

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2019

PRONOUNCED ON : 14 .08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.11005 of 2019 and
W.M.P.No.11440 of 2019

R.Mohandass

...Petitioner

Vs

1.The Medical Council of India,
Pocket 14, Sector VIII,
Dwarka, Phase VII,
Dwarka, Phase VII,
New Delhi.

2.The Vice-Chancellor,
Pondicherry University,
Kalapet,
Pondicherry.

3.The Controller of Examinations,
Pondicherry University,
Kalapet, Pondicherry.

4.The Registrar,
Pondicherry University,
Kalapet, Pondicherry.

5.The Assistant Registrar (Medical)
Pondicherry University,
Kalapet,
Pondicherry.

6.The Venkateshwara Medical College Hospital
and Research Centre,
No.13A, Pondy-Villupuram Main Road,
Ariyur, Pondicherry - 605 102.

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the
Constitution of India for a writ of Certiorarified Mandamus call
for the records relating to the order dated 23.01.2019 in letter

No.PU/CE/E5/2019/293 of the fifth respondent herein quash the same and consequently direct the respondents 2 to 5 herein to include petitioner improve internal assessment marks in November, 2017 in Physiology subject and to issue a fresh mark sheet by including the improved internal assessment marks in November, 2017.

For Petitioner :Mrs.A.L.Gandhimathi

For 1st Respondent :Mr.V.P.Raman

For Respondents 2 to 5 :Mrs.A.V.Bharathi

ORDER

The petitioner herein is a student of 6th respondent Medical College who joined the MBBS course during the academic year 2014. He took his first year examination in June 2015. He wrote all the six papers of the three subjects namely Anatomy, Physiology and Bio chemistry but passed none. In his first three attempts (May-2015, Nov-2015 and June-2016) he could not clear the arrears. Subsequently, on his fourth attempt in the exam held in November 2016, he cleared Anatomy exam alone and failed in other two subjects. The petitioner was not able to pass these two subjects even in his fifth attempt in June 2017.

Since, the petitioner has exhausted the chances to clear the arrears, he was not permitted to take up the exams any further. This was challenged by the petitioner in a writ petition in W.P.No.30476 of 2017.

2.In the said writ petition, this court passed an interim order on 24/11/2017 directing the respondent university to permit the petitioner to write the examination. The University was further directed to value the answer sheets. However, the results not to be published until further orders from the court. Accordingly, the petitioner wrote his Physiology and Biochemistry exams as his fifth attempt during November 2017.

He was able to clear Biochemistry paper but again failed in Physiology subject.

3.The contention of the petitioner is that, the University policy of restricting the improvement of internal assessment for the first time seekers alone is contrary to Medical Council of India Regulation and the Judgment of a Division Bench of this Court in S.Srisakthish -vs- The Medical Council of India (W.A.No.869 of 2018 dated 28/04/2018). Earlier during his first attempt in May 2015 he was awarded 21 marks in the internal assessment for physiology paper. It was revised to 26 marks

during his second attempt in November 2015. In his sixth attempt during November 2017 he has secured 31 marks in the internal assessment. If this revised internal assessment mark of 31 is added to his theory and viva marks secured during the Nov 2017 he will cross 110 marks and will be declared pass. Since, the university has awarded only 26 marks for internal assessment which he secured during his second attempt, he made a representation dated 22/11/2018 to the University to add the internal assessment what he secured during his sixth attempt. The Division Bench of this Court in Srisakthish case (cited supra) has observed that, if there was no restriction on number of attempts to take up improvement of internal assessment while the student joined the course, the subsequent restriction on the number of improvement as one, will not apply to the students who joined the course prior to the change in the regulation. This dicta of the Division Bench of this Court applies to the petitioner herein also. However, the University did not consider the representation dated 22.11.2018 of the petitioner herein to add the improvised internal assessment mark secured by the petitioner during his November 2017 examination in Physiology. Hence, he filed a writ petition in W.P.No.32225 of 2018 for Writ of Mandamus to direct the University to consider his representation dated 22/11/2018. In the said writ petition, the High Court vide order dated 07/12/2018 directed the 5th respondent to consider the representation and pass order.

4. Pursuant to this direction, the fifth respondent has passed order declining to add the petitioner's improvised internal assessment marks sent by the 6th respondent college stating that improvement is allowed only once and the petitioner had already availed the opportunity in November 2015 and secured Theory Internal Assessment 27 marks and Practical Internal Assessment 22 marks and hence, improvement in Internal Assessment marks during November 2017 is not permissible. Further, in the said communication, the University has further stated that, there was no application from the petitioner for second improvement prior to commencement of session. The said communication of the 5th respondent dated 23/01/2019 is under challenge in this writ petition.

5. The counter affidavit filed on behalf of the respondents 2 to 5, place the facts and reasons for rejecting the petitioner's request, on the following lines:-

Petitioner joined MBBS course in the 6th respondent college during the academic year 2014. He took up his first year examination and the result of it are as below:

Month and Year	Subject	Pass/Fail
May'15	Anatomy Physiology Biochemistry	Failed in 3 subjects
Nov 15	Anatomy Physiology Biochemistry	Failed in 3 subjects
Jun 16	Anatomy Physiology Biochemistry	Failed in 3 subjects
Nov 16	Anatomy Physiology Biochemistry	Passed in Anatomy Failed in Physiology failed in Biochemistry
Jun 17	Anatomy Physiology Biochemistry	Failed in Physiology Passed in Biochemistry
Nov 17	Anatomy Physiology Biochemistry	Failed in Physiology Passed in Biochemistry

The petitioner appeared for first year paper five times from May 2015 to June 2017 and his request for sixth attempt was declined by the University. The petitioner filed the W.P.No.30476 of 2017 and by the order of the Hon'ble Court he was allowed to appear for I MBBS Examination in Nov 2017 and the results were released in which the petitioner appeared for 2 papers namely Physiology and Biochemistry and passed in Biochemistry but failed in Physiology.

After declaration of results, the petitioner has requested to add his new Internal Assessment marks to his failed

subject so that he can get through the Physiology paper. In the first place, he has not applied to the University seeking permission for improvement of IA in Nov 2017 session, and the college also has not informed or forwarded the improved IA marks before publication of results. The college has forwarded the Improved Internal Assessment marks to the respondent University on an after thought, after one year and after publication of result. The Respondent University could not entertain the request of the petitioner. The petitioner taking advantage of this, he has filed W.P.No.32225 of 2018 and sought for direction to consider his representation dated 22.11.2018, and the Hon'ble High Court by its order dated 07.12.2018 has disposed the W.P with direction to the University to consider the representation of the petitioner dated 22.11.2018 on merit and pass appropriate orders.

The petitioner in his letter dated 22.11.2018 has requested to grant relief as was done in the case of Srisakthish, student of PIMS, whose improved IA was included in Nov 2017 session as per Hon'ble Court's direction. Srisakthish had applied for improvement of IA marks during that session itself before exams/before publication of results. Whereas in the case of the petitioner R.Mohandass, he had not applied or obtained permission from the respondent University for improvement of IA during Nov 2017 session. Further, the 6th respondent college also had not forwarded his improved IA to the University during that session itself before publication of petitioner's results. Only after publication of his results (after nearly a year), on coming to know his results as fail, the college has forwarded on 24.01.2019 the petitioner's new Internal Assessment marks (31). The petitioner had not applied for improving his internal assessment mark in Physiology for November 2017 examination and his name was not included in the improvers list forwarded either by college or by University.

Therefore, the request of the petitioner is not similar to Srisakthish case and hence the petitioner's request cannot be considered.

The recommendation of the 6th respondent college forwarding the revised IA marks after one year on completion of Examination and publication of results, was considered by the respondent University and such action of 6th respondent college had promoted and misguided the students to take legal recourse to avail undue benefit causing embarrassing situation to the respondent University. Because of this undue act of the college, the college has been warned by a letter dated 26.03.2019 to desist from such acts in the future. The reply to petitioner letter dated 22.11.2018 has been sent to 6th respondent college as the letter was forwarded by the college."

In respect of the division bench judgment cited by the petitioner, the respondents says in their counter in paragraph 16 as follows:-

16. The averments and allegations contained in paras 9 & 10 of the affidavit are denied as false. The petitioner in his letter dated 22.11.2018 has requested to grant relief as was done in the case of Srisakthish, student of PIMS whose improved IA was included in Nov 17 session as per Court's direction. Srisakthish had applied for improvement of IA for Nov 17 session and the college also has forwarded the IA marks during that session itself before the exams/before publication of results. Whereas, in the case of the petitioner R.Mohandass, he had not applied or obtained permission from University for improvement of IA during Nov 17 session, and the college also had not forwarded his improved IA to the University during that session itself before the exams, infact which has to be done by the college within 20 days from the date of Publication of previous session

results. Only after publication of the petitioner's results (after nearly a year), knowing his result was as fails, the college has forwarded his new IA marks. Therefore, the request of petitioner is not similar to Srisakthish case and hence his request cannot be considered."

6. From the pleadings and documents, this Court finds that the petitioner was not able to clear his first year papers despite several attempts. His sixth attempt was pursuant to Courts interim order and there is no records to show that he applied for improvised internal assessment for the said session. For the first time the respondent college has issued a letter along with internal assessment mark statement dated 24/01/2019. This is after one year from the date of examination. If really, the petitioner had taken up improvised internal assessment, it would have been reflected in his application to the university. Further, the interim order of the High Court which permitted the petitioner to take up the theory exam for the sixth time did not restrain the respondent college from forwarding the internal assessment marks immediately after the end of the session. Publication of the result alone was restrained by the High Court vide its order dated 24/11/2017. The dicta of the Division Bench judgment in Srisakthish case (cited supra) is not applicable to the petitioner herein since, the petitioner has not established the fact that he took up improvised internal assessment during the relevant session. He has neither applied to the University nor obtained prior permission to take up improvement examination.

7. After release of the result and knowing he is short of 4 marks to get through, in connivance with the 6th respondent College, the petitioner has created records as if, he underwent improvised internal assessment during the said session and scored 31 marks. As pointed out by the respondents in their counter, the respondent College ought to have completed the internal assessment within 20 days from the date of publication of previous session results. In this case, the College has forwarded the Internal Assessment marks statement along with the letter after one year. The 6th respondent College has been reprimanded by the University through the warning letter instructing the College to desist from misguiding the students.

8.For the reasons stated above, this Court finds that the communication of the 5th respondent dated 23/01/2017 is sustainable. Hence, the Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Medical Council of India,
Pocket 14, Sector VIII,
Dwarka, Phase VII,
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Pondicherry University,
Kalapet,
Pondicherry.

+1cc to Mr.V.P.Raman, Advocate Sr.69653
+1cc to Mr.A.L.Gandhimathi, Advocate Sr.69871
+1cc to M/s.A.V.Bharathi, Advocate Sr.69214

W.P.No.11005 of 2019

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srg 17/09/2019