

M. Mubarak Ali Vs. Controller, of Examination, Bangalore University and Another

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Court : Karnataka

Decided On : Aug-09-1994

Reported in : AIR1995Kant42; ILR1994KAR2859; 1994(4)KarLJ352

Judge : P. Krishna Moorthy, J.

Acts : Bangalore University Act, 1964 - Sections 36

Appeal No. : Writ Petn. No. 21222 of 1994

Appellant : M. Mubarak Ali

Respondent : Controller, of Examination, Bangalore University and Another

Advocate for Def. : M.N. Seshadri, Adv.

Advocate for Pet/Ap. : Smt. K. Shailaja Shetty, Adv.

Judgement :

ORDER

1. Petitioner appeared for the fourth year B.H.M.S. Degree examination (Homeopathy) in January, 1994. There arc 3 subjects for the above examination. The peti tioner passed the first 2 subjects but failed in the 3rd subject 'Repertory' as is evident from Annexure 'A' the marks card. The total marks for that subject is

200 made up of -- Theory 100 marks, practical 50 marks and Viva-voce 50 marks. A separate minima of 50% is necessary in all the above 3 for securing a pass. The petitioner obtained only 46 marks out of 100 for 'Theory' though he obtained more than 50% for Practical and Viva-voccc. According the petitioner was declared to have failed in that, examination. The petitioner is claiming that he is entitled to a grace mark of 3% of the total marks for the subject namely 6 marks and if it is added to the marks for Theory he will obtain pass mark. Though he made various representations to the University authorities to award him the same, so far the university has not done so and ac-cording this writ petition is filed for directing the university to award him grace marks and declare him as passed.

2. The stand taken by the university is that the petitioner is only entitled to a grace mark of 3% of the Theory paper alone and not 3% of 200 marks which is the total marks for the subject in view of the fact that a separate minima for a pass is fixed for Theory, Practical and Viva-voce. If 3 marks alone are added to the marks obtained for theory paper, the marks of the petitioner will only be 49 out of 100 for theory which is below 50% and according the petitioner is not entitled to any relief.

3. The question will depend upon the interpretation of 'Regulations governing gracing of marks at the Examinations conducted by the Bangalore University.' Regulations 2 to 5 are relevant for the purpose of this case and they are extracted below:

2. In these Regulations, unless there is anything repugnant in the subject or context, 'Paper' means and includesp

(i) Paper or papers which have a separate minima for a pass.

(ii) Practical, Chemicals and Viva-voce which have separate minima for a pass.

Explanation: Paper includes theory, prac-ticals, clinical and viva-voce.

3. One percent of the maximum marks ofthe paper or papers of the examination takenby the candidate shall be' available forgracing.

4. Subject to Regulation No. 3 gracing in any paper/s shall not exceed 2 per cent of the maximum marks of that papers.

5. Notwithstanding anything contained in Regulation No. 4 and subject to Regulation No. 3 gracing in any paper/s shall be three per cent of the maximum marks of that paper/ s if the candidate has taken all the papers prescribed for that examination and has obtained 50 per cent or more in the total aggregate of that examination.

4. It is agreed between the parties that it is Regulation 5 that is applicable for the facts of this case as the petitioner has taken all the papers in the examination and has obtained more than 50% in the total aggregate.

5. If the question that arises for consideration is, as to whether petitioner is entitled to a grace mark of 3% of the total marks of 200 (total of theory, practical and viva-voce) or 3% of 100 marks which is the maximum marks for theory. Normally the question of gracing will arise only for the failed papers except in cases coming under Regulation 8. Regulation 5 provides that if other conditions are satisfied gracing in any paper/s shall be three per cent of the marks of that paper. Paper is defined in Regulation[^] to mean and include a paper or papers which have a separate minima for a pass or practicals, clinical and viva-voce which have a separate minima for a pass. Though normally a paper may not include practicals, clinical or viva-voce the meaning of word 'paper' is enlarged to take in the above 3 examinations as well provided a separate minima marks is fixed for a pass in that examination. On a combined reading of clauses (i) to (ii) of Regulation 2 I have no hesitation to hold that the theory, practicals, clinical and viva-voce examinations have to be treated as separate papers so long as a separate minima pass mark is fixed for the above examinations. The explanation to Regulation 2 can apply only in cases where there is no separate minimum pass mark fixed for any of the 4 examinations mentioned therein. In cases where separate minima pass mark is fixed for all the 4 examinations it is the main part of the definition that shall apply and the explanation can have no application. Moreover, under Regulation 5 gracing is provided for 'any paper' and not to 'any subject' which would also indicate that the 4 examinations will have to be treated as separate papers so long

as a minima pass mark is fixed for the same.

6. Admittedly in the case on hand, separate minima for a pass is fixed for theory, practical and viva-voce. If so the gracing can be made only to the extent of 3% of the maximum marks for the 3 examinations separately. In that view of the matter for the :theory paper the petitioner will be entitled to a grace mark of 3 (3% of 100 - the maximum for theory paper) which will make a total of 49 out of 100. Even that will not be sufficient for a pass the minima for a pass being 50%

In view of what is stated above the petitioner is not entitled to any relief and the writ petition is dismissed. No costs.

7. Petition dismissed.

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