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

+ W.P.(C) 2981/2012

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Judgment dated 19.10.2012

HARSHIT PERIWAL Petitioner

Through: Mr.Ravi Gupta, Sr.Advocate with
Mr.Gaurav Gupta, Advocate

versus

UNIVERSITY OF DELHI AND ANR Respondent

Through: Mr.A.P.S. Ahluwalia, Sr.Advocate with
Mr.S.S. Ahluwalia, Advocate for the
Respondent no.2/ College
Mr.M.J.S. Rupal, Advocate for D.U.

+ ***W.P.(C) 2982/2012 & CM.6435/2012***

ANJALI REKHIJA Petitioner

Through: Mr.Ravi Gupta, Sr.Advocate with
Mr.Gaurav Gupta, Advocate

versus

UNIVERSITY OF DELHI AND ANR Respondent

Through: Mr.A.P.S. Ahluwalia, Sr.Advocate with
Mr.S.S. Ahluwalia, Advocate for the
Respondent no.2/ College
Mr.M.J.S. Rupal, Advocate for D.U.

+ ***W.P.(C) 2983/2012 & CM.6436/2012***

TANVEER SINGH KUKREJA Petitioner

Through: Mr.Ravi Gupta, Sr.Advocate with
Mr.Gaurav Gupta, Advocate

versus

UNIVERSITY OF DELHI AND ANR Respondent

Through: Mr.A.P.S. Ahluwalia, Sr.Advocate with
Mr.S.S. Ahluwalia, Advocate for the

Respondent no.2/ College
Mr.M.J.S. Rupal, Advocate for D.U.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Rule. With the consent of counsel for the parties, present petitions are set down for final hearing and disposal. The aforesaid three matters were heard together, as the facts of the same are almost identical, hence, the same are being disposed of by a common order.
2. Petitioners were admitted to the respondent no.2 college in B.Com (Hons.) course. It is the case of the petitioners that they were not allowed to appear in the final examination, on account of shortage of attendance.
3. Counsel for the petitioners submits that petitioners were found short of attendance just by 1.50% in aggregate, 1.25% in aggregate and 3.80% in aggregate. The petitioners approached the college, and the college authorities had called upon the petitioners to furnish an undertaking to cover up the attendance in future. Thereafter the respondent no.2, college authorities issued admission tickets in favour of the petitioners, permitting them to appear in the annual examination for 2nd year. On 14.05.2012 the respondent no.2, college authorities displayed a list of students, who were detained from appearing in the annual examination, on account of shortage of attendance, wherein names of the petitioners were found mentioned. Thereafter the petitioners immediately approached the respondent no.2, college, and requested the college, to allow them to appear in the examination, whereupon the respondent no.2, college informed the petitioners that the list of 14.05.2012 was tentative and the college is reconsidering the same. On 15.05.2012 the respondent no.2, college issued another notice which displayed the revised list of the

students, who were detained from appearing in the annual examination, on account of shortage of attendance. In this list as well, the names of the petitioners were mentioned.

4. Reliance is placed on the rules and ordinances of the respondent, university relating to attendance criteria and the undertaking 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. Counsel for the petitioners has relied upon the undertaking submitted by the petitioners at the instance of the college, to show that each student was to attend not less than 40% of the lectures in each semester/ second year at the discretion of the Principal of the college, to show that petitioners have attended 44.3% lectures in the second year and cumulative 53.5% lectures; attended 44.2 in the second year and cumulative 53.7% lectures; and attended 53.2 in the second year and cumulative 51.2% lectures respectively. It is thus contended by counsel for the petitioners that petitioners have missed the 50% criteria marginally. Another submission made by counsel for the petitioner is that once the admit cards were handed over to the petitioners they could not have been prevented from appearing in the examination. Hence, it is prayed that it is a fit case for the court to exercise its discretion and permit students to appear in the examination and be promoted to the next year.
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 petitioners have 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 petitioners, seeking exemption on the ground that they had submitted undertakings at the instance of the college, to show that each student was to attend not less than 40% of the lectures in each semester/ second year at the discretion of the Principal of the college, is that there is no provision in the University Statute which confers any power on respondent no.2 to condone shortage of attendance. It is further contended that the petitioners secured the attendance far below the percentage of 66.66 and so they were rightly prevented from appearing in the examinations. 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. Counsel for the college further submits that the monthly attendance record of the petitioners were posted on the college notice boards as was instructed by the University and that the petitioners were also given due notice of the attending the classes regularly at the time of admission in the college as well through the prospectus wherein it was specifically stated as under:

“Discipline
Attendance Rules

All students are expected to attend classes regularly, University Rules require a minimum attendance of 66.66% both in lectures and in tutorials/preceptorials/practicals separately, held in each subject, failing which a student shall be allowed to appear for the University Examinations.”

8. 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 petitioners were well aware about the attendance rules and also the consequences of violating the same, however, petitioners 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 petitioners, along with all other students, on the College notice boards. It is further submitted that the university rule referred to by the petitioners is no longer in force, as the same was amended and after the amendment every student has to obtain 66.66% for one year/ semester.

9. Counsel for the Delhi University has supported the stand of the college. Mr.Rupal, submits that the requirement of 66.66% 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.
10. 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 students 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.

11. 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.
12. 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."

13. 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

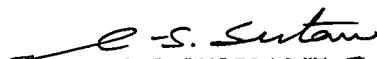
purposes of calculation of attendance of the year and decide each case on its own merits. However, Ordinance VII (2) (9) (a) has been made subject to the express provisions contained in sub clauses (c). Sub clause (c) states in unambiguous terms that the benefit of exclusion of lectures contemplated 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.'

14. Petitioners have not mentioned any specific ground, nor substantiated the same by way of documentary proof, for not attending the classes regularly, but only emphasized on the undertaking given at the instance of the college, to show that each student was to attend not less than 40% of the lectures in each semester/ second year at the discretion of the Principal of the college, to show that petitioners have attended 44.3 in the second year and cumulative 53.5% lectures; attended 44.2 in the second year and cumulative 53.7% lectures; and attended 53.2 in the second year and cumulative 51.2% lectures respectively. The stand taken by the petitioners is unacceptable in view of the Ordinance VII of the University.
15. The Ordinance VII of the University lays down the criteria, according to which the petitioners are to attend the minimum 66.66% classes in each semester / year. While counsel for the petitioners 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.
16. It is deemed appropriate to direct the college to follow the notification dated 07.02.2012 in letter and spirit and University should monitor the

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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.

17. In view of Ordinance VII, no relief can be granted to the petitioners, consequently, the writ petitions and the applications stand dismissed. No costs.


G.S.SISTANI, J

OCTOBER 19, 2012
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