

BOARD OF SCHOOL EDUCATION HARYANA

v.

ARUN RATHI AND ORS.

FEBRUARY 9, 1994

[M.N. VENKATACHALIAH, CJ. AND S.C. AGRAWAL, J.]

Education: School education—Haryana Senior Secondary Certificate Examination Regulations 1990: Regulation 26—Grace marks for passing—Award of 1% of aggregate of marks—Extending such concession to students for earning compartment—Validity of.

Regulation 26 of the Haryana Senior Secondary Certificate Examination Regulations, 1990 provided for award of 1% of aggregate of marks as grace marks to enable such students to pass the examination. However, this concession was not extended to enable students to earn compartment.

Following the direction of the High Court in *Anil Kumar v. Board of School Education, Haryana*, that the benefit of grace marks be given to students to earn compartment, the Board proposed an amendment and forwarded it to the State Government for approval.

In the meantime, a Full Bench of the High Court in *Meenakshi Sharma v. The Board of Education Haryana & Ors.*, held that grace marks could be awarded only to the extent of the total marks in the subject(s) alone in which the candidate reappeared. It also negated the challenge to Regulation 26. Thereafter the Board in its meeting held on 23.4.1993 decided that the result of the Examination held in March 1993 would be declared giving the benefit of 1% grace marks to students only to pass the examination and not to earn compartment.

The respondents filed Writ Petitions before the High Court contending that the right that had accrued to the students could not be permitted to be taken away by giving retrospective effect to the regulation. The High Court allowed the Petitions. The Board came in appeal. On the question whether a candidate for the Haryana Senior Secondary Certificate Examination is entitled to the award of grace marks so as to enable him to earn compartment;

A **Allowing the appeals, this Court**

HELD: 1.1. The High Court was in error in interfering with the decision taken by the Board at its meeting held on April 23, 1993, to enforce Regulation 26(b), as originally framed, with effect from the Senior Secondary Certificate Examination March, 1993 and to deny to the respondents the benefit of grace marks to earn compartment. [752-E, F]

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1.2. Prior to April 23, 1993 the Board had been following the law as laid down by the High Court in *Anil Kumar's case* but on April 23, 1993 in accordance with the subsequent decision of the Full Bench in *Meenakshi Sharma's case* the Board decided to enforce Regulation 26(b), as originally framed, with effect from the Senior Secondary Certificate Examination March, 1993. There was no amendment in Regulation 26(b) at any stage because the approval of the State Government to the amendment proposed by the Board in the said Regulation after *Anil Kumar's case* had not been received by the Board till April 23, 1993 and, therefore, there is no question of the Board having changed the rules with retrospective effect on April 23, 1993. [750-F-G-H, 751-A]

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1.3. It cannot be said that the respondents had acquired any right to award of grace marks to earn compartment prior to the decision of the Board dated April 23, 1993 and, therefore, there is no question of deprivation of any right which had vested in the respondents. Nor can the principle of estoppel be invoked to preclude the Board from enforcing the provisions of Regulation 26(b). [751-A-B]

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Mennakshi Sharma v. The Board of School Education Haryana & Ors., C.W.P. No. 1803 of 1993 decided on July 21, 1992 by the Punjab & Haryana High Court, approved & explained.

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Punjab University, Chandigarh v. Shri Sunder Singh, [1984] 3 S.C.R. 31, approved.

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Anil Kumar v. Board of School Education, Haryana, Civil Misc. No. 6963 of 1990 and C.W.P. No. 9164 of 1990 decided on August 18, 1990 by the Punjab & Haryana High Court, disapproved.

