

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

LPA No.1684 of 2015 (O&M)

Date of decision: 15.02.2016.

Gursimrat Singh Randhawa

.....Appellant.

Versus

Guru Nanak Dev University and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM**

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?

Present: Mr. Gurpreet Singh Dhillon, Advocate, for the appellant.

Mr. Amrit Paul, Advocate, for the respondents.

S.S. SARON, J.

CM No. 491-LPA of 2016

The civil miscellaneous application has been filed by the appellant to allow him to appear in Minor-I of 4th semester and compartment exams of Examination of Minor-I of 2nd semester LLB examinations commencing from 15.02.2016.

The main appeal is also listed for hearing today. The appeal itself is taken up for hearing. In the circumstances, no order is being passed in the civil miscellaneous application

The civil miscellaneous application stands disposed of.

LPA No. 1684 of 2015

This appeal has been filed by the appellant against the judgment and order dated 31.10.2015 passed by the learned Single Judge in CWP No. 17612 of 2015 whereby the petition of the appellant for directing Guru Nanak Dev University, Amritsar ('GND University' - for short) (respondent No. 1) to promote him to the second year of his LLB (Three Years) programme has been dismissed. The learned Single Judge found that the appellant was short of lectures in two papers, i.e. Constitutional Law of India-II (LAL-408) and Jurisprudence-II (LAL-410).

The appellant has been pursuing LLB (Three Years' Degree) Course at GND University (respondent No. 1). According to him, he is a meritorious student as is well reflected in his previous academic endeavours. After undergoing the selection process/eligibility requirement, he was granted admission to the Three Years' LLB Course of GND University (respondent No. 1) for the sessions 2014-2017. He appeared in the first semester examinations and cleared the same. He obtained Semester Grade Points Average (SGPA) of 4.83 and Cumulative Grade Points Average (CGPA) of 4.83. According to the appellant, unfortunately, his mother fell ill; besides, he himself fell ill. Due to this, the classes that he was attending were affected and there was a shortage in his lectures for being eligible for appearing in the second semester examinations.

The appellant was informed of the shortage of his lectures by the GND University (respondent No. 1). He was asked to explain his position, failing which he was not to be allowed to appear in the semester examinations corresponding to second semester. The appellant submitted a

medical certificate (Annexure P2) showing the persistent illness of his mother, namely, Smt. Narpinder Kaur. In terms of said certificate, the mother of the appellant was admitted on 25.06.2014 at Medanta Global Health Pvt. Ltd. However, there is no mention of the date of her discharge. In the column; "Encounter Type", it is mentioned as "Outpatient". Therefore, it appears that the mother of the appellant was admitted only as an outpatient for a day. The appellant, in any case, tendered a comprehensive explanation as to how he fell short of lectures for the second semester and he informed the GND University (respondent No. 1) of his illness and submitted medical certificates issued by the official dispensary of the GND University (respondent No. 1) itself. A medical certificate dated 24.02.2015 (Annexure P3 - Colly) and another certificate, which mentions the treatment carried out have been placed on record. The medical certificate dated 24.02.2015 (Annexure P3 - Colly) mentions that the appellant was suffering from 'PUO', i.e. high grade fever. He was advised rest for five days from 24.02.2015 to 28.02.2015, which was essential for his recovery. Another certificate dated 02.03.2015 (Annexure P3 - Colly.) has been submitted certifying that the appellant had been suffering from PUO and rest was advised for four days from 02.03.2015 to 05.03.2015, which was essential for his recovery.

The explanation that was submitted by the appellant, according to him, was initially not accepted by the GND University (respondent No. 1) and the *bona fides* were brought in question. He then brought to the notice of the GND University (respondent No. 1) the entire medical record of his mother, who unfortunately was a cancer patient and

had to undergo constant treatment for which the appellant being the elder son had to facilitate. He also undertook not to repeat the aforementioned deficiency of shortage of lectures. It is submitted that the GND University (respondent No. 1) on humanitarian grounds, seemingly, condoned his lectures although said condoning of the lectures is a matter of oral communication only to him. The appellant persuaded the officials of the GND University (respondent No. 1) to issue a formal order condoning his lectures and issue him a roll number for appearing in the forthcoming semester examinations. He was assured that such an order was not necessary and his lectures stood condoned and that he would be allowed to appear in the second semester examinations. The request for issuing of a roll number to him stood declined and no formal roll number was ever issued to him. His roll number was being retained by the GND University (respondent No. 1).

