IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 785 of 2023

Reserved on: 12.4.2023

Decided on : 22.5.2023

Nehar Singh

...Petitioner

Versus

Himachal Pradesh University & others

...Respondents

Coram

Hon'ble Mr. Justice Tarlok Singh Chauhan, Acting Chief Justice.
Hon'ble Mr. Justice Virender Singh, Judge
Whether approved for reporting? yes

For the Petitioner	**:**	**Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rocky, Advocate.**
For the respondents	**:**	**Mr. Shourya Sharma, Advocate, for respondents No. 1 and 2.**
		Mr. Arush Matlotia, Advocate, for respondent

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No. 3.

Per Virender Singh, Judge

Petitioner, Nehar Singh has invoked the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India, seeking the following substantive reliefs:

> "i)That appropriate writ, order or direction may very kindly be issued to the respondents directing them to either locate/find out the paper code No. XIII of the petitioner immediately and declare the result after evaluating the same or grant the average marks to the petitioner in paper code No. 13 on the basis of rest of his papers and to declare the result by declaring the petitioner passed immediately without any further delay in the interest of law and justice.
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> ii) That appropriate writ, order or direction may very kindly be issued directing the respondents to compensate the petitioner adequately to the tune of Rs. 3 lac on account of losing an opportunity for consideration to the public employment and also for suffering physically, mentally and financially in the interest of law and justice.
>
> ii(a) That appropriate writ, order or direction may kindly be issued and clause 6.67 of the ordinance may very kindly be quashed and set aside."

2. The factual position, as pleaded in the writ petition, is that the petitioner was a regular student of respondent No. 3-College and pursuing his B.Ed. Degree course in the session 2020-22. The petitioner has successfully completed his three semesters and appeared in the examination of 4th

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semester, in the month of August, 2022, under roll No. 200640510510025. After the examination, result of 4th semester of B.Ed. Degree course was declared by the respondent No. 1-University on 22.12.2022, in which, result of the petitioner for the paper Code XIII i.e. Gender School and Society has been shown as RLA. In this regard, the petitioner relied upon the result sheet of paper code-XIII (Annexure P-1).

3. After declaration of the result, the petitioner has approached respondent No. 1-University and he has been apprised that answer sheet of paper Code XIII has not been received by respondent No. 1-University. He was apprised by the authorities of respondent No. 1-University that they had asked respondent No. 3 to supply the answer sheet of the petitioner of paper code XIII, vide letter dated 13.10.2022, but, despite the same, respondent No. 3 has not sent his answer sheet to respondent No. 1-University.

4. Thereafter, the petitioner had also approached the authorities of respondent No. 3, regarding his answer sheet for paper in question and verified as to why his answer sheet was not sent despite letter dated 13.10.2022 (Annexure P-2), but no satisfactory answer has been given to him. However, a

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copy of memo has been supplied to him, wherein it has been mentioned that respondent No. 3 has submitted the copy of answer sheet of paper in question to respondent No. 1-University. The aforesaid memo was received by the petitioner on 20.8.2022 and he has annexed the copy of the same with the writ petition, as Annexure P-3. Thereafter, the petitioner has approached respondent No. 2 by way of representation, but all the efforts made by the petitioner remained futile.

5. It is further case of the petitioner that he has already qualified the Teacher Eligibility Test (TET), which is an essential qualification for teaching profession in Government and private schools, but without result of the paper in question, he is not eligible for getting job, due to the negligence, on the part of respondents No. 2 and 3.

6. Explaining his vows, he has submitted that due to the inaction, on the part of respondents, the petitioner has lost the opportunity of appearing in the commission of Kendriya Vidyalaya and will also lose further opportunities despite being TET qualified.

7. Assailing the ordinance of University, as referred above, as unjust and unfair, as the students cannot be made to suffer, for the wrong committed by the respondent

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authorities, the petitioner has prayed that the relief(s), as claimed by him, may kindly be granted to him.