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Naresh Shoshi v. Punjab School Education Board, C.W.P. No. 9760 of 1989 decided by the High Court of Punjab & Haryana; *Vishal Kumar v. State of Haryana & Ors.*, Civil Writ Petition No. 14021 of 1990 decided on

December 3, 1991 by the Punjab & Haryana High Court; *Shri Raj Kumar & Ors. v. State Board of Technical Education, Punjab, Chandigarh*, (1990-2 (XCVIII) P.L.R. 179 and *Anita Devi v. State of Haryana*, (1993) 2 104 P.L.R. 137, referred to. A

2. Since the respondents may have proceeded on the basis that they would be placed under compartment and they would not be required to appear in regular examination in all the papers in accordance with the judgment of the High Court and they may not have taken steps to register themselves as students for the regular examination in all the subjects, it is but appropriate that the Board should permit them to appear in the regular examinations in all the subjects without insisting upon their complying with the requirements regarding attendance etc. [752-G, H] B C

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 690-93 of 1994.

From the Judgment and Order dated 6.9.1993 of the Punjab & Haryana High Court in W.P. Nos. 9280, 9830 & 10060 of 1993. D

U.N. Bachawat, Anil Mittal and Manoj Swarup for the Appellant.

B.S. Walia and S.C. Patel for the Respondents.

The Judgment of the Court was delivered by E

S.C. AGRAWAL, J. Special leave granted.

Heard learned counsel for the parties.

1. These appeals raise the question whether a candidate who has taken the Senior Secondary Certificate Examination of the Board of School Education, Haryana (hereinafter referred to as 'the Board') is entitled to the award of grace marks so as to enable him to earn compartment. The respondents in these appeals appeared in the Senior Secondary Certificate Examination of the Board held in the month of March, 1993 but were declared as failed since they did not secure the minimum pass marks in two of the subjects. They moved the High Court of Punjab & Haryana, by filing writ petitions under Article 226 of the Constitution, and claimed that they should be awarded grace marks and be placed under compartment, so as to enable them to appear in the supplementary examination in one F G H

A paper in September, 1993. The said writ petitions have been allowed by the High Court by orders dated September 6, 1993 and September 10, 1993.

2. The Board has been constituted under the provisions of the Haryana Board of School Education Act, 1969. (hereinafter referred to as 'the Act'). In exercise of the powers conferred by Section 19(1) of the Act the Board has made the Haryana Senior Secondary Certificate Examination Regulations, 1990. (hereinafter referred to as 'the Regulations'). Regulation 26 of the Regulations contains the provisions for awarding of 1% of the aggregate of marks as grace marks to the candidates appearing in 10+2 examination to be conducted by the Board. The said Regulation reads as under:

"26. *Grace marks* :—

- (a) If a candidate fails in one or more subject(s) and the total deficiency is not more than one percent of the aggregate of marks, he will be awarded the required grace marks (that can be distributed among any number of subjects) provided, the grace marks awarded in practicals do not exceed the marks actually obtained by the candidate in the practical examination.
- (b) A candidate shall not be entitled to the benefit of grace marks to earn compartment though he shall be entitled to the grace marks to pass the compartment examination to the extent of one percent of the maximum marks allotted to the examination.
- (c) A candidate appearing in a subject(s) for improvement in his previous performance, will not be entitled to grace marks.
- (d) A candidate appearing in one or more additional subjects shall also be eligible for grace marks upto 1% of the aggregate of the total marks allotted to the papers."

3. In *Naresh Shosi v. Punjab School Education, Board*, (C.W.P. No. 9760 of 1989) decided by Division Bench of the High Court of Punjab & Haryana on September 15, 1989, the High Court considered Regulation

