

## CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*SADHU RAM SINGAL,—*Petitioner**versus*THE PANJAB UNIVERSITY AND ANOTHER,—*Respondents***Civil Writ No. 2589 of 1968.**

October 28, 1968.

*Punjab University Calendar 1967—Volume II—Regulation 13—Volume III—Chapter XXIX—Rule 6(a) and (b)—Master of Arts examination—Candidate passing in aggregate in either Part I or Part II of the Examination, but failing in one or more papers—Such candidate—Whether entitled to grace marks.*

*Held*, that if a candidate in the Master of Arts examination of the Panjab University has passed in the aggregate in either Part I or Part II of that examination but has failed in one or more papers, he is entitled to 4 grace marks at the rate of 1 % of the aggregate marks of that Part. He will thus be taken to have obtained the marks so determined after the addition of the grace marks. The addition of grace marks in such a case helps the candidate to pass the examination. The grace marks are to be added to the best advantage of the candidate in order to be declared to have passed the examination. Thus the interpretation to be put on the Rule has to be such as is to the best advantage of the candidate.

(Para 1)

*Petition under Article 226 of the Constitution of India, praying that a writ of mandamus or any other appropriate writ, order or direction be issued directing the respondents to add to the aggregate marks obtained by the petitioner 4 grace marks, i.e., one per cent of the total aggregate marks and to declare the petitioner's result afresh after the moderation thereof in accordance with the direction.*

H. L. SONI, ADVOCAT', for the Petitioner.

S. C. GOYAL, ADVOCATE, for the Respondents.

## JUDGMENT

TULI, J.—The petitioner in this case appeared in the Master of Arts examination Part I in the subject of Political Science held by the Punjab University in April, 1967, as a private candidate and obtained 209 marks. He was thus declared successful in that examination. He appeared in Part II examination in that subject held in 1968, and obtained 187 marks having failed in paper I, in which he obtained 25 marks instead of 33 which are required for a pass. He was thus declared as having failed in Part II. He made a representation to the Registrar of the University to the effect that he was entitled to 4 grace marks as a matter of right in view of Regulation

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13, for Master of Arts examination contained in Panjab University Calendar, Volume II and Rule 6(a) and (b), moderation of results, Chapter XXIX, Volume III, of the Punjab University Calendar 1967. He claimed that if he was given 4 grace marks, the aggregate of his marks in both Parts I and II would come to 400 and thus he should be declared successful. That representation was rejected on the 23rd July, 1968. The petitioner then filed the present writ petition praying for a writ of *mandamus* directing the respondents to add to the aggregate marks obtained by him 4 grace marks, i.e., 1 per cent of the total aggregate marks in Part II, and to declare his result afresh after the moderation thereof in accordance with such direction. The relevant Regulation 13 and Rule 6(a) and (b) are as under:—

*Regulation 13.*—“A candidate who has obtained a minimum of second class marks in the aggregate of both Part I and Part II examination taken together shall be deemed to have passed the examination even if he has failed in one or more papers of Part II examination.”

*Rule 6(a).*—“A candidate shall be declared to have passed the examination if he has secured at least second class marks in the aggregate (in the whole examination), even if he fails in one or more papers.”

*Rule 6(b).*—“A candidate who fails in one or more papers or in the aggregate shall be given grace marks upto 1 per cent of the total aggregate marks of Part I and Part II examination, as the case may be, to the best advantage of the candidate, in order to be declared to have passed the examination.”

It is the interpretation of this Regulation and the Rules, which is called for in this petition. On behalf of the petitioner it has been contended that since he has failed in one paper, he is entitled to 4 grace marks under Rule 6(b), and if those 4 grace marks are added to the marks obtained by him in paper I, in which he failed having obtained 25 marks, instead of 33, his marks in that paper will go up to 29 and the aggregate marks will go up to 191. Adding 209 marks obtained in Part I, and 191 marks thus, obtained in Part II, his aggregate of marks will come to 400 out of 800 and thus he is entitled to be declared as pass because 400 represent the minimum second class marks. On the other hand, it is contended by the learned counsel for the respondent that the petitioner is not entitled to any grace

