

(2009) 10 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 91 of 1999 (O and M)

Rajesh Kumar

APPELLANT

Vs

The Institution of Engineers (India)

RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Citation : (2011) 163 PLR 190

Hon'ble Judges : Gurdev Singh, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred against order of learned Single Judge , dismissing the writ petition seeking direction to declare the appellant to have passed the AMIE Section B Examination held in December, 1990.

2. The appellant is employed as Junior Engineer (Civil) in the Haryana State Electricity Board since 1984. The respondent Institute of Engineers conducts examination called AMIE, which is taken into account as qualification for further departmental promotion. The appellant appeared and qualified section A of the Examination but result of Section B of the Examination was withheld on account of the allegation of appellant's involvement in unfair means. After Show Cause Notice dated 15.10.1990, order dated 19.12.1991 cancelling the result was passed. Earlier, against the withholding of result, the appellant filed C.W.P. No.4259 of 1991, which was allowed to be withdrawn to file a suit, by order dated 19.11.1991. The appellant, thereafter, filed suit which was decreed by the trial Court, but the lower appellate Court reversed the said decree and dismissed the suit. However, R.S.A. No.632 of 1994 filed by the appellant was allowed by this Court on 4.4.1995 to the effect that the issue was directed to be decided afresh after affording due opportunity to the appellant. In compliance of the said order the matter was considered afresh and order dated 14.12.1995 was passed, reiterating cancellation of result. The appellant then filed C.W.P. No.9699 of 1996

which was dismissed by this Court on 10.7.1996 but the Hon''ble Supreme Court vide order dated 25.7.1997 in appeal arising out of SLP (Civil) No.28 of 1997, upheld the plea of the appellant against order of cancellation of result and directed that the result be declared. Accordingly, the result was declared, wherein, the appellant was declared to have failed to one subject having secured 31 marks as against minimum 35 marks. This led to filing of writ petition giving rise to the impugned order.

3. Contention raised in the writ petition was that the appellant should have been given four grace marks and should have been allowed re-valuation or re-examination of his answer sheets. The result was adverse to the appellant on account of bias of the respondent in view of earlier proceedings which had ended in favour of the appellant. The respondent contested the writ petition. Allegation of bias was denied. It was also denied that there was practice of awarding grace marks. Reliance was also placed on Rules 36 and 37 framed by the respondent against any application being entertained for rechecking the answer books. It was stated that to maintain high degree of efficiency in the pro-fession of Engineering, papers were strictly checked according to the standards and merit by competent Examiners.

4. Learned Single Judge dismissed the writ petition except for a direction that the appellant be re-examined in the paper of Structural Design as per the syllabi for the year 1990. It was, inter alia observed:-

".....To my mind, the ratio of the aforesaid judgment would not apply to the facts of the present case inasmuch as that in the aforesaid case there was no provisions for a re-appear in the examination in the failed subject as it pertained to an entrance examination to a public service. In the present matter, it is the stand of the respondent-institute (in paragraph 12 of the reply) that the petitioner would be entitled to re-appear in the subject in which he had failed in accordance with the Regulations. It is, therefore, evident that the second choice given by the Patna High Court is available to the present petitioner at the instance of the institute itself. I am further of the opinion that the petitioner's claim to the award of grace marks on account of the observations of the Hon''ble Supreme Court in this judgment Annexure P-I would be wholly unjustified because those observations were made in a peculiar contest while setting aside the order quashing the petitioner's result for the AMIE Section B held in year 1990. Moreover, in Punjab University's case (supra) the Hon''ble Supreme Court has observed (while dealing with Post-Graduate Classes) that it was improper that grace marks should be awarded in such cases. To my mind, these observations would fully apply to the facts of the present case as well as the AMIE qualification has been recognized as being equivalent to a degree in Engineering.

Mr. Chhibbar, has nevertheless pointed out that the examination record for the year 1990 was not traceable despite efforts having been made to locate it. He has, however, put in record a tabulation sheet of the result of the Summer 1990

Part B Examination pertaining to the petitioner and two other candidates in which the petitioner has been shown as having failed in the subject of Structural Engineering. It has also been pointed out that one Kuldip Raj, who was one of the other two persons disqualified alongwith the petitioner and had also filed a CWP No. 1158 of 1996 on 16.4.1998 for the declaration of his result and a similar tabulation sheet pertaining to him had been produced before the Division Bench and he was shown as having passed in the subject concerned. To my mind, therefore, the tabulation sheet now produced also reflects the correct position".

5. In the aforesaid observations, reference is to judgment of Patna High Court, wherein one additional mark was given on the basis of average of marks in other papers, when paper of the candidate could not be produced. The said judgment was distinguished on the ground that in that case, there was no provision for re-appearing. In the present case, there being provision to re-appear, learned single judge thought it proper to allow the appellant to re-appear.