16(b)(1) of the Punjab School Education, Board Senior Secondary Certificate Examination Part-I, Regulations, 1988 wherein provision was made for award of grace marks. In the said regulations there was no provision similar to clause (b) of Regulation 26 of the Regulations whereunder the benefit of grace marks cannot be given to earn compartment. The High Court has pointed out that the duty of holding the Senior Secondary Certificate Examination was being performed by the Punjab University and the said work had been transferred to the Punjab School Education Board only recently. After referring to Regulation 27(1) of the General Regulation for Examinations contained in Chapter III of the Punjab University Calender Volume II, 1984 wherein provision was made for award of grace marks and it was also provided that grace marks be also awarded to a candidate if by awarding such grace marks he could earn exemption or compartment in subject/s and part/s, the High Court has observed that it was difficult to believe that merely by transfer of work of holding the examination from the University to the Punjab School Education Board, the benefit of award of grace marks would be denied in the case of "compartment" candidates and its applicability would be restricted to the candidates only to enable them to pass the examination. It was, therefore, held that Regulation 16(b)(1) of the Punjab School Education, Board Senior Secondary Certificate Examination Part-I, Regulations, 1988 shall apply to the cases of compartment candidates also and grace marks shall be awarded to a candidate if by awarding such marks he can earn exemption or compartment in subject/s and part/s. It was observed that if the regulation was capable of the interpretation that grace marks could not be awarded to a candidate if by awarding such marks he can earn compartment then the regulation would be held to be arbitrary and discriminatory.

4. Following the said decision a division bench of the High Court in *Anil Kumar v. Board of School Education, Haryana*, Civil Misc. No. 6963 of 1990 and Civil Writ Petition No. 9164 of 1990 decided on August 18, 1990, directed the Board to award grace marks so as to entitle the petitioner in that case to earn a compartment. The Court rejected the contention urged on behalf of the Board that the decision in *Naresh Shosi's* case (supra) was not applicable in view of the express provision regarding non-award of grace marks in the Regulations of the Board.

5. Thereafter in *Vishal Kumar v. State of Haryana & Ors.*, (Civil Writ Petition No. 14021 of 1990 decided on December 3, 1991), a single Judge

A of the High Court, relying upon the observation made in *Naresh Shoshi's* case (supra) held that Regulation 26(b) of the Regulations, insofar as it debars a failed candidate to the entitlement of the benefit of grace marks in order to earn compartment is arbitrary and violative of Articles 14 and 16 of the Constitution.

B 6. After the decision in *Anil Kumar's* case (supra), the Board, at its meeting held on Septmeber 26, 1990, decided that 10 + 2 candidates who had appeared in March, 1990 annual examination but had failed, be given the benefit of grace marks to earn compartment as per the said decision and the candidates whose result are liable to be revised be intimated that
C they can apply to be placed in compartment in the supplementary examination, 1990. It was also decided that a proposal to carry out amendment in the relevant Regulations be considered in the next meeting of the Board. It appears that the Board also proposed an amendment in Regulation 26 in the light of the decision of the High Court in *Anil Kumar's* case (supra) and the same was forwarded to the State Government for approval.
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7. The question whether the concession of grace marks could be given to students for earning compartment came up for consideration before a full Bench of the High Court in *Shri Raj Kumar & Ors. v. State Board of Technical Education, Punjab, Chandigarh*, 1990-2 (XCVIII) P.L.R.
E 179, in the context of Rule 21 of the Examination Rules of the State Board of Technical Education, Punjab, for Pharmacy Course. The said Rule was silent about the concession of grace marks being given to students for earning compartment. The full Bench construed the Rule as meaning that
F are able to pass in all the subjects. Rejecting the contention that the absence of a provision regarding concession of grace marks for earning compartment though a provision is made about the grant of grace marks for passing out the examination, renders the rule discriminatory, the Full Bench has observed:

G "Moreover, the intention of the rule framers that the students of 1st year should get more than one chance to pass the preliminary examination can well be gathered from plain reading of the rules and once the more beneficial provisions has been made by providing supplementary
H examination for a student who is unable to pass out

examination, no grievance can possibly be made that the rules should be held discriminatory only because no provision had been made for the grant of concession of grace marks to the students for the purpose of earning compartment." [p.185]

