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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2955/2012 & CM.No.6380/2012

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Judgment dated 11.10.2012

SHARAA KHAN

..... Petitioner

Through: Mr.M.Tarique Siddiqui, Adv

versus

UNIVERSITY OF DELHI AND ANR

..... Respondent

Through: Mr.M.J.S. Rupal, Advocate for the University
Mr.Romy Chacko and Mr.Varun Mudga,
Advocates for respondent no.2/ college

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of counsel for the parties, present petition is set down for final hearing and disposal. Necessary facts required to be noticed for disposal of the present petition are that petitioner was admitted to the respondent no.2/ college in B.A. (Programme) in July, 2010. She appeared in the university annual examinations for the first year which were held during the months of May – June, 2011. Thereafter petitioner started attending classes of the second year. The petitioner was not permitted to appear in the second year examinations on account of shortage of attendance, which has led to filing of the present petition.
2. It is contended by counsel for the petitioner that her father expired in the year 2004 and her mother is a house-wife, who is diabetic and is suffering from various other ailments for which she requires constant care and support and for the said reasons, petitioner could not attend her classes

regularly. It is next contended by counsel for the petitioner that on 08.05.2012 respondent no.2, college displayed on its notice board a list of students who were not eligible to appear for the annual examination 2nd year in B.A. programme. Against the name of the petitioner the total attendance was shown as 59.91%. A meeting between the mother of the petitioner and the Principal of the college did not yield any result, and the petitioner was informed that she is short by approximate 6% attendance. It is also submitted that the request of the petitioner was declined without any cogent reasons. The first submission of counsel for the petitioner is that on 07.02.2012 respondent no.1, university had issued a notification directing the Principals of the colleges to ensure that attendance of the students is uploaded on the college website every month and a hard copy of the same be displayed on the college notice board. It is contended that the aim and object of the said notification was to inform the students about the status of their attendance regularly.

3. It is thus contended by counsel for the petitioner that the respondent no.2, college has not complied with directions of the university, due to which petitioner was not aware that she is short of attendance.
4. It is submitted by counsel for the petitioner that the University has not taken a uniform stand and the students with less than 66.6% attendance have been permitted to appear in the examination, subject to their furnishing an undertaking that they would fulfil the attendance criteria in the following year. Reliance is placed on the rules and ordinances of the respondent, university relating to attendance criteria which permits a student to appear for the annual examination if he/ she has 40% attendance in the 1st year, and not less than 55% attendance in 1st and 2nd year (combined), however, the concerned student will be required to sign the undertaking that the shortage in the attendance will be made up in the

following year. A failure to secure 66% attendance in all three years combined will render the student ineligible to sit for the annual examination. It is also contended by counsel for the petitioner that petitioner could not attend classes due to bona fide reasons, as she was attending to her mother.

5. The present petition has been opposed both by counsel for the college and the counsel for the University.
6. Counsel for respondent no.2/ college submits that the petitioner has not made out a case of violation of any statutory or constitutional provision and so the writ petition is not maintainable. The submission of counsel for the respondent no.2/ college on the claim of the petitioner, seeking exemption on the ground that she had to attend to her mother who is suffering from diabetes and other ailments, is that there is no provision in the University Statute which confers any power on respondent no.2 to condone shortage of attendance on the grounds claimed by the petitioner. It is further contended that the petitioner secured only 49.84% attendance and so she was rightly denied the admit card. It is denied that the action of the Principal is arbitrary and violative of principles of natural justice, as the college has only followed the directive of the University.
7. It is next contended that there is no provision under the rules laid down by Respondent no.1 for respondent no.2 to grant any exemption for the lectures/ tutorials/ practicals missed by a students on account of illness of any family member. Counsel for the college further submits that the monthly attendance record of the petitioner was posted on the college notice boards as was instructed by the University. The comprehensive attendance details for the whole year were posted and the list of those who failed to meet the eligibility requirement vis-à-vis attendance was also posted. It is submitted that the petitioner was well aware about the

attendance rules and also the consequences of violating the same, however, petitioner chose to be unmindful of the same. It is strongly urged by counsel for respondent no.2 that the respondent no.2 has complied with the directive of respondent no.1 dated 07.02.2012 and posted the attendance records of the petitioner, along with all other students, on the College notice boards. It is further submitted that the university rule referred to by the petitioner is no longer in force, as the same was amended and after the amendment every student has to obtain 66.6% for one year/ semester.

8. Counsel for the Delhi University has supported the stand of the college. Mr.Rupal, submits that the requirement of 66.60% of attendance is not a mere technicality or formality, but has been envisaged keeping in mind the rule of education in a person's life. Mr.Rupal, further submits that education requires participation which comes through attending classes, and through the classes a teacher imparts knowledge and tries to imbibe the students with such understanding as is anticipated by the chosen subject. Counsel for the University further submits that the colleges of the University of Delhi have to act in accordance with the rules and regulations framed by the University from time to time. The relevant provisions of the rules are made available to the students through various means like prospectus etc.
9. Mr.Rupal, further submits that the notification dated 07.02.2012 was issued by the University and all the colleges are duty bound to display the attendance every month to enable a student to verify their attendance status every month. It is next contended that every college and the student are duty bound to follow the rules laid down by the University from time to time. It is for this reasons that every teacher is also required to keep a daily record of attendance of students and to submit the same for

uploading on the college website on a monthly basis. The University has also written to every College for time-tables of each teacher to be placed on the College website in order that students may acquaint themselves with the class schedule and to facilitate their attendance on a regular basis in class.

