

PANDIT, J.—(21) I agree with my learned brother that both the appeal and the cross-objections be dismissed and the parties left to bear their own costs.

(22) However, as regards the contention of the learned counsel for the appellant that the Local Commissioner had no power under the law to examine evidence and give his findings fixing liability on the parties, I am of the view that it is unnecessary to decide this question in this case, because my learned brother has, if I may say so with respect, rightly observed : “— — the defendant appellant is estopped from challenging the procedure adopted by the Local Commissioner when it was done so at his instance and that of the plaintiff respondent. Both of them agreed to lead evidence before the Local Commissioner taking their chance for a favourable decision. No objection as to the jurisdiction of the Local Commissioner to record evidence for examining the truth of the entries in the books of account was raised before him and not even before the trial Court. It is for the first time in the present appeal that an objection as to the validity of the procedure adopted by the Local Commissioner is being taken.”

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K.S.K.

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*

GOPAL KAPILA,—*Petitioner.*

*versus*

THE PUNJABI UNIVERSITY, PATIALA,—*Respondent.*

**Civil Writ No. 3530 of 1968**

March 11, 1969..

*Punjabi University Calendar (1966-67)—Volume II—Ordinance relating to Master of Arts Examination—Rule 6—Word ‘examination’—Whether means examination of each part and not the M.A. Examination as a whole—Candidate at such examination—Whether entitled to grace marks on the total aggregate marks of the entire examination.*

*Held*, that the word “examination” in rule 6 of the Ordinance relating to the Master of Arts examination of the Punjabi University in the Calendar for the year 1966-67, Volume II, means the examination of each part and not M.A. examination as a whole.. If a candidate has passed Part I examination but has

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failed in Part II examination, he is declared as having failed in Part II examination only and not in the Master of Arts examination as a whole and he gets further chances to pass the M.A. examination by passing Part II examination. Examinations of Part I and Part II are distinct and separate and the M.A. degree is awarded only if a candidate passes both the examinations but that does not mean that for the purposes of grace marks one per cent of the total aggregate marks of the entire Master of Arts examination has to be taken because that is to the best advantage of the candidate. A candidate is entitled only to grace marks on the total aggregate marks of the first or second Part of the examination in which he can pass with the help of the grace marks but if he passes Part I examination without the help of grace marks, he cannot avail himself of more than 1 per cent of the total aggregate marks of Part II examination for passing in that Part.

(Para 6)

*Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order or direction be issued to the respondent to declare the results of the petitioner to the effect that he has passed the Master of Arts examination in economics held in April, 1968, and the petitioner is holding a decree for Master of Arts.*

A. N. MITTAL, ADVOCATE, for the Petitioner.

B. S. SHANT, ADVOCATE FOR B. S. DHILLON, ADVOCATE-GENERAL (PUNJAB), for the Respondent.

#### JUDGMENT

TULI, J.—The petitioner joined the Master of Arts Course in the Punjabi University at Patiala with Economics as his subject in the year 1965. The Master of Arts examination is held in two parts. Each part consists of four papers of one hundred marks each. The total aggregate of marks in each part is thus four hundred.

(2) The petitioner cleared the first part of the Master of Arts examination in the year 1966 without requiring any grace marks. He appeared in Part II examination held in April, 1968 and obtained the following marks in each paper :—

Paper I	27
Paper II	34
Paper III	45
Paper IV	57

(3) The minimum number of marks required to pass in each paper is 33 per cent and in the aggregate 40 per cent. The petitioner

thus failed in Paper I, not having been able to obtain 33 marks although in the aggregate he had obtained 163 marks which are more than 40 per cent marks. He claimed that under rule 6 of the Punjabi University Calendar 1966-67, Volume II, he was entitled to 8 grace marks, that is, 1 per cent of the total aggregate marks of both Part I and Part II as the Master of Arts examination consisted of both the parts and if given 6 grace marks in Paper I, he would be deemed to have passed the examination in Master of Arts in Economics. The University did not agree with the contention of the petitioner as it is of the opinion that grace marks can be given only on the total aggregate marks of each Part and not of the entire Master of Arts examination. The petitioner then filed the present writ petition on November 19, 1968, in which he prayed that he should be declared to have passed the Master of Arts examination in Economics from the respondent-University held in April, 1968 and that the petitioner is holding a degree of Master of Arts. A further direction is sought to be issued to the respondent to declare the result of the petitioner to the effect that he has passed the Master of Arts examination held in April, 1968.

