

Punjab University

Vs

Subash Chander and Another

Civil Appeal No. 2828 (NCM) of 1977

(A. Varadarajan, A. P. Sen, V. B. Eradi JJ)

17.05.1984

JUDGMENT

VARADARAJAN, J. -

1. This appeal by special leave is by Punjab University against the judgment of a Full Bench of the Punjab and Haryana High Court in the Letters Patent Appeal 352 of 1975 confirming the judgment of a learned Single Judge in W. P. 1017 of 1975.

2. Subash Chander. Respondent 1 in this appeal, joined the Daya Nand Medical College, Ludhiana, for the MBBS course in 1965 when Regulation 25 of the Punjab University was in force. That regulation required a minimum of 50 per cent of marks to pass in each subject. However Rule 7.1 relating to the MBBS and certain other courses provided that a candidate who fails in one or more papers/subjects and/or aggregate may be given grace marks up to 1 per cent of the total aggregate marks (including marks for practical and internal assessment) to his best advantage in order to be declared to have passed the examination.

But in May 1970 an amendment was made by the University in the form of an exception to Rule 2. 1 which corresponds to Rule 7.1 which was in force in 1965 in the following terms :

2. 1. A candidate who appears in all subjects of the examination and who fails in one or more subjects (written, practical, sessional or viva voce) and/ or aggregate (if there is a separate requirement of passing in the aggregate) shall be given grace marks up to 1 per cent of the total aggregate marks (excluding marks for internal assessment) to make up for the deficiency if by such addition the candidate can pass the examination. While awarding grace marks fraction working to half or more will be rounded to a whole.

Exception. - In the case of MBBS and BDS examinations, however, the grace marks shall be given up to one per cent of the total of each subject and not up to one per cent of 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.

3. Subash Chander, respondent 1, appeared for the final MBBS examination in 1974 and secured the following marks and remarks :

#Medicine - 202 out of 400 p.

Surgery - 225 out of 400 p.

Eye and ENT - 204 out of 400 p.

Midwifery : (i) Theory - 95 out of 200 Reappear

(ii) Practical - 106 out of 200

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4. According to Regulation 25 read with Rule 7.1 which was in force when Subash Chander joined the course in 1965, he would be eligible for grace marks at 1 per cent of the aggregate marks of 1600 for all the above four subjects, which will be 16, and he would have passed in midwifery also. But he was given only 1 per cent of the total marks of 400 for Midwifery as per the amended Regulation 25 read with Rule 2.1 of the Punjab University Calendar, 1974, namely four as grace marks and held to have failed in Midwifery as the total of 95 marks which he actually secured and the 4 grace marks in the theory in that subject fell short of 50 per cent by 1 mark. His contention is that the old Regulation 25 read with the old Rule 7.1 which was in force when he joined the course in 1965 should be made applicable to him and he should be declared to have passed the final examination in full including Midwifery.

5. Before the High Court, it was contended for the Punjab University that there is not element of retrospectivity in the application of the amended regulation and rule to students appearing for the examination subsequent to the amendment and that students are bound to secure marks as per the regulation in force at the time of commencement of the examination concerned and they have no vested right to claim the benefit of any regulation or rule which was in force when they were admitted to the course.

6. Chief Justice S. S. Sandhawalia who spoke for the Full Bench in the Letters Patent Appeal out of which this appeal before us has arisen noticed certain decisions of the Punjab and Haryana High Court and observed that they did not lay down clear guidelines for deciding the question at issue, namely whether the University is entitled to change the regulation relating to the percentage of grace marks to be awarded to students and the basis for awarding the same i.e. whether it is on the aggregate of the marks of all the subjects for which the students appears in the concerned examination or the aggregate of the marks of the subject in which they had failed in that examination. The learned Chief Justice noticed this Court's observation in *Hukam Chand v. Union of India* which is this : (SCC p. 604, para 8)

The underlying principle is that unlike sovereign legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same.

And he proceeded to consider whether Section 31 of the Punjab University Act under which the regulations in question have been framed empowers the Senate to frame regulation with retrospective effect. Section 31 reads thus :

Section 31. (1) The Senate, with the sanction of the Government, may from time to time make regulations consistent with this Act to provide for all matters relating to the

University.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for -

##(a) to (m) * * *##

(n) the courses of study to be followed and the conditions to be complied with by candidates for any University examination, and for degrees, diplomas, licences, titles, marks of honour, scholarships and prizes conferred or granted by the University.

The words " other than an examination for matriculation" which previously occurred in subclass (n) have been omitted by the Government of India notification dated December 6 1969.

