

CASE NO.:
Appeal (civil) 3961 of 2002

PETITIONER:
THE MAHARASHTRA STATE BOARD OF SECONDARY & HIGHER SECONDARY EDUCATION

Vs.

RESPONDENT:
AMIT & ANR.

DATE OF JUDGMENT: 09/07/2002

BENCH:
N. SANTOSH HEGDE, BISHESHWAR PRASAD SINGH.

JUDGMENT:

Bisheshwar Prasad Singh, J.

Special Leave granted.

The appellant, the Maharashtra State Board of Secondary Education is a Board constituted under the Maharashtra Secondary and Higher Secondary Boards Act, 1965. In this appeal, the appellant has impugned the judgment and order of the High court of Judicature at Bombay, (Aurangabad Bench) dated September 3, 2001 in Writ Petition No.3131 of 2001, whereby the High Court allowed the Writ Petition preferred by respondent No.1 herein and directed the Board to declare the petitioner as having passed the examination. The High Court took the view that under sub-clause 2(d) under Note 1 of Clause (3)(a) of Regulation 52, the respondent No.1 was entitled to the grant of 20 grace marks with the result that the marks obtained by him in the subject Mathematics would be 39, he having secured 19 marks in the examination. Consequently, the respondent No.1 having obtained 39 marks in the subject Mathematics with the addition of grace marks, would be entitled to the further benefit under sub-clause (3) of Note 2 of Clause (3)(a) of Regulation 52, having secured more than 105 marks in the subjects Mathematics and Science taken together and therefore entitled to the benefit of combined passing in the subjects Mathematics and Science under the said provision.

We may first notice the facts which are not in dispute. Respondent No.1, who was a student of Saraswati Bhuvan School took the Secondary School Certificate Examination conducted by the Aurangabad Divisional Board in March, 2001. On June 2, 2001 the results were declared but respondent No.1 was declared to have failed, since he had obtained only 19 marks in the subject Mathematics as against a minimum of 52 marks which a candidate is required to obtain under the Regulation for passing in that subject. Respondent No.1, then applied to the Board for the grant of 20 grace marks under sub-clause 2(d) under Note 1 of Clause (3)(a) of Regulation 52 on the ground that he had participated

in sports at the State level. It appears that the respondent No.1 had participated in the "Kho Kho" competition at the State level.

The application of respondent No.1 was rejected and the decision was conveyed by the Divisional Secretary of the Aurangabad Division Board to the Head of the school stating that even with the addition of 20 grace marks, respondent No.1 could not be declared to have passed, since he failed to secure 52 marks in the subject Mathematics, even with the addition of grace marks.

Aggrieved by the decision of the Board the respondent No.1 preferred a Writ Petition before the High Court, wherein he claimed benefit under sub-clause 2(d) under Note 1 of Clause (3)(a) of Regulation 52 as also the benefit under sub-clause (3) of Note 2 of Clause (3)(a) of the said Regulation. In substance, his case was that after adding 20 grace marks to the marks actually obtained by him in Mathematic i.e. 19, he should be deemed to have obtained 39 marks in the subject Mathematics and therefore entitled to the benefit of combined passing in the subjects Mathematics and Science, since he had secured more than 105 marks in the subjects Science and Mathematics taken together. The High Court upheld the contention of respondent No.1 which is challenged before us by the Board.

The Board has framed Regulations, and Regulation 52 lays down the standard for passing in a subject. A close scrutiny of Regulation 52 discloses that it lays down comprehensively the rules relating to the minimum marks to be secured by a candidate for passing the examination, the grace marks which may be granted to a candidate in given circumstances, and the manner of calculation of such marks. However, before adverting to the provisions of the aforesaid Regulation, we consider it appropriate to notice the principles which the Court has to keep in mind while dealing with a case of this nature where grace marks are claimed under the relevant Regulations. It cannot be disputed that the academic standards are laid down by the appropriate authorities which postulate the minimum marks that a candidate has to secure before the candidate can be declared to have passed the examination. The award of grace marks is in the nature of a concession, and there can be no doubt that it does result in diluting academic standards. 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 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 his overall performance in other subjects, he deserves to be declared successful. The appropriate authorities may also provide for grant of grace marks to a candidate who has taken part in sports events etc., considering the fact that such candidates who have obtained a level of proficiency in any particular game or event may have devoted considerable time in pursuit of excellence in such game or event. However, a rule for the award of grace marks must 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. (See Board of School

Education, Haryana Vs. Arun Rathi & Ors. 1994 (2) SCC 526).

