

where services of the petitioner were regularised on December 19, 1990, which fact is not disputed and in view of the instructions aforesaid, he would be entitled to reimbursement of the medical expenses incurred during the period of *ad hoc* service also. For reimbursement of medical bills after regularisation, case would be covered under the Rules. After regularisation the period of *ad hoc* service is to be taken into consideration for service benefits like seniority, pension, gratuity etc. and also for medical reimbursement.

(5) For the reasons stated above, order Annexure P/4 is quashed with the direction to the respondents to reimburse the medical bill submitted by the petitioner forthwith. The petitioner will get costs which are quantified at Rs. 1000.

J.S.T.

(FULL BENCH)

*Before : M. R. Agnihotri, A. S. Nehra & N. K. Sodhi, JJ.*

MEENAKSHI SHARMA,—*Petitioner.*

*versus*

THE BOARD OF SCHOOL EDUCATION, HARYANA, BHIWANI  
AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 1802 of 1992.*

21st July, 1992.

*Haryana Board of School Education Act, 1969—S. 19—Haryana Board of School Education Regulations—Regl. 26—Scope of—Grant of grace marks in compartment examination—Allocation of grace marks—Validity of the Regulation—Regulation whether arbitrary and unjust.*

*Held, that the regulation provides that candidate appearing in compartment examination will be eligible for 1 per cent of the maximum marks allotted to the subject as grace marks.*

(Para 7)

*(C.W.P. No. 13981 of 1991 decided by Division Bench of Punjab and Haryana High Court, on 14th December, 1992).*

(UPHELD)

*Held further, that there is no constitutional or legal infirmity or any arbitrariness in the said regulation. The intention of the legislature and the object of the legislation were only to promote the interest of education by requiring the students to achieve success in*

the examination on the basis of their own performance and not by depending on the grace of the examining bodies. The object underlying the grant of grace marks is to remove the real hardship to a candidate who has otherwise shown good performance in the academic field but is somehow losing one year of his scholastic career for the deficiency of a mark or so in one or two subjects, while on the basis of his overall performance in other subjects, he deserves to be declared successful. This consideration being a laudable one, regulation 26 is neither arbitrary nor unfair or unjust.

(Para 7)

*Civil Writ Petition Under Articles 226/227 of the Constitution of India praying that :*

- (i) *a writ in the nature of Mandamus directing the respondents to allow the petitioner the benefit of 4 grace marks according to Regulation 26 equivalent to 1 per cent of the total aggregate marks allotted to 5 subjects in the subject of English Core to make up deficiency to pass examination may be issued;*
- (ii) *a writ in the nature of Mandamus directing the respondents Nos. 1 to 3 to declare her pass in the Haryana School Education Board Senior Secondary Certificate Examination 1990 and to issue the Result Card/Certificate may be issued;*
- (iii) *a writ in the nature of certiorari declaring that the classification for awarding different grace marks for annual and supplementary (Compartment) examination is unrealistic hypertechnical and without any good object and the same may be struck down;*
- (iv) *issue any other writ/order or direction which this Hon'ble Court may deem fit and appropriate in favour of petitioner;*
- (v) *filing of certified copies of the Annexures and advance notice to the respondents may be exempted;*
- (vi) *the writ petition may be allowed with cost.*

**PRAYER FOR AD-INTERIM RELIEF :** *It is further prayed that the respondents may be directed to declare the result of the petitioner by grant of 4 marks in the subject English Core pending decision of this writ petition.*

*(Case referred by the Division Bench consisting of Hon'ble Mr. Justice A. P. Chowdhri and Hon'ble Mr. Justice N. C. Jain on 12th March, 1992 to a Larger Bench along with C.W.P. No. 13981 of 1991 (decided by Division Bench on 14th February, 1992) for deciding*

*the important question of law involved in these cases. The Full Bench consisting of Hon'ble Mr. Justice M. R. Agnihotri, Hon'ble Mr. Justice A. S. Nehra and Hon'ble Mr. Justice N. K. Sodhi finally dismissed the writ petition and affirmed C.W.P. No. 13981 of 1991 on July 21, 1992).*

A. K. Kulshrestha, Advocate, for the petitioner.

Mrs. Abha Rathore, Advocate, for Respondent Nos. 1 to 3.

S. C. Sibal, Senior Advocate with Deepak Sibal, Advocate, for Respondent No. 4.

#### JUDGMENT

*M. R. Agnihotri, J.*

Petitioner appeared in the Senior Secondary Certificate Examination held by the Haryana Board of School Education in March, 1990. The examination consisted of five subjects, each subject carrying maximum marks of 100, with minimum pass percentage of 33. Out of the five subjects, the petitioner could clear only four subjects and was placed in compartment in the subject of English Core. In order to clear her compartment, the petitioner could avail two chances by appearing in the supplementary examination in the month of September, 1990, and in the next annual examination held in March, 1991. The petitioner availed the first chance but could not clear the compartment. When she appeared for the second time in March, 1991, she was again placed in compartment in the subject of English Core, as she had secured only 29 marks out of 100, against the pass percentage of 33.

