

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.24748 of 2018

J.Cynthia Ann

... Petitioner

Versus

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 2nd respondent to consider the petitioner's representation dated 06.08.2018 and to grant 2 (Two) Marks as grace marks towards the petitioner's paediatrics subject in the III Professional Part II M.B.B.S held on May 2018 as per the Medical Council of India Regulations chapter IV 13 (10) & Pondicherry University Examination Regulations 2009-2010.

For Petitioner: Mr.A.Swaminathan

For R1 : Mr.V.P.Raman

For R2 : Mrs.A.V.Bharathi

For R3 : Mr.C.T.Selvam
Additional Government Pleader

O R D E R

The writ petition has been filed seeking for issuance of a Writ of Mandamus, directing the 2nd respondent to consider the petitioner's representation dated 06.08.2018 and to grant 2

(Two) Marks as grace marks towards the petitioner's paediatrics subject in the III Professional Part II M.B.B.S held on May 2018 as per the Medical Council of India Regulations chapter IV 13 (10) & Pondicherry University Examination Regulations 2009-2010.

2. The brief facts that are necessary for disposal of the writ petition are as follows:

The petitioner joined M.B.B.S. Course, in third respondent college during the academic year 2011 - 2012 and she has passed in all the papers in the last four years and began the III Professional Part II course in June 2017. The petitioner took examinations in four subjects, namely, General Medicine, General Surgery, Obstetrics & Gynaecology and Paediatrics. After writing the examinations in May 2018, the results of the petitioner was published in online during second week of August 2018. Though the petitioner passed in three subjects, she was declared fail in Paediatrics due to shortage of two marks. Hence, she was sought only two marks to get pass.

3. The petitioner passed three subjects out of four subjects. As per the university regulations, it is contended by the petitioner that she was entitled to award grace marks as she has failed only in one subject and passed in all other subjects. It is not in dispute that the Medical Council of India has framed regulations whereby the grace marks up to a maximum of five marks can be awarded to the students, who have failed only in one subject.

4. Based on the regulations of the Medical Council of India, the petitioner has sent a representation to the second respondent on 06.08.2018 and however, the said representation has not been considered by the second respondent. Under these circumstances, the petitioner has come forward to file the above writ petition.

5. The learned Counsel appearing for the petitioner referred the regulations of the Medical Council of India and submitted that grace marks up to maximum marks of five can be awarded by the university to the student, who was failed only in one subject.

6. The university has framed examination regulations and also regarding grace marks. The regulations of the university is read as follows.

"A Board / Examination Committee is constituted for finalizing the results of examinations of each phase. The members would scrutinize and review of the marks and results of the examination. The Board / Examination Committee can consider grace

marks, if the student has failed in only one subject and has passed in all the other subjects of a particular session/semester. Grace marks of up to 5% of theory marks can be added for one subject only, provided that by such an addition the student passes the annual/Summative (viz., First professional, second professional, etc.,) examination.

For Eg.,

1. For the subject Anatomy, given the above guidelines, a maximum of eight marks (5% of maximum of theory examinations of 1600) can be awarded.
2. For the subject of Pediatrics, given the above guidelines, a maximum of four marks (5% of maximum of theory examinations of 80) can be awarded.

The grace mark of 5% is applicable to all the Annual/Summative examinations of MBBS conducted semester-wise.

This addition of grace marks is applicable to students irrespective of First or subsequent appearances provided that he/she will be passing the annual/summative examination in total with such considerations.

Split distribution or addition of grace marks to more than one subject, practicals and internal assessment is not permitted."

7. By referring to above said regulations, the learned Counsel for the petitioner submitted that the petitioner has secured 49.5% in Paediatrics and that an addition of two marks will make the petitioner to pass in the subject of Paediatrics. There is no dispute with regard to the facts narrated in the affidavit filed in support of the writ petition.

8. The learned counsel appearing for the university / second respondent has produced its own Regulations before this Court and the said regulations are applicable to the candidates, who were appeared for the examination during the year 2009 - 2010 regarding grace marks and the relevant portions are extracted hereunder:-

"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 member, the board allots grace marks maximum 5 for one subject. The grace mark of 5 will be added for one subject only after 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 examination 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."

8. After referring to the university regulations above extracted, the learned Counsel appearing for the second respondent submitted that the petitioner failed in Paediatrics and that, she has secured only 38 marks in practical including Internal marks. It is further submitted by the learned counsel for the second respondent that as per the university regulations, grace marks cannot be added to the practical. On reading the stand taken by the second respondent, the petitioner has obtained 40 marks out of 80 marks in theory and 14 marks out of 20 marks in Oral examination. The petitioner has also secured 7 marks out of 20 marks in internal. The total marks obtained by the petitioner is therefore 61 marks out of 120 marks. The petitioner has secured 25 marks out of 50 marks in practical examination. The petitioner again secured 11 marks out of 30 marks in internal. Since the total marks obtained by the petitioner is only 99 marks out of 200 marks, the petitioner was failed.

