

Kumar Satyawadi's case (1), (*supra*) only lays down some of the broad guidelines which should be kept in view for coming to the conclusion whether a particular authority is a Court or not. As I have already pointed out that since the parties have no right to produce evidence before the Settlement Officer, and he is creation of the Statute for the object of consolidation of holdings, it cannot be said that the Settlement Officer is a Court within the meaning of section 195 of the Code of Criminal Procedure. I, therefore, hold that the Settlement Officer is not a Court within the meaning of section 195 of the Code of Criminal Procedure.

(9) As far as the second contention of the learned counsel for the petitioner that the learned Additional Sessions Judge had no power to set aside the order of the learned trial Magistrate and order further enquiry is concerned, in my opinion, even if it is held in favour of the petitioner, the same would not affect the ultimate decision of this petition for the simple reason that I having come to the conclusion that the Settlement Officer under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, is not a Court within the meaning of section 195 of the Code of Criminal Procedure, the order of the learned trial Magistrate is clearly without jurisdiction and the matter being before me in revision, I am bound to set aside the order of the learned trial Magistrate. Since I have found that the order of the learned Magistrate is without jurisdiction, the said order is quashed and the learned trial Magistrate is directed to proceed with the complaint on merits. The petition stands dismissed.

N.K.S.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SEWA RAM SINGAL—Petitioner.

versus

The Punjabi University, Patiala, etc.—Respondents.

Civil Writ No. 1208 of 1971.

May 26, 1971.

Punjabi University, Patiala, Calendar, Volume II, 1966-67 Edition—Rules 27(A) and 27(B)—Final examination for degree of Bachelor of

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Medicine and Surgery—Requirement to obtain 50 per cent marks—Whether is with respect to each subject of the Examination—Aggregate of the marks in all the four subjects of the written and oral papers as well as of the clinical examination and internal assessment—Whether can be put together to determine 50 per cent marks —Rule 27(A)—Whether can be interpreted with reference to rule 27(B)—After obtaining all the grace marks, candidate not fulfilling the requirement of rule 27(A)—Rule 27(B)—Whether can be resorted to.

Held, that Rule 27(A) of the Punjabi University Calendar, Volume II, 1966-67 Edition, is quite clear that the requirement to obtain 50 per cent of the aggregate marks is with respect to each subject of the Final Examination for degree of Bachelor of Medicine and Surgery, while the minimum of the 50 per cent marks assigned to the Clinical Examination including Internal assessment are to be obtained in order to pass in that part of the subject. Similarly 50 per cent of the aggregate marks assigned to the written and oral examination put together have to be obtained in each subject. (Para 2)

Held, that the intention of the framers of rules 27(A) and 27(B) is quite clear that the candidate has to obtain 50 per cent marks in the Clinical examination and Internal assessment put together in each subject and also 50 per cent marks of the written and oral examination of each subject. The words "each subject" have to be read in all the three clauses of rule 27(A) prescribing the minimum number of marks to be obtained by the candidate in order to pass the examination. The fact that instead of mentioning the Final Examination in Medicine in rule 27(A), all the subjects of that examination have been mentioned therein is indicative of the fact that 50 per cent marks, as stated in each of the three clauses, are to be obtained with regard to and in each subject. The marks of the written and oral examination in all the four subjects cannot be aggregated together to see whether a candidate has secured 50 per cent marks. Similarly, the aggregate of the marks obtained by a candidate in Clinical examination and internal assessment of all the four subjects cannot be considered together. (Para 3)

Held, that Rule 27(A) is not to be interpreted with reference to rule 27(B) which will come into play only if by getting grace marks the candidate is able to fulfil the requirement mentioned in rule 27(A). If by obtaining the entire number of grace marks he is entitled to, he cannot fulfil the requirement of rule 27(A), then rule 27(B) cannot be resorted to. (Para 5)

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari, Mandamus or any other suitable writ, direction or order be issued quashing the order dated 24th February, 1971, and the University authorities be directed to declare him to have passed the

M.B.B.S. Course, with a further direction to grant him all the consequential benefits.

J. L. GUPTA AND CHANDER PARKASH SAPRA, ADVOCATES, for the petitioner.

KULDIP SINGH, ADVOCATE, for the respondent.

JUDGMENT.

TULI, J.—(1) The petitioner appeared in the Final Professional Examination for the Degree of Bachelor of Medicine and Bachelor of Surgery (M.B.B.S) held in December, 1970. The subjects prescribed for that examination are—

- (i) Medicine and Preventive Medicine;
- (ii) Midwifery and Gynaecology;
- (iii) Surgery and Operative Surgery; and
- (iv) Diseases of Eye, Ear, Nose and Throat.

