

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

+ **W.P.(C) 3243/2010 & CM No.6473/2010 (for interim relief)**

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Date of decision : 18th August, 2010.

HARSH SETHI

..... Petitioner

Through: Mr. Arun Bhardwaj & Mr. Rakesh K. Khanna, Sr. Advocates with Mr. Vinod Kumar & Ms. Neha Garg, Advocates.

Versus

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
& ORS.**

..... Respondents

Through: Mr. O.P. Saxena, Advocate.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 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, a student of five year Bachelor of Law (L.L.B.) (Hons.) Degree Course of University School of Law & Legal Studies of the respondent no.1 University, has filed this writ petition seeking relief of directing the respondent no.1 University to conduct the 5th term examination of the petitioner along with the exams of the University being conducted in May/June 2010 and in the alternative for a direction to the respondent no.1 University to hold Special Examination for the petitioner for the 5th term so that his final results could be declared along with the other students of his batch.

2. The petitioner joined the said course comprising of 10 Semesters in the year 2005. The petitioner was promoted to the 5th Semester in July 2007 and the 5th Semester examination were to be held in December, 2007. The petitioner was however not permitted to take his 5th Semester examination for the reason of failing to meet the criteria of attendance of 75% or more in the aggregate of all the courses taken together in a Semester. The petitioner had only 63% attendance. Though the petitioner did not take the 5th Semester examination but on his representations, was promoted to the 6th Semester along with his batchmates. The Rules of the respondent no.1 University though prevent such promotion but empower the Dean of the concerned School to promote a student detained on account of attendance, to the next Semester on the condition that the student complies with all the requirements of attendance for the said Semester and at the close of the last Semester of the academic programme completes the Semester in which he has been detained. The petitioner was thereafter promoted from time to time, finally to the 10th Semester in January, 2010 and due in May/June, 2010 to take his 10th Semester examination. However, the petitioner till now had not cleared the 5th Semester examination. Faced with the prospect of being required to repeat the 5th Semester even after taking examination of 10th Semester, the present writ petition was filed. The same was accompanied with an application for interim relief to permit the petitioner to take 5th Semester examination along with 10th Semester examination, in the examinations held in May/June, 2010. No interim relief was granted to the petitioner.

3. The respondent no.1 University has filed a counter affidavit contesting the writ petition and to which a rejoinder has been filed.

4. Though, the petitioner has taken numerous grounds in the writ petition but the Senior Counsel for the petitioner has confined the submissions to one particular aspect. It is contended that as per the curriculum of the course, the petitioner even prior to 5th Semester, was undertaking internship with Law Firms/Advocates; that as per the practice then being followed by the University, the time spent in internship etc. was counted in the attendance; that the petitioner in the 5th Semester also, had applied to the respondent no.1 University for internship with a senior advocate of this Court from 1st September to 30th September, 2007 on the prescribed form therefor provided by the University itself. Column 5 of the said form is as under:-

“I will submit the report within the three days after completion of the said internship.”

The printed note at the foot of the said form is as under:-

“The relaxation in attendance will be confirmed after the submission of the report on the related activity.”

5. It is not in dispute that the permission for internship aforesaid was granted by the respondent no.1 University to the petitioner. The Senior Counsel for the petitioner has contended that from the aforesaid form prescribed by the University itself, it is clear that the University was following the Rule/Practice of giving relaxation in attendance for the period of internship. It is urged that the petitioner interned as aforesaid in the

legitimate expectation that he would be given the benefit of the attendance for the full term of internship. The petitioner after completing the internship submitted the certificate of the senior advocate confirming that the petitioner had undertaken the internship from 1st September to 30th September, 2007 and also recommending remission in attendance for the said period.

6. The respondent no.1 University in its counter affidavit has relied on the Minutes of the Meeting of the Committee of the University for reviewing the University Ordinance relating to attendance for L.L.B. (Hons.) students. The Senior Counsel for the petitioner with reference thereto has shown that the said Committee was constituted owing to a sea change in the scenario of legal education. It is contended that because the legal education now, besides attending classes also comprises of Moot Competitions, Internal Moot Courts, Research for Project Work, Internship, Participation in Workshops, Organization of Clinical Legal Programmes etc., provision was made therefor. However, while making the said provision, for internship benefit of actual attendance for 15 days only in a Semester was given. It is contended that the respondent no.1 University applying the said new Rules gave benefit to the petitioner only of 15 days instead of 30 days for which the petitioner had undertaken the internship. It is stated that the Rule for giving benefit of 15 days and not of 30 days for internship as was earlier done, came into force only after 31st August, 2007 while the petitioner had commenced his internship from 1st September, 2007 without knowledge of the same. The argument of the Senior Counsel for the petitioner is that the said Rule ought not to be applied retrospectively and if

benefit of entire 30 days internship is given, the petitioner meets the requisite attendance target.

