

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.2.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.4839 of 2015 & WMP.No.12226 of 2018

K.Shruthi Vinotha

...Petitioner

Vs.

- 1 The Vice Chancellor, Vinayaka Missions University (Deemed University), Sankari Main Road (NH-47), Ariyanoor, Salem-636308.
- 2.The Registrar, Vinayaka Missions Sankarachariyar Dental College (VMSDC), Sankari Main Road (NH-47), Ariyanoor, Salem-636308.
- 3.The Controller of Examinations, Vinayaka Missions University (Deemed University), Sankari Main Road (NH-47), Ariyanoor, Salem-636308.
- 4.The Principal, Vinayaka Missions Sankarachariyar Dental College (VMSDC), Sankari Main Road (NH-47), Ariyanoor, Salem-636308.
- 5.The Dental Council of India, rep.by its Secretary, AIWAN-E Galilb Marg, Kotla Road, Temple Lane, New Delhi. 110 002.

(R-5 is impleaded as per order dated 13.3.2017 by NKKJ in WMP.No.1159 of 2017) ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents to revalue the petitioner's performance in the practical segment in respect of subjects (1) Paediatric & Preventive Dentistry and (2) Orthodontics & Dentofacial

Orthopaedics and declare her results in the same within a time frame fixed by this Court and further direct the respondents to permit the petitioner to undergo house surgery to complete her course BDS.

For Petitioner : Mr.S.Sathia Chandran
For Respondents 1 to 4 : Ms.R.Devi
for Mr.R.Parthasarathy
For Respondent-5 : Dr.S.Seethalakshmi

ORDER

The petitioner by name Ms.K.Shruthi Vinotha is before this Court seeking a direction to respondents 1 to 4 to revalue the petitioner's performance in the practical segment in respect of subjects (1) Paediatric & Preventive Dentistry and (2) Orthodontics & Dentofacial Orthopaedics, declare her results in the same within a time frame fixed by this Court and further direct respondents 1 to 4 to permit the petitioner to undergo house surgery to complete her course BDS.

2. The petitioner, on completion of her higher secondary school education in the year 2010, joined the BDS course in the second respondent - college, which is established and administered by the first respondent, a deemed to be university. According to the petitioner, she performed reasonably well in all the years of study and appeared for the fourth year examination, both for practicals as well as theory papers. On 24.10.2014, the University published results of the practical papers and the petitioner was declared 'fail' in both the papers.

3. The petitioner would state that the marks obtained by her were not uploaded in the internet. However, the petitioner cleared the theory papers, which she came to know after her mother contacted the institution. In paragraph 6 of the affidavit filed in support of the writ petition, the petitioner cast certain aspersions against three persons, who are internal examiners on the date when the petitioner appeared for the practical examinations.

4. Though this averment is made to support the contention that there were mala fides on the part of those three examiners and that injustice has been done to her, in the absence of those parties being impleaded as respondents in this writ petition, this Court cannot adjudicate into those allegations.

5. Be that as it may, the case of the petitioner is that she is reasonably good in her academics, which would be established through the results in both the practical and theory examinations in all the four years of the course and that there was no reason to be declared as 'fail' in the two practical examinations. Furthermore, in the final year theory examinations, the petitioner was successful. With these facts, the petitioner has sought for the above referred to relief.

6. In this writ petition, originally the University and its officials were made as parties and subsequently, the Dental Council of India was impleaded as the fifth respondent on 13.3.2017.

7. In the counter affidavit filed by the fifth respondent namely the Dental Council of India (DCI), it has been stated as to the purpose, for which, the DCI was constituted. It has been further stated that it is their duty to ensure higher standards of dental education in the country and that they are entrusted with the responsibility of discharging such duty to supervise the qualification or eligibility standards for admission, etc. The examination procedure for the dental courses as envisaged in the Revised DCI BDS Course Regulations 2007 has been set out in the counter.

8. It has been further stated in the counter filed by the fifth respondent - DCI that the DCI is a governing body, which sets the minimum standard in order to ensure maintenance of higher standards of dental education and that the first respondent - University cannot, in any case, set the standard below the minimum standard prescribed in the said Regulations, as that would affect the quality of dental education. The averment in paragraph 12 would be relevant wherein it has been stated that the first respondent - University violated the statutory requirement as set out in the said Regulations and that it is for them to place the factual position before this Court as to why they violated the requirement prescribed under the said Regulations.

9. Further, with regard to re-evaluation of the answer sheets, it has been stated in the counter filed by the fifth respondent - DCI that the objective of the re-evaluation is to ensure that students receive a fair evaluation in the university examinations and to minimize human error and extenuating circumstances. The DCI would further state that it is a governing body and not an examining body like the first respondent - University and that it is unable to comment upon the factual position.

10. The first respondent - University filed a counter affidavit on their behalf and also on behalf of respondents 2 to 4 wherein they had taken a stand that in terms of the said Regulations, there is no provision for re-evaluation of the practical papers and that re-evaluation is permitted only in respect of theory papers. Further, the marks scored by the petitioner have been set out in paragraph 8 of the counter. By referring to the said marks, it is stated that the petitioner failed to secure a minimum mark of 50% under each head with a minimum of 50% aggregate in both the subjects. Therefore, she was declared 'fail'.

11. With regard to the complaint given by the petitioner dated 28.10.2014, it is stated by the first respondent - University that an enquiry committee was constituted comprising the third respondent and the Principal of the fourth respondent college, that an enquiry was conducted with the staff members and the internal examiners and that it was found that the allegations made by the petitioner in her complaint dated 28.10.2014 were false and baseless. Thus, the first respondent - University sought to justify their stand by stating that there is no power under the said Regulations for re-evaluation.