8. When put to notice, the stand taken by the petitioner has been contested by the respondents.

9. Respondents No. 1 and 2, in their reply, have not disputed the factual position, qua the fact that respondent No. 3-College is affiliated with respondent No. 1-University for B.Ed Course and the petitioner appeared in examination of B.Ed. Degree course, held in the month of August, 2022.

10. It is the case of respondents No. 1 and 2 that respondent No. 2 being the Controller of Examination had tallied the scripts and observed that the answer sheet of roll No. 20064051051 0025 was not found in the packet and in this regard, a special note has been appended in the memo, received from respondent No. 3-College.

11. The factum of non-receipt of the answer sheet has duly been intimated to respondent No. 3 on 13.10.2022, whereas, respondent No. 3, after a lapse of about three months, has submitted to respondent No. 1 that the answer sheet of petitioner has already been sent in the packet. Since, the answer-sheet, according to respondent No. 1, has not been received by it, as such, a letter was written to

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respondent No. 3 to explain its position. But, respondent No. 3, could not clear the factual position with regard to missing of the answer sheet, hence the respondent-University has issued notice to it on 1.3.2023 to produce the relevant record.

12. Supporting their action, qua declaring the result of the petitioner, regarding paper in question, as RLA, it has been submitted, in the reply that the same is due to the factum of non-receipt of answer-sheet from respondent No. 3-College.

13. So far as the relief, claimed by the petitioner in the present petition, is concerned, respondents No. 1 and 2 have put forward the plea that as per the provisions, as contained in Ordinance 6.67 of the H.P. University First Ordinances, only one chance can be given to the petitioner, as a special chance.

14. Respondent No. 3, in its reply, has termed the petition, as misconceived on the ground that after receiving a letter from the respondent-University on 13.10.2022, it has promptly responded to the same, vide letter dated 16.1.2023.

15. In view of the stand taken by the respondents, in this case, one thing is crystal clear that the petitioner was pursuing B.Ed. Degree course, for the session 2020-22 and

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took admission with respondent No. 3-College. He has appeared in the 4th semester of examination of B.Ed. Degree course, in the month of August, 2022, under roll No. 200640510510025 and his result has been shown as RLA for the paper code XIII. On 13.10.2022, the Deputy Registrar of the respondent-University has written a letter to respondent No. 3-College to verify its record as to why the answer sheet of the paper Code XIII, pertaining to roll No. 200640510510025 was not found in the packet of answer scripts, received in the office of respondent No. 2. Petitioner, in this regard, has also written a letter to the Controller of Examination (respondent No. 2). As per the attendance sheet, the petitioner had appeared in the paper code XIII on 20.8.2022.

16. In view of the inter se correspondences between respondents No. 1 and 2 with respondent No. 3, it is crystal clear that the authorities are trying to shift the responsibility upon each other. The petitioner is being victimized without his fault. The petitioner has cleared all his previous semesters examinations of B.Ed degree course.

17. Once, it has been held that the petitioner has appeared in the examination of the paper code XIII and his

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attendance has duly been marked on that date, then it was the responsibility of respondent No. 3 to keep the answer sheet in safe custody and submit the same to respondents No. 1 and 2. Merely, the respondents have made correspondences with each other, does not absolve them from the liability, in the present case. Admittedly, the petitioner has not committed any irregularity and no fault can be found on the part of the petitioner.

18. Respondents No. 1 and 2, in the present case, have relied upon the ordinance 6.67 of the H.P. University First Ordinances, which is reproduced as under:

> "6.67 A candidate whose answer-book is lost, after having been received by the Superintendent or Superintendence-in-charge of the Examination Centre, provided he has passed in all other subjects of the examination, may be permitted by the Vice-Chancellor to reappear in that paper, which is lost, on a date to be fixed by the Controller of Examination and if he obtains pass marks in that paper he shall be deemed to have passed the examination. In the case of dispute as to whether a candidate's paper was duly received or not, the finding of the Controller of Examination subject to confirmation by the Vice-Chancellor, shall be final."

