

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2022

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.11117 of 2017
and W.M.P.No.12050 of 2017

V.Rajasekar

...Petitioner

Vs

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

2.The Controller of Examination,
The Tamil Nadu Dr.M.G.R Medical University,
No.62, Anna Salai,
Guindy, Chennai - 600 032.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, prayed for the issuance of Writ of Declaration, declaring the impugned decision of 45th meeting of the standing Academic Board of the respondent University dated 15.11.2012 in Agenda 45 (1) wherein it was resolved that the "average marks of the two valuation will be considered for processing the results" as null and void and direct the respondent University to select the higher of two marks in the double valuation system for processing the result of the students for the P.G. examination held in April 2016.

For Petitioner : Mr.C.Emalias

For Respondents: Mr.D.Ravichander

ORDER

This Writ Petition has been filed seeking for the issuance of Writ of Declaration, declaring the impugned decision of 45th meeting of the standing Academic Board of the respondent University dated 15.11.2012 in Agenda 45 (1) wherein it was resolved that the "average marks of the two valuation will be considered for processing the results" as null and void and

direct the respondent University to select the higher of two marks in the double valuation system for processing the result of the students for the P.G. examination held in April 2016.

2.The case of the petitioner is that he had completed his M.B.B.S Course and working as a Assistant Surgeon in the Government of Tamil Nadu. In the year 2012, he joined M.D.Course in the "Community Medicine", which is three year Course, in Sri Mookambigai Institute of Medical Science. In the Part II Community Medicine Examination, consists of three parers, he obtained the following marks:

1) Community Medicine Health Practice	- 50
2) Administration and recent Advances	- 53
3) Health Care Special Group	- 36

Total	139

Since the minimum marks in aggregate of all three papers should be 150 and the petitioner obtained only 36 marks in the Health Care Special Group subject, which is a fail marks, he requested to re-valuate his answer paper and in re-valuation he obtained 42 marks in the said subject.

3.According to the petitioner, the petitioner is entitled for grace marks 5 as per the Regulation 13(10) of the MCI Regulations on Graduate Medical Education, 1997 (amended upto July 2017) and as per the decision taken by the Standing Academic Board of its 40th Meeting held on 22.12.2010. Therefore, by adding the grace marks 5 and by taking the highest marks of double valuation, the petitioner would have cleared the examination by obtaining minimum pass marks of 150, as shown below:

1) Community Medicine Health Practice	- 50
2) Administration and recent Advances	- 53
3) Health Care Special Group	- 42

Total	145
Grace marks	5

Total	150

4. Mr.C.Emalias, learned Senior Counsel for the petitioner would submit that, initially, on 15.11.2012, the Standing Academic Board in its 45th Meeting has held that, in the event of the double valuation, the average marks of the double valuation will be taken for arriving at the final marks. The learned Senior Counsel would further submit that the said decision of the 45th Meeting was reviewed at the 234th Meeting of the Governing Council and thereafter, the Resolution No.40 was passed, whereby, the Council has taken a decision to ratify the

action of the University for taking a higher of two marks in the case of double evaluation for all U.G and P.G. students in February 2015 examination session. Therefore, he would submit that the same method will apply for the petitioner also, thus, the University can also ratify its act. Further, the learned Senior Counsel referred the reply to the RTI queries to the Questions 1 to 7 which reads as follows:

"From August 2016 to till date, the theory papers of Super Speciality (DM / Mch) Course, the second valuation of answer scripts which is less than 50% in individual theory papers is done. The highest mark from, among the two valuation, First or Second Valuation be considered as mark scored by the candidates."

In the present case, the petitioner appeared for the examination in April 2016. Therefore, the same benefit can be given to the petitioner by the University to take the highest of both the evaluation and award the marks as similar to the case of the February 2015 batch candidates.

5.The learned Senior Counsel by referring the order of this Court in W.P.No.51 of 2018 dated 17.04.2018, in the case of S.P.Pritiviraj vs. The Registrar, Tamil Nadu Dr.M.G.R. Medical University, would submit that the learned Single Judge of this Court has considered the Resolution 40 made in the 234th Governing Council Meeting held on 03.03.2015 and held that in the double valuation, the highest marks has to be taken as the final marks from April, 2015.

6.According to the petitioner, the petitioner appeared for the examination in April 2016, therefore, the learned Senior Counsel for the petitioner contended that, as far as the petitioner's case is concerned, originally, in Health Care Special Group subject, he obtained 36 marks and in re-valuation he obtained 42 marks, therefore, the highest marks has to be taken into consideration. However, without considering this aspect, the respondents had taken the average of the double valuation and awarded marks to the petitioner. Aggrieved over the same, the present Writ Petition has been filed.