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8. Recently another Full Bench of the High Court in *Anita Devi v. State of Haryana*, (1992) 2 104 P.L.R. 157, has considered the question of confining the award of grace marks only to a candidate who can pass the examination but not if he is placed in compartment in connection with the examinations for awarding of Diploma in Education at the Government Elementary Teachers Training Institute, Bhiwani. In the relevant provisions there was an express prohibition to the effect "that the candidates cannot be placed in the compartment by awarding a grace marks." The validity of the said provision was assailed as being violative of Article 14 of the Constitution and reliance was placed on the decision in *Naresh Shosi's* case (supra). The said contention was, however, rejected and it was held that the view taken in *Naresh Shosi's* case (supra) as well as in *Vishal Kumar's* case (supra) is not correct and both these decisions have been overruled. The Court has agreed with the earlier full bench decision in *Raj Kumar's* case (supra). It has been observed:

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"The academic standards laid down by the appropriate authorities postulate the minimum marks that a candidate has to secure before he becomes eligible for the award of the diploma. The award of grace marks is a concession. It results in diluting academic standards. A rule for the award of grace marks has to be construed strictly so as to ensure that the minimum standards are not allowed to be diluted beyond the limit specifically laid down by the appropriate authority. It is only in a case where the language of the statute is absolutely clear that the claim for the award of grace marks can be sustained. Normally, the Court shall be slow to extend the concession of grace marks and grant a benefit where none is intended to be given by the appropriate authority." (p. 160)

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9. Before the said decision in *Anita Devi's* case (supra) the provisions of Regulation 26 came up for consideration before a full Bench of the High

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A Court, Punjab & Haryana in *Meenakshi Sharma v. The Board of School Education Haryana & Ors.*, (Civil Writ Petition No. 1802 of 1992 decided on July 21, 1992). In that case the petitioner could qualify only in four subjects out of five subjects and was placed under compartment in the subject of English Core. She availed the first chance but could not clear the compartment. She appeared for the second time in March, 1991 and secured 29 marks out of 100, against the pass percentage of 33. The question for consideration was whether the award of grace marks was restricted only to the extent of 1% of the maximum marks allotted to the subject concerned or 1% of the total aggregate marks of all the five subjects. Relying upon the decision of this Court in *Punjab University, Chandigarh v. Shri Sunder Singh*, [1984] 3 S.C.R. 31, the High Court has held that the grace marks could be awarded only to the extent of 1% of the total marks of the subject(s) alone in which the candidate reappears. In that case the validity of Regulation 26 had also been challenged on the ground that it was arbitrary. Negating the said contention it was held:

D "So far as the challenge to the vires of regulation 26 *ibid* is concerned, we do not find any constitutional or legal infirmity or any arbitrariness in the said regulation. Obviously, the intention of the Legislature and the object of the legislation, were only to promote the interest of education by requiring the students to achieve success in the examination on the basis of their own performance and not by depending on the grace of the examining bodies. The object underlying the grant of grace marks is to remove the real hardship to a candidate who has otherwise shown good performance in the academic field but is somehow losing one year of his scholastic career for the deficiency of a mark or so in one or two subjects, while on the basis of this overall performance in other subjects, he deserves to be declared successful. The consideration being a laudable one, regulation 26 is neither arbitrary nor unfair or unjust. In fact, it seeks to lay emphasis on the excellence in the field of education; hence, deserves to be upheld."

H 10. The Board, in its meeting held on April 23, 1993, taking note of the decision in *Meenakshi Sharma's* case (*supra*) wherein Regulation 26

has been held to be valid, decided that withdrawal of the benefit given to the candidates who had already been granted the benefit of 1% grace marks to earn compartment on the basis of the decision taken by the Board on September 26, 1990 and December 21, 1990 pursuant to the earlier judgment in *Anil Kumar's* case (supra) would not be justified but the judgment of the High Court in *Meenakshi Sharma's* case (supra) should be made applicable from the examination in March, 1993 and onwards, and that the result of the Senior Secondary Certificate Examination in March, 1993 would be declared giving the benefit of 1% grace marks only to pass the examination. As a result of the said decision, the Board did not give the benefit of 1% grace marks to the respondents so as to enable them to be placed under compartment.

