

**(1993) 08 MP CK 0015**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Petition No. 1495 of 1992**

Mukesh Kumar and Another

APPELLANT

Vs

Dean, Lakshmibai National College of Physical Education and  
Another

RESPONDENT

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**Date of Decision : 24-08-1993**

**Acts Referred:**

**Citation : (1994) 39 MPLJ 82 : (1994) MPLJ 82**

**Hon'ble Judges : Shacheendra Dwivedi, J;R.C. Lahoti, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

R.C. Lahoti, J.

Mukesh Kumar and Kunwarpal Lachoriya, two students of Lakshmibai National College of Physical Education, Gwalior (hereinafter "L.N.C.P.E." for short) having been declared failed in B.P.E. (3 Y.D.C.) Examination Part II and Part I, respectively for the two petitioners, conducted in the month of April, 1992, have filed this petition seeking a writ of mandamus commanding the respondents to award grace marks to the petitioners and declare them eligible for supplementary examination of 1992. At the hearing the petitioners through their learned counsel took a somersault, while petitioner No. 2 Kunwarpal Lachoriya conceded that he had no case worth being canvassed before this Court and he was prepared to suffer dismissal of his petition as not pressed; Mukesh Kumar petitioner No. 1 improved upon the prayer made in the petition seeking declaration of having passed the examination without necessity of taking supplementary examination. Forcefully canvassing his case the learned counsel for the petitioners placed implicit reliance on a Division Bench decision of this Court in Madhu Jaswani and Ors. v. Dean, Lakshmibai National College of Physical Education, Gwalior and Anr., 1991 MPLJ 542, to which decision one of us (Shacheendra Dwivedi, J.) was also a party.

Be that whatever it may, we are now called upon to adjudicate upon the fate of petitioner No. 1 alone, facts relevant to whom shall only be stated hereinafter. Straightway we proceed to extract and reproduce the relevant part of the statement of marks (Annexure P/1) secured by him:-

Part "A": Theory

| -----                                                             |       |                                                 |                                                 |     |       | Paper                            |
|-------------------------------------------------------------------|-------|-------------------------------------------------|-------------------------------------------------|-----|-------|----------------------------------|
| Subject                                                           | Final | Sessionals                                      | Total                                           | No. | exam. | Mks.                             |
| -----                                                             |       |                                                 |                                                 |     |       | Max. 75 25                       |
| Min. 25 - 100                                                     | 33    | I Physiology and Physio. of Exercise            | 40                                              | 06  | 46    | II Klnesiology                   |
| 27 13 40                                                          |       | III Educational Psychology                      | 36                                              | 10  | 46    | IV English 23 09 32 V Methods in |
| Phy. Edn. 30 06 36                                                |       | VI Introduction to Edn. and Educational Methods | 37                                              | 06  | 43    |                                  |
| VII Citizenship and Government                                    | 25    | 04 29                                           | Marks or subject already - cleared out of ----- |     |       |                                  |
| -----                                                             |       |                                                 |                                                 |     |       |                                  |
| Total marks Part "A" (including Sessionals) out of 700 (Min. 231) |       |                                                 |                                                 |     |       | 272                              |
| -----                                                             |       |                                                 |                                                 |     |       |                                  |

Result Part A Theory PASSED/FAILED/SUPPLEMENTARY

The contention of the petitioner is that though there is a maximum prescribed there are no minimum passing marks prescribed, in so far as the sessionals are concerned, it would suffice if the petitioner has secured passing marks in theory and minimum passing percentage in the final aggregate of the total marks including those secured at the sessionals to make him pass. The petitioner has been treated having failed in papers IV and VII i.e. English and Citizenship and Government. According to the petitioner there being no minimum passing marks prescribed in the sessionals, he had secured 25 marks in theory paper in Citizenship and Government and hence in that paper he should be treated to have passed; he was wrongly treated by the respondents as failed. Next he submits that on the same analogy to pass in English Paper he required only 2 marks to attain the minimum passing marks in theory paper which 2 marks he was entitled as of a right to secure as grace marks. In the final aggregate he was required to secure a minimum of 231 marks while he had already secured 272 marks. Negatively put the case of the petitioner is that it is not necessary for him to secure minimum 33 marks in the total of each paper; it suffices if he secures 33% out of 75 i.e., 25 marks in each of the papers in theory and 33% out of 700 i.e., 231 marks in the aggregate total; securing 33 marks in each of the papers individually being not necessary inasmuch as the relevant provisions as contained in the General Rules (Examination Ordinance) issued by L.N.C.P.E. nowhere prescribe for the candidate securing any minimum passing marks in sessionals, the spirit of the rules being total exclusion of sessionals assessment while considering the entitlement of the student to pass or take supplementary examination.

