

HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.39315, 34694 & 16575 OF 2017

COMMON ORDER:

Heard Mr.Tuhin Kumar for petitioners and Dharmesh DK Jaiswal for respondent Nos.2 and 3/JNTU.

The petitioners and respondents are substantially same in these writ petitions. The learned counsel for parties have submitted that the prayer in W.P.No.16575 of 2017 can be treated as substantive prayer and the outcome of other two writ petitions is dependant or consequential to the prayer in W.P.No.16575 of 2017.

The petitioners in W.P.No.16575 of 2017 pray for Mandamus declaring the action of respondents in detaining the petitioners and not permitting them to write 2nd semester of III year BE/B.Tech., examinations scheduled to be held from 2nd May, 2017, as illegal, arbitrary, unconstitutional etc.

The petitioners are all students of Vignan Institute of Technology and Science/4th respondent. The petitioners were 2nd semester students of III year B.Tech. The petitioners aver that the 2nd respondent University detained the petitioners in the same class by not considering the midterm exam attendance up to 15.04.2017. The petitioners further state that the respondents all through were considering attendance for including in the minimum percentage of attendance of the midterm exam as well. But this time, without intimation or notice either to college or the students, the University did not include midterm attendance in computing the minimum percentage of 65% attendance for enabling the

petitioners to write the exam and thereby detained the petitioners. The petitioners, therefore, claim that they are going to lose their academic year and the loss cannot be compensated. The main examinations of 2nd semester of III year are scheduled to be conducted from 2nd May, 2017. The petitioners are not allowed to write the examinations and hall tickets are also not issued. Hence, the writ petitions.

This Court on 28.04.2017 granted interim direction to respondents to issue hall tickets to petitioners and permit them to write examination of 2nd semester of III year BE/B.Tech courses starting from 2nd May, 2017. On 02.06.2017, the 2nd respondent filed counter affidavit and also a petition to vacate the interim order dated 28.04.2017.

The gist of the counter affidavit is that the Regulations of the 2nd respondent University mandates that nobody has the power to condone the shortage of attendance below 65%. It is stated that Rules and Regulations framed by the 2nd respondent University from time to time are binding on all colleges.

The crux of the respondents' case is that Regulation 6 of the University does not provide for condonation of shortage of attendance below 65% in aggregate. The respondents rely on Academic Regulations and contend that the internal examinations are not treated as part of 90 academic days and the attendance of a student of internal exam is not included for determining the attendance percentage possessed by a candidate. The respondents rely on the following decisions:

1. ASHOK KUMAR THAKUR v. UNIVERSITY OF HIMACHAL PRADESH AND OTHERS (1973(2) SCC 298 SC)
2. YUGANDHAR V. THE PRINCIPAL, KUPPAM ENGINEERING COLLEGE (2008(2) ALT529 AP (DB)
3. AKILESH LUMANI AND OTHERS v. PRINCIPAL, SIR C.R.REDDY AUTONOMOUS COLLEGE, ELURU (2000(4) ALD 630 AP (DB)
4. M.SUNIL CHAKRAVARTHY AND OTHERS v. PRINCIPAL, SRIKALAHASTEESWARA INSTITUTE OF TECHNOLOGY (2005(1) ALD 253 AP (DB)
5. ANIRUDH MITTAL V. OSMANIA UNIVERSITY, HYDERABAD AND ANOTHER (2012(2) ALD 578 (DB)
6. POTHURI SUSHANTH AND ANOTHER v. CVSR COLLEGE OF ENGINEERING, VENKATAPUR, GHATKESAR, R.R. DISTRICT AND OTHERS (2016(2) ALD 371.

and vehemently contend that the direction issued by this Court is contrary to Regulations and amount to interfering with the academic matters of University wherein by authority of this Court, primacy to the view of respondents is given.

While the matters stood thus, the petitioners filed W.P.No.34694 of 2017 for the following relief:

....this Hon'ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in detaining the action of the respondents, not receiving the examination fees of IV year 1st Semester and also III year 1st semester of BE/ B Tech examinations scheduled to be held on 25.09.2017 to 16.10.2017 and with fine of Rs.100/- to be scheduled on from 17.10.2017 to 17.10.2017 with fine of Rs.1000/- as examination fees schedule to be held from 18.10.2017 to 18.10.2017 and also issue the hall tickets to the petitioners and also not declared the results of the petitioners for III year 2nd Semester and II year 2nd semester of the petitioners is illegal, arbitrary, unconstitutional and consequently direct the respondents to receive the examinations fees of the

petitioners and to issue hall tickets to write the examinations of IV year I semester and also release the results of III year 2nd semester and also II year 2nd semester of BE/B. Tech examinations of the petitioners in the interest of justice and pass....”

On 16.10.2017, the respondents were directed to receive the fee tentatively, pending further orders in W.P.No.16575 of 2017. Finally, the petitioners filed W.P.No.39315 of 2017 complaining against non-issue of hall tickets to petitioners for writing the first semester of III & IV years of B.Tech examinations in 4th respondent University.

Mr.Tuhin Kumar, appearing for petitioners, vehemently contends that the respondents did not include the attendance of internal exams, still the petitioners have 63.5% attendance. if the attendance of internal exam is also included, the petitioners satisfy the minimum requirement of 65% attendance and the respondents can be directed to exercise their discretion of condoning 10% attendance and prays for allowing the writ petitions.

Dharmesh DK Jaiswal, appearing for 4th respondent University, vehemently contends that the petitioners cannot stipulate the calendar year, curriculum and classes. According to him, a student eligible to write examination under 6.2 of the Regulations is required to have 65% of attendance. The attendance of 65% is referable to classes attended by a student, but does not include the attendance of internal examination. He places strong reliance of all the decisions referred above and submits that the writ petitions are liable to be dismissed.

The precedents relied on by respondents, for brevity, are not referred in this order, but keeping in view the binding precedents, the fact in issue together with applicable Regulation is considered and decided. The decisions relied on by the respondents apply on all fours to the fact situation of the case and are well established. Therefore, the decisions are not excerpted in this order. Regulation 6 of Regulations of the University stipulates attendance requirements. It is not in dispute that the petitioners fall below the minimum aggregate of 65% attendance. It does not make any difference whether it is 62% or 63.5%. The petitioners counsel fairly admits that if the attendance is less than 65%, the University does not have jurisdiction to condone the attendance and enable the student to write the examination. But the case of petitioners is that the internal examinations written by petitioners are also to be treated as classes attended and in such an event of inclusion, the petitioners could not draw the attention of the Court to a Regulation on the lines contended by them and secondly this Court has difficulty in interpreting Regulation 6 in the manner canvassed by the petitioners. The attendance of classes is the requirement and the requirement is not attendance of classes and exams. The petitioners have failed to make out a case for granting any relief.

The writ petitions fail and are, accordingly, dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stand closed.

S.V. BHATT, J

26th November, 2017
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