7. The counsel for the respondents has not controverted the facts aforesaid. He has however drawn attention to the undertaking given by the petitioner to the University on 12th May, 2008 and on the basis whereof he was permitted to take the 6th Semester examination. The petitioner had undertaken to complete the attendance of the 5th Semester at the close of the 10th Semester and had agreed that result of the 10th Semester be declared only after he passes the 5th Semester examination. It is contended that the petitioner cannot be permitted to seek a relief contrary to his undertaking. It is further contended that the petitioner was promoted to the 6th Semester notwithstanding having not cleared the 5th Semester, only because of the undertaking and if now re-siling from the undertaking, is required to repeat from the 6th Semester onwards.

8. The Senior Counsel for the petitioner in rejoinder has contended that asking the petitioner to now attend the classes of the 5th Semester would embarrass the petitioner before his to be peers and would also not serve any useful purpose. Without prejudice to the contentions, it is offered that at the most the balance number of classes can be directed to be attended. It is also urged that the petitioner has in the writ petition itself explained the circumstances in which the undertaking was given; the petitioner a few days before the examination was being prevented from taking the examination for the 6th Semester also and had no option but to give the undertaking on the

dotted line and as per the format prepared by the respondent no.1 University.

It is also pointed out that nowhere in the said document the petitioner has admitted that his attendance was short.

9. The respondent no.1 University has not shown as to what was the Rule prior to 31st August, 2007 with respect to internship; how many days internship in a Semester was permitted and what benefit thereof qua attendance was given. From the printed form of the University in which the petitioner had applied for internship from 1st September to 30th September, 2007, it does appear that then the benefit in attendance of the entire internship period if completed successfully was being given. The petitioner immediately after 31st August, 2007 could not be expected to know of the change position i.e. of the benefit of 15 days internship only being given. The petitioner would be entitled to succeed on the said ground.

10. As far as the defence of the respondent no.1 University of the “undertaking” is concerned, it is not as if the undertaking was taken in January, 2008 while promoting the petitioner to the 6th Semester. The undertaking is of a day around the time of the examination and it is quite believable that the petitioner at that time had no choice. The counsel for the respondents has relied on the judgment dated 14th May, 2010 of this Court in W.P.(C) No.3333/2010 titled ***Gautam Mudgal Vs. Guru Gobind Singh Indraprastha University***. The petitioners in the said case had also given a similar undertaking. This Court dismissed the writ petition. However, in the present case, I have concluded that the petitioner was wrongly held to be

short of attendance in the 5th Semester and therefore wrongly deprived from taking the examination and thus the said judgment would not apply.

11. However the fact remains that even if the petitioner in the circumstances as aforesaid made to give the undertaking, he thereafter also waited for over two years to prefer the present writ petition. The petitioner appears to have been content in the thought of repeating the 5th Semester after completing his 10th Semester. Only now when the thought of attending the classes along with his juniors has come in the mind of the petitioner, the present writ petition has been filed. In my view, though the undertaking aforesaid cannot non-suit the petitioner, but the delay in preferring the petition deprives the petitioner of the relief of directing the respondent no.1 University to hold a Special Examination for 5th Semester for him.

12. The Senior Counsel for the petitioner has relied upon the order dated 8th December, 2009 of this Court in W.P.(C) No.11514/2009 titled ***Apoorve Vashistha Vs. Guru Govind Singh Indraprastha University*** where Special Examination was directed to be held. The counsel for respondent University relies on the judgment of the Division Bench of this Court in . ***Vipin Sharma Vs. Guru Gobind Singh Indraprastha University*** MANU/DE/1863/2009 holding that such a direction for holding Special Examination cannot be given even otherwise as aforesaid, in the facts of this case, no case for directing Special Examination is made out.

13. The petition is therefore allowed to aforesaid extent. It is directed that the petitioner is entitled to relaxation of attendance for the entire period of

internship from 1st September to 30th September, 2007. The petitioner would as such not be required to attend the classes of the 5th Semester again as a pre-condition for taking 5th Semester examination. However, for the reason of the delay in preferring the writ petition, the petitioner is not found entitled to the relief claimed, of direction to the respondent no.1 University to hold a Special Examination for 5th Semester for the petitioner. The petitioner would thus be entitled to take the 5th Semester examination to be held next by the respondent no.1 University in the routine course. Axiomatically, the 10th Semester examination result of the petitioner to be declared subject to the petitioner taking and clearing the 5th Semester examination.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

18th August, 2010
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