

PUNJAB AND HARYANA HIGH COURT

Anita Devi

Vs

State of Haryana

C.W.P. No. 14527 of 1992

(S.D. Agarwala C.J., Jawahar Lal Gupta & H.S. Bedi, JJ.)

10.05.1993

JUDGMENT

Jawahar Lal Gupta, J.

1. Is the action of the respondents in declaring the petitioner to have failed and not awarding her 5 grace marks in the subject of 'Role of the teacher & Education in the 'Indian Progressive Society' so as to enable her to earn a compartment, discriminatory and violative of Article 14 of the Constitution ? This is the short question that arises for consideration in this writ petition. In (*Naresh Shori v. Punjab School Education Board*¹) a Division Bench of this Court had taken the view that "when a candidate appearing in compartment examination has also been made eligible for the award of grace marks, surely a candidate who can secure compartment by the award of grace marks, could not be deprived of such an award. To that extent the Regulation would be held arbitrary and discriminatory." Following this judgment of the Division Bench a learned Single Judge has allowed (*Vishal Kumar v. State of Haryana etc*²). The Motion Bench which heard the present writ petition had certain reservation about the views expressed in Naresh Shori's case. Consequently, the matter was admitted to a Full Bench and has come up for hearing before us. A few facts may be noticed.

2. The petitioner joined a two years Course leading to the award of Diploma in Education at the Government Elementary Teachers Training Institute, Bhiwani. In April, 1992, she appeared in the second year examination. The result was declared on May 1, 1992. She passed in various subjects, but secured only six marks out of 40 in the subject of 'Role of the Teacher & Education in the Indian Progressive Society' (hereinafter referred to as 'the Subject'). On this account, she was declared to have failed. Averring that the purpose of awarding the grace marks is only to save a year of the student, she claims that she was entitled to the award of five grace marks so as to enable her to earn compartment in the subject. On this premises, a prayer has been made for the issue of a writ of mandamus directing the respondents to award her 5 grace marks so that the petitioner can be declared to have been placed in compartment instead of having failed in the examination.

3. A written statement has been filed on behalf of the respondents. It has been *inter alia* averred

that CWP No. 11905 of 1992 has already been dismissed by a Division Bench of this Court. It has been further averred that the department has issued instructions laying down the minimum marks that a candidate has to secure for passing the examination or for being placed in compartment. According to the respondents, a trainee has to secure 40% marks in each paper separately or being able to pass it. Further a candidate "who fails in one paper of theory securing at least 20% marks in that paper but passes in all other theory papers & other sections of practical Examination shall be placed under compartment." Since the petitioner had failed to secure 20% marks in the relevant paper, she could not be placed under compartment. It has been further pointed out that provision for the award of grace marks has been made on the pattern followed in the State of Punjab whereby a total of 5 grace marks can be given in one or more subjects only in that case "where a candidate is able to get through the examination." Reference has also been made to a letter dated August 11, 1976 in which it has been *inter-alia* provided that "the candidate cannot be placed in the compartment by awarding grace marks." On these premises, the petitioner's claim has been controverted and it has been prayed that the writ petition be dismissed.

4. We have heard Mr. Aman Dahiya, learned counsel for the petitioner and Mr. Jagdev Sharma, who has appeared on behalf of the respondents. We have also perused the pleadings of the parties.

5. It deserves mention at the outset that it is the prerogative of the appropriate authority, like the University or any other examining body to lay down the standards for passing of an examination leading to the award of a diploma or a degree. The educationists are the best persons for laying down the minimum marks that a candidate must secure before he can be said to have passed the examination. These are matters for academicians and experts to decide. Courts are normally slow to enter academic thickets and interfere in these matters unless the relevant rule is shown to be apparently arbitrary and unfair. We further take it as equally settled that Article 14 of the constitution permits reasonable classification provided such classification has a reasonable nexus with the object that is sought to be achieved. Another dimension which has been added to Article 14 is that the State cannot act arbitrarily. It is on these premises that the petitioner's challenge to the action of the respondents has to be examined.

6. It is the admitted case of the parties that the award of grace marks is governed by the two letters, copies of which have been produced as Annexures R.2 and R.3 with the written statement. The relevant provisions may be usefully called out. These are as follows:-

i) A total of 5 grace marks are given in the ETT examination.

ii) Grace marks can be given in one or more subjects.

iii) Grace marks can be given only in that case where a candidate is able to get through the examination.

iv) Grace marks can be awarded to a candidate in one or more subjects, so that by awarding these marks he/she may be declared successful. These grace marks will not be added in the aggregate (obtained marks). The candidate cannot be placed in the compartment by awarding grace marks. (Emphasis supplied)

A perusal of the above provisions clearly shows that a total of five grace marks can be given to a candidate in one or more subjects so that he is able to get through the examination. However, no grace marks can be awarded to enable a candidate to be placed in compartment. On a plain reading of the circulars, it is clear that grace marks cannot be claimed for being placed in compartment. In view of this clear provision, we are of the opinion that the claim of the petitioner is wholly lacking in merit and deserves to be rejected.

