

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.9696 of 2016
Decided on :23.08.2016**

Jyoti

... Petitioner

Versus

Registrar, Punjab University, Chandigarh and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present : Mr. Mohit, Advocate
for the petitioner.

Ms. Alka Chatrath, Advocate
for respondents No.1 and 3.

Mr. IPS Doabia, Advocate
for respondent No.2.

G.S. Sandhawalia, J.

The petitioner seeks issuance of admit card of 2nd semester of B.Ed. (Special Education) (Mental Retardation), on account of the fact that she had less attendance and her medical leave was not counted. Resultantly, she had sought permission to sit in the examination of 2nd semester, which was taking place in May, 2016. Her attendance was short on account of the fact that she was 5 months pregnant at the time of admission and on account of the delivery of a female child on 11.11.2015 and various complications, thereafter, the shortage of attendance had occurred, when she was in the 2nd semester.

An interim order in her favour was passed on 19.05.2016, allowing her to sit in the said examination, which was to start from 21.05.2016. The said order being conditional was provisional, subject to

the final decision of the writ petition.

The respondents in the reply have given the details of shortage of the 2nd semester. It has been further submitted that her attendance was extremely short i.e. 6 lectures out of 232 till 29.02.2016. A memo had been served upon her guardian on 04.03.2016 to direct her to attend classes regularly in future, but she did not attend. It was required as per Rule 3.1 that attendance had to be 75% in lectures and practicum separately. It was, accordingly, pleaded that she had only attended 38.6% lectures. The relevant rule reads as under:-

“3.1 A person who possess the qualification laid down in regulation 2.1 & 2.2 is on the roll of a college affiliated for the course of B.Ed. degree during the academic year preceding the examination, and produces the following certificate signed by the principal of college shall be eligible to appear in the examination:-

- Good Moral Character,*
- of having undergone the course of training for the degree of Bachelor of Education for one academic year at a college affiliated for this examination, and*
- at least 75 per cent attendance in (i) lectures and (ii) practicum separately in each paper, during each semester proceeding the semester and examination.”*

However, it was further mentioned that she would be helped to proceed further in 3rd semester provided she completes her short fall in attendance. The 2nd semester examination could be given by her alongwith the 4th semester examination as a late candidate without loosing any time and she would be eligible to complete the course alongwith her other classmates, subject to her academic performance.

Reliance upon Rule 6.3 was, accordingly, made which reads as under:-

“6.3 A student who has failed/absent in course/s of first semester shall be eligible to clear the same along with the examination of Second Semester and the student who has failed/absent in Second Semester, will appear in the examination along with the students of First Semester of next Session after fulfilling all the requirements. The dates of additional/compartement examination shall be declared by the Vice-Chancellor, if necessary beyond three months.”

It is, thus, apparent that the respondents have taken a very sympathetic view, so that the petitioner would not lose a year.

It was noted by this Court on 04.08.2016 that benefit of 15 lectures could be granted by the respondent-college and 30 as an exceptional case on the recommendation of the Principal by the University under Rule 3.3. Since, admittedly it is not disputed that she had a medical problem, on account of her pregnancy and the delivery of the child.

Counsel for the respondent submitted that in spite of the said benefit also, the petitioner would not make the cut and would only reach to 46.8% well short of the 75% requirement of the lectures.

Counsel for the petitioner has relied upon the judgment of the Madras High Court in '**Nithya Vs. University of Madras and others**' 1995 AIR (Madras) 464 and '**Kavitha Rajagopal Vs. The Registrar, The Tamil Nadu, Dr. Ambedkar Law University**' 2008 (1) CTC 374 and in W.P. No.440 of 2011 '**A. Arulin Ajitha Rani Vs. State represented by The Principal Secretary, Department of Higher Education and others**',

decided on 09.07.2012 to argue that concessions have been given on account of the shortage of lectures to similarly situated persons, after keeping in view Article 42 of the Constitution of India to substantiate his argument.

At the first blush the argument seemed very attractive, but on a detailed examination, it transpired that in ***A. Arulin Ajitha Rani Vs. Principal and Film and Television Institute of Tamil Nadu, Chennai and others' 2009 AIR (Madras) 7*** the same relief had been prayed for and the writ petition had been dismissed. The matter was taken up in appeal before the Division Bench, which accordingly upheld the order of the Single Judge by taking into consideration the abovesaid judgments passed in the case of ***Nithya (supra) and Kavitha Rajagopal (supra)***. The Division Bench came to the opinion that it is a matter of policy for the State Government to follow and the benefits of maternity leave as such could not be read into for the purpose of condonation of shortage of lectures. The relevant portion of the judgment reads as under:-

“8. In the above context, the matter has to be examined. There is no doubt that every educational institution has its own rules and regulations regarding attendance of the students in the classes. It is obvious that such norms are prescribed to ensure that there is regular attendance by the students, with the expectation that by attending the classes either theory or practical, knowledge can be acquired.

