

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.24762 of 2018
and
WMP.No.28786 of 2018

A.Vighneshwaran

... Petitioner

Vs.

1. The Medical Council of India,
MCI Building Pocket - 14,
Sector -8, Dwarka Phase-I,
New Delhi - 110 077.
2. The Controller of Examinations,
Pondicherry University,
Kalapet, Puducherry - 605 104.
3. Pondicherry Institute of Medical Sciences,
Ganapathichettikulam, Kalapet,
Puducherry - 605 014. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent to permit the petitioner to appear in Anatomy & Bio Chemistry Subjects (I Professional MBBS Degree Examination) as per the Medical Council of India regulation on graduate medical education, 1997 without limiting to four chances in 3 years from the date of enrollment.

For Petitioner : Mr.A.Swaminathan

For Respondents : Mrs.A.V.Bharathi, for R2
Mr.B.Nambiselvam, AGP, for R3

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O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus, directing the second respondent to permit the petitioner to appear for Anatomy & Bio Chemistry Subjects (I Professional MBBS Degree Examination) as per the Medical Council of India Regulation on graduate medical education, 1997 without limiting to four chances in 3 years from the date of enrollment.

2. The case of the petitioner is that the petitioner appeared for his I year professional examination in May 2016, but failed in all three subjects. Thereafter, the petitioner passed in Physiology subject in October 2016 and appeared for Anatomy and Bio-Chemistry in June 2017 and November 2017. However, the petitioner once again failed in both the subjects. When the petitioner wanted to write the Examination in 2018, it is stated that the second respondent did not permit the petitioner to appear for Anatomy and Bio-Chemistry subjects in September 2018 Supplementary Examination on the ground that the petitioner had already exhausted all his four chances.

3. The learned counsel appearing for the University however states that the petitioner, as a matter of fact, has been given one more chance and he failed in the fifth chance also.

4. The learned counsel appearing for the petitioner states that there is an amendment to clause 7(3) of MCI Regulations, which reads as follows:

"(3) The first 2 semester (approximately 240 teaching days) shall be occupied in the Phase I (Pre-clinical) subjects and introduction to a broader understanding of the perspectives of medical education leading to delivery of health care. No student shall be permitted to join the Phase-I (Para-clinical / clinical) group of subjects until he has passed in all the Phase-I (Pre-clinical subjects) for which he will be permitted not more than four chances (actual examination), provided four chances are completed in three years from the date of enrollment.

In the above sub-section 7(3) the words "for which he will be permitted not more than four chances (actual examination), provided four chances are completed in three years from the date of enrollment" have been deleted in terms of notification published on 30.09.2003 in the Gazette of India."

5. The learned counsel for the petitioner further states that the Regulations restricting number of chances to be given to the failed candidates has now been deleted by the Medical Council of India in the Regulations with effect from 2003. It is further stated that the Regulations in the University statute is contrary to the Regulations framed by MCI in exercise of its power under the Central Legislation and therefore it is not valid. In this context, the learned counsel appearing for the respondent-University produced before this Court, a copy of the order passed by a learned Single Judge of this Court, dated 19.07.2018 in W.P.No.29328 of 2018, and batch of cases. In the said judgement, after referring to the MCI Regulations as

amended in 2003, the learned Single Judge of this Court while considering the validity of the Regulations framed by the University, observed that the University has got right to fix better or more qualifications than what is prescribed in the Regulations framed by Medical Council of India and that such a clause is not contrary to the MCI Regulations. It is further held that the deletion of certain words from the MCI Regulations would not nullify or modify the University Regulations, since the University wants to stick on to the conditions already stipulated in the prospectus. The learned counsel further justified the stand taken by the University by holding that there was no contravention of MCI Regulations and the University Regulations as stipulated, restricting the number of chances to be given to a candidate. The learned Judge of this Court has disposed of the Writ Petition filed by the students with an observation that it is open for the University to remove the clause 10, dealing with mercy.

6. The question whether the Regulations of University is repugnant to the MCI Regulations and whether the Regulations framed by University, which are certainly contrary of the MCI, is a matter, which cannot be re-agitated by this court, in view of the decision of the learned Single Judge of this Court in W.P.No.29328 of 2018, etc., batch of cases. Though this Court is not fully in agreement with the view taken in the said judgement, it is not proper for this Court to take a different view.

