



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.03.2022

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Coram:

THE HONOURABLE MR.MUNISHWAR NATH BHANDARI, Chief Justice
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.723 of 2022
and
C.M.P.No.5025 of 2022

Dr.S.Karthika

... Appellant/Petitioner

Vs.

1. National Medical Commission
Rep. by its Joint Secretary/Assistant Secretary,
Pocket-14, Sector-8, Dwaraka, Phase-I,
New Delhi-110 077.
2. The Pondicherry University,
Rep. by its Registrar,
Administrative Building, R.V.Nagar,
Kalapet, Puducherry-605 014.
3. The Controller of Examinations,
Pondicherry University, R.V.Nagar,
Kalapet, Puducherry-605 014.
4. Sri Venkateshwara Medical College
Hospital and Research Centre,
Rep. by its Chairman B.Ramachandran,
No.13-A, Pondy Villupuram Main Road,
Ariyur, Puducherry-605 102. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the Common order dated 17.11.2021 passed by the learned Single Judge in W.P.No.22909 of 2021 and W.P.No.9429 of 2020 on the file of this Court.

Prayer in W.P.No.22909 of 2021:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus or any other appropriate Writ



order or directions in the nature of a Writ directing the 1st respondent to take a decision on condoning the Shortage of Attendance of the petitioner and consequently direct the 2nd respondent to declare petitioners result of the PG Examination held in July 2020.

Prayer in W.P.No.9429 of 2020:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of the writ directing the respondents 6 and 7 to condone the shortage of attendance of the petitioner to appear for final year PG Examination commencing from 15.07.2020 onwards by issuing Hall Ticket to the petitioner.

For appellant : Mr.K.Sakthivel

For respondent: M/s.Shubharanjani Ananth for R-1
Mr.M.Ravi for RR-2 & 3

JUDGMENT

(The Judgment of the Court was delivered by The Hon'ble Chief Justice)

This Writ Appeal has been filed against the order dated 17.11.2021, whereby the Writ Petition preferred by the appellant was dismissed.

2. The Writ Petition was filed seeking condonation of shortage of attendance to appear in the final year P.G. examination commencing from 15.07.2020 onwards. The writ petition therein was dismissed.

3. Learned counsel for the appellant submits that minimum of 80% attendance was required of imparting training, the appellant had obtained 71% of the attendance. Thus, the first Writ Petition was filed seeking a direction to the respondents to consider the representation of the writ appellant for condonation of the shortage of attendance. However, when the representation was rejected, another Writ Petition was filed. The Writ Petition was thereupon dismissed by learned Single Judge referring to Regulation 13 of the Post-Graduate Medical Education Regulations, 2000.



4. The learned counsel for the appellant, referring to the provisions of the Pondicherry University Act, submitted that it is governed by the Post-Graduate Medical Education Regulations, 2000. It provides minimum standards and required attendance for it. The appellant prayed for condonation of shortage of attendance. It was submitted that it is not the attendance, of course, but the strategic training was given under Regulation 13.2 of the Regulations, 2000 and therefore, the shortage of attendance could have been condoned. This was not examined by the learned Single Judge in terms of the provisions and for that reason, writ petition was dismissed for the reasons recorded by the learned Single Judge. The learned Single Judge failed to consider that a Division Bench of this Court addressed the same issue in the case of E.Pradeep Prem Kumar Vs. State of Tamil Nadu, represented by the Secretary, Chennai and others, reported in CDJ 2011 MHC 967. In view of the above, the learned Single Judge should have allowed the petition with condonation of the shortage of attendance.

5. It is more so, when the appellant had appeared for the written examination pursuant to the interim order passed by this Court and otherwise to cover the shortage of attendance, she took training on holidays. The prayer is accordingly made to consider the issue aforesaid in the background given above and thereby, while setting aside the order of the learned Single Judge, the Writ Appeal be allowed.

