

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 18641 of 2015 (E)

PETITIONER(S) :

**V.C.GIRIJA,
VALIYAKKIL HOUSE, P.O.CHITTATTUKARA,
THRISSUR-680 511, KERALA.**

BY SMT.V.C. GIRIJA (PARTY IN PERSON)

RESPONDENT(S) :

- 1. THE DIRECTOR, SCHOOL OF LEGAL STUDIES,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**
- 2. VICE CHANCELLOR,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**
- 3. THE CONTROLLER OF EXAMINATIONS,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**
- 4. ADV.FATHIMA,
GUEST FACULTY, SCHOOL OF LEGAL STUDIES,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**
- 5. SATHYASEELAN, SCHOOL OF LEGAL STUDIES
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**
- 6. NIBU ANDREWS, 5TH SEMESTER, 3 YEAR LLB EVENING COURSE,
SCHOOL OF LEGAL STUDIES,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**
- 7. SABU PHILIP, 5TH SEMESTER, 3 YEAR LLB EVENING COURSE,
SCHOOL OF LEGAL STUDIES,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**

WP(C).No. 18641 of 2015 (E)

**8. MUHAMMED, 5TH SEMESTER, 3 YEAR LLB EVENING COURSE,
SCHOOL OF LEGAL STUDIES,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY P.O., PIN- 682 022, COCHIN.**

**9. GOVERNMENT OF KERALA,
REPRESENTED BY SECRETARY, EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHURAM-1.**

**R1 TO R3 BY ADV. SRI.MILLU DANDAPANI, S.C
R9 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-08-2015, THE COURT ON 27-10-2015 DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXHIBIT P1: APPLICATION FOR CONDONATION OF SHORTAGE OF ATTENDANCE WHICH MENTION R1'S PROCEEDING "NOT RECOMMENDED" DATED 03.06.2015.**
- EXHIBIT P2: CHALAN RECEIPT FOR LEAVE CONDONATION DATED 05.06.2015.**
- EXHIBIT P3: MEDICAL CERTIFICATE DATED 04.06.2015.**
- EXHIBIT P4: REQUEST FORWARDED TO R1 TO PERMIT THE PETITIONER TO WRITE THE REMAINING EXAMS DATED 08.06.2015.**
- EXHIBIT P5: CERTIFIED COPY OF STAY ORDER IN CMA 142/2011 DATED 12.06.2013.**
- EXHIBIT P6: CERTIFIED COPY OF STAY ORDER IN CMA 145/2013 DATED 15.07.2014.**
- EXHIBIT P7: CERTIFIED COPY OF STAY ORDER IN TOP 405/2013 DATED 21.06.2013.**
- EXHIBIT P8: CERTIFIED COPY OF ORDER IN TOP 644/2013 DATED 27.02.2015.**
- EXHIBIT P9: A COPY OF PUBLIC INTERNATIONAL LAW QUESTION PAPER-1.**
- EXHIBIT P10: A COPY OF THE PUBLIC INTERNATIONAL LAW QUESTION PAPER-2.**
- EXHIBIT P11: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WRIT PETITION (C) 28809 OF 2012 DATED 23.05.2013.**

RESPONDENT(S)' EXHIBITS :

- EXHIBIT R1(A): TRUE COPY OF THE RELEVANT EXTRACT OF THE REGULATION CLAUSE (9).**
- EXHIBIT R1(B): TRUE COPY OF THE 5TH SEMESTER ATTENDANCE CERTIFICATE FOR THE THREE YEAR LLB COURSE INDICATING THE PERCENTAGE OF ATTENDANCE IN EACH SUBJECTS OBTAINED BY EACH STUDENT.**
- EXHIBIT R1(C): TRUE COPY OF THE APPLICATION DATED 08.06.2015 PREFERRED BY THE PETITIONER.**

//TRUE COPY//

P.S.TO JUDGE.

A.V.RAMAKRISHNA PILLAI, J

WPC No.18641 of 2015

Dated this the 27th day of October, 2015

JUDGMENT

Aggrieved by the denial of hall ticket to the petitioner to sit in the 5th semester LL.B. examination conducted during June 2015 by the respondent University, the petitioner has come up before this Court.

2. The petitioner, at the time of filing of the writ petition, was undergoing the 5th semester of the three year LL.B. evening batch of SLS, CUSAT Kochi. She alleges that when she had submitted application for the 5th semester of three year LL.B. Examination scheduled to be held in June 2015 and on 4.6.2015, she was informed from the office of the respondent University that due to attendance shortage she has to apply for leave condonation. According to the petitioner, she was regularly attending the classes from January to May 19th without any fail. According to the petitioner, she submitted Ext.P1 application for condonation of shortage of attendance which was forwarded to the first respondent. She alleges that the first respondent turned

down the request for condonation. The petitioner further alleges that she had requested the first respondent to allow her to write the examination as she was regularly attending the classes and she was informed of the matter only on 4.6.2015 from the office and had paid a sum of ₹2100/- towards fee for condonation of leave as directed. She again forwarded a request to permit her to write the examination which also was rejected by the respondent.

3. In the counter affidavit filed by the first respondent, it was contended as follows:

The petitioner is a student of 5th semester, LLB (evening) programme in the first respondent school of Legal Studies. The petitioner was having shortage of attendance in Labour Law, Public International Law and Property Law.