7. Further, it is pointed out that in the said order, in paragraph 18, the learned Single Judge has observed as follows:

"18. If the students have got more attempts, and it was not the last attempt, pursuant to the interim orders of the Court, the right to appear for the remaining attempts, is protected. But if the attempt made pursuant to the interim order of the Court, was more than the one prescribed under the Rules and Regulations, then this attempt shall be treated as the last attempt. Judges would not like to grant grace marks, as they may not like to take treatment under those persons, if they become Doctors. It is very doubtful whether the counsel who is appearing for these persons, will go and take treatment and dare enough to sent their family members to those persons for treatment."

Referring to the above paragraph, the learned counsel for the petitioner submitted that the Court can grant permission for one more chance to the student. This Court is unable to see such suggestion from this Court in the said judgement.

8. Having regard to the precarious position of the petitioner in this case, this Court is of the view that the University shall also consider similar amendment being introduced in the University Regulations, so as to give the benefit to the students in tune with MCI Regulations, as the Court is also of the view that there is contradiction between the MCI Regulations and University regulations and that the University Regulations to the extent repugnant to MCI regulations cannot stand.

9. The learned counsel for the petitioner states that the petitioner has already given a representation to the University on 27.08.2018 seeking permission to write one more attempt of first year MBBS examination, which is to be held in September 2018.

10. Considering the facts and circumstances, the Pondicherry University is directed to consider the petitioner's representation, dated 27.08.2018 and pass appropriate orders within a period of two weeks from the date of receipt of a copy of this order. It is also made clear that the University shall also make necessary amendment, if they are advised or acknowledge that their Regulations are contrary to the MCI Regulations.

11. With the above directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.
Pvs

Sd/-
Assistant Registrar(CS-V)

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Sub Assistant Registrar

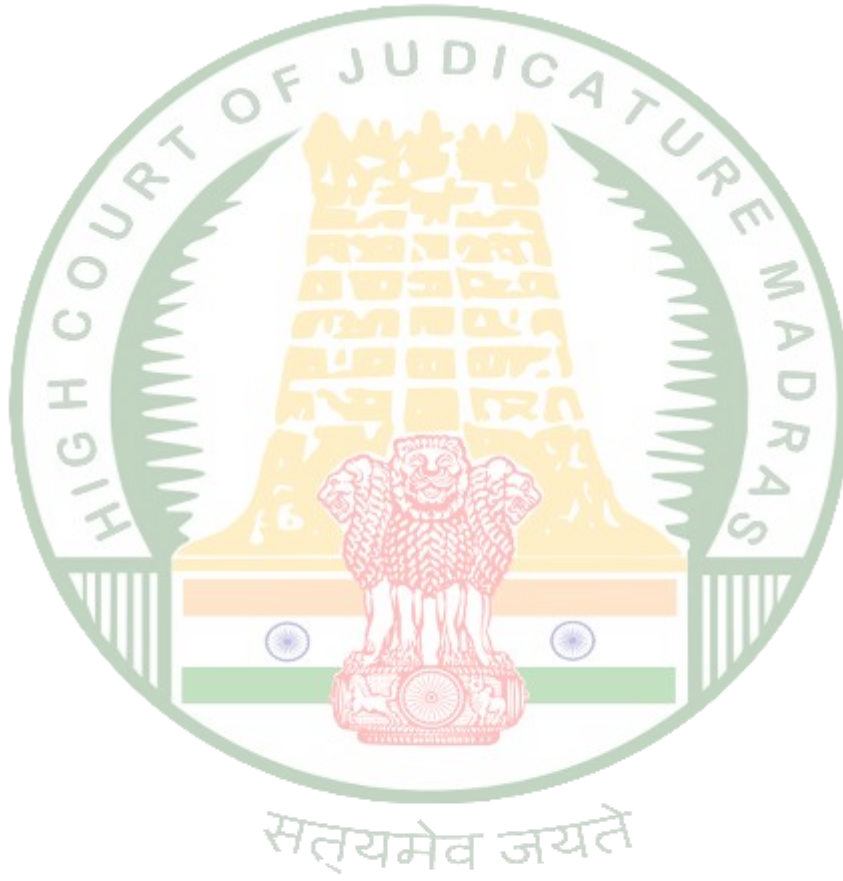
To

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+1cc to Mr.A.Swaminathan, Advocate, S.R.No.65188

KR/22/10/18

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