

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 20th October, 2010.

+ **W.P.(C) 2790/2010 & CM No.5589/2010 (u/S 151 CPC for interim order)**

GAGANDEEP KAUR Petitioner
Through: Ms. Meenu Mainee, Adocate.

Versus

GOVT.OF NCT OF DELHI & ORS Respondents
Through: Ms. Latika Chaudhary & Ms. Simran
for Ms. Avnish Ahlawat, Advocate.

AND

+ **W.P.(C) 2829/2010**

POOJA GOEL Petitioner
Through: Mr. Maninder Singh, Mr. Ajay
Kumar Pupaniya & Mr. A.K.S.
Mishra, Advocates.

Versus

STATE (GNCT OF DELHI) & ORS. Respondents
Through: Ms. Bandana Shukla for Ms. Ruchi
Sindhwani, Adv. for R-1.
Ms. Latika Chaudhary & Ms. Simran
for Ms. Avnish Ahlawat, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. The petitioner in both the petitions are the students of the second year of the two year Diploma Course in Elementary Teacher Education (ETE) of the respondent no.3 District Institute of Education & Training (DIET) established by the respondent no.2 State Council of Educational Research & Training (SCERT), an autonomous body of the respondent no.1 Government of NCT of Delhi. The respondent no.3 DIET having refused to give admit cards to the petitioners to appear in the examination commencing in April, 2010, for the reason of the petitioners not meeting the attendance criteria, the present petitions were filed for permitting the petitioners to appear in the examinations. This Court vide order dated 27th April, 2010 while issuing notice of the petitions, as an interim measure directed the respondents to allow the petitioners to appear in the examination and to issue the necessary admit card to the petitioners. It was made clear that no special equities will flow in favour of the petitioners for the reason of the said interim order and the result of the petitioners shall be kept in a sealed cover. The petitioners thereafter applied to this Court contending that examination of certain papers/subjects had already been held before the interim order could be implemented; that supplementary examinations of those papers were to be held w.e.f. 23rd July, 2010 and seeking directions to the respondents to allow the petitioners to appear in the supplementary examinations for the papers/subjects held before the implementation of the interim order in the

petitions. Since the petitioners had earlier been permitted to appear in the examinations, the petitioners were vide order dated 16th July, 2010 permitted to appear in the supplementary examinations of the papers, examinations of which they had missed, again on the same terms as aforesaid.

2. The counsel for the respondent no.2 SCERT has filed counter affidavit and to which rejoinder has been filed. The counsels have been heard.

3. The Rules with respect to the attendance of the ETE course undertaken by the petitioners are as under:-

**“III. THE RULES APPLICABLE FOR TEACHER
TRAINEES STUDYING IN ETE/ECCE
DIPLOMA COURSE:**

1. Students while pursuing ETE/ECCE Diploma cannot pursue any other course, be it Regular full time/ Regular part time/ Correspondence / any other. If at any stage, it is found that any student is pursuing/ has pursued other course while undergoing ETE/ECCE course, his/her ETE/ECCE Diploma shall stand cancelled.
2. Every student is required to secure a minimum of 85% attendance of the session in theory papers and 100% in SEP separately. Those students who do not meet the attendance criteria will not be allowed to appear in annual examination. (Applicable to each year of the programme)
3. The requisite attendance criteria is to be met out separately in 1st year as well as in 2nd year.

4. The requirement of percentage of attendance is also to be met out afresh in case the student is retained in 1st year or in 2nd year on account of any ground.
5. Every student who is not allowed to take annual examination due to shortage of attendance shall have to seek readmission and repeat the entire course of 1st year or 2nd year, as the case may be.
6. **Relaxation** upto five(5 %) in attendance can be granted by the Principal of the respective institute on reasonable ground and further upto 10% attendance, on the recommendation of Principal of respective institute/ DIET can be relaxed by the Director SCERT on medical ground or on any other extraordinary ground, in theory papers and in SEP separately.
7. Attendance required in School Experience Programme is 100%. No students shall be promoted from 1st year to 2nd year course if they have missed their SEP (School Experience Programme) or have less than 85% attendance in SEP after relaxation or have secured less than 50% marks in SEP. Such candidates will have to take readmission in 1st year and will be required to complete and qualify the school experience programme and all theory papers. Similarly students of 2nd year will have to take readmission in 2nd year if they have less than 85% attendance in SEP after relaxation or have secured less than 50% marks in SEP.
8. Any candidate who has got admission at later stage after closure of admission, in compliance to direction of authorities/judiciary, will be required to complete the minimum required attendance of the full session as indicated in aforesaid Rules in theory and SEP failing which he/she will take readmission and repeat the course as stipulated in para 4 and 5 given above. It being a professional course for teacher preparation, no relaxation in attendance, because of late admission, shall be allowed.

