

(2007) 02 AHC CK 0124**Allahabad High Court****Case No:** None

Anil Kumar Maurya

APPELLANT

Vs

The Vice Chancellor, Dr. Bhimrao
Ambedkar University and
Principal, Sarojini Naidu Medical
College

RESPONDENT

Date of Decision: Feb. 1, 2007**Citation:** (2007) 2 ADJ 703 : (2008) 6 AWC 6492**Hon'ble Judges:** Vineet Saran, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

Vineet Saran, J.

Heard Sri A.K. Verma, learned Counsel for the petitioner as well as Sri Anil Tiwari, learned Counsel for the respondent-University. Pleadings between the parties have been exchanged and with their consent, this writ petition is being disposed of at this stage.

2. The petitioner appeared in M.B.B.S. Final Professional Examination, 2006 and was declared pass and the mark-sheet was issued to him on 28.3.2006. Thereafter, for seeking admission in higher classes and for continuing his internship, the petitioner approached the respondent-University for issuance of the final or provisional certificate of having passed the M.B.B.S. examination. When the same was not issued to the petitioner, he filed this writ petition with the prayer for a direction for issuance of the final certificate/degree and for a further direction to the respondents not to interfere in the completion of his internship.

3. Since the mark-sheet had been issued on 28.3.2006, meaning thereby that the petitioner had already been declared pass, this Court, on 21.11.2006 directed the respondents to issue the provisional degree and permit the petitioner to continue

his internship, or show cause by 19.12.2006. In response, the respondent-University filed a counter affidavit on 5.1.2007. The case of the respondent is that the petitioner was declared pass only after having been awarded 5 (five) grace marks but according to the Rules, in the case of the petitioner, only 2 (two) grace marks ought to have been awarded, and if done so, the petitioner would not pass. It has also been stated that 5 grace marks were awarded because of the mistake on the part of the respondent-University in interpreting the Rule relating to grace marks. It is, however, not denied that according to the Rules, the University is allowed to award grace marks up to the extent of 5. It has further been stated that after the said discrepancy was noticed by the University, a fresh mark-sheet has been issued to the petitioner on 18.12.2006, in which only 2 (two) grace marks have been awarded, and thus the petitioner has now been declared fail.

4. It is relevant to note that correction in the mark-sheet was made by the respondent-University after nine months of the declaration of the results and after filing of the writ petition in November, 2006. It is not stated in the counter affidavit as to why the provisional certificate was not issued to the petitioner immediately after the issuance of the mark-sheet in March 2006. It appears that it was only after the filing of the writ petition that the process of issuance of degree/certificate was initiated by the respondent-University and the mark-sheet was corrected, and the petitioner was declared fail. It is not disputed that as per their own Rules, the maximum number of grace marks, which a candidate can be awarded, is up to 5 (five), but now the University has taken a stand that as per the relevant Rule, in the case of the petitioner only 2(two) grace marks ought to have been awarded. Considering the fact that once 5 (five) grace marks had been awarded to the petitioner in pursuance to which the petitioner's mark-sheet was issued and he was declared pass, and the Rule does provide that for grant of upto 5 (five) grace marks to a candidate, in my view, recalling or withdrawing the awarding of said 5 (five) grace marks would now not be justified, especially without giving any opportunity to the petitioner and after the mark-sheet had already been issued declaring the petitioner pass in the examination. It is the respondent-University which had itself, after interpreting the Rules, awarded the grace marks and once a benefit, which is permissible under the Rules of the University itself, had been granted to a candidate, withdrawal of the same would not be justified, more so when in the counter affidavit it has not been stated as to under what circumstances and by whom such mistake of awarding extra grace marks had been done and as to what action has the University taken against the erring official/officials and also why the University waited for the petitioner to file a writ petition and then review the matter and for nine months, neither issued the provisional certificate/degree nor communicated any order for making any such correction in the mark sheet of the petitioner.

5. A candidate would be entitled to be given the provisional certificate, if not the final certificate/degree, immediately after the issuance of the mark-sheet. No

plausible explanation has been given by the respondent-University for not having issued the provisional certificate to the petitioner immediately after declaration of result and issuance of mark sheet on 28.3.2006. Such certificate would be required by the candidates for seeking admission in higher classes and if the same is not issued immediately, the interest of the candidate would certainly be jeopardized. In such view of the matter, non issuance of the provisional certificate to the petitioner does not appear to be justified. The subsequent mark-sheet issued to the petitioner after the filing of the writ petition whereby the petitioner has been declared fail, is also unjustified and is, thus, quashed. The mark-sheet issued to the petitioner initially on 28.3.2006 would be treated as the correct mark-sheet and on such basis the petitioner would be entitled to provisional/final degree/certificate, which shall be issued to the petitioner within three weeks from today.

6. Accordingly, this writ petition stands allowed to the extent indicated above. No order as to cost.