CHAPTER V

EXAMINATIONS

Another area of increasing litigation has been the examinations. This trend can be seen during the period from 1975 to 1981, where one finds a gradual increase in the case law which reached the highest curve in 1981. The States of Punjab and Haryana contributed to the largest litigation, followed by the States of Uttar Pradesh and Orissa, and after them the States of Madhya Pradesh and West Bengal which are followed by the other states. The states in the South did not contribute to a larger number of cases in this area as they had in the case of admissions.

The cases may be categorised into three broad heads: eligibility for examination; conduct of examination; and the award of marks.

(i) Eligibility for Examination

An educational institution requires candidates appearing in the examination to satisfy all the eligibility requirements for examination. If any of those requirements is not fulfilled, the authority concerned is entitled to refuse the candidate an entry in the examination.

Shortages of Attendance

When a student fails to fulfil the requirement of attendance, the educational authorities have a right not to allow him to appear in the examination. In a few cases the question has arisen whether the student has to fulfil the attendance requirement separately in each of the mediums of instructions, such as, lectures, seminars, tutorials and practicals, or it is enough if he satisfies the overall attendance requirement, that is, after combining all these mediums of instruction. If a statutory provision is clear and statesthat the student has to satisfy the attendance requirement separately in the lectures, tutorials, practicals, etc., there is no difficulty. This happened in the case of Delhi University in Azra Seema v. J.P.S. Oberoi.[1] However, in Principal Patna College v. K.S. Raman,[2] the statutory provision whether the attendance requirement had reference to the total of lectures, tutorials and practicals combined, or separately was not clear. Reading the regulations concerned as a whole, the court stated that in the context it was more reasonable to hold that the attendance requirement must be satisfied separately in the case of lectures, tutorials and practicals -- a view taken by the university. The court justified its interpretation on the ground that

1. A.I.R. 1979 Del.101.
2. A.I.R. 1966 S.C. 707.

the tutorials and practicals had a great deal of importance in the learning process. As regards the role of the judiciary in intervening in such matters, it was stated that the courts should give due regard to the interpretations of the educational authorities. Where a regulation is capable of two constructions, "it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed before the said authorities on the relevant regulation appears to the High Court less reasonable than the alternative construction which it is pleased to accept"

A student detained from the examination may dispute the correctness of the record of his attendance or the counting of attendance, or he may claim the benefit of some exemption clause, e.g. sickness. Therefore, such a student may want a hearing to be given to him by the college before action is taken against him. The educational authorities are to comply with his request. In Kumkum v. Principal, Jessus & Mary College,[3] the principal under the concerned provisions was empowered to give concession in attendance if the student had fallen seriously ill or met with an accident during the year disabling him from attending classes for some period. The principal

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3. A.I.R. 1976 Del. 35.

made it a rule that for invoking the benefit of this provision, the leave application should invariably be accompanied by a medical certificate, as a late production of certificate would not inspire confidence. The principal accordingly did not accept late medical certificates from students who were being detained. It was held that the principal was to observe natural justice in deciding the question whether the concession on account of illness was to be given to the students or not. The principal could not fetter his discretion to deny such a benefit by adopting it as a rule of policy that the leave application must be accompanied by a medical certificate. It is a different matter if the principal after hearing the student decides that a medical certificate produced late is not believable but he should not make a premature decision about that matter.

The rules of natural justice are, however, not rigid or formal. The courts allow a great deal of flexibility in the matter of observance of natural justice by the authorities. In Azra Seema v. J.P.S. Oberoi,[4] a student was debarred from appearing at an examination because of shortage of attendance. The exact shortage was not disclosed to him lest he

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4. Supra note 1.

might submit the tailored medical certificate. The exact shortage was, however, made known to him after he produced the certificate. On the following facts it was held that the principles of natural justice were satisfied. The petitioner had made a representation invoking ill health as the reason for his absence from classes and that representation was duly considered by the authorities including the representation made to the Vice-Chancellor. The latter had not given a personal hearing. The court did not find anything wrong in this as it was not essential that personal hearing be given at all the stages and levels at which the matter was considered. As regards the question that the authorities did not make complete disclosure because they did not inform the candidate initially of the precise shortage of attendance, the court held that even that did not vitiate the proceedings as the student was supposed to know how many classes (here seminars) were held and out of which how many he did not attend, and further he was duly communicated the exact shortage after the submission of the medical certificate.

