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

Date of decision: 7th December, 2010.

\+ **W.P.(C) No.3163/2010**
%

VIBHOR ANAND & ORS. **..... PETITIONERS**
Through: Mr. V.K. Anand & Ms. Kavita, Advocates.

Versus

VICE CHANCELLOR, GGSIP UNIVERSITY & ORS. **…..RESPONDENTS**
Through: Mr. O.P. Saxena & Mr. Mithilesh Kumar, Advocates.

AND

CONT.CAS(C) No.426/2010

VIBHOR ANAND & ORS. **..... PETITIONERS**
Through: Mr. V.K. Anand & Ms. Kavita, Advocates.

Versus

DR. DILIP KUMAR BANYOPADHYAY, VC, GGSIP UNIVERSITY & ORS. **…..RESPONDENTS**
Through: Mr. O.P. Saxena & Mr. Mithilesh Kumar, Advocates.

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, a student of the Sixth semester of the LL.B course of the respondent University, upon being prevented from taking the Sixth Semester End-term Examination for the reason being short of attendance, preferred this petition impugning the order of the respondent University holding him to be short of attendance and seeking direction to the respondent University to allow him to take the examination. The petitioner however while doing so also challenged the appointment of the Dean of the University School of Law and Legal Studies of the respondent University and also sought the relief of striking down the said appointment.

2. This Court while issuing notice of the petition, vide order dated 10th May, 2010 allowed the petitioner to appear in the examination with the rider that the same shall not create any special equities in favour of the petitioner and the result of the said examination shall be kept in a sealed cover. Counter affidavit has been filed by the respondent University. When the matter came up before this Court on 2nd August, 2010, the petitioner instead of arguing on the aspect of attendance wanted to argue on the challenge to the appointment of the Dean of the respondent University. Since the said matter required consideration, the hearing was deferred to 29th November, 2010. Consequently the result of the examination taken by the petitioner under orders of this Court was not declared and the petitioner has not attended any classes.

3. When the matter came up on 29th November, 2010, the counsel for the petitioner contended that if the result of the examination taken as aforesaid by the petitioner is declared and the petitioner is found to have passed in the same, the petitioner be permitted to join the Seventh Semester w.e.f. January, 2011. Alternatively it was submitted even if the petitioner has failed in the said examination; he be permitted to take the Sixth Semester End-term Examination in December, 2010. The matter was as such adjourned for the counsel for the respondent University to obtain instructions.

4. The counsel for the respondent University has today informed that there will be no classes of Seventh Semester w.e.f. January, 2011; the petitioner even if has passed in the exam taken under orders of this Court, can join the Seventh Semester only w.e.f. July, 2011. The said suggestion is not acceptable to the counsel for the petitioner. He today contends that the petitioner should be allowed to take the Seventh Semester End-term Examination scheduled in December, 2010. The same is not acceptable to the respondent University. It is stated that the petitioner has not attended any classes of the Seventh Semester and cannot be permitted to take the Seventh Semester End-term Examination. It is also pleaded that the petitioner has not even cleared the requisite number of papers which he is required to clear before being entitled to promotion from Sixth to the Seventh Semester. The counsel for the petitioner in the circumstances has desired the decision of the writ petition on merits.

5. The respondent University in the counter affidavit has *inter alia* pleaded:-

i. that the petitioner has passed only five out of total thirty papers up to Sixth Semester of studies;

ii. that the petitioner had attended only 28.5% of the classes in the Sixth Semester as against the requirement of 75%;

iii. that even if the petitioner is permitted grace of 40 attendances for being volunteer trainee for Common Wealth Games-2010, even then his attendance would be only 49%, still much below that prescribed by the respondent University and the Bar Council of India;

iv. that the petitioner was admitted to the B.A., LL.B course in the year 2006 but till May 2010 i.e in four years had passed only in five out of thirty subject papers; that he had been re-appearing in several papers but failing repeatedly; that he could however reach the Sixth Semester owing to the Policy of allowing promotion up to the Sixth Semester on the condition of clearing the requisite papers;

v. that he was also found using unfair means during the year 2008-2009 and his examination was cancelled;

vi. that he was also found guilty by the Grievance Committee of misconduct in the class.

6. The petitioner in the petition has merely stated that he has attended most of the classes and there should not be any shortage of attendance. He has further pleaded that the respondent University does not maintain the Attendance Registers properly and had refused to grant attendance to him of the co-curricular activities. It is stated that no credibility can be attached to the record of attendance maintained by the respondent University. It is also alleged that the details of attendance had not been supplied to him inspite of demand.