(4) The return to the writ petition has been filed by the Registrar of the Punjabi University in which it has been emphasized that according to rule 6 *ibid* the petitioner is entitled to only 4 grace marks, that is, 1 per cent of total aggregate marks of Part II and not to 8 marks as claimed by him on the total aggregate marks of both Part I and Part II. It is the interpretation of the relevant rules of the Punjabi University Calendar which is called for in this case. The relevant rules are given in the Punjabi University Calendar 1966-67, Volume II, at pages 32 to 36 under the Ordinance relating to "Master of Arts Examination". The relevant rules are set out below :—

- "(1) The examination for the degree of Master of Arts shall be held in two parts to be called Part I and Part II and shall be held annually in the month of April, or on such other dates as may be fixed by the Academic Council.
- (5) The examination in each Part shall consist of four papers according to the syllabus prescribed for that part. Each paper shall be of three hours' duration and carry 100 marks.
- (6) The minimum number of marks required to pass shall be 33 per cent in each paper/thesis and 40 per cent in the aggregate in each part:

Provided that if a candidate who fails in one or more paper (s) and/or aggregate by not more than 1 per cent of the

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total aggregate marks shall be given the marks to pass the examination and these shall be to his best advantage.

Provided further that this concession shall also apply to a candidate appearing in the examination under Ordinance relating to Compartment.

(5) There is a note to this rule which is based on the Regulations made by the Syndicate Para 71 dated 28th August, 1965 and reads as under :—

“that the number of grace marks awarded to a candidate in the written and/or clinical parts of the examination be also counted for purposes of making up the minimum aggregate in order to enable him to pass the subject/examination. The grace marks so given would not be actually added to the aggregate.

(8) Four weeks after the termination of the examination, or as soon as may be, the Registrar shall publish a list of candidates who have passed the examination. Each successful candidate of Part I shall receive a certificate of having passed that part of the examination. The list of successful candidates of Part II, examination shall be arranged in three divisions according to Ordinance 11 and the division obtained by the candidate will be stated in his degree certificate.

(10) The examination shall be open to any person who—

(a) has passed Part I examination in the subject offered; and

(b) satisfies the following requirements—

(A) (i) has been on the rolls of a college, admitted to the privileges of the University, throughout the academic year preceding the examination:

Provided that he has not discontinued his studies for more than three continuous years after passing M.A. Part I examination;

(ii) has his name submitted to the Registrar by the Principal of the college he has most recently attended and produces a certificate, signed by the

Principal of having attended not less than two-thirds of the full courses of lectures and seminars; Provided that a deficiency in the number of lectures or seminar work may be condoned for special reasons by the Academic Council;

(iii) is certified by competent authority under Ordinances 12 and 13, of Chapter II, of Part E relating to colleges admitted to the privileges of the University to have completed the approved course of instruction.

(B) has been admitted to the examination as a private candidate under the Statutes dealing with such candidates, provided that he has passed M.A., Part I examination not more than three years previously.

(C) has completed the prescribed course of instruction for the examination, but has not appeared or having appeared has failed and is recommended by the Principal of the college for admission to such examination, as a late college student, without attending a fresh course of instruction, within a period of three years from the date of completion of the course."

(6) The submission of the learned counsel for the petitioner is that according to these rules there is only one examination for the degree of Master of Arts. It is held in two parts and the grace marks are to be allowed on the total aggregate of the Master of Arts examination consisting of both the parts. that is, grace marks up to 8 have to be allowed in case a candidate needs the same as the total aggregate of marks of both the parts is 800. I regret my inability to agree to this submission. In my opinion, under rule 6, the total aggregate marks mean the total aggregate marks of all the papers in each Part I and II and not total aggregate marks of the Master of Arts examination, that is, 800. It is pertinent to note that Part I ends with an examination and if a candidate does not pass the M.A., Part I examination, he is not eligible to join Part II, of the said examination. If the submission of the learned counsel is accepted, it means that if a candidate can pass Part I of Master of Arts examination by getting grace marks which are more than 4 but not exceeding 8, he should not be declared having failed in Part I examination but should be allowed to join Part II, courses so

