

CONTROLLER OF EXAMINATION, UTKAL UNIVERSITY
AND ANR. ETC.

v.

MISS PAURNAMASI DAS AND ANR. ETC.

SEPTEMBER 19, 1995

[M.M. PUNCHHI AND SUJATA V. MANOHAR, JJ.]

Education

Utkal University Regulations/Hard Case Rule.

Regulations 12.16(b)/Para 2.2.—Criteria for awarding First Class Honours, Second class Honours—Adding of 0.5% marks—Adding up of pre-degree examination marks and Final Degree Examination Marks—Not permissible—Could only be added separately for pre-degree/final degree examination.

Under Regulation 12 of the Utkal University regulations, classes are awarded both in pre-degree and final degree examinations separately, and shown as such in the diploma. In the pre-degree examination, in order to obtain a second class Honours, a minimum of 30% marks are required in core subjects, other than honours subject, while 45% marks in the aggregate are required in all the honours subjects taken together. For obtaining a First class Honours, a minimum of 30% is required in each subject but in the honours subject, 60% marks are required in the aggregate, For final examinations also, the same criteria is followed subject to retaining honours in pre-degree examination.

According to Regulation 16(b) the class which is awarded to a candidate in the final examination depends entirely on the marks obtained by the candidate in the final examination. However, for obtaining an honours degree, an additional condition was stipulated that the candidate must have secured honours in the pre-degree examination. He must have also secured honours in the final examination.

In 1990, the Utkal University framed what is known as a Hard Case Rule for pre-degree and final degree examinations of the plus three degree course. It, *inter alia*, provided that if a candidate who appears for honours

A degree in any honours subject fails to secure honours marks, or the next higher class in the honours subject, by not more than 0.5% of the maximum marks in the honours subject, the required marks be added to the paper in which the candidate has secured the highest percentage of marks to enable him to retain honours or to secure the next higher class.

B In these appeals the respondents were short by 4 marks in their final degree honours papers, for getting a Second class Honours/First class Honours. Approaching the High Court, they contended that they were entitled to 4 marks which would be 0.5% of 800 marks, the maximum of 400 in the pre-degree and 400 in the final degree examination. This was accepted by the High Court. Hence these appeals by the University.

C Allowing the appeals, this Court

D HELD : 1.1. Paragraph 2(2) of the Hard Case Rule framed by the Utkal University provides that "the Hard Case Rule shall be applied in each part", each part being the pre-degree examination and the final degree examination. The entire scheme of marks under the Regulations also quite clearly makes separate provision for the pre-degree examination and for the final degree examination. Regulation 16(b) also very clearly provides that the marks in the final degree examination only will be the basis for awarding honours and class. Therefore, it is not possible to add the marks which can be obtained in the pre-degree examination to the marks in the final degree examination for the purpose of applying the Hard Case Rule. [775-F]

E 1.2. In the pre-degree examination also if the candidate misses honours by 0.5% marks the candidate can have those marks added. In the present case, there was no occasion to apply the Hard Case Rule to the respondents in the pre-degree examination. The only occasion for applying the Hard Case Rule arose at the time of the final degree examination. However, under the Hard Case Rule only 2 marks could have been added which were not sufficient for the respondents to obtain Second class Honours/First Class Honours in the final degree examination. The High Court was, therefore, not right in coming to the conclusion that 4 marks should be added in the final degree examination. [775-GH, 776-A]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8398 of 1995.

G

H

From the Judgment and Order dated 22.12.93 of the Orissa High Court in O.J.C. No. 5229 of 1993. A

With

Civil Appeal No. 8399 of 1995. B

From the Judgment and Order dated 8.9.94 of the Orissa High Court in O.J.C. No. 5162 of 1994.

Vinoo Bhagat for the Appellants.

A.K. Panda for the Respondent in C.A. No. 8399/95. C

Mrs. K. Sharda Devi, for the Respondent in C.A. No. 8398/95

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. Leave granted. D

These two appeals pertain to the pre-degree and final degree examinations conducted by the Utkal University for awarding the B.A. degree. The Utkal University has framed Regulations for the conduct of examinations. Under Regulation 12 of the Regulations, classes (i.e. First class Hons., Second class hons., etc.,) are awarded in both pre-degree and final degree examinations separately. Regulation 12 provides that classes are awarded separately in each examination and both shall be shown in the diploma. In the pre-degree examination, Regulation 12 provides, *inter alia*, that in order to obtain a 2nd Class Honours, a minimum of 30% marks are required in core subject other than honours subject, while 45% marks in the aggregate are required in all the honours papers taken together. For obtaining a 1st class Honours, a minimum of 30% is required in each subject but in the honour subject, 60% marks are required in the aggregate. E F

The second part of Regulation 12 deals with the final examination. In the final examination, in order to obtain 2nd Class Honours degree, a minimum of 30% is required in each subject and 45% of marks are required in the aggregate of all the honours papers provided that the candidate has retained honours in the pre-degree examination. In order to obtain a 1st Class Honours degrees in the final examination, a minimum of 30% marks are required in each subject and 60% of marks are required H

- A for the aggregate of honours papers provided the candidate has retained honours in the pre-degree examination. These Regulations, therefore, clearly provide that in the final examination a candidate will be granted an honours degree, either in the 1st class or the 2nd class as the case may be, provided he has obtained honours in the pre-degree examination. The material portion of Regulation 16(b) is as follows :

B "Based on the marks of the final examination only the list of those who have obtained honours shall be arranged in two classes and within each class the names shall be arranged in order of merit....."