9. Students shall not be promoted to 2nd year course if they have got reappear in more than 4 papers of 1st year course. They will have to take readmission in 1st year. Similarly in 2nd year, if students get reappear in more than 4 papers, they will have to take readmission in 2nd year and complete all the courses and SEP with prescribed attendance.
10. No student shall remain absent from the institute for more than 6 working days continuously without intimation to concerned Principal, failing which the student's name can be struck off from the institute's rolls, by the Principal under intimation to the Exam Cell SCERT.

IV ADMISSION PROCEDURE

2. Age Limit

SCERT does not take any responsibility for any person who completes the said course late, and therefore becomes ineligible for appointment as a teacher as per Recruitment Rules of GNCT of Delhi or any other recruitment organization/agencies.”

4. The petitioner in W.P.(C) No.2790/2010 in the second year had only 60% attendance in Theory classes and 90.2% in School Experience Programme (SEP). The petitioner in W.P.(C) No.2829/2010 also, in second year had only 60% attendance in Theory classes and 97% in SEP. The stand of the respondents is that the prescribed attendance being 85% in Theory, even if the relaxation of 15% permissible under the Rules aforesaid is to be given to each of the petitioners, that would still take the attendance of each of the petitioners in Theory classes to only 75% and which would still be short of the required 85%.

5. The petitioner in W.P.(C) No.2790/2010 explains that she was prevented from attending the classes for the reason of being required to undergo eye surgery necessitating leave from 26th July, 2009 to 7th August, 2009 and for the reason of having got married in the month of February, 2010 and lastly for the reason of again suffering eye infection from 15th March, 2010 to 23rd March, 2010.

6. The petitioner in W.P.(C) No.2829/2010 pleads that she was prevented from attending classes in the months of July & August, 2009 for the reason of having had a prolonged serious ailment.

7. Both the petitioners have filed medical certificates, proof of marriage etc.

8. The counsel for the respondents has also not disputed the illness or the marriage. The counsel has argued that even if a student on the ground of illness is prevented from attending classes, the Rule of attendance cannot be waived.

9. As far as the plea of marriage is concerned, without meaning to undermine the importance thereof in life and the anxiety of the parents to marry off particularly a daughter, it remains an optional matter. Marriage cannot be equated with illness which perforce prevents a person from attending to the required chores.

10. I had in the order dated 16th July, 2010 itself, on a perusal of the Rules aforesaid qua attendance expressed a *prima facie* view that they do not permit condonation of shortage in attendance beyond 15% and had called upon the counsels for the petitioners to address on, whether mandamus directing something to be done contrary to the Rules can be issued.

11. The counsels for the petitioners though not citing any judgments on the said aspect have referred to ***Shri Krishan Vs. The Kurukshetra University, Kurukshetra*** AIR 1976 SC 376 and to the judgment of a Single Judge of the Karnataka High Court in ***Archana Vs. University of Mysore*** ILR 1990 Karnataka 522. The counsels have argued that the respondent no.3 DIET, notwithstanding the shortage in attendance of the petitioners, having allowed the petitioners to appear in the internal examinations and having accepted the fees from the petitioners of the second year of the course from time to time, were prohibited from at the last moment before the examination preventing the petitioners from appearing. The respondent no.3 DIET in the counter affidavit has stated that the notice of shortage of attendance is duly put up on the notice board every month and the petitioners themselves went and deposited the fee and payment of the fee cannot entitle the petitioners to claim that shortage in their attendance has been condoned/waived. The counsels for the petitioners have rejoined by controverting that any such notice was put up; that the accountant accepting

the fee ought to check on the computer whether the student has fulfilled the requisite attendance criteria or not and if has not, ought not to accept the fee.

12. The Supreme Court in *Shri Krishan* (supra), on the basis of the provision of the statute of the University in that case held that though the University was empowered to withdraw the certificate required to be issued in that case of having the requisite attendance but the same could be withdrawn only before the examination and once the appellant in that case was allowed to take the examination rightly or wrongly, then the power in the statute to withdraw the certificate of attendance stood exhausted. The said judgment was on its own peculiar facts not present in the instant case and thus has no application.

