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

+ **W.P.(C) 256/2014**

APOORV YADAV

..... Petitioner

Through

Mr. R.K. Saini with Mr. Anil Kumar
Yadav and Mr. Abhimanyu Dhawan,
Advocates

versus

UNIVERSITY OF DELHI & ORS Respondents

Through

Mr. Mohinder J.S. Rupal, Advocate
for R-1 to 3.
Mr. Preet Pal Singh, Advocate for
R-4/BCI.

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Reserved on : 15th May, 2014.

Date of Decision : 27th May, 2014

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J:

1. Present writ petition has been filed seeking promotion of the petitioner to second semester of LL.B. first year course and also for a declaration that respondent-University's action of not allowing the petitioner to sit in the exams of those subjects in which he had more than 70% attendance in first semester was illegal.

2. Admittedly, in the first semester, petitioner had the following attendance in his 5 subjects:-

Subjects	LB-101 Atnd/Delvd	LB-102 Atnd/Delvd	LB-103 Atnd/Delvd	LB-104 Atnd/Delvd	LB-105 Atnd/Delvd
TOTAL	16/38	21/39	22/39	28/43	18/41
Total number of Lectures attended : $16+21+22+28+18 = 105$ Total number of Lectures delivered : $38+39+39+43+41=200$					

3. Petitioner in this writ petition claims that he is entitled to two attendances in each subject on account of attending a moot court as also for remission of some lectures on the ground that he was admitted late.

4. According to Mr. R.K. Saini, learned counsel for petitioner, if provision is made for the aforesaid relaxations then the petitioner's attendance in two subjects would exceed 70% and his overall attendance would be 65%.

5. He stated that in accordance with Rule 12 of the Bar Council of India's Rules of Legal Education, 2008 (for short 'Rules, 2008') a student whose minimum attendance was 70% in a particular subject, was entitled to appear in the examination of the said subject.

6. Mr. Saini pointed out that on 25th June, 2010 through a public notice, the Bar Council of India had announced that universities and colleges had to report compliance with Rules, 2008 by July, 2010.

7. He further submitted that in view of the judgments of this Court in *S.N.Singh v. Union of India*, 106(2003) DLJ 329, *Satyendra Singh v. University of Delhi*, WP(C)No. 3225/2008, *Kiran Kumar v. University of Delhi & Ors.*, W.P(C) No.9143/2007, *Komal Jain v. University of Delhi*, WP(C) No. 8534/2008, as well as *Sukriti Upadhyay v. University of Delhi*, LPA 539/2010, Bar Council Rules of Legal Education would prevail over

the attendance rules prescribed by the Delhi University in its Bulletin of Information 2013-2014.

8. Consequently, according to Mr. Saini, if a student had 70% or above attendance in a subject, the respondents were legally bound to allow him to appear in that subject examination. The Law Faculty had committed an error by not allowing the petitioner to appear in two papers of the first semester in which he had 70% or more attendance.

9. On the other hand, Mr. Mohinder J.S. Rupal, learned counsel for respondent-University stated that in accordance with Bulletin of Information 2013-2014, all students of LL.B. course had to attend minimum 66% aggregate lectures in all the subjects.

10. He stated that if a student was promoted to the next semester without having minimum attendance of 70% in all subjects then the said student would never be able to complete attendance shortfall in classes of the subjects taught in previous semester since the classes of the new subjects in the next semester were bound to overlap leading to utter chaos and mismanagement entirely due to the default of such student. He further stated that even if it is assumed that the student would be able to attend classes of previous subjects that would only be feasible after one year when the next academic sessions would have started. Since considerable emphasis was laid on para 13 of the counter affidavit, the same is reproduced hereinbelow:-

"13. The Faculty of Law admits around 2500 students in first semester every year. Around one fourth of the students get detained every year due to shortage of attendance. The BCI rule if read literally will result into additional burden on the Faculty to make special arrangements for each such defaulting

student on regular basis to adjust him for attending classes of previous semester along with the present Semester which is not possible at all looking to sheer number of defaulting students. Such number of defaulting students rather than decreasing in number are bound to increase if the BCI rules are applied in literal sense. The rule cannot be read in a sense which will encourage the evil which it is otherwise framed to prohibit."