7. The petitioner in the rejoinder to the counter affidavit has alleged that the respondent University has fabricated the records of attendance. The petitioner claims to be entitled to grace of 120 attendances for the period spent for participation in his capacity as the Head Convenor of Volunteer Training Programme for Common Wealth Games-2010. He further claims that he is entitled to 25% attendance for co-curricular activities like Moot Court, Projects and attending Seminars etc. He further claims to be entitled to favourable exercise of discretion vested in the Vice Chancellor for waiver

of 5% attendance. He further claims to be entitled to five attendances per day on account of medical reasons.

8. It would thus be seen that there is really no dispute as to the number of classes attended by the petitioner being 28.5% only as against the required of 75%. The petitioner seeks rest of the attendance for his other activities as aforesaid.

9. The subject of attendance particularly relating to the LL.B course of the respondent University has been the subject matter of several decisions. It was held in judgment dated 18th August, 2010 in W.P.(C) No.3129/2010 titled ***Choudhary Ali Zia Kabir v. Guru Gobind Singh Indraprastha University*** that the rules of natural justice or *audi alteram partem* cannot be extended to attendance. The said Rules do not apply to records of attendance maintained by Educational Institutions. It was also held that the said records cannot be challenged by students. It was yet further held that factual disputes as to attendance if permitted to be raised, the educational institutions would forever be embroiled in such disputes only and would be running to the Courts to prove the attendance rather than imparting education to the students. It was felt that it is well nigh impossible for the Courts also to decide as to whether the student has been correctly marked absent on a particular day or not; a teacher imparting education and learning to a student cannot be expected to mark a student present in the class absent.

In judgment dated 20th October, 2010 in W.P.(C) No.2790/2010 titled ***Gagandeep Kaur v. Govt. of NCT of Delhi*** it was held that the Courts having held attendance to be compulsory and necessary to complete the process of education, the difference between voluntary and involuntary absence is irrelevant; 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. In ***Choudhary Ali Zia Kabir*** (supra) it was also held that a student is required to know the norm qua attendance and cannot be heard to say that he did not know that he was short of attendance. The argument of unlimited exemption on account of extracurricular activities was also negatived. In ***Gagandeep Kaur*** (supra) it was held that the minimum percentage of lectures fixed at 75% still gives students freedom to miss or abstain from 25% of such lectures and which was considered a fairly large percentage of lectures which a student may miss for a variety of reasons. Even otherwise if exemption from a large number of lectures as claimed by the petitioner in the present case were to be given, the same will make a mockery of the Rule of attendance and a student would be able to obtain a Degree without attending the classes and which cannot be permitted. In view of the said detailed judgments, need is not felt to burden this judgment with the reasonings. Reference must also be made to the recent dicta of the Division Bench of this Court in ***Sukriti Upadhayay Vs. University of Delhi*** MANU/DE/2600/2010 laying down that the quality

of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures he attends and the failure to attend requisite number of lectures can legitimately disentitle him to claim eligibility for appearing in the examination. With special reference to law students, it was held that if lectures are not attended, he cannot take a leap to next year of study.

10. In so far as the challenge by the petitioner to the appointment of the Dean is concerned, I find the petitioner to have no locus for the same. Rather the said conduct of the petitioner of browbeating the teachers in the said manner is found to be sufficient to disentitle the petitioner from discretionary remedy under Article 226 of the Constitution of India.

11. The petitioner had also filed an application being CM No.20613/2010 though titled for directions but pleading new facts and notice whereof was issued. However in view of the statement of the counsel for the petitioner today for decision on merits, need is not felt to deal with the same.

12. The petitioner who has a poor academic record cannot in any case be permitted to the Seventh Semester as is sought.

13. Cont. Cas.(C) No.426/2010 was filed averring that the Dean of the respondent University delayed for forty five minutes in providing a writer to

the petitioner and did not give extra time to the petitioner therefor in the examination which petitioner was permitted to take under interim order aforesaid. It is also alleged that in other examination the Dean disturbed the petitioner. It is thus alleged that notwithstanding the orders of this Court directing the respondent University to permit the petitioner to take the examination, disturbances were caused therein. Even though no notice of the Contempt has been issued but counter affidavit has been filed denying the averments.

14. The statements made are factual and in the light of the conduct of the petitioner of while seeking attendance, challenging the appointment of the Dean, no credibility can be given thereto.

No case for contempt is made out. The Contempt is dismissed.

15. There is no merit in the petition; the same is dismissed. I refrain from imposing any costs.

RAJIV SAHAI ENDLAW
(JUDGE)

7th December, 2010
pp