At times, a student alleged to be having shortage of attendance may be given admission card for the examination provisionally, subject either to his completing the attendance subsequently before the

close of the academic year or final determination of the matter by the authorities. Thus, the admission card is only conditional. In such cases, the approach of the courts is that if it becomes clear after the student had taken the examination that he was really short of attendance, the university would be within its legal right to withhold his result.[5]

In some cases the courts have bypassed the terms of the provisional admission card because of the justice of the matter rather than law. This occurred in Habibullah v. Mysore[6] where the result of a candidate was withheld because he did not complete the attendance requirement within the academic year. However, the college where he was studying arranged special classes after he had taken the examination and the completion of the academic year to enable him to make good the attendance. It was held that the candidate had satisfied the attendance requirement. The approach of the court is not correct and is not in line with the other cases. The idea of compulsory attendance is to equip the student for examination and it is not understood what purpose is served by

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5. Ashok Kumar v. H.P. University, 1973 S.C.223; A. Mishra v. B.S.E.Board, A.I.R. 1972 Pat.239.

6. A.I.R. 1977 Kant.80.

arranging special classes after the examination was over. The whole thing is to be farcical.

In another case, the principal of a college had given provisional admission card to a student, subject to his completing his attendance. The student took the examination, but the university withheld the result on account of shortage of attendance. Taking a narrow and extremely technical view of the university ordinances on the subject, it was held that the principal had no power to make the admission ticket, issued by the university, provisional, and the Vice-Chancellor also had no authority to withdraw the permission once given to the candidate to sit in the examination.[7] The ruling is not happy and is to be confined to the facts of the case.

When the student has been issued the admission card unconditionally and he took the examination, but later on it was discovered that he was not qualified to be sent for examination, it has been held that his result cannot be withheld as the university was prevented from doing so on the ground of estoppel.[8]

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7. Premji Bhai v. Ravishankar University, A.I.R. 1967 M.P. 194. Also Bireswar Mohpatra v. Principal, R.T. College, A.I.R. 1977 NOC 62 (Ori.).

8. Palkrishna v. Rewa University, A.I.R. 1973 M.P. 86. Also Vijai Mohan Srivastava v. State of U.P., A.I.R. 1978 NOC 64 (All.).

It has been held by the Supreme Court that when a student has taken the examination and the university wants to withhold his result on account of the shortage of attendance, the authorities should observe the principles of natural justice. It will be wrong to withhold the result without giving a hearing to the student concerned.[9]

(ii) Conduct of Examination

In the examination students are required to answer questions given in the question paper within the prescribed time limit. The Indian examination system is more or less based on the memory test. This has resulted in the adoption of unfairmeans in the examination. In such cases the universities either cancel the result of the examination or suspend or rusticate the student involved in the use of unfairmeans. This has resulted in litigation between the students and educational authorities. In this area the largest cases were decided by the High Court of Punjab and Haryana, followed by the Allahabad, Calcutta and Orissa High Courts respectively. The other High Courts had a few cases only.

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9. Board of H.S. & I.E. U.P. v. Chittra, A.I.R. 1970 S.C.1039.

Using of Unfairmeans in the Examination Hall

Unfairmeans used in the examination hall may include copying from a chit or notes,[10] resulting in cancellation of the examination. When the court is satisfied that the unfairmeans was adopted and principles of natural justice were followed it does not upset the order of the educational authorities in that regard, but when it is not so satisfied, it would strike down the order of the educational authorities.[11]

In this area the courts have frequently invoked the principles of natural justice to invalidate the actions of the authorities. When show cause notice was given to a student for his being allegedly involved in using unfairmeans, he denied the allegation, but from the record it appeared that the authority had not applied its mind, it was held that the requirements

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10. T.C. Peter v. Union Pub.Serv. Comm., A.I.R. 1978 Mad. 87; Ashok Kumar v. Lucknow Uni., A.I.R. 1977 All.132; Rameshwar Prasad v. V.C.R.A.Univ., A.I.R. 1975 Pat. 146; R.K. Sahu v. Utkal Univ., A.I.R. 1969 Ori.206; Anand Kumar v. Punjab Univ., A.I.R. 1969 Punj.144.

