
(1994) 08 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 2706 of 1994

Narendra Hemchandra Chaudhari

APPELLANT

Vs

University of Poona

RESPONDENT

Date of Decision : 30-08-1994

Acts Referred:

Poona University Ordinance — Ordinance 135A, Ordinance 140, Ordinance 163

Citation : (1995) 2 BomCR 456 : (1995) 97 BOMLR 946 : (1995) 1 MhLj 126

Hon'ble Judges : Vishnu Sahai, J;D.R. Dhanuka, J

Bench : Division Bench

Advocate : Avinash Shivade, for the Appellant; Shobhana Patil and R.S. Bhonsale, for the Respondent

Final Decision : Allowed

Judgement

D.R. Dhanuka, J.—Petition admitted. Rule to issue. Respondent waive service. Rule heard forthwith for final hearing.

2. The petitioner appeared for IIIrd M.B.B.S. examination held in the month of October, 1993 by the University of Pune. At the said examination, the petitioner got 89 out of 200 marks in the subject of medicine. Ordinance No. 163 of the ordinances framed by the respondent-University provides that five additional marks may be granted to the candidate appearing at the University examination as an incentive for his participation in one or more of the activities specified therein like National Cadet Corps, National Service Scheme etc. In view of the participation of the petitioner in the activities, specified in the said ordinances, the respondent granted five additional marks to the petitioner in the subject of medicine. Thus, with the aid of the said marks, the petitioner got 94 marks in the said subject. The said additional marks were granted in lieu of participation of the student in specified extra-curricular activities and cannot be considered as "grace marks" as such as normally understood. The concept of "additional marks" for participation in certain activities is different than that of grace marks.

3. Ordinance No. 135-A of the Ordinances framed by the University as set out in Circular No. 371 of 1993, copy whereof is Exhibit A to the petition reads as under :

"Ordinance No. 135-A

Notwithstanding anything contained in the Ordinance Nos. 135 to 138, the examinee shall be given grace marks only for passing in each head of passing (Theory/practical/Oral/External/Internal) as follows :

Head of passing Grace marks upto

Note :

1. O. 140 will not be given effect while applying O. 135-A".

4. Ordinance No. 140 framed by the respondent provides that no candidate shall be entitled for the benefit of gracing or condonation permissible under more than one ordinance at one examination. The said ordinance has no relevance to grant of additional marks for participation in signified extra curricular activity under Ordinance No. 163.

5. The learned Counsel for the petitioner relies on the note, appended to Ordinance No. 135-A reading as under :

Note :

1. O.140 will not be given effect while applying O.135-A"

Ordinance 140 will not be given effect to while applying ordinance 135-A. The learned Counsel for the petitioner rightly submits that in view of the said note, the petitioner is entitled to grace marks upto six under Ordinance No. 135-A of the ordinance of the respondent-University. Ordinance 135-A provides for award of six grace marks in a paper of 200 marks. The learned Counsel for the respondent submits that the petitioner is not entitled to invoke Ordinance No. 135-A in view of the petitioner being already availed of the additional marks under Ordinance No. 163. The learned Counsel for the respondent is not right in view of the note appended to Ordinance No. 135-A. The said note cannot be ignored for purpose of interpretation of Ordinance No. 135-A. The learned Counsel for the respondent submits that if the petitioner would have passed the examination in respect of the subject of medicine with the aid of grace marks to the extent of six, without availing of additional marks under Ordinance No. 163, then alone Ordinance No. 135-A could have been invoked by the petitioner. The learned Counsel for the respondent submits that if the petitioner would have got 94 marks in the examination then, alone the petitioner would have been entitled to 6 grace marks under Ordinance No. 135-A. We do not agree. In view of the entitlement of the petitioner to the additional marks under Ordinance No. 163, as a matter of right, we must take it that the petitioner got 94 marks in the said examination. If so, the petitioner is entitled to invoke Ordinance No. 135-A and get six grace marks in the subject. In our view ordinance No. 163 was enacted

by the respondent as an incentive for participation of the students in National Cadet Corps etc. As a matter of fact, additional marks under Ordinance 163 cannot be considered as award of grace marks at all. In this view of the matter, we reject the submission made by the learned Counsel for the respondent. If there is any lacunae in ordinance No. 135-A, and if the respondent desires to delete the note, appended thereto, it is for the respondent to take a policy decision and take steps to amend the relevant ordinance. The Court is bound to interpret and apply the provisions of law as they exist today.

6. The learned Counsel for the petitioner informs the Court that the petitioner has already passed his examination in subject of surgery in the subsequent examination held in April, 1994. By this petition, the petitioner merely seeks the relief of a declaration that the petitioner has passed in the subject of "medicine" for third M.B.B.S. examination held in October, 1993 only in view of the applicability of Ordinance No. 135-A referred to hereinabove. We accept the submission of the petitioner.

7. In this view of the matter, the rule is made absolute in terms of prayers (a).

8. The respondent shall issue the modified marks list in the light of this judgment within four weeks from today at the latest. No order as to costs.

9. Issue of certified copy expedited.