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W.P.Nos.6949 & 5837 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2024

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.Nos.6949 & 5837 of 2021

and

W.M.P.Nos.6424 & 7498 of 2021

Bichu Krishna V.M.,
S/o V.G.Mohanam

... Petitioner in W.P.No.6949/2021

R.B.Rubinzoe,
S/o Dr.Joel Rupert

... Petitioner in W.P.No.5837/2021

vs.

1. Central Council of Indian Medicine
rep. by its Secretary,
Office : 61-65, Institutional Area,
Janakpuri, D-Block,
New Delhi - 110 058.
2. The Ministry of Ayurveda,
Yoga & Naturopathy,
Unani, Siddha and Homeopathy (AYUSH)
Government of India, Represented by its
Secretary, 'B' Block, GPO Complex,
INA, New Delhi - 110 023.
3. The Controller of Examinations,
The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy,
Chennai - 600 032.
4. The Principal,
Maria Ayurveda Medical College and Hospital,
Thottavaram, Attoor, Thiruvattar Post,



W.P.Nos.6949 & 5837 of 2021

Kanniyakumari District - 629 177.

..Respondents.

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Prayer in W.P.No.6949/2021 : Writ Petition filed under Article 226 of the constitution to issue a Writ of Declaration declaring that the petitioner is governed under the 2012 Amended Regulation of India Medical Council (Minimum Standards of Education in Indian Medicine) Regulation 1989 as the petitioner joined in B.A.M.S. course in the 4th respondent college October 2016 much prior to 07.11.2016, the date on which the 2016 Regulation was gazetted and consequently declare the order passed by the 3rd respondent in Lr.No.EX.IV(3)/15071/2020 dated 17.10.2020 is invalid and permit the petitioner to appear for the ensuing 1st year arrear examinations forthwith and declare the result of the petitioner.

Prayer in W.P.No.5837/2021 : Writ Petition filed under Article 226 of the constitution to issue a Writ of Declaration declaring that the petitioner is governed under the 2012 Amended Regulation of India Medical Council (Minimum Standards of Education in Indian Medicine) Amendment Regulation 1989 as the petitioner joined in B.A.M.S. course in the 4th respondent college 22-07-2016 much prior to 07.11.2016, the date on which the 2016 Regulation was gazetted and



consequently declare the order passed by the 3rd respondent in Lr.No.EX.IV(3)/15071/2020 dated 17.10.2020 as invalid and permit the petitioner to appear for the 1st year arrears examination on 08.03.2021, 09.03.2021 and 10.03.2021 (two papers in Anatomy on 08.03.2021, 09.03.2021) and for the subject Maulik-Siddhant on 10.03.2021 and declare the result of the petitioner.

For Petitioner
in both the W.Ps. : Mr.P.Ebenezer Paul

For Respondents
in both the W.Ps. : Mr.K.Vellayaraj for R1
Mrs.V.Sudha for R2
Mr.A.Mohammed Ghouse,
Standing Counsel for R3
Mr.S.Kousik
for Mr.K.Satishkumar for R4

COMMON ORDER

These writ petitions have been filed to issue a Writ of Declaration declaring that the petitioner is governed under the 2012 Amended Regulation of India Medical Council (Minimum Standards of Education in Indian Medicine) Regulation 1989 as the petitioner joined in B.A.M.S. course in the 4th respondent college much prior to 07.11.2016, the date on which the 2016 Regulation was gazetted and consequently declare the



order passed by the 3rd respondent in Lr.No.EX.IV(3)/15071/2020 dated 17.10.2020 is invalid and permit the petitioner to appear for the ensuing 1st year arrears examinations forthwith and declare the result of the petitioner.

2. The petitioners are studying B.A.M.S., Course in the 4th respondent College which is affiliated with the 3rd respondent University. The petitioners joined the course in the year 2016. Due to health issues, they were not able to clear the 1st year Professional examination. At the time of admission into the said course, the Indian Medical Council (Minimum Standards of Education in Indian Medicine) Regulation 1986 as amended in 2012 was in force. As per the said Regulation, the duration of course was five years comprising of 4 professional years and compulsory rotatory internship for one year and nowhere it stipulates that maximum four + one discretionary attempt were provided to a candidate to appear for the examination and only in 2016 Regulation which came into force from 07.11.2016 (the date of gazette notification) it was stated that the failed student of 1st professional shall be allowed to appear in 2nd profession examination but the student shall not be allowed to appear in 3rd professional



examination unless the student passes all the subjects of 1st professional examination and the maximum four chances shall be given to pass first professional examination within a period of maximum three years.

