

the same benefits to which he was entitled while he was serving in the Market Committee, Jaitu, that is, there is continuity of service without any break and, therefore, the petitioner's rights have not been affected in any manner. In order to protect the interests of the transferred employee, provision has been made by the proviso to section 3(11) of the Act that the case of any increase or decrease of emoluments of a transferred employee shall be referred to the State Government whose decision on such reference shall be final. Under this provision the State Government can always safeguard the interests of the transferred employee. The resort had not been taken to this proviso in the present case because the emoluments of the petitioner on transfer were not decreased. The learned counsel for the State of Punjab has adopted the written statement filed by respondent 2 and is, therefore, bound by the same assurances contained in that written statement. In view of these facts, no injustice has been done to the petitioner nor have his conditions of service been changed or affected. According to section 20(4) of the Act, the post of an employee dealing with accounts is transferable within the region and it is not the case of the petitioner that he has been transferred to a Market Committee outside the region. I, therefore, find no merit in the writ petition which is hereby dismissed but without any order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

VIJAY KUMAR,—Petitioner.

versus

THE PANJAB UNIVERSITY,—Respondent.

Civil Writ No. 2341 of 1966.

February 3, 1970.

*Panjab University Calendar, 1966, Volume III, Chapter XXIX Rule 6—Grace marks—Meaning of—Whether include marks to get higher class—Candidate passing M.A. examination in lower division and re-appearing in any one part to improve division—Whether entitled to claim grace marks under rule 6(d).*

Vijay Kumar v. The Panjab University (Tuli, J.)

*Held*, that grace marks mean marks which a candidate has not earned on merits on his own performance but are awarded *ex gratia*. These are not marks awarded only to enable a candidate to pass in a certain paper or in the aggregate of an examination. Grace marks will also include marks, if permissible to be given, to enable a candidate to get a higher class. (Para 2)

*Held*, that sub-rule (d) of rule 6 of Chapter XXIX, Volume III, Panjab University Calendar, 1966, relates to a candidate, who passes the M.A., M.Sc. or M.Ed. examination originally in two parts and secures marks which are fewer than the next class. In that case if the deficiency is up to one per cent of the aggregate marks, he will be allowed the number of marks which he needs to get into the next class or division but this sub-rule has no applicability to a case where a candidate takes a second chance in order to improve his class when he has already passed the examination in some class. In that case, if by his own efforts, without any grace marks being added to the marks obtained by him, he is able to improve his class, he will be entitled to do so, otherwise he will remain in the same class in which he was before re-appearing in a particular Part of the examination. His result will remain the same as originally declared ignoring his second attempt at the examination. Hence a candidate who, having passed the M.A. examination, re-appears in any one Part to improve his division is not entitled to any grace marks. (Para 2)

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ in the nature of Mandamus or any other appropriate writ, order or direction be issued to the Panjab University directing it to declare the result of the petitioner as having passed with 400 marks in the second division in the M.A. English examination of the Panjab University held in April, 1966.*

C. L. AGGARWAL, ADVOCATE, for the petitioner.

N. K. SODHI AND A. S. ANAND, ADVOCATES, for the respondent.

### JUDGMENT

TULI, J.—The petitioner passed his M.A. Examination in English from the Panjab University in April, 1965, securing 367 marks and was thus placed in third class. In order to improve his prospects of service, he again took Part II Examination in 1966 to improve his class. This was permissible to him under regulation 16 of the Regulations framed by the Panjab University under section 31 of the Panjab University Act. In that examination the petitioner secured 207 marks out of 400. In Part I Examination he had already secured 186 marks. Adding the two the total came to 393 out of 800 marks,

with the result that the petitioner again got third class instead of second class. The petitioner claimed that he was entitled to seven marks to be added to the aggregate of both Part I and Part II Examinations to award him a higher class under rule 6(d) in Chapter XXIX of the Panjab University Calendar, 1966, Volume III. Rule 6 deals with the moderation of results with regard to M.A., M.Sc. and M.Ed. examinations and reads, as under:—

“6. (a) A candidate shall be declared to have passed the examination if he has secured at least second class marks in the aggregate (in the whole examination) even if he has failed in one or more papers.

*Note.*—This does not apply to M.Sc. examination.

(b) A candidate who fails in one or more papers or in the aggregate shall be given grace marks up to 1% of the total aggregate marks of the Part I or Part II examination, as the case may be, to the best advantage of the candidate, in order to be declared to have passed the examination.