7.Mr.D.Ravichander, the learned Standing Counsel appearing for the respondents would submit that the Regulation 13(10) of the MCI Regulations on Graduate Medical Education, 1997 (amended upto July 2017), is applicable only for UG Course. Further, in the absence of any Medical Council of India Regulations to award grace marks, the respondents University cannot award any grace marks and therefore, the petitioner is not entitled for the

grace marks and in the double valuation, only the average marks will be taken into consideration in terms of the 45th Meeting of the Standing Academic Board held on 15.11.2021, therefore, the respondents have rightly awarded the final marks to the petitioner by taking the average marks of double valuation.

8. Heard the learned Senior Counsel for the petitioner as well as the learned Standing Counsel appearing for the respondents and perused the materials available on records.

9. The issue in the present case is as to whether the petitioner is entitled for the grace marks on the basis of the Regulation 13(10) of the MCI Regulations on Graduate Medical Education, 1997 (amended upto July 2017) and in terms of the Resolution passed at 40th Meeting of the Standing Academic Board held on 22.12.2010?

10. It would be apt to extract the Regulation 13(10) of the MCI Regulations on Graduate Medical Education, 1997 MCA Regulation, which reads as follows:

"(10) The grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects."

11. A perusal of the above, it is clear that a grace marks up to a maximum of five marks may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects. However, as rightly contended by the respondents' counsel, the said Regulation would apply only for UG Course and not for P.G. Course. In the present case, the petitioner failed only in one subject. The University, however, passed a Resolution in its 40th Meeting of the Standing Academic Board on 22.12.2010, whereby, they have decided to provide grace marks of 5 for the students those who failed only in one subject.

12. Though the learned counsel appearing for the respondents would submit that, in the absence of any Medical Council of India Regulations, the University cannot grant any grace marks and that is the reason why, in the present case, the University has not awarded any grace marks to the petitioner, however, a perusal of the Resolution passed by the University in its 40th Standing Academic Board Meeting held on 22.12.2010, it has decided to award the grace marks. In the absence of any Regulation or any specific prohibition for awarding grace marks, the learned counsel for the respondents is unable to explain, the basis on which the respondents University in its Standing Academic Board passed a Resolution at its 40th Meeting on

22.12.2010, for awarding the grace marks. Therefore, the contention of the respondents on this aspect does not carry any substance. Thus, the University is bound to grant grace marks in terms of the Resolution passed on 40th Standing Academic Board Meeting, to the petitioner.

13. In the present case, the petitioner failed only in one subject, therefore, there is no dispute on the aspect of granting grace marks to the petitioner. Hence, this Court is of the view that, the petitioner is entitled for grace marks and the respondents supposed to have awarded grace marks to the petitioner.

14. The another issue needs to be considered in this matter is, in the event of double valuation, whether the highest marks has to be taken as a final marks? To answer this issue, it is necessary to go through the Resolution passed at 45th Standing Academic Board Meeting held on 15.11.2012 and the Resolution No.40 passed subsequently, at the 234th Governing Council Meeting on 03.03.2015

15. A perusal of the Resolution passed by the Standing Academic Board at its 45th Meeting on 15.11.2012, it appears that, in the event of double valuation, student is entitled only average marks obtained in both the valuation. Subsequently, the University has changed its stand and at its 234th Governing Council Meeting it had passed the following Resolution:

"Agenda 234(40): "To ratify the action of the University in re-introducing double valuation of answer papers with effect from February 2015 examination onwards with slight modification of Governing Council Resolution:

Resolved to ratify the action of the University in selecting the higher of the two marks in the double evaluation system introduced for all UG and PG courses, regular and arrear batches in February 2015 examination session. The double evaluation will be applicable for all UG and PG courses except BDS course where Dental Council of India regulations are followed, from April 2015 examination session onwards for regular and arrear batches.

This double evaluation shall be done for all answer scripts that are awarded marks below the minimum required for a pass in the respective theory paper

during the first evaluation. The average of the two evaluations or the first evaluation mark, whichever is higher will be taken as the final mark."

16.A perusal of the above resolution would show that the University has taken the highest marks of the candidate in the case of double evaluation for the February 2015 batch candidates and awarded the same. The said act was ratified at 234th Meeting of the Governing Council held on 03.03.2015. A reading of the third portion of the Resolution, it shows that with effect from April 2015, the University has taken a decision that in the event of double evaluation, the average of two evaluations or the first evaluation marks, whichever is higher will be taken as the final marks. In the RTI query, the respondents University replied vide letter dated 23.10.2020 for the questions 1 to 7 that from August 2016 to till date, the theory papers of Super Speciality (DM / Mch) Course, the second valuation of answer scripts which is less than 50% in individual theory papers is done. The highest marks from, among the two valuation, First or Second Valuation be considered as marks scored by the candidates.

