

Devashree Jayakrishnan vs the Kerala University of Health Sciences

Devashree Jayakrishnan vs the Kerala University of Health Sciences

SooperKanoon Citation : sooperkanoon.com/1315264

Court : Kerala

Decided On : Feb-01-2024

Judge : Honourable Mr.Justice Mohammed Nias C.P.

Appeal No. : WP(C)/40004/2023

Appellant : Devashree Jayakrishnan

Respondent : The Kerala University of Health Sciences

Advocate for Pet/Ap. : Sri. Sri.K.Ramakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.
THURSDAY, THE 1ST DAY OF FEBRUARY 2024 / 12TH MAGHA, 1945
WP(C) NO. 40004 OF 2023 PETITIONER: DEVASHREE
JAYAKRISHNAN AGED 22 YEARS D/O. JAYAKRISHNAN
KRISHNANKUTTY, STUDENT, 2ND YEAR MBBS COURSE, P. K. DAS
INSTITUTE OF MEDICAL SCIENCES, VANIYAMKULAM IN PALAKKAD
DISTRICT, KERALA, NOW RESIDING AT 37/966, ANDUMADOM,
FATHIMA CHURCH ROAD, ELAMKULAM, ., PIN - 682020 BY ADVS.
SRI.K.RAMAKUMAR (SR) ASWINI SANKAR R.S. T.RAMPRASAD UNNI

S.M.PRASANTH T.H.ARAVIND RESPONDENTS:

1 THE KERALA UNIVERSITY OF HEALTH SCIENCES REPRESENTED BY ITS REGISTRAR, MEDICAL COLLEGE CAMPUS, THRISSUR P.O., THRISSUR, PIN - 680596 2 THE CONTROLLER OF EXAMINATIONS KERALA UNIVERSITY OF HEALTH SCIENCES, MEDICAL COLLEGE CAMPUS, THRISSUR P.O., THRISSUR., PIN - 680596 3 THE NATIONAL MEDICAL COMMISSION REPRESENTED BY ITS SECRETARY, POCKET - 14, SECTION 8, DWARAKA PHASE - 1, NEW DELHI,, PIN - 110077 BY ADVS. R1 & R2 SRI.P.SREEKUMAR R3 BY SRI.K.S.PRENNJITH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR FINAL HEARING ON 29.01.2024, THE COURT ON 01.02.2024 DELIVERED THE FOLLOWING: -2-

MOHAMMED NIAS C.P., J.

----- WP(C) No.40004 of 2023 ----- Dated
this the 1st day of February, 2024

JUDGMENT

The petitioner is a second-year MBBS student at P.K. Das Institute of

Medical Sciences, Vaniyamkulam, in Palakkad District. The classes for the second year started in April 2023, and the results of the first-year examinations were published on May 10, 2023. The petitioner could not clear the subject 'Human Anatomy'. A supplementary examination referred to as 'Say' was conducted three weeks after the commencement of the second-year classes and when the petitioner was attending the same till 3rd July 2023. The petitioner submits that she had joined the course in the year 2020, but the classes started only in 2021 when they should have normally started in August 2020. The COVID-19 pandemic was the reason for the delay in starting the course; accordingly, the first-year final examination was conducted only in February 2022. The petitioner could

-3- not clear the supplementary examination as well, and accordingly, she attended the classes with the junior students and wrote the examination again. A true copy of the examination results along with the score sheet issued by the first respondent University is Ext.P1.

2. The petitioner, aggrieved by the marks given to her, raised a

grievance before the first respondent University, which accepted the same following the recommendations from the college and ordered a fresh revaluation by the evaluators from the University who had not evaluated the paper earlier. Pursuant to Ext.P2, results were published on 20.10.2023, a copy of which is marked as Ext.P3, where again the petitioner was declared 'failed' in the Human Anatomy paper. A student gets four chances only to clear the papers. The petitioner submits that as

per communication dated 1.9.2023 issued by the National Medical Commission, considering the Covid pandemic and as classes could not be conducted in full stream, amended the existing regulations and held that 'subjects that have two papers, the learned must secure a minimum of 40% of marks in aggregate' replacing the earlier 50% of the marks aggregate'. Considering the queries raised by the students, Ext.P5 was provided by the National Medical Commission. The petitioner contends that as per Ext.P4, the pass percentage is declared as 40%, and therefore, the amendment applies to the petitioner, and her results declared on 20.10.2023 must be in tune with the amendment that came into force with effect from 1.8.2023.

-4- However, the petitioner was still declared as 'failed', for which the

petitioner submitted Exts.P6 and P7 representations. In these circumstances, the petitioner prays for a declaration that she has passed the first year MBBS examination under the first respondent University going by the amended Ext.P4 regulation and also to allow the petitioner to continue to attend the classes for the second year MBBS course.

3. The University has filed a statement contending that the fresh

valuation was conducted and the original pass criteria of the examination concerned apply to the fresh valuation also. It is contended that Ext.P4 is applicable only for the examinations notified after 1.8.2023, and the same has been clarified by the National Medical Commission as well. The norms applicable when the examination was notified are relevant and not while preparing the result sheet by the University. If the petitioner took the examination based on old rules, the new notification will not apply to the petitioner.

