

**CWP-24431-2024**

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP-24431-2024
Date of Decision: 19.10.2024**

Tanvi

..... Petitioner

Versus

Panjab University and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURIPresent: Mr. Varun Sharma, Advocate,
for the petitioner.Mr. Subhash Ahuja, Advocate,
for respondents No.1 to 3.

None for respondent No.4.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing respondents No.1 to 3 to grant the petitioner at least 3 grace marks and add the same to the marks already obtained by her in the theory paper of Law of Evidence (Annexure P-8) and said respondents be further directed to accordingly declare re-evaluated result of 7th semester of the petitioner forthwith.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner was a student of B.A. LLB. (Hons) (5 year Integrated Course) in respondent No.4-College. He further submitted that the petitioner has completed all 10 semesters however in 7th semester she could not clear

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one of the subjects i.e. Law of Evidence because total marks obtained by her was 37 including theory and internal assessment and the minimum passing marks were 45 and the Detailed Marks Certificate of the petitioner is attached as Annexure P-7. Thereafter, she took an examination as a re-appear candidate regarding which the Detailed Marks Certificate is attached as Annexure P-8 in which she also could not secure minimum marks i.e. 45 marks as she obtained 42 marks. He also submitted that the petitioner is entitled for grace marks to the extent of 1% of the total aggregate of whole theory paper in view of Rule 28.1(a) of the Panjab University Calendar Vol.II, 2007 which has been reproduced in the writ petition which provides that in a case where one student fails in one or more subjects then he/she shall be given grace marks upto 1% of the total aggregate marks excluding the marks for internal assessment to make up the deficiency. He further submitted that in case such 1% marks are given to the petitioner then she will get 4.8 more marks (round off 5 marks) and she will pass the examination and therefore, a direction may be issued to the University to award 4.8 marks (round off 5 marks) in view of the aforesaid Rule 28.1(a). He also referred to a judgment passed by a Co-ordinate Bench of this Court in *CWP-24275-2022* titled as “*Saurav Markanda Vs. Panjab University and another*” decided on 01.12.2022 in this regard.

3. On the other hand, Mr. Subhash Ahuja, learned counsel for the respondent-University while referring to the reply has submitted that the petitioner has not reproduced the entire Rule 28.1 in the present writ petition whereas the same has been reproduced in the reply because in addition to Clause (a) it also incorporates Clause (b) and as per the provision of Rule

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28.1 it is very clear that the aforesaid grant of grace marks of the total aggregate of all the papers will not be applicable where the candidate is re-appearing in all the subjects because there is a marked difference between Clause (a) and Clause (b). He further submitted that when a candidate is appearing in first instance in a normal paper, Clause (a) will apply and grace marks of 1% will be calculated on aggregate of maximum marks in all the papers but when a candidate is appearing as re-appear candidate, then Clause (b) will apply and now 1% of the aggregate would not be of the total paper but of the same subject. He also submitted that the aforesaid issue has since been interpreted and decided by Hon'ble Supreme Court in "**Punjab University, Chandigarh Vs. Shri Sunder Singh**", 1984 AIR (SC) 919 wherein the distinction has been discussed in detail. He further submitted that earlier the relevant Rule was Rule 27 and now it is Rule 28 but the language used is *pari materia* with each other. He further submitted that the case of the respondent-University is squarely covered by the aforesaid judgment of Hon'ble Supreme Court. He also submitted that so far as the judgment of the learned Single Judge of this Court relied upon by the learned counsel for the petitioner is concerned, the same will not apply in the present case in the light of the aforesaid judgment of Hon'ble Supreme Court as aforesaid and also in view of the fact that in the aforesaid judgment the provision of Clause 28.1(b) was never brought to the notice of the Co-ordinate Bench of this Court and therefore, even otherwise also the aforesaid judgment is *per incuriam* not only of the Rules of Panjab University Calendar Vol.II 2007 but also of the judgment of Hon'ble Supreme Court. He submitted that in the light of above, the present petition may be



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dismissed.

5. I have heard the learned counsels for the parties.

6. The only issue involved in the present case is as to whether the petitioner is to be granted grace marks in pursuance of Rule 28.1(a) or not. Admittedly the petitioner is seeking grace marks in the re-appear paper and not in the initial paper because in the initial paper even if she is granted the grace marks as per the learned counsel for the petitioner the petitioner will still not be getting the pass marks. So far as the application for grant of grace marks of 1% in re-appear paper is concerned, the same is governed by Clause (b) of the aforesaid Rule. As per Clause (b), 1% of the aggregate of the respective subject in which he re-appears is to be seen and not of all the papers. The aforesaid issue has been dealt in detail by Hon'ble Supreme Court in ***Punjab University, Chandigarh's case (Supra)*** and the relevant portion of the same is reproduced as under:-

“3.A bare reading of the Rule 27 (referred to as the Regulations by the High Court) makes it clear that clause (a) is applicable where the full examination is taken and clause (b) is attracted whom the candidate reappears to clear the compartment or subject and part in which he has been declared eligible to reappear. In each of these cases the candidate was reappearing to clear the paper in which he or she had failed; cl (b) was clearly attracted and the benefit under clause (a) was not available. The University had taken that decision and took the same stand before the High Court in answer to the rule nisi. We are clearly of the opinion that the High Court went wrong in taking the view that when a candidate reappeared to clear a paper of a subject on

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being found eligible to do go, clause (a) was attracted. The language of clause (b) is such as would squarely apply to such a situation. Having taken the view that clause (a) governed the matter, the High Court had no occasion to express any opinion as to if clause (b) applied what benefit the candidate would have got. The provision in clause (b) is clear and on reappearing the candidate becomes entitled to grace marks of up to one per cent of the total marks of the subject/subjects in which he reappears. Once clause (b) applies no reference is available to the performance in the regular examination taken earlier and the benefit of grace marks to the extent indicated has to be confined to the performance at the reappearance.”

7. After hearing the learned counsels for the parties, this Court is of the considered view that the case of the respondent-University is squarely covered by the aforesaid judgment of Hon’ble Supreme Court and even if the petitioner is granted the grace marks of 1% in pursuance of Clause (b) even then she cannot reach upto the level of minimum passing marks i.e. 45 marks. Consequently, this Court finds no merit in the present petition and the same is hereby dismissed.

19.10.2024*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |