

(2015) 01 KL CK 0087

In the High Court Of Kerala

Case No : Writ Petition(C). Nos. 35305 and 35306 of 2014 (K)

Fathima S. Hameed

APPELLANT

Vs

Kerala University of Health Sciences

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 01 KL CK 0087

Hon'ble Judges : K. Vinod Chandran, J.

Bench : Single Bench

Advocate : S. Sanal Kumar, Bhavana Velayudhan and T.J. Seema, for the Appellant; P. Sreekumar, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioners are all 1st year students of the MBBS course for the academic year 2014-15. The petitioners herein failed in Physiology Practical examination alone, having not obtained minimum qualifying marks. The petitioners challenged the Regulation of the University which declines grace marks in practicals. Medical Council of India (MCI) has provided that, maximum of five marks can be granted as grace marks, without any stipulation as to whether the same has to be in theory or practicals. Specification is only with respect to such marks being awarded to the single subject.

2. The University has framed Regulations as per Ext.P5 produced in W.P. (C).35305/2014 wherein it has been stipulated that the grace marks upto a maximum of five in total, would be awarded in an examination at the discretion of the Passing Board for a student to pass one subject in theory alone, provided the student has passed in all other subjects. It was also stipulated that, grace marks will not be awarded to change the internal assessment marks.

3. The petitioners herein failed in only one subject namely "Physiology" and that too in the practicals. The petitioners' contention on the basis of the marks

obtained in the other subjects is that the Regulation prescribed is arbitrary for reason of the grace marks being declined to practicals and confined to theory. Primarily it is to be noticed that the petitioners appeared in the examination in the 1st year with open eyes, quite aware of the Regulations, in Ext.P5, without making any challenge to the same. Later on, when they failed to obtain qualifying marks in the practicals they seek to turn round and challenge the Regulation by which grace marks have been declined, specifically for practicals.

4. The issue is covered by a judgment of this Court in W.P.(C)s.27673/2013 and 27905/2013 wherein similarly situated students had challenged a similar Regulation; but, for the academic year 2012-13. The learned counsel, for the petitioners submits that in fact, a Division Bench decision of this Court in W.A.409 of 2011 dated 28.03.2011, held in favour of the petitioners. It is to be noticed that the said decision was noticed by this Court. However, relying on Board of School Education, Haryana Vs. Arun Rathi and others, and The Maharashtra State Board of Secondary and Higher Secondary Education Vs. Amit and Another, , this Court declined to grant any relief in the writ petition. The Regulation of the University was held to be neither arbitrary, discriminatory or repugnant to the MCI Regulations. The challenge having been negatived, the writ petition was dismissed.

5. The declaration of law in Maharashtra State Board of Secondary in paragraph 6 was that:-

"However, a rule for the award of grace marks must be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim of the award of grace marks can be sustained. Normally the Court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority". 6. One other contention raised by the learned counsel for the petitioners is that, there was a clear case of victimization by a faculty member who had subsequently left the College. However, the said person has not been impleaded herein and no allegation of victimization could have been urged or considered, when the party against whom the allegation is raised, is not in the party array.

7. The further contention raised is that the University has now taken a decision to award grace marks to the practicals also from the next year onwards and hence the same ought to be allowed in the present year too. The learned Standing Counsel for the University admits that such a recommendation was made; however, nothing has happened on the same, since the Governing Council has to take a final decision in the matter.

8. In any event, the present Regulation for the present academic year prohibits grant of grace marks in practicals. It would not be proper for this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of

India to command the University to extend proposed benefits, to students who already appeared in the examination, who are regulated by a valid published prospectus, which does not contain such a provision.

The writ petitions are dismissed.