

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

LPA No. 1528 of 2014. [O&M]
Date of Decision: 15th January, 2015.

Shayana Kanotra Appellant through
Mr. D.S.Patwalia, Sr. Advocate with
Mr. Sehaj Bir Singh, Advocate.

Versus

Guru Nanak Dev University & Anr.
Respondents through
Mr. Amrit Paul, Advocate.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

This Letters Patent Appeal is directed against the order dated 03rd September, 2014 passed by the learned Single Judge whereby the appellant's writ petition seeking a writ of *mandamus* to direct the respondent-University to condone the deficiency in lectures in the second semester of Masters in Business Administration on account of her having suffered a medical exigency, has been dismissed.

[2]. The learned Single Judge has viewed that the power to condone the deficiency in lectures vested under the University Calendar in the Head of the Department is upto 10% subject-wise and thereafter the Vice-Chancellor can condone another 5% lectures in a case of illness, accident or any other unavoidable reason, i.e., total 15% only, whereas, the appellant has a shortage of more than 15% in the second semester in each subject, hence she is not

entitled to seek condonation.

[3]. Before adverting to the point in issue, the facts may be noticed briefly.

[4]. The appellant got admission in the Master of Business Administration in the University Business School, Guru Nanak Dev University, Amritsar in April, 2013. She cleared her first Semester Examination held in December, 2013/January, 2014 and was promoted to the second semester.

[5]. While she was on her way to the College on 25th February, 2014, the appellant met with a serious road accident in which she suffered a fracture in her femur as well as in her metacarpal, [one bone in her hand]. She was admitted to Guru Ram Dass Government Hospital at Amritsar and then was shifted to Daya Nand Medical College and Hospital, Ludhiana on the same day. She was operated on 26th February, 2014 and a rod had to be inserted in her thigh besides fixation of wire in her fractured hand.

[6]. The appellant was discharged from the hospital on 01st April, 2014 and, thus, could not attend classes till then.

[7]. Resultantly, there was deficiency of lectures in all the six subjects and even after granting the maximum condonation of 15% [10+5], the appellant's attendance fell short between 6 to 10 lectures in different subjects. Consequently, she was not issued Roll Number to appear in the 2nd semester examination.

[8]. The appellant approached this Court through a writ petition in which the following interim order was passed by the learned Single Judge on 20th April, 2014:-

“In the meantime, the petitioner shall be issued Roll No. and permitted to sit in 2nd Semester examinations of MBA. It is made clear that the said order is only provisional and the petitioner shall not be entitled to claim any equity on the basis of the interim order passed”.

[9]. The writ petition has been finally dismissed by the learned Single Judge for the reasons which have been briefly noticed at the out-set.

[10]. It is pertinent to mention here that during the pendency of the writ petition and pursuant to the interim order passed by the learned Single Judge, the appellant was permitted to appear in the second semester examination. But before the result could be declared, the learned Single Judge dismissed her writ petition.

[11]. When this appeal came up for hearing on 12th September, 2014, the University was directed as an interim measure to allow the appellant to pursue her third semester course. Thereafter, the appeal was heard on 07th October, 2014 and while admitting the same for 27th January, 2015, the University was further directed to declare the result of 2nd semester and to allow the appellant to appear in the third semester examination. The operation of the later interim order has been stayed by the Hon'ble Supreme Court vide order dated 12th January, 2015. Further, this Court has been impressed upon to decide the main appeal itself.

[12]. There is no denial to the fact that with or without the aid of interim orders, the appellant has completed her 1st, 2nd and 3rd semesters. It is also an admitted fact that there was no shortage of lectures in the 1st or 3rd semesters.

[13]. It is equally true that as per Clause 1.1 of the University Calendar, the Head of the Department may condone upto 10% subject-wise shortage of lectures while Vice-Chancellor can additionally condone 5% such shortage. Should the afore-said clause be given a literal interpretation, the shortage of lectures suffered by the appellant is un-condonable, for the shortage is slightly more than that.

[14]. The short question that weighed in the mind of this Court while issuing the interim directions or at present is whether, in the back-drop of the unfortunate fact situation where the appellant suffered the shortage in lectures for the reasons beyond her control, should the writ Court not rescue her from irretrievable loss of an academic year? The other facet of the question is as to whether exceptional circumstances require exceptional measures to undo the extreme hardship, failing which the appellant will have to revert back to the second semester?

[15]. Having given our thoughtful consideration, it appears to us to be too iniquitous and unfair to revert the appellant back to the second semester at this stage when she is otherwise eligible for admission to the Fourth and the last semester. The fact of the matter is that despite severe injuries, the appellant worked hard and passed her 2nd Semester examination. Not only this, the appellant attended more than the requisite lectures in the third semester and has qualified that semester as well. It emerges that but for her ill-luck that caused the accident, rendering her immobile, the appellant was a conscientious student who has been pursuing her course diligently.

Her spirit, thus, deserves applaud.

[16]. The University Calendar empowering the Head of Department or the Vice-Chancellor is couched in affirmative language and it need not be construed to hold that shortage in lectures beyond 15% can not be condoned in any circumstances. The aforesaid provision nonetheless is not an embargo on a writ Court for invoking its discretionary jurisdiction and do complete justice in a case where the authorities have been helpless for want of an untraceable explicit power in the Rules. In the absence of any head-on-collision between the University Calendar and Equitable considerations, it appears justified to invoke the later and bail out the appellant in such a manner that the spirit and object of the former also remains intact. We attempt to do so.

[17]. For the reasons afore-stated, the appeal is allowed; the order passed by the learned Single Judge is set aside and the writ petition is allowed to the extent that there shall be a direction to the University to admit the appellant and allow her to pursue the fourth semester of the Course, subject to condition that the Head of Department may identify the subjects in which the appellant could not attend her second semester classes. She shall be, while pursuing her fourth semester, asked to attend those classes to the extent it is feasible as per the time-table and till she completes the deficient lectures. The limited purpose of attending the 2nd semester classes would be to make good the deficiency in the academic knowledge of the subject-course which is of a professional nature. It is directed that the appellant should be issued/awarded MBA degree only after the

certification by the Head of Department that she has attended the required number of lectures in 2nd semester also.

[18]. At this stage, Mr. Amrit Paul, learned counsel for the University suggests that the appellant be asked to indicate the subjects and classes which she would prefer to attend as per the running time-table of the fourth and second semesters so that she may attend the second semester classes simultaneously. The afore-said suggestion of the learned counsel would indeed facilitate the appellant to comply with the condition imposed by us in the previous para.

[19]. Since the order has been passed in the light of peculiar facts and circumstances of the case in hand, it shall not be cited as a precedent.

[20]. Disposed of. Dasti.

(SURYA KANT)
JUDGE

January 15, 2015.
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(RAJ MOHAN SINGH)
JUDGE