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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 10.08.2017

Judgment delivered on : 25.08.2017

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W.P.(C) 4801/2017 & C.M. No.23005/2017

AYUSHI SETHI & ORS

..... Petitioners

Through: Dr Ashutosh and Ms Urmi, Advs.

Versus

DELHI UNIVERSITY & ANR

..... Respondents

Through: Mr Mohinder J.S. Rupal and
Mr Prang Newmai, Advs for DU
Ms Beenashaw N. Soni, Adv for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The present petition has been filed by the seven petitioners. The prayers made in the petition read as under:-

(i) a Writ of Mandamus and/or any other Writ, order, and/or direction in the nature thereof may kindly be issued in the matter, thereby directing the respondents to allow the students to appear in the examination held on 27.05.2017 at 3 pm; and/or

(ii) a Writ of Mandamus and/or any other Writ, order and/or direction in the nature thereof may kindly be issued in the matter, thereby directing the

respondents to promote the petitioners to the next semester, so that they may appear in the supplementary examination of fourth semester along with the examination of sixth semester; and/or

(iii) any other order, as may be deemed fit and proper, under the facts and circumstances of the case, may also be passed in favour of the petitioners and against the respondents.”

2 On 26.05.2017 this Court had considered the rival submissions of the parties; petitioner no 4 and petitioner no 7 namely Divya Gupta and Vinay Varma were permitted to sit in the examination of “Generic Elective” which was to be held on 27.05.2017. That direction stands complied with.

3 Record shows that the aforementioned petitioners are studying in the Deen Dayal Upadhyaya College (hereinafter referred to as ‘respondent No.2’). They were pursuing a B.Com (Hons.) course from the said college. The college is affiliated to respondent no. 1 (Delhi University). The course is a 3 year course divided into six semesters. All the students are presently in the II year. Petitioners had successfully completed their 3rd semester and were to appear in the examination of 4th semester which was scheduled between 09.05.2017 to 27.05.2017. Admit cards had to be issued to them on 08.05.2017. The petitioners did not know that there was any shortage of

attendance on their part.

4 On 05.05.2017 the management of the college had displayed a list of 184 students who were detained due to shortage of attendance. Their attendance was allegedly less than 40%. As per the University guidelines students securing 66.66% attendance were alone eligible to sit for the examination. However, the students securing upto 40% attendance were considered by the college for the purpose of their eligibility to appear in the examination on the basis of their respective medical certificates or other circumstances like participation in extra curricular activities and sports etc. That out of list of 184 students, 70 were left out; their attendance was less than 26.7%. The medical certificates and other grounds including participation in extra curricular activities did not apply to those students whose attendance was less than 26.7%.

5 Submission is that the petitioners in the month of January 2017 had opted for the course Entrepreneurship/ Cyber Law by giving their option; this was through E-filing; if their attendance for this course of “Entrepreneurship/ Cyber Law” is calculated, the attendance of all the petitioners would be more than 26.7% which was the cut off percentage set by the college. The Principal of the college however did not accept the

attendance of the petitioners for those 18 days (in the month of January 2017) inspite of the fact that all the aforementioned petitioners had attended the said classes. The concerned teacher who was taking the classes for the said subject had inadvertently not passed on that attendance record to the concerned authority as a result of which the petitioners had been denied their admit cards. In fact the concerned teacher had even admitted her mistake in writing to the effect that she had not passed on this attendance chart of said aforementioned petitioners to the concerned authorities.

6 The petitioners were kept in the dark. They were time and again informed that their matter was being considered favorably by the authorities. On 18.05.2017 the Principal of the college gave an option to the petitioners and advised them to procure medical certificates for the period of examination i.e. 09.05.2017 to 27.05.2017 so that their attendance could be marked on medical grounds during the days of the aforementioned examinations and they could be promoted to the next semester; thereafter they could appear in the supplementary examination for the fourth semester scheduled alongwith the 6th semester examination. However even on this count the Principal backed out and did not adhere to his promise. This was on 22.05.2017. On the same date a representation had been given to the

Principal; this was qua the conduct of one teacher namely Dr. Hemchand Jain. Hemchand Jain was assigned the teaching of the subject “Computer Application in Business” of B.Com(Hons.) II year. However he never used to take classes as per schedule and even when he used to take classes they would be not more than 10-15 minutes as he had a dual responsibility having been promoted as Vice Principal and was also simultaneously looking after the charge of Acting Principal. This was in the month of January to April. This representation also remained unheard.