11. Ashok Kumar v. Lucknow Univ., supra note 10; Rameshwar Prasad v. V.C.R.A. Univ., supra note 10; S.K.Jain v. Board H.S. & I., U.P., A.I.R. 1973 All. 27.

of natural justice were not fulfilled.[12] If the authority had duly considered the matter, perhaps a further probe (enquiry) might have been necessary than the evidence of mere assertion of the invigilator and the denial by the student. "Judicial process continues till the end and judicial mind must be applied to the relevant facts in a judicial manner".[13] Again it is a violation of natural justice if the educational authority based its decision on some of the materials collected behind the back of the candidate and did not give an opportunity to him to rebut the same.[14] If the student demanded certain materials so as to make effective representation but the concerned authority did not give such materials, it is a case of breach of principle of natural justice.[15] If the tribunal dealing with

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12. T.C. Peter v. Union Pub. Serv. Comm., supra note 10.

13. Ibid. A somewhat contrary approach is depicted by the decision of the Supreme Court in H.S. & I.E. Board v. Bagleshwar, A.I.R. 1966 S.C. 875, 878. Also Kurukshetra University v. Vinod Kumar A.I.R. 1977 P. & H. 21; G.B.S. Omkar v. Shri Venkataswara Univ., A.I.R. 1981 A.P. 163.

14. Ramesh Kapur v. Punjab University, A.I.R. 1965 Punj. 120.

15. Sunil Kant v. Kurukshetra Univ., A.I.R. 1977 P. & H. 373; Ramballav v. Utkal Univ., A.I.R. 1969 Ori. 89.

unfairmeans is of the opinion that the case against the student is clear and giving him an opportunity of hearing would not serve any purpose and as such in a case no opportunity was given to the concerned student, the court held that it was no justification for non-observance of the said principles.[16] However, the courts have not conceded to the student the right of cross-examination[17] or representation through an advocate in such proceedings.

Detecting unfairmeans after the examination

Sometimes a student may use unfairmeans in examination in such a way that the invigilator on duty may not be able to catch him red-handed. But later on the examiner while examining the answer book may find from the same that unfairmeans were adopted. In such cases the educational authorities have taken action against such students. These unfairmeans included : answering a mathematical question

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16. Vinod Kumar v. State of Punj., A.I.R. 1966 Punj. 155.

17. Anand Kumar v. Punjab Univ., supra note 10. R.K. Sahu v. Utkal Univ., supra note 10.

without going through the requisite working either[18] in rough or in the answer itself, inserting papers or supplementary answer book written outside the examination hall,[19] copied answers from other candidates,[20] etc. Educational authorities have to follow natural justice in determining whether the student was guilty of using unfair means in the examination or not. The tendency on the part of the courts is that of non-intervention in the decisions arrived by the educational bodies.[21] The court will only quash a decision when there is absolutely no evidence in support of the decision.[22] The approach to be adopted by the courts in such matters is indicated by the following observations of the Supreme Court in Bagleshwar;[23]

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18. Ghazanfar Rashid v. Board, H.S. & I. Edu., A.I.R. 1979 All. 209; Ajai Kumar v. Madhyamik Shiksha Parishad, A.I.R. 1979 All.13.

19. Univ. of Mad. v. Nagalingam, A.I.R. 1965 Mad.107; Kurukshetra Univ. v. Vinod Kumar, supra note 13. G.B.S. Onkar v. Sri Venkat. Univ., supra note 13.