12. The petitioner filed a rejoinder to the counters filed by the respondents stating that the first respondent - University had not followed the procedure prescribed under the said Regulations with regard to the scheme of clinical and practical examinations. It is further stated that the first respondent - University did not publish the clinical experiments/procedure and marks prior to the conduct of examination along with the time table of the practical examination as mandated by the Regulations of the DCI.

13. I have heard Mr.Sathya Chandran, learned counsel for the petitioner, Ms.R.Devi, learned counsel appearing on behalf of University/ institution and Dr.S.Seethalakshmi, learned Standing Counsel appearing for the fifth respondent - DCI.

14. The first question to be decided is as to whether the said Regulations issued by the DCI provided for re-evaluation of the practical examinations.

15. The relevant Regulation reads as follows :

"Re-evaluation: The objective of re-evaluation is to ensure that the student receives a fair evaluation in the university examination and to minimize

human error and extenuating circumstances. There shall be two mechanisms for this purpose :

(1).....

(2) Re-evaluation : Re-evaluation of theory papers in all years of study of the BDS course may be permissible by the university on application and remittance of a prescribed fee. Such answer scripts shall be re-evaluated by not less than two duly qualified examiners and the average obtained shall be awarded to the candidate and the result accordingly reconsidered. However, in those universities where the double evaluation provision exists, this provision of re-evaluation will not be applicable."

16. In terms of the above extracted Regulation, re-evaluation of theory papers in all the years of study of BDS course can be permitted by the University on an application and remittance of prescribed fee. This Regulation specifically states that re-evaluation is permissible in respect of the theory papers in all the years of study of BDS course. Conspicuously, there is mention about the practical papers.

17. It is the submission of the learned counsel for the petitioner that there is no specific bar under the Regulations for practical papers being re-evaluated.

18. In the considered view of this Court, the proper manner, in which, the relevant Regulation has to be interpreted is not to insert or substitute words and the relevant Regulation has to be read as a whole, which mentions only about the theory papers. Therefore, in the absence of any mention about the practical papers, it has to be interpreted to mean that the practical papers cannot be subjected to re-evaluation. Hence, the stand taken by the first respondent - University in this regard is justified.

19. Though this Court comes to such a conclusion, this may not affect the petitioner on account of an event, which took place during the pendency of this writ petition. A learned Single Judge of this Court, by an interim order dated 05.4.2018, permitted the petitioner to take up the next practical examinations for the two subjects and results of the practical examinations were directed to be kept in a sealed cover and produced before this Court. However, this was without prejudice

to the rights and contentions of the petitioner. The first respondent - University permitted the petitioner to appear for practical examinations and the answer scripts and the marks secured by her were produced before this Court in a sealed power. On opening the cover, it is seen that the petitioner passed in both the practical papers. In the considered view of this Court, this subsequent event can be taken into consideration provided the petitioner is able to make out a case that she need not appear for the theory papers once over again.

20. The argument of the learned Standing Counsel for University/ institution is that even if the marks secured by the petitioner in the practical examinations, in which she appeared pursuant to the interim directions issued by this Court, are taken into consideration, yet she has to be considered as a repeater and she has to necessarily write the theory papers to enable her to get her herself qualified.

21. Under normal circumstances, the argument put forth by the learned counsel for the University/institution would be acceptable. However, in the instant case, there is a specific averment made by the DCI in their counter that the first respondent - University is guilty of having violated the said Regulations. If such is the case, the first respondent - University being a defaulter and having not adhered to the said Regulations, the question would be as to what would be the relief that should be granted to the petitioner.

22. In the considered view of this Court, the case on hand is a peculiar case and it is one of the rarest of rarest cases where appropriate remedy can be granted by molding the relief sought for. It is worth reiterating that the DCI has taken a specific stand that the first respondent - University violated the statutory requirements namely the requirements prescribed under the said Regulations. In such circumstances, this Court would be well justified in issuing appropriate directions to reckon the marks secured by the petitioner in the practical examinations, in which, she appeared pursuant to the interim directions issued by this Court, take into consideration the marks secured by her in the theory papers at the first instance and consequently declare her as 'pass' so as to enable her to complete her house surgeoncy. If this direction is issued, it will protect the interest of the petitioner and it will, in no manner, jeopardize the first respondent - University. However, this order shall not be taken as a precedent in any other matter by any student of the first respondent - University or any other like educational institution.

23. In the light of the above, the writ petition is disposed of by directing the first respondent - University to reckon the marks secured by the petitioner in the two subjects in the practical examinations, in which, the petitioner appeared on 27.8.2018 and 29.8.2018, take note of the marks secured by the petitioner in the theory examinations, in which, she appeared during the year 2014-15 and declare the petitioner as 'pass' in the four year BDS course and consequently permit her to complete her house surgeoncy by treating the petitioner as a fresher. The original practical scripts and marks are directed to be returned to the learned counsel for the first respondent - University under acknowledgment by replacing xerox copies of the same. No costs. Consequently, the connected WMP is closed.

Sd/-

Assistant Registrar (C.S.VI)

/True Copy/

Sub Assistant Registrar

To

- 1 The Vice Chancellor, Vinayaka Missions
University (Deemed University),
Sankari Main Road (NH-47), Ariyanoor, Salem-636308.
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5. The Secretary, Dental Council of India,
AIWAN-E Galilib Marg, Kotla Road, Temple Lane,
New Delhi. 110 002.

+1 cc to M/s.S.Sathia Chandran, Advocate Sr.No. 14381
+1 cc to M/s.S.Seethalakshmi, Advocate Sr.No.13964

AKM/17.03.2020/7P-8C /

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