

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. Special Appeal (Writ) No.1080/2011
Rajasthan Technical University, Kota & Anr.
Versus
Shri Gaurav Agarwal

Date of Order : 29.07.2011

HON'BLE THE CHIEF JUSTICE MR. ARUN MISHRA
HON'BLE MISS JUSTICE BELA MADHURYA TRIVEDI

Mr. A.K. Bhargava, for appellants.
Mr. Prahlad Singh]
Mr. Madhav Mitra] for respondent.

Heard learned counsel for the parties.

Question involved in the appeal relates to award of grace marks. As per provisions made by the University of Rajasthan, Jaipur, grace marks to the extent of 1% of the aggregate marks prescribed for an examination will be awarded to a candidate failing in not more than 25% of the total number of theory papers, practicals, sessionals, dissertation, viva-voce and the aggregate, as the case may be, in which minimum pass marks have been prescribed; provided the candidate passes the examination by the award of such grace marks. It is permissible to grant grace marks.

The grace marks can be given in 25% of the papers, only such theory papers, practicals, dissertation, viva-voce etc. would be considered of which, the examination is conducted by the University.

The respondent namely; Gaurav Agarwal has obtained 15 marks in theory paper and 15 marks in practical paper. The aggregate marks shown in the mark-sheet are 30 marks. He can be awarded 1% of the aggregate marks. He is entitled for grant of 10 marks. If 10 marks are added, he would pass having secured 40 marks.

However, stand of the University and submission of counsel for appellant is that he has passed in practical paper and he has failed in theory. Passing marks in theory are 24. Thus, he is entitle for 9 marks in the paper of theory by way of grace marks. When 9 marks are added in the paper of theory, the respondent would secure 24 marks in theory and by adding 15 marks in the practical he would obtain only 39 marks. Thus, he would not pass the examination. Consequently, grace marks cannot be awarded as per the provision.

Learned counsel appearing on behalf of respondent have jointly submitted that view taken by the Single Bench in **Gaurav Agarwal vs. Rajasthan Technical University, Kota [2009 WLC (Raj.) UC 526]** was appropriate. Though, in special appeal, correctness of the aforesaid decision was left open to be examined at appropriate stage. Learned counsel have submitted that interpretation made by the Single Bench in the aforesaid decision is appropriate and no case for interference is made out in the appeal.

After hearing learned counsel for the parties, we are of the opinion that in order to give affect to the provision made by the University as the University itself has made the provision that 1% of the aggregate marks prescribed for an examination will be awarded to a candidate failing in not more than 25% of the total number of theory papers, practicals, sessionals, dissertation, viva-voce etc. Thus, it is possible to combine the papers while computing the aforesaid percentage and awarding the marks. The provisions made by the University in the Rules for the awarding of grace marks are as follows:

"A. UNDER GRADUATE/POST GRADUATE (MAIN/SUPPLEMENTARY) INCLUDING M.PHIL. EXAMINATIONS UNDER THE FACULTIES OF ARTS, FINE ARTS, SCIENCE, COMMERCE, SOCIAL SCIENCE, EDUCATION, MANAGEMENT, HOMOEOPATHY, LAW, AYURVED AND ENGINEERING & TECHNOLOGY.

Grace marks to the extent of 1% of the aggregate marks prescribed for an examination will be awarded to a candidate failing in not more than 25% of the total number of theory papers, practicals, sessionals, dissertation, viva-voce and the aggregate, as the case may be, in which minimum pass marks have been prescribed; provided the candidate passes the examination by the award of such Grace marks. For the purpose of determining the number of 25% of the papers, only such theory papers, practicals, dissertation, viva-voce etc. would be considered, of which, the examination is conducted by the University.

N.B.:- If 1% of the aggregate marks or 25% of the papers works out in fraction, the same will be raised to the next whole number. For example, if the aggregate marks prescribed for the examination are 450 grace marks to the extent of 5 will be awarded to the

candidate, similarly, if 25% of the total papers is 3.2, the same will be raised to 4 papers in which grace marks can be given.