The examinations for the second semester commenced on 08.05.2015. The appellant was allowed to appear in the first examination of Comparative Constitutions (LAL-407) (6421) (India, USA, UK, Canada). Much to his surprise, on 13.05.2015, he was not allowed to appear in the second paper of Constitutional Law of India-II (LAL-408) (6422). The reason for refusal to appear in the said paper was due to shortage of lectures. The appellant promptly spoke to the teacher in charge of the said subject and also to the Head of the Department. Both, it is submitted concurrently gave their consents to him to appear in the aforesaid paper. He was, however, still refused by the Superintendent (respondent No. 3) conducting the examinations to appear in the examination in spite of the

fact that he had secured concurrence of the concerned teacher and the Head of the Department. It is submitted by the appellant that he has retained with him the telephonic conversation illustrating the entire event and would be more than obliged to produce the same before the Court. However, under protest and helplessness, he had to accept the order of the Superintendent (respondent No. 3). He then wrote a letter dated 13.05.2015 (Annexure P4) to the Head of the Department of Laws, GND University, Amritsar (respondent No. 2) detailing the events that had occurred. Later on, the appellant was assured that such an incident would not be repeated wherein his appearing in the examination would be barred by any of the Superintendents conducting the examinations by citing shortage of lectures as a reason which, according to him, already stood condoned by the GND University (respondent No. 1).

The appellant, however, again pressed the GND University (respondent No. 1) to issue him an official order condoning his lectures and issue him his roll number. In case the same was done, such an incident as had happened would not happen. His request, however, was again turned down mentioning that such an order was not necessary.

The appellant then appeared in the next examination on 18.05.2015, i.e. Family Law-II (LAL-409) (6423) in which he faced no problem and was allowed to appear as a normal student. Thereafter, in the examination of Jurisprudence-II (LAL-410) (6424), which was held on 21.05.2015, he was not allowed to appear citing shortage of lectures as the reason. The appellant again brought this aspect to the notice of the officials of the GND University (respondent No. 1) that such an incident had earlier

also happened and he was assured that it would not be repeated. According to the appellant, the attitude of the officials of the GND University was, however, dramatically different this time and the stand of the GND University (respondent No. 1) had all of a sudden changed to never having condoned any lecture of the appellant and stating that their refusal to let the appellant appear in the examination was as per law. The appellant brought to the notice of the GND University (respondent No. 1) that the explanation then sought to be tendered could not possibly be correct, as he had already appeared in the past three examinations, which could not have been possible had the lectures not been condoned. He also sought an explanation as to how the GND University (respondent No. 1) had diagonally changed its stand that too, at a point where such a change of opinion would hamper his career more than it could have, had the refusal being given at the very first instance and he was not allowed to sit in any of the examinations. The officials of the GND University feeling cornered and caught in their own net, it is submitted, allowed the appellant to appear in all the remaining examinations for which he would have not been stopped provided the matter was not agitated by him any further or before any authority whatsoever. The appellant, thereafter, appeared in the examination of Law of Contract-II (Special Contracts) (LAL-411) (6425) held on 27.05.2015 and in the examination of Public International Law (LAL-412) (6426) held on 29.05.2015. In this manner, the appellant was not allowed to sit in two papers, i.e. Constitutional Law of India-II (LAL-408) and Jurisprudence-II (LAL-410) against which he filed the writ petition. It was also alleged that there had been discrimination with him inasmuch as the GND University

(respondent No. 1) had allowed other students, who were short of lectures, to appear in the examinations. He referred to the cases of Ms. Purnima and that of Navpreet and Amandeep Singh.

