

by and large are snatched away by the top creamy layer of the 'backward' caste or class, thus keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake,——"

"In fact, research conducted by the A. N. Sinha, Institute of Social Studies, Patna, has revealed a dual society among Harijans, a tiny elite gobbling up the benefits and the darker layers sleeping distances away from the special concessions. For them, Arts. 46 and 335 remain a 'noble romance', the bonanza, going to the 'higher' Harijans."

(8) What has been so succinctly brought out in the above quoted observations, equally applies to the sub-categories of officers, and JCOs and other ranks. If the concept of fairness pervading Article 14 has any meaning, the impugned sub-categorisation must be held to be fair, reasonable and meant to achieve the object of affording equality of opportunity to the children of two classes.

(9) Both on principle as well as precedent, therefore, we have no doubt that the sub-categorisation between children of officers on the one hand and the JCOs and other ranks on the other hand in the category of Ex-servicemen, is reasonable, fair and valid, having a nexus with the object sought to be achieved by such classification.

(10) For the foregoing reasons, we find no merit in the appeal, which is accordingly dismissed.

P.C.G.

Before : Gokal Chand Mital & Amarjeet Chaudhary, JJ

SANJAY BATTA,—Petitioner.

versus

PUNJABI UNIVERSITY, PATIALA AND ANOTHER,—Respondents.

Civil Writ Petition No. 1735 of 1990.

9th April, 1990.

Punjabi University Calendar, Volume II, 1981, Chapter 65—Ordinance 26(B)(i) proviso—M.B.B.S. examination—Grant of grace marks—Rule requiring grant of not more than 5 grace marks in one subject to pass—Petitioner short of six marks—Proviso to Ordinance 26 is neither unreasonable nor arbitrary.

Held, that if in the M.B.B.S. Course, which is a professional Course, the University wants a higher degree of proficiency and

**Sanjay Batta v. Punjabi University, Patiala and another
(Gokal Chand Mital, J.)**

provides that more than 5 grace marks be not given to a candidate in one subject, it is neither unreasonable nor arbitrary.

(Para 2)

Petition under articles 226 and 227 of the Constitution of India, praying that this Hon'ble Court may be pleased to summon the records of the case, and after a perusal of the same :

- (a) *issue a writ in the nature of Mandamus, directing the respondents to declare the petitioner as having passed the Final Professional M.B.B.S. examination, by giving him the benefit of one per grace marks;*
- (b) *issue a writ in the nature of Certiorari, quashing the impugned proviso to rule 26 (B) (i) which restricts the giving of grace marks, in one individual paper upto only five marks;*
- (c) *issue any other writ, order or direction that this Hon'ble Court may deem fit under the facts and circumstances of the case;*
- (d) *service of advance notices on the respondent be dispensed with;*
- (e) *petitioner be exempted from filing the certified copies of the annexures;*
- (f) *cost of the petition be awarded to the petitioner.*

Satya Pal Jain, Advocate, for the Petitioner.

R. L. Sharma, Advocate, for the Respondents.

ORDER

(1) In view of proviso to Ordinance 26 (B) (i) of the Punjabi University Calendar, Volume II, 1981, Chapter 65, the petitioner can avail not more than five grace marks in one subject to pass. He is short of six marks and even if five grace marks are given to him, he does not pass in the subject in question. Accordingly, no relief can be granted to the petitioner.

(2) Faced with this situation, the counsel for the petitioner contends that he has challenged the vires of the aforesaid proviso. We find no ground to declare the said proviso null and void. If in the M.B.B.S. Course, which is a professional course, the University wants a higher degree of proficiency and provides that more than 5 grace marks be not given to a candidate in one subject, it is neither unreasonable nor arbitrary.

Dismissed.

R.N.R.