

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.23912 of 2018

ORDER:

This writ petition is filed with the following prayer:

“..... to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 2nd respondent in declaring the writ petitioners as failed in the P.G. Medical Degree Examinations-2018 by giving effect to the Regulation No.14 of Medical Council of India Post Graduate Medical Education Regulations (Amendment) 2018, dated 05-04-2018 as illegal, arbitrary, capricious and violation of principles of natural justice and consequently direct the respondents not to give effect to the Regulation No.14 of Medical Council of India Post Graduate Medical Education Regulations (Amendment) 2018, dated 05-04-2018 and declare the petitioners as successful candidates in the examinations held in the month of April/May, 2018 by considering the Regulation No.14 of Medical Council of India Post Graduate Medical Education Regulations, 2000 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Learned counsel for the petitioner submits that the 3rd respondent-Medical Council of India made amendment to the Regulation 14 of Medical Council of India Regulations by way of Postgraduate Medical Education (Amendment) Regulations, 2018, and the same was published in Gazette on 05-04-2018 prescribing a minimum of 40% marks in each theory paper and not less than 50% cumulatively in all the four papers for a degree examinations and three papers in diploma examination. But the petitioners appeared for examination conducted on 24-04-2018 in respect of notification issued on 09-02-2018. As such, amendments made by the 3rd respondent and published on 05-04-2018 cannot be made

applicable to the petitioners, as the same is subsequent to the examination notification dated 09-02-2018 and the amendment made by the 3rd respondent cannot have retrospective effect. The petitioners came to know about the said amendment only after results were declared. Learned counsel for the petitioners also submits that even the earlier examinations notification also contained the said clause, but the same was not implemented.

Learned Standing Counsel for the 2nd respondent filed counter affidavit and in para No.4 it is stated as under:

“ The main allegation of the petitioners is that the said amended regulations came into force on 05-04-2018 which is fag end of their course and the same is not applicable to them and any amendment to the Regulations are only prospective in nature but not retrospective in nature. It is submitted that the Medical Council of India vide letter No.MCI-23(1) 2014/Med/157716, dated 11-02-2015 communicated the Academic Committee meeting dated 03-09-2014 and communicated the recommendations of the Academic Committee duly approved by the Executive Committee at its meeting held on 20-11-2014 to all the Universities/States/Colleges and the University has received the same on 15-04-2015 from the MCI. Immediately after receipt of the said communication from the MCI, this university has informed the said amendments to the colleges which are affiliated to the University through letter No.E2b/PG/DV/11, dated 29-02-2016 and also directed all the colleges to inform the said amendments to the students and staff concerned through circular and notice boards and further they should be informed it will be implemented from the PG Degree and Diploma examinations scheduled from 24-05-2016 onwards. But after receipt of the said communications from this University to all the colleges and students, the students orally represented to this university stating that the said amended regulations is to be implemented for the academic year 2015-16 batch students but not their batches

because, they have started their academic course in the year 2013-14 by that time no such amended regulation is in force and for that reason, the university did not implement the same from 2016 onwards in view of that the candidates appearing the examinations are belonging to the batch of 2013-14 by that time no such amended regulations is there and the said amended regulation came into force from 15-04-2015 by the said date, the university has received the said letter from the MCI.

Learned Standing Counsel also submits that the notification dated 09-02-108 issued by the 2nd respondent-university also contains that the minimum pass marks should be 40% in each paper.

In the notification dated 09-02-2018, it is stated that as per Medical Council of India as per Lr.No.MCI-23(1)/2014/Med./157716, dated 11-04-2015 the MCI has informed 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 PG Regulations and recommended that an examinee should obtain minimum 40% marks in each theory paper and not less than 50% marks cumulatively in all the four papers for Degree examinations and three papers in Diploma examination to be cleared “ passed” at the said degree/diploma examination as the case may be. Upon approval from the competent authorities of the Council the same may be notified for the information of all concerned.”

As seen from the above, the notification dated 09-02-2018 contained the amendment in challenge and in pursuance to the said examinations notification dated 09-02-108 only, the petitioners appeared for examinations. Learned counsel for the

petitioners also says that in earlier notification also the said clause was mentioned. As such, it cannot be said that the petitioners are not aware of the same. The petitioners having appeared in pursuance of the said examination notification and having found them to be declared fail by applying the amendment, the present writ petition is filed. As such, the assertion in the writ petition that the petitioners are not aware of the amendment is not correct. No doubt the amendment is subsequent to the examination notification dated 09-02-2018, but the colleges wanted to implement the same and examination notification dated 09-02-2018 also contains the same as stated supra. The petitioners are also relying on the same. After appearing the examinations and after declaration of results in which the petitioners were declared as failed by virtue of said amendment, they cannot contend otherwise. More so, the fact that the petitioners are not aware of the said amendment is also not correct, as the examination notification dated 09-02-2018 contains the same. No doubt, the learned counsel for the petitioners relied on the judgment of **Raj Bahadur Singh v. MCI and others**, dated 15-03-2017 passed by Punjab and Haryana High Court in CWP.No.18429 of 2016. But the fact remains that the petitioner is aware of the amendment and that was made as condition in the examination notification dated 09-02-2018. In view of the same, the judgment relied on by the counsel for the petitioners cannot be of any help to the petitioners.

In view of above facts and circumstances, I do not see any reason to entertain the writ petition and accordingly, the same is dismissed.

As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

17-09-2018
Nvl