The GND University (respondent No. 1), in its reply, submitted that the appellant was irregular in attendance in his second semester during the period from January to April, 2015. He was short of lectures in two of the six subjects, i.e. Constitutional Law of India-II (Paper Code LAL-408) with only twenty-six lectures he attended out of fifty lectures delivered; besides, in Jurisprudence-II (Paper Code LAL-410) with only thirty lectures he attended out of sixty lectures delivered. A consolidated lectures statement (Annexure R2) has been submitted. The details of the lectures attended in the said two subjects in which he was short of lectures are shown on the relevant page of the attendance register (Annexure R3) and lecture statement (Annexure R4) for Constitutional Law of India-II (Paper Code LAL-408) and the relevant pages of the attendance register (Annexure R5) and lectures statement (Annexure R6) for Jurisprudence-II (Paper Code LAL-410) have been placed on record. It is further submitted that mother of the appellant was hospitalized in June, 2014 vide Annexure P1 which had nothing to do with his shortage of lectures in the second semester from January, 2015 to April, 2015. It is also submitted that the plea of the appellant that he was not well from 02.03.2015 to 05.03.2015 and from 24.02.2015 to 28.02.2015 vide Annexure P3 (colly) did not justify his irregular attendances on other days. Even otherwise, it is submitted, for any exceptional reason (which includes such casual illness) whatsoever, the maximum power to condone vested in

the Head of the Law Department (respondent No. 2) as per the mandatory Legal Education Rules of the Bar Council of India (Annexure R7), by which the course is governed, is only 5% of the lectures delivered and no more. The appellant as per consolidated lectures statement for the second semester (Annexure R2) had attended only twenty-six lectures out of fifty lectures delivered in Constitutional Law of India-II and he only attended thirty lectures out of sixty lectures delivered in Jurisprudence-II. Thus, shortages of his attendance were beyond the limit/power to condone to the extent of 5% as per the Bar Council of India Rules. Therefore, the same could not be condoned. It is also submitted that due to his failure in three subjects and, thus, obtaining a CGPA of 3.67 (as against the minimum requisite of 4.5) at the end of second semester of his course, as per the result of his second semester May, 2015 Examinations (Annexure R8), he was not eligible to be promoted and, hence, he could not be promoted to the third semester of the next year, i.e. in the academic year 2015-16 of his course under the CGPA Ordinances (Annexure R9) applicable to him, of which, he was fully aware as he was admitted to the course under the said Ordinances under which he studied and cleared his first semester of the course, i.e. from July to December, 2014. The appellant, accordingly, had to revert to and take admission in the first semester of his course during academic session 2015-16 starting in July, 2015, which he had not done and for which he had not attended even a single lecture in any of the subjects. It is reiterated that the appellant had not taken admission in the first semester of his course during the current academic session as per the said ordinances and the law, the way the other students had taken.

The appellant filed replication and the GND University, thereafter, filed rejoinder to the replication.

Learned Single Judge considered the matter and also the case of others qua whom there had been alleged discrimination. It was held that it was apparent that the averments made by the appellant were correct to some extent that the Law Department of the GND University was acting in an arbitrary manner in permitting some of the students, who were short in their lectures to take examinations but detaining the others. However, the Court was well aware of its limitations that one wrong did not permit it to permit the petitioner (now appellant) to be extended the same benefit, which the officials of the University had wrongly granted to other similarly situated students. It was considered that on account of the wrong action of the University, the appellant would stand to lose two years and he had to go back to the first semester in the session 2016. Had the University informed the appellant at the initial stage, he would have also taken admission in the first semester as Amandeep Singh was given on his application in July, 2015 to salvage one precious academic year. The appellant, it was held, could not apply since he had chosen to litigate and the facts were not clear at that point of time that the other persons were beneficiaries of an arbitrary action of the University. It is further observed by the learned Single Judge that the second somersault was done by the University in the additional affidavit, which was filed in Court on 31.10.2015, in which it was again mentioned that there had been incorrect mention of lectures and that Amandeep Singh at that time was studying in the third semester. The Court expressed its deep regret at the way the career of young students was being

dealt with in such a casual manner. The loss of two years because of the insensitive attitude of the University, it was held, could not be condoned. The writ petition was, accordingly, partly allowed to the extent that the petitioner (now appellant) would be readmitted in the first semester for the session 2015-18 and in case there was any shortage of lectures, he would be given the benefit of lectures which he had already attended in the earlier semester for the session 2014-17 and shortage of lectures would not stand in his way. This would prevent the appellant from losing two academic years.