Each subject carries 400 marks and is divided into two parts, one consisting of written and oral examination and the other of Clinical examination and Practical. The written and oral part consists of four written papers of 35 marks each, oral examination has 40 marks and Internal assessment carries 20 marks. The total marks of this part are thus 200 out of which the candidate must secure 50 per cent marks, that is, 100, in order to pass the examination. The second part consists of Clinical examination carrying 140 marks, Internal assessment 20 marks and Practical 40 marks. The Clinical examination and Internal assessment are taken together while Practical is taken separately. In order to pass in this paper, the candidate must secure 50 per cent marks in Clinical examination and Internal assessment, that is, 80 out of 160, while there is no minimum provided for the Practical examination. The petitioner obtained 97 marks in the written and oral examination instead of 100 and he obtained 52 marks in Clinical examination and 12 marks in Internal assessment, that is, 64 marks out of 160, instead of the minimum of 80 marks. Thus he required 3 more marks in the written and oral paper and 16 more marks to pass in the Clinical examination and

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Internal assessment combined. The rules for the Degree of Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) are to be found in the Punjabi University, Patiala, Calendar Volume II, 1966-67 Edition, at page 80. The relevant rules are 27(A) and (27(B) which are reproduced below :—

“27(A). In Medicine and Preventive Medicine, in Surgery, in Midwifery and Gynaecology and in Diseases of Eye, Nose, Ear and Throat, no candidate shall be declared to have passed who fails to obtain fifty per cent of the aggregate marks assigned to each subject of the Final Examination; or who fails to obtain fifty per cent of the marks assigned to the Clinical examination; or who fails to obtain fifty per cent of the aggregate of the marks assigned to the written and Oral examination put together.

Ten per cent marks of the total marks in each subject shall be allotted in each subject to certified class work including day to day work and periodic class examinations both written and oral (50 per cent class marks shall form a part of written and 50 per cent shall form part of the Clinical examination).

A candidate who fails in any one subject or subjects of Part A or Part B shall be allowed to appear at any subsequent examination only in the subject or subjects in which he fails, provided that the whole examination is completed in five chances within a period of twenty-four months from the time the candidate first appeared in the examination, failing which he shall have to appear in the examination.

Candidates who have obtained eighty per cent marks in any subject shall be deemed to have obtained distinction in that subject, provided no candidate who does not pass in all subjects of the examination at one time shall be declared to have passed with distinction in any subject.

27(B). (i) A candidate who fails in one or more papers/subjects and/or aggregate may be given grace marks, up to one per cent of the total aggregate marks (including the marks for practical and internal assessment) to his best

advantage in order to be declared to have passed the examination.

- (ii) A candidate who fails in one more subject/subjects may be given grace marks up to one per cent in each subject separately in order to declare him/her eligible for earning exemption in a subject or subjects for placing him/her in a compartment, e.g., if a student does not pass by taking advantage of No. (i) and say passes in E.N.T. and Midwifery and fails in Medicine and Surgery for 14 and 4 marks, respectively, he/she can be given benefit of 4 marks in Surgery and he/she be declared to have passed the subject of Surgery and be placed in compartment to re-appear in Medicine only; and
- (iii) A candidate who gets exemption in certain subjects and reappear in a subject/subjects may be given grace marks up to one per cent of marks in each subject separately in which he/she reappears in order to declare him/her to have passed the examination and/or who with this benefit becomes eligible for earning exemption in a subject or subjects or for placing him/her in a compartment, e.g., if a student does not pass at the first annual examination and is to reappear, say in Surgery/Medicine, in the supplementary examination, he/she can be given a benefit of 4 marks in each of the subjects of Medicine and Surgery in order to pass the examination in Surgery or Medicine."

(2) The case of the petitioner is that he failed in the written and oral paper of the subject of Medicine by 3 marks, but he is entitled to 16 grace marks and if 3 marks are given to him, he passes in that paper. In the paper consisting of Clinical examination, Internal assessment and Practical, he has obtained 89 marks whereas he was required to obtain 100 marks for passing the Examination. He, therefore, requires 11 grace marks which can be easily granted to him out of the grace marks to which he is entitled. Thus he needs only 14 grace marks in the written and oral and Clinical examination, Internal assessment and Practical. This interpretation of the rules is not accepted by the University, on whose behalf it is stated that the petitioner requires 3 more marks to pass in the written and oral examination and if more marks to pass the Clinical examination and

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Internal assessment combined. Since he is entitled to only 16 grace marks in all and he needs 19, he could not be declared to have passed the examination. In my opinion, the interpretation of the University is correct. Rule 27(A) is quite clear that the requirement to obtain 50 per cent of the aggregate marks is with respect to each subject of the Final Examination while the minimum of the 50 per cent marks assigned to the Clinical examination including Internal assessment are to be obtained in order to pass in that part of the subject. Similarly 50 per cent of the aggregate marks assigned to the written and oral examination put together have to be obtained in each subject. Since the petitioner could not pass the examination even if the entire number of grace marks (16) were to be given to him, the result declared by the University is correct.

