

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.05.2018

C O R A M

THE HONOURABLE Mr.JUSTICE C.V.KARTHIKEYAN

W.P.No.12462 of 2018

and

W.M.P.No.14596 of 2018

G.Arokia Arul Raj

...Petitioner

Vs.

1.The Medical Council of India,
MCI Building Pocket - 14,
Section - 8 Dwarka Phase I
New Delhi - 110 077

2. Controller of Examination,
Pondicherry University,
Kalapet, Pondicherry 605 104

3. Sri Manakula Vinayagar Medical College,
Katitheral Kuppam,
Pondicherry

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 2nd respondent to grant 3 (Three) marks as grace marks towards the petitioner's theory exams in Ophthalmology in the III Year Professional Part I MBBS held on November 2017 as per the Medical Council of India Regulations chapter IV 13(10) & Pondicherry University Examination Regulations 2009-2010.

For Petitioner	: M/s.Vennimalai
For R1	: Mr.B.Seshadri
For RR2&3	: Mrs.A.V.Bharathy

ORDER

The petitioner is a student studying M.B.B.S in the 3rd respondent Medical College and he joined in the year 2009-2010. Very unfortunately, he appears to have accumulated the habit of repeating the exams owing to performance which was not considered satisfactory by the examiners. In such manner, in one of the papers namely Ophthalmology, the petitioner had written the examination in May 2017 and he was unsuccessful. He again wrote the exam in November 2017. He fell short by three marks. In this writ petition, he claims grace marks to the extent of three marks be awarded to him and it should be declared that he had cleared the paper of Ophthalmology.

2 The learned counsel appearing for the petitioner relied on two earlier judgments of this Court in WP No.8130 of 2015 and WP Nos.10080 to 10083 of 2015 (batch) dated 23.03.2015 and 08.04.2015 respectively. In both set of cases, this Court had independently considered granting grace marks to petitioners therein who were unsuccessful in the practical examination conducted by the University and by the said order, grace marks were directed to be granted. The learned counsel appearing for the petitioner stated that in

the Regulations, it had been specifically provided that grace marks should not be granted for practicals. But however, in the writ petitions mentioned above, this Court had exercised its jurisdiction and had granted grace marks even for candidates who had not cleared the practical examination. It is an admitted stand that the University or Medical Council of India had not taken up the said orders on appeal.

3 On the other hand, the learned counsel appearing for the 2nd respondent produced a copy of the Examination Regulations and distribution of marks which according to the learned counsel applies for the present petitioner who had joined the course in the year 2009-2010. According to the said Regulations, the Regulation with respect to grace marks reads as follows :-

Grace Marks

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

A passing board is constituted for finalising 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.

4 Pointing out the said Regulation, the learned counsel appearing for the 2nd respondent stated that the grace mark cannot be granted for compartmental candidates who write examination in the second attempt which is otherwise known as compartmental manner.

5 The learned counsel appearing for the 1st respondent has also pointed out the regulations governing the 1st respondent and in the said rules, under Rule 10, it has been provided as follows :-

“ The grace marks up to 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.”

Pointing out the above, it has been stated that the grace marks can be given to a candidate who has failed only in one subject and who has passed in all the other subjects.

6 The learned counsel appearing for the petitioner stated that in the earlier writ petitions, the contention of the 2nd respondent was that grace mark cannot be granted for practicals and before this Court in the instant case, they have stated that grace marks cannot be granted for theory papers. He has also pointed out the judgment of a Division Bench of this Court in WA No.325 to 333 of 2017, wherein the Division Bench of this Court had directed granting of Grace Mark.

7 The learned counsel appearing for the 2nd respondent however countered the said contention raised by the learned counsel appearing for the petitioner and stated that the judgment of the Division Bench was passed based on a Circular and when the regulations are clear that grace mark cannot be granted when the candidates takes up the examination in compartmental manner, regulation shall prevails over the circular.

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8 I have carefully considered the rival arguments advanced by the learned counsels.

9 In this case, the petitioner has been striving to complete his medical course from the year 2009-2010 onwards. He has progressed on a slow rate. With respect to the subject of Ophthalmology, the petitioner had written the same in April 2017 and being not successful, once again written the examination in November 2017. Again he was unsuccessful. But the fact which has to be emphasised is that he fell short by three marks. Normally, it would have been expected that he would improve his performance but unfortunately his performance did not improve and he had fallen short by three marks. He now claims as a matter of right awarding of grace marks, and he relies on the regulations.

10. The learned counsel for the petitioner produced a binded copy of the regulations stating that it is not specifically stated that the grace marks cannot be granted when a student writes the examination in compartment manner. However, the regulation provided by the 2nd respondent very specifically states that grace marks cannot be provided to a student who takes up the examination in a compartmental manner. When that is the case, it would be improper on the part of this Court to supersede the regulation of the 2nd respondent and thrust its own rules as to how the examination has to be

conducted and what are the regulations to declare a person successful in an examination. It must also be noted that the petitioner in the present case, has attempted to qualify for a very serious course of MBBS and it would only be in his own interest that he qualifies with credit. It is also to be noted that the two orders relied on by the learned counsel appearing for the petitioner relate only to practical examinations and not to theory examinations. In the present case, the regulations very specifically state that when a candidate appears in compartmental manner, grace mark cannot be granted. So long as the regulations have not been challenged and the same are in vogue, as a student, it is binding on the petitioner. The petitioner has to abide by the terms of the regulations. The learned counsel appearing for the petitioner pointed out that the petitioner has been pursuing the course from the year 2010 onwards and in the year 2019, if he does not complete the papers, he would lose the benefit of the entire course. It is also stated that there is a provision of granting one course year at that particular point of time. It would be presumptions to assume that the petitioner would require that one additional course year. To assuage the petitioner, even at this Stage this Court express the hope that the petitioner would complete the course whenever he takes up the examination and even if he falls short in the year 2019, this Court is sure that the University would favaourbly consider for extending the Course to one further year for the

petitioner. The University also has an obligation to encourage the students and one form of encouragement would be in extending the course of the study at least for one year insofar as the petitioner is concerned if need arises. However, these observations are only with respect to an eventuality which might happen in the year 2019. At that particular point of time, it is also within the rights of the University/ the 2nd respondent to take an independent assessment.

