

*Before Augustine George Masih & Harminder Singh Madaan, JJ.*

**AKSHITA SINGH**—Appellant

*versus*

**STATE OF HARYANA AND OTHERS**—Respondents

**LPA No.140 of 2022**

February 18, 2022

*Constitution of India, 1950—Arts. 226 and 227—Letters Patent Appeal—National Medical Commission Regulations on Graduate Medical Education, 1997—Request for revaluation of MBBS 3<sup>rd</sup> Professional (Part 2) Supplementary Examination, July 2021 of General Surgery A and B and Obstetrics and Gynecology A and B—Awarding of grace marks—Treatment as special case with costs to be borne by the petitioner—Order of the Writ Court upheld—University can grant a maximum of 5 marks at its discretion to a student who has failed only in one subject and has passed in all the other subjects—In this case, appellant failed in 2 subjects—Hence, not eligible for grace marks—Also Ordinance of University does not provide for any provision for revaluation for MBBS Programme, BDS and MDS Examinations—LPA dismissed.*

*Held that*, a perusal of the above would show that the University can grant maximum 5 marks at its discretion to a student who has failed only in one subject and has passed in all other subjects, meaning thereby that passing in all subjects except one is a condition precedent for entitlement of a student for grant of grace marks and that too, up to maximum of 5 marks in one subject only.

(Para 11)

*Further held that*, in the light of the above, since the appellant has failed in two subjects, she is not eligible for grant of grace marks as per the MCI Regulations on Graduate Medical Education, 1997 which enables awarding of maximum of 5 marks in one subject only and that too, if the student has passed in all subjects. Even as per Clause 5.38.1 of the University Ordinance, the appellant can be awarded 1% of the aggregate marks which is again subject to maximum of 5 marks in one subject. Since in General Surgery A&B Paper, the appellant is short by 10 marks and in Obstetrics and Gynecology, she is short by 15 marks (4 Theory, 11 Practical), she does not qualify in either of the papers. On merits, therefore, the claim of the appellant for grant of grace marks is

not sustainable.

(Para 14)

*Further held that*, as regards the claim of the appellant for re-evaluation of her two papers by getting those checked through an independent examiner, the said claim can also not be accepted as the Ordinance of the University relating to the provision of re-checking/re-evaluation of the answer books do not provide for any provision for re-evaluation of the same rather it specifically states in the negative. Ordinance 5.18 reads as follows:-

“5.18 Rechecking/re-evaluation of answer books

5.18.4 There shall be no re-evaluation in respect of the following:

- (a) MBBS and M.Sc. (Medical)/Diploma examinations.
- (b) BDS and MDS examinations.
- (c) BPT, MPT, B.Sc. Nursing, Post Basic Nursing, GNM and any other Medical/Dental streams unless, proved by the regulation of the respective regulating bodies.
- (d) Laboratory/ Practical examination, viva-voce/ sessional, thesis/ dissertation evaluation and project report evaluation etc.”

(Para 15)

*Further held that*, a perusal of the above would show that as far as MBBS, BDS and MDS examinations are concerned, there is no provision for reevaluation. It may be pointed out here that in the Regulations of the National Medical Commission (erstwhile Medical Council of India), there is no provision for re-evaluation for MBBS Programme. Therefore, the said request/claim being not supported by any provision of the Statute cannot be accepted. As regards re-checking, the said request of the appellant had been accepted but there has been no change in the marks.

