

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.447 of 2016
IN
Civil Writ Jurisdiction Case No. 2778 of 2016**

=====

Sabiha Naaz, Daughter of Md. Arshad Hassan, resident of Samanpura Raja Bazar,
P.S.- Shashtri Nagar, District- Patna

.... Appellant

Versus

1. The Patna University through its Vice Chancellor
2. The Registrar, Patna University, Patna
3. The Examination Controller, Patna University, Patna
4. The Principal, Patna Women's College, Patna

.... Respondents

=====

Appearance :

For the Appellant : Mr. Prashant Sinha, Advocate
For the Respondent Nos. 1 to 3 : Mr. Vivekanand Pd. Singh, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 20-04-2016

The writ petitioner-appellant, being the regular student of Bachelor of Business Administration course of Patna Women's College, when approached the College, on commencement of process of filling up of application forms for 2nd year Bachelor or Business Administration examination for the academic session 2015-16, she was orally informed that since her attendance was less than 60%, she would not be allowed to fill-up her form for the examination aforementioned.

2. Aggrieved by not being allowed to fill-up the form, the appellant came to this Court with a writ petition, made under Article 226 of the Constitution of India, which gave

rise to C.W.J.C. No. 2778 of 2016, seeking, *inter alia*, a direction to the respondent No. 4 to allow the writ petitioner-appellant to fill-up her form for 2nd year Bachelor of Business Administration for the academic session 2015-16.

3. Before we advert to the submissions advanced, on behalf of the appellant, for assailing the order, under appeal, relevant facts need to be taken note of.

4. According to the writ petitioner-appellant, she is a regular student of three-years Bachelor of Business Administration course at Patna Women's College. During the 1st year, i.e., academic year 2014-15, as her attendance was 86% and she obtained more than 65% marks at the examination, she received scholarship; but to her misfortune, on 31.08.2015, she met with an accident, while going to college to attend her class and was, immediately, taken to hospital and as she remained under treatment and bedridden from 31.08.2015 to 19.11.2015, she could not attend her classes during the aforesaid period. An intimation about this accident was given to the Principal of the College, on 08.09.2015, by the mother of the writ petitioner-appellant and the Principal, in turn, forwarded the said application to the Head of the Department on the same day. On having recovered completely, the writ petitioner-appellant resumed her classes on 20.11.2015 and attended all her classes till 02.02.2016.

5. The writ petitioner-appellant tried to persuade the College administration to allow her to fill-up her application form for the 2nd year BBA Examination, but her request was turned down on the ground that even on taking into consideration the medical certificate, she was falling short of minimum required 60% attendance in an academic year to enable her to appear at the examination.

6. It is the specific case of the writ petitioner-appellant that she was ready to submit her application form with late fine, the last date of submission of application form with late fine being 11.02.2016. Even though she attended classes upto 02.02.2016, but the College administration has taken into account the attendance of the petitioner only upto 13.01.2016. Had her attendance been taken into account upto 02.02.2016 coupled with the medical certificate, she could have attained the minimum required attendance of 60% thereby making her eligible to fill-up the form.

7. As the writ petition filed by the writ petitioner-appellant, being C.W.J.C. No. 2778 of 2016, has been dismissed by the judgment and order, dated 11.02.2016, the appellant has preferred this appeal.

8. We have heard Mr. Prashant Sinha, learned counsel, appearing on behalf of the appellant, and Mr. Vivekanand Prasad Singh, learned Counsel appearing for the

respondent Nos. 1 to 3.

9. Mr. Prashant Sinha, learned Counsel, appearing on behalf of the appellant, has submitted that the writ petitioner-appellant is a bright student, and her performance has been excellent during 1st year, but because of the unfortunate accident, she could not attend the classes. Mr. Sinha, learned Counsel, also points out that the authorities of the College have calculated the attendance in arbitrary manner and have not taken into consideration the actual classes attended by the appellant. If the calculation is made properly, the appellant becomes eligible to fill-up the forms.