7. Mr. Aman Dahiya, however, contends that the provision for the award of grace marks has been made by the authorities with the object of enabling a candidate to save a year of his career. This object will also be achieved if a candidate is placed in compartment. He further contends that the action of the respondents in confining the award of grace marks only to a candidate who can pass the examination is apparently discriminatory and violative of Article 14 of the Constitution.

8. We are unable to accept this contention. A candidate has to secure 40% marks in a paper to pass. If he fails to secure the requisite percentage of 40% in one paper but passes in all other papers, and secures at least 20% marks in that paper, he can be placed in compartment. Furthermore, if a candidate secures less than 40% marks in one or more papers, but can pass with the award of total of 5 grace marks in paper (s), the grace can be shown to him. However, if a candidate secures less than 20% marks in any papers, he is declared to have failed. Thus the academic authority has laid down a uniform minimum standard which a candidate must attain to earn a compartment or to pass the examination. The rule is reasonable. It is not arbitrary. It is not unfair. It is of uniform application. It only permits the award of grace marks where a candidate can pass the examination and not otherwise. To illustrate, if a candidate appears in 5 papers and he secures 39% marks in each one of those papers, he can be awarded one mark in each one of the five papers so as to enable him to pass. However, if he does not pass the examination, in spite of the award of grace marks, he is to be treated to have failed in the examination.

9. On a consideration of the matter, it appears to us that the intention of the authority is only to help a candidate to pass the examination. If he is so poor that he cannot pass in spite of the award of grace marks, then no benefit is intended to be given to him. In our view, the learned counsel is not right in contending that the object of the rule is only to save a year of the student. The real object appears to be to help only that student who has succeeded in attaining a particular minimum standard and not any other.

10. Even if it is assumed that Mr. Dahiya is right in his contention and that the object of the rule is to save a year of the student, such an object will not be achieved in a case where a candidate is placed in compartment. He will have to wait till the next examination to appear and pass the examination. No degree or diploma can be awarded till the complete examination is passed. One, who is placed in compartment, gets nothing. It is only on passing the subject that he becomes entitled to the award of the diploma.

11. The academic standards laid down by the appropriate authority postulate the minimum marks that a candidate has to secure before he becomes eligible for the award of the diploma. The award of grace marks is a concession. It results in diluting academic standards. A rule for the award of grace marks has to be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award

of grace marks can be sustained. Normally, the Court shall be slow to extend the concession of grace marks and grant benefit where none is intended to be given by the appropriate authority. This rule shall be all the more stringent in case of 'teaching', 'medical' and other similar courses.

12. What is the position in the present case ? The rule clearly postulates the award of a maximum of five grace marks so as to enable a candidate to pass the examination. It is clearly provided that grace marks shall not be awarded to enable a candidate to be placed in the compartment. The language is clear and unambiguous. We find no ground to hold that the petitioner is entitled to any relief in spite of the clear provision in the circular.

13. Mr. Aman Dahiya referred to the decision of a Division Bench in Naresh Shori's case to contend that the rule is discriminatory. The regulation in this case provided for the award of grace marks to enable a candidate to pass the examination or even to clear the compartment/reappear. It contained no provision to the effect that grace marks would be awarded to enable a candidate to be placed in compartment. The Division Bench, however, took the view that grace marks could be awarded even for enabling a candidate to be placed in the compartment. Otherwise, rule would be arbitrary and discriminatory. Relying on this decision of the Division Bench, a learned Single Judge has also upheld the claim for the award of grace marks in the case of *Vishal Kumar v. State of Hayrana*,. After considering the matter, we are of the opinion that the view taken in these two cases that the provision in the rule was violative of Article 14 of the Constitution is not correct. Accordingly, we are constrained to overrule these two decisions.

14. In *Raj Kumar and others v. State Board of Technical Education, Punjab*³, a Full Bench of this Court has clearly 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." We are in respectful agreement with the view expressed by the Full Bench.

15. In view of the above, we answer the question posed at the outset in the negative. We hold that the auction of the respondents in declaring the petitioner to have failed and not awarding her five grace marks so as to enable her to earn a compartment is not discriminatory or violative of Article 14 of the Constitution of India. We further hold that rules governing the grant of grace marks have to be construed strictly and unless a rule specifically provides for the award of grace marks so as to enable a candidate to earn a compartment, the benefit shall not be available to him or her.

Accordingly, we find no merit in this petition. It is dismissed. Since the petitioner is a student, we make no order as to costs.

Petition dismissed.

Cases Referred.

1 Civil Writ Petition No. 9760 of 1989

2 C.W.P. No. 14021 of 1991

3 1990(2) PLR 179