

Devindra Kumar v. Panjab University, Chandigarh (J. L. Gupta, J.)

proceedings of the present petition, it has been brought to my notice that full back wages have not been paid to him so far. If that is so, the petitioner-management of Bank of India is directed to clear the arrears of his salary, that is, full back wages admissible to him under the rules, right from the date of termination of his services, that is, 26th November, 1983, till the date of reinstatement, within a period of two months, failing which the petitioner-management shall have to pay interest at the rate of 12 per cent per annum on the amount due, from the date it became due till the date of actual disbursement. The respondent shall also be entitled to the costs of this petition which are quantified at Rs. 1,000.

R.N.R.

Before : *Jawahar Lal Gupta, J.*

DEVINDRA KUMAR,—*Petitioner.*

versus

PANJAB UNIVERSITY, CHANDIGARH,—*Respondent.*

Civil Writ Petition No. 1322 of 1987.

29th April, 1991.

Constitution of India, 1950—Art. 226—Panjab University Calender, Vol. III—P. 413, rl. 9—Panjab University Regulations—Regl. 27.1, 27.2 & 27.3—Award of grace marks—Candidate re-appearing in some papers of M.A. II to improve upon his previous performance—In reappear result, candidate securing 16 additional marks in M. A. II—Not satisfied, candidate applying for re-evaluation of both reappear papers—As a result of re-evaluation in one paper, marks reduced by 8—University declaring result of candidate with an aggregate of 384 marks on the basis of result of re-evaluation—Candidate thereafter applying for award of 8 grace marks—University rejecting the claim—Claim for award of 8 grace marks is legally unsustainable in view of rule 9—Since the score had decreased by more than 5 per cent, the University was justified in declaring the result as reduced by re-evaluation—Candidate's claim for award of grace marks upto 1 per cent of total marks of M.A. examination is unjustified since he had appeared in two papers of M.A. II only—Candidate is entitled to 1 per cent of the marks of the examination in which he reappears—Since the grant of 1 per cent grace marks in the two reappear papers would not lead to any change of result, the candidate is not entitled award of grace marks—Award of grace marks should suffer strict construction—Courts to lean in favour of merit rather than agree to award grace marks freely.

Held, that a perusal of the rule 9 would show that the result of a candidate is changed on re-evaluation if the score increases or decreases by 5 per cent or more of the maximum marks allotted to the concerned paper. The petitioner had sought re-evaluation in two papers. In Paper I his score had remained unchanged at 48. In paper IV his score was reduced from 51 to 43. The difference was of 8 per cent marks. The score had decreased by more than 5 per cent and accordingly the University was justified in revising his result and reducing his aggregate marks from 392 to 384. Even if it is held that the petitioner is entitled to the award of 8 grace marks, his total score would only come to 392 marks, which would not help him to achieve the desired result viz. a second division in M.A.

(Paras 8 & 9)

Held, that under Regulation 27.3, a candidate is entitled to 1 per cent of the marks "in the Part in which he re-appears." Literally construed, it would mean that if a candidate reappears in all the papers of a Part viz. Part I or II, he would be entitled to 1 per cent of the total aggregate marks of the Part, which are 400. The crucial words in my view are "in which he reappears." The regulations permit a candidate to re-appear in one Part; in both the parts or in some papers only. The intention of the rule making authority clearly is to give him grace marks upto 1 per cent of the total marks of paper/s, in which he has re-appeared.

(Para 10)

Held further, that the University Regulations, which are statutory provide for the award of grace marks. Still the fact remains that this is a concession. The award of concession can have consequences in future career of the students. One candidate may secure 400 marks on his own merit. Another candidate who secures 392 marks may in a certain situation get as many as 8 grace marks and succeed in having his aggregate score raised to 400 marks. The result would be that the better effort of the first candidate would be brought down to the same level as that of the second candidate. Such a course of action leads to inequitable results. As such, a provision relating to the award of grace marks should be strictly construed and unless a benefit is clearly admissible a candidate should not be awarded grace marks. Even otherwise we should not let the grace become disgraceful. The sanctity of the University Examination compels Courts to lean in favour of merit rather than agree to award grace marks freely.

(Para 11)

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that after perusing the record of the case of the petitioner :

- (i) *A writ of mandamus or any other writ or direction as this Hon'ble Court may deem fit be passed directing the respondents to give the benefit of 8 grace marks to the petitioner as given to other candidates similarly placed;*

Devindra Kumar v. Panjab University, Chandigarh (J. L. Gupta, J.)

