

(2009) 11 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16002 of 2009

K. Nithesh Kumar (Dr.) and Others

APPELLANT

Vs

Dr. NTR University of Health Sciences

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Citation : (2010) 1 ALT 15

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Ramachandra Rao for K.R. Prabhakar, for the Appellant; D.V. Nagarjuna Babu, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners joined in different Post Graduate Degree courses in the academic year 2006-2007 in various institutions, affiliated to the respondent university. They are at the verge of completion of the courses. Some of them are said to be meritorious and awarded gold medals in certain subjects. Examinations were conducted in June, 2009. According to the norms stipulated by the University, a candidate must secure minimum of 50% of marks, both in theory papers, carrying 400 marks and practicals, carrying 300 marks. The petitioners were declared failed in one subject or the other on the ground that they did not secure the minimum of 50% marks in the subject concerned, be it in theory or practical. It is their common case that they fall short by less than five marks.

2. The petitioners contend that the University framed regulations of providing for addition of five marks in case the same would result any candidate being declared pass and such facility was denied to them. The second limb of their grievance is that contrary to the regulation made by the Medical Council of India (MCI) that provides for evaluation of theory and practical papers by one and the same examiner, different examiners were arranged in respect of the petitioners. They submit that but for the deviation made by the University from the relevant

rules, they would have been declared passed. It is also urged that the arbitrary action on the part of the respondent would entail not only prolongation of duration of their study but also would make them liable to appear all the subjects, once again.

3. The respondent filed a counter-affidavit denying the allegations made by petitioners. It is stated that though there existed the facility of addition of five marks, it has been dispensed with, on the basis of a resolution passed by the Executive Council of the University at its 172nd meeting held on 17-7-2007. It is stated that the award of grace marks at the PG level is not advisable. So far as the appointment of the same examiner for the theory and practical examinations is concerned, the respondent contends that the rule is not mandatory and it would depend upon the convenience and availability of adequate number of examiners.

4. Sri S. Ramachandra Rao, the learned senior Counsel for the petitioners, submits that the petitioners cannot be denied the benefit of grace marks on the basis of resolution passed by the Executive Council, much after they have been admitted into the courses. Placing reliance upon certain decided cases, the learned senior Counsel submits that the resolution would be made applicable only to those who were admitted into the courses subsequent to the date of the meeting. He further submits that the MCI framed regulation insisting on evaluation of theory and practical examination papers by one and the same examiner with a clear objective and the University cannot act contrary to the same.

5. Sri D.V. Nagarjuna Babu, learned standing Counsel for Dr. NTR University, submits that the Executive Council of the University has passed a resolution at its meeting held on 17-7-2007 to dispense with awarding of grace marks with the object of maintaining high standards at PG level. He submits that no student can claim addition of grace marks as of right. He places reliance upon a judgment of this Court in W.P. No. 8243 of 2008 and batch dated 9-7-2008. He further submits that though the MCI intended that the same examiner be assigned the duties of examination of theory and practical papers of a candidate, it is not mandatory. He also submits that the petitioners cannot claim evaluation of their theory and practical papers in a particular manner.

6. It has already been mentioned that the petitioners have been admitted into PG courses in the academic year 2006-2007. It is a matter of record that the rules and regulations, framed by the University that were in force when the petitioners were admitted, provide for addition of five grace marks by the University, in case such an addition would enable the candidate to pass the examination. It is not even necessary that a candidate must apply for it. Addition is almost automatic, in case it would have the effect of a candidate being declared as passed in the subject concerned. Though it is mentioned as addition of grace marks, that process is part of the scheme of the course. It is settled principle of law that the norms of admission, the scheme of the course and

various facets leading to the conferment of a degree, that were in force at the time of admission of a candidate, must remain same till he completes the course in accordance with those very rules. Law does not permit alternation of the same when the candidate is half way through. Reference, in this context, must be made to the judgments in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Nimesh Mehta v. State of Maharashtra* (2005) 13 SCC 707. This view was expressed by this Court in *A. Sundara Kami Reddy v. Principal, Guntur Medical College, Guntur* 1968 (1) An.W.R. 56.

7. It is no doubt true that in W.P. No. 8243 of 2008 and batch, a learned single Judge of this Court in the common order dated 9-7-2008 did not accept the similar contention advanced by the petitioners therein. However, no discussion with reference to the principle was undertaken, except that the parameters of the new arrangement were mentioned. The attention of the learned Judge does not appear to have been drawn to the decided cases.

8. The learned standing Counsel submits that the rules of admission are different from the other facets of the course, such as scheme of examination. It is difficult to accept this contention. As a matter of fact, rules of admission have relevance only at the threshold whereas the scheme of examination has relevance for the rest of the period till the candidate completes the course. Therefore, the denial of the facility of addition of grace marks to the petitioners cannot be sustained in law.

9. So far as the second aspect is concerned, the regulation framed by the MCI is not in mandatory terms and it is mostly suggestive in nature. At any rate, the occasion to consider the relevance of the same vis-a-vis to the petitioners does not exist since they have taken the examinations without any demur. It will be too late for this Court to make any endeavour to examine the relevance of the regulation at this stage.

10. It is brought to the notice of this Court that if the facility of addition of grace marks is extended to the petitioners, all of them would clear the exams.

11. Having regard to the facts and circumstances of the case, the Writ Petition is allowed and the University is directed to extend the benefit of addition of grace marks to the petitioners and declare their results without any loss of time. There shall be no order as to costs.