We shall now proceed to consider Regulation 52 on which both parties have placed reliance. Regulation 52 in so far as it is relevant reads as follows:-

"52. Standard for passing in a subject
To pass the Secondary School Certificate Examination, a candidate must secure at least 'C' Grade in each of the optional and School Certificate subject offered by the candidate.

In the case of the Optional Technical subjects (Branch 2) wherein the examination is taken by the Board, candidate must obtain minimum 35% marks. In the case of three language heads and Social Sciences which have been allotted the maximum of 100 marks each, a candidate must obtain at least 35 marks in each of them and in the case of Mathematics and Science, which have been allotted the maximum of 150 marks each, a candidate must obtain at least 52 marks in each.

(2) In a subject for which there are more than one papers or practicals, the marks will be added together for a 'pass' in the subject.

(3)(a) Candidates appearing without claiming exemption or exemptions shall be granted automatic condonation of marks if their deficiency for the purpose of passing in a subject or subjects is upto 2 or 3 marks as detailed below:

Subject	Automatic Condonation of Marks admissible upto	
(i) First Language	2	
(ii) Second Language	2	
(iii) Third Language	2	
(iv) Social Sciences	2	
(v) Mathematics	3	3
(vi) Science	6	
(vii) Mathematics and Science (while applying combined passing provision)		
(viii) Two subjects offered by Deaf and Dumb candidates in lieu of two languages	2 in each subject	

Note: (1) If more marks are required than the limit of marks indicated above for the purpose of passing in a subject or subjects automatic condonation of marks shall not be

granted in the subject or subjects.

(2)(a) Subject of the condition prescribed in sub-clause (a) of clause (3), candidates may get the benefit of automatic condonation of marks in one or more compulsory subject or subjects.

(b) The candidates shall also be granted for the purpose of passing in the remaining compulsory subjects of failure (wherein the deficiency is more than the limit of 2 or 3 marks indicated in clause (3)(a) above upto the maximum of 20 grace marks limited to three subjects only subject to the condition that in any one subject not more than ten percent (of the maximum marks for that subject) grace marks shall be granted.

(c) Notwithstanding anything contained in sub-clause (b) (above), in the case of blind or deaf and dumb or physically handicapped or spastic candidates, the limit of maximum 10 per cent grace marks shall be extended upto 20 grace marks.

(d) Notwithstanding anything, contained in sub-clause (b) (above), a candidate who has actually participated in any sports or games held in India or abroad or State, National, International level in the same academic year, the limit of maximum 10 per cent grace marks shall be extended upto 20 grace marks, provided such request is made by the candidate concerned through the respective head of the secondary school, so as to reach to the Divisional Secretary of the Divisional Board concerned upto one month from the date of the declaration of results. All such applications shall invariably be submitted in a prescribed form along with a certificate of the District Sports Officers, to that effect, to the Divisional Secretary of the Divisional Board concerned".

Clauses (e) and (f) are in substantially the same terms as Clause (d) and grant similar benefit of grace marks to candidates who have actually participated in the Republic Day Parade, President's Rally etc.

Then follows Note 2 which reads as under:-

"Note 2: (1) Candidate may get the benefit of both the provisions made under sub-clauses (a) and (b) of Note 1, sub-clause (2) of clause (3) but not in one and the same subject.

(2) No automatic condonation of marks or the grace marks shall be granted to a candidate who does not pass the examination even after applying the provisions made in sub-clause (a) and (b) of Note 1, sub-clause (2) or both these provisions of clause (3).