(Para 16)

Ashish Aggarwal, Sr. Advocate, with  
Rajiv Kumar Saini, Advocate, and  
Aashna Aggarwal, Advocate,  
*for the appellant.*

**AUGUSTINE GEORGE MASHI, J.**

(1) This appeal has been preferred challenging the judgment dated 09.02.2022 passed by the learned Single Judge whereby writ petition preferred by the appellant-petitioner challenging the order dated 01.12.2021 (Annexure P-11) passed by the Vice Chancellor, Shree Guru Gobind Singh Tricentenary University (hereinafter referred to as “SGT University”) in compliance with the order dated 28.10.2021 (Annexure P-10) passed by this Court in CWP No. 21724 of 2021 preferred by the appellant-petitioner calling upon the Vice Chancellor to decide the pending representation dated 13.10.2021 (Annexure P-9) submitted by the appellant-petitioner for awarding her grace marks and requesting for re-evaluation of MBBS-Third Professional (Part-II) Supplementary Examination, July 2021 of General Surgery A&B and Obstetrics and Gynecology A&B by an examiner at the cost borne by the appellant-petitioner while treating it as a special case, stands rejected and the order dated 18.01.2022 (Annexure P-14) wherein on a subsequent writ petition preferred by the appellant-petitioner i.e. CWP No. 26812 of 2021 directing the Vice Chancellor to consider the representation dated 14.12.2021 (Annexure P-12) dispassionately and objectively and decide it by passing a speaking order, which representation was also not accepted, prayer was for issuance of a writ of mandamus directing the respondent-University to re-check the answer sheets of the appellant- petitioner in the above-mentioned two subjects and her practical paper be examined by an examiner from any other independent University/Medical College other than the SGT University at the cost borne by the appellant.

(2) The said writ petition, after consideration, has been dismissed by the learned Single Judge vide the impugned judgment dated 09.02.2022 on the ground that there is no policy for re-evaluation and, therefore, the prayer of the appellant-petitioner for re-evaluation of the answer sheets of the appellant-petitioner in the above-mentioned two subjects i.e. MBBS- Third Professional (Part-II) Supplementary Examination, July 2021 of General Surgery A&B and Obstetrics and Gynecology A&B, cannot be accepted. The prayer of the appellant-petitioner that the Vice Chancellor of the University had the power to order re-evaluation, in case a mistake is brought to his notice which is apparent on record, has been rejected by the learned Single Judge by observing that the mistake, which is sought to be projected as apparent on record, is not so and the issue of evaluation of the answer and only a subject expert is competent to do so to come to a conclusion as to

whether there is a mistake apparent on record or not and the Vice Chancellor has, therefore, rightly rejected the said prayer.

(3) Learned senior counsel for the appellant has submitted that the appellant took admission in MBBS Course for the Session 2013-14 in the SGT University. She qualified and passed her MBBS First Professional and Second Professional with good marks. In the Third Professional Part-II examination, she appeared but was failed in General Surgery Paper A&B and Obstetrics and Gynecology Paper A&B as also the Practical paper. The appellant applied for re-checking of her answer-sheets in the above-mentioned two subjects, result of which was shown as "No change". Thereafter, the appellant participated in the Third Professional Part-II Supplementary examination but was not passed and declared unsuccessful. It is at this stage that the appellant submitted representation dated 13.10.2021 (Annexure P-9) to the respondents to grant 5 grace marks as per the policy of the University in Obstetrics and Gynecology A&B subjects as she was short by 4 marks only.

(4) When no action was taken thereon, appellant filed CWP No. 21724 of 2021 praying for issuance of a direction to decide the said representation which was allowed and directions were issued to the Vice Chancellor of the respondent-University to decide the same expeditiously and in any case, not beyond four weeks from the date of receipt of certified copy of the order. Vide order dated 01.12.2021 (Annexure P-11), her representation and the claim made therein was rejected on the ground that as per the Ordinance of the University and Regulations of the National Medical Commission, there is no provision for re-evaluation for MBBS Programme and also for the reason that the appellant had failed in two subjects and grace marks can be awarded when a student is failed in one paper only. Thereafter, representation dated 14.12.2021 (Annexure P-12) was made for arrangement for re-checking of the answer sheets of the appellant in MBBS-Third Professional (Part-II) Supplementary Examination, July 2021 in the above-mentioned two subjects as also Practical paper by an examiner from any other independent University/Medical College other than the SGT University at the cost to be borne by the appellant.