marks as by the addition of the grace marks even, he will be failing in paper I and, therefore, there is no point in giving him 4 grace marks. The grace marks according to the learned counsel, are to be given in order to enable the candidate to pass in that particular paper. I regret I cannot agree with the interpretation suggested by the learned counsel for the respondents. In my view, if the candidate has passed in the aggregate in either Part I or Part II, but has failed in one or more papers, he is entitled to 4 grace marks, at the rate of 1 per cent of the aggregate marks of that Part. He will thus be taken to have obtained the marks so determined after the addition of the grace marks. The addition of the grace marks in the present case helps the petitioner to pass the examination, which means the examination of Master of Arts in the subject of Political Science, because if the marks of both the Parts are added, the total comes to 400. It is to be borne in mind that the grace marks are to be added to the best advantage of the candidate in order to be declared to have passed the examination. Thus the interpretation to be put on the Rule has to be such as is to the best advantage of the candidate. I, therefore, find great force in the contention of the learned counsel for the petitioner and hold that the petitioner in this case is entitled to 4 grace marks, to be added to the marks of paper I in Part II and the aggregate of Part II should be determined after adding those 4 grace marks.

(2) In the case of *Satinder Mohan Mehta v. Punjab University and another* (1), Narula J. had to consider a similar Rule relating to LL.M. examination. The Rule did not call for interpretation in that case because it had been admitted by the learned counsel for the University that in case the Rule applied to LL.M. examination, the petitioner in that case was entitled to the grace marks which worked out to 3 in that case.

(3) It is then contended by the learned counsel for the respondents that a candidate shall be deemed to have passed the examination as provided in Regulation 13, *supra*, if by his own effort he obtains the minimum of second class marks in the aggregate of Part I and Part II and not by the addition of grace marks. I regret my inability to agree to that contention. In my view a candidate shall be deemed to have obtained the minimum of second class marks if the aggregate of his marks in both Parts I and II of the examination

(1) 1967 Cur. Law Journal (Pb. & Hra.) 191.

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comes to 400 or more after including the grace marks to which he may be entitled under Rule 6 (b), *supra*.

(4) For the reasons given above, I accept this petition with costs and direct the respondent to add 4 grace marks to the marks obtained by the petitioner in paper I of Part II and declare his result after aggregating the marks thus obtained by him in both Parts I and II. Counsel's fee Rs. 100.

K. S.

CIVIL MISCELLANEOUS

*Before P. C. Jain, J.*

JUGAL KISHORE,— *Petitioner*

*versus*

THE STATE OF HARYANA AND ANOTHER,—*Respondents*

**Civil Writ No. 2886 of 1968.**

and

**Civil Misc No. 4291 of 1968.**

October 29, 1968.

*Punjab Municipal Act (III of 1911) Sections 38 and 45—Punjab Municipal (Executive Officer) Act (II of 1931) Section 3—Secretary of a Municipal Committee—Removal or suspension of—Special meeting of the Committee under section 38, Punjab Municipal Act—Whether essential—Such Secretary—Whether can be removed at a meeting under section 3(1), Punjab Municipal (Executive Officer) Act—Committee exercising power under section 45 Punjab Municipal Act—Procedure under section 38(1)—Whether must be followed.*

*Interpretation of statutes—Word “may”—When interpreted as “shall”.*

*Held*, that section 3(1) of the Punjab Municipal (Executive Officer) Act, 1931, deals with the appointment of the Executive Officer while section 38 of the Punjab Municipal Act deals with the appointment of Secretary. Both these sections have been enacted for the appointment of different persons to different offices. Under section 38 of the Punjab Municipal Act, in a special meeting, a Committee is empowered to appoint, subject to the approval of the State Government, one of its members or any other person to be its Secretary and if any person so appointed is to be suspended, removed, dismissed or otherwise punished, then for that purpose also, a special meeting has to be convened. At the meeting convened for the purpose of appointing an Executive Officer “no other business may be transacted”. The word “may” has been used to mean “shall” in section 3(1) of the