The learned counsel for the petitioner read out to us paras 4 and 14 of the General Rules. However we have chosen to read a few other paragraphs as well,

being of useful importance in assisting solution of the problem at hand. We quote several relevant excerpts from the General Rules as under:-

"4. To pass in Theory subjects in each of part I, II and III, examinations a candidate must secure at least 33% marks in each Theory Paper in the final examination and also obtain at least 33% marks in the aggregate of each paper. No minimum percentage is prescribed for the sessional grades in Theory."

\*\*\* \*\* "9. Those candidates who fail in only one paper of Part A of B.P.E. Part I, II and III examinations and/or in part D (Specialization) only of B.P.E. Part III examination held in April every year shall be eligible to appear in supplementary examination in the paper in which they failed and/or in Part D Specialization of B.P.E. Part III examination to be held as far as possible in August/September every year subsequent to the main examination. Under Part D, a candidate failing only in the written paper or practical examination shall appear only for the written paper or practical examination, as the case may be."

\*\*\* \*\* "For B.P.E. Supplementary examination the result shall be declared on the basis of the marks actually obtained by a candidate in each of the papers he/she passed in the annual examination, plus the marks obtained in the paper in which he/she took the supplementary Examination and the division shall be awarded on the total of such marks. Such candidates, however, will be ineligible for a place on the merit list."

"If a candidate appears for Supplementary Examination in Part D (Specialization) the sessional marks previously obtained by such candidates shall be repeated and division shall be decided on the aggregate of sessional marks plus the marks obtained in the Supplementary Examination. Such candidates, too, will be ineligible for a place on the merit list."

\*\*\* \*\* "The candidates who fail in more than one theory subject in B.P.E. Part I, II and IIIrd examination held in March/April shall not be eligible to appear at the supplementary examination. They will appear as ex-student in all theory subjects next annual examination. Such candidates shall not be eligible for provisional admission to the next higher classes in that academic year."

"11. Private candidate shall not be allowed to appear at the B.P.E. examination. Those candidates who appear at B.P.E. Part I, II or III examinations, but are declared to have failed shall however be permitted to appear at annual examination as ex-students. In their cases the sessional marks previously obtained by them shall be carried over."

\*\*\* \*\* "14. An examinee, who fails by a total of not more than three marks in not more than two subjects in any of the B.P.E. Parts I, II or III examinations but secures more than the minimum aggregate marks required including sessional marks in each paper, shall be given three grace marks to enable him to pass the examination."

The relevant part of para 4 which we have quoted hereinabove makes it clear

that to pass in theory subjects the candidate must satisfy the following requirements:-

- (i) must secure at least 33% marks in each theory paper;
- (ii) must also obtain at least 33% marks in the aggregate of each paper, which aggregate would consist of the marks secured in theory added by marks secured in the sessionals;
- (iii) it would suffice if the candidate has secured a minimum of 33% of marks in each theory paper and also in the aggregate of each paper though not a minimum percentage in the sessionals; requirement as to securing of minimum percentage at the sessionals having been explicitly excluded by the provisions.

The excerpts from the General Rules reproduced hereinabove make it very clear that the assessment by giving marks for the sessionals is not a matter of empty formality. The candidate has to take the sessionals seriously. The marks secured at the sessionals have utility for two purposes: firstly, they have to be counted for determining whether the student has satisfied the requirement of securing minimum 33 marks out of 100 in each of the papers; secondly, the sessional marks being totalled with theory paper marks would determine not only the candidate's entitlement for the supplementary examination but also his division and place of order in the merit list. Had it been otherwise there would have been no reference to sessional marks in the rules at several places italicized by us in the excerpts of the Rules made hereinabove. The candidate can afford to bid a good-bye to sessionals and purchase a zero thereat provided that he is so much confident of his merit of performance at the theory as would earn him so much marks as would make a percentage of 33 not only in the theory (out of 75) but also in the total (out of 100), ultimately making up 33% in the final aggregate. To illustrate, if the student secures 25 marks in theory, he would need at least 8 marks in sessionals to make a total of 33 in that paper so as to pass. However if he has secured 33 marks in theory paper alone, it would not make any difference if he secures even a zero in the sessional of that subject. Marks secured by the petitioner herein in several subjects provide typical illustration of what we have stated hereinabove. He has passed in papers I, V and VI in spite of securing only 6 marks in each of the three sessionals respective to these subjects. On the contrary, securing 9 marks in sessional has not enabled him passing in English (paper IV) where he has secured 23 marks in theory and 32 in total. So is also in Citizenship and Government (paper VII) where he has secured just enough marks i.e., 25 in theory. Poor performance in sessional earning only 4 marks has resulted in his failure in that subject which it would not have been if he could have compensated the loss in total by securing 8 marks in the sessionals.