20. H.S. & I.E.Board, U.P. v. Bagleshwar, supra note 13; Prem Prakash v. Punjab Univ., A.I.R. 1972 S.C. 1408.

21. See supra notes 18-20.

22. Ajai Kumar v. M.S. Parishad, supra note 18.

23. Supra note 13.

> In the matter of the adoption of unfair means, direct evidence may sometimes be available, but cases may arise where direct evidence is not available and the question will have to be considered in the light of probabilities and circumstantial evidence. This problem which educational institutions have to face from time to time is a serious problem and unless there is justification to do so, Courts should be slow to interfere with the decisions of domestic Tribunals appointed by educational bodies like the Universities. In dealing with the validity of the impugned orders passed by Universities under Art.226, the High Court is not sitting in appeal over the decision in question; its jurisdiction is limited and though it is true that if the impugned order is not supported by any evidence at all, the High Court would be / conclusion that the impugned order is not supported by any evidence must be reached after considering the question as to whether probabilities and circumstantial evidence do not justify the said conclusion. Enquiries held by domestic Tribunals in such cases must, no doubt, be fair and students against whom charges are framed must be given adequate opportunities to defend themselves, and in holding such enquiries, the Tribunals must scrupulously follow rules of natural justice; but it would, we think, not be reasonable to import into these enquiries all considerations which govern criminal trials in ordinary Courts of law. [24]

In Ajai Kumar v. M.S. Parishad,[25] the Allahabad High Court made a distinction between a situation where the result of the candidate has not been / declared and a situation where it has been declared. In the latter

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24. Id. at 875.

25. Supra note 18.

/justified to quash that order. But the

case the court said that "convincing evidence of the alleged use of unfairmeans by the petitioner was required before the opposite party took the drastic decision of cancelling petitioner's declared result". However, the Supreme Court's opinion in Bachchan does not depict this approach.

The authorities have to observe principles of natural justice even if the university statutes are silent for giving an opportunity of hearing or not.[26] As stated earlier, principles of natural justice are flexible and the extent of their applicability would depend upon the circumstances of each case. The court may not be strict in their applicability where the student is caught red-handed by an invigilator in the examination hall, but strict in others cases.[27] It has been held that natural justice was violated when the student was not given the opportunity of cross-examination,[28] or when the notice of the charges was

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26. Rajendra Kumar v. Vikram University, A.I.R. 1966 M.P. 136; Madras University v. Nagalingam, supra note 19.

27. See Surendra Kumar v. Jabalpur University, A.I.R. 1969 M.P. 234; Ghazanfar Rashid v. Bd. of H.S. & Int.Ed., supra note 18.

28. S.C. Paul v. Calcutta University, A.I.R. 1970 Cal. 282.

received by the students' father who appeared before the enquiry committee but stated that the student could not appear as he was out of town (here the committee should have given another date for the student to appear before it).[29] However, there was no violation of natural justice when the report of the enquiry committee, on whose report the disciplinary authority acted, was not given to the student,[30] or when the university asked the student whether he wanted personal hearing but did not avail of the opportunity.[31]

It has been held that it is not necessary for the disciplinary committee to write an elaborate report.[32]

Mass Copying

There may be cases where there is en masse copying in the examination and in such cases it is not just one student but many are involved in adopting unfairmeans. These cases require a special approach as compared to the cases of unfairmeans involving particular individuals.

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29. Madhukumar v. ...P. University, A.I.R. 1973 H.P. 94.

30. Suresh Koshy v. Kerala Univ.,A.I.R. 1969 S.C.198.

31. Pramila v. Secy.,Bd. of Sec.Ed., A.I.R. 1972 Ori. 221.

32. H.S. & I.E.Bd. v. Baleshwar, A.I.R. 1966 S.C. 875, 878; Kurukshetra Univ. v. Vinod Kumar, supra note 13; G.B.S.Omkar v. Shri Venkataswara Univ., supra note 13. But see T.C.Peter v. U.P.S.C., supra note 10.