7. The learned Chief Justice opined that there is nothing in Section 31 of the Punjab University Act which would clothe the Senate, explicitly or impliedly, with the power to frame regulations retrospectively and held that the regulation, as amended in 1970, has retrospectively altered the condition of Subash Chander, respondent 1, taking the examination to his detriment and could not apply to him and that he is governed only by Regulation 25 read with Rule 7.1 as it was in force when he joined the course in 1965. The learned Chief Justice thus differed from the view taken by a Division Bench of the Punjab and Haryana High Court (D. K. Mahajan and P. C. Jain, JJ) in *Sewa Ram v. Kurukshetra University* in which it has been held thus :

The University is an autonomous body and has every right in the matter of altering the requisite rules concerning the conduct of examinations and the qualifying marks necessary for a degree provided the regulations are made well in advance to the examination which a candidate is required to take.

8. The learned Chief Justice rejected the submission made on behalf of the Punjab University that the change in the regulation made in 1970 by the addition of an exception to Rule 2.1 related to examination's to be held only in future and there is no question of the rule having retrospective operation and held that when Subash Chander, respondent 1, joined the course in 1965 he obviously did so with the intention of obtaining the degree in Medicine and Surgery and that it is a single integrated composite course. The learned Chief Justice observed that the change in the regulation by way of addition of the exception to Rule 2. 1 is a change in the course of that single interpreted course and is retrospective in nature. The other two learned Judges agreed with this view of the learned Chief Justice and the Full Bench accordingly dismissed the appeal and directed the Punjab University to declare the result of Subash Chander, respondent 1, afresh after affording him the benefit of 16 grace marks in accordance with the old Regulation 25 read with Rule 7.1 which was in force at the time of his admission to the course in 1965 and not only 4 marks as per the amended regulation.

9. We are of the opinion that this appeal has to succeed., Section 321(1) of the Punjab University Act extracted above enables the Senate of the Punjab University, with the sanction of the Government, to make, from time to time, regulations, consistent with the provisions of that Act to provide for all matters relating to the University. Section 31(2) (n) provides that in particular and without prejudice to the generality of the foregoing power such regulation may provide for the course as of study to be followed and the conditions to be complied with by candidates for any University examination and for decrees, diplomas, licences, titles, marks of honour, scholarships and prizes

conferred or granted by the University. Obtaining the requisite percentage of marks in the subject of the examination falls under the clause "conditions to be complied by candidates for any University examination" occurring in sub-clause (n) of Section 31(2) of the Act. Therefore, the Senate had the power to award some percentage of marks as grace marks to candidates appearing in university examinations in considering whether they are eligible to pass the examination in the subject or subjects in which they had appears. There is no dispute that the minimum number of marks required for passing the examination in a paper/subject is 50 per cent of marks. When Subash Chander, respondent 1, was admitted to the MBBS course in 1965, Rule 7.1. as it stood then and extracted above provided that the candidate who fails in one or more papers/subject/or aggregate may be given grace marks up to 1 per cent of the total aggregate marks excluding (Sic including) for practical and internal assessment to his best advantage in order to have him declared to have passed the examination. Subash Chander, respondent 1, who appears for the final MBBS examination only nine years later in 1974 had to pass in four subjects, namely, Medicine, Surgery, Eye and ENT and Midwifery for each of which the aggregate was 400 marks. He secured 202, 225 and 204 marks in Medicine, Surgery, and Eye and ENT respectively and was declared to have passed the examination in those subject. Midwifery consists of two parts, namely theory and practical for each of which the aggregate was 200 marks. Subash Chander respondent 1, secured 106 out 200 in the practical examination and only 95 out of 200 in the theory examination. Since the total aggregate of all the four subjects for which he appears in 1974 was 1600 marks, under the old Regulation 25 read with Rules 7.1 as it stood at the time of his admission to the course in 1965 he would be entitled to 16 grace marks and would have been declared to have passed the examination as the addition of 16 grade marks to the 95 marks actually secured by him in the practical examination in Midwifery would satisfy the required minimum of 50 per cent. But long before Subash Chander appears for the final MBBS examination in 1974 the rule relation to award to grade marks to MBBS and BDS students was changed by the Senate of the University 1970 by the addition of an exception to Rule 2.1 as mentioned above. It is not contended that the sanction of the Government had not been obtained for making this change. The exception says that in the case of MBBS and BDS examination however the grace marks shall be given up to 1 per cent of the total marks of each subject and not up to 1 per cent of the aggregate marks of all the subject : in other words each subject will be, for this purpose, a separate unit and a candidate who fills in a subject by not more than 1 per cent may be given the required number of marks in order to pass in that subject. Under this rule was amended in 1970 Subash Chander, respondent 1, was entitled to only 4 marks as grace marks being per cent of the aggregate of 400 marks for Midwifery alone. As the addition of 4 grace marks to 95 marks actually secured by him in the practical examination in Midwifery for which the aggregate was 200 but of the total aggregate of 400 marks for that subject makes only 99 out of 200 it was less than 50 per cent and he was declared to have failed in Midwifery and asked to reappear for that subject.