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that if he passes Part II, examination independently, that is, without the help of grace marks, he should be declared successful. The learned counsel admits that this cannot be done because by the time the candidate takes Part I examination, he is only entitled to the grace marks on the basis of the total aggregate marks of that Part, that is, 1 per cent of 400 marks on the ground that he has taken examination only in papers which carry 400 marks. In other words, the learned counsel has admitted that for getting grace marks in Part I, a candidate has to confine to 1 per cent of the total aggregate marks of that Part. I cannot understand why a different interpretation should be given when considering a candidate who requires grace marks to pass Part II examination. I am further of the opinion that the necessity for grace marks in Part I ends when a candidate passes that examination. There is no carry-forward of the grace marks with regard to Part I examination to Part II examination with a view to help a candidate. The word "examination" in rule 6 means the examination of each Part and not the M.A. examination as a whole consisting of both the parts. This interpretation follows from the language of rule 5 and also of rule 8 and is, in my opinion, the correct one. If a candidate has passed Part I examination, but has failed in Part II examination, he is declared as having failed in Part II examination only and not in the Master of Arts examination as a whole and he gets further chances to pass the M.A. examination by passing Part II examination as provided in rule 10. Rule 10 also states that the examination of Part II shall be open to any person, who has passed Part I examination in the subject offered which makes it clear that the examinations Part I and Part II are distinct and separate and the M.A. degree is awarded only if a candidate passes both the examination, but that does not mean that for the purposes of grace marks one per cent of the total aggregate marks of the entire Master of Arts examination has to be taken because that is to the best advantage of the candidate. This interpretation is far-fetched and cannot be supported by any canons of interpretation. I am, therefore, of the opinion that the respondent-University is quite correct in interpreting rule 6 to mean that the candidate is entitled only to grace marks on the total aggregate marks of the first or second Part of the examination in which he can pass with the help of the grace marks, but if he passes Part I examination without the help of grace marks, he cannot avail himself of more than 1 per cent of the total aggregate marks of Part II examination for passing in that Part. The petitioner has, therefore, been rightly declared as having failed in Part II examination of Master of Arts examination in Economics held by the

Punjabi University in April, 1968. There is thus no merit in the writ petition which is hereby dismissed, but without any order as to costs.

**K. S. K.**

CIVIL MISCELLANEOUS

*Before Shamsheer Bahadur and R. S. Narula, JJ.*

BRIJ LAL AND OTHERS,—*Petitioners.*

*versus*

THE FINANCIAL COMMISSIONER, REVENUE, PUNJAB, CHANDIGARH  
AND OTHERS,—*Respondents.*

**Civil Writ No. 2679 of 1968**

March 12, 1969.

*Punjab Land Revenue Act (XVII of 1887)—Sections 7(1), 23(2) and 24—Financial Commissioner of the State of Punjab sitting in Chandigarh—Whether has jurisdiction to dispose of matters relating to Punjab—Interpretation of statutes—Headnotes to a section—Whether govern its construction.*

*Held*, that the words “within the local limits of his jurisdiction” employed in sub-section (2) of section 23 of Punjab Land Revenue Act, have to be read in the context of sub-section (2) of section 7 which deals with a situation where there are more than one Financial Commissioner in the State. Powers are distributed between these Financial Commissioners by the State Government and under sub-section (2) of section 23, he is to exercise his powers within the limits of his jurisdiction. Far from laying any fetter on the place of sitting, all that sub-section (2) of section 7 requires is that each of the Financial Commissioners would exercise the powers in respect only of the areas or matters within his own jurisdiction. Read in this way, there is no statutory bar for the Financial Commissioner, Punjab, to exercise his powers in Chandigarh which since the Punjab Reorganisation Act, 1966, has ceased to remain within the jurisdiction of the State of Punjab. In the context and circumstances of the prevailing situation, the Financial Commissioner of the State of Punjab under sub-section (2) of section 23 of the Punjab Land Revenue Act may hold his sittings in Chandigarh where the headquarter of the State is located and dispose of matters relating to Punjab (Paras 10 & 11).

*Held*, that the head-note of the section, though it may give a clue to its construction, does not, however, govern it. The note cannot affect the construc-