3. As per Central Counsel of Indian Medicine Regulations of B.A.MS Degree course, students shall be given maximum 4 chances to pass 1st professional examination within a period of maximum three years. In respect of these petitioners, the 3rd respondent University has already given one more chance (5th attempt) to write their first professional examination to the petitioner. Their request to write one/two failed subjects as sixth attempt was rejected.

4. When the writ petition in W.P.No.5837 of 2021 was taken up for admission on 05.03.2021, this Court directed the 3rd respondent to permit the petitioner to appear for the 1st year arrears examination. However, the results have not been published. Subsequently, when the matter came up for hearing before this Court on 08.10.2021, as it was stated that the petitioner has already cleared the first year course, this Court permitted the petitioner to write the second year examination commencing from 20.10.2021 stating that the said interim direction will



be subject to the final result of the writ petition.

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5. In respect of the petitioner in W.P.No.6949 of 2021 is concerned, by order dated 02.11.2021, this Court, based on the permission granted to the petitioner in W.P.No.5837 of 2021, the petitioner in W.P.No.6949 of 2021 was also permitted to write the first year arrears papers.

6. Subsequently, on 24.03.2022, the third respondent has filed counter stating that as per circular issued by National Commission for Indian System of Medicine dated 15.12.2021, three more chances over and above mercy chances shall be allowed to the students. Paragraph Nos.3 and 4 of the said counter reads as follows:

"3. I respectfully state that without getting into the merits and the demerits of the case and the issue involved in the subject Writ petition, I am filing this affidavit to state on record that the issue involved in the Present Writ Petition does not require any consideration in view of the recent circular issued by the National Commission for Indian System of Medicine dated 15.12.2021 in Ref.No.BOA/ Regulations/UG/7-



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W.P.Nos.6949 & 5837 of 2021

10/2021 taking into consideration of the representations made by the Students, universities, State Boards and State Governments.

4. I further respectfully state that in terms of the said Circular, now National Commission has issued an order granting three more chances over and above mercy chances shall be allowed to the students. The extract of the necessary portion of the circular is as follows:

"Therefore, the Commission considered this Scenario ad decided that students admitted under 2016 regulation, who could not pass examinations as per specific number of maximum attempts and duration, three more chances over and above mercy chances shall be allowed.

This is a one-time measure considering due to unforeseen Covid-19 pandemic situation."

7. Now, it is brought to the notice of this Court that the petitioners have cleared all the papers but the results were not published in view of the pendency of these writ petitions. The declaration of the results of the examination is utmost importance for all the students. Withholding of the results would adversely affect their career of getting job opportunity or admission in the colleges for higher studies. Already they would have



undergone mental agony for not permitting to write the arrears examination and after great struggle, by approaching this Court and filing the writ petition and only in response to the directions of this Court, the petitioners were permitted to write the examinations. If the results are withheld without publishing, no purpose would be served in permitting the petitioners to write the examination. Therefore, without going into the merits of the matter, this Court is of the view that the result of the petitioners has to be published by the respondents. Accordingly, the 3rd respondents is directed to publish the results of the petitioner forthwith.

8. In the result, the Writ Petitions are allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petitions are closed.

18.03.2024

Index :yes/No
Speaking /Non speaking order
vsi

To

1. The Secretary,
Central Council of Indian Medicine
Office : 61-65, Institutional Area,
Janakpuri, D-Block, New Delhi - 110 058.



W.P.Nos.6949 & 5837 of 2021

2. The Secretary

Ministry of Ayurveda, Yoga & Naturopathy,
Unani, Siddha and Homeopathy (AYUSH)
Government of India, 'B' Block, GPO Complex,
INA, New Delhi - 110 023.

3. The Controller of Examinations,

The Tamil Nadu Dr.M.G.R.Medical University,
No.69, Anna Salai, Guindy,
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