10. The minimum prescribed for passing each subject is 50 per cent. Under the old rule as it stood prior to 1970, Subash Chander could have passed by getting 16 grace marks being 1 per cent of the aggregate of all the four subjects, namely, Medicine, Surgery Eye and ENT and Midwifery even if he had secured only 84 marks out of 200 in the practical examination in Midwifery which comes to only 42 per cent and he had secured more than 50 per cent in the other subjects/papers. The Senate thought it fit to remedy this glaring defect so far as MBBS and BDS examinations are concerned by adding the exception to Rule 2.1 in 1970 under which the grade marks would be only 1 per cent of the aggregate marks in the particular subject. We do not think that the Senate did not have the necessary power to effect that change or hand acted unreasonably in making the change. We think that the Senate had the necessary power under Section 31(2) (n) of the Act to fix, from time to time,

the percentage of marks required for passing the examination and to grant or to refuse to grant grace marks or to enhance or reduce the quantum of grace marks. It has not been contended before thus that there was any mala fides on the part of the Senate in making this change. It could not be contended that Subash Chander who appeared for the final examination in 1974 did not have sufficient notice of the change brought about in 1970 in the rule relating to award of grace marks or that he was prejudiced by the change.

11. We do not agree with the learned Judges of the Full Bench of the High Court that there is any element of retrospectivity in the change brought about by the addition of the exception to rule 2.1 of the Calendar for the year 1970. "Retrospective" according to the Shorter Oxford English Dictionary, Third Edition, in relation to Statutes etc. means "Operative with regard to past time". The change brought about by the addition of the exception to Rule 23.1 does not say that it shall be operative with effect from any earlier date. It is obviously prospective. It is not possible to hold that it is retrospective in operation merely because though introduced in 1970 it was applied to Subash Chander, respondent 1, who appears for the final examination in 1974, after he had joined the course earlier in 1965. No promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of this admission would continue to be applied to him until he finished his whole course. In the Calendar for 1979 we find the following at page 1 :

Notwithstanding the integrated nature of a course spread over more than one academic year, the regulations in force at the time a student joins a course shall hold good only for the examinations held during or at the end of the academic year. Nothing in these regulations shall be deemed to debar the University from amending the regulations subsequently and the amended regulations, if any, shall apply to all students whether old or new.

This is as it should be, though there was not such provision in the Calendar of 1965 when Subash Chander was admitted to the course. It is admitted that it was introduced only in 1971. The absence of such a provision in the Calendar of 1965 is of no consequence. It is necessary to note in this connection what this Court had said in regard to retrospectivity in such matters in *Bishun Narain Mishra v. State of U. P.* It is this :

The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we read the rule we do not find any retrospective in it. All that the rule provides is that from the date it comes into force the age of retirement would be 55 years. It would therefore apply from the date to all government servants, even though they may have been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all government servants even though they were recruited before 1957. But it is urged that the proviso shows that the rule was applied retrospectively. We have already referred to the provision which lays down that government servants who had attained the age of 55 years on or before June 17, 1957 and had not attained the age of 58 years on May 25, 1961 would be deemed to have been retained in service after the date of superannuation, namely 55 years. This proviso in our opinion does not make the rule retrospective; it only provides as to how the period of service beyond 55 years should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. Further the second order issued on the same

day also clearly shows that there was no retrospective operation of the rule for in actual effect no government servant was retired before the date of the new rule i.e. May 25, 1961 and all of them were continued in service up to December 31, 1961 except those who completed the age of 58 years between May 25, 1961 and December 31, 1961 and were therefore or entire on reaching the age of superannuation according to the old rule. We are, therefore, of opinion that the new rule reducing the age of retirement from 58 years to 55 years cannot be said to be retrospective. The provision to the new rule and second notification are only methods to tide over the difficulty situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule therefore cannot be struck down on the ground that it is retrospective in operation.

12. Therefore, we are clearly of the opinion that there is no question of the change in the rule made in the year 1970 having retrospective operation merely because it was supplied in 1974 to Subash Chander who had joined the MBBS course in 1965 when the rule regarding award of grace marks was different. In these circumstances we affirm the view of D. K. Mahajan and P. C. Jain, JJ. expressed in the Division Bench judgment in Sewa Ram v. Kurukshetra University and disapprove the view taken by the learned Judges of the Full Bench in the decision under appeal in this case and hold that the University was right in holding that Subash Chander, respondent 1, was not entitled to 16 grace marks under the old rule but was entitled to only 4 grace marks under the new rule and had therefore not passed the examination in Midwifery. We allow the appeal, but without any order as to costs. However, this decision will not affect the result of the examination of Subash Chander in Midwifery if it had been declared as per the direction of the learned Judges of the Full Bench in the Letters Patent Appeal.

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