11. In allowing the writ petitions of the respondents the High Court has proceeded on the basis that prior to April 1993 the Regulation 26(b) provided for award of grace marks to earn compartment and the Board had been acting on the said regulation since December 1990 till April 1993 and the students were awarded grace marks and were placed under compartment but after April 1993 the Board has amended the Regulations to the effect that no grace marks would be granted for placing the students under compartment. According to the High Court the respondents took the examination in March 1993 when the regulation providing for grant of grace marks to the students was in operation and was being acted upon by the Board and the students acted on the basis of the said regulations and took the examination and though the Board had amended the regulation in question on April 23, 1993 before declaration of the result yet the right accrued to the students could not be permitted to be taken away by giving retrospective effect to the regulation and the amended regulation, in view of the full Bench decision, has to come into operation only with regard to the students who took examination after the regulation had been amended. The High Court has also observed that the Board was estopped by its act and conduct in denying grace marks to the respondents for placing them under compartment particularly when it had acted on the said regulation for almost three years and granted the said concession to the students who had taken examination under the said rule.

12. Shri Bachawat, the learned senior counsel appearing for the Board, has submitted that the High Court has proceeded under an er-

- A roneous impression that Regulation 26 had been amended by the Board on April 23, 1993 after the decision in *Meenakshi Sharma's* case (supra). The learned counsel has pointed out that on April 23, 1993 the Board had taken note of the decision in *Meenakshi Sharma's* case (supra) and had decided to drop the the amendment which had been proposed in the light
- B of the decision in *Anil Kumar's* case (supra) and had been sent to the State Government for its approval and that on April 23, 1993 the Board had decided to enforce Regulation 26(b), as originally framed, with effect from the Senior Secondary Certificate Examination March, 1993 since the Board did not wish to withdraw the benefit of 1% of grace marks to earn
- C compartment which had been granted to students taking earlier examinations. This contention is fully borne out by the proceedings of the meeting of the Board held on April 23, 1993 which show that in compliance with the decision of the High Court in *Anil Kumar's* case (supra) the Board started giving 1% grace marks even to a failed candidate to enable him to earn compartment with effect from the examinations held in November,
- D 1990 in anticipation of the sanction of the State Government to the proposal to amend Regulation 26(b). The said proceedings indicate that sanction of the State Government had not been received till the date of the meeting of the Board. The proceedings of the meeting dated April 23, 1993, also show that having regard to the decision in *Meenakshi Sharma's* case
- E (supra) wherein Regulation 26(b) has been upheld, the Board concluded that 1% grace marks are not to be given to earn compartment but it decided that it would not be justified to withdraw the benefit of 1% grace marks that has already been granted to the candidates and that the judgment of the High Court in *Meenakshi Sharma's* case (supra) should be
- F made applicable from the examination of March 1993 and onwards. The proceedings show that prior to April 23, 1993 the Board had been following the law as laid down by the High Court in *Anil Kumar's* case (supra) but on April 23, 1993, in accordance with the subsequent decision of the full Bench in *Meenakshi Sharma's* case (supra), the Board decided to enforce Regulation 26(b), as originally framed, with effect from the Senior Secondary
- G Certificate Examination March, 1993. There was no amendment in Regulation 26(b) at any stage because the approval of the State Government to the amendment proposed by the Board in the said Regulation after *Anil Kumar's* case (supra) had not been received by the Board till April 23, 1993 and, therefore, there is no question of the Board having changed
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the rules with retrospective effect on April 23, 1993. It cannot be said that the respondents had acquired any right to award of grace marks to earn compartment prior to the decision of the Board dated April 23, 1993 and, therefore, there is no question of deprivation of any right which had vested in the respondents. Nor can the principle of estoppel be invoked to preclude the Board from enforcing the provisions of Regulation 26(b).

