

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 18TH DAY OF MARCH 2015/27TH PHALGUNA, 1936

WP(C). No. 23215 of 2013 (B)

PETITIONER(S):

**RAHUL VINCENT RAJAN, AGED 22 YEARS,
SON OF SMT.LATHA VINCENT, RESIDING AT NEDIYAZHIKAM,
ULICHIRA, KOLLAM-691304.**

BY ADV.SRI.LEO GEORGE

RESPONDENT(S):

- 1. UNIVERSITY OF KERALA,
REPRESENTED BY ITS REGISTERAR, UNIVERSITY OF KERALA,
THIRUVANANTHAPURAM-695001.**
- 2. THE VICE CHANCELLOR,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695001.**
- 3. THE REGISTRAR,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695001.**
- 4. THE PRINCIPAL,
BISHOP JEROME INSTITUTE, KOLLAM-691001.**
- 5. CONTROLLER OF EXAMINATIONS,
UNIVERSITY OF KERALA, THIRUVANANTHAPURAM-695001.**

R4 BY ADVS. SRI.KURIAN GEORGE KANNANTHANAM (SR.)

SRI.TONY GEORGE KANNANTHANAM

R1,R2,R3,R5 BY ADV. SRI.GEORGE POONTHOTTAM, SC, KERALA UTY.

R1-R3 BY ADV. SRI.BECHU KURIAN THOMAS, SC, UNIVERSITY OF KERALA

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT-P1: TRUE COPY OF THE REGULATIONS ISSUED BY THE UNIVERSITY OF KERALA IN THIS BEHALF OBTAINED BY THE PETITIONER FROM THE WEBSITE OF THE UNIVERSITY OF KERALA APPLICABLE TO THE B TECH COURSE.**
- EXHIBIT-P2: TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER BEFORE THE FOURTH RESPONDENT DATED 6/11/2012.**
- EXHIBIT-P3: STATEMENT SHOWING THE DETAILS OF THE ABSENCE OF THE PETITIONER IN HIS FIFTH SEMESTER OF HIS B TECH COURSE FORWARDED ALONG WITH EXHIBIT-P2 APPLICATION.**
- EXHIBIT-P4: MEDICAL CERTIFICATE ISSUED BY DR.M.B.SHEYA IN RESPECT OF THE PETITIONER DATED 4/8/2012.**
- EXHIBIT-P5: MEDICAL CERTIFICATE ISSUED BY DR.JAYA VIJAYAN, HOLY CROSS HOSPITAL, KOTTIYAM IN RESPECT OF THE PETITIONER DATED 10/9/2012.**
- EXHIBIT-P6: MEDICAL CERTIFICATE ISSUED BY DR.M.B.SHEYA, IN RESPECT OF THE PETITIONER DATED NIL.**
- EXHIBIT-P7: TRUE COPY OF THE ADMIT CARD ISSUED BY THE UNIVERSITY OF KERALA TO THE PETITIONER DATED NIL.**
- EXHIBIT-P8: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE UNIVERSITY DATED 5/4/2013.**
- EXHIBIT-P9: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE UNIVERSITY DATED 25/5/2013.**
- EXHIBIT-P10: TRUE COPY OF THE INTERIM ORDER IN I.A.NO.8965 OF 2013 IN WP(C) NO.14499 OF 2013 DATED 12/7/2013.**
- EXHIBIT-P11: TRUE COPY OF THE INTERIM ORDER IN I.A.NO.8965 OF 2013 IN WP(C) NO.14499 OF 2013 DATED 12/7/2013.**
- EXHIBIT-P12: TRUE COPY OF THE COMMUNICATION BEARING NO.E.F.11.4/4264/2012-13 ISSUED BY THE CONTROLLER OF EXAMINATIONS ADDRESSED TO THE FOURTH RESPONDENT DATED 23/8/2013.**
- EXHIBIT-P13: TRUE COPY OF THE CIRCULAR ISSUED BY THE CONTROLLER OF EXAMINATIONS TO THE HEADS OF INSTITUTIONS DATED 23/8/2013.**

RESPONDENT(S)' EXHIBITS

EXT.R3(A):- TRUE COPY OF THE MINUTES OF THE MEETING OF THE SYNDICATE HELD ON 10.10.2013.