(5) When no response was received, appellant had filed CWP No. 26812 of 2021 which was disposed of by this Court vide order dated 05.01.2022 (Annexure P-13) directing the Vice Chancellor to consider the claim of the appellant within four weeks from the date of receipt of certified copy of the order, which claim has also been

rejected on the same grounds as was earlier mentioned vide order dated 18.01.2022 (Annexure P-14).

(6) On these factual assertions, learned senior counsel for the appellant has stressed upon the facts that the action of the respondents is arbitrary, unreasonable and unjustified when the appellant has only requested for re-evaluation of her answer sheets. The appellant was ready to bear the costs and, therefore, there would have been no burden upon the respondent-University.

(7) Another aspect, which has been pressed into service, is that there was mala-fide on the part of the Head of the Department of Surgery as the appellant had, when her attendance had wrongly been shown short, filed a complaint in October, 2019 to the Dean of the University in this regard leading to the attendance of the appellant being made good. From that time onwards, the Head of the Department of Surgery had personal enmity against her. Similarly, against one Bindu Yadav, Professor of Obstetrics and Gynecology, a complaint had been filed by the appellant as she was degraded and taunted upon her personality.

(8) Learned senior counsel for the appellant has further submitted that the students of the University are being victimized falsely and harassed on one pretext or the other to exploit them. In any case, it has been asserted by him that this is a fit case where the Court should exercise its jurisdiction to set aside the impugned orders and to issue the writ of mandamus as prayed for.

(9) We have considered the submissions made by the learned senior counsel for the appellant but do not find ourselves in agreement with the said submissions as the education and training of MBBS as also the examinations and the conduct thereof including the award of grace marks etc. is governed by the Ordinance of the University, which is an admitted position. Ordinance of the University, which deals with the award of grace marks, is 5.38.1, which reads as follows:-

“5.38 Award of Grace Marks

5.38.1 Unless specified otherwise in any other Ordinance, Grace Marks may be given to the candidates for various examinations, to the extent and in the manner given below:

(a) A candidate who fails in one or more paper(s)/ subject(s) (Written, Practical, Sessionals/Internal Assessment or Viva-Voce) and/or in the Aggregate shall be given Grace Marks

up to 1% of the aggregate marks (excluding the marks for Internal Assessment/Sessional (s) of the paper(s)/subject(s) of the examination, if by the addition of these marks he/she can pass the examination or be placed in compartment or earn exemption. However, if such a candidate, after ascertaining from the D.M.C./University that he/she has been given Grace Marks, represents, against the Grace Marks awarded to him/her, the same shall be withdrawn and his/her result revised. The option once exercised shall be final. The request of the candidate for withdrawal of Grace Marks must reach the Controller of Examinations within one month of the dispatch of the Detailed-Marks- Cards/Certificates by the University, after which no request will be entertained.

(b) However, in respect of MBBS and BDS, the student shall be entitled to grace marks up to 1% of the aggregate marks of the concerned examination provided that no one shall be given grace marks beyond 5 in a subject/paper. The un-availed grace-marks will be carried forward for the subsequent examination of the class concerned.”

(10) A perusal of above would show that Clause (b) of Ordinance 5.38.1 deals with the MBBS and BDS Courses. According to this Clause, a student is entitled to grace marks up to 1% of the aggregate marks of the concerned examination. Proviso thereto is that no student shall be given grace marks beyond 5 in a subject/paper. It needs to be mentioned here that National Medical Commission (erstwhile Medical Council of India) Regulations on Graduate Medical Education, 1997, which have been notified, relate to the award of grace marks. At Sr. No. 13 (10), it reads as follows:-

“The grace marks up to a maximum of five marks 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.”

(11) A perusal of the above would show that the University can grant maximum 5 marks at its discretion to a student who has failed only in one subject and has passed in all other subjects, meaning thereby that passing in all subjects except one is a condition precedent for entitlement of a student for grant of grace marks and that too, up to maximum of 5 marks in one subject only.