10. Mr. Prashant Sinha further submits that the learned single Judge has also failed to appreciate the specific case of the writ petitioner-appellant that with the aid of medical certificate and proper calculation of attendance of classes, the writ petitioner-appellant was eligible to fill-up her form.

11. Resisting the appeal, Mr. Vivekanand Prasad Singh, learned Counsel appearing, on behalf of respondent Nos. 1 to 3, has submitted that it transpires from the submission of the writ petitioner-appellant that even by taking into consideration the medical certificate and prescription, the attendance of the writ petitioner-appellant does not come upto 60% and though there is power conferred upon the Vice-Chancellor to condone the shortage in attendance, the Vice-

Chancellor has never exercised such discretion under Regulation, 2006. The request of the writ petitioner-appellant has been rejected not being in consonance with the Regulations of the University. The judgment and order, under appeal, therefore, does not warrant interference by this Court.

12. Having heard learned Counsel for the appellant and the respondent University as well as the learned Counsel appearing on behalf of Patna Women's College, we have noted that the case involves a student, who has a history of maintaining good academic record. It appears that she has scored high marks at previous examinations and has a history of conforming to the standards and discipline of the college by attending classes to the extent of 85% in the past academic year. Unfortunately, she met with an accident, which prevented her from attending classes between the period 31.08.2015 and 20.11.2015. She, however, attended all her classes till 02.02.2016.

13. We have noted that the College has taken into consideration the attendance of the students only up to 13.01.2016 for the purposes of calculating the attendance of students making them eligible to fill up the form. In the case of the petitioner also, the College administration has taken into account the attendance of the petitioner only up to 13.01.2016; whereas she has, admittedly, attended classes up to



02.02.2016. This appears, rather, illogical. Had the authorities added up the rest of the period between 31.01.2016 and 02.02.2016, the appellant's percentage of required attendance would have risen up to 60% and even beyond making her, thus, eligible to fill up the form. The medical certificate, coupled with the additional attendance, would have definitely accrued to her advantage and she would have become eligible for consideration of condonation of shortage of attendance in accordance with the Regulations of the respondent University. The stand taken by the respondents that she was not having the required 60% attendance, in an academic year, to be even eligible for consideration of condonation of delay, cannot be readily acceded to. No sound rationale has been offered by the College administration to support the contention that the attendance of the petitioner could be considered only up to 13.01.2016.

14. We are also unable to comprehend as to why the medical certificate, forwarded by the appellant in support of her case seeking condonation of shortage of percentage, was not considered favorably by the College authorities. It has been submitted by learned Counsel for the appellant that the same was not taken into consideration only on account of the fact that the appellant had filed photocopies of the original medical certificates and not the original ones. However,

nothing has been brought before us so as to indicate that the certificates, in original, were directed to be furnished by the Principal. This apart, the medical certificates, in original, have not been produced before us on behalf of the appellant and has not been, or could not be, disputed by or on behalf of the respondents.

15. In view of the aforementioned facts and circumstances, we find that the appellant has a good case for consideration of condonation of shortage of attendance and her case deserves to be considered, in accordance with the Regulations, by the authorities concerned so that she may not be made to lose an academic year.

16. In the result, the present appeal is allowed. The judgment and order, dated 11.02.2016, passed in C.W.J.C. No. 2778 of 2016, shall according stand set aside. We direct that the appellant's case be reconsidered afresh after adding the aforementioned number of days of classes attended by the appellant till 02.02.2016 and if, then, the appellant's case falls within the parameters prescribed under the relevant Regulations, she shall be allowed to appear in the examination in accordance with law and in terms of the directions, which we have passed today, i.e., on 20.04.2016, in C.W.J.C. No. 3834 of 2016 (***All India Students Federation vs. The State of Bihar and Others***), along with other candidates so that all the results

are published together.

17. However, there shall be no order as to costs.

(Anjana Mishra, J)

I. A. Ansari, ACJ :

(I. A. Ansari, ACJ)

N.A.F.R.
Pawan/-

U			
---	--	--	--