

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P.No.9785 of 2016

Dr.G.Vivekanandan

... Petitioner

Vs.

1.The Registrar,
The Tamil Nadu Dr.M.G.R. Medical University,
No.69, Mount Road,
Guindy, Chennai - 600 032.

2.The Controller of Examinations,
The Tamil Nadu Dr.M.G.R. Medical University,
No.69, Mount Road,
Guindy, Chennai - 600 032.

3.The Dean,
Madras Medical College,
Chennai.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to declare the petitioner as pass in Ophthalmology and grant the petitioner with Degree in M.S. Ophthalmology as completed in the year 2013.

For Petitioner : Mr.B.Prasanth Nadaraj
for M/s.AL.Gandhimathi

For Respondents : Mr.D.Ravichander
Standing Council for R1 & R2
: Mrs.P.Rajalakshmi,
Additional Government Pleader for R3

O R D E R

Dr.G.Vivekanandan has filed this Writ Petition seeking for an issuance of a Writ of Mandamus under Article 226 of the Constitution of India, directing the respondents to declare him

as pass in Ophthalmology subject and grant him a degree in M.S. Ophthalmology, as completed in the year 2013.

2.The learned counsel for the petitioner would submit that the petitioner joined M.S. Ophthalmology in the academic year 2001-2002. Since system of examination was one of composite type, one has to get an average pass mark of compounding theory and practical examination. The said system was in vogue in the year 2001-2002, when the petitioner joined the course. The learned counsel for the petitioner would further submit that due to various circumstances, the petitioner was not able to complete the course within the prescribed period. He wrote his final examination in March 2008, however, he was declared fail in Ophthalmology subject as he had secured only 268 marks out of 300 marks, which consists of written, clinical and oral examinations. Subsequently, when the petitioner requested the third respondent for continuation of the said course, he was informed by the third respondent vide its letter dated 16.10.2012 that he was readmitted under the Double the Duration Scheme and the petitioner has been permitted to write part II Examinations in M.S. Ophthalmology held in April, 2013 and he was given one year grace period on condition that he will be automatically discharged from the course, if he is not clearing the same within one year. Unfortunately, during October, 2013, the petitioner was once again declared fail in Ophthalmology including Neuro Ophthalmology written examination, since he had secured only 43 marks out of 100 against the minimum pass marks of 50. In view all the these reasons, the petitioner submitted his representations dated 22.06.2015 and 07.08.2015 requesting them to permit him to complete the course besides declaring pass in Ophthalmology subject. Despite such representations, his claim was not considered

3.Referring to the Regulations (Effective from the Academic Year 1993-94), learned counsel for the petitioner submitted that as per the said Regulations, 50% of marks in aggregate are being followed in Theory, Clinical and Practical/Oral Examinations conducted by the University. Whiles, the petitioner, who had secured 43 marks out of maximum of 50 marks in Ophthalmology, had been declared as fail, however, it is contended, if 149 marks secured by him are taken into consideration under composite system, then the aggregate marks secured by him comes to more than 50%, hence, on this score, he prayed for allowing the writ petition.

4.The learned counsel appearing for the first and second respondents, by filing a detailed counter affidavit, stated that the contention of the petitioner that only the total aggregate marks from all subjects should be taken into account is no way contemplated, for, as per Regulations for the Post-

Graduate (M.S.) Degree clinical Courses Registration, the failed candidates would be permitted to appear for maximum of 10 attempts within 6 years from the date of commencement of the course and they shall be discharged from the course if he/she fails to fulfill this provision, therefore, in view of the said provision, the petitioner should have completed the course by passing the examination within six years from the date of commencement of examination i.e., from 2001-2002 till 2006-2007. Since he was not able to pass the course within such period, he was also given one year grace period by an order dated 16.10.2012 by the Academic Officer of the University. However, despite availing such grace period, he could not get the pass marks during the examination. Therefore, he is not entitled to press his prayer.

5. I fully agree with the above said submission. Besides, it is to be noted that Agenda No.II (04) of the Minutes of the 40th Meeting of the Standing Academic Board held on 22.12.2010, of the Tamil Nadu Dr.M.G.R. Medical University, prescribes 50% of marks in each subject as minimum pass marks. For better appreciation, the same extracted below:-

"Agenda No.II (04)
TO CONSIDER AND DECIDE ON PRESCRIBING
INDIVIDUAL PASS IN EACH PAPER FOR ALL UNDER
GRADUATE & POST GRADUATE DEGREE / DIPLOMA
COURSES, MEDICAL, DENTAL, INDIAN MEDICINE &
HOMOEOPATHY AND ALLIED HEALTH SCIENCE COURSE
IN LIEU OF AGGREGATE MARKS."

Resolved that the candidates of Post-graduate / Diploma / Degree and Super Speciality Courses in Medical/Dental/Indian Medicine & Homoeopathy / Allied Health Sciences, has to secure the minimum pass mark of 50% in each paper in lieu of aggregate marks. The following guidelines for passing the examination of will come into force from April 2011 examination onwards. The same to be intimated to all colleges by letter, e-mail & website."

A mere reading of the above Agenda clearly shows that the submission made by the petitioner that the petitioner should have been declared as pass by taking into account the old system accepting the 50% of marks in all the subjects is wholly misconceived. Secondly, as rightly contended by the second respondent, when six years time period was given from the commencement of the course to pass the examination within 10 attempts, the petitioner, having been joined the course in the academic year 2001-2002, was given more than that benefit, since

he was also permitted to write examination till October, 2013. Therefore, when he is not able secure minimum pass marks fixed by the University, in my view, he has no locus-standi the to press for the prayer as stated supra.

6. Thus, for all the above stated reasons, the writ petition fails and the same is dismissed as devoid of any merit. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ia/rkm

To

1.The Dean,
Madras Medical College,
Chennai.

2.The Additional Government Pleader,
Madras High Court,
Chennai - 104.

+1 cc to Mr.D.Ravichander, Advocate Sr.No.5634

+1 cc to M/s.AL.Gandhimathi, Advocate Sr.No.5830

W.P.No.9785 of 2016

SR(CO)
CSL/18.02.2019

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