(2) In this situation, the grievance of the petitioner is, that as she had scored 29 marks in English Core subject out of 100 marks, that is, only four marks less than the minimum pass percentage, she should not have been placed in compartment but should have been declared as successful by adding four marks by way of grace. Claim is based on regulation 26 of the Regulations of the Board of School Education, Haryana, according to which if a candidate fails in one or more subjects and the total deficiency is not more than 1 per cent of the aggregate marks, that candidate shall be awarded the requisite grace marks to pass the compartment examination to the extent of 1 per cent of the marks allotted to the subject. According to the petitioner, 1 per cent of the maximum marks allotted to the subject, should be read as 1 per cent of the total aggregate marks of all the five subjects (that is, five marks) and, therefore, she should be

declared successful as the grace marks required by her were only four. Alternatively, if the regulation was to be interpreted otherwise, i.e., to restrict the grant of grace marks to only 1 per cent of the maximum marks allotted to the subject concerned, then the regulation was arbitrary and deserved to be struck down.

(3) In the return filed by the Haryana Board of School Education, the stand taken is that the grant of grace marks to a compartment candidate has to be restricted only to the extent of 1 per cent of the maximum marks allotted to the subject concerned, that is, the subject in which the candidate had been placed in the compartment. For this, reliance was placed on a Division Bench judgment of this Court in C.W.P. No. 13981 of 1991, dated 14th February, 1992, wherein this very view has been taken.

(4) The Motion Bench on 12th March, 1992 admitted the writ petition to a Full Bench as it was of the view that the aforesaid Division Bench judgment needed further consideration. Accordingly, we have considered the judgment once again, and have no hesitation in endorsing the view taken therein.

(5) The grant of grace marks in compartment examination of 10+2 is governed by regulation 26 of the Regulations framed by the Board of School Education, Haryana, under Section 19 of the Haryana Board of School Education Act, 1969. This regulation provides that candidate appearing in compartment examination will be eligible for 1 per cent of the maximum marks allotted to the subject as grace marks. Regulation 26(a) relates to regular examination, whereas regulation 26(b) relates to the compartment case alone. Both these provisions are independent and mutually exclusive. Regulation 26 is reproduced below:—

**"26. GRACE MARKS.**

- (a) If a candidate fails in one or more subject(s) and the total deficiency is not more than one per cent of the aggregate of marks, he will be awarded the required grace marks (that can be distributed among any number of subjects) provided, the grace marks awarded in practicals do not exceed the marks actually obtained by the candidate in the practical examination.
- (b) A candidate shall not be entitled to the benefit of grace marks to earn compartment though he shall be entitled

to the grace marks to pass the compartment examination to the extent of one per cent of the maximum marks allotted to the examination.

- (c) A candidate appearing in a subject/s for improvement in his previous performance, will not be entitled to grace marks.
- (d) A candidate appearing in one or more additional subjects shall also be eligible for grace marks upto one per cent of the aggregate of the total marks allotted to the papers.

(6) Incidentally, the matter is squarely covered by the judgment of the Hon'ble Supreme Court reported as *Panjab University, Chandigarh v. Shri Sunder Singh* (1), wherein their Lordships were interpreting Rule 27 of the Panjab University Regulations dealing with an exactly identical question. Rule 27 *ibid* reads as under:—

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

Provided that grace marks be also awarded to a candidate if by awarding such marks he can earn exemption or compartment in subject/s and part/s.

- (b) A candidate who re-appears to clear the compartment or subject/s and part/s in which he has been declared (eligible) to re-appear shall be awarded grace marks upto 1 per cent of the total marks of the subject/s and part/s in which he re-appears if by such addition the candidate can pass in that subject/s or part/s.”

While interpreting the above provisions, it was held by their Lordships of the Supreme Court that.—

“.....The provision in clause (b) is clear and on re-appearing the candidate becomes entitled to grace marks of upto

one per cent of the total marks of the subject/subjects in which he re-appears. Once clause (b) applies, no reference is available to the performance in the regular examination taken earlier and the benefit of grace marks to the extent indicated has to be confined to the performance at the re-appearance."

Therefore, the controversy as to whether a candidate who has been placed in compartment is entitled to the grant of grace marks upto 1 per cent of the total aggregate marks of the subject, or to the extent of 1 per cent of the maximum marks of that subject alone in which the candidate has been placed in compartment, stands already concluded by the aforesaid judgment of the Supreme Court. Resultantly, the claim of the petitioner is devoid of any force and deserves to be rejected. In fact, the aforesaid Division Bench judgment of this Court in C.W.P. No. 13981 of 1991 has only placed reliance on the Supreme Court judgment in *Shri Sunder Singh's case* (supra), which is binding as well as conclusive.

(7) So far as the challenge to the vires of regulation 26 *ibid* is concerned, we do not find any constitutional or legal infirmity or any arbitrariness in the said regulation. Obviously, the intention of the Legislature and the object of the legislation, were only to promote the interest of education by requiring the students to achieve success in the examination on the basis of their own performance and not by depending on the grace of the examining bodies. The object underlying the grant of grace marks is to remove the real hardship to a candidate who has otherwise shown good performance in the academic field but is somehow losing one year of his scholastic career for the deficiency of a mark or so in one or two subjects, while on the basis of his overall performance in other subjects, he deserves to be declared successful. This consideration being a laudable one, regulation 26 is neither arbitrary nor unfair or unjust. "In fact, it seeks to lay *emphasis* on the excellence in the field of education; hence, deserves to be upheld.

(8) Consequently, the writ petition is dismissed and the Division Bench judgment of this Court in C.W.P. No. 13981 of 1991 (supra) is affirmed. There shall be no order as to costs.