This order has been assailed by the appellant in the present appeal. Notice of motion was issued on 26.11.2015. It was submitted that, in fact, the shortage in lectures had been condoned and it was for the said reason that the appellant was allowed to appear in the other papers. Therefore, there was no reason for not allowing him to appear in the two papers, i.e. Constitutional Law of India-II and Jurisprudence-II, which were held on 13.05.2015 and 21.05.2015, respectively.

We have heard learned counsel for the parties at considerable length.

Learned counsel for the appellant has submitted that there was discrimination in not allowing the appellant to appear in the said two papers i.e. Constitutional Law of India-II and Jurisprudence-II and that he was given oral assurance by the GND University (respondent No. 1).

Learned counsel appearing for the respondents has submitted that neither any oral assurance was ever given nor could any such assurance be given as the Head of the Department of Laws (respondent No.

2) of the GND University had only power to condone lectures to the extent of 5% according to the Legal Education Rules of the Bar Council of India and not beyond that. Therefore, there was no assurance much less oral assurance given. As regards other students, namely, Purnima, Navpreet and Amandeep Singh, it is submitted that shortage of their lectures had been condoned. As regards Amandeep Singh, it is submitted that inadvertently incorrect averments were made in the affidavit dated 26.10.2015 of Dr. Sharanjit Singh Dhillon, Registrar, Guru Nanak Dev University, Amritsar. In fact, Amandeep Singh was not studying in the third semester as deposed in the said affidavit. He was, in fact, studying in the first semester, which is evident from his own application dated 17.07.2015 (Annexure R14).

We have given our thoughtful consideration to the matter.

The question is of shortage of lectures in two subjects, i.e. Constitutional Law of India-II and Jurisprudence-II, in respect of the appellant. However, there had indeed been a rancour between the students and the teachers of the GND University (respondent No. 1), which we are not going into as according to learned counsel for the GND University (respondent No. 1), the matter is being inquired into by the Vice-Chancellor of the GND University. It may, however, be mentioned that in the two subjects in which the appellant is stated to be short in lectures, are Constitutional Law of India-II and Jurisprudence-II. In the said two subjects, according to Annexure R2, fifty lectures were delivered in Constitutional Law of India-II and required percentage was seventy, i.e. thirty-five lectures. The appellant had attended twenty-six lectures. The Head of the Department had power to condone 5% of the shortage of the

lectures attended and 5% of twenty-six works out to about one lecture. In the subject of Jurisprudence-II, lectures delivered were sixty-four and the lectures attended by the appellant are thirty. 5% of thirty lectures work out to two lectures. Therefore, even if one lecture in Constitutional Law of India-II and two lectures in Jurisprudence-II were condoned, the same could not have reached the required percentage of 70%. A detail of the lectures attended by the appellant in the second semester for the period from January, 2015 to April, 2015 (Annexure R10) has been placed on record, which brings out the position as regards Constitutional Law of India-II and Jurisprudence-II, as is mentioned in the table (Annexure R2). The Head of the Department, in the rejoinder to the replication filed in response to the written statement, submitted that shortage in lectures in Constitutional Law of India-II and Jurisprudence-II, as depicted in Annexure R2, was based on the lectures statements (cut off lists) supplied by the respective teacher and on the copies of the relevant pages of the attendance registers of the said two subjects, which were true and genuine documents, according to which, the figures regarding lectures of the appellant, as given in Annexure R2, were correct. To verify the allegations of the appellant qua other subjects, the original attendance registers had been called for in all the subjects by the Head of the Department of Laws. On their scrutiny by the Head of the Department, it was revealed that in the subject of paper No. 5 (Law of Contract-II), the appellant had attended sixteen lectures as against thirty-nine lectures as mentioned in the lecture statement (cut off list) supplied by the teacher concerned due to which, he could not be detained in that subject. Accordingly, he wrongly appeared in

that paper, i.e. Law of Contract-II, as had come to light. The modified revised figures with regard to his lectures were depicted in Annexure R10.