13. The learned counsel for the respondents has, however, submitted that in *Meenakshi Sharma's* case (supra) the Court was not dealing with the question regarding giving benefit of grace marks to earn compartment and the question for consideration before the full Bench was with regard to the basis for computing 1% grace marks to be awarded to a candidate who had been placed under compartment and who had appeared in the supplementary examination. It is submitted that the validity of Regulation 26 had been challenged in the said case in the light of the said question and that the decision in *Meenakshi Sharma's* case (supra) negating the said challenge cannot be construed as upholding the validity of Regulation 26(b) which prohibits award of grace marks to earn compartment. It has been urged that since in *Meenakshi Sharma's* case (supra) the validity of Regulation 26(b), insofar as it prohibits giving the benefit of grace marks to earn compartment has not been considered, the Board was in error in placing reliance on *Meenakshi Sharma's* case (supra) to take the decision on April 23, 1993 to discontinue the practice of awarding grace marks to earn compartment which was being followed since November 1990 in view of the decision in *Anil Kumar's* case (supra)

14. It is no doubt true that in *Meenakshi Sharma's* case (supra) the full Bench of the High Court was considering the question as to the mode of computing the benefit of 1% grace marks to be given to a candidate who had been placed under compartment and who had appeared in one subject only and the High Court was not required to consider the question whether benefit of grace marks should be given to earn compartment and the validity of Regulation 26, as being discriminatory, was also assailed in the said context. But we find that while negating the challenge to the validity of Regulation 26 the full Bench has considered Regulation 26 in its entirety and having regard to the intention of the Legislature and object of the legislation, namely, to promote the interest of education by requiring the students to achieve success in the examination on the basis of their own

- A performance and not by depending upon the grace marks of the examining bodies, the High Court has held that Regulation 26 is neither arbitrary nor unfair or unjust. These observations apply to all the clauses of Regulation 26 including clause (b). For like reasons a full Bench of the High Court in *Anita Devi's* case (supra) upheld a provision similar to Regulation 26(b) which provided that grace marks shall not be awarded to enable a candidate to be placed under compartment. Moreover the judgment in *Meenakshi Sharma's* case (supra) has to be read with the earlier judgment of the full Bench of the High Court in *Raj Kumar's* case (supra) wherein the Court did not accept the contention that a rule which did not provide for grant of grace marks to enable a candidate to earn compartment was arbitrary and discriminatory.
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15. In these circumstances, It cannot be said that the Board at the meeting held on April 23, 1993 committed any error in proceeding on the basis that Regulation 26(b) has been held to be valid by the High Court in *Meenakshi Sharma's* case (supra) and in deciding to enforce Regulation 26(b) with effect from the Senior Secondary Certificate Examination of March 1993 and in declaring the result of the said examination in accordance with the said Regulation.
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- E 16. The High Court, in the judgment under appeal, was in error in interfering with the decision taken by the Board at its meeting held on April 23, 1993, to enforce Regulation 26(b), as originally framed, with effect from the Senior Secondary Certificate Examination March, 1993 and to deny to the respondents the benefit of grace marks to earn compartment.
- F The judgment of the High Court cannot, therefore, be upheld and must be set aside.

17. Since the respondents may have proceeded on the basis that they would be placed under compartment and they would not be required to appear in regular examination in all the papers in accordance with the judgment of the High Court and they may not have taken steps to register themselves as students for the regular examination in all the subjects, it is but appropriate that the Board should permit them to appear in the regular examinations in all the subjects without insisting upon their complying with the requirements regarding attendance, etc.
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18. In the result the appeals are allowed, the judgment and order of the High Court dated September 6, 1993 and September 10, 1993 are set aside and writ petitions filed by the respondents in the High Court are dismissed. The respondents will, however, be permitted to take the next Senior Secondary Certificate Examination to be conducted by the Board in all the five subjects without their being required to fulfil the requirements of Regulations relating to attendance, etc. No order as to costs.

G.N.

Appeals allowed.