9. There is no doubt that the Maternity Benefit Act, 1961 contains several provisions for extending the benefit to the pregnant women in their respective work-field. Section 2 of the Act indicates that the Act applies to (a) every establishment being a factory, mine or plantation including any such

establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances and (b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.

However, the proviso contemplates that the State Government may with the approval of the Central Government, declare that all or any of the provisions of the Act shall apply to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

10. Even assuming that an Educational Institution may also come within the aforesaid provisions, there is no dispute that the State Government has not issued any notification declaring that the provisions of the Act would be applicable to the educational institutions. There cannot be any dispute regarding the requirement of grant of maternity benefit to the working women. However, the question is, in the absence of any specific provision applicable to educational institution, whether such provision can be extended.

11. We do not think that in the context in which such provisions have been made for the working women, such provisions can be ipso facto made applicable. Whether such benefit can be extended or not is essentially a policy decision to be taken by either the State Government or the Central Government.

*12. In the present case, the learned counsel for the appellant has contended that by applying the above provisions and the International Conventions, the shortage of attendance was required to be condoned as had been done in two earlier occasions by the learned single Judges in the two decisions reported in **1996 WLR 802 (Nithya v. University of Madras)** and **2008(1) CTC 334 (Kavitha Rajagopal v. The Registrar, Tamil Nadu Dr. Ambedkar Law University, Chennai And Another)**.*

13. In the peculiar facts and circumstances of the case, we are unable to apply the ratio of the said decisions to the present

case. Even assuming that such provisions can be made applicable, the concerned student could have availed maternity leave of six weeks before the birth of the child and six weeks after the birth of the child. From the factual position, which has been elucidated clearly in the counter affidavit filed in the Review Appln.No.99 of 2006 and even from the averment made by the appellant herself, it is apparent that the appellant had claimed to have attended the classes till 17.9.2005 and only on that day she was admitted in the hospital and the child was born on 19.9.2005. In other words, it is not the case of the appellant that she was unable to attend the classes because of the pregnancy before 17.9.2005. Similarly, the appellant has stated that she attended the classes after 15.10.2005. During the period from 17.9.2005 to 14.10.2005, 18 working days were available. Even giving full credit for those 18 days, as has been explained in the counter affidavit, the required percentage would come to about 71% (70.91%). Minimum requirement is 80% with provision for condonation of delay upto 5% i.e., a student having attended 75% or above, can be considered for condonation. No other power is envisaged under the rules and regulations for condonation of further period. Therefore, even assuming that such International Conventions or the provisions of the Maternity Benefit Act could be made applicable, yet the concerned student fell short of the attendance.

14. For the aforesaid reasons, we are unable to persuade ourselves to interfere with the order of the learned single Judge. The question as to whether similar beneficial provisions should be made applicable to the educational institutions is essentially a policy matter left to the wisdom of the legislature and we do not express any opinion in one way or the other.”

It is pertinent to mention that thereafter review was filed and the same was also dismissed by the Division Bench on 21.01.2010, which is reported in **2010 (2) Madras Law Journal 782**. Unfortunately, counsel did not bring these facts to the notice of this Court.

The subsequent judgment in *A. Arulin Ajitha Rani (supra)*, on 09.07.2012, wherein certain directions were issued for framing of policy was only on account of the fact that the said petitioner had persisted with getting the issue decided. On the recommendations of the Tamil Nadu Women's State Commission, an order had been passed by the Principal Secretary to the Government Higher Education Department refusing to grant maternity leave to girl students undergoing higher education in the State. The said order of the State Government was subject matter of challenge, wherein directions were issued to formulate a policy in general for all educational institutions.

It is pertinent to mention that in the said case reliance was placed upon the judgment in '*Vandana Kandari Vs. University of Delhi*' **2010 (3) SCT 363**, which has also been referred to by the counsel. The said view also stands overruled by the Division Bench of the Delhi High Court on 10.01.2011 by holding that the maternity leave could not have been put in a different compartment for the purpose of relaxation of attendance. Accordingly, it was held that the judgment rendered by the learned single Judge suffers from infirmity and was set aside.

Resultantly, keeping in view the fact the Division Benches have also come to the conclusion that the benefit of shortage of lectures cannot be condoned on account of pregnancy, the argument raised by the counsel of the petitioner cannot be accepted.

Another factor which is to be noticed is that the petitioner will not loose a year and the respondents have already taken a categorical

stand that she will be duly adjusted and will pass out alongwith her peers.

In such circumstances, on account of the huge backlog in shortage of lectures, necessary relief cannot be granted. The attendance of lectures would only help the petitioner to complete the course in proper prospective and give her appropriate training for the course which is apparently specialized and pertains to handling of disabled people. It would be unfair if she does not have advantage of practical handling, which would be required.

Resultantly, the present writ petition is dismissed. However, the respondents shall ensure that the petitioner is allowed to complete her course alongwith her peers similarly situated. She will attend the extra classes to make up the shortages as required by the respondent-Institute.

All interim orders shall stand vacated.

AUGUST 23, 2016
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No