

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos. 9826 & 9828 of 2020
and WMP.Nos.11944 & 11947 of 2020

I. Santhosh,
S/o. V. Ilancheran,
No.12, 1st Cross,
Rajiv Gandhi nagar,
New Saram,
Pondicherry - 605 013. Petitioner in W.P.No.9826/2020

Shweta Hari,
D/o. S. Hari,
FR3, Fourth Floor,
Balasri Anbalaya Apartments,
17th Cross, Krishna Nagar,
Pondicherry - 605 008. Petitioner in
W.P.No.9828/2020

Vs.

1. The Medical Council of India,
MCI Building Pocket - 14,
Sector - 8, Dwarka Phase I,
New Delhi - 110 077.
2. The Controller of Examination,
Pondicherry University, Kalapet,
Puducherry - 605 104.
3. Pondicherry Institute of Medical Services,
Kalathumettupathai,
Ganapathichettikulam,
Village No.20, Kalapet,
Puducherry - 605 104. Respondents in both writ
petitions

COMMON PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, calling for the entire records pertaining to the impugned circular No.50 in Ref.PU/Exam/M-E5/2019 dated 14.03.2019 issued by the second respondent and consequential letter in

Ref.No.PU/Exam/E5/2020/110 dated 10.07.2020 and quash the same thereby directing the second respondent to grant me seven(7) marks as grace marks towards the petitioner's Practical examination of General Surgery and General Medicine respectively in the III Professional Part II MBBS Nov-Dec 2019 examinations as per Medical Council of India Regulations Chapter IV 13(10) & Pondicherry University Examination Regulations 2009-2010.

For Petitioner : Mr.K.Mohanamurali
For Respondents : Mr.V.P.Raman [R1]
Mr.M.Ravi [R2 & R3]

COMMON ORDER

The Pondicherry University had separate examination regulations in line with the Medical Council Regulations. It is seen from 2009-2010 regulations that it provided for grace marks in case of failure of a student in one out of all subjects for a particular semester. The grace mark was fixed at 5% and it was made very clear in the regulations itself that it will apply only to theory paper and it cannot be applied to practical and internal assessments.

2. A batch of writ petitions came to be filed challenging the rejection of the claim made by the candidates for grace mark and the writ petitions were dismissed by a common order dated 15.02.2017. Thereafter writ appeals were filed and the Division Bench after considering the submission made on either side passed a common order on 11.04.2017. The Division Bench allowed the writ appeals and directed the Puducherry University to grant grace marks on the ground that the candidates were entitled for the same and they cannot be deprived of it by virtue of the subsequent circular, which was issued on 29.06.2016.

3. Review Applications came to be filed in Rev.Appl.Nos.67 to 75 of 2017 by the Puducherry University. The relevant portions in the order passed on 10.04.2018 in the review applications is extracted hereunder:

"3. Heard the learned counsel appearing for the applicant, learned counsel appearing for the first respondent and the learned Standing Counsel appearing for the second respondent.

4. As per the Regulation, for completion of a semester, if there is shortage of marks in one subject, the University was awarding grace marks to theory, to the maximum of five marks, in order to pass through the semester. But the said granting of five marks was only for theory paper and not for practicals. By Circular dated 29.6.2016, the University decided not to grant

any grace marks. Therefore, the students filed writ petitions seeking a direction to grant grace marks and the same were dismissed.

5. On appeal by the students, this Court, observing that the circular dated 29.6.2016 should not be given retrospective effect and that some of the students who failed in one subject for shortage of even one mark, though have come out successful in all other subjects, should not be driven to reappear for the said subject, in the light of the Regulation of Medical Council of India, directed the University to revise the declaration of the results of the students by following the Regulation which was adopted on earlier occasion and carry out the consequent exercise.

6. As the University has come up with the above applications for want of clarification with regard to the awarding of maximum grace marks, we make it clear that the University shall award grace marks to the students only for theory and not for practicals. We also make it clear that such awarding of grace marks shall be to the maximum of five marks and not 5% of the marks obtained. If the University had already awarded excess marks, the same shall not be revised.

7. It is submitted by the learned counsel appearing for the students that earlier grace mark was granted even to practicals and the same was not extended now. We leave it open to the University to decide the same, as per the Regulation at the relevant point of time.

8. The review applications are disposed of accordingly. However, there shall be no order as to costs."

4. It is clear from the above order that the Division Bench clarified that the grace mark will apply only to theory papers and not for practical. The Division Bench also made it clear that the grace mark shall be awarded to a maximum of five marks and not 5% of the marks obtained. This order makes it abundantly clear that the earlier order passed by the Division Bench cannot be extended for giving grace marks for the practical. The petitioners underwent P.G. course in the third respondent college and they claim that they have passed in all the theory papers and they have only failed in the General Medicine Practical and General Surgery practical in the final year. The petitioner therefore approached the Puducherry University by giving a representation seeking for grace marks and the same was

rejected by the University on the ground that the regulation do not provide for awarding any grace marks for practical. The petitioners were further directed to attend the examinations for both theory and practical for the failed paper in the forthcoming examinations. Aggrieved by the rejection of the claim made by the petitioner, the present writ petition has been filed before this Court.

