

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 26.05.2015

+ **W.P.(C) 5514/2015 & CM No. 9911/2015**

KAJAL JAIN

..... Petitioner

versus

**BANARSIDAS CHANDIWALA INSTITUTE
OF PROFESSIONAL STUDIES & ORS**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Sana Ansari with Mr Sitab Ali Chaudhary.

For the Respondents : Mr Vaibhav Kalra for R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has been denied an admit card/hall ticket for taking the second semester examinations of BBA Course, which is scheduled to commence from 27.05.2015, on the ground of shortfall in attendance. This has led the petitioner to approach this Court by way of the present petition.

2. Briefly stated, the relevant facts are that the petitioner qualified the entrance examination and based on the order of merit, was admitted in the course of BBA, 1st Year in the academic year 2014-15 with respondent no.1 Institution (hereafter referred to as 'BCIPS').

3. It is stated that the petitioner regularly attended the classes in first semester and appeared in the end semester examination in respect of all subjects. The petitioner cleared all subjects successfully except the subject of "Information & Technology" as according to her she could not reach the

examination centre in time. The petitioner was, thereafter, promoted to the second semester which commenced in January, 2015. It is stated that the petitioner's attendance for this semester was short for medical reasons. The petitioner could not attend the classes from 13.02.2015 to 14.03.2015 as a stone was detected in her kidney and she had to undergo treatment for the same. The petitioner resumed attending classes from 15.03.2015 but again fell ill and could not attend classes from 08.04.2015 to 27.04.2015.

4. The petitioner states that apart from her absence on account of medical reasons, she was diligent in attending her classes. The petitioner contends that extra classes were held for students who were short of attendance, in order to enable the said students to make up for the shortfall. However, this opportunity was not provided to the petitioner as the petitioner was not informed of the shortage of attendance or holding of any extra classes, at the material time. The petitioner further submits that there are several students who are placed in a position similar to that of the petitioner, that is, are short of attendance; and yet, they have been permitted to take the end semester examination.

5. The learned counsel for Guru Gobind Singh Indraprastha University (hereafter 'University') who appears on advance notice submitted that in view of the Ordinance XI of the University, the petitioner was not eligible to appear for the end term examination. He further referred to the decisions of a Coordinate Bench of this Court in **Choudhary Ali Zia Kabir v. Guru Gobind Singh Indraprastha University & Anr.**: W.P.(C) 3129/2010, decided on 18.08.2010 and **Gagandeep Kaur v. Govt. of NCT of Delhi & Ors.**: W.P.(C) 2790/2010, decided on 20.10.2010 in support of his

contention that the shortage of attendance could not be condoned.

6. I have heard the learned counsel for the parties.

7. Paragraph 9 of Ordinance XI of the University relates to the requirement of attendance. Paragraph 9 of the said Ordinance is relevant and is quoted below:-

“9. Attendance

9.1 For programmes other than Bachelor of Education (B.Ed.) and Master of Education (M.Ed.):

A student shall be required to have a minimum attendance of 75% in the aggregate of all the courses taken together in a semester, provided that the Dean of the School in case of University Schools and Principal/Director in case of University maintained/affiliated institutes may condone attendance shortage upto 5% for individual student for reasons to be recorded. However, under no condition, a student who has an aggregate attendance of less than 70% in a semester shall be allowed to appear in the semester term end examination.

For B.Ed. and M.Ed. programmes:

- The minimum attendance of **B.Ed.** students shall be 80% for all Course work and Practicum, and 90% for school internship.
- The minimum attendance of **M.Ed.** students shall be 80% for Theory Courses and Practicum, and 90% for field attachment.

9.2 Student who has been detailed due to shortage of attendance shall not be allowed to be promoted to the next

semester and he/she will be required to take re-admission and repeat all courses of the said semester with the next batch of students. The University enrolment number of such student shall however remain unchanged and he or she shall be required to complete the programme in a maximum permissible period of n+4 semesters as mentioned in clause 4.3.

Dean of the School/Director/Principal shall announce the names of all such students who are not eligible to appear in the semester term end examination, at least 5 calendar days before the start of the semester term end examination and simultaneously intimate the same to be Controller of Examinations.

