

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.No.25266 of 2018
and WMP.No.29377 of 2018

V.Chandrabose

... Petitioner

Vs.

1. Medical Counsel of India,
Rep. by its Secretary,
New Delhi - 110 077.

2. The Registrar,
Puducherry University,
Kalapet, Puducherry - 14.

3. Sri Manakula Vinayagar Medical College,
Rep. by its Dean,
Kalitherthalkuppam,
Madagadipet, Pondicherry.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 2nd respondent University to grant permission to the petitioner, to apply and appear for the Phase I - First Year Subject Physiology, in the forthcoming Exams to be held on November-December 2018, in pursuant to the directions of this Court issued in Writ Petition 29328 of 2017 etc., batch, dated 19.07.2018.

For Petitioner : Mr.R.Poornima

For Respondents : Mr.V.P.Raman, for R1
Mrs.A.V.Bharathi, for R2

O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus, directing the second respondent University to grant permission to the petitioner to apply and appear for phase I of first year subject, viz., Physiology in the forthcoming examination to be held on November-December 2018.

2. The brief facts that are necessary for disposal of the Writ Petition are as follows.

3. On completion of plus 2 examinations, the petitioner joined MBBS course in the third respondent Institution, during the academic year 2012-13 under the Management Quota. The petitioner took his first year course examinations in June 2013. It is not in dispute that for Medical Students, passing of papers of first phase is mandatory to move on to the second year. The phase I of the course contains 3 subjects, but the petitioner could not clear all the three subjects. Hence, the petitioner appeared in November 2013 supplementary examinations and cleared only one paper, viz., Anatomy and failed in other two subjects, viz., Physiology and Bio-Chemistry.

4. Thereafter, the petitioner appeared in May 2014 examination for both the subjects, viz., Physiology and Bio-Chemistry. Unfortunately, the petitioner could not get through. Again, the petitioner appeared in the examinations held in November 2014, May 2015, November 2015, June 2016, November 2016 and June 2017. It is admitted that despite the petitioner's repeated attempts, he could not clear the two subjects. When the petitioner appeared for examinations on November 2017, he cleared the Bio-Chemistry subject and failed in the other subject, viz., Physiology.

5. Since the petitioner could not clear all the papers in first year Phase I, he could not move on to the second year. By the time the petitioner appeared for November 2017 exams, maximum time for clearing the first year subjects, i.e., three years has expired as per the Regulations of the second respondent University. When the petitioner made a request to the University to appear for the June 2018 exams, the same was declined by the University referring to the provisions of 2019 Regulations of the University. Stating that in final attempt, the petitioner failed only in a little margin and that the petitioner has passed in all the practicals, the petitioner has filed this Writ Petition to direct the second respondent University to give him one more chance to clear the Physiology paper, which is a subject in phase I of the course.

6. The learned counsel for the petitioner relied upon the order of this Court, in a Writ Petition in W.P.No.29328 of 2018 and batch of cases, dated 19.07.2018, in the case of Nahakpam Rojita Devi vs. the Medical Council of India and others, wherein, this Court in paragraph 23 has held as follows:

"23. The total number of (maximum) years prescribed to complete the MBBS Course is eight years. In the above Regulations, the word "eight" makes it clear that after the period of the medical course of 4 1/2 years,

excluding the period of House Surgeon, students will be entitled to complete the course with the extended period of 3 1/2 years and the total period is eight years. The contention that the total period should be construed as 11 1/2 years in terms of clause 8 extracted supra, cannot be accepted. However, in view of Clause 10 extracted supra, the Vice Chancellor would be entitled to permit the students to write the examination by showing mercy and that leniency/mercy can also be shown only once. Otherwise, the students will knock at the doors of the Vice Chancellor seeking mercy for more than once and that is not the spirit of the Regulations of the Pondicherry University."

7. From the above judgement, it could be seen that the total extended period that can be given to a candidate is only 3 1/2 years. Further, in paragraph 22, relevant clauses of Pondicherry University Regulations dealing with migration, etc., particularly, Clauses 8 and 9, is extracted, which reads as follows:

"8. Maximum duration permitted to complete MBBS course is 8 years. An extension of 3 1/2 years only is allowed beyond the scheduled time for that batch of MBBS in which the candidate was enrolled.

9. In case of a candidate discontinuing in the middle and wishing to rejoin, the period of absence will be condoned only if a prior permission has been sought from the University before discontinuing.

10. Beyond this stipulated period, Mercy chance for any candidate due to prolonged illness, family problem, natural calamities, etc. will be made only by the Vice-Chancellor of the University."

8. It is seen from the regulations of the Pondicherry University that an extension of 3 1/2 years alone is allowed beyond the scheduled time for that batch of MBBS, in which, the candidate was enrolled. Beyond the stipulated period, mercy chance for any candidate due to prolonged illness, family problem, natural calamities, etc., will be made only by the Vice-Chancellor of the University. From the reading of the above regulations, it is evident that it is not mandatory for the University to give one more chance on mercy without any reasons.

9. In such circumstances, this Court is of the view that the petitioner is not entitled to get one more chance, even as per the regulations of the University, as extracted in the judgment relied upon by the petitioner. In this case, it is admitted that the petitioner has joined the first year MBBS course, during the academic year 2012-13. The first year

examination was taken by the petitioner in June 2013 and then, the petitioner has failed in many attempts. Even as per his admission, six chances excluding the first chance were given to him. Moreover, by the end of June 2017, 3 1/2 years period is over for the petitioner. When the petitioner approached the University for one more chance, that was rejected by the respondent-University for the reason that the petitioner had not passed in phase I subjects even after four chances in three years.

10. The petitioner has not challenged the communication, by which, the petitioner's request to write examination in June 2018 was rejected. In such circumstances, this Court find no merit in this Writ Petition. It is to be remembered that the petitioner after becoming professional Doctor is expected to treat living persons to save their lives. If the candidates like the petitioner, who could not pass Phase I course, even after making eight attempts, becomes doctor, he will only pose a threat to the common people. This is a serious concern of this Court. Hence, the order which is in tune with the Regulations should be respected.

11. In that view of the matter, this Court is not inclined to show any indulgence to the petitioner. Hence, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Secretary,
Medical Counsel of India,
New Delhi - 110 077.

2. The Registrar,
Puducherry University,
Kalapet, Puducherry - 14.

3. The Dean,
Sri Manakula Vinayagar Medical College,
Kalitherthalkuppam,
Madagadipet, Pondicherry.

+1cc to Mr.V.P.Raman, Advocate, S.R.No. 66343
+1cc to Ms. A.V.Bharathi, Advocate, S.R.No. 66139

W.P.No.25266 of 2018
and WMP.No.29377 of 2018

MP (CO)
GN(25/10/2018)



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