19. On the basis of aforesaid ordinance, it is the stand of respondents No. 1 and 2 that they could permit the petitioner to appear in the examination of paper code XIII.

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20. Since the vires of the ordinance, relied upon by respondents No. 1 and 2, has also been challenged by the petitioner, as such, the moot question, before this Court, is as to whether the ordinance passes the test of reasonableness, as innocent candidates cannot be penalized for the wrongs committed by the authorities, which are responsible for conducting the examination and keeping the answer sheet(s) in safe custody.

21. The petitioner has invoked the extra ordinary jurisdiction of this Court, under Article 226 of the Constitution of India. The petitioner has also sought the writ of certiorari to quash the ordinance of the University, as referred above.

22. Hon'ble Apex Court in a decision in case titled as '**Dwarka Nath versus I.T.O.** reported in AIR 1966 SC 81 (84), has elaborately discussed the powers of High Courts under Article 226 of the Constitution of India. The relevant paras of the judgment is reproduced as under:

> "This improvement effect by Art. 226 upon the English prerogative writs has thus been explained by the Supreme Court.
>
> > "Art. 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. A wide language in

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> describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised was designedly used by the Constitution. The High Court can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of expression "nature",which expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. The High Courts are enabled to mould the reliefs to meet the peculiar and complicated requirements of this country. To equate the scope of the power of the High Court under Art. 226 with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction would defeat the purpose of the article itself. But this does not mean that the High Courts can function arbitrarily under this article. There are some limitations implicit in the article and others may be evolved to direct the article through defined channels."

23. It is no longer res-integra that the Courts should not interfere in academic matters of the educational institutions, unless or until the same does not pass the test of reasonableness or are violative of principles of natural justice.

24. Learned counsel appearing for respondents No. 1 and 2 could not satisfy the judicial conscience of this Court as to how the innocent student can be compelled to re-appear

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in the examination, in which he or she has already appeared, and his answer-sheet has been lost due to negligence or inaction of the respondent authorities.

25. As stated above, no fault has been attributed to the petitioner. At the cost of repetition, how the student, who once had appeared in the examination, can be compelled to re-appear, without his or her fault.

26. In such situation, relegating the petitioner to appear in the examination again, as per the provisions contained in Ordinance 6.67 of the H.P. University First Ordinances, is not justifiable, in the eyes of law, as the petitioner is not, at all, at fault and he cannot be penalized for the inaction on the part of respondents.

27. Since the vires of the ordinance 6.67 of the H.P. University First Ordinances, of respondent No. 1 has also been challenged by the petitioner, with a prayer to quash the same, the material question, which arises before this Court, is about the fact whether in the given facts and circumstances of the case, the same can be quashed in order to grant relief to the petitioner.

28. The ordinance in question can only be struck off by this Court, if it is found that the same is violative of equality

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clause/equal protection clause, enshrined under Article 14 of the Constitution of India.

29. It has vehemently been argued by learned senior counsel, appearing for the petitioner that the ordinance does not pass the test of reasonableness, as such the same is liable to be quashed, as according to the ordinance, a candidate has been forced to appear again in the same examination, in which he has already appeared.

30. Although, a feeble attempt has been made by the learned counsel appearing for respondents No. 1 and 2 to establish that in the ordinance in question, the only course left for the petitioner is to again appear in the exam, that too, after seeking approval of Vice Chancellor.

31. Now, this Court proceeds to determine as to whether the Ordinance 6.67 of the H.P. University First Ordinances passes the test of reasonableness?