6. We have considered the submissions made by the learned counsel for the parties and perused the records.

7. The appellant has referred to the salient features of the Regulations, 2000, published by the Pondicherry University. Regulation 13 pertains to training programme and Regulation 13.2 is relevant to the issue, which is extracted as under:

"Regulation 13: Training Programme:

.....

13.2. All the candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during Academic Term of 6 months, including assignments, assessed full time responsibilities and participation in all facets of the educational process."



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8. As per the Regulation aforesaid, all candidates joining the Post-Graduate training programme, were to work as "Full Time Residents" during the period of training and to attend not less than 80% of the imparted training during academic term of 6 months, including the assignments, assessed full time responsibilities and participation in all facets of the educational process. This being the rule position, the candidate pursuing the post-graduate education, was under the obligation to attend the post-graduate training programme, as full time residents and attend not less than 80% of the imparted training during academic term of six months.

9. It is not in dispute, rather, the case of the appellant was that she is short of 80% attendance and thus, only she prayed for condonation, so as to take the final examination of post-graduate, without having attendance to the extent it is prescribed under the Regulations, 2000, quoted above.

10. The Regulation, 2000, aforesaid is amended by the Regulations of 2008, where several provisions have been addressed and the Regulations of 2008 are binding. This being so, one is required to take the training programme in the manner required finally by the Pondicherry University. It is not a case where the minimum requirement given under the Regulations, has been altered to go below the minimum, so as to ignore the Regulations of the Pondicherry University, rather, the Regulations, 2008, are otherwise referred to by the Pondicherry University as the salient feature of the Regulations. This was required to be complied by each candidate. Regulation 13.2 of the Regulations, 2008 is also quoted hereunder for ready reference:

"Regulation 13: Training Programme:

.....

13.2. All candidates joining the Post Graduate training programme shall work as 'Full Time Residents' during the period of training and shall attend not less than 80% (Eighty percent) of the imparted training during each academic year including assignments, assessed full time responsibilities and participation in all facets of the educational process."

11. The learned counsel for the writ appellant failed to show any provision that provides to make out the attendance before the date of final examination, i.e., to fill up the shortage of attendance, by taking programme on holidays. There



is no Regulation in that regard. The Medical College or the University cannot permit a candidate to fill the gap in her own suitable manner, whereas, imparted training is programmed, looking to the nature of the course. It is not M.B.B.S., but it is a post-graduate course which requires vigorous training and studies, because, a candidate undertaking the course of post-graduation would be extending the medical advise in a specialised field and, therefore, the only requirement unlike M.B.B.S. course, in the post-graduate, is to be resident for training. Therefore, more attention was required to be given to take the training to the minimum extent required. The appellant herein failed to take training with minimum required percentage to become eligible to appear for the examination. It cannot be endorsed in the name of sympathy only for the reason that this Court passed interim order to allow the appellant to participate in the examination. Permission to write the examination does not mean the finality of the interim order. It always remains subject to the final outcome of the Writ Petition and the Writ appellant has to resolve the issue and finding that the appellant failed to complete the training in the manner required, i.e. to the extent of percentage required to be attended, the Court did not find any ground to accept the prayer and accordingly, the Writ Petition was dismissed.

12. We do not find any error in the impugned order passed by the learned Single Judge, and otherwise, she is not debarred to appear for the final examination, rather with the completion of the required training programme to the extent of the attendance required.

13. In view of the above, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, C.M.P. is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

cs/grs
To

1. The Joint Secretary/Assistant Secretary,
National Medical Commission,
Pocket-14, Sector-8, Dwarka, Phase-I,
New Delhi-110 077.



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2. The Registrar,
The Pondicherry University,
Administrative Building, R.V.Nagar,
Kalapet, Puducherry-605 014.

3. The Controller of Examinations,
Pondicherry University, R.V.Nagar,
Kalapet, Puducherry-605 014.

+1cc to the Government Pleader Sr.21100
+1cc to Mr.K.Sakthivel, Advocate Sr.21266

W.A.No.723 of 2022

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