

(2012) 07 MP CK 0048

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2812 of 2012

Satyendra Narayan Prasad

APPELLANT

Vs

Rani Durgavati Vishwavidyalaya

RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Citation : AIR 2013 MP 29 : (2013) 1 MPHT 42 : (2013) 1 MPLJ 444

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : Satyam Agrawal, for the Appellant; Kamlesh Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Ajit Singh, J.—By this petition, the petitioner has prayed that the respondent be directed to award him five grace marks. The petitioner is a student of Netaji Subhash Chandra Bose Medical College, Jabalpur, which is affiliated to the respondent-Rani Durgavati Vishwavidyalaya, Jabalpur. In the month of November, 2011, the petitioner appeared in MBBS Final (II) Prof. Examination and the result of examination was declared on 8-2-2012. Out of total four subjects, the petitioner was declared pass in three subjects and fail in one subject. The subject in which the petitioner failed is Obstetrics and Gynecology. In this subject, he secured 45 marks in theory, 20 marks in internal assessment and 32 marks in practical, i.e., aggregate marks in total 97 out of 200. The minimum passing marks in theory is 50 out of 100 and minimum passing aggregate marks in total in Obstetrics and Gynecology is 100 out of 200.

2. The petitioner submits that if the respondent is directed to grant him five grace marks in the theory of Obstetrics and Gynecology subject, he will pass in the subject and his academic career shall not suffer adversely. The petitioner has relied upon Clause 32 of Ordinance 6 of the respondent, which provides for awarding of five grace marks. He has also relied upon the order dated 9-2-2011 passed by the Division Bench of this High Court in Writ Petition No. 885/2011,

Dileep Kumar Awasya Vs. State of Madhya Pradesh, where, in identical situation, the respondent was directed to award five grace marks to a student of MBBS course.

3. The respondent, in reply, has stated that amendment made in the proviso to Clause 36 of Ordinance 6 applicable from the academic session 2010-11, clearly disentitle the petitioner for grace marks. According to the respondent, in Writ Petition No. 885/2011, the amended proviso was not brought to the notice of the Division Bench as a result of which the petitioner of that case succeeded in getting undue benefit of grace marks by order dated 9-2-2011. The respondent submits that had the amended proviso been brought to the notice of the High Court, no direction to award him five grace marks would have been issued. According to the respondent, advantage of order dated 9-2-2011, therefore, cannot be given in the present case to the petitioner.

4. The relevant Clause 32 of Ordinance 6 made applicable from the academic session 2010-11 reads as under:-

32. Notwithstanding anything contained in the concerned Ordinance, an examinee, who fails by a total of not more than three marks in not more than two subjects in any of the B.A./B.Sc./B.Sc.(Home Science)/B.Com./B.Ed./B.P.Ed./L.L.B./B.Lib./B.D.S./B.P.T./B.M.L.T.I/B.V.Sc. and other graduate examination except where it is held on a semester basis but secures more than the minimum aggregate marks required shall be given three grace marks to enable him to pass the examination:

Provided also that in case of MBBS, BHMS, BAMS, BUMS, BE, B.Pharm., B.Tech., B.Arch., number of grace marks in one subject to pass the examination will be 5, if the candidate secures minimum passing aggregate marks in total of that subject in which candidate appeared. The grace marks are only notional and are not added in the aggregate.

Passing in aggregate in subject is compulsory before benefit of marks is given:

Provided that if a candidate appearing at the Supplementary/Second Examination, in one or more subject but not in full examination one grace mark shall be awarded.

5. A bare reading of the above quoted first proviso to Clause 32 of Ordinance 6 makes it clear that a candidate appearing in the MBBS Examination shall be entitled for five grace marks in one subject to pass the examination provided he secures minimum passing aggregate marks in total of that subject. Thus, if a candidate fails to secure minimum passing aggregate marks in total of the subject in which he appeared, he will not be entitled for five grace marks to pass that subject. As already mentioned above, in Obstetrics and Gynecology subject, the petitioner secured aggregate marks in total 97 out of 200, whereas the minimum passing aggregate marks in total in that subject is 100 out of 200. This being the situation, in the absence of petitioner's entitlement for grace marks,

no direction to the respondent can be issued to award him five grace marks in the theory of Obstetrics and Gynecology subject. Needless to mention that any such direction will be contrary to the ordinance and rule of law.

6. We are also in complete agreement with the submission of respondent that in Writ Petition No. 885/2011, the amended proviso to Clause 32 of Ordinance 6 was not brought to the notice of the Division Bench as a result of which the petitioner of that case got undue benefit of five grace marks by order dated 9-2-2011. The petitioner, therefore, cannot be allowed to take the advantage of order dated 9-2-2011 passed in Writ Petition No. 885/2011.

7. Lastly, the petitioner submitted that as the amended proviso was made applicable from the academic session 2010-11, it was not applicable to him because he was admitted to MBBS course much prior to that academic session. But, this submission is not acceptable. Clause 32 of Ordinance 6 deals with the candidate appearing in the examination and not with the admission of a student in any course. Therefore, the result of the examination of petitioner, which was held in the month of November, 2011 is fully governed by the amended proviso. For these reasons, the petition fails and is dismissed.