32. The principle of reasonableness has firstly been explained by the Hon'ble Supreme Court in a leading case, titled as, **'Smt. Maneka Gandhi versus Union of India'**, reported in AIR 1978 Supreme Court, 597. Para-56 of the said judgment is reproduced, as under:

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"56 Now, the question immediately arises as to what is the requirement of Article 14 : what is the content and reach of the great equalising principle enunciated in this article ? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned Within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in E. P. Royappa v. State of Tamil Nadu & Another (1974) 2 SCR 348; (AIR 1974 SC 555) namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes, at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be "'right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied. How far natural justice is air essential element of procedure established by law." (self emphasis supplied)

33. The theory of reasonableness has again been expended by the Hon'ble Supreme Court in a case titled as,

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“R.K.Garg versus Union of India”, reported in AIR 1981, SC 2138.

34. The Hon’ble Supreme Court in an another case, titled as, **“Natural Resources Allocation in RE, Special Reference No. 1 of 2012”** reported in (2012) 10 SCC, page 1, has again reiterated the principle of Menka Gandhi’s case (supra). Relevant paragraphs 99 to 106 of the judgment are reproduced as under:

> “99. Building upon his opinion delivered in Royappa's case (supra), Bhagwati, J., held in Maneka Gandhi Vs. Union of India & Anr. (Maneka Gandhi Case,SCC p. 284, para-7)
>
> “7..... The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive."
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> 100. In Ajay Hasia & Ors. Vs. Khalid Mujib Sehravardi, this Court said that the 'arbitrariness' test was lying "latent and submerged" in the "simple but pregnant" form of Article 14 and explained the switch from the 'classification' doctrine to the 'arbitrariness' doctrine in the following words: (SCC p. 741, para 16)
>
> "16...The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of

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equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an 'authority' under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution."

101. Ramana Dayaram Shetty Vs. International Airport Authority of India explained the limitations of Article 14 on the functioning of the Government as follows: - (SCC p.506, para-12)

"12...It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

102. Equality and arbitrariness were thus, declared "sworn enemies" and it was held that an arbitrary act would fall foul of

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the right to equality. Non-arbitrariness was equated with the rule of law about which Jeffrey Jowell in his seminal article "The Rule of Law Today" said: -

"Rule of law principle primarily applies to the power of implementation. It mainly represents a state of procedural fairness. When the rule of law is ignored by an official it may on occasion be enforced by courts."

103. As is evident from the above, the expressions 'arbitrariness' and 'unreasonableness' have been used interchangeably and in fact, one has been defined in terms of the other. More recently, in Sharma Transport Vs. Government of A.P. & Ors.42 , this Court has observed thus: (SCC pp. 203-04, para-25)

"25...In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression "arbitrarily" means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

104. Further, even though the 'classification' doctrine was never overruled, it has found less favour with this Court as compared to the 'arbitrariness' doctrine. In Om Kumar & Ors. Vs. Union of India43 , this Court held thus: (SCC p.409, para-59)

"59. But, in E.P. Royappa v. State of T. N. Bhagwati, J laid down another test for purposes of Article 14. It was stated that if the administrative action was "arbitrary", it could be struck down under Article 14. This principle is now uniformly followed in all courts more rigorously than the one based on classification. Arbitrary action by the administrator is described as one that is irrational and not based on sound reason. It is also described as one that is unreasonable."

105. However, this Court has also alerted against the arbitrary use of the 'arbitrariness' doctrine. Typically, laws are struck

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down for violating Part III of the Constitution of India, legislative incompetence or excessive delegation. However, since Royappa's case (supra), the doctrine has been loosely applied. This Court in State of A.P. & Ors. Vs. McDowell & Co. & Ors.44 stressed on the need for an objective and scientific analysis of arbitrariness, especially while striking down legislations. Jeevan Reddy, J. observed: (SCC pp.737-38, para 43)

