

(2009) 02 MAD CK 0091

In the Madras High Court

Case No : Writ Appeal No. 147 of 2009

The Controller of Examinations, The Tamil Nadu Dr. M.G.R.
Medical University

APPELLANT

Vs

S.S. Rajtilak and The Principal, White Memorial Homeo
Medical College

RESPONDENT

Date of Decision : 10-02-2009

Acts Referred:

Bachelor of Homeo Medical Sciences Examination Regulations — Regulation 7
Homoeopathy Central Council Act, 1973 — Section 20, 33

Citation : (2009) 02 MAD CK 0091

Hon'ble Judges : S.J. Mukhopadhaya, Acting C.J.;V. Dhanapalan, J

Bench : Division Bench

**Advocate : AR.L. Sundaresan for A.L. Ganthimathi, for the Appellant;
Harikrishnan, for Respondent-1, for the Respondent**

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, A.C.J.

1. The first respondent, S.S. Rajtilak, a IV (Final) Year student of Bachelor of Homeo Medical Sciences (BHMS) Course in the second respondent-White Memorial Homeo Medical College, Attoor, Kanyakumari District (hereinafter referred to as the "Medical College" for short), appeared for the second time in the III Year Examination, but failed in the Obstetrics and Gynaecology Paper. He preferred the writ petition, W.P. No. 29889 of 2008 for a mandamus on the first respondent in the writ petition, i.e., the Tamil Nadu Dr. M.G.R. Medical University, Chennai (hereinafter referred to as the "University" for short) to re-value his answer sheets in the Obstetrics and Gynaecology Paper in terms with the application preferred by him on 22.10.2008.

2. The learned single Judge, by the impugned order dated 21.1.2009, having noticed the recommendation of the Medical College that the first respondent/writ petitioner is a very punctual student and that his performance in the department

is excellent, directed the University to permit the first respondent/writ petitioner to appear in one arrear paper in Obstetrics and Gynaecology along with the VII Semester (part of the IV Year) Examinations. This gave rise to the present writ appeal preferred by the University.

3. Learned senior counsel appearing on behalf of the appellant-University submitted that though there was no such prayer made on behalf of the first respondent/writ petitioner to permit him to appear in the VII Semester (part of the IV Year) Examinations and it was accepted that the answer paper of the first respondent/writ petitioner cannot be re-valued, in the facts and circumstances, there was no occasion for the learned single Judge to direct the University to allow the first respondent/writ petitioner to appear in the VII Semester (part of the IV Year) Examinations.

4. Learned Counsel appearing on behalf of the first respondent produced before us a format forwarded by the Medical College to the University, wherein under Sl. No. 8, the remarks of the Head of the Department Professor are shown, to the effect that the first respondent is a very punctual student and his performance in the department is excellent. Learned Counsel submitted that the first respondent/writ petitioner having applied within time, in fact, his prayer for re-valuation of his answer paper should have been accepted.

5. We have heard the learned Counsel for the parties and noticed the rival contentions.

6. The Central Council of Homeopathy, in exercise of the power conferred by Clauses (i) (j) and (k) of Section 33 and Sub-section (i) of Section 20 of the Homeopathy Central Council Act, 1973, with the previous sanction of the Central Government, framed the Regulations relating to BHMS Examination (hereinafter referred to as the "Regulations" for short). Under Clause 10(i) of the Regulations, no candidate shall be admitted to the IV Year BHMS Examination unless he / she has passed the III Year BHMS Examination and he / she has the required attendance as per Regulation 7(iii), to the satisfaction of the Head of Homeopathic Medical College.

7. Learned senior counsel appearing on behalf of the University brought to our notice the guidelines prescribed for re-valuation of answer papers for all Undergraduate Degree Courses, as per the resolution adopted by the Governing Council of the University in its 161st Meeting held on 10.1.2007, the relevant portion of which is quoted hereunder:

(a) The application for revaluation should reach this university within 15 days from the date of receipt of the statement of marks by the college.

...

(c) The revaluation of papers is not permissible, if the candidates have failed in more than one subject.

- (d) The revaluation is allowed only if the failure leads to break of semester/year.
- (e) Notwithstanding anything contained in guideline (d), the revaluation is allowed in the case of candidates who fail in final year.
- (f) The revaluation is not permissible if the candidates have failed in any subjects including those of previous semester years.

In the counter affidavit filed in the writ petition, the University has brought the following facts to the notice of the Court:

8. It is submitted that the petitioner has failed in 2 sessions, i.e. the petitioner has written whole paper in III BHMS examination held in February, 2008 but the petitioner has failed in Paper 2 Obstetrics & Gynaecology Homeopathic. Again the petitioner has written paper-2 Obstetrics & Gynaecology Homeopathic in III BHMS examination held in August, 2008 and failed.

9. It is submitted that the petitioner is not eligible for revaluation of answer paper as per the guidelines (d, e & f) prescribed by this University. The same was also informed to the candidates through the Principal, White Memorial Homoeo Medical College, Attor vide this University's Letter No. Ex.IV(2)/37061/2008 dated 11.11.2008.

8. In view of the aforesaid facts, we are of the view that the first respondent/writ petitioner, having earlier appeared and failed in the Obstetrics and Gynaecology Homeopathic Paper in February, 2008 and again having appeared and failed in the same subject, i.e., Obstetrics and Gynaecology Homeopathic in the examination held in August, 2008, is not entitled for re-valuation of his answer paper in the said subject.

9. As the Regulations prohibit even admission of a student in the IV Year BHMS Course without passing the III Year BHMS Course, we hold that the first respondent/writ petitioner is not entitled to appear in the VII Semester (part of the IV Year) Examinations. Further, no such prayer having been made by the first respondent/writ petitioner in the writ petition, without granting the prayer for re-valuation of the answer paper in question, there was no occasion for the learned single Judge to direct the University to permit the first respondent/writ petitioner to appear in the VII Semester (part of the IV Year) Examinations.

10. It has been brought to our notice that the Medical College, by its letter dated 30.1.2009, has informed that the first respondent/writ petitioner, Rajtilak, having Registration No. 58041132, has attended the Final Year BHMS Course; he has only 42% of attendance in the Final Year BHMS Course; there is arrear of one paper in III Year BHMS Course; and so, he is not eligible for appearing in the Final Year Examinations scheduled to be held in February, 2009. This Court is informed that the minimum attendance prescribed is 80%, whereas the first respondent/writ petitioner has only 42% of attendance in the Final Year BHMS Course.

11. For the reasons aforesaid, we set aside the impugned order dated 21.1.2009 passed by the learned single Judge in W.P. No. 29889 of 2008 and allow the writ appeal, but there shall be no order as to costs. Consequently, M.P. No. 1 of 2009 is closed.