

(2011) 01 CAL CK 0061
In the Calcutta High Court
Case No : Writ Petition No. 764 (W) of 2011

Vivek Kumar Bhagwat

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-01-2011

Acts Referred:

Graduate Medical Education Regulations, 1997 — Regulation 13

Citation : (2011) 3 CHN 70

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Tapas Kr. Mukherjee, Samrat Chowdhury, for the Appellant; Indranil Roy, Ayan Bhattacharya for the respondent Nos. 2, 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—Let the affidavit-of-service filed in Court today be kept with the records.

2. This writ application is filed by the petitioner for a direction upon the respondent University to exercise its discretion in accordance with the provision of sub-regulation (10) Regulation 13 of Graduate Medical Education Regulations, 2002 by awarding 5 grace marks to the petitioner in respect of his result of Anatomy (Theory) of M.B.B.S. First Provisional Supplementary Examination, 2010.

3. The petitioner was a student of M.B.B.S. course under the West Bengal University of Health Sciences. He appeared in M.B.B.S. First Provisional Examination, 2010 held in the month of June-July, 2010. He failed in 2 subjects out of 3, namely, Anatomy and Bio-Chemistry. He was allowed to appear in M.B.B.S. First Provisional Supplementary Examination, 2010 held in September-October, 2010 in the aforesaid two subjects. He failed in Anatomy (theory) paper.

4. It is submitted by the learned Counsel appearing for the petitioner that in accordance with the provision of sub-regulation (10) of Regulation 13 of

Graduate Medical Education Regulations, 2002 he was entitled to get 5 grace marks and it was at the discretion of the University. The learned Counsel relies upon the decisions of The Maharashtra State Board of Secondary and Higher Secondary Education Vs. Amit and Another, and Controller of Examinations, Utkal University Vs. Purnamasi Das (Ms), , in support of his above submission.

5. On the other hand, it is submitted by the learned Counsel appearing for the respondent University that there was a provision to award grace marks to a student who has failed only in one subject but passed in all other subjects. But in the regular examination the petitioner failed 2 subjects out of 3. So, he had to appear in the supplementary examination in respect of 2 subjects. He failed in one subject. Therefore, this provision, he was not entitled to get the above grace marks. The provision was with regard to the regulation for examination only.

6. Having heard learned Counsel appearing for the respective parties as also considering the fact and circumstances of this case I find that admittedly the petitioners failed in regular examination in respect of 2 subjects out of 3. Admittedly, he had to appear in the supplementary examination in respect of 2 subjects and on that occasion the petitioner failed in one subject. For proper adjudication of this case the provision of sub-regulation (10) Regulation 13 of the Regulations of Graduate Medical Education introduced by the Medical of India are quoted below :

(10) The grace marks upto a maximum of five years may be awarded at the discretion of the University to a student who has failed only in one subject but has passed in all other subjects.

7. After considering the above provisions I find that there was discretion of the respondent university to award up to a maximum of 5 years to a student who had failed in only one subject but has passed in all other subjects. Since the petitioner failed in more than one subject in the regular examination he was not entitled to get any grace marks. With regard to the question or awarding grace marks in respect of one subject in supplementary examination the University was the best authority to take a decision with regard to awarding of grace marks to the petitioner. Considering the performance of the petitioner I do not find any impropriety in the decision marking process of the respondent University. I do not find that the decision of Maharashtra State Board of Secondary & Higher Secondary Education (supra) is in favour of the petitioner. Rather, it is against him. The relevant portion of the above decision is quoted below :

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 for the ward 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.

8. Further find that the decision of Utkal University (supra) is also against the petitioner. In that case, the High Court granted some marks in favour of the writ petitioner/respondents applying hard case rule but the opinion of the Hon"ble Supreme Court set aside the above order passed by the High Court and dismissed this writ petition.

9. In view of the above discussions and observations, this writ petition stands dismissed.

10. There will be, however, no order as to costs.

11. Urgent photostat certified copy of this order, it applied for, be given to the parties on priority basis.