10. Counsel for the respondents have relied in the case of **University of Delhi & Anr. Vs. Vandana Kandari & Anr., [LPA No.662/2010]** where this Court held that it is mandatory for students to attend classes in order to fulfil the minimum attendance criteria to be allowed to sit in the examination.
11. I have heard counsel for the parties and considered their rival contentions. The students are governed by Ordinance VII of the University, which provides for the minimum attendance which a student must have to be eligible to appear for the examination in each semester / year. Relevant portion of the clauses of the Ordinance VII read as under:

“2 (1) No person shall be deemed to have pursued a regular course of study unless the Principle of his College/ Head of the Department concerned in the case of candidates for the B.A. (Pass), B.A. (Vocational Studies), B.Com (Pass), B.Sc. (General), B.A. (Honours), B. Com (Honours), B.Sc. (Honours) Degrees, the Principal, School of Correspondence Courses and Continuing Education in the case of students registered with the School, and Head of the Department concerned in the case of candidates for any other Degree or Diploma or Certificate Examination is satisfied that the required conditions in respect of his instruction have been fulfilled.

(2) The required conditions shall not be deemed to have been satisfied in respect of the following degrees unless the candidate has attended not less than two-thirds of lectures and practicals, separately, delivered in his College or the University, as the case may be, for the course of study in each academic year.

(9)(a) Subject to the provisions of sub-clauses (b) and (c)

(i) In the case of a student who is selected as a member of the N.C.C. to participate in the annual N.C.C. Camps or is deputed to undertake Civil Defence work and allied duties or in the case of a student who is enrolled in the National Service Scheme and is deputed to various public assignment by or with the approval of the Head of the institution concerned, or a student who is selected to participate in sports or other activities organized by the Inter-University Board or in national or international fixtures in games and sports approved by the Vice-Chancellor, or a student who is required to represent the University at the Inter-University Youth Festival, or a student who is required to participate in periodical training in the Territorial Army, or a student who is deputed by the College to take part in Inter-College sports or fixtures, debates, seminars, symposia or social work projects, or a student who is required to represent the College concerned in debates and other extra-curricular activities held in other Universities or such other activities approved by the Vice-Chancellor, for this purpose, in calculating the total number of lectures etc. delivered in the College, or in the University, as the case may be, for his course of study in each academic year, the number of lectures etc., in each subject delivered, during the period of absence for that purpose shall not be taken into account.

(c) The benefit of exclusion of lectures contemplated in categories (i) or (ii) of sub-clause (a) above, either separately or jointly, shall in no case exceed 1/3 of the total number of lectures delivered.”

12. Ordinance VII of the University provides for the minimum attendance a student should have put in, in order to be eligible to appear for the examination each semester or year, as the case may be. Ordinance VII (2) (9) (a) provides for cases of exception under category (i) and (ii) to the minimum attendance prescribed by the same Ordinance. Category (i) pertains to student taking part in sports, N.C.C., from among other things. Category (ii) pertains to ‘exceptionally hard cases of students who had

fallen seriously ill or had met with an accident during the year disabling them from attending classes for a certain period' could be excluded for purposes of calculation of attendance of the year and decide each case on its own merits. However, Ordinance VII (2) (9) (a) has been made subject to the express provisions contained in sub clauses (c). Sub clause (c) states in unambiguous terms that the benefit of exclusion of lectures contemplated in the sub clause (a) categories (i) and (ii) 'either separately or jointly, shall in no case exceed 1/3 of the total number of lectures delivered.'

13. The only ground urged by the petitioner as per the writ petition for not attending the classes regularly is on account of illness of the mother of the petitioner. The petitioner has failed to place a single document on record in support of the submission which has been made by counsel for the petitioner. The reliance placed by counsel for the petitioner on the University rules in support of his plea that a student must obtain at least 40% attendance in the first year and not less than 55% in the first and second year (combined), is misplaced. The Ordinance VII of the University lays down the criteria, according to which the petitioner is to attend the minimum 66.6% classes in each semester / year. While counsel for the petitioner submits that the notification dated 07.02.2012 was not complied with by the college. This fact is disputed by counsel for the college, who submits that the details of attendance of all the students was displayed on the notice board, even otherwise merely not following the directions contained in the notification dated 07.02.2012 by itself cannot be a ground to ignore the University Ordinance which lays down the criteria of attendance.
14. It is however, directed that all colleges should follow the notification dated 07.02.2012 in letter and spirit and University should monitor the

same and in case of any violation the University should take serious view of the matter, so that the students are warned in advance with regard to shortages of attendance.

15. In view of Ordinance VII, no relief can be granted to the petitioner, consequently, petition and the application stand dismissed. No costs.

G.S.SISTANI, J

OCTOBER 11, 2012

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