double valuation and in that event, ignoring Paper-II for double valuation, wherein, he has secured 50% marks, on account of aggregate, even he has secured less than 50% marks, may not be correct. According to the learned counsel, if aggregate is not taken into account, the respondents will be right, with regard to the paper, in which, the petitioner has secured 50% marks. Learned counsel further submitted that in the event of the petitioner not being given the benefit of double valuation, he has to redo the course, as per the Medical University Regulations.

4.Though the first respondent has not filed any counter affidavit, the learned counsel for the first respondent produced a copy of 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."

5. According to the learned counsel for the first respondent, the petitioner has failed in Biochemistry, as he secured less than minimum marks of 50%, due to which, Paper -I was subjected to double valuation, in which, he has secured only 15 marks out of 50, which is less than the minimum pass mark. Further, as there is a bar, Paper-II, wherein he has secured 50% marks, ought not to have been subjected to double valuation and therefore, the petitioner, as a matter of right, cannot demand for double valuation and such contention would not be countenanced. Thus, according to the learned counsel, the writ petition is liable to be dismissed.

6. Heard both sides and perused the records.

7. It is not in dispute that the petitioner, after clearing NEET examination, joined MBBS course in the second respondent College and appeared for the first year examination, in which, in Bio chemistry subject, he has secured 25 marks, out of 50 in theory paper - II, whereas, he has secured 15 marks out of 50, even after double valuation in Paper-I and hence, he was declared as failed in that subject.

8. With regard to the issue involved herein, the learned counsel for the petitioner placed a reliance on the decision of this Court in Dr. Ivan A Jones v. Tamil Nadu Dr. M.G.R. Medical University [(2016) 7 MLJ 678], wherein, in paragraph Nos. 32 and 34, it has been 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."

9.It cannot be disputed that the second respondent college will have to maintain guidelines with regard to double valuation and that the contention of the first respondent 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 paper-II, irrespective of the fact that he has secured 50% marks in that paper, lest, the purpose of granting aggregate marks for clearing the papers would become otiose. As long as the aggregate of 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.

10.Concededly, the petitioner has cleared one theory paper. However, he has not cleared another theory paper of the same subject. In such event, he has to redo the entire course. When that being the position, there can be no hard and fast rule, hurdle or bar that the paper, which is not double valued earlier, have to be subjected to double valuation, to ascertain as to whether the petitioner has passed Biochemistry subject by taking aggregate of marks.

11.As long as the petitioner is declared as failed by taking note of 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 failed, even though he has secured 50% marks in one paper.

12.In such perspective of the matter, to subserve the interests of justice, this Court directs the first respondent to double value the theory Paper -II, if not done earlier, award correct marks and declare the result of the petitioner with respect to Biochemistry.

13.The writ petition is allowed to the extent indicated above. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

rk/asi

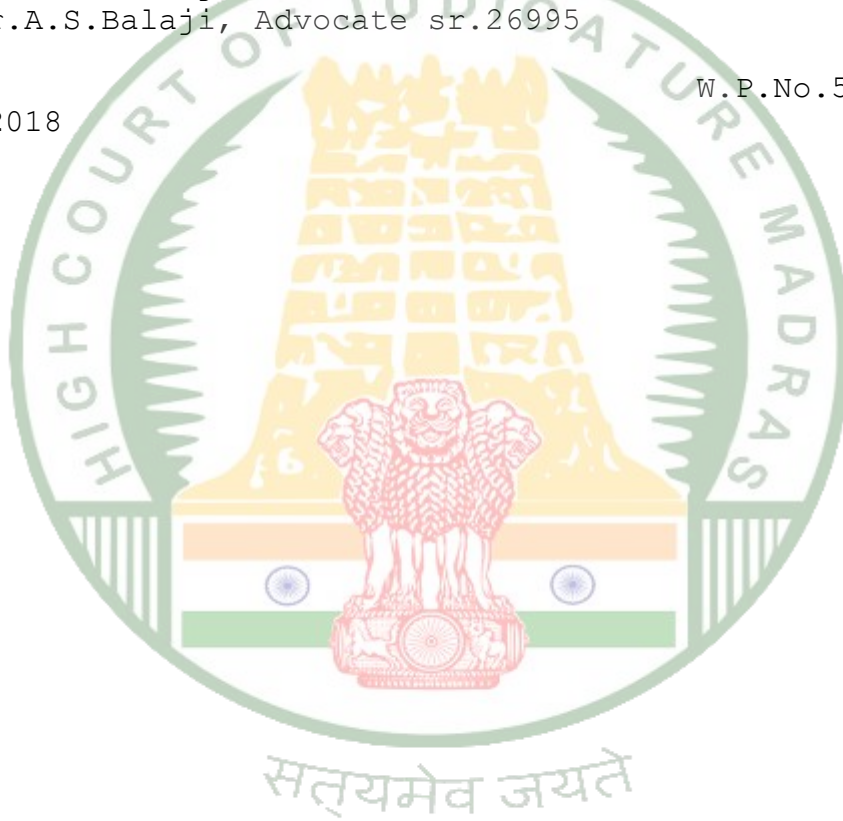
To

The Registrar,
Tamil Nadu Dr. M.G.R. Medical University,
No.69, Anna Salai,
Guindy,
Chennai - 600 025.

+lcc to Mr.Mr.G.Sankaran, Advocate, S.R.No.26613
+lcc to Mr. Mrs.P.Rajalakshmi, Advocate, S.R.No.26928
+lcc to Mr.A.S.Balaji, Advocate sr.26995

W.P.No.5731 of 2018

nr 07/05/2018



WEB COPY