

PUNJAB AND HARYANA HIGH COURT

Shri Raj Kumar

Vs

State Board of Technical Education

Civil Writ Petition No. 12876 of 1989

(Gokal Chand Mittal, Jai Singh Sekhon and Naresh Chander Jain, JJ.)

06.04.1990

JUDGMENT

Naresh Chander Jain, J.

1. The necessary facts in order to appreciate the questions of law lie in a narrow compass and may thus be noticed.

2. The petitioners sought admission in Ist year of Pharmacy Diploma Course in the year 1988 and the academic year of theirs commenced from July, 1988. They appeared in the annual examination conducted by the Board of Diploma in Pharmacy in the year 1989 and the result was declared by the State Board of Technical Education, which is Annexure P-1 to this petition. Since the petitioners could not succeed in the examination of the Ist Year, having got reappear in more than two subjects, they have approached this Court for the grant of grace marks at one per cent, that is, in all 11 marks, the total marks being 1100. The case of the petitioners is that they should be given 11 grace marks in all the papers i.e. theoretical as well as practical even if the grant of such grace marks may not push them into higher class. In other words, it is the precise case of the petitioners that they should be held entitled to the grant of grace marks whether such a concession entitles them to earn compartment or earn them promotion to get into the second year. It is on these facts as averred in the petition or as stated during the course of arguments that the following questions of law are involved in the present Writ Petition :

(i) Whether the students who have appeared in the Ist year of Pharmacy Diploma Course are entitled to get grace marks only when they are going to pass in all the papers or they are entitled to the grant of grace marks even when they are not passing out in all the papers but such a grant would only entitle them to get compartment in some papers. In other words, the provisions pertaining to the grace marks are to be applied to all the students whether or not such a concession entitles the students to pass out the first year or to get compartment ?

(ii) Whether the rules so far as they are silent for the grant of concession of grace marks to the students earning compartment are liable to be struck down as being discriminatory

and arbitrary ?

3. Mr. Sarwan Gupta, the learned counsel for the petitioners, has argued that the concession of grace marks should be given to all the students irrespective of the fact whether grant of grace marks makes a student pass out the examination or get compartment. It is further the argument of the learned counsel that non existence of provisions in the Pharmacy rules for the students of first year regarding concession of grace marks for earning compartment is discriminatory vis-a-vis the students regarding whom provisions have been made about the grant of grace marks for passing out the examinations. The precise argument of the learned counsel is that the rules extending grace marks only for passing out the examination should be struck down as being discriminatory and arbitrary because no provision has been made in the rules for the grant of grace marks to the students who are likely to get compartment. It has been argued, in short, that this Court should issue a writ of mandamus directing the authorities to frame rules for enabling the candidates of the Ist year to get grace marks even for getting compartment in order to avoid any hardship on the same pattern on which rule 21 has been framed. In support of the argument, the learned counsel has relied upon a solitary decision rendered by a Division Bench of this Court in *Naresh Shori v. The Punjab School Education Board*¹, on September 15, 1989.

4. Mr. H.S. Bedi, the learned Advocate General appearing for the respondent while refuting the arguments of the counsel for the petitioners has vehemently argued that according to rules, only those students are entitled to get grace marks who by the grant of such grace marks can pass out the examination and if the framers of the rules have thought it appropriate not make any provision for the grant of grace marks to the students for earning compartment, this Court should not interfere and that no case for striking down the rules as being discriminatory and arbitrary has been made out. It has further been argued that a very strong case has to be made out for the issuance of writ of mandamus either for striking down the rules or for issuing directions to the authorities to frame rules making provisions for the grant of grace marks and that the present is not a case of the type where this Court should issue a writ of mandamus directing the authorities to frame any such rules.

5. Before deciding the two questions of law as have been framed above and for appreciating the arguments advanced at the bar by the counsel for the parties, it is necessary, in the first instance, to have a look at the relevant rules and their simple interpretation and the intention of the rules framers. The relevant rules are called "The Examination Rules of the State Board of Technical Education, Punjab, for Pharmacy Course."

6. Rules 3(a) and b(i), 20 and 21 of the said rules reads as under :

"3. *CONDUCT OF EXAMINATIONS* :

(a) The State Board shall conduct the examination of Pharmacy classes under the Annual System as decided by it from time to time of all the Institutions affiliated to it.

(b)(i) The examination shall be held twice a year i.e. once in the month of April/May (Annual examination) for all candidates and once in November/December (Supplementary examination) for reappear candidates on such dates as may be fixed by the Director/Examination Committee."

