

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

Date of decision: 12th July, 2010.

+ **W.P.(C) No.9567/2009 & CM No.7581/2009 (for interim relief)**

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HIMESH RANA

..... Petitioner

Through: Mr. R.K. Saini & Mr. Sitab Ali
Chaudhary, Advocates

Versus

UNIVERSITY OF DELHI & ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal with Ms.
Preeti Maniktalya, Advocates for R-1
Ms. Jyoti Singh & Mr. Ankur
Chibhar, Advocates for R-2 & 3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

RAJIV SAHAI ENDLAW, J.

1. The petitioner is a student of Bachelor of Ayurvedic Medicine & Surgery Course in A & U Tibbia College (respondent no.2) owned and controlled by the Govt. of NCT of Delhi (respondent no.3) and affiliated to the respondent no.1 University of Delhi. The course undertaken by the petitioner is of five and half years duration and consists of three professional examinations held at intervals of one and half year and internship training of twelve months thereafter.

2. The first professional examination comprising of six papers was to be undertaken by the petitioner in January, 2009. Though the roll number and admit card was issued by the respondent no.1 University to the petitioner but the respondent no.2 College ordered detention of the petitioner in four out of the aforesaid six papers for the reason of shortage in attendance. The petitioner could thus appear in two examinations only.

3. The respondent no.2 College has in its counter affidavit stated that a student who has not so appeared in examination owing to short attendance is entitled to appear in supplementary examination, provided such student has 50% attendance at the time of supplementary examination and which is counted from past 18 months. No Rule in this regard is cited. It was expressly enquire from counsel for respondent no.2 College whether there is any Rule to this effect. The answer is in the negative.

4. The supplementary examinations were scheduled to be held in June, 2009. The petitioner again applied for appearance in the four papers in which he had been detained. Again, the roll number and admit card of the petitioner was issued by the Respondent no.1 University but denied by the Respondent no.2 College to the petitioner for the reason of shortage in attendance. The petitioner represented to the Respondent no.2 College contending that he had attended 80% of the classes from 5th

February, 2009 till 5th May, 2009 and was thus eligible for taking the supplementary examination. The said representation having not met with any success, the present writ petition was filed.

5. This Court vide order dated 5th June, 2009 while issuing notice of the writ petition, allowed the petitioner to appear in the supplementary examination on the conditions that his result would be kept in a sealed cover and the petitioner will not claim any special equity in his favour for the reason of having been allowed to appear in the examination. Subsequently it was informed that the petitioner has cleared the said examination.

6. It is the contention of the petitioner that the bulletin of information issued by the Respondent no.2 College regarding admission to the course aforesaid does not contain the norms of attendance Rules and Regulations regarding appearance in the examination; that when the Respondent no.2 College, after having not allowed the petitioner to take the examination in four papers, allowed the petitioner to attend the classes for the said four papers and in which classes the petitioner met the attendance criteria by having 80% attendance, he could not be denied the right to take the said four papers during the supplementary examinations.

7. The Respondent no.2 College in its counter affidavit has stated that there is a requirement of at least 50% attendance in the total number of delivered lectures even though as per the Respondent no.1 University, each B.A.M.S. student is required to attend not less than $\frac{3}{4}^{\text{th}}$ of the lectures delivered and practicals/demonstrations/ clinicals held in each subject separately during each year of the course. It is further pleaded that the discretionary power of the Principal to exempt from attendance is only to the extent $\frac{1}{3}^{\text{rd}}$ of the total number of lectures delivered. The respondent no.2 College pleads that the attendance of the petitioner at the time of main examination in the four papers aforesaid was less than 50% in theory and in practical and the attendance being less than 50%, he could not have been allowed. It is further stated that the condition for appearing in supplementary examination, is at least 50% attendance at the time of supplementary examination and which is counted for the past 18 months. It is contended that the petitioner did not clear the benchmark of 50% for the last 18 months before the supplementary examination either. It is contended that the attendance in the classes after the main examination and before the supplementary examination (and in which petitioner claims 80% attendance) alone cannot be counted.

8. The counsel for the Respondent no.2 College during the arguments has explained that a student who does not meet the criteria of

50% attendance in the 18 months study before the first professional examination is permitted to attend the classes for about 6 months after the final examination and before the supplementary examination and the criteria for attendance to appear in the supplementary examination is 50% attendance in 18 months immediately preceding the supplementary examination i.e. the attendance of the first 6 months of the 18 months' course duration before main examination is not taken into consideration and in lieu thereof the attendance of 6 months after final and before the supplementary examination is taken into consideration. It is urged that the petitioner on such computation also did not meet the minimum criteria.

9. The counsel for the petitioner has orally challenged the method aforesaid adopted by the Respondent no.2 College of excluding the first 6 months' attendance and substituting the same with the 6 months' attendance between the main and the supplementary examination. It is urged that if the average attendance of the entire 24 months is to be taken or if the attendance of 18 months before main examination and 6 months after main examination is taken, the petitioner meets the criteria of 50% attendance.