(12) Ordinance 5.38.1 starts with the words 'Unless specified otherwise in any other Ordinance' and thereafter, goes on to deal with the grant of grace marks. Clause (b) of Ordinance 5.38.1 would, therefore, be subservant to and will give way when it comes to the grant of grace marks.

(13) As per the Regulations issued by the National Medical Commission, which is the Apex Regulatory Body for MBBS and BDS, the said Regulation at Sr. No. 13 (10), as reproduced above, would be applicable, meaning thereby that the appellant can only be granted 5 marks in total and that too, in one subject provided she had cleared the other subjects as well. Unfortunately, she has failed in two subjects i.e. General Surgery A&B and Obstetrics and Gynecology A&B. While passing the order dated 01.12.2021 (Annexure P-11), the Vice Chancellor of the University has, in a tabulated form, mentioned the result of both the subjects in which the appellant had failed, which reads as follows:-

Sr. No.	Subject code	Subjectname	Maximum marks	Marks secured	Additional marks required for passing
1	01010401	General Surgery A&B	170 (Theory)	75	10
2	01010410	Obstetric and Gynecology A and B	130 (Theory) 70 (Practical)	61 24	15 (04+11)

(14) In the light of the above, since the appellant has failed in two subjects, she is not eligible for grant of grace marks as per the MCI Regulations on Graduate Medical Education, 1997 which enables awarding of maximum of 5 marks in one subject only and that too, if the student has passed in all subjects. Even as per Clause 5.38.1 of the University Ordinance, the appellant can be awarded 1% of the aggregate marks which is again subject to maximum of 5 marks in one subject. Since in General Surgery A&B Paper, the appellant is short by 10 marks and in Obstetrics and Gynecology, she is short by 15 marks (4 Theory, 11 Practical), she does not qualify in either of the papers. On merits, therefore, the claim of the appellant for grant of grace marks is not sustainable.

(15) As regards the claim of the appellant for re-evaluation of her two papers by getting those checked through an independent

examiner, the said claim can also not be accepted as the Ordinance of the University relating to the provision of re-checking/re-evaluation of the answer books do not provide for any provision for re-evaluation of the same rather it specifically states in the negative. Ordinance 5.18 reads as follows:-

“5.18 Rechecking/re-evaluation of answer books

5.18.4 There shall be no re-evaluation in respect of the following:

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- (d) Laboratory/Practical examination, viva-voce/sessional, thesis/dissertation evaluation and project report evaluation etc.”

(16) A perusal of the above would show that as far as MBBS, BDS and MDS examinations are concerned, there is no provision for re-evaluation. It may be pointed out here that in the Regulations of the National Medical Commission (erstwhile Medical Council of India), there is no provision for re-evaluation for MBBS Programme. Therefore, the said request/claim being not supported by any provision of the Statute cannot be accepted. As regards re-checking, the said request of the appellant had been accepted but there has been no change in the marks.

(17) As regards the assertion of the mala-fide alleged against the Head of the Department of Surgery as also one Professor of the Obstetrics and Gynecology is concerned, firstly, both of them are not a party to the writ petition or the appeal and secondly, the material, on the basis of which this allegation is based, does not reflect such a situation. The said ground, therefore, is without any basis.

(18) The plea of the action of the respondent-University being arbitrary does not have any legs to stand on as the claim, which has been made by the appellant, is dependent upon the statutory provisions, which, in this case, would be the Ordinance of the University and the Regulations of the National Medical Commission (erstwhile Medical Council of India), which, as found above, do not



support the claim of the appellant.

(19) In the light of the above, we do not find any ground to interfere with the order passed by the learned Single Judge dated 09.02.2022 in the writ petition preferred by the appellant dismissing the same.

(20) The appeal being devoid of merit stands dismissed.

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*Payel Mehta*