(3) Notwithstanding anything contained in clauses (1), (2) and (3) (a), a candidate obtaining not less than 105 marks in the subjects Mathematics and Science taken together at one and the same Secondary School Certificate examination, and obtaining not less than 38 marks in the subject or subjects of failure shall be entitled to the benefit of combined passing in the subjects Mathematics and Science.

(b) Candidates appearing with exemption shall be granted automatic condonation of the marks for the purpose of passing as detailed below:

The automatic condonation of 13 marks shall be granted to a candidate at the Secondary School Certificate examination in proportion to the number of subjects of failure but not exceeding 3 marks in any one of the subject as per the following schedule:-

No. of subjects	Condonation marks Admissible
1	3
2	5
3	8
4	10
5	13

Note 3: A candidate appearing with exemption in either Mathematics or Science shall not be entitled to the benefit of combined passing in Science and Mathematics.

Note 4: A candidate appearing with exemption in other subject or subjects, and appearing in Mathematics and Science at one and the same examination shall be entitled to the benefit of automatic condonation marks to the extent of 5 marks for the purpose of Secondary School Certificate while applying rule of combined passing.

(4) No condonation marks or grace marks shall be given in technical or other optional subjects of failure".

A close scrutiny of the scheme of Regulation 52 discloses that under Clauses (1) and (2) of Regulation 52 the minimum passing marks in each subject has been prescribed. The Regulation in clear terms provides that in the subjects Mathematics and Science (which have been allotted maximum 150 marks each) a candidate must obtain at least 52 marks in each subject.

Clause 3(a) provides for grant of automatic condonation of marks. The extent to which such automatic condonation may be granted for the purpose of passing the

subject is laid down therein. In the subjects Mathematics and Science (while applying combined passing provision) automatic condonation of six marks is admissible. The automatic condonation of three marks in each subject separately is admissible. So far as the case of the appellant is concerned, there is no dispute that he secured only 19 marks in Mathematics and 112 marks in Science. Under the provision for grant of automatic condonation, he would be entitled to three marks in the subject Mathematics which would not enable him to secure the passing marks. Sub-clause 2(b) of Clause (3)(a) gives an additional benefit to the candidates for the purpose of passing in the remaining compulsory subjects of failure, wherein the deficiency is more than the limit of 2 or 3 marks as indicated in Clause 3 (a) upto the maximum of 20 grace marks, but subject to the condition that it shall be limited to three subjects only, and that in any one subject not more than 10% of the marks for that subject shall be granted. Under sub clause (d) the maximum 10% grace marks has been extended upto 20 grace marks for a candidate who has actually participated in any sports or games held in India or abroad at State, National or International level in the same academic year. The respondent No.1 claimed the benefit under Sub-clause (d), and it is not in dispute that he is entitled to that benefit. Even so the respondent No.1 would have secured only 39 marks after grant of 20 grace marks in the subject Mathematics as against 52 which is the prescribed minimum passing marks.

The case of the respondent No.1, however, is that once 20 grace marks are added to the marks obtained by him in the subject Mathematics, it should be held that he has actually secured 39 marks in that subject. He then relies on Note 2 sub clause (3) and submits that since the marks obtained by him in Mathematics added to the marks obtained by him in Science is more than 105, he is entitled to the benefit of combined passing in the subjects Mathematics and Science.