The appellant has obtained a communication (Annexure A1), which he has placed on record in appeal. The said communication is from Dr. Arvindeka Chaudhary Assistant Professor, Department of Laws. The subject of the communication is, “persecution in the Department of Laws by the Head.” It is submitted that the Head of the Department had misled this Court. In the subject of Law of Contracts-II, it is mentioned by the Assistant Professor Dr. Arvindeka Chaudhary that the petitioner (now appellant) had attended sixteen lectures as against thirty-nine as mentioned in the lecture statement. It is further submitted that in the counter reply to the replication qua the written statements on merits in para 6, sub point 3 clause (iv) the respected Head of the Department furnished information that the teacher concerned did not inform the office of the Head of the Department about shortage of another student, namely, Navpreet. It is submitted that this statement was absolutely wrong. She was the teacher concerned and she submitted the original registers to the Head of the Department on 28.04.2015 along with lecture shortage list in which it was clearly mentioned that roll No. 527 had attended only sixteen lectures and was having twenty-three lectures short; besides, roll No. 578 had only two lectures and was running thirty-seven lectures short along with the other shortages of the class. She also provided information that she herself let Navpreet sit in the paper. This was an irrational statement. It is submitted that Head of the Department issued the roll numbers and the Centre Superintendent allowed the students to sit in the examination hall. She

could not allow anyone to sit in the examination hall for which she had no authority. It is also mentioned in sub point 1 of the same paragraph, she had admitted a student, namely, Amandeep Singh, who wrongly appeared in paper No.1 (Comparative Constitutions) for which another teacher was the course coordinator, but on being detected, he was detained in the second paper. It is submitted that this showed careless attitude on the part of the office of the Head of the Department. To save her skin, she first provided fabricated records and later lied and accused her of everything for which she should not be blamed. She submitted her original registers to the Department itself and in case there was any confusion, she could have checked that. This aspect of there being wrong information supplied by the Head of the Department, is being inquired into by the Vice-Chancellor and is not the subject matter of the present appeal. Therefore, we leave it to the Vice-Chancellor to determine that and are not inclined to delve into this aspect.

The question in this appeal is only regarding shortage of lectures of the appellant in two papers, i.e. Constitutional Law of India-II and Jurisprudence-II, for which the appellant submits that he was given oral assurances, which have been denied by the GND University. There being a clear dispute of facts in this appeal, this Court is not to go into the same. However, it is not disputed that the information given in Annexure R2 and then modified by Annexure R10, is in any manner wrong. The stand of the appellant is that the shortage in his lectures had been condoned. However, according to the GND University, the shortages in lectures in the two subjects of Constitutional Law of India-II and

Jurisprudence-II could not be condoned beyond 5%. The position as regards other students, who are stated to have been favoured, has been considered by the learned Single Judge. As regards Ms. Purnima, it has been held that she had no shortage of lectures and she had appeared in all subjects. As regards Navpreet, it has been held that on account of participation in a cultural event, there was a decision of the Board of Control of Department regarding subjects at serial No. 1 and 4. Regarding subjects at serial No. 3 and 6, the shortage of lectures was within condonable limit and regarding subject at serial No. 5, he had wrongly appeared and corrective measures had been contemplated. As regards, Amandeep Singh, a wrong affidavit, according to learned counsel for the GND University, was filed on the date of hearing of the writ petition and due to inadvertent mistake it was mentioned that he was studying in third semester, whereas according to his own application dated 17.07.2015 (Annexure R14), he was studying in the first semester. Even otherwise, the learned Single Judge has rightly held that one wrong does not permit this Court to permit the petitioner (now appellant) to be given the same benefit which the University officials had wrongly granted. The Supreme Court in the case of **Chandigarh Administration and another v. Jagjit Singh and others**, AIR 1995 Supreme Court 705, has held that:

“Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and

valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law – indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law – but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law.”

Therefore, in view of the above, the appellant cannot seek any benefit merely because some wrong benefit may have been given to other similarly situated students of the same University.

In the circumstances, we find no merit in the present appeal and the same is accordingly dismissed.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

15.02.2016
Ramesh

Whether to be referred to reporter: Yes