In S.E. Board v. Subash Chandra,[33] the Board of Examination cancelled the result of examination of a particular centre because of mass copying by the candidates of that centre. When the matter came up before the Patna High Court, relying upon Ghanshyam's[34] decision, it was held that as the board did not give a hearing to the candidates, therefore there was violation of natural justice. But the Supreme Court in appeal set aside the High Court's decision. Hidayatullah, C.J., who delivered the opinion of the court, limited the scope of right of hearing when he said:

> The examination was vitiated by adoption of unfairmeans on a mass scale. In these circumstances it would be wrong to insist that the Board must hold a detailed inquiry into the matter and examine each individual case to satisfy itself which of the candidates had not adopted unfairmeans. 35

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33. A.I.R. 1970 S.C. 1269.

34. Board of High School v. Ghanshyam, A.I.R. 1962 S.C. 1110, where the Supreme Court insisted that when the Board was performing quasi-judicial function it should observe principlesof natural justice.

35. Id. at 1272, Madan Mohan v. Cal. Univ., A.I.R. 1979 Cal. 67. Ramesh Kumar v. Punjabi Univ. A.I.R. 1973 P. & H. 157. Triambak Pati v. B.H.S. & J. Edu., A.I.R. 1973 All. 1 (F.B.)

Thus if the court was satisfied that there were sufficient materials to show that the university was right in cancelling examination of a particular centre due to large scale copying in the examination, the court would not adopt a rigid attitude with respect to the application of natural justice. In the B. Louis case,[36] the petitioner argued that she was not at all involved in the mass copying in the examination hall nor the university was able to prove otherwise in her case and, therefore, her case should not be tagged with those students who had actually indulged in mass copying. But the Bombay High Court conceded that though the action of the authority was likely to inflict undue hardship on some honest students who might not have indulged in the use of unfairmeans yet, held that, cancellation of examination was the only course which was open to the university.

In this regard the Calcutta High Court[37] stated that large scale copying did not necessarily include copying by all or by any individual candidate, but from the use of unfairmeans by such a large number of examinees it was impossible to differentiate who had or had not actually taken part in mass copying. The court showed great concern over the increasing

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36. A.I.R. 1973 Bom. 5.

37. Raj Kumar Agarwalla v. Cal. Univ., A.I.R. 1979 Cal. 393.

practice of mass copying and opined that it "is unfortunately becoming an unseemingly feature of our educational institutions which is a reflection of the alarming decaying moral standard in all spheres in our country".[38]

In order to guard against such a situation Mukherji, J., issued five directions: Firstly, the invigilator should be present in the examination hall throughout the time the examination continues. Secondly, the examination authority must ensure proper enterance of the students. Thirdly, students should be allowed in the examination hall after proper verification and search at the entrance and wherever necessary adequate police force should be provided for. Fourthly, the university should depute an observer who must be an outsider to report all the incidents in the examination hall. And lastly, honest and bona fide examinees should not be allowed to be held in ransom.[39]

(iii) Minimum marks

Regulations of the universities generally require minimum marks in each paper or subject and a higher minimum in the aggregate for passing the examination. It is obvious that the two minimum must

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38. Id. at 395.

39. Ibid.

be satisfied by a student. It is not enough that the student has secured, the minimum marks in each paper.[40] In a few cases the question has arisen, Minimum of what? A few varied situations which have occurred in this regard are examined here.

In a case before the Assam and Nagaland High Court,[41] the law course consisted of two years and examination was held at the end of each year. It was contended by the candidate that in counting the aggregate for the second year the marks of the first year should also be considered. In other words, it was contended that there should be combined assessment for the two years. The plea was not accepted.

In Bakshish Singh v. Guru Nanak University,[42] it was held that on a proper interpretation of the regulations it was not necessary for passing of a candidate to obtain minimum pass marks separately in the internal assessment, if he obtained the

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40. Univ. of Raj. v. Roshanlal, A.I.R. 1974 S.C. 539; Asim Prumanik v. V.C., Burdwan Univ., A.I.R. 1972 Cal. 482.

41. Siba Prasad v. Dibrugarh Univ., A.I.R. 1971 A. & N. 151.

42. Bakshish, A.I.R. 1973 P. & H. 121.

minimum marks after combining the marks obtained in the written paper and marks obtained in the internal assessment pertaining to that paper. In another Rajasthan case.[43] the university regulations provided that a candidate in order to pass had to secure minimum marks in each "subject" and in the particular case the subject of "Philosophical and Sociological Foundation of Education" consisted of two papers. The court did not accept the contention of the university that the word "subject" was loosely used in the regulation and it referred to papers so that the candidate should secure minimum marks in each paper and not in the two papers combined.