9. The learned Counsel appearing for the second respondent further submitted that if the internal marks are included, the petitioner has secured only less than 50% of the marks in practicals. It is stated that the petitioner was failed in practical, cannot be benefited by adding grace marks in theory paper, which will have now consequences in the result of the examination. The stand taken by the second respondent is extracted in paragraph 7 to 10 in the Counter Affidavit filed by the second respondent.

Subject	Theory mark out of 80	Oral out of 20	Internal out of 20	Total out of 120	Practical out of 50	Internal out of 30	Total out of 80	Grand Total out of 200
Passing Minimum	40% of 80 32	-	35% of 20 07	50% of 120 60	50% of 50 25	35% of 30 11	50% of 80 40	50% of 200 100

Subject	Theory mark out of 80	Oral out of 20	Internal out of 20	Total out of 120	Practical out of 50	Internal out of 30	Total out of 80	Grand Total out of 200
Marks obtained	40	14	07	61	27	11	38	99

10. This Court noticed vast difference in the regulations has laid upon by the petitioner in the affidavit filed in this Writ Petition and the regulation that was followed by the respondent. The learned Counsel appearing for the respondent submitted that the regulation placed by the second respondent before this Court is valid from 2009 - 2010 and that the petitioner has taken only the copy of the regulation, which is neither authorised nor in force as on date. The regulation of the university clearly indicates that grace marks will be added only in theory paper and it has been specifically stated that no grace marks will be added to the practicals. However, as per the regulation extracted in the Affidavit filed in support of the writ petition, it is not made clear whether addition of grace marks is permissible to the candidate, who was not secured 50% by including internal.

11. It is seen from the regulation relied upon by the learned Counsel appearing for the second respondent is that the grace marks of 5 can be added only in theory. Similarly, there is no indication even from the regulation relied upon by the second respondent that the internal marks should also be included to arrive at the percentage of the marks secured by the candidate. As per the regulation referred to by the petitioner, it is seen that addition of grace marks is applicable to the students irrespective of first or subsequent appearance provided the candidate will be passing annual examination in total. In such consideration, it is made clear that distribution or addition of grace marks in one subject in practical is not permissible. From the regulations relied upon by the second respondent, there is no indication as to whether internal marks also can be included.

12. This Court has already decided a similar case, where the issue has been decided in favour of the petitioner by holding that the internal marks of the candidate cannot be added in theory, this was the minimum marks secured by the candidate and the percentage thereof. Since this Court has already taken a view that internal marks can be added, this Court is underwont to sustain the stand taken by the second respondent in the Counter Affidavit and the method of consideration for award of grace marks.

13. The following table which is reproduced by the second respondent in the counter affidavit

"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 marks of 5 is applicable to all the University Examination 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 Examinations in a compartmental manner.

The University is always entitled to prescribe higher standards than what is prescribed by the Medical Council of India norms in order to maintain the excellence in higher education. No Grace marks can be awarded for practicals. This Hon'ble Court has made it clear in the Order passed in Review Nos.67 to 75 of 2018 dated 10.04.2018 that grace marks cannot be granted in Practical."

from the table furnished by the second respondent, it is seen that the petitioner has secured 61 marks out of 120 marks in all. The petitioner has secured 40 marks out of 80 marks in theory and 14 marks out of 20 marks in oral. The petitioner has also secured 27 marks out of 50 marks in practical. If internal marks are not added and they are removed from the above table. There is no difficulty for anyone to say that the petitioner is entitled to the grace marks as prayed. The marks obtained by the petitioner would clearly show that only obtained two marks to go through the subject paediatrics in the III Professional Part II MBBS Examinations.

14. The contention of the second respondent that no grace marks will be added to practical is evident from the regulations relied upon by the second respondent. However, it does not take the respondent to advance their case while applying the position to the petitioner. It is not in dispute that the petitioner has secured 27 marks out of 50 marks in practical. It is stated that the petitioner has secured 11 marks out of 30 marks in internal and therefore the total marks of the petitioner is only 38 marks out of 80 marks. Since the petitioner has not obtained 50% in practical, the learned counsel for the second respondent submitted that the petitioner has not passed in practical and the petitioner cannot be given the benefit of grace marks as no grace marks can be added. However, it is admitted before this Court the pass marks in practical is only 25 marks out of 50

marks. It is only by adding internal marks the learned counsel for the second respondent states that the petitioner has not passed in practical.

15. As pointed out in the other judgment, this court has already taken its view that the regulation of university do not justified inclusion of internal marks so as to calculate the marks obtained by the candidate, whether the candidate is eligible to get grace marks. This Court also found that for awarding grace marks internal marks obtained by the candidate is not a significant and has no role in fixing the percentage of marks for the purpose of considering the eligibility of the candidate to get grace marks. Hence, this Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

mtl/rpl

To

1. The Medical Council of India
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Puducherry - 605 014.

+1cc to Mr.V.P.Raman, Advocate, S.R.No.75490

+1cc to Mr.A.V.Bharathi, Advocate, S.R.No.74796

+1cc to Mr.A.Swaminathan, Advocate, S.R.No.74965

W.P.No.24748 of 2018

RRK(09/11/2018)