- (ii) *that the whole record of the case concerning the petitioner be summoned from the University;*
- (iii) *that filing of certified copies of Annexures be dispensed with as those are in possession of the respondents/ University;*
- (iv) *cost of the writ petition be also awarded.*

Dr. M. S. Rahi, Advocate, for the petitioner.
Sanjay Majithia, Advocate, for the respondent.

JUDGMENT

Jawahar Lal Gupta, J.

(1) Having failed to persuade the University to award 8 grace marks in the hope that the petitioner shall be able to secure a Second Division in the M.A. Examination, he has approached this Court through the present writ petition.

(2) Brief reference to the sequence of events is necessary. The petitioner appeared in M.A. (English) Part I Examination in April, 1982. He secured 192 marks out of 400. He then appeared in M.A. Part II examination in April, 1983 and secured 184 marks out of 400. He thus secured a total of 376 marks out of 800.

(3) Under Regulation 13.1 of the Panjab University Regulations, a candidate who has qualified for the award of M.A. degree from the Panjab University is allowed to re-appear as a private candidate in the paper/s in which he wants to improve upon his previous performance. The petitioner appeared in two papers viz. I and II of M.A. Part II for improving upon his previous performance in July, 1984. He succeeded in securing 16 extra marks. As a result he secured 200 marks out of 400 in M.A. Part II giving him an aggregate of 392 marks out of 800, instead of the total of 376 marks, which he had secured in the year 1983. Thereafter, the petitioner applied for re-evaluation of his two papers of M.A. Part II in which he had appeared in April, 1984. As a result of re-evaluation his score in Paper I remained unchanged, but in the other paper viz. Paper IV his marks were reduced from 51 out of 100 to 43 out of 100. Consequently, the University declared his result with an aggregate of 384 marks out of 800 instead of the aggregate of 392 marks. The petitioner applied to the University for award of 8 grace marks. The claim of the petitioner was rejected by the University,—*vide*

order dated January 13, 1986. a copy of which has been produced by the petitioner as Annexure P.3. It is apt to quote the order, which reads as under :—

“Reference your letter dated 31st December, 1985. The Regulation for award of grace marks for higher Division is separate for the candidates appearing in the examinations for improvement of their performance after passing M.A. Examination. They are governed under Regulation 27.3 at page 26 of P.U. Cal. Vol. II, 1984 reproduced below :—

“A candidate who reappears in M.A., M. Com., M.A. (Physical Education) or M. Lib. Sc. examination for purposes of improving the division may be given grace marks upto 1 per cent of the total marks as follows :—

- | | |
|---|--|
| (i) A candidate who reappears in one Part only | 1 per cent of the marks in the Part in which he reappears. |
| (ii) A candidate who reappears in both the Parts. | 1 per cent of the marks of both the Parts taken together. |

Provided that no candidate shall be given more marks than the minimum that may be required for securing the higher division.”

Since in July, 1984 you appeared only in two papers in M.A. Part II Examination carrying 200 marks for the purposes of improvement of your performance, you were entitled to only 2 grace marks for awards of higher division. Your plea that you should have been awarded 8 marks does not have the sanction of the Regulation and therefore cannot be accepted.

(2) The rules relating to re-evaluation of Answer Books are applicable to all the candidates seeking re-evaluation of Answer Books whether they are fresh candidates or they are appearing in the M.A. examination for improvement of their previous performance. Relevant rule 9 at page 413 of P.U. Cal. Vol. III, 1981 is reproduced below :—

“The Result of a candidate will be changed on re-evaluation only if the character of result is changed. (Character

Devindra Kumar v. Panjab University, Chandigarh (J. L. Gupta, J.)

means 'Fail' to 'Pass' or 'Compartment', 'Compartment' to 'Pass' or *vice versa*, change in division, in aggregate, or position in the University merit list) or where on re-evaluation the score increases/decreases by 5 per cent or more of the maximum marks allotted to the concerned paper."

In view of the above your marks for M.A. Examination July, 1984 (Improvement) were correctly revised from 392 to 384 as a result of re-evaluation of your Answer Books. The candidates appearing in different examinations are governed under the rules/Regulations in force which cannot be changed in their favour according to the circumstances suitable to them."