"20. COMPILATION OF RESULTS :

(a) A candidate shall be declared to have passed the examination, if he/she obtains :-

- (i) Not less than 33% marks in English (including sessionals);
- (ii) Not less than 40% marks in each of the remaining papers of written-examination (including sessionals);
- (iii) Not less than 45% marks in each practical examination (including sessional);
- (iv) There will be no minimum pass percentage in aggregate;
- (v) A candidate who obtains 75% or more marks in any subject(s) shall be awarded distinction in that subject(s) provided the student passes in all the subjects in first attempt at a time;

(b) A candidate shall be shown as "Reappear" in any theory or practical subject(s) in which he/she fails to obtain the pass marks.

For the purposes of examination each theory paper and practical even in the same subject shall be treated as a separate subject.

(c) The candidature of any candidate who is not eligible to take the examination according to rules shall be cancelled.

(d) Exemption may be given on application to any student who is taking examination in additional course for any subject he/she has passed earlier. In that case, the marks already obtained by him/her shall be taken into account.

Note : 1

The student who is allowed "Reappear" in any subject(s) will be eligible to sit in the next examination(s) in that/these reappear subjects and his sessional marks of the previous examination shall be taken into account for declaration of result.

Note : 2

A candidate who has completed the prescribed course in the First Year but does not appear or gets reappear(s) in the preliminary Examination shall be allowed to join the second year course pending the declaration of the result of the supplementary examination. If a candidate gets reappear(s) in more than two theory papers and two practicals in the supplementary examination also, he will not be permitted to continue the studies in the Second Year Class, provided that this action will be taken (i) in the case of candidates, who do not apply for re-evaluation, on the last date for receipt of application for re-evaluation in terms of rule 24 of Exam rules and (ii) those who apply for re-evaluation, on receipt of re-evaluated result. A candidate who gets reappear(s) in not more than two subjects at the supplementary examination shall be allowed to continue his studies in the Second Year Class even after the supplementary examination. Such candidate can

appear in the reappear subject(s) along with final examination but his result of the final examination shall not be declared until he has cleared the preliminary examination. However, the candidate will be intimated the name of the subject(s) of Second Year in which he is not passing."

21. *AWARD OF GRACE MARKS :*

Marginal assistance in the form of grace marks shall be given to the candidates on the following pattern :-

- (i) Grace marks as fixed under (ii) shall be given to marginal candidates only if by awarding the same they are able to pass in all the subjects. Grace marks required to just fulfil this condition only shall be awarded, notwithstanding the maximum quantum fixed in para (ii) hereunder. Grace marks shall be awarded irrespective of the number of subjects in which the candidate fails. Each practical shall be treated as a separate subject;
- (ii) The quantum of grace marks shall not exceed one per cent of the total marks comprising of theory, practical and sessional marks of that class;
- (iii) The marks shall not, however, be noted in the answer book(s) or on the award sheet(s) but shall be added in the result sheet only."

7. Rule 3(b)(i) contemplates the holding of examination twice a year i.e. annual examinations in April/May and supplementary examinations in November/December. The supplementary examination is held for "Re-appear" candidates. In other works, rule 3(b)(i) envisages the holding of a supplementary examination as well, besides annual examination. Rule 20(a) prescribes the pass percentage marks. Rule 20(b) defines a candidate who is to be shown as "Re-appear". A candidate who fails to obtain the pass marks in any theory or practical subject or subjects would be shown as "Re-appear" for the purpose of examination. Each theory paper and practical, even if they are in the same subject, has been treated as a separate subject.

8. According to Note 1 of Rule 20, a student who is allowed "Re-appear" as contemplated by rule 20(b) has been held eligible to sit in the next examination. Note 2 of Rule 20 provides that a candidate who has completed the prescribed course in the first year but he does not appear or gets "Re-appear" in the preliminary examination [as contemplated in rule 20(b)], is also entitled to join the 2nd year course pending the declaration of his result of the supplementary examination which is so contemplated in rule 3(b)(i). It is further prescribed in Note 2 that if a candidate gets reappear in more than two theory papers and two practicals in the supplementary examination, he would not be permitted to continue the studies in the 2nd year class. If a candidate gets "Re-appear"/"Re-appears" in two or less than two subjects in the supplementary examination, he is allowed to continue his studies in the 2nd year class even after the supplementary examination and such a candidate has been held entitled to appear in the "Re-appear" subject or subjects along with the final examination subject to the rider that his result of the final examination would not be declared until and unless he has cleared the preliminary examination. Rule 21 relates to the awarding of grace marks. It has been specified in rule 21(i) that grace marks as fixed under sub-rule (ii) shall be given only to those candidates who by the grant of such marks are able to pass in all the subjects and that grace marks would be awarded