"43...The power of Parliament or for that matter, the State Legislatures is restricted in two ways. A law made by Parliament or the legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground. We do not wish to enter into a discussion of the concepts of procedural unreasonableness and substantive unreasonableness - concepts inspired by the decisions of United States Supreme Court. Even in U.S.A., these concepts and in particular the concept of substantive due process have proved to be of unending controversy, the latest thinking tending towards a severe curtailment of this ground (substantive due process). The main criticism against the ground of substantive due process being that it seeks to set up the courts as arbiters of the wisdom of the legislature in enacting the particular piece of legislation. It is enough for us to say that by whatever name it is characterised, the ground of invalidation must fall within the four corners of the two grounds mentioned above. In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (s) to (6) of Article 19 and so on. No

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enactment can be struck down by just saying that it is arbitrary** or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that court thinks it unjustified. Parliament and the legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. In this connection, it should be remembered that even in the case of administrative action, the scope of judicial review is limited to three grounds, viz., (i) unreasonableness, which can more appropriately be called irrationality, (ii) illegality and (iii) procedural impropriety (see Council of Civil Service Unions v. Minister for Civil Service which decision has been accepted by this Court as well).

106. Therefore, ever since the Royappa era, the conception of 'arbitrariness' has not undergone any significant change. Some decisions have commented on the doctrinal looseness of the arbitrariness test and tried keeping its folds within permissible boundaries. For instance, cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [See: Air India Vs. Nergesh Meerza45 (SCC at pp. 372-373)] only on the basis of "arbitrariness", as explained above, have been doubted in McDowell's case (supra). But otherwise, the subject matter, content and tests for checking violation of Article 14 have remained, more or less, unaltered."

(self emphasis supplied)

35. The word 'reasonableness' has been held to be a question of fact, as held by the Hon'ble Supreme Court in case titled as, **"Commissioner of Customs, Kandla Vs. Essar Oil Ltd. & others"**, reported in 2004(11) SCC 364. Relevant para 41 of the judgment is reproduced, as under:

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> "41.The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact; whether a particular act is reasonable or not depends on the circumstances in a given situation. It is often said that "an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space". The author of "Words and Phrases" (Permanent Edition) has quoted from In re Nice & Schreiber 123 F.987, 988 to give a plausible meaning for the said word. He says, "the expression "reasonable" is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined". (self emphasis supplied)

36. Now, the question, which arises for determination by this Court is, as to what method is to be adopted, in such type of cases, where the answer script of the examinee is lost by the authorities.

37. Admittedly, the petitioner has passed all other papers, except the paper in question, in which answer-sheet has been lost, due to inaction on the part of respondent No. 3.

38. There is nothing on file to demonstrate that the University authorities have taken any step to inquire about the missing answer scripts and to take action against those, responsible for the loss. Merely relying upon the Ordinance 6.67 of the H.P. University First Ordinances, the University cannot absolve from its responsibility. The University has

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forgotten that the candidate is not to be blamed and he is nowhere responsible for the loss of his answer script.

39. In view of the law so discussed, Ordinance 6.67 of the H.P. University First Ordinances, does not sustain in the judicial scrutiny by this Court and the same is liable to be quashed and the same is quashed as such.

40. Learned counsel appearing for respondents No. 1 and 2 could not satisfy the conscience of this Court about the object to be achieved by the ordinance in question, i.e. compelling the students to re-appear in the same examination, in which they have already appeared and there is no fault attributed to them.

41. In such situation, the method known as 'proportionate quotient' (PQ method) could only be adopted, which seems to be more reasonable for redressing the grievance of the petitioner. The proportionate quotient is based upon the proportionate marks to be awarded to the petitioner on the basis of average marks obtained by him in other papers of B.Ed. Degree, which, he has already qualified. Ordered accordingly.

42. Respondents No. 1 and 2 are directed to complete the exercise within a period of two weeks from today and

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declare the result of the petitioner for the paper in question, so that further loss to the petitioner, on account of the act and conduct of the respondents, can be avoided.

43. The petition is allowed in above terms. The pending application(s), if any, are also disposed of accordingly.

44. No order as to costs.

(Tarlok Singh Chauhan)
Acting Chief Justice

(Virender Singh)
Judge

May 22, 2023
Kalpana

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