(c) Grace marks shall not be allowed to a candidate who reappears only in one Part of the M.A. examination for purposes of improving the division.

(d) Up to one per cent of the total marks of Parts I and II examinations (i.e. up to 8 marks) shall be added to the aggregate of both Part I and Part II examinations to award a higher class to a candidate, provided, that grace marks have not already been given for passing the examination in Part I or Part II.”

(2) Sub-rules (a) and (b) of rule 6 have no applicability to the petitioner. The question to be decided is whether the petitioner's case is covered by sub-rule (c) or sub-rule (d) of rule 6. The learned counsel for the petitioner vehemently submits that it is sub-rule (d) which applies and not sub-rule (c), while the learned counsel for the respondent contends that sub-rule (c) applies and not sub-rule (d). The argument of the learned counsel for the petitioner is that sub-rule (c) does not apply because grace marks are those marks which are given to a candidate in order to enable him to pass the examination and not to improve his class, to which sub-rule (d) applies. I regret my inability to agree to this submission.

Grace marks mean marks which a candidate has not earned on merits on his own performance but are awarded *ex gratia*. These are not marks awarded only to enable a candidate to pass in a certain paper or in the aggregate of an examination. Grace marks will also include marks, if permissible to be given, to enable a candidate to get a higher class. It is true that in sub-rule (c) the words 'grace marks' are used, which are not used in sub-rule (d). Sub-rule (c) is specific with regard to a candidate who re-appears in one Part of the M.A. examination for purposes of improving the division and that specific sub-rule is attracted to the facts of the present case to the exclusion of the general rule stated in sub-rule (d). Sub-rule (d) of rule 6, in my opinion, relates to a candidate who passes the M.A., M.Sc. or M.Ed. examination originally in two Parts and secures marks which are fewer than the next class. In that case if the deficiency is up to one per cent of the aggregate marks, that is eight, he will be allowed the number of marks which he needs to get into the next class or division; for example, if second class starts with 400 marks and a particular candidate obtains marks between 392 and 399, he will be given the requisite number of marks in order to make the total 400 so that he can be placed in second class instead of third class. Similarly, if class first starts with 520 marks, any candidate getting marks between 512 and 519 will be given the requisite number of marks to make the aggregate 520 so as to place him in class first, but this sub-rule has no applicability to a case where a candidate takes a second chance in order to improve his class when he has already passed the examination in some class. In that case, if by his own efforts without any grace marks being added to the marks obtained by him, he is able to improve his class, he will be entitled to do so, otherwise he will remain in the same class in which he was before re-appearing in a particular Part of the examination. In that case his result will remain the same as originally declared ignoring his second attempt at the examination. In the instant case, applying the above principle, I hold that the petitioner was not entitled to any grace marks and since the marks secured by him in the second Part added to the marks obtained by him in the first Part do not improve his class his original result, wherein he had secured 367 marks, will remain effective and the examination in Part II taken by him in 1966 is to be ignored. He is not entitled to any grace marks to be added to 393 secured by him in order to place him in second class. The reason is that it is the option of a candidate

to take the examination second time, when he has already once passed it in order to improve his class. If he is able to do so he will get the benefit of the higher class which he must secure without any grace marks given by the University. There is no point in giving a second opportunity to a candidate if he is still to be given grace marks by the University.

(3) For the reasons given above, there is no merit in this writ petition which is dismissed, but as the matter was *res integra*, I leave the parties to bear their own costs.

N.K.S.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

HOSHIAR SINGH,—Petitioner

*versus*

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 2102 of 1968.

February 4, 1970.

*Commission of Enquiry Act (LX of 1952)—Section 3—Criminal trial pending regarding an occurrence—Appointment of commission of inquiry about the same matter during the pendency of such trial—Whether proper—Inquiry—Whether to be stayed till the completion of the trial.*

*Held*, that during the pendency of a criminal trial regarding an occurrence a parallel enquiry cannot be conducted by Government under section 3 of the Commission of Enquiry Act, 1952, into the matter relating to incidents relating to that trial. If the matters which an Inquiry Officer is going to enquire into and that pending for trial before a Court are the same or more or less the same, the holding of inquiry, in face of the same matters being before the Court, would amount to contempt. Hence it is not proper that during the pendency of criminal trial, a commission of inquiry be appointed about the same matter. Such an inquiry has to be stayed till the completion of the trial (Paras 3 and 4)

*Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 27th October, 1969 to a Division Bench for decision of an important question of law involved in the case. The case was finally decided by the Division Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice S. S. Sandhawalia on 4th February, 1970.*