(4) Aggrieved by the action of the University in declining to award grace marks to the petitioner, he has filed the present petition. The order reproduced above has been challenged being violative of the Regulations of the Panjab University. The only prayer made in the petition is for the award of 8 grace marks.

(5) In response to the notice issued by this Court, a written statement has been filed on behalf of the solitary respondent viz. the Panjab University. The claim of the petitioner has been controverted and it has been pleaded that the benefit claimed by the petitioner is not admissible under the Rules/Regulations.

(6) I have heard Dr. M. S. Rahi, learned counsel for the petitioner and Mr. Sanjay Majithia, learned counsel for the University.

(7) The first issue that arises for consideration is regarding the total marks secured by the petitioner. The sequence of events, as detailed above, shows that when the petitioner appeared in two papers of M.A. Part II for improving upon his earlier performance, he secured 16 marks above his original score of 184 marks. His total score of M.A. Part II had thus come to be 200 marks out of 400. He had secured 192 marks in M.A. Part I and thus got an aggregate of 392 marks out of a total of 800 marks. He applied for re-evaluation in the two papers, in which he had re-appeared in April 1984. As a result of re-evaluation his marks in Paper IV were reduced from 51 to 43. His total score was thus reduced from 392 to 384. Was this action of the University valid? Rule 9 relating to re-evaluation provides as under :—

"Rule 9—The result of a candidate will be changed on re-evaluation only if the character of result is changed

(Character means 'Fail' to 'Pass' or 'Compartment', 'Com.' to 'Pass' or *vice versa*, change in division, in aggregate, or position in the University merit list) or where on re-evaluation the score increases/decreases by 5 per cent or more of the maximum marks allotted to the concerned paper."

(8) A perusal of the above rule would show that the result of a candidate is changed on re-evaluation if the score increases or decreases by 5 per cent or more of the maximum marks allotted to the concerned paper. The petitioner had sought re-evaluation in two papers. In paper I his score had remained unchanged at 48. In paper IV his score was reduced from 51 to 43. The difference was of 8 per cent marks. The score had decreased by more than 5 per cent and accordingly the University was justified in revising his result and reducing his aggregate marks from 392 to 384. Nothing was brought to my notice to challenge this action of the University. It is, therefore, clear that the petitioner has factually got a score of 384 marks out of 800 and he thus really passed the M.A. (English) Examination in the third division.

(9) In this view of the matter, the claim of the petitioner with regard to the award of 8 grace marks actually becomes academic. Even if it is held that the petitioner is entitled to the award of 8 grace marks, his total score would only come to 392 marks, which would not help him to achieve the desired result viz. a second division in M.A. Irrespective of this I have examined his claim in this regard also and I find it to be wholly untenable. The relevant provisions are contained in Regulations 27.1, 27.2 and 27.3. These read as under :—

"Regulation 27.1 : (a) A candidate who appears in all subjects of an examination and who fail in one or more subjects (written, practical, sessional or *viva voce*) and/or the aggregate (if there is a separate requirement of passing on the aggregate) shall be given grace marks upto maximum of 1 per cent of the total aggregate marks (excluding marks for internal assessment) to make up the deficiency if by such addition the candidate can pass the examination. While awarding grace marks fraction working to $\frac{1}{2}$ or more will be rounded to a whole.

Provided that grace marks be also awarded to a candidate if by awarding such marks he can earn exemption or compartment in subject/s and part/s.

- (b) A candidate who reappears to clear the compartment or subject/s and part/s in which he has been declared to reappear shall be awarded grace marks up to 1 per cent of the total marks of the subject/s and part/s in which he reappears if by such addition the candidate can pass in that subject/s or part/s.
- (c) The grace marks as admissible under the Regulations be given to candidates appearing under English only Regulations and in the deficient subject/s in order to qualify for admission to higher course, but not in the additional optional subject.

Exception (i).—In the case of B.D.S. examination, however, the grace marks shall be given up to one per cent of the total marks of each subject, and not up to one per cent of the aggregate of all the subjects. In other words, each subject will be, for this purpose, a separate unit, and a candidate who fails in a subject by not more than one per cent of the aggregate marks of that subject may be given the required number of marks in order to pass in that subject.

- (ii) For M.B.B.S. examinations, no grace marks will be awarded.”

“*Regulation 27.2* : Grace marks up to one per cent of the total marks of an examination including its part/s, if any, shall be added to the total marks secured by a candidate for the award of higher class (and not for earning distinction/honours); provided that no grace marks have already been availed of for passing the examination.”