irrespective of the number of subjects in which the candidate fails and each practical has been treated as a separate subject meaning thereby that a candidate may fail in all the subjects, whether theory or practical, and he would be entitled to the grace marks. Rule 21(ii) lays down that the quantum of grace marks would not exceed 1% of the total marks comprising of theory, practical and sessional marks of that class. This is the plain, unambiguous and precise interpretation of the rules which can be gathered on its first reading. The argument of the learned counsel for the petitioner has to be appreciated in the context of the rules framed by the Pharmacy Council.

9. While advertng to the arguments advanced by Mr. Gupta, it can safely be held that neither the concession of grace marks can be given to the students for earning compartment nor silence in the rules for the grant of grace marks to a student for earning compartment can be held to be discriminatory vis-a-vis the other students regarding whom relevant provisions have been made about the grant of grace marks for passing out the examination. Whenever the rules are plain and unambiguous and precise words have been used while framing the rules, it has always been the well-settled law that the Court is bound to construe such words in their ordinary sense and give them full effect. It has been held by the Hon'ble Supreme Court in *Dr. Ajay Pardhan v. State of Madhya Pradesh and another*², that if the precise words are plain and unambiguous, the Court is bound to construe them in their ordinary sense and given them full effect. The apex Court went to the extent of observing that the plea of inconvenience and hardship was a dangerous one and was only admissible in construction where the meaning of the Statue was obscure and there are alternative methods of construction. The apex Court in *Dr. Ajay Pardhan's case* (supra) was interpreting the rule of admission i.e. rule 10 to post graduate course in M.D./M.S. Rule 10 is as follows :

"The seats available in any particular year will be filled up in that year. No candidates will be admitted against the seats remaining vacant from previous year."

10. The facts of the case before the apex Court were that the seat in Post-Graduation Course in M.D. in General Medicine fell vacant on account of the death of a student towards the end of the academic year and the authorities took no step to fill up the seat. Dr. Ajay Pardhan staked his claim to fill up the vacant seat under rule 10 reproduced above. While interpreting rule 10, the apex Court held as under :

"If the precise words used are plain and unambiguous, we are bound to construe them in their ordinary sense and give them full effect. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are alternative methods of construction. Where the language is explicit its consequences are for Parliament and not for the Courts, to consider "Where the language of an Act is clear and explicit" sand Viscount Simon in *King Emperor v. Benori Lal Sharma*, 72 Ind. App 57 at P. 70, "We must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature." We do not see why the same rule of construction should not apply to the Rules framed by the State Governments under Article 162 of the Constitution.

On a plain construction, Rs. 10 is in two parts. The power to admit a student under the

first part arises when a seat falls vacant in a particular year. The words 'filled up in that year' necessarily qualify the preceding words 'the seats available in any particular year'. It must logically follow that a necessary concomitant of the power under the first part of Rule 10 is the 'availability' of the seat being 'filled up in that year' which follow clearly imply that the vacancy cannot be carried over to the next academic year or years. That construction of ours is reinforced by the second part of Rule 10 which, by the use of negative language, clearly creates a bar against the seat being filled up in the next or succeeding academic year. What is implicit in the first part of Rule 10 is made explicit in the second part. The use of the negative words in the second part 'No candidates will be admitted etc.' are clearly prohibitory in nature and exclude the applicability of the carry-forward rule. It follows that if a seat falls vacant for any reason, namely, that the candidate selected in order of merit does not join the post graduate course in MD/MS in a medical college or by reason of his death or otherwise, and due to inaction on the part of the authorities the seat is not filled up in the academic year to which it pertains, there is no question of the vacancy being carried forward to the next academic year."

