



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.09.2019

Pronounced on: 23.09.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.12527 of 2019
& W.M.P.No.12791 of 2019

A.T.S.V.S. Siddha Medical College & Hospital,
(Run by Akila Thiruvudhancode Siddha Vaidhya Sangam),
Munchirai, Pudukkadi (P.O),
Kanyakumari District - 629 171,
Represented by its Interim Administrator,
Justice A.Ramamurthi (Retired),
S/o.Anganan,
Plst No.9, HIG, TNHB, Phase - II,
Nolambur, Mogappair West,
Chennai - 600 037. ... Petitioner

/versus/

1. The Secretary,
Government of India,
Ministry of Health & Family Welfare,
Department of Ayush,
Ayush Bhavan, 'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. The Secretary,
Central Council of Indian Medicine,
61-65, Institutional Area, Janakpuri,
New Delhi - 110 058.
3. The Secretary,
Government of Tamil Nadu,
Health & Family Welfare Department,
Fort St.George, Chennai - 600 009.
4. The Vice Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
Chennai - 32.
5. The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.
6. The Controller of Examination,
Tamil Nadu Dr.M.G.R.Medical University,
Guindy, Chennai - 600 032.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Declaration that in MSE 2016 Regulation 6. Scheme of Examination (1) (a) "The first professional session shall ordinarily start in July" should be interpreted as commencement of Academic Session i.e., the Academic year, is only after the cut-off date for admission of students in the 1st year BSMS Course fixed by the Department of Ayush i.e., at present November - December of every year along with the consequential direction to the respondents herein to implement the MSE 2016 from 07.11.2016 in favour of all the students studying 4 ½ years BSMS course in the petitioner college and pass orders.

For Petitioner : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.C.V.Vijayakumar.

For R1 : Mr.G.Karthikeyan

For R2 : Mr.K.Vellayaraj

For R4 to R6 : Mr.D.Ravichander

For R3 : No appearance

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner Institute is conducting course in Siddha medicine, after getting due approval and recognition from the Central Council of Indian Medicine. The regulation framed by the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Amendment Regulations 2013 (hereinafter referred to as "MSE - 2013") regarding the eligibility criteria of a candidate to enter II-year of the course on completion of I-year course was amended in the year 2016 liberalizing to the effect that a failed candidate in the 1st year could enter II-year and write I-year examination in the supplementary exam along with II-year paper in the annual examination and enter III-year also and write the I-year arrear in the supplementary exam while studying the III-year. Thus, after MSE-2016 regulation, a I-year student without any break can carry arrears and attempt a subject for four times.

Earlier under MSE-2013 regulation, if a candidate failed in more than two subjects in the I-year, he/she was not eligible to enter II-year. If he has one paper arrear in the I-year, will be allowed to enter II-year but, has to clear the I-year arrears during the supplementary examination of the II-year. If he fail to clear the I-year arrear, he will not be allow to enter the II-year annual exam.

3. The grievance of the petitioner is that, the said regulation came to effect from 07.11.2016. It should be applied to the students got admitted for the academic year 2016-2017. Whereas, the Regulation of the CCIM states that, the first professional session shall start every year in the month of July. Therefore, the students who were admitted in the academic year 2016-2017 are governed by the old regulation MSE-2013. The University apply the regulation of the year 2013 on the premise that the new regulation was notified only on 07.11.2016 whereas, the students of the academic year 2016-2017 are deem to have been admitted during the month of July which is the commencement of the professional session. In this connection, the petitioner earlier approached this Court by filing a Writ Petition No.26858 of 2018, wherein, the Court observed that since the academic year for the petitioner college commences only from July, the amended regulation notified on 07.11.2016 will be given effect to have only from the ensuing academic year 2017-2018. Wherein, the Division Bench held that the University has no power to give retrospective effect to the notification issued by the Union of India, therefore the request of the petitioner/Institute to give retrospective effect for the notification to help the students admitted in the academic year 2016-2017 to have the benefit of liberalized regulation cannot be granted. At the same time, the Division Bench has given liberty to the petitioner/Institute to move for a larger relief by either approaching the Central Government or by approaching the appropriate forum impleading Union of India which has issued the regulation. Hence, the present Writ Petition is filed challenging the interpretation of the University in respect of commencement of academic session as well as implementation of MSE-2016 by the Tamil Nadu Dr.M.G.R.Medical University, Chennai to students joined the academic year 2016-2017.