7 On 24.05.2017 the petitioners met the Chairman of the college namely Dr. Brajesh Choudhary. They were informed that the Committee who was looking into their matter had sympathetically considered their case. An E-mail was addressed to the Dean, Students Welfare also on the same day explaining the aforementioned circumstances. The petitioners were running from pillar to post seeking promotion to the next semester. They failed to get any relief. It is pointed out that the similarly placed students had been granted relief.

8 Qua the status of petitioners no. 4 and 7 namely Divya Gupta and Vinay Varma, respondent points out that these two students had not passed their previous papers; they would be ineligible for promotion to the next

semester. This Court notes that on 26.05.2017 this fact was noted and petitioners no. 4 and 7 were permitted to sit in the examination of paper Generic Elective scheduled for 27.05.2017. This result of petitioners no. 4 and 7 is yet awaited.

9 A counter affidavit has been filed by respondent No.2 alone. Respondent No.1 has supported the stand of respondent No.2. Contention of respondent No.2 is that respondent No.2 is bound to follow the University Statutes and Ordinances; he is bound by them. Reliance has been placed upon Ordinance VII of the Ordinances of University of Delhi. It is pointed out that a student is required to have at least 66.66% i.e. 2/3rd attendance to make him/her eligible to appear in an examination. The Principal of the college has discretion in terms of Ordinance VII (2) to allow students with a 40% attendance to take the examination. The petitioners had been given the concessions available under the rules; they did not qualify as per the attendance criteria and hence their admit cards were legally withheld. It is pointed out that a list of 184 students who were short of attendance had been displayed on the college website on 05.05.2017. On 08.05.2017 a revised list of 172 students with shortage of attendance was again displayed. Many of the students came with a request to accept their medical certificates

claiming ignorance on their submissions earlier. As a gesture of goodwill, these medical certificates of all such students who had filed them at that point of time were entertained by the college Administration. As per the University rules a benefit of a maximum of 1/3rd of the classes could be given on medical grounds to the students meaning thereby that 1/3rd of the classes could be subtracted while computing the attendance of the students.

10 It is pointed out that the petitioners along with one teacher of their college namely Dr.Abha Wadhwa, (Associate Professor in Commerce) had come to the office of the Principal and on 11.05.2017 she had given a letter in writing stating that the aforementioned 7 petitioners had applied for a change of option to “E-Filing of Returns” and were attending her classes regularly. It is pointed out that the college had offered 3 options under the Skill Enhancement Courses to the students of B.Com(Hons.) 4th semester. They were (i) Entrepreneurship Development (ii) Cyber Crime and Laws and (iii) E-filing of Returns. The students were required to give one option out of three. As per the record none of the said students had opted for “E-filing of Returns” which was being taught by Dr.Abha Wadhwa. Six of them had opted for ‘Entrepreneurship Development’ and one for ‘Cyber Crime and Laws’. When this fact was brought to the notice of Dr.Abha Wadhwa, she

submitted another application stating that these students had changed their option in the month of February 2017. She however stated that each of the petitioners had attended 18 classes out of 18 held in January 2017. This appears to be fraudulent as petitioner no. 4 was on medical leave from 22.01.2017. She thus could not have attended all the 18 classes. The names of other students appeared in the attendance sheet of the subject 'Entrepreneurship Development' and 'Cyber Crime and Laws' which option had been taken in January 2017. One student could not attend two classes at the same time and take benefit of attendance from both the subjects. The rules allowed the student to take one option. Moreover the attendance record submitted by Dr. Abha Wadhwa for the month of January 2017 did not have the names of the petitioners. The names appeared to have been added by her in her own handwriting for which she had no explanation. No weightage could thus be given to the attendance of the petitioners for the paper E-filing of Returns; these petitioners had never opted for the subject being taught by Dr. Abha Wadhwa.