4. A memo has been filed on behalf of the third respondent National Medical Commission producing Ext.R3(a)dated 3.10.2023, which

held that there is no retrospective effect to the notification dated 1.9.2023.

5. Heard Sri. Sri.K.Ramakumar the learned senior counsel for the petitioner, assisted by Sri. T.Ramprasad Unni, Sri.P.Sreekumar, the learned -5- standing counsel for respondents 1 and 3 and Sri.K.S.Prenjith Kumsr, the learned standing counsel for the third respondent.

6. It is undisputed that the petitioner had appeared for the

examination before the issuance of Ext.P4. However, the results were revalued after the notification came into existence. Learned senior counsel argues that Ext.P4 deals with fixing minimum marks for the pass, which has to be after the examination and therefore, Ext.P4 applies on all fours to the petition. The contention of the respondents that Ext.P4 notification has no retrospective cannot be accepted.

7. Learned senior counsel for the petitioner also brings to my notice the judgment of this Court in WP(C)No.34075/2023 dated

1.10.2023, wherein the candidate appeared for the supplementary examination in July 2023, and the results were published on 30.9.2023. This Court considered the rival submissions and held that the amendment has to be prospectively applied to all cases where the examinations are

held after the amendment and the Pass Board meets to decide on the

result. The application cannot be restricted on the basis of the notification of the examination. In that case, also the University contended that the amendment will apply only to examinations that are notified after the amendment. The relevant portion of the judgment is extracted hereunder: 4 xxxxxxx -6- The learned Standing Counsel for the University contends that the amended notification will apply only to examinations which are notified after the amendment.

5. The contention raised by the Standing Counsel for the

4th respondent cannot be countenanced. The amendment had to be prospectively applied to all cases where the examinations are held after the amendment and the Pass Board meets to decide on the result. The application cannot be restricted on the basis of the notification of the examination.

8. In short, the crucial question is whether, for the application of

Ext.P4 notification, the date of the examination or the date of valuation of the answer sheets is relevant. Learned senior counsel argues that Ext.P4 notification concerns fixing of marks, which determines whether a candidate passes or fails and therefore, the notification only concerns the valuation and does not have a bearing on the date of examination. On going through Ext.P4 and also the judgment referred, I find considerable force in

the argument on behalf of the petitioner. Maybe the petitioner takes advantage of Ext.P4 as it applies from 1.8.2023, and the result published after that must be in tune with Ext.P4 notification. The stand of the NMC that it is prospective also does not militate against this position. Accordingly, the writ petition is allowed. It is declared that the petitioner has passed the first year MBBS examination in tune with Ext.P4, and she shall be permitted to attend the classes for the second year MBBS

-7- examinations. The University will issue consequential orders forthwith. The writ petition is allowed as above. Sd/- MOHAMMED NIAS C.P. JUDGE dlk/30.1.2024 -

8- APPENDIX OF WP(C) 40004/2023 PETITIONER'S EXHIBITS EXHIBIT P1 TRUE COPY OF EXAMINATION RESULTS (PROVISIONAL) NO. 200013782-10-05-2023 ALONG WITH SCORE SHEET ISSUED BY THE FIRST RESPONDENT EXHIBIT P2 TRUE COPY OF ORDER NO. U.O.NO. 296/21717/DSA-A1/KUHS/2023 DATED 16..08..2023 EXHIBIT P3 TRUE COPY OF RESULT (200013782-21-10-2023) OF THE PETITIONER PUBLISHED ON 20..10..2023 ISSUED BY R1 EXHIBIT P4 TRUE COPY OF COMMUNICATION F.NO. U/14021/8/2023-UGMEB DATED 01..09..2023 BY THE THIRD RESPONDENT EXHIBIT P5 TRUE COPY OF FREQUENTLY ASKED QUESTIONS RELATED TO CBME COURSE CORICULUM EXHIBIT P6 TRUE COPY OF REPRESENTATION DATED 23..10..2023

SUBMITTED BY THE PETITIONER BEFORE THE CONTROLLER OF EXAMINATIONS, KERALA UNIVERSITY OF HEALTH SCIENCES, THRISSUR EXHIBIT P7 TRUE COPY OF REPRESENTATION DATED 23..10..2023 SUBMITTED BY THE PETITIONER BEFORE THE DEAN STUDENT AFFAIRS, BOARD OF ADJUDICATION OF STUDENT GRIEVANCE, KERALA UNIVERSITY OF HEALTH SCIENCES, THRISSUR EXHIBIT P8 A TRUE COPY OF PUBLIC NOTICE NO. U.13021/01/2023/UGMEB DATED 11..12..2023 ISSUED BY THE NATIONAL MEDICAL COMMISSION EXHIBIT P9 A TRUE COPY OF CIRCULAR BEARING NO. HAS BEEN ISSUED BY THE UNIVERSITY -9- RESPONDENTS ANNEXURES Annexure R1A A true copy of the minutes of the meeting of the Pass Board held on 10.5.2023, for considering the publication of the results of the First Professional MBBS examination February 2023 [2020 Admissions]

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com