- C Therefore, the class which is awarded to a candidate in the final examination depends entirely on the marks obtained by the candidate in the final examination. For obtaining an honours degree, however, there is an additional condition that an honours in the final examination will not be granted to a candidate if he had failed to secure honours in the pre-degree examination. Therefore, in order to obtain an honours degree a candidate must secure honours in the pre-degree examination. He must also secure honours in the final examination. The class that he obtains will depend upon the marks obtained in the final examination alone.

- E In 1990, the Utkal University framed, what is known as a Hard Case Rule for pre-degree and final degree examinations of the plus three year degree course. This Rule deals with various kinds of hard cases. It *inter alia*, provides that if a candidate who appears for an honours degree in any honours subject fails to secure honours, or the next higher class in the honours subject, by not more than 0.5% of the maximum marks in the honours subject, the required marks be added to the paper in which the candidate has secured the highest percentage of marks to enable him/her to retain honours or to secure the next higher class as the case may be.

In the light of these provisions, let us examine the facts in the two appeals which are before us.

- G In appeal No. 8398/95 arising out of S.L.P.(C) No. 6663/94, the respondent appeared for the pre-degree B.A. examination conducted by the Utkal University in 1992. Her honours subject was Oriya language. She secure 201 out of 400 marks and thus qualified for appearing as an honours student in the final degree examination. In 1993, the respondent appeared H in the final degree examination. She obtained 176 marks out of 400 in her

honours subject. Since the minimum percentage of marks required for an honours degree are 45%, she was short of the minimum required by 4 marks. She, therefore, did not qualify for an honours degree and she was awarded a B.A. general degree and not an honours degree. As per the Hard Case Rule, she was entitled to the given 0.5% of the maximum marks if this enabled her to obtain the minimum marks required for an honours degree. Since the maximum marks in her honours subject were 400, she was entitled to obtain 2 grace marks under the Hard Case Rule. This, however, was not sufficient for her to obtain the minimum 45% marks. Therefore, she could not have obtained an honours degree.

It is the contention of the respondent that if the maximum marks are to be counted as 400 marks in the pre-degree examination plus 400 marks in the final degree examination, the total maximum marks would be 800 and, therefore, she would be entitled to 4 grace marks under the Hard Case Rule. If she is given these 4 marks in her final degree examination in her honours papers, she will be able to obtain 45% marks in her honours subject. This contention which found favour with the High Court does not appear to derive any support from the Regulations pertaining to the conduct of examinations of the Utkal University. The Hard Case Rule quite clearly provides that it is to be applied in each part of the examinations separately.

Paragraph 2(3) of the Hard Case Rule provides that "the Hard Case Rule shall be applied in each part", each part being the pre-degree B.A. examination and the final degree B.A. examination. The entire scheme of marks under the Regulations also quite clearly makes separate provisions for the pre-degree examination and for the final degree examination. Regulation 16(b) also very clearly provides that the marks in the final degree examination only will be the basis for awarding honours and class. Therefore, it is not possible to add the marks which can be obtained in the pre-degree examination to the marks in the final degree examination for the purpose of applying the Hard Case Rule. In the pre-degree examination also if the candidate misses honours by 0.5% marks she can have those marks added. In the present case, there was no occasion to apply the Hard Case Rule to the respondent in the pre-degree examination since she obtained 45% marks in her pre-degree examination. The only occasion for applying the Hard Case Rule arose at the time of the final degree examination. However, under the Hard Case Rule only 2 marks could have been

A
B
C
D
E
F
G
H

A added which are not sufficient for the respondent to obtain honours in the final degree examination. The High Court was, therefore, not right in coming to the conclusion that 4 marks should be added in the final degree examination.

B In appeal No. 8399/95 arising out of S.L.P. (C) No. 19991/94 also the respondent appeared for the pre-degree examination in 1992. His honours subject was Political Science. He secured 243 out of 400 marks in his honours subject and thus qualified for appearing in the final degree examination for a 1st Class Honours Degree, the minimum marks for a 1st Class Degree being 60% in the honours subject. In 1993, the respondent
C appeared in the final degree examination. He obtained 236 out of 400 marks for the honours subject. This fell short of the minimum requirement for a 1st Class Degree by 4 marks. Hence, the respondent was awarded a 2nd Class Honours Degree to which he was eligible in view of his marks in the final examination and in view of the fact that he had obtained honours in the pre-degree examination. The respondent contended that he
D should be granted 4 marks under the Hard Case Rule on the same grounds as the respondent in appeal No. 8398/95 arising out of S.L.P.(C) No. 6663/94. For the reasons which we have already set out, the maximum marks which could have been added were 2 under the Hard Case Rule. This would not have enabled the respondent to obtain a minimum 60%
E marks in the Honours subject in the final degree examination.

In the premises, both the appeals are allowed. The Judgments and orders of the High Court are set aside and the writ petitions are dismissed. In the circumstances, there will be no order as to costs.

G.N.

Appeals allowed.