11 The details of the attendance of the aforementioned students has been clarified in the aforementioned counter affidavit; submission being that each of the student has less than 20% attendance. The attendance sheet submitted by

Dr. Abha Wadhwa is in fact incorrect. The petitioners have not come to the Court with clean hands. Petitioner no. 4 has qualified only in 4 papers out of 5 in the 3rd semester. Petitioner no. 7 had in fact qualified in all the papers; he had mis-represented to the Court that he has failed pursuant to which he was permitted by this Court to sit in the examination which was scheduled on 27.05.2017. The petitioners deserve no relief.

12 Rejoinder has been filed by the petitioners reiterating the averments made in the petition. It is pointed out that there is no rule in the University which denies promotion to the students; Ordinance VII does not prohibit a promotion from one semester to another. The petitioners undertake to make good of the shortfall of their attendance in the next semester. It was only on 08.05.2017 that the petitioners for the first time were told that they would not be eligible for the examination which was to be held on 09.05.2017. Thereafter they are running from pillar to post to get relief. The Principle has adequate discretion to condone the shortage of their attendance, if any.

13 Respondent No.2 was directed to file an additional affidavit. This was on 02.08.2017. In this additional affidavit it is pointed out that the terms and conditions of the Ordinance which have now been highlighted by the petitioner are not pleaded in the petition. It is pointed out that classes in the

4th semester were dispersed on 27.04.2017. On the same day, the college had its Annual Day Function. 29th and 30th April were Saturday and Sunday. The college had displayed the shortage of attendance on their website and notice board on 05.05.2017. Benefit under sub clause (a) of the aforementioned Ordinance was given to all those students who had qualified.

14 In the course of these proceedings learned counsel for the petitioners had pointed out that two students namely Tanvi Jain and Raj had been granted the benefit of additional attendance and their shortage of attendance had been condoned. Record of the aforementioned students was brought to the notice of the Court. This was on 01.08.2017. On the following day i.e. on 02.08.2017, this Court has been informed that the record of Tanvi Jain and Raj is distinct as they were participants in extra curricular activities. This objection is thus no longer pressed.

15 Rejoinder to this additional affidavit has been filed. It was stated that the college should have condoned the shortage of attendance in terms of Ordinance VII (2) of respondent No.1 university.

16 Learned counsel for the respondent in support of his submission has placed reliance upon a judgment reported as 170 (2010)DLT 755 Vandana Kandari vs University of Delhi. Reliance has also been placed upon a

Division Bench judgment of this Court reported as 197 (2013) DLT 469 Heena Bahal vs University of Delhi & Ors. as also 2011 Law Suit (Del) 3615 Neeraj Behl vs Guru Gobind Singh Indraprastha University.

17 Arguments have been heard. Record had been perused.

18 Ordinance VII which is the relevant Ordinance of the University regarding attendance rules for the 3 year semester based undergraduate programmes (page No. 328 and 349 of the University Calendar Volume I (2004) (E.C. 28.05.2015) was amended w.e.f. 28.05.2015. The existing nomenclature of an undergraduate course BBS (Bachelor of Business Studies) came to be amended and the amended nomenclature reads as BMS (Bachelor of Management Studies).

19 The said Ordinance (Ordinance VII (2)) reads as under:

A candidate for the Semester I/III/IV Examination shall not be deemed to have satisfied the required conditions of attendance unless s/he has attended, in all the subjects taken together, not less than two thirds of the lectures/practical/presentation/tutorial required to be attended. Provided that a student of the Semester I/III/IV who does not fulfill the required conditions of attendance, as above, but has attended, in all the subject taken together, not less than 40 percent of lectures/practical/presentations during the respective semester, may at the discretion of the Principal of the College concerned, appear for the

ensuring semester examination; but such a candidate shall be required to make up the deficiency at lectures and practical, in the next semester of the same academic year.