4. The Contention of the Learned Senior Counsel appearing for the petitioner is that, for all practical purpose, the academic classes for the professional College imparting Indian Medicine Courses such as Ayurveda, Unani, Siddha and Homeopathy commences only in the month of November - December of the year and professional examination commences only during the month of October in the succeeding year. Therefore, the clause in the MSE -2016 regulation and the interpretation of the Tamil Nadu Dr.M.G.R.Medical University, Chennai, that the students admitted for the academic year 2016-2017 will be governed by MSE - 2013 is incorrect.

5. The Regulation 6 of the Scheme of Examination, which is sought to be interpreted otherwise than it is worded is extracted below:-

6. Scheme of examination: (1) (a) The first professional session will ordinarily start in July and the first professional examination shall be at

the end of one academic year of first professional session.;

(b) The first professional examination shall be held in the following subjects:-

(i) Siddha Maruthuva Adippadai Thathuvangalum Varalarum [History and Fundamental Principles of Siddha Medicine];

(ii) Tamil Language or Communicative English (wherever applicable);

(iii) Uyir Vedhiyal (Bio-Chemistry);

(iv) Maruthuva Thavara lyal (Medicinal Botany and Pharmacognosy); and

(v) Nunnuyiriyal (Micro Biology);

(c) A student failed in not more than two subjects shall be held eligible to keep the terms for the second professional session, however he shall not be allowed to appear for second professional examination unless he passes in all the subjects of the first professional examination.

(2) (a) The second professional session shall start every year in the month of July following completion of first professional examination and the second professional examination shall be ordinarily held and completed by the end of month of May or June every year after completion of one year of second professional session;

(b) The second professional examination shall be held in the following subjects:-

(i) Udal Koorugal (Anatomy) Paper I;

(ii) Udal Koorugal (Anatomy) Paper II;

(iii) Udal Thathuvam (Physiology) Paper I;

(iv) Udal Thathuvam (Physiology) Paper II;

(v) Gunapadam-Paper I (Mooligai) (Materia Medica -

Plant kingdom); and

(vi) Gunapaadam -Paper II (MateriaMedica -Thathu and Vilanginam) (Metals, Minerals and Animal kingdom);

(c) A student failed in not more than two subjects shall be held eligible to keep the terms for the third professional session, however he shall not be allowed to appear for third professional examination unless he passes in all the subjects of second professional examination.

6. The contention of the Learned Senior Counsel appearing for the petitioner is that, some of the students who have been admitted during the academic year 2016-2017, have arrears in the I-year subjects. The cut of date for admission of the year 2016 - 2017 was 31.12.2016, which is subsequent to the Gazette Notification of MSE - 2016 on 07.11.2016. The students who are admitted in the academic year 2016 - 2017 appeared for the I-year annual examination only in the month of October - November 2017. Therefore, the new MSE - 2016 Regulation alone is applicable for them.

7. In the counter filed by the 1st respondent/Government of India, Ministry of Health & Family Welfare, it is stated that Government had fixed the cut of date for admission as 30th September for each academic session. However, as a special case, for the academic year 2016-2017, the cut of date for newly formed colleges, admission of candidates in respect of Ayurveda, Unani, Siddha and Homeopathy Colleges given permission after 15th October 2016 was extended upto 30th November 2016 as a one time measure. The candidates who were admitted after 31.10.2016 were treated par with candidates admitted before 31.10.2016 and all the students admitted in the year 2016 - 2017 were considered as students admitted under the provision of MSE - 2013 only. This issue has already been clarified by the Hon'ble High Court in the Writ Petition filed by the petitioner and same has been confirmed by the Division Bench in the Writ Appeal. Hence, re-agitating the very same issue in a different manner in the present Writ Petition is unsustainable. The provisions of Regulation MSE - 2016, which has come into effect from 07.11.2016 is applicable for the academic year 2017-2019 onwards only.

8. The 2nd respondent/Central Council of Indian Medicine, has also filed counter, wherein, it is stated that in exercise of power conferred under Section 22 of Indian Medicine Central Council Act, 1970, the Central Government is empowered to prescribe Minimum Standards of Education in Indian Medicine for granting recognized medical qualifications by Universities, Board or Medical Institutes

in India.