(iv) Limitation on number of years for sitting in examination

In certain cases the education authorities provide for supplementary or examination for back-loggers. The educational institution cannot open its doors for unsuccessful students for indefinite number of years. It may prescribe that the unsuccessful student might get three or four successive chances to clear the examination.[44] In a case the petitioner who failed three times by mistake got the admit

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43. Ram Kumar Sharma v. Univ. of Raj., A.I.R.1975 Raj. 85.

44. Haripada Das v. Utkal Univ., A.I.R. 1978 Ori. 68.

card but later on after discovery of the fact that he had already appeared three times his admit card was cancelled. Thereupon he moved the court to grant relief but as the regulation permitted only three chances, the court did not accept the doctrine of estoppel and the petition was dismissed. In such a situation the Supreme Court has opined that if a student is allowed "to continue indefinitely to attend the institution indefinitely without adequate application and to continue to offer himself for successive examinations, a lowering of academic standards would inevitably result".[45] In this case it was held that the rule of the university prohibiting a student who has failed in the examination for a certain number of years was not ultra vires, the University Act, as such a rule came within the power of the university to maintain standards.

In Kirti v. Gujarat University,[46] the ordinance framed by the Gujarat University for its Faculty of Medicine provided that a candidate who failed to pass his examination on five occasions would not be eligible to reappear thereat. A candidate,

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45. Mys. Univ. v. Gopala Gowda, A.I.R. 1965 S.C. 1932, 1935.

46. A.I.R. 1977 Guj. 154.

who had failed to pass in four attempts, filed a form for appearing in examination the fifth time but later on withdrew his form before the date of examination on account of unavoidable circumstances. The question was : Would it be presumed that in this attempt also he failed to pass the examination. The Gujarat High Court interpreted the words "failed to pass the examination" to mean "five actual trials" or meaning thereby "five occasions on which the student really sit at the examination". And according to the court this was wanting in the present case.

(v) Grace Marks

Educational authorities have power to give grace or moderation marks to candidates while scrutinising the marks obtained by them in different papers before declaring the results. There is a distinction between grace marks and moderation marks. The former are given to pull up a candidate to pass the examination and the latter are additional marks given to the candidates for some good and sufficient reason. It is open to the university to adopt one system in one year and the other in the next year. The court would not question the decisions of the academic body in this regard. There is also no discrimination involved for adopting different

criteria for different years. This is the holding of the Karnataka High Court in G.S. Radhika v. Government of Karnataka.[47] In this case, the court also held that, in judging the merits of candidates for admission to a higher course, a particular candidate was given grace or moderation marks by the university in his previous examination is not material. Merit is to be judged in accordance with the results finally declared by the university.

Though the university may change the rules relating to grace marks for a subsequent year, yet it cannot change them to the detriment of the students immediately after the examination was over so as to be inapplicable for that particular examination.[48]

In Nirupama v. State, an interesting fact situation arose. The educational authority in question declared a few students as unsuccessful in the examinations conducted by it. On a representation by those students, the authority reviewed the results and declared them to have passed the examination after giving them grace marks. Subsequently again, the

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47. A.I.R. 1981 Kant. 53. Also Mukhtiar Singh v. State, A.I.R. 1980 P. & H. 346.

48. Gurvinder v. Punjab University, A.I.R. 1971 P. & H. 384.

authority on taking the view that the regulations did not confer power on it to review the results declaringthem as having failed in the examination. In the meanwhile, those candidates had pursued further studies. It was held that in the absence of regulations prohibiting the authority to review the results already declared it had the power to do so. The court, of course, cautioned that "the results of an examination are not to be interfered with lightly, but a situation may arise where exceptional circumstances may warrant a reconsideration". The court also invoked the doctrine of equitable estoppel in prohibiting the authority from subsequently declaring the candidates as failed.

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49. A.I.R. 1977 Ori. 123.