

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
WRIT APPEAL NOS.1594, 1595 AND 1596 OF 2017

COMMON ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

In these three appeals, the order passed by the Learned Single Judge in W.P. No.16896 and 23743 of 2017 dated 12.09.2017, and the order passed in W.P. No.15824 of 2016 dated 11.09.2017, are under challenge by the Jawaharlal Nehru Technological University. The respondents in these Writ Petitions are either students who were not permitted by the Appellant-University to appear for the third year B.Tech second semester examination, or the second year B. Tec second semester examination, because of shortage of attendance. While the attendance secured by some of these students is said to be around 61%, a few others secured 64.25% attendance. Since the Appellant-University refused to condone the shortage of attendance, and held that they were ineligible to appear for the examination, the respondent-writ petitioners invoked the jurisdiction of this Court.

In the order under appeal, the Learned Single Judge observed that, in the unreported judgment of this Court, in W.P. No.14557 of 2015 and 12134 of 2016 dated 30.08.2017, it was held that, in view of the appearance of the petitioners for examinations in previous semesters, if the results were not declared, the same should be declared; and their eligibility for attending the next IV year B.Tech. course should be regulated accordingly. The Learned Single Judge was of the view that if the Writ Petition was dismissed, it would result in the petitioners having to undergo the study of the second semester all over again which would be illogical.

Regulation 6 of the Regulations of the Appellant-University relates to attendance requirement. Regulation 6.1 makes the students eligible to write the University examinations only if they secure a minimum of 75% attendance aggregate in all the subjects. Regulation 6.2 enables condonation of shortage of attendance, in aggregate upto 10% (65% and above and below 75%) in each semester or one year, to be granted by the College Academic Committee. Clause 6.3 stipulates that shortage of attendance below 65% in aggregate shall not be condoned. The other sub-clauses of Regulation 6 deal with the manner in which the student, who was not permitted to appear for the examination on his failure to secure the minimum required attendance, should be re-admitted.

We find considerable force in the submission of Sri V. Ramachander Goud, Learned Standing Counsel for the appellant, that, in judicial review proceedings under Article 226 of the Constitution of India, this Court would neither sit in judgment over the decision of the University, nor would it substitute its views for that of the University, in prescribing the minimum attendance requirement for students to be permitted to appear for the examination; and as Clause 6.2 confers power on the College Academic Committee to condone shortage of attendance in aggregate upto 10% i.e. a minimum attendance requirement of above 65% and below 75%, all those students who secured attendance of less than the minimum 65% would not, under any circumstances, be eligible to appear for the examination.

The contention, urged on behalf of the respondent-writ petitioners, is that, if the mid-term examination attendance is included in computing the minimum required attendance, then all respondent-

writ petitioners would secure more than the minimum stipulated 65% attendance, in which event, as was done in the case of other students, the shortage of attendance would be condoned on payment of the prescribed fine. In the order under appeal, the Learned Single Judge has noted the contents of the counter-affidavit, filed on behalf of the Appellant-University, that the attendance is counted only for instruction days, and not for the examinations; the mid-term examination days are excluded in calculating the total number of instruction days; and only during the Telangana agitation, was the mid-term examination attendance added, as the required instruction days were not fulfilled. The submission, urged on behalf of the respondent-writ petitioners, is that since an exception was made during the Telangana agitation, and the attendance during the mid term examination was included in computing the required attendance on instruction days also, the Appellant-University should extend a similar benefit to the respondent-writ petitioners herein, and should also include the mid term examination days, when these students attended the examination, in computing the minimum required attendance of 65%. While contending that the exceptional circumstances which prevailed during the Telangana agitation cannot be treated as the norm for the mid-term examination attendance to be included, in computing the minimum required attendance, each year, Sri V. Ramachander Goud, Learned Standing Counsel for the Appellant-University, would submit that, even if these days were included, the respondent-writ petitioners in W.A. No.1594 and 1596 of 2017 would still not secure the minimum required attendance of 65%; and it is only the respondent-writ petitioners in W.A. No.1595 of 2017 who may secure the minimum required attendance of 65%.

In **Ashok Kumar Thakur v. University of Himachal Pradesh**¹,

the Supreme Court observed:

“.....Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the Principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner’s appeal. We, therefore, do so. In the circumstances of this case, however we are making no order as to costs.....”

It is only if a student secures a minimum attendance of 65% would Regulation 6.2 enable the college Academic Committee to condone the shortage of attendance of upto 10% (i.e., the difference between 75% and 65% attendance) on such conditions as it may deem fit to impose. Since the mid-term examinations were included in computing the minimum attendance for appearing in the examinations held during the Telangana agitation, and as this aspect ought to have been taken into consideration by the authorities concerned and a conscious decision should be taken on whether or not a similar benefit should have been extended to students in the concerned academic year also, we consider it appropriate to dispose of all these Writ Appeals with the following directions:

- i. The College Academic Committee shall consider whether the attendance secured by students, on the days the mid-term examination was held, should be included in computing the minimum required attendance to appear for the examination, as was done during Telangana agitation;

¹ (1973) 2 SCC 298

- ii. If the College Academic Committee holds that the attendance, secured during mid-term examination should be added to the instructional attendance of these students, then the attendance of each of these students shall be recomputed to ascertain whether or not they have secured the minimum 65% attendance.
- iii. In case the College Academic Committee decides not to include the mid term examination attendance in computing the minimum required attendance of 65%, it shall assign reason therefor and communicate its decision to each of the respondent-writ petitioners herein.
- iv. In case the mid-term examination attendance is included, and yet the concerned student does not secure the minimum required 65% attendance, the question of the College Academic Committee, condoning the minimum required attendance of such students, would not arise.
- v. If the College Admission Committee decides to add the attendance secured by them during the mid-term examination to their instructional attendance, only such students who, on recomputation, secure attendance of more than the minimum required 65% shall be considered by the College Academic Committee for condonation of shortage of attendance.

As the IVth year first semester examination is scheduled to commence from the 20th of November, 2017, and as the second year second semester/third year second semester course would commence by the last week of November, 2017, it is necessary that the College Academic Committee takes a decision with utmost expedition and, in any event, not later than ten days from today. The College

Administrative Committee shall communicate its decision in this regard to each of the students; and depending on the decision taken by the College Academic Committee in this regard, such students will either be permitted to appear for the next year first semester examination on their being held to have secured the minimum required attendance of 65%; or they shall be granted re-admission for the second semester of the year in which they failed to secure the minimum required attendance.

Sri V. Ramachander Goud, Learned Standing Counsel for the Appellant-University, undertakes to inform the College Academic Committee of its obligations under this order.

The Writ Appeals are disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.



RAMESH RANGANATHAN, ACJ

ABHINAND KUMAR SHAVILI, J

Date: 30.10.2017.
MRKR