EXT.R3(B):- TRUE COPY OF THE CIRCULAR NO.E.F.11/4/4264/2013 DATED 22.10.2013.

KRJ

/True Copy/

P.A to Judge

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.23215 of 2013

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Dated this the 18th day of March, 2015

JUDGMENT

Exts.P12 and P13 are under challenge.

2. The petitioner is undergoing 7th semester of B Tech Degree course in Bishop Jerome Institute, Kollam affiliated to the Kerala University. Earlier in the 5th semester, he met with a road traffic accident on 1.9.2012 and was bed ridden for one week thereafter. Further due to certain ailments also, he could not attend the classes. Therefore, he could not secure 75% attendance to become eligible to undertake the fifth semester examination.

3. Petitioner had a shortage to 9 days attendance. As per Ext.P1 regulations of the university, it is open to the vice chancellor to grant condonation of shortage of attendance on the recommendation of the head of the institution provided the attendance of the student is not less than 60% of the total working

days and the candidate concerned has not secured condonation on two occasions.

4. It is alleged that in the 5th semester course of the petitioner, there were altogether 72 working days and the petitioner has the attendance of more than 60% of the total working days. In this context, the petitioner had submitted his leave applications along with medical certificates whenever he had remained absent in his fifth semester and the leave applications have been duly sanctioned and approved by the Principal of the college also.

5. The petitioner submitted Ext.P2 application for condonation of shortage of attendance to the university through the Principal of the college on 6.11.2012, who in turn, forwarded the same to the university after endorsing that the case of the petitioner that he was absent on account of valid health reasons and applications for leave were made by the petitioner and the same had been sanctioned and granted at the relevant time and also recommending for condonation

of shortage of attendance.

6. The petitioner further alleges that during the pendency of Ext.P2, he was permitted to take the 5th semester examination and to attend the classes for 6th semester B.Tech course. However, when the examination of the 6th semester commenced, the university did not permit him to take the examination. At that juncture, he filed W.P(C) No.14499 of 2013 before this Court seeking appropriate direction to the second respondent to take a decision on Ext.P2 application within a time limit to be prescribed after giving the petitioner a reasonable opportunity of being heard. In the above writ petition, this Court granted an interim order permitting the petitioner to take the 6th semester examination of B.Tech course pending final decision of the university on Ext.P2. Pursuant to the same, the petitioner took the 6th semester examination and thereafter he was attending the seventh semester classes on the basis of the interim order of this Court in the said writ petition.

7. In the meanwhile on 5.9.2013, a copy of Ext.P12 communication was served on the petitioner, rejecting Ext.p2 application for shortage of attendance stating that the shortage of attendance is beyond the condonable limits. In this context, it is alleged that Ext.P12 communication is issued by the controller of Examinations based on a direction issued by the Vice Chancellor of the university fixing a ceiling limit of 8 days as the maximum condonable limit of attendance.

8. It is further stated that the second respondent has no power to issue any directions contrary to Ext.P1 regulations fixing a shorter period as a ceiling limit beyond which condonation of shortage of attendance cannot be granted. Further directions, if any, issued by the second respondent is only during 2013 and the same is in relation to condonation of shortage of attendance for the academic year 2011-12. thus, even assuming (not admitting) that the second respondent is competent to issue any such direction, the same cannot be given

retrospective effect; it is alleged. Further Ext.P12 communication has been issued to the petitioner without affording him a reasonable opportunity of being heard. It is with this background, the petitioner has come up before this Court.

8. In the counter affidavit filed by respondents 1 to 3 and 5 it was contended as follows:

In terms of Ext.P1 regulations, only those students who have secured 75% attendance or more in a particular semester are entitled to appear for the university examinations conducted at the fag end of the semester and the petitioner not having secured the requisite attendance for the 5th semester is not entitled to appear for the 5th semester examinations.