13. The High Court of Karnataka in *Archana* (supra) held that taking into consideration the hardship that would be caused to a student, the Court may in exercise of its equity jurisdiction direct the authorities to continue the student on the rolls and not to cancel the admission. On the basis of the same it was argued that the petitioner in W.P.(C) No.2829/2010 is already 26 ½ years of age and if made to repeat the second year of the course, would be ineligible for employment in the schools of the Municipal Corporation of Delhi, the maximum age for seeking employment wherein is of 27 years. After the counsel for the petitioner in W.P.(C) No.2829/2010 made the said argument, the counsel for the petitioner in W.P.(C) No.2790/2010 stated that

the petitioner in that case also is in the same position. I may however hasten to add that there is no basis in the pleadings for the said argument. The petitioner in W.P.(C) No.2829/2010 has in the affidavit sworn on 26th April, 2010 given her age as about 25 years and in her medical certificate dated 20th May, 2009 her age is given as 23 years. Similarly the petitioner in W.P.(C) No.2790/2010 has disclosed her age as 24 years in the affidavit dated 24th April, 2010. Thus the argument of their age being 26 ½ years does not appear to be correct.

14. I do not find any merit in the contention that the Rules regarding attendance could be or stood waived as claimed by the petitioners. I also do not find any merit in the contention that the petitioners were required to be given any notice of their not meeting the attendance criteria. The petitioners were/ are deemed to be aware of the Rules of attendance and of the classes missed by them. The Colleges/Institutes cannot be expected to eliminate students month by month for the reason of attendance. The established practice is of the issue of attendance becoming relevant only at the time of appearance in the examination for which admit card is required to be issued. The Accounts Department of Colleges/Institutes accepts fee tendered to them and is not expected to refuse fee from students not meeting the attendance criteria. Moreover it is possible that a student who may not be meeting the attendance criteria for some months may by attending all the classes in subsequent months complete the requirement as to attendance. I

have in W.P.(C) No.3419/2010 titled *Syed Shabeeb Raza Bilgrami Vs. The School of Planning & Architecture* pronounced on 8th September, 2010 also dealt with the said aspect and held that the records of attendance are generally computed only at the time of issuing admit cards to the examination hall and it is not as if students are prevented from attending the Institute/College upon failing to meet the attendance criteria. It was held that acceptance of projects submitted by the students or internal evaluation of their performance and for all of which admit cards are not required to be issued, does not tantamount to waiver of Rules of attendance.

15. The respondent no.3 DIET in its counter affidavits has set-out the month-wise detail of the classes attended by the petitioners. A perusal thereof shows that each of the petitioners missed/skipped classes even during the months of which there is no explanation. During the hearing I enquired from the counsels whether the petitioners would have met the eligibility for attendance if had attended all the classes save for the duration for which explanation aforesaid has been given in the petitions. The answer is in positive. On enquiry as to why the other classes were missed, while counsel for the petitioner in W.P.(C) No.2829/2010 stated, for the purposes of preparation of the exam and other miscellaneous reasons, the counsel for the petitioner in W.P.(C) No.2790/2010 could not give any answer. I find the said conduct of the petitioners to be also disentitling them from any relief in the present petitions. Even if it were to be held that the petitioners were

prevented for *bona fide* reasons beyond their control from attending some of the classes, there is no explanation as to why the petitioners could not have attended all the other classes during the remaining duration so as to fulfill/secure their eligibility for attendance.

16. Coming back to the query aforesaid raised on 16th July, 2010 and which as aforesaid remained unanswered, I find that the Supreme Court recently in ***Maharshi Dayanand University Vs. Surjeet Kaur*** JT 2010 (7) SC 179 has reiterated that the Court has no competence to issue a direction contrary to law, nor the Court can direct an authority to act in contravention of statutory provisions. It was further held that the Courts cannot be generous or liberal in issuing directions which in substance amount to directing the authorities concerned to violate their own statutory Rules and Regulations. It was further reiterated that the High Court under Article 226 of the Constitution of India is required to enforce rule of law and not pass order or direction which is contrary to what has been enjoined by law. The Supreme Court held that a public authority cannot be debarred from enforcing a statutory provision. To the same effect are the judgments in (i) ***Hope Textiles Ltd. Vs. UOI*** 1995 Supp. (3) SCC 199; (ii) ***State of UP Vs. Nidhi Khanna*** (2007) 5 SCC 572 and; (iii) ***Vice-Chancellor, University of Allahabad Vs. Anand Prakash Mishra (Dr.)*** (1997) 10 SCC 264.