The learned counsel for the petitioner has placed reliance on paras 7 and 12 of the Division Bench decision in Madhu Jaswani's case.

The learned counsel for the petitioner submitted that the Division Bench in Madhu Jaswani's case (supra) has laid down the law which completely does away

with the necessity of assessing the petitioner's performance at the sessionals for any purpose -- whether adjudging the entitlement to pass or adjudging the entitlement to secure grace marks. We are afraid that the submission made is a too tall one and what is being contended does not at all flow from the dictum in Madhu Jaswani's case. On the contrary we find several passages occurring therein which support the respondents' opposition to the petitioner's case.

At the very outset, we may observe that Madhu Jaswani's case interpreted para 14 of the General Rules solely for the purpose of determining the entitlement of a student to grace marks and thereby finding out if the student would be deemed to have passed, the question whether a student can be treated as passed without allowing grace marks was not posed before the Division Bench. The Division Bench was not posed with the problem of interpreting the General Rules with a view to find out the entitlement of a student to pass straightway. Having benevolence running through para 14 as "double-track benefit", the Division Bench held:-

"An examinee can avail the benefit of Para 14 in the types of cases to achieve the minimum required to pass any one or two papers/subjects and thereby pass the examination: grace marks may be added to meet the deficiency in the written test; they may also be added to make up the deficiency in the total minimum marks required to be secured in that particular paper or papers. The benefit will not be available to an examinee whose performance in the written test is so low that addition of grace marks to the total marks secured by him in that paper/subject on being transferred to the marks secured by him in the written test do not raise his performance in the written test to the minimum required."

1. Vide para 7, the Division Bench held that passing of the examination was subjected to three conditions-precendent:

-- only three grace marks can be added;

-- when the examinee has failed to pass the examination in not more than two subjects;

-- but he has secured more than the aggregate marks required."

2. Vide para 6, the Division Bench stated:--

"Sessional marks secured by a candidate in each of the papers are meant to be simply included in the minimum aggregate marks required."

3. Vide para 7, the Division Bench stated that the words in each paper occurring in Para 14 of the General Rules "Obviously qualify the immediately preceding words "Sessional marks"".

4. Vide para 8, the Division Bench stated :--

"It appears clear, therefore, care is taken to specify "minimum marks" in three

ways -- for written test, in respect of total marks of each paper and of all papers.  
"

The last quoted excerpt from para 8 of the Division Bench decision in Madhu Jaswani's case makes it clear that passing of a student is made dependent on his securing minimum marks (i) in written test; (ii) in total marks of each paper; (iii) in total marks of all papers, taken together. The student must satisfy all the three tests before he is declared passed.

Any interpretation of the General Rules to the contrary would lead to absurdity. If we were to accept the argument of the learned counsel for the petitioner, it is not difficult to contemplate a case where a student secures only 30 marks each in 6 papers i.e., less than the minimum passing marks but secures 51 marks in the 7th paper and making 231 in final aggregate. Then in spite of having failed individually in 6 out of 7 papers he would be entitled to be declared passed. Such an interpretation would strike at the very root of the examination scheme where the performance of a student is required to be assessed in a course of study by distributing it in several subjects/papers. We have carefully read Madhu Jaswani's case and confidently we find therein no support for such a contention of the learned counsel for the petitioner.

Madhu Jaswani 's case would have entitled the petitioner to allotment of 3 grace marks in papers not exceeding two. The grace marks could have been added to the marks secured either in theory or in the marks secured in total of that paper/subject. Here the petitioner needs 2 marks in English (theory) and 4 marks in Citizenship and Government (total) to declare him passed which is not permissible.

Grace marks can be awarded if such award would enable a student pass at the examination. Grace marks cannot be awarded merely to entitle the student to appear at a supplementary examination.

It is well settled that we can read the Rules and interpret them so as to avoid patent injustice, anomaly or absurdity but we cannot embark upon an interpretation process which would lead us into absurdity.

For the foregoing reasons we find no merit in the petition. It is dismissed though without any order as to the costs as the petitioners are still pupils.