(3) In the alternative, the petitioner has pleaded that the marks of the written and oral paper in all the four subjects have to be considered together and similarly the marks of the Clinical examination and Internal assessment of all the four subjects have to be taken together in order to find out whether a candidate has obtained 50 per cent marks in the written and oral examination put together and Clinical and Internal assessment put together. According to this submission, the petitioner has obtained 329 marks out of the total of 640 in the Clinical examination and Internal assessment of all the four subjects put together and has obtained 416 marks in the written and oral examination of all the four subjects. His plea is that the marks obtained by him being more than 50 per cent, he should have been declared as having passed. In my opinion, the language of rule 27(A) does not bear out that interpretation. The intention of the framers of the rules appears to me to be quite clear that the candidate has to obtain 50 per cent marks in the Clinical examination and Internal assessment put together in each subject and also 50 per cent marks of the written and oral examination of each subject. The words "each subject" have to be read in all the three clauses of rule 27(A) prescribing the minimum number of marks to be obtained by the candidate in order to pass the examination. I am supported in this interpretation by the fact that, instead of mentioning the Final Examination in Medicine in rule 27(A), all the subjects of that examination have been mentioned therein which is indicative of the fact that 50 per cent marks, as stated in each of the three clauses, are to be obtained with regard to and in each subject. The marks of the written and oral examination in all the four subjects cannot be

aggregated together to see whether a candidate has secured 50 per cent marks. Similarly, the aggregate of the marks obtained by a candidate in Clinical examination and Internal assessment of all the four subjects cannot be considered together.

(4) The learned counsel lastly submitted that the marks obtained in Practical should be considered along with the marks of Clinical examination and Internal assessment as they form part of one paper consisting of 200 marks and so considered he has obtained 89 marks out of 200 and needs only 11 more marks which are within the permissible limit of the grace marks after allowing him 3 grace marks for passing in the written and oral examination. I regret my inability to agree to this argument as well. Rule 27(A) does not make mention of Practical examination. It only talks of the minimum marks of 50 per cent to be obtained in the Clinical examination and Internal assessment. For this reason, the marks obtained in the Practical examination cannot be taken into consideration while determining the result with regard to Clinical examination and Internal assessment. The University has filed the result statement of the petitioner with regard to the Final Professional M.B.B.S. Examination held in December, 1970, wherein the minimum marks to be obtained in the written and oral examination are stated to be 100 out of the total marks of 200 and 80 marks to be obtained out of 160 by combining Clinical examination and Internal assessment, while no minimum marks to be obtained are mentioned under Practical. The requirement is that a candidate, in order to pass in the first subject of Medicine, must obtain 100 marks out of 200 in the written and oral examination, 80 marks out of 160 in the Clinical examination and Internal assessment put together and in both the parts of the examination in this subject, he must obtain 200 out of 400 marks. The petitioner cannot, therefore, take advantage of the marks obtained in the Practical examination for declaring the successful in the part consisting of Clinical examination, Internal assessment and Practical.

(5) The learned counsel for the petitioner submits that on this interpretation some words in the various clauses of rule 27(B) become/redundant. That may or may not be so. Rule 27(A) is not to be interpreted with reference to rule 27(B) which will come into play only if by getting grace marks the petitioner is able to fulfil the requirement mentioned in rule 27(A). If by obtaining the entire

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number of grace marks he is entitled to, he cannot fulfil the requirement of rule 27(A), then rule 27(B) cannot be resorted to. It will, therefore, not be proper to take into consideration rule 27(B) while interpreting rule 27(A). If the petitioner had fulfilled the requirement of rule 27(A), then it had to be seen in what manner the grace marks could be allowed to the petitioner in various subjects or papers or the aggregate to his best advantage. In this view of the matter, I hold that the interpretation placed by the respondent—University on rule 27(A) is the correct one and the petitioner is not entitled to the declaration that he has passed the examination if the grace marks are allowed. The petition is accordingly dismissed but without any order as to costs.

N.K.S.

APPELLATE CRIMINAL

Before Manmohan Singh Gujral and S. C. Mital, JJ.

MUNICIPAL COMMITTEE,—Appellant

versus

AMRIK SINGH,—Respondent.

Criminal Appeal No. 231 of 1968.

May 27, 1973.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 13 and 16(1) (a) (i)—Reports of public analyst and Director, Central Food Laboratory—Variation between—Accused—Whether entitled to benefit of doubt on that score alone.

Held, that having regard to sub-section (3) and sub-section (5) of Section 13 of the Prevention of Food Adulteration Act, 1954, it is not possible to take into account the report of the public analyst where a certificate from the Director of the Central Food Laboratory has subsequently come on record in accordance with the provisions of sub-section (3) of Section 13. Consequently, there is no question of variation between the reports of the public analyst and the Director as the first report of the public analyst stands completely wiped out by the certificate of the Director. It cannot be looked into as evidence of the facts stated therein. Hence merely because there is conflict between the report of the public analyst and the certificate of the Director, the accused cannot be given the benefit of doubt and acquitted. (Para 5)

Appeal from the order of Shri H. S. Ahluwalia, Judicial Magistrate, Ist Class, Amritsar, dated 31st October, 1967, acquitting the respondent.

ROOP CHAND, ADVOCATE, for the appellant.

H. L. SARGN, ADVOCATE, for the respondent.