17. A Division Bench of this Court in *Ashutosh Bharti Vs. The Ritnand Balved Education Foundation* MANU/DE/0024/2005 held that grooming up and progressing of the students at the College is an important aspect for assessing the students; their presence is a must - that system has been recognized all over the world; academic authorities are best judges in the field of education to make suitable rules, regulations or ordinances. It was further held that attendance is a must and curriculum does not mean only examination but it includes various other aspects such as discipline, behaviour in the classroom with the teachers and other co-students, answering the questions etc. It was further held that merely because the conditions which are imposed may be found inconvenient to some students, it cannot be challenged as being arbitrary.

18. Another Division Bench of this Court in *Arvind Gupta Vs. University of Delhi* MANU/DE/0238/1980 agreed with the view of the University that the requirement to attend a certain percentage of lectures delivered is not only to enable a student to acquire requisite proficiency in the subject for the examination but also to ensure that a student who is pursuing a regular course of study acquires a discipline of education and a disciplined outlook towards his classes, courses and academic life. It also held that academic discipline will be best preserved by all concerned including the executive and even the Courts abstaining from encroaching upon the autonomy and internal discipline within the portals of University and academic institutions.

The Division Bench also observed that its order would serve as a warning to the students that the regulation of the requirement of attendance of lectures cannot be ignored with impunity.

19. The subject of attendance in Law Colleges has been a subject matter of a recent detailed judgment dated 12th July, 2010 of another Single Judge of this Court in ***Vandana Kandari Vs. University of Delhi*** and several other petitions. This Court, for a plethora of reasons given therein has held that minimum percentage of lectures having been fixed at 66% (in that case), still gives the students freedom to miss or abstain from 34% of such lectures and which was considered a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. Reliance in this regard was placed on the judgment dated 16th May, 2008 of a Division Bench of this Court in W.P. (C) No. 9143/2007 titled ***Kiran Kumari Vs. Delhi University***, order dated 1st December, 2008 of another Division Bench of this Court in W.P. (C) No. 8534/2008 titled ***Komal Jain Vs. University of Delhi*** and on judgment dated 20th April, 2007 of another Single Judge in W.P. (C) 18051/2006 titled ***Smt. Deepti Vs. Vice Chancellor, University of Delhi***.

20. Mention may also be made of ***Preeti Srivastava Vs. CBSE*** MANU/DE/0484/1994, ***Yogesh Bhatia Vs. University of Delhi*** MANU/DE/0784/2003 and ***Neera Dadhwal Vs. Deepak Paintal***

MANU/DE/8392/2007 and ***Kangana Modi Vs. NIFT***

MANU/DE/1197/2010 all of which have also emphasized the importance of attendance and that Rules with regard thereto cannot be given a go by on sympathetic grounds.

21. I have in judgment dated 18th August, 2010 in W.P.(C) No.3129/2010 titled ***Choudhary Ali Zia Kabir Vs. Guru Gobind Singh Indraprastha University*** also held that the rules of natural justice or *audi alteram partem* cannot be extended to such matters.

22. The last question which arises is whether serious medical ailments should be given a special status. I have given my serious thought to the matter. However the Courts having held attendance to be compulsory and necessary to complete the process of education, I fail to see the difference between voluntary and involuntary absence. If a student has not completed the education for which he/she has joined the course, then he/she cannot be given the certificate of completion of the said education even if prevented by reasons beyond control from completing the education. A Division Bench of this Court in ***S.N. Singh Vs. UOI*** 106 (2003) DLT 329 deprecated the University for granting relaxation on medical grounds and directed that no relaxation beyond that permitted can be given.

23. I have also considered whether any relief should be granted to the petitioners for the reason of both the petitioners having completed the SEP in which more attendance than in Theory classes is required. I must admit that the thought did cross my mind that considering the nature of the course, and the petitioners having fulfilled the eligibility for SEP, the condition of eligibility qua Theory papers should be relaxed. However the experts in the field of education having provided compulsory attendance for Theory papers also though less rigorous than SEP, I feel myself incompetent to rule over the said decision of the experts to hold that the fulfilling the eligibility qua SEP alone is sufficient. The respondent no.3 DIET has in its Rules given sufficient weightage to attendance and to completing the course by also warning the students as aforesaid that they would be not entitled to any exemption merely for the reason of becoming ineligible for appointment as a teacher as per Rules of GNCTD of Delhi or any other recruitment organization.

24. There is no merit in the petitions, the same are dismissed. The result of the examinations which the petitioners were permitted to take under interim orders of this Court are axiomatically cancelled. The petitioners will however be eligible to rejoin the second year of the course. Considering that the petitions are being disposed of now only and the petitioners have attended some classes in the previous year, it is directed that the petitioners would upon so rejoining the respondent no.3 DIET be required to fulfill the

attendance requirements w.e.f. 1st November, 2010 only. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

20th October, 2010
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