11. With these observations, the writ petition stands dismissed. No costs.

17.05.2018

Internet : Yes / No
Index : Yes / No
Speaking / Non-speaking

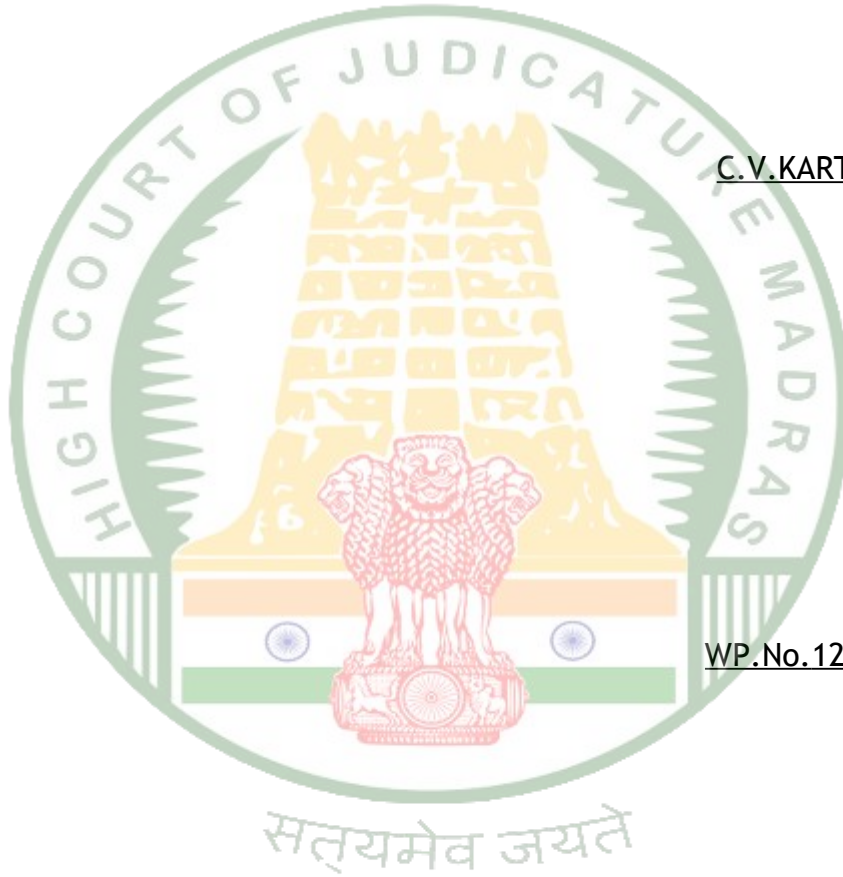
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To

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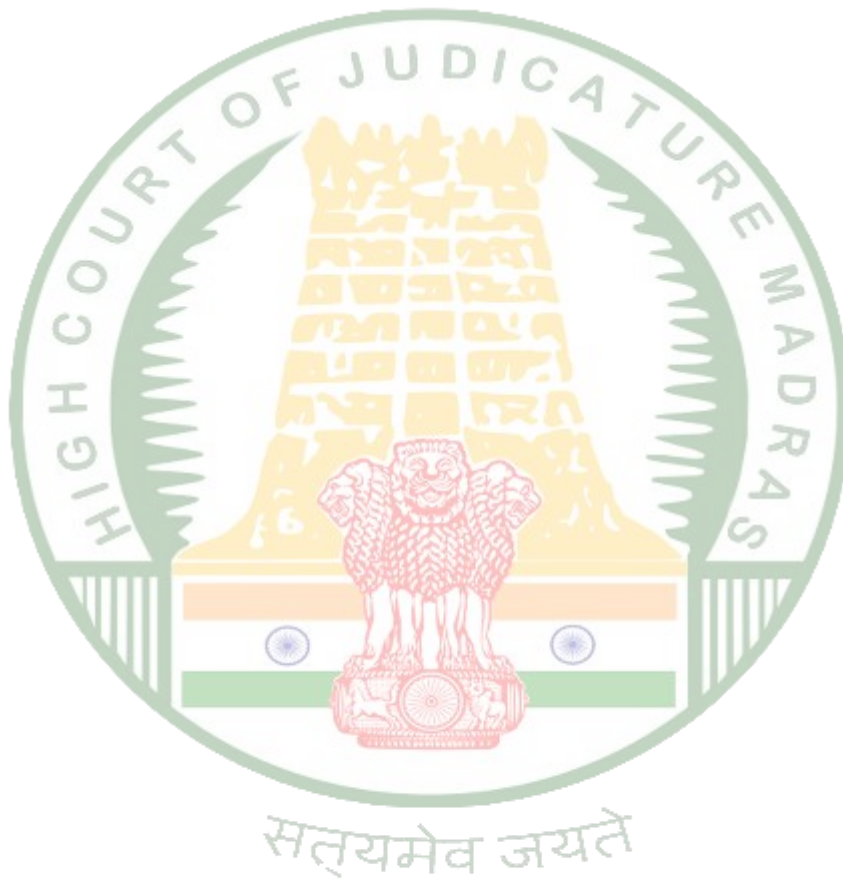
C.V.KARTHIKEYAN.,J

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