9.3 In case any detailed student appears in the semester/supplementary term end examination, his / her result shall be treated as null and void.”

8. It is apparent from the above that minimum attendance required to appear in the end semester examination is 75% in aggregate of all courses taken together. Shortage of attendance to the extent of 5% may be condoned, for reasons to be recorded in writing, however, further shortage cannot be condoned. Therefore, the students having attendance below 70% in aggregate cannot, in any eventuality, be permitted to appear in the end semester examination. Concededly, the petitioner's attendance falls short of the minimum required under paragraph 9.1 of Ordinance XI of the University.

9. This Court has in several cases, considered the predicament of bonafide students who had been denied an opportunity to appear in the end

semester examination on account of serious medical reasons or other compelling circumstances. It is now well established that the directions for condoning shortage of attendance cannot be granted. In **Kiran Kumar & Ors. v. Delhi University & Ors.**: W.P.(C) 9143/2007, decided on **16.05.2008**, a Division Bench of this Court had emphasized the importance of attendance and had observed as under:-

“The qualify of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.”

10. A student who has not attended the necessary classes cannot be considered to have completed his course. Attending lectures is the substratum of undertaking the course and in absence of the necessary attendance, a student cannot be considered to have qualified the course. The rules of attendance are for good reason and even though one may be sympathetic with a student who has been unable to attend the classes for medical or other compelling reasons, no directions can be issued to the University to act contrary to its rules/regulations. A Coordinate Bench of this Court in ***Gagandeep Kaur*** (*supra*) had referred to various decisions and had reiterated the settled position that shortage of attendance cannot be waived. The Court had observed that insofar as attendance is concerned, there could be no difference between voluntary or involuntary absence and had held as under:-

“22. The last question which arises is whether serious medical ailments should be given a special status. I have given my serious thought to the matter. However the Courts having held attendance to be compulsory and necessary to complete the process of education, I fail to see the difference between voluntary and involuntary absence. If a student has not completed the education for which he/she has joined the course, then he/she cannot be given the certificate of completion of the said education even if prevented by reasons beyond control from completing the education. A Division Bench of this Court in *S.N. Singh v. UOI* 106 (2003) DLT 329 deprecated the University for granting relaxation on medical grounds and directed that no relaxation beyond that permitted can be given.”

11. The learned counsel for the petitioner has emphasized that the petitioner had not been afforded an opportunity to make up the shortfall of attendance and, therefore, the petitioner must be permitted to sit for the end term examination.

12. In my view, this contention is also devoid of any merit; first and foremost for the reason that if the petitioner has not attended the lectures for any reason, the petitioner cannot be considered to have completed his course for the semester and, obviously, cannot proceed ahead to be evaluated for qualifying the semester. Secondly, it is difficult to accept that the petitioner was denied the extra classes. If extra classes were being held, the petitioner could have insisted, at the material time, for attending the same. The petitioner cannot fault the college for not making her aware of the extra classes. It is expected that the student would be aware of the classes being held in the college. Thus, if the petitioner had made the

necessary efforts at the material time to find means of making up her shortage of attendance, I have no doubt that she could have discovered that extra classes were being held; this is of course assuming that they were held as claimed.

13. The contention that other similar students have been permitted to sit for the examination also cannot be a ground to grant any relief to the petitioner. It is well settled that Article 14 of the Constitution of India does not contemplate negative equality. If an act has been done which is contrary to rules and regulations, directions to continue the wrong cannot be issued. Thus, even assuming that the petitioner's contention is correct and some students who were short of attendance are being permitted to sit in the examination, a direction to permit a student to sit for examination contrary to the relevant statute cannot be issued by this Court. A mandamus to act contrary to law can never be granted. The petitioner at best can seek directions that examination admit cards of those students, be cancelled. However, this order also cannot be granted in this petition as those students are not the parties to the present petition.

14. In the circumstances, the action of the respondents in denying a admit card/hall ticket cannot be faulted. Accordingly, the petition and application are dismissed.

VIBHU BAKHRU, J

MAY 26, 2015
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