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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE P. KRISHNA BHAT

WRIT PETITION NO.1120 OF 2022 (EDN-RES)
CONNECTED WITH
WRIT PETITION NO.1160 OF 2022 (EDN-RES)

IN W.P. NO.1120/2022:
BETWEEN:

MR. DASARI CHAKRADHAR
S/O MR. D.S.S.V. TRINADHA
BENGALURU-560 090.

... PETITIONER

(BY SRI ABHISHEK MALIPATIL, ADV.)

AND:

THE REGISTRAR (EVALUATION)
RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES,
4TH T BLOCK,
JAYANAGAR,
BENGALURU-560 070.

... RESPONDENT

(BY MS. FARAH FATHIMA, ADV.)

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O R D E R

These two petitioners are Phase III - Part II (4th year) MBBS students who have taken supplementary examinations for four subjects each in October 2021 held by the respondent-University.

2. Part of the examinations which the petitioners were required to take in fulfillment of Phase III - Part II (4th year) MBBS is the clinical/practical examinations.

3. The short grievance of the petitioners is that on account of examiners appointed by the respondent-University acting in violation of the Guidelines for the Conduct of Clinical Examinations for MBBS examinations - October 2020 (Annexure-D to Writ Petition 1120 of 2022 and Annexure-C to Writ Petition 1160 of 2022), the petitioners were shown as failed in the examinations and on account of the same, they were made to take examinations as repeaters, which is illegal.

4. The relevant Guidelines read as follows:

"Guidelines to Conduct of Clinical Examinations for MBBS examinations – October 2020

General instructions:

- *The Marks awarded by every examiner for each component such as Clinical case (Short case, Long case), Practical activity etc., to be entered in the place specified for entering the marks in the answer booklet.*

- *Individual examiner's marks awarded for every component to be maintained for the purpose of records.*

- *In case, marks awarded to any candidate is less than 50% of total marks prescribed for the practical's then it is mandatory to enter remarks in answer booklet of that candidate as specified in it. The same Answer booklet to be signed by all the examiners appointed.*

- *In case, if any college is attached to other college center for conduct of Practical examinations in the Orthopedics subject the Internal Examiner are informed to sign for their respective college Students only in Practical Answer Booklet/Viva-voce Sheet and Online freeze Copy of Marks sheet.*

- *Theory Answer booklet Valuations of all the internal and external examiners appointed for practical examinations is mandatory. Further it is the responsibility of Director/ Dean/Principal/Chief Superintendent to ensure the same."*

5. It is crystal clear that as per the Guidelines aforementioned which is binding on the respondent-University for the conduct of Clinical examinations, each of the four examiners holding Clinical examinations are required to make an entry of the marks awarded by them (Short case, Long case) in the answer booklet furnished to them. The copies of practical answer booklets made available by the respondent-University to the petitioner-

Dasari Chakradhar is produced at Page No.16 (Long case) and Page No.21 (Short case) in Writ Petition No.1120 of 2022 and that provided to the petitioner-Shashi Kumar is produced at Page No.15 (Long case) and Page No.23 (Short case) in Writ Petition No.1160 of 2022. Similarly, the contention of the learned counsel for the petitioners is that in regard to assessment made by each of the examiners in the practical answer booklet against Sl. Nos. of each of the examiners entry of appraisal of the performance of the candidates should be made both in figures and in words for particular case. In respect of petitioner-Shashi Kumar, certain figures are entered in the practical answer booklet (Page No.15). Reading of the entries made in regard to appraisal by each of the examiners show that entries with reference to the marks awarded were the total number of marks to the Long case and not the entries of marks awarded by each of the examiners. This is in violation of the requirement under the guidelines that in the first instance, each of them has

to enter the marks that he or she has awarded separately and the total marks should be arrived at by taking average of the marks so awarded by each of them. With regard to both petitioners, practical answer booklets are left blank.

6. Guidelines issued are a procedural framework provided by the respondent-University for the purpose of assessing the performance of the candidates and in this case, examiners have demonstrably failed to abide by the said procedure. These guidelines are not mere superfluous verbiage for filling the pages of a Brochure of the University. It is a framework of solemn significance with regard to conduct of Clinical examinations in fulfillment of the course content of MBBS studies. It is not unoften that students of MBBS and MD courses complain about the malpractices by those in-charge of conduct of Clinical examinations. One of the most frequently heard complaints is that the Professors in-charge of the Clinicals often form a narrow syndicate for helping or salvaging the

careers of favoured candidates and scuttling the careers of those who are out of favour with them. It is precisely to keep the streams of Clinicals examination unpolluted, the guidelines have been framed to make the entries of marks awarded by each of the examiners then and there separately. Therefore, University *"must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those Standards on pain of invalidation of an act in violation of them."* This rule was enunciated felicitously by Mr. Justice Frankfurter in **Viteralli v. Seton**[1] as follows:

> *"An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a define procedure, even though generous beyond the requirement that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of administrative*

[1] 359 U S. 535: LAW Ed (Second series) 1012

law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

7. Since the assessment, as per the practical answer booklet, is not made in accordance with the procedural guidelines as contended by the learned counsel for the petitioners in these cases, it is open to be contended that the examiners did not actually assess the performance of the petitioners and the same was filled up later by someone else. In the circumstances, it is unjust on the part of the respondent-University to treat the petitioners as repeaters in spite of the petitioners participating in examinations held for October-2021 and therefore, they should be permitted to take up the examinations again and result shall not be taken as that of repeaters. In other words, it is required to be treated by the respondent-University as a result of examinations of October-2021.

8. Accordingly, the writ petitions are ***allowed*** with a direction to the respondent-University to hold fresh practical examinations for failed subjects of Surgery and Pediatrics respectively for the petitioners within three weeks' from the date of receipt of a certified copy of this order.

9. Before parting with this case, it is necessary to observe that examiners appointed by the respondent-University seem to be routinely violating the guidelines issued by the University for holding the Clinicals examination. As a matter of fact, the learned counsel brought to my notice the order dated 22-12-2020 in Writ Appeal No.615 of 2020 (EDN-RES) ***(RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES v. MR. RAMEGOWDA Y. AND OTHERS),*** wherein also this Court had an occasion to notice such malpractice and direct re-conduct of practical examinations. It is now time that the respondent-University wakes up to reality

and proceeds to take action against delinquent examiners by blacklisting them, or by holding departmental proceedings so that this kind of malpractices do not recur. Future conduct of examination is concerned, the respondent-University shall take precautionary measures and ensure that malpractices do not take place causing the students to take examination over and over. It is open to the respondent-University to device procedural safeguards to ensure compliance of the directions in this order.

Sd/-
JUDGE

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