6. This appeal was earlier dismissed vide order dated 12.5.2000, holding that grace marks could not be awarded merely because the record was not traceable. On appeal to the Hon'ble Supreme Court being C.A. No.2942 of 2001, decided on April 20, 2001, the Hon'ble Supreme Court remanded the matter with the following observations:-

"The High Court in this case has proceeded on the assumption, as is evident from the decision of the single judge as well as of the Division Bench, that there is no rule for awarding grace marks in the affidavit-in-reply filed in this Court, it has been stated that there is a Rule with regard to grace marks which was first introduced in 1962 and has subsequently been revised by a Resolution passed in 1990. This fact should have been brought to the notice of the High Court and the High Court should have applied its mind and examined whether any benefit can be granted to the appellant".

7. Accordingly, the matter has been placed for consideration before us.

8. We have heard learned counsel for the parties.

9. Learned counsel for the appellant vehemently submitted that 10 marks were awarded to one Mr. Subhash Mittal and thus, there existed a rule for giving of grace marks. It was on the basis of document showing awarding of grace marks to Subhash Mittal that the Hon'ble Supreme Court has directed reconsideration of the matter.

10. Learned counsel for the respondent has produced rules dated 25.7.1962 adopted in 61st Meeting of the Examinations Committee at Bangalore. The rules, inter alia provide as under:-

"Section B of the Associate Membership Examination.-

1. The minimum marks for exemption from future examination in any subject is

50.

2. The pass mark in any subject is 35.

3. The minimum aggregated in the 9 subjects of Section B of the Associates Membership Examination for an overall (final) pass is 450.

4. The Committee may award upto a maximum often marks to any candidate and declare him as passed, if the candidate secures a minimum of 35 marks in all the individual subject and secures a minimum of 440 marks in the aggregate.

5. The Committee may award upto a maximum of 3 marks in any one individual subject to a candidate and declare him as passed if the candidate secure a minimum of 35 marks in all the other subjects and also the minimum aggregate of 450 marks.

6. A candidate who has passed Section A and B or is exempted therefore, may appear in any paper of Section A and/or Section B. For such candidates, the pass mark in each paper is 50".

11. The appellant has also filed CM. No.2727 of 2009 annexing the same set of rules.

12. Learned counsel for the appellant submitted that false stand was taken by the respondent in stating that there was no provision for grant of grace marks and since Rules clearly show that there is provision for grant of grace marks and grace marks were awarded to one Subhash Mittal, the appellant should be declared to have passed. It was also submitted that since paper of the appellant which was in the custody of the respondent has been lost, the appellant should have been given one extra grace mark and should be declared to have passed.

13. Learned counsel for the respondent supported the impugned judgment and submitted that as per rules, no grace marks could be awarded unless a provision existed in the rules, as rightly held by the single judge relying on judgment of the Hon"ble Supreme Court in Punjab University, Chandigarh Vs. Sunder Singh, . As per rules 3 marks could be given in a subject and since the marks obtained by the appellant in the subject of structural Design as only 31, while pass marks required are 35, the appellant could not succeed. In the case of Subhash Mittal, more than four marks were awarded in the "aggregate" as per rules and not in an individual subject. He also submitted that even if paper of appellant was not traceable, there being a provision to re-appear, learned single judge has rightly allowed the appellant to re-appear, but the appellant failed to avail of that opportunity. In these circumstances, no interference was called for with the view taken by the learned Single Judge.

14. The question for consideration is whether the appellant was entitled to be declared to have passed by awarding grace marks, particularly when his paper was not available. As already held by learned Single Judge, in absence of rules, grace marks could not be awarded nor re-evaluation ordered and only benefit

which could be given to the appellant was opportunity to appear again. The said view was earlier affirmed by Division Bench of this Court but the Hon''ble Supreme Court directed reconsideration of the matter after referring to rules for grace marks.

15. We have perused the rules for grace marks, which only provide grace marks being given upto 3 in an individual paper. Even if maximum grace marks are given to the appellant, he cannot succeed.

16. Next question is whether the appellant should be held entitled to extra grace marks or only an opportunity of appearing again. The examination in question is crucial examination equivalent to Degree in Engineering and Structural Design in an important paper. Even if two views as possible, passing of a candidate of such an examination by presuming that his performance may have been better, may not be a safe course. Learned single Judge allowed opportunity to the appellant to appear again, which the appellant failed to avail of. Re-evaluation is not permitted under the rules and the Hon''ble Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, upheld such rules. No doubt in exceptional situation, this Court may direct reevaluation. Having regard to facts and circumstances, we are unable to hold that on account of absence of paper of the appellant, extra grace marks beyond the provisions in the rules should be awarded to the appellant. Plea of bias could also not be accepted. The appellant has been awarded goods marks in other papers.

17. In view of above, we do not find any ground to interfere with the view taken by the learned Single Judge.

18. The appeal is dismissed.