10. I have enquired from the counsel for the Respondent no.1 University and the counsel for the Respondent no.2 College as to whether there is any Rule entitling the Respondent no.2 College to so

exclude the first 6 months of the 18 months before main examination and substituting the same with 6 months after main examination for computing the attendance. The counsels have been unable to show any. There is also nothing to show that the students were informed of the aforesaid method/formula adopted by the respondent no.2 College.

11. I find no basis whatsoever for the Respondent no.2 College to adopt the system/method aforesaid in the case of students who fail to meet the attendance criteria for the examination and who are permitted to attend classes between the main and the supplementary examination. It defies logic as to why only the first 6 months and not any other months should be excluded. It is quite possible that the attendance in the first 6 months when the course has just begun is good/regular and the students have become irregular as the classes and the studies progress. Similarly, the situation can be otherwise too. However, it is not for this Court to deliberate on the said aspect. This Court neither has the expertise nor is equipped to take decision in this regard. It is best to leave the same to be decided by the authorities concerned after taking the views of all concerned into consideration. I have also enquired whether there is any provision qua the practice followed by the Respondent no.2 College of holding classes after the main examination and before the supplementary examination. The answer is in the negative. Again, though the Respondent no.2 College is affiliated to the

Respondent no.1 University which prescribes the minimum attendance as 3/4th but the Respondent no.2 College is following the Rule of 50% as minimum attendance. There is no explanation for the same also.

12. Moreover, the Respondent no.2 College without informing the students of their Rules regarding attendance, cannot withhold any student suddenly without notice. The writ petition is thus entitled to succeed on this ground alone.

13. However, before parting with the case, I must add that the course undertaken by the petitioner is a professional course. The petitioner after clearing the same would be handling the lives of others. The course is not such which can be taught through correspondence or learnt without attending regular classes. The purport of the said classes is to enable the students to learn the art of medicine in practice rather than in theory alone under the guidance of highly specialized and experienced teachers/faculty. The students cannot be permitted to defeat such purpose by missing classes particularly when there is no plausible explanation therefor. A doctor who has cleared the examination without attending the classes would definitely have something lacking in him and which could play havoc with the lives and well-being of the persons who approach such a doctor with confidence in his acumen. The students of such professional courses ought to have a higher sense of responsibility and which seems to have been lacking in the petitioner.

Self study is not sufficient. Even though, distance learning has come to be widely accepted as a universal mode of acquiring knowledge, skills and qualifications, yet traditional forms of knowledge dissemination holds great relevance where instructional interface is mandatory. The requirement of minimum attendance is not a mere formality but a term of eligibility to sit for the examination. The counsel for the Respondent no.2 College has stated that the aforesaid system/method has been followed by the Respondent no.2 College for long and all students were/are aware of it. The same appears to be quite likely. The petitioner instead of attending his classes appears to have been busy elsewhere. Such a student who has no faith in the faculty of the Institution which he has joined cannot make a good doctor.

14. The Division Bench of this Court in *Ashutosh Bharti Vs. The Ritnand Balved Education Foundation (Regd.)* MANU/DE/0024/2005 and in *Arvind Gupta Vs. University of Delhi* MANU/DE/0238/1980 and in *Preeti Srivastava Vs. CBSE* MANU/DE/0484/1994 and Single Judge of this Court in *Yogesh Bhatia Vs. University of Delhi* MANU/DE/0784/2003 and in *Neera Dadhwal Vs. Deepak Paintal* MANU/DE/8392/2007 have emphasized the importance of attendance and that Rules with regard thereto cannot be given a go by or sympathetic grounds.

15. Thus though allowing the writ petition for reason aforesaid, it is deemed expedient to impose certain conditions on the petitioner.

16. The writ petition is therefore allowed on the following terms:-

- (i) The respondents to release the result of the petitioner of the examination undertaken under orders of this Court.
- (ii) The petitioner if promoted, be allowed to attend the classes of the next semester.
- (iii) The respondent no.2 College is directed to in consultation with the Respondent no.1 University, experts and all other concerned parties, within four months hereof frame proper Rules qua the attendance criteria; regard in this respect be given to the requirement of the Respondent no.1 University of 3/4th attendance and the need, if any, of the Respondent no.2 College to lower the bar. Rule should also be made with respect to the classes to be held after the main examination and before the supplementary examination and as to how the total attendance is to be computed.
- (iv) It is further directed that the petitioner, if does not meet the attendance criteria as may be so laid down, in future shall

not be granted any indulgence. Though during the hearing it was proposed by the Court that a condition be imposed on the petitioner to have at least 90% attendance for the remaining years of the course but at the time of correcting the order it is not deemed expedient to interfere with the Rule of the University/College and to place a more onerous condition on the petitioner. However, it is directed that if the petitioner intends to take any leave he should duly inform about the same to the Respondent no.2 College stating reasons in advance. If the petitioner is compelled to take leave without opportunity of communication as aforesaid, the petitioner to immediately thereafter, as soon as may be possible in the circumstances, inform the Respondent no.2 College in writing of the same, again stating reasons.

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

**RAJIV SAHAI ENDLAW
(JUDGE)**

12th July, 2010

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