

In the High Court of Judicature at Madras

Dated: 31/10/2003

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The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.25492 of 2003 and Writ Petition No. 25884 of 2003

Salini Nair .. Petitioner in WP.No.25492/03

Krishna Kabir Anthony .. Petitioner in WP.No.25884/03

-Vs-

1. Pondichery University

rep. by its Registrar

Kalapet, Pondicherry.

2. The Controller of Examinations

Pondicherry University

Pondicherry.

3. The Moderation Board constituted

by the Examination Committee for

MBBS Course, rep. by its Chair Person

Pondicherry University

Pondicherry.

4. Medical Council of India

rep. by its Chairman

Opposite to Mata Sundari College for

Women, New Delhi 110 002.

5. Vinayaka Mission's Medical College

rep. by its Dean

Keezhakasakudimedu

Kuttucherry Post

Karaikal 609 609

Pondicherry State. .. Respondents in both Wps.

Petitions filed under Article 226 of the Constitution of India
praying for issuance of writ of declaration as stated therein.

For petitioners: Mr. K. Doraisamy, Senior Counsel
for M/s. Muthumani Doraisamy.

For respondents: Mr. K. Srinivasan for R.1 to 3

:COMMON ORDER

By consent of both parties, writ petitions themselves are taken up for disposal.

2. Since the relief sought for is one and the same in both the writ petitions, they are being disposed of by the following common order.

3. The petitioners have prayed for issuance of writ of declaration, declaring that as per Regulation 12 (4) of the Medical Council of India Examination Regulations, they have passed in all the subjects in the final year MBBS examinations held in May, 2002, making them eligible to undergo Internship and become a registered Medical Practitioner.

4. According to the petitioner in W.P.No.25492 of 2003, she joined the 5th respondent Institution in the year 1997 under NRI quota in the new regulation MBBS Scheme. She had completed 10 subjects successfully and wrote the final year MBBS examinations in May, 2003. Provisional results of the final year MBBS examinations was published in their College Notice Board on 16.07.2003. Out of 4 final year subjects, namely General Medicine, Surgery, Obstetrics and Gynecology and Pediatrics, it was indicated that she was failed in the subjects Obstetrics & Gynecology and Pediatrics. On enquiry, she was informed that she failed in Pediatrics for want of one mark and in Obstetrics & Gynecology for want of two marks. It is the claim of the petitioner that as per the Pondicherry University Regulations, the Examination Committee is empowered to award grace marks in deserving cases, according to the Rules framed. The petitioner made a representation for considering her request by the Examination Committee, by communication dated 29.08.2003, the second respondent rejected her request, even though 2 Professors, who are concerned with the subjects have given in writing that the question papers were tough and moderation is essential. Since the procedure adopted by respondents 1 and 2 is contrary to the Medical Council of India Examination Regulations, the petitioner has approached this Court. Since the other petitioner has also highlighted his claim, which are similar to the case of Salini Nair, I am of the view that it is unnecessary to refer the same.

5. On behalf of respondents 1 to 3, the Registrar of Pondicherry University has filed a common counter affidavit, wherein it is stated that though the University largely and substantially follows the Medical Council of India Regulations, it has however put a higher condition than Medical Council of India with respect to the pass determinations in order to main standards.

6. There is no factual dispute regarding the lesser mark, namely 1 or 2 in the final exam by the petitioners. Since the petitioners have referred to the marks as per Medical Council of India Examination Regulations and marks obtained by them in the subjects in question in their respective affidavit, which are also not in dispute, I am not referring the same in this order.

7. The learned senior counsel for the petitioners after taking me through the Medical Council of India Regulations, particularly, Chapter - IV 12. Examination Regulations, in which by referring Clause 12.4 would contend that inasmuch as those Regulations are binding on the respondents 1 to 3 - Pondicherry University, if we apply the said Regulation, there will not be any difficulty in declaring the petitioners as passed. In other words, according to the learned senior counsel, the decision of respondents 1 to 3 is contrary to Regulation 12 .4 of Medical Council of India Examination Regulations and they went wrong in not applying the principle of aggregate marks. According to him, failure to give moderation / grace marks is arbitrary and discriminatory. The relevant Medical Council India Examination Regulations reads as under:

"12. Examination Regulations

(1)

(2)

(3)

(4) Distribution of Marks to Various Disciplines:

(A)

(B)

(C) Pass: In each of the subjects a candidate must obtain 50% in aggregate with a minimum of 50% in Theory including orals and minimum of 50% in Practicals / clinicals. "

If we apply the above test and the method, the marks secured by the petitioners clearly show that they satisfy the marks prescribed by the Medical Council of India and they should have been declared as pass.

8. In this regard, it is brought to my notice that the Division Bench of Kerala High Court had an occasion to consider the very same Regulation, namely, Medical Council of India Examination Regulations in the case of Pleasant Sunny vs. University of Calicut and others etc., (W.A.No.1777 of 2002 8 dated 26.09.2002). The Division Bench, almost in similar circumstance, after referring the marks secured and in the light of the Regulation therein declared those persons as having passed in the subjects in question. The following conclusion of the Division Bench is relevant.

"4. Inasmuch as standards of Medical Education is to be strictly monitored and maintained by the Medical Council of India, we took the view that the opinion of the Medical Council with regard to the manner in which its regulations were interpreted and applied was relevant."

After accepting the various Clauses in the Medical Council of India Examination Regulations, their Lordships have held,

"6. In the result, we hold that under the Regulations a candidate shall be declared to have passed if he has got 50% of the aggregate marks in University theory + orals + internal assessment theory and 50% of the aggregate marks in University practicals + internal assessment practicals / clinicals. "

9. There is no dispute with regard to the law laid down by the Division Bench of the Kerala High Court and the same is being followed by the University in the subsequent years. Further, before the Division Bench,

the Medical Council of India clarified that a candidate in order to be eligible to be declared as pass must obtain a minimum of 50% in aggregate in theory including orals (internal assessment theory + University theory + University oral added together) and also 50% in practicals (internal assessment practical + University practical added together). Accepting the clarification of the Medical Council of India, the Hon'ble Division Bench allowed the writ appeals, declaring the appellants therein, who got 50% of the aggregate marks as having passed. Inasmuch as the Medical education in the country is governed by the provisions of the Medical Council of India Act, 1956, which lays down elaborate provisions for constitution of a professional body known as Medical Council of India and the manner of accreditation / recognition of academic institutions imparting medical education, I am of the view that the Regulation prescribed by Medical Council of India is binding on respondents 1 to 3. By applying the above method as explained by the Medical Council of India before the Kerala High Court and in the light of the marks obtained by the petitioners, the petitioners are to be declared as "passed".

In the light of what is stated above, both the writ petitions are allowed as prayed for. No costs.

Index:Yes

Internet:Yes

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To

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