11. Mr. Rupal also stated that the new Rules, 2008 make the attendance requirement stricter by raising the bar from 66% to 70%.

12. He pointed out that other educational institutions of repute had rather laid down stricter norms of minimum 75% attendance in all subjects in each semester. He stated that if the said Rules, 2008 were read and interpreted as sought by the petitioner, it would have grave repercussions across the country.

13. Mr. Preet Pal Singh, learned counsel for Bar Council of India had drawn this Court's attention to his counter affidavit wherein it was stated that by virtue of Rule 12 of the Rules, 2008 students would be allowed to take end semester test in a subject if the student concerned had attended minimum 70% of the classes, but promotion from one semester to next semester would be governed by the Rules and Regulations made by the University. The relevant portion of the counter-affidavit is reproduced hereinbelow:-

"9. That under Rule 12 of the Education Rules of Bar Council of India Rules; student shall be allowed to take end semester test in the subject if the student concerned has attended minimum of 70% of the classes held in the subject concerned and also in the moot court, etc. but promotion from one semester to next semester will be governed by the Rules/Regulations made by the university.

14. Having heard learned counsel for parties, this Court is of the view that the primary issue that arises for consideration is the interpretation of Rule 12 of Rules, 2008 and Rules 10 and 11 of the Bulletin of Information 2013-2014 which lay down the minimum attendance norms. Rule 12 of Rules, 2008 and Rules 10 and 11 of Bulletin of Information 2013-2014 are reproduced hereinbelow:-

A) Rule 12 of Rules 2008

“No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.....”

B) Rules 10 & 11 of Bulletin of Information 2013-2014

“10. Attendance Rules

All the students of LL.B. shall have to put in minimum attendance of 66% of the lectures in each of the subjects as also at the moot courts and practical training course:

Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean, Faculty of Law/Professor-in-Charge of the Law Centre concerned may condone attendance short of those required by this Rule, if the student had attended 66% of the lectures in the aggregate for the semester examinations.

The Professor-in-Charge of the Law Centre shall have power to strike off the name of a student who is grossly irregular in attendance inspite of warning, or, when the absence of students is for such a long period that he cannot put in requisite percentage of attendance.

11. *Promotion Rules*

(i) *No student shall be promoted to the next Term, if he/she has been detained in the examination for shortage of attendance."*

15. Though this Court at the *prima facie* stage was impressed by the argument of learned counsel for petitioner, yet on a deeper reflection of the matter, this Court is of the view that there is no contradiction between the aforesaid Rules.

16. Rule 12 of Rules, 2008 is couched in negative language. It does not prohibit or prevent the respondent-University from refusing to allow students to take end-semester exam in one or more subjects even if the student has 70% or more attendance in such subject if such student is not having aggregate attendance of 66% in all subjects.

17. Rule 12 of Rules, 2008 only lays down the minimum standard which cannot be diluted. It is always open to the University to lay down higher standards than the minimum bench mark prescribed by the Bar Council of India for promotion to the next term.

18. In the opinion of this Court, Rules, 2008 make the attendance norms stricter by raising the attendance from 66% to 70% .

19. This Court is of the opinion that the way the petitioner is trying to read Rule 12 would lead to absurdity and would dilute the minimum attendance norms laid down by the University for students pursuing LL.B. course.

20. Consequently, the petitioner to be allowed to sit in any subject exam has to have overall attendance of 66% and 70% attendance in that particular

subject. Even the Bar Council of India has confirmed the aforesaid interpretation in its counter affidavit.

21. The judgments relied upon by Mr. Saini offer no assistance to the petitioner as there is no contradiction between the Rules, 2008 and the Bulletin of Information 2013-2014. Accordingly, the present writ petition being bereft of merits is dismissed but with no order as to costs.

Order dasti under signature of Court Master.

MANMOHAN, J

MAY 27, 2014

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