According to the University Rules, 80% of attendance is compulsory for writing the external examinations. A shortage of 5% of attendance could be condoned by the Director and another 5% of shortage could be condoned by the Vice Chancellor. The petitioner is having more than 10% of attendance shortage for the paper 'Labour Law'. The

actual percentage of attendance she got in the three subjects are mentioned below:

a)	Labour Law	-	68%
b)	Public International law	-	73%
c)	Property Law	-	75%

It is contended that the petitioner attended 5th semester class from 5.1.2015 to 20.5.2015. There were altogether four papers for external examinations as per the Regulations. In such papers, internal marks are assigned on the basis of specific criteria. The petitioner has not complied with the requirement in paper 'Public International Law' where she appeared for only one internal examination out of two tests generally administered. She absented herself from the presentation of assignment which is another component for internal assessment. Thus, she secured only 15 marks out of 50 for the paper and secured only 73% attendance. In regard to Property Law, the petitioner has only 75% of attendance and got only 21 marks out of 50. She did not turn up for the presentation of assignment as she took leave on that date. Similarly with regard to paper 'Labour Law-I' handled by Mrs.Fathima Ruby, she secured only 68% of

attendance and got only 17 marks out of 50 in the internal examination. Hence, going by the Regulation she is not entitled for condonation. As per the regulation under the head 'examination', clause (9) reads as such:

“There shall be a University examination at the end of each semester. Candidates having not less than 80% attendance in each paper shall alone be admitted to the examination. 10% of the required percentage of attendance in each paper may be condoned by the Vice Chancellor on medical grounds”.

Thus, from the above Regulations, it is evident and clear that the petitioner has not complied with the same. A true copy of the relevant extract of Regulation clause (9) is produced and marked as Ext.R1(a).

It is contended that the 5th semester attendance certificate for the three year LLB course indicating the percentage of attendance in each subjects obtained by each student is produced and marked as Ext.R1(b). In Ext.R1(b) the petitioner is Roll No.8. The contention of the petitioner that the cause of other students who had applied for condonation was considered whereas the petitioner's application was rejected and she claims the said action to be discriminatory and arbitrary is erroneous. The other

students, who went for condonation, was better in their academic performance in internal tests and as such, they stand apart in no way comparable with the performance of the petitioner.

It is contended that Prof.A.Sathyaseelan, who was working in the School of Legal Studies on contract basis, after his retirement from the Government Law College service as Principal, was engaged to handle classes for LLB. (evening) from 12.12.2012 to 29.11.2013. For the first batch of LLB (evening) students which commenced on 12.12.2012 Prof.A.Sathyaseelan was assigned to handle classes in Law of Crimes. After this, he has not taken any classes for this batch and for the last one year, he is not working in School of Legal Studies, since his contract appointment period was over. Further, there was no allegation levelled by any student against the teacher and no cause was there to make any complaint in any manner. It is for the first time that some allegation is being made in this writ petition against Prof.Sathyaseelan. This is only an afterthought and a creation of the petitioner alone.

It is contended that the petitioner has not spared the 4th respondent Adv.Fathima Ruby. She is a teacher working as guest faculty in the first respondent school. There is no material or facts to support any such allegations rendered by the petitioner which can only be considered to be a creation of her own. The first respondent School of Legal Studies is not aware of any such incidents till today.

It is pertinent to point out that on 8.6.2015, the petitioner preferred an application to the first respondent admitting her shortage of attendance and requesting for re-admission to the vth semester and the first respondent has ordered to place the request before the Department Council. A copy of the application dated 8.6.2015 preferred by the petitioner is produced and marked as Ext.R1(c). The decision in this regard is pending as the Department Council has not yet convened because of the annual holidays in the University.

4. Arguments have been heard.

5. The petitioner has made certain wild allegations against faculty which has been stoutly denied by the

respondent in the counter affidavit. The petitioner could not substantiate the alleged bias or *mala fides*.

6. The definite contention of the petitioner is that she had attended all the classes and was having sufficient attendance entitling her to be admitted to the 5th semester examination.

7. The definite stand taken by the respondent is that according to the University Rules, 80% of attendance is compulsory for writing the external examinations though a shortage of 5% attendance could be condoned by the Director and another 5% of shortage could be condoned by the Vice Chancellor.

8. Here, the petitioner is having a shortage of more than 10% for the paper 'Labour work'. Even if the power of condonation conferred on the Director and the Vice Chancellor is exercised in favour of the petitioner, she would not be able to write the examination as the shortage of attendance is below than the tolerance level.

9. It is settled law that regulations cannot be diluted in order to give any benefit to any particular candidate. The

physical presence of the candidate in the working periods as mandated by the regulation is a condition precedent for allowing any candidate to sit for the examination. Either the Director or the Vice Chancellor cannot recommend the condonation of the shortage of attendance if the candidate does not have the physical presence during the required working periods. For condoning the shortage of attendance, the Director as well as the Vice Chancellor has to follow certain norms as specified in the regulations. The objection behind not condoning the absence of students with reference to the physical presence below a particular level is to ensure that the particular student who is appearing for the examination has gained learning by attending those classes. If there is shortage of attendance, it may not be open to the candidate to write the examination. As it is a mandatory requirement, under circumstances, when it is admitted that the petitioner did not have the requisite attendance, the respondent cannot be found fault with for not permitting the petitioner to sit for the 5th semester examination. The only remedy available to the petitioner is

to approach the respondent University seeking permission to continue the course by repeating the system, if it is permissible as per the rules and regulations.

With the aforesaid observation, this writ petition is dismissed.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

css/

true copy

P.S.TO JUDGE