

\$~20, 46, 48 and 53

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

Date of decision: 19th February, 2019

+ W.P.(C) 8779/2018 & CM APPL. 33767/2018
W.P.(C) 8782/2018 & CM APPL. 33772/2018
W.P.(C) 12796/2018 & CM APPLs. 49667-49668/2018
W.P.(C) 9205/2018 & CM APPL. 8067/2019

MOHIT WADHWA AND ORS.

MUSKAN GOEL AND ORS.

MANIK GUPTA AND ORS.

ADITYA KHURANA AND ANR Petitioners

Through: Mr. Ratan K. Singh, Adv. with
Ms. Sushila and Mr. M.P.Singh,
Adv.

Mr. Yashu Khurana, Adv.

versus

THE PRINCIPAL ARYABHATTA COLLEGE

& ANR

.... Respondents

Through: Ms. Beenashaw N. Soni, Adv.
with Mr. Akash Yadav, Adv.
for R-1

Mr. Mohinder J.S. Rupal, Adv.
with Mr. Prang Newmai, Adv.
for University of Delhi

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T (O R A L)

W.P.(C) 8779/2018, W.P.(C) 12796/2018 & W.P.(C) 9205/2018

1. The petitioners in these cases are students pursuing various courses in the Aryabhatta College (Respondent No.1 herein and

referred to, hereinafter, as “the College”), which functions under the aegis of the University of Delhi and is a constituent college of the said University, having been established by the University *vide* Notification dated 12th December, 2014.

2. It is not in dispute that the petitioners were detained in their second and fourth semesters and were not permitted to appear in the end term examinations of the said semesters, owing to the fact that they did not possess the requisite attendance, for being permitted to do so, as prescribed in Ordinance VII(2)(a) of the Ordinance governing the University of Delhi, which may be reproduced thus:

“ A candidate for the Semester I/III/V Examination shall not be deemed to have satisfied the required conditions of attendance unless s/he has attended; in all the subjects taken together, not less than two thirds of the lectures/practical/presentations/tutorials required to be attended. Provided that a student of the Semester I/IIW who does not fulfil the required conditions of attendance, as above, but has attended, in all the subjects taken together, not less than 40 percent of lectures/practical/presentations during the respective semester; may at the discretion of the Principal of the College concerned, appear for the ensuing semester examination; but such a candidate shall be required to make up the deficiency at lectures and practicals, in the next semester of the same academic year.”

Provided that a student of the II/IV/VI semester who does not fulfil the required, conditions of attendance as above, but has attended in all the subjects taken together, not less than 40, per cent of the lectures/practical/presentation/tutorials, held during, the respective semester, may at the discretion of the Principal of the College concerned, be allowed to appear at the ensuing examination provided that she/he makes up the

deficiency of the said attendance by combining the attendance of the previous semester in the ensuing semester. Provided farther that the Principal of the College concerned may permit a student to appear in an examination notwithstanding that the student has not fulfilled the attendance requirement, if in the opinion of the Principal, such student shall make up the deficiency in the succeeding academic year.

Provided further that a student of the VI semester shall be allowed to appear at the VI Semester Examination, if by combining the attendance of the three academic years, the candidate has put in two-thirds of attendance, in all the subjects, taken together, held during the respective years.”

3. Though the said detention of the petitioners, in their second and fourth semesters, is not under challenge in these proceedings, the counter affidavit filed by the College reveals that these students could not even be extended the benefit of the proviso to Ordinance VII(2)(a) (*supra*), as they had not attended even 40% of the lectures/practicals/presentations/tutorials in all subjects taken together.

4. In fact, the attendance of the petitioners, in their second/fourth semesters has been conveniently tabulated by the petitioners, even in para 2 of the writ petition, which may be reproduced, to that extent, as under:

“

S. No.	Petitioner /Name	Course/Semester	Attendance (%)
1.	Mohit Wadhwa	B.Com (H)	34 %
2.	Gaurav Khatana	B.A. (P)	20%
3.	Bharti Sharma	B.A. (P)	23%

4.	Shivani Yadav	B.Com (P)	26%
5.	Anuj Jangid	B.A. (P)	36%
6.	Urooj Azhar	Political Science	34%
7.	Sajida Asif	B.A. (P)	35%
8.	Vipin Kumar	B.Com (P)	35.81%
9.	Jatin Kapoor	B.Com (H)	32%
10.	Rahul Yadav	B.A. (P)	38%
11.	Gurmukh Singh	B.A. (P)	35%
12.	Subham Sharma	B.A. (P)	36%
13.	Abhishek Vashist	B.A. (P)	39%
14.	Nikhil Sharma	B.A.(P)	37 %

”

5. Though, owing to shortage of attendance, the petitioners were not allowed to give their second and fourth semester examinations, they did appear in their first and third semester examinations, in which they cleared all papers. It is not, therefore, disputed that, in the case of each of the petitioners, he/she had cleared 50% of the examinations in the first year or the second year of the course, having cleared all papers in the first/third semester (as the case may be), and having cleared none of the papers in the second/fourth semester, having not been allowed to appear therein.

6. The case predicated by the petitioners in this writ petition is that, though they had not been permitted to appear in their second/fourth semester examinations, owing to shortage of attendance in the concerned semesters, they were, nevertheless, entitled to be promoted to the next semester, i.e. third/fifth semester, in the first/second year of the course, by virtue of their having cleared 50% of the papers in the first/third year.

7. This case is premised on Clause 12(1)(c) of Ordinance (IX), governing the University, which reads thus:

“(c) Promotion Rules:

A student shall be eligible for promotion from 1st year to 2nd year/III semester provided he/she has passed 50% papers of I and II semester taken together and similarly for promotion from 2nd year to 3rd year/V semester.”

8. To reiterate, the petitioners’ contention is that, as each of them had passed all the papers in the first/third semester and has, thereby, passed 50% of the papers, in the first/second year, they were entitled, *ipso facto*, to promotion to the next year, in view of Clause 12(1)(c) of Ordinance (IX).

9. The College and the University, *per contra*, seek to justify the denial, to the petitioners, of the right to be promoted to the third/fifth semester (i.e. to the second/third year) by invoking Clause 5(b) of Ordinance (IV) of the Ordinances of the University, as amended *vide* Notification dated 27th July, 2012.

10. Clause 5 of Ordinance (IV), as thus amended, may, in its entirety, be reproduced thus:

“5. (a) A student of the University having failed to pass any examination of the University will be registered as an Ex-student for re-appearing in the said examination subject to the conditions laid down under the Regulations of the University relating to Conditions of Admission to University Examinations.

(b) A student of the University who was not allowed to appear in the examinations due to shortage of attendance will be re-admitted to the class he studied last in his College/Department, within the prescribed period of registration.

(c) If a student's name is struck off the rolls of his College, he may be re-admitted to the same class at the discretion of his Principal in the same academic year or within the period of registration, if re-admission is sought in any subsequent year. No enrolment fee shall be charged in such a case and a remark in the University Register shall be deemed as equivalent to fresh enrolment.

The term "his college" means the College last attended by the Student."

11. The case being set up by the University/College, to repeal the case of the petitioners, is that, as students who had not been allowed to appear in their second/fourth semester examinations, due to shortage of attendance in the said semesters, the petitioners were liable to be re-admitted to the second/fourth semester, being the classes in which they had studied last, by operation of Clause 5(b) of Ordinance (IV) (*supra*).

12. As such, the University/College contends that there could be no question of allowing the petitioners to be admitted to the third/fifth semesters or to write the examinations of the third/fifth semesters. Rather, it is urged, by operation of Clause 5(b) of Ordinance (IV) (*supra*) the petitioners would have to be readmitted to the second/fourth semesters and would have, thereafter, to clear the examination of the said semesters before they could aspire to

promotion to the third/fifth semester.

13. This case, quite obviously, involves an interplay of Clause 12(1)(c) of Ordinance IX, on the one hand, and Clause (5)(b) of Ordinance (IV) on the other. The contention of Mr. Ratan Singh, learned counsel for the petitioners, is that, as his clients had cleared 50% of the papers in the first/second year, they were entitled, *ipso facto*, to promotion to the second/third years, irrespective of any other consideration.

14. The case, to the contrary, canvassed by the respondents is that, as the petitioners had not been allowed to appear in the second/fourth semester examination, due to shortage of attendance, they were, by operation of Clause (5)(b) of Ordinance (IV) (*supra*) liable to be readmitted to the classes in which they had studied last, i.e. the second/fourth semester, and could not be promoted to the third/fifth semester.

15. I may also note that Mr. Ratan Singh has placed reliance on *S.N.Singh v. Union of India, 2003 (69) DRJ 502 (DB)* and *Avijit Bhushan v. University of Delhi, (2007) 136 DLT 441*.

16. It is not necessary, however, for me to deal, in detail, with these judgments, as they did not involve students who had been detained in any semester on account of shortage of attendance and, consequently, Clause 5(b) of Ordinance (IV) did not come in for consideration in either of the said cases.

17. Be that as it may, para 32 of the judgment of the Division Bench in *S.N.Singh (supra)* may, usefully, be reproduced thus:

“In matters pertaining to education *no court-can permit total violation of the norms*. LLB. Degree Course is expected to produce trained legal minds, ready to take on the challenges of the 21st Century. Decline in education norms in professional law courses was noted by the Supreme Court as far back as 1989. In the judgment reported as AIR 1989 SC 1541 titled *Baldev Raj Sharma v. Bar Council of India*, it was observed that there is a substantial difference between a course of study pursued as a regular student and a course of study pursued as a private candidate. It was observed that *regular attendance for the requisite number of lectures, tutorials etc. has a purpose*. Rules framed by the Bar Council of India were upheld. *Whatever be the equities, we cannot permit a total violation of the norms. Promotion of all students who have cleared only 4 or 14 papers respectively to the third term and fifth term are thus quashed.*”

(Emphasis supplied)

18. To my mind, the issue in controversy does not admit any complexity whatsoever.

19. If the contention canvassed by Mr. Singh were to be accepted, it would amount to reading, into Clause (5)(b) of Ordinance (IV), an exception/proviso, excepting the applicability of the said Clause in cases where the student(s) had cleared her/his first/third semesters.

20. It is not possible for this Court to enter into any such pseudo-legislative exercise, which would amount, in my mind, to twisting the

Clause completely out of shape.

21. It is obvious that the intention of the framers of the Ordinance, while conceptualizing Clause (12)(1)(c) of Ordinance IX, was to cater to students who had appeared in the examinations in both semesters of the concerned year, but had failed to clear more than 50% of the papers. Such students have been extended an amnesty by being permitted, nevertheless, to be promoted to the next year.

22. The question of promotion to the next semester/year would, obviously, arise only where the student had undergone the examination of the earlier semester. A student who, by operation of Clause (5)(b) (*supra*), was liable to be re-admitted to the earlier semester, on account of her/his not having been allowed to appear in the examination on account of shortage of attendance, could obviously not aspire to admission to the next semester. A student could either be a student of the second semester or the third semester. He could not be both at one time.

23. Clearly, therefore, the College and the University are justified in contending that the petitioners, having not been allowed to appear in the second/fourth semester examinations, due to shortage of attendance in the concerned semesters, came within the regime of Clause (5)(b) (*supra*) and had, therefore, to be re-admitted to the second/fourth semester. They could aspire to promotion to the third/fifth semester only after, consequent to such re-admission, and their attending classes to the said semesters, they cleared the requisite

number of papers in the second/fourth semester. There is no justification whatsoever, in my view, to except such students entirely from the applicability of Clause (5)(b) of the Ordinance IV merely because they happened to have cleared all papers in the first/third semesters. Clause 12(1)(c) of Ordinance IX, which is the sheet-anchor of the petitioners' case, in my view, can admit of no such interpretation.

24. For the above reasons, I am of the view that there is no merit in these writ petitions, which, therefore, merit rejection.

25. I may note, here, that the petitioners were allowed to appear in the third/fifth semester examinations, pursuant to interim orders passed by this Court. While allowing them to appear in the said examination(s), it was made clear that such appearance would not create any equities in their favour, and that grant of permission to appear in the examinations would remain subject to the outcome of these writ petitions.

26. The said interim orders cannot obviously create any rights in favour of the petitioners as the writ petitions itself stand dismissed. They, accordingly, stand vacated.

27. At this stage, learned counsel request that the petitioners be permitted to join classes in the second/fourth semester, which have already commenced so that they do not suffer any further prejudice, and be also permitted to appear in the second/fourth semester

examinations consequent thereupon.

28. The concern is legitimate and deserves to be addressed.

29. The petitioners would, therefore, be entitled to join the second/fourth semester class of their respective courses.

30. The percentage of classes required to be attended by them, to entitle them to appear in the second/fourth semester examinations would be reckoned with reference to the number of classes from the date of their joining the said semesters, and would not be influenced by the fact that, till now, they have not been able to attend classes.

31. Ms. Beenashaw N. Soni submits that the petitioners could approach the University of Delhi and take admission tomorrow itself.

32. Accordingly, the petitioners are permitted to do so.

33. Ms. Beenashaw N. Soni undertakes that the fees paid by the petitioners, for the third/fifth semesters, if any, would be adjusted against the fees which would be payable by them against the fourth/fifth semester as per rules.

34. Subject to the observations in para 31 and to 32 *supra*, the writ petitions are, therefore, dismissed, albeit, however, with no order as to costs.

W.P.(C) 8782/2018

35. The petitioners in this case are somewhat differently situated, as compared to the petitioners in W.P.(C) 8779/2018, as, apart from having not been permitted to appear in the second semester, owing to shortage of attendance, they had also failed to clear all papers in the first semester, so that they could not claim that they had cleared 50% of the papers in the first year.

36. Be that as it may, these petitioners would also be entitled, by virtue of Clause (5)(b) of Ordinance (IV), to be re-admitted to the second semester, and to appear in the second semester examinations on the same terms as has been granted in the aforementioned writ petitions.

37. As the order has been dictated in open Court, Ms. Beenashaw N. Soni undertakes to inform the College of the contents thereof.

38. This writ petition also stands disposed of in the above terms.

C. HARI SHANKAR, J

FEBRUARY 19, 2019

dsn