General

1. A candidate who passes in a paper/practical or the aggregate by the award of grace marks will be deemed to have obtained the necessary minimum for a pass in that paper/practical or in the aggregate and shown in the mark-sheet to have passed by grace. Grace marks will not be added to the marks obtained by a candidate from the examiners nor will the marks obtained by the candidate be subject to any deduction due to award of grace marks in any other paper/practical or aggregate."

A bare perusal of the aforesaid provisions does not rule out award of the grace marks by adding marks awarded in the practical as well as theory marks. In order to give effect to the provisions to make it purposeful, we agree with the interpretation made by the Single Bench in decision of **Gaurav Agarwal** (Supra) in which the question has been considered.

The Single has interpreted the provision as follows:

"7. I am afraid, such an interpretation which the respondents are seeking to place on the Rules for award of grace marks promulgated by the University of Rajasthan, which they have adopted for their purposes, can neither be supported on logic, nor on law. The relevant rule is reproduced herein:

"Grace marks to the extent of 1% of the aggregate marks prescribed for an examination will be awarded to a candidate failing in not more than 25% of the total number of theory papers, practicals, sessionals, dissertation, viva-voce and the aggregate, as the case may be, in which minimum pass marks have been prescribed;

provided the candidate passes the examination by the award of such Grace marks. For the purpose of determining the number of 25% of the papers, only such theory papers, practicals, dissertation, viva-voce etc. would be considered, of which, the examination is conducted by the University."

8. The note no.1 given there below in the caption general is also reproduced:

"A candidate who passes in a paper/practicals or the aggregate by the award of grace marks will be deemed to have obtained the necessary minimum for a pass in that paper/practicals or in the aggregate and shown in the marks sheet to have passed by grace. Grace marks will not be added to the marks obtained by a candidate from the examiners nor will the marks obtained by the candidate be subject to any deduction due to award of grace marks in any other paper/practicals or aggregate."

9. Aforesaid Rule prescribes that a candidate failing in not more than 25% of the total theory papers, practicals, sessions, dissertation, viva-voce and the aggregate, as the case may be, in which minimum pass marks have been prescribed, shall be entitled to 1% of the aggregate marks prescribed provided the candidate passes the examination by the award of such grace marks. For the purpose of determining the number of 15% of the papers, all theory papers, practicals, dissertation, viva-voce etc. would be considered. It is not in dispute that 10 marks which this Court had directed to award to the petitioner and which the respondents to do were required only in one single paper no. 105 because petitioner secured 19 marks in theory as against the required 24 and 30 marks in aggregate as against required 40 marks in the very same paper. The rule although gives an outer limit for award of the marks to the extent of 1% of the aggregate which limit is 10 marks and taking that interpretation earlier judgment was passed by the Court, conscious of the fact that 10 marks were awardable in theory paper as well as in aggregate. The contention that having awarded 5 marks to the

petitioner in theory paper, the respondent would yet not consider the petitioner as having passed in theory even though the total of 19 + 5 would be 24, which is the minimum pass marks and even thereafter they would consider him to have secured 19 marks for the purpose of further the awarding the marks at the stage of aggregate because bonus marks cannot be reflected in the mark-sheet and then in that case he would need again 10 marks. Such an interpretation is highly unreasonable and would be contrary to the spirit of the aforesaid rule, which is intended to help the student in a border line case to wriggle out the situation where he was declared fail by reason of shortage of only 1% or less than that, of the aggregate marks.

10. The petitioner would be entitled to 5 marks at the stage of declaring him pass in theory paper and additional 5 marks at the stage of aggregate, after the marks of practical are added thereto, thus keeping total of the two within the outer limit of 1% of aggregate, as directed by this Court and in this manner, he would be entitled to secure 40% total marks out of 100, which is required to declare him pass in paper No.105."

In view of aforesaid, we find that there is no merit in the appeal. The order passed by the Single bench is appropriate.

Accordingly, the appeal stands dismissed. Stay application also stands dismissed. However, correct mark-sheet be issued as early as possible within three days. Contempt proceedings in CCP No.576/2011 shall remain stayed for a period of seven days.

(BELA MADHURYA TRIVEDI),J

(ARUN MISHRA),CJ