5. Mr.K.Mohanamurali, learned counsel appearing on behalf of the petitioners submitted that the petitioners at the time of joining the course were entitled for grace mark and the benefit that was given by the Division Bench should also be extended to the petitioners and the petitioners cannot be singled out and denied the grace mark in the practical. The learned counsel further submitted that the subsequent notification issued on 29.06.2016 cannot be put against the petitioners, who had already joined in the year 2015 itself and the Rules of the game cannot be changed midway. The learned counsel further submitted that the impugned rejection order passed by the second respondent is a non-speaking order and the second respondent did not take into consideration the order passed by the Division Bench in the writ appeal. The learned counsel concluded his arguments by submitting that the practical itself contains one component of theory and atleast for the said component, the petitioners are entitled for grace marks as per the regulation.

6. Mr.V.P.Raman, learned Standing Counsel appearing on behalf of the Medical Council of India submitted that the MCL regulation clearly stipulates awarding a maximum of 5 marks as a grace mark to a student, who had failed in one paper out of all other. The learned counsel further submitted that it was left to the discretion of the University to award said grace mark.

7. Mr.Ravi, learned counsel appearing on behalf of the Puducherry University submitted that the petitioners are governed by the examination regulations which came into force even in the year 2009-2010 and as per these regulations, no grace mark can be awarded for practical. The learned counsel further submitted that there are no two components as was attempted to be projected by the petitioners and what the petitioners are claiming only falls under the category of practical. The learned counsel further placing reliance upon the orders passed in the review application, submitted that the Division Bench had itself made it clear that the grace marks will not apply to practical. Therefore, it was submitted that the petitioners are not entitled for the relief even as per the Division Bench order passed in the review application.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The petitioners are claiming for grace marks in General Medicine practical and General Surgery practical. It is seen from the regulation of the Puducherry University, that grace marks are not permitted for practical. This is the position right from the year 2009-2010 onwards. The petitioners are relying upon the Division Bench judgment passed in the writ appeal while claiming for grace marks.

10. In the considered view of this Court, even before the petitioners joined the course, the regulations of the Puducherry University was governing the field and it made it clear that no grace marks will be awarded for practical. Since there was a confusion after the final orders were passed in the writ appeal with regard to awarding of grace marks for practical, review application came to be filed in Rev.Appl.No.67 to 75 of 2017. The final orders passed in the review applications at paragraph No.6 makes it very clear that the University will award grace marks to the students only for theory papers and not for practical. The Division Bench had merely reiterated what was already available in the regulations, which came into force in the year 2009-2010.

11. The impugned letter of the second respondent dated 10.07.2020 does not suffer from any illegality since it is perfectly in line with the regulations as well as the order passed by the Division Bench in the review applications. The Puducherry University was correct in directing the petitioner to attend the examination for both theory and practical for the failed paper. This Court does not find any ground to interfere with the same.

12. In view of the above discussion, this Court does not find any grounds to grant the relief claimed by the petitioners. Accordingly, these writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

sd/-

Assistant Registrar

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Sub Assistant Registrar

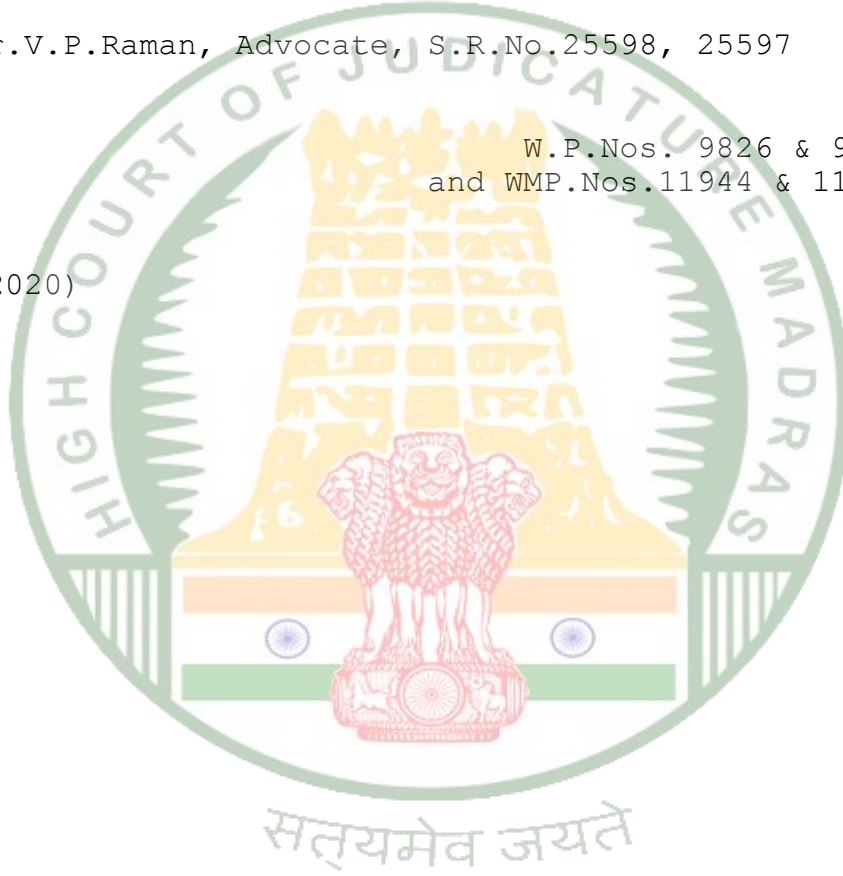
To

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2. The Controller of Examination,
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3. Pondicherry Institute of Medical Services,
Kalathumettupathai, Ganapathichettikulam,
Village No.20, Kalapet, Puducherry - 605 104.

+1cc to Mr.V.P.Raman, Advocate, S.R.No.25598, 25597

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PP(CO)
RV(27/08/2020)



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