It was further stated that in terms of Ext.P1 governing the condonation of shortage in attendance, the Vice Chancellor is empowered to condone the shortage in attendance exercising discretionary powers vested with him. The Vice Chancellor on a

consideration of such application before him observed that the reasons for absence quoted in many cases were rather flimsy ranging from stomach ache to migraine. It was further observed that there was an rampant tendency on the part of the students to use medical certificates as a pretext which required to be discouraged. Therefore, the Vice Chancellor directed to set 1/86 days as ceiling for granting condonation of shortage in attendance for the semester and annual scheme respectively. This was communicated to all the heads of the institution vide Ext.P13 circular. Under such circumstances, the applications preferred by the petitioner and similarly placed students were rejected.

It was stated that the petitioner was permitted to appear in the 6th semester examination provisionally on the basis of Ext.P10 order. The results of the examinations in respect of the petitioner are yet to be published. As can be seen from Ext.P1 regulations, it is open to the Vice Chancellor to condone shortage in attendance in

accordance with certain norms on the recommendation of the head of the institution. Several complaints were received from students and college authorities as against the revised norms. The Vice Chancellor directed that the same be placed before the Syndicate in its meeting held on 10.10.2013 which resolved to keep the revised norms in abeyance. True copy of the minutes of the meeting of the syndicate held on 10.10.2013 is produced as Ext.R(3)(a). The same was communicated to all heads of institutions vide circular dated 22.10.2013. True copy of the same is produced as Ext.R(3)(b). As can be seen therefrom, the position prevailing immediately prior to issuance of Ext.P13 circular has been reinstated.

It was pointed out that the shortage of 9 days of attendance in respect of the petitioner in the 5th semester is within the condonable limits going by Ext.P1 regulation. The application for condonation (duly recommended and forwarded by the head of institution) of shortage if any submitted by the petitioner would be

considered on the basis of Ext.P1 regulations.

9. Arguments have been heard.

10. The petitioner had shortage of 9 days of attendance in his 5th semester B.Tech Course. Ext.P2 application was submitted by the petitioner for condonation of shortage of attendance which was duly recommended by the Principal and forwarded to the university for orders on 7.11.2012. Ext.P1 regulation was in vogue at the time of submission of Ext.P2 application which *inter alia* provided that a student who has a minimum of 60% of attendance is eligible for condonation of shortage of attendance in a particular semester.

11. The petitioner has got 60% attendance in his 5th semester. According to him, he has no shortage of attendance on any previous occasion and that his application for shortage of attendance has been recommended by the Principal. Though Ext.P2 was submitted on 6.11.2012, orders on Ext.P2 was on 23.8.2013. In the meanwhile, the petitioner had taken the examination for the 5th semester and attended

the classes for 6th semester, and thereafter took the examination for the 6th semester and was taking classes for the 7th semester. If Ext.P12 is allowed to stand, the petitioner would be compelled to repeat his fifth, sixth and seventh semesters which would adversely affect his future. The 2nd respondent has no power to issue any direction as mentioned in Ext.P13 circular fixing a shorter period as eligibility for preferring an application for condonation of shortage of attendance in a particular semester contrary to the eligibility criteria fixed in Ext.P1 regulation. According to the petitioner, the 5th respondent has no power to issue Ext.P12 communication.

12. On a consideration of the entire materials placed on record, this Court is of the view that the petitioner is entitled to get the relief prayed for.

In the result, the writ petition is disposed of quashing Exts.P12 & P13 are quashed. It is hereby declared that the petitioner is eligible for condonation of shortage of attendance as per Ext.P1

regulation and that he is entitled to get the condonation of shortage of attendance. As the condonation application was submitted by the petitioner as early as on 6.11.2012, the respondent concerned shall condone the shortage of attendance of the petitioner during 5th semester and issue formal orders within a period of one month from the date of receipt of a copy of this judgment.

If the petitioner has completed the course and taken the entire semester and has come out successful, on a proper application submitted by him, the petitioner's degree certificate also shall be issued without any further delay.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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