

Rajinder Kumar v. The State of Punjab and others (S. S. Sandhawalia, C.J).

proceeding under this Act. "It may be that the appeal is a continuation of the original proceedings as such, but at the same time, the revision-petition has been filed against an order under section 24 of the Act which was passed in the proceedings under this Act. In this view of the matter, it could not be successfully urged that the respondent is not entitled to the litigation expenses of this revision petition because this by itself is not 'a proceeding under the Act'. Even in *Jalasutram Annapurnamma's* case (supra) it has been held "it is a common case that an appeal is a continuation of the original proceeding. The fact that an appeal lies under the Civil Procedure Code against an order in a proceeding under the Act, will not make the appeal any-the-less a proceeding under the Act, for, the appeal also relates to the adjudication in respect of the rights conferred under the Act." On the same analogy the revision petition also relates to the adjudication in respect of the rights conferred under the Act. In that view of the matter, the revision petition cannot be said to be an independent proceeding in that sense for which the respondent is not entitled to the litigation expenses. For all intents and purposes, it will be deemed to be a proceeding under the Act as it arises out of adjudication of the proceedings under the Act, and will affect the maintenance itself.

(3) In this view of the matter, preliminary objection raised on behalf of the petitioner fails and the application is allowed and the respondent is held to be entitled to the litigation expenses of this revision petition which are assessed at Rs. 500.

N. K. S.

Before S. S. Sandhawalia, C.J. & S. S. Sodhi, J.

RAJINDER KUMAR,—Petitioner.

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ Petition No. 610 of 1973.

January 27, 1983.

*Constitution of India 1950—Article 226—No rules or regulations providing for grant of grace marks to a failed candidate—Grace marks, however, given to some candidates—Writ of mandamus by a failed candidate claiming grace marks—Whether competent.*

*Held*, that in the absence of rules or regulations governing the grant of grace marks, there is obviously no legal right in the writ petitioner which he could seek to enforce for grace marks to be given to him as claimed. As is well known, Mandamus is a discretionary relief granted to enforce a specific legal right. No such right exists in the failed candidate. The fact that some grace marks may have been given to some other candidates could at best be construed as a concession extended to them or may be taken as an arbitrary exercise of power, but, be that as it may, no right accrues thereby to a failed candidate amenable to enforcement in writ proceedings. To hold otherwise would be conferring legality to arbitrariness in the matter of grant of grace marks, both with regard to the cases where they are to be given as also the extent thereof, a course which is clearly not permissible under cover of any legal or equitable consideration. (Para 5).

Radha Krishan Sood vs. The State of Punjab & others, Civil Writ Petition No. 3375 of 1972 decided on January 29, 1973. **OVERRULED.**

*Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue:—*

- (a) *a Writ of Mandamus, Certiorari or any other writ, direction or order declaring that the petitioner had been illegally declared fail in final examination i.e. 5th Year under Roll No. 712 by an unauthorised person and the respondents be directed to declare the petitioner as having passed the examination by directing the Faculty to grant him 11 grace marks in the paper of Shalya Tantra;*
- (b) *directing the respondents to produce all the relevant records particularly of the students whose instances have been cited in the writ petition;*
- (c) *any other writ, direction or order as this Hon'ble Court may deem fit in the circumstances of this case in the interest of justice; and*
- (d) *costs of the petition be awarded to the petitioner.*

Bhal Singh Malik, Advocate, for the Petitioner.

Roop Chand, Advocate, for Respondents Nos. 3, 4 & 6.

### JUDGMENT

S. S. Sodhi, J.

(1) In the absence of rules or regulations governing the matter, is a writ of mandamus competent to direct the grant of grace marks

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to a failed candidate merely on the ground that such marks have been given to some others? This is the matter which arises for consideration in this petition under Article 226 of the Constitution of India.

(2) The petitioner, Rajinder Kumar, was a student of the Punjab State Faculty of Ayurvedic and Unani System of Medicine, Amritsar. After four earlier unsuccessful attempts to pass the fifth year professional examination of the faculty, he failed in his fifth attempt too, but this time by only 11 marks. It was his claim that he was entitled to these 11 marks as grace marks on the ground that there were instances, quoted in the Writ Petition, where candidates had been given grace marks.

(3) No return was filed by any of the respondents. The stand of Mr. Roop Chand, counsel for respondent 3, 4 and 6 being that the Writ Petition could be disposed of merely on the legal issue raised therein and no return was, therefore, necessary.

(4) There were admittedly no rules or regulations under the relevant Act, namely the Punjab State Faculty of Ayurvedic and Unani Systems of Medicine Act, 1963, regarding the grant of grace marks. It is apparent, therefore, that any grace marks given to any candidate in the past were without any colour of legal authority. The sole contention of the counsel for the petitioner was that it would be discrimination against the petitioner Rajinder Kumar, if he was not given grace marks as had been given to other candidates in the past. In support of this contention he sought to rely upon the judgment of this Court in *Radha Krishan Sood v. The State of Punjab & others*, (1). This was again a case which involved a claim for grace marks in the final year examination of the Ayurvedic College, Patiala. It was held that even in the absence of rules and regulations relating to the grant of grace marks in examinations if such marks had been given to some candidates it would not look reasonable for the respondents to be allowed to accord different treatment to the petitioner. The respondents were accordingly directed to give the necessary grace marks to the petitioner and declare his result thereafter.

(5) We cannot with respect subscribe to the view taken in *Radha Krishan Sood's* case (supra). In the absence of rules or

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(1) Crl 3375 of 1972 decided on 29th January, 1973.

regulations governing the matter, there is obviously no legal right in the petitioner which he could seek to enforce for grace marks to be given to him as claimed. Counsel for the petitioner could indeed point to no such right under which grace marks to the petitioner could be enforced. As is well known Mandamus is a discretionary relief granted to enforce a specific legal right. No such right exists in the petitioner here. The fact that some grace marks may have been given to some other candidates could at best be construed as a concession extended to them or may be taken as an arbitrary exercise of power, but be that as it may, no right accrues thereby to the petitioner, amenable to enforcement in writ proceedings. To hold otherwise would be conferring legality to arbitrariness, in the matter of grant of grace marks, both with regard to the cases where they are to be given as also the extent thereof, a course which is clearly not permissible under cover of any legal or equitable consideration. We are constrained, therefore, to overrule the authority referred to above and to hold that the petitioner is not entitled to the relief claimed. This Writ Petition is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.

S. S. Sandhwalia C.J.—I agree.

N. K. S.

*Before R. N. Mittal, J.*

SURJIT SINGH and others,—Petitioners.

*versus*

KARTAR KAUR and others,—Respondents.

*Civil Revision No. 3199 of 1981.*

*February 7, 1983.*

*Code of Civil Procedure (V of 1908)—Order 21 Rule 26—Decree passed for possession of land—Judgment debtor seeking stay of execution of the decree to enable him to move the appellate Court for such a stay—Decree holder, however, taking possession in execution before the passing of the stay order—Judgment debtor applying for restitution of possession—Restitution allowed by the Court without imposition of any conditions—Such order of restitution—Whether invalid.*