“*Regulation 27.3* : A candidate who reappears in M.A., M.Com., M.A. (Physical Education) or M. Lib. Sc. examination for purposes of improving the division may be given grace marks up to 1 per cent of the total marks as follows :—

- (i) A candidate who reappears 1 per cent of the marks in the in one part only. part in which he reappears.
- (ii) A candidate who reappears 1 per cent of the marks of both in both the parts. the parts taken together.

Provided that no candidate shall be given more marks than the minimum that may be required for securing the higher division."

(10) The petitioner claims that he is entitled to the award of grace marks up to 1 per cent of the total marks of the M.A. examination. The claim of the University is that the petitioner had only appeared in two papers of M.A. Part II viz. Papers I & IV and he was entitled to only 1 per cent of the 200 marks and no more. In my view, the stand taken on behalf of the University is in strict conformity with the regulations. The provisions of Regulations 27.1, 27.2 and 27.3 if harmoniously read mean that the candidate is entitled to 1 per cent of the marks of the examination which he actually takes. While Regulation 27.2 is applicable to a candidate, who takes the complete examination of M.A. viz. Part I and II and is general in nature, the specific provision applicable to the present case is contained in Regulation 27.3. Under this regulation a candidate is entitled to 1 per cent of the marks "in the Part in which he re-appears." Literally construed, it would mean that if a candidate reappears in all the papers of a part viz. Part I or II, he would be entitled to 1 per cent of the total aggregate marks of the part, which are 400. The crucial words in my view are "in which he re-appears." The regulations permit a candidate to re-appear in one part; in both the parts or in some papers only. The intention of the rule making authority clearly is to give him grace marks up to 1 per cent of the total marks of paper/s, in which he has reappeared. The petitioner had reappeared in two papers carrying 100 marks each. The University could, therefore, give him 2 marks, but since this did not lead to any change of result, the petitioner was not awarded any grace marks.

(11) It is no doubt correct that the University Regulations, which are statutory provide for the award of grace marks. Still the fact remains that this is a concession. The award of concession can have consequences in future career of the students. One candidate may secure 400 marks on his own merit. Another candidate who secures 392 marks may in a certain situation get as many as 8 grace marks and succeed in having his aggregate score raised to 400 marks. The result would be that the better effort of the first candidate would be brought down to the same level as that of the second candidate. Such a course of action leads to inequitable results. As such, a provision relating to the award of grace marks

Commissioner of Income Tax, Patiala v. M/s Avtar Singh & Sons,
Patiala (S. S. Sodhi, A.C.J.)

should be strictly construed and unless a benefit is clearly admissible a candidate should not be awarded grace marks. Even otherwise we should not let the grace become disgraceful. The sanctity of the University Examination compels Courts to lean in favour of merit rather than agree to award grace marks freely.

(12) In view of the above, I hold that the petitioner has secured 384 marks out of a total of 800 in the M.A. (English) Examination. He is not entitled to claim any grace marks. The order at Annexure P. 3 passed by the University is absolutely legal and valid. The writ petition is consequently dismissed. Keeping in view that it is a writ filed by a student, I do not award any costs.

R.N.R.

Before : S. S. Sodhi & N. K. Kapoor, JJ.

COMMISSIONER OF INCOME TAX, PATIALA,—Applicant.

versus

M/S AVTAR SINGH & SONS, PATIALA,—Respondent.

Income Tax Reference No. 246 of 1980.

14th May, 1991.

Income-tax Act, 1961 (XLIII of 1961)—S. 40-A (3)—Income-tax Rules, 1962—Rl. 6 DD (j)—Payment by assessee in cash to Supplier Company in contravention to S. 40-A (3)—Assessee claiming deductions on such expenditure—Assessee entitled to such deduction under rl. 6 DD (j) in exceptional circumstances, if the seller's identity is established and payments are genuine.

Held, that the identity of the party to whom payments were made is beyond question and nor is there any doubt with regard to the genuineness of the payments. There is also in addition an affidavit from the Chief Accountant of Amrit Banaspati Company regarding these payments having been received in cash and duly accounted for in the Company's Books of Account and that these payments were received in cash as money was urgently needed by the Company after banking hours and receipt of it by crossed cheque or draft would have delayed payment and caused unnecessary hurdles in the proper conduct of the Company's business. These circumstances lead to the irresistible conclusion that payment made