Learned counsel for the appellant on the other hand submitted that sub clause (3) of Note 2 which refers to "a candidate obtaining not less than 105 marks" refers to the marks actually obtained by the candidate on the basis of his performance in the examination and not the marks deemed to have been obtained by him after granting grace marks. She submitted, and in our view rightly, that sub-clause (3) of Note 2 is unambiguous, and permits of no confusion or controversy. The Regulation clearly makes a distinction between marks "granted" and marks "obtained". Whenever the Regulation refers to the marks obtained by a candidate, it refers to the marks awarded to him on the basis of his performance in the examination. But whenever it refers to marks granted, it refers to the grace marks which are given to the candidate as a matter of concession. She, therefore, submitted that the benefit of sub clause (3) of Note 2 may be given only to a candidate who has actually obtained in the examination 105 marks in the subjects Mathematics and Science taken together and not less than 38 marks in the subject of failure. So far as the appellant is concerned, for the purpose of sub clause (3) of Note 2, he should be considered to have obtained marks less than 38 in the subject of failure namely, Mathematics since he actually secured only 19 marks. We find considerable force in the submission urged on behalf of the appellant and it must be upheld. Regulation 52 refers to the passing marks which a candidate "must obtain" or "must secure". Clause (3)(a) which deals with grant of automatic condonation uses the words "shall be

granted automatic condonation of marks". Similarly under Clause (b) of sub-clause (2) of Regulation 3(a) the words used are "shall also be granted" Clauses 'c' to 'f' only extend the grace marks upto 20. Under Note 2 sub clause (2) which deals with automatic condonation of marks, reference is to the marks "granted". The scheme of the Regulation is therefore quite clear and it clearly makes a distinction between marks "obtained" or "secured" and grace marks "granted". In the light of this, if we consider sub-clause (3) under Note 2 it would be apparent that the said Sub-clause does not at all deal with grant of grace marks. Regulation 52 is a comprehensive provision and sub-clause (3) under Note 2 only deals with the grant of benefit of combined passing in the subjects Mathematics and Science. It begins with a non-obstante clause and lays down a special rule notwithstanding anything contained in Clauses (1), (2) and (3)(a) of Regulation 52. It clearly implies that even if a candidate would have otherwise failed having regard to the provisions of Clauses (1) and (2), despite grant of grace marks under Clause (3)(a), yet under sub-clause (3) of Note 2 he is entitled to the benefit of combined passing in the subjects Mathematics and Science, provided he has obtained not less than 105 marks in the aforesaid two subjects taken together, while obtaining not less than 38 marks in the subject or subjects of failure. We have already held that obtaining of not less than 38 marks refers to the marks actually obtained by a candidate in the examination on the basis of his performance, and without addition of grace marks. So construed sub-clause (3) of Note 2 does not confer any benefit on a candidate like respondent No.1 who secured only 19 marks in the subject Mathematics, and therefore, does not fulfil the second condition. We have therefore no hesitation in holding that sub clause (3) of Note 2 confers no benefit on the respondent No.1 since he is not eligible thereunder for the benefit of combined passing, having secured less than 38 marks in the subject Mathematics. The High Court was clearly in error in extending to the respondent No.1, the benefit under the aforesaid provision.

We, therefore, hold that the High Court was in error in allowing the writ petition of Respondent No.1. Consequently, we allow the appeal and set aside the impugned judgment and order of the High Court and dismiss the Writ Petition filed by respondent No.1. We are informed that the respondent later re-appeared in the examination and has been declared to have passed the examination.

Before parting with the judgment we may observe that the grant of grace marks being a matter of concession and which tends to dilute academic standards, Regulations dealing with grant of grace marks should not be generously and liberally construed. We have noticed that several concessions are given to candidates by way of grace marks. A candidate may qualify under different Clauses of the Regulation for the grant of grace marks. It is doubtful if a candidate can claim grace marks under more than one Clause even if he may be eligible for the concession under several Clauses. It has been contended before us with considerable force that a candidate may be granted grace marks under only one of the Clauses under the relevant Regulation, and that in no case shall he be entitled to the award of grace marks under more than one Clause even if under the Regulation he may be eligible for grant of grace marks under more than one Clause. It is quite possible that a candidate may have taken part in games at the State level and may have also

participated in the Republic Day Parade and in the President's Rally, which are covered by sub-clause (d) (e) and (f) of Clause (2) under Note 1. If the benefit under all the three clauses is extended to a failing candidate, it would really reduce the examination conducted by the Board to a mockery.

JUDIS