9. Under Section 36 of Indian Medicine Central Council Act, 1970, the Central Government of India is empowered to make regulation with previous sanction of the Central Government. Accordingly, the MSE - 2016 regulation was introduced on 07.11.2016, replacing the earlier MSE - 2013 regulation. It has come into effect from the date of publication and applies to the students admitted from the ensuing academic session. The regulation specifically state that the professional session shall commence from the month of July and this cannot be altered or the regulation cannot be given retrospective effect as prayed in the Writ Petition. So, any students admitted in the academic year 2016-2017 are not eligible to have the benefit of new MSE - 2016 regulation, which came into effect after the commencement of professional session.

10. The Learned Counsel appearing for the 1st respondent would submit that, the Regulation 6 of MSE - 2016 has been tested by this Court by Single Judge as well as Division Bench and the liberty mentioned by the learned Senior Counsel does not implies that they can re-agitate the issue through fresh Writ Petition merely by impleading the Union of India as one of the party.

11. Further, the Learned Counsel for the 1st respondent would also submit that, the manner in which the students were admitted for the academic year 2016-2017 itself is subject matter of another Writ Petition. The questionable admission of one candidate by name P.Sethupathy in the academic year 2016-2017, is the subject matter of pending Writ Petition.

12. This Court, on considering the prayer in this Writ Petition and the law on the point fear that the Writ Petition is ill-conceived.

The Prayer in this Writ Petition is reads as below:

"Writ of Declaration that in MSE 2016 Regulation 6. Scheme of Examination (1) (a) "The first professional session shall ordinarily start in July" should be interpreted as commencement of Academic Session i.e., the Academic year, is only after the cut-off date for admission of students in the 1st year BSMS Course fixed by the Department of Ayush i.e., at present November - December of every year along with the consequential direction to the respondents herein to implement the MSE 2016 from 07.11.2016 in favour of all the students studying 4

½ years BSMS course in the petitioner college and pass orders.”

13. This Court, on strict interpretation of the statute, view that the MSE - 2016 regulation has been notified in the Gazette on 07.11.2016 and it shall come into effect only from that day. The candidates for the academic year 2016-2017 might have been admitted by the Institute, on a later date due to the extension given by the Central Council of Indian Medicine as one time measure. That will not inure the benefit of the relaxed regulation of MSE-2016. More so, the plea of the petitioner to declare the 1st professional session shall ordinarily start in the month of July should be read as November - December of every year is nothing but to replace the statute through a Writ of Declaration. The prayer in the Writ Petition is nothing but an attempt to amend the Regulation under the guise of interpretation.

14. This Court cannot don the role of the legislature. In the earlier round of Writ Petition, this Court has rightly directed the petitioner to approach the Authorities if they are really aggrieved in fixing the commencement of the professional year as month of July.

15. The regulation is framed in exercise of the power conferred under the statute. The state has taken the policy decision that the Regulation will come into effect from 07.11.2016 and for all practical purpose, 1st professional session shall ordinarily start in the month of July. The Court can only interpret a statute as it is drafted and not otherwise. As a one time measures, extension of time was granted to newly established Colleges to enable them to admit students after 31.10.2016. Taking advantage of the extension, the existing Institute like petitioner herein might have admitted students beyond 31.10.2016 till 31.12.2016. This does not mean that those students should be given advantage of MSE - 2016 Regulation which has come into effect after commencement of the academic year.

16. Therefore, the prayer and the relief sought in the Writ Petition cannot be granted for the reasons stated. Hence, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

bsm

To,

1. The Secretary,
Government of India,
Ministry of Health & Family Welfare,
Department of Ayush,
Ayush Bhavan, 'B' Block, GPO Complex, INA,
New Delhi - 110 023.
2. The Secretary,
Central Council of Indian Medicine,
61-65, Institutional Area, Janakpuri,
New Delhi - 110 058.
3. The Secretary,
Government of Tamil Nadu,
Health & Family Welfare Department,
Fort St.George, Chennai - 600 009.
4. The Vice Chancellor,
The Tamil Nadu Dr.M.G.R.Medical University,
Chennai - 32.
5. The Registrar,
Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai,
Guindy, Chennai - 600 032.
6. The Controller of Examination,
Tamil Nadu Dr.M.G.R.Medical University,
Guindy, Chennai - 600 032.

+1cc to Mr.C.V.Vijayakumar , Advocate SR.No. 82178

+1cc to Mr.G.Karthikeyan , Advocate SR.No. 82085

+1cc to Mr.K.Vellayaraj , Advocate SR.No. 81511

+1cc to Mr.D.Ravichander , Advocate SR.No. 81482

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spd

A.SK(16/10/2019)

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