17.When the Standing Academic Board, at its 45th Meeting passed Resolution to take average marks in the case of double evaluation for the February 2013 examination onwards, the University suo motu awarded the highest marks of the double evaluation for February 2015 batch candidates and the said act of the University was ratified subsequently at its 234th Governing Council Meeting held on 03.03.2015. In the said Meeting while ratifying the act of the University for taking highest marks of the candidate, in the case of double evaluation, they have also taken a decision that from April 2016 examination onwards, in the case of double, the average of two evaluations or the first evaluation marks, whichever is higher will be taken as the final marks of the candidate. In the present case, the petitioner written the examination in April 2016. The University once again has changed its stand with effect from August 2016 to take highest marks of two evaluation. The University itself was not certain about the methods to be followed in awarding marks in the case of double evaluation that is the reason why it has changed its method of awarding marks to the candidates in the case of double evaluation frequently from time to time. Ultimately the University found that, taking the highest mark of the double valuation would be appropriate method to award the mark to the candidate and this constant decision was taken by the University with effect from August 2016. When such being the case, similar benefit can be extended to the petitioner who wrote the

examination in April 2016 also, which was the transition period where the University was in a confusing mind in awarding the marks in double evaluation. Therefore, this Court is of the view that the University can certainly consider the petitioner for awarding the highest marks in double evaluation similar to the February 2015 batch students.

18. Therefore, the respondents can consider the marks of the petitioner as 42, which is the highest marks in the double valuation. If the petitioner's highest marks 42 and grace marks 5 is awarded, the petitioner would have secured 150, which is the minimum marks to be secured in total. However, all these fact were not considered by the respondents and they failed to award the grace marks in the Health Care Special Group subject, which is not in accordance with the Resolution passed by the Governing Council and Standing Academic Board of the respondents.

19. Further, though the learned Standing Counsel for the respondents would submit that there is no regulation to provide grace marks to the students who failed in the examination, he is not in a position to explain as to how without any regulation M.G.R. University has introduced the grace marks for P.G. degree on its 40th Standing Academic Meeting held on 22.12.2010. He is also unable to produce any Rules and Regulations which would prohibit the University from awarding the grace marks. The learned Standing Counsel appearing for respondents referred the judgment of this Court in the case of Dr. Ivan A. Jones vs. The Tamil Nadu Dr. M.G.R. Medical University reported in 2016 7 Mad LJ 678, wherein in Paragraph No.15, it is held as follows:

"15. Settled legal position is that, the respondent-University can adopt the regulation framed by the Central Council, which is MCI, and in case of inconsistency between the Resolution of the respondent - University and Regulation of MCI, the Regulation of MCI shall prevail. It is an undisputed legal position that the Regulation of MCI does not provide for award of grace marks. Therefore, in the absence of any statutory backing for award of grace marks, the petitioner cannot seek for a direction, compelling the respondent-University to award grace marks. Therefore, the prayer sought for by the petitioners in one set of Writ Petitions, with regard to the award of grace marks is rejected."

20.A perusal of the above, it is clear that the learned counsel who appeared on behalf of the University in the above case has miserably failed to bring into the knowledge of this Court about the decision taken by the grace marks to the P.G Course at the 40th Meeting of Standing Academic Board held on 22.12.2010. Therefore, this Court has held that, in the absence of any statutory backing to award grace marks, the petitioner cannot seek for a direction, compelling the respondent-University to award grace marks. Further, this Court did not have any opportunity to deal with the 40th Meeting of Standing Academic Board held on 22.12.2010. At this circumstances only the said order was passed. However, while considering the decision taken by the University at its 40th of Standing Academic Board held on 22.12.2010, it is clear that the respondents have taken decision to award the grace marks, certainly following the same, in similar way the petitioner is also entitled for the grace marks.

21.Hence, in the absence of any MCI Regulations which prohibits the respondents University from awarding grace marks for the P.G. Course, it is not open to the respondents to argue against its own Standing Academic Board Resolution passed in its 40th Meeting held on 22.12.2010. Therefore, in terms of the Resolution passed at the Standing Academic Board held on 22.12.2010, the petitioner is entitled for the grace marks and the respondents University is bound to grant grace marks to the petitioner which they have failed to do so while awarding marks to the him and declared the result. Hence, the result declared by the respondents dated 03.06.2016 is liable to be set aside since the respondents declared the result without taking into consideration of awarding the grace marks and failed to take the highest marks awarded in the double valuation to the petitioner in the Health Care Special Group Subject, at par with February 2015 batch students.

22.Accordingly, the result declared by the respondents dated 03.06.2016 to the petitioner is set aside and the respondents is directed to re-consider the marks of the petitioner after taking into consideration of the grace marks '5', which the petitioner is entitled for and to take the highest marks in the double valuation as the final marks of Health Care Special Group subject i.e 42 marks instead of 36 and re-declare the result of the petitioner within a period of three weeks from the date receipt of a copy of this order. The said action may be ratified by the Governing Council like how they have ratified the actions of the University which was done for February 2015 batch students.

23.With the above directions, this Writ Petition is disposed of. No Costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To:

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

2.The Controller of Examination,
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+1cc to Mr.C.Emalias, Advocate SR.No.6260

W.P.No.11117 of 2017
and W.M.P.No.12050 of 2017

SVI (CO)
GMY (17/02/2022)