11. In the present case also, the rule framers after laying down the specific provisions for admission of a candidate to the 2nd year without his passing out the examination have by the use of negative language made the student disentitled to continue if he does not pass out in the supplementary examination of the 1st year or if he does not get "Re-appear" in specified number of subjects. In other words, the language which was unambiguous in the first part has been made more specific in the second part by using the word "will not be entitled to continue the studies in the 2nd year class". Similarly while framing rule 21 pertaining to the award of grace marks, the rule framers have made the language more specific by using the word 'shall' at one place and 'only' at another place, meaning thereby that grace marks shall be given only to those candidates who by getting the same are able to pass in all the subjects. In a nut shell, the apparent intention of the rule framers in the present case that the students should not be allowed the concession of grace marks in order to earn compartment and that concession of grace marks should be allowed only if a student by the grant of such grace marks can pass out the examination can well be inferred by the simple and unambiguous use of the language employed in the rules and this is how the ratio laid down by the apex Court in Dr. Ajay Pradhan's case (supra) can safely be applied to the facts of the instant case. Moreover, the intention of the rule framers that the students of 1st year should get more than one chance to pass the preliminary examination can well be gathered from a plain reading of the supplementary examination for a student who is unable to pass out examination, no grievance can possibly be made that the rules should be held discriminatory only because no provisions has been made for the grant of concession of grace marks to the students for the purpose of earning compartment. In any case no case has been made out for striking down the rules as discriminatory and for the issuance of a writ of mandamus directing the authorities to frame rules for granting concession of grace marks even for earning compartment.

12. This leads us to see as to whether the ratio laid down in Naresh Shori's case (supra) is applicable to the facts of the instant case or not. In that case, this court while granting concession of grace marks to the students appearing in 10+1 examination conducted by the Punjab School Education Board relied upon Regulations 27.1 of the General Regulations for Examination

contained in Chapter III of the Punjab University Calendar Volume II, 1984 which provided that a candidate who appeared in all subject of an examination and who failed in one or more subjects was entitled to be given grace marks for passing the examination and for earning compartment. It was held by this Court that since there was express provision in the Punjab University Calendar which had been conducting the examination before the Board took over the charge of conducting the examination of 10+1 and since the Board did not make any provision to the contrary, it was held that it was difficult to believe that merely by transfer of work of holding the examination from the University to the Board, the benefit of award of grace marks would be denied to the students for earning compartment. Moreover, this Court interpreted Regulation 16(b)(iii) of the Punjab School Education Board Senior Secondary Certificate Examination Part 1, Regulations 1988, according to which a candidate appearing in compartment examination was eligible for the grace marks upto 1%. It was held that if a candidate appearing in the compartment examination was made eligible for the award of grace marks, surely the candidate who could secure compartment by the awarding the grace marks could not be deprived of the grant of grace marks. The ratio laid down in Naresh Shori's case (supra) is inapplicable for more than one reason. In the first instance no such regulations are there in the present case which were subject to interpretation by this Court in the decided case. Secondly, as has been observed by us above, more beneficial provisions having been made by the Pharmacy Council in the rules, regarding the admission to 2nd year, regarding holding of supplementary examinations etc. no grievance can possibly be made simply because the petitioners have not been allowed the grace marks for getting compartment. In view thereof, the ratio laid in Naresh Shori's case (supra) is inapplicable.

13. Before parting with the judgment rule 3(c) which has been framed in the year 1989 has just to be referred. Rule 3(c) as reproduced in the writ petition reads as under :-

"Pharmacy Course :-

The promotion to 2nd year class will be governed according to rules framed by the Pharmacy Council of India from time to time.

NOTE :- Under the existing provisions of the Pharmacy Council of India, a candidate who has completed the prescribed syllabus of Ist year and gets re-appear(s) in more than two theory papers and two practicals, he/she will not be permitted to continue his/her studies in the 2nd year class."

14. The reference to the above mentioned rule 3(c) was made by the petitioners' counsel in order to show probably to this Court that the same was being applied to the petitioners to their disadvantage. We could not, however, see as to how the petitioners, who joined in the year 1988, could be in a disadvantageous position by the applicability of rule 3(c). In any case, it was stated at the bar by Mr. H.S. Bedi, the learned Advocate General, Punjab, and it was so specified in paragraph 2 of the written-statement that on the representation of the students who met the Director, Technical Education Punjab, it was decided that the new examination rule pertaining to carry over system would be effective only from admission session of July, 1989, and that the students who were admitted in July, 1988, session and earlier sessions would continue to be governed by the carry over system of old rules i.e. Annexure R-1.

15. For the foregoing reasons, the writ petition is found to be meritless and is consequently

dismissed with no order as to costs.

Petition dismissed.

Cases Referred.

1CWP No. 9760 of 1989

2AIR 1988 SC 1875