Provided that a student of the II/IV/VI semester who does not fulfill the required conditions of attendance as above, but has attended in all the subjects taken together, not less than 40 per cent of the lectures/practical/presentation/tutorials, held during the respective semester, may the discretion of the Principal of the College concerned, be allowed to appear at the ensuing examination provided that she/he makes up the deficiency of the said attendance by combining the attendance of the previous semester in the ensuing semester.

Provided further that the Principal of the College concerned may permit a student to appear in an examination notwithstanding that the student has not fulfilled the attendance requirement, if in the opinion of the Principal, such student shall make up the deficiency in the succeeding academic year.

Provided further that a student of the VI semester shall be allowed to appear at the VI semester examination, if by combining the attendance of the three academic years, the candidate has put in two-thirds of attendance, in all the subjects taken together, held during the respective years.

20 The petitioners are in the 4th semester. They have however not been

permitted to give their examination for the 4th semester for the reason as enumerated in their petition.

21 Learned counsel for the respondent has highlighted the first proviso of the aforementioned Ordinance. Submission is that a student who is of the 4th semester (as is in the instant case) and who does not fulfill the required conditions of attendance but has attended in all the subjects taken together not less than 40% of the lectures / practical / presentation / tutorials held during that particular semester i.e. during the 4th semester, may at the discretion of the Principal of the college be allowed to appear at the ensuing examination provided that she/he makes up the deficiency of the said attendance by combining the attendance of the previous semester in the ensuing semester. Learned counsel for the respondent points out that even if the attendance of the 3rd semester of the petitioners is taken into account and is read alongwith the attendance of the petitioners in the 4th semester, they do not qualify for a promotion to the 5th semester as 40% attendance in each respective semester has to be kept in mind. The attendance of the petitioners in the 4th semester was even less than 20%.

22 Per contra learned counsel for the petitioner has highlighted the 2nd proviso; submission is that the Principal of the college may permit a student

to appear in an examination notwithstanding that the student has not fulfilled the attendance requirement and if in the opinion of the Principal such student shall make up the deficiency in the succeeding academic year. Learned counsel for the petitioners points out that the petitioners have an attendance of 40% if both 3rd and 4th semester is counted. This position is not in dispute. It is not in dispute that if the attendance of 3rd and 4th semester is counted together each of the petitioners would have an attendance of about 40%. The contention of the respondent is that 40% attendance as contained in the first proviso should be an attendance in each semester. Learned counsel for the petitioner submits that the discretion of the Principal of the college which is contained in the second proviso is wide enough to allow a student to sit in an examination if in the opinion of the Principal the student can make up the deficiency in the succeeding academic year.

23 The vehement submission of the respondent that the deficiency of attendance in the 4th semester cannot be made up in the next year as the 3rd and 4th semester is one cumulative year and a shortage of attendance in the 3rd and 4th semester cannot be made up in the next semester i.e 5th semester/6th semester would be contrary to the terms of the second proviso which clearly provides that Principal in its discretion may allow a student to

make up the deficiency in the succeeding academic year meaning thereby that if the student has fallen short of attendance in the II year (3rd and 4th semester taken together) and if the Principal is of the opinion that such a student can make up the deficiency in the next academic year, he may be permitted to sit in the examination.

24 Again at the cost of repetition the submission of the respondent on this count that each year is a complete year in itself and the present petitioners who are in the II year (4th semester) cannot make good their attendance in the 5th and 6th semesters thus holds no water. This argument of the respondent has no force.

25 The fact that two other students namely Tanvi Jain and Raj have been granted permission to be promoted to the next semester even though they have an attendance of 14% and 18% respectively had been examined by the respondent. The respondent had informed this Court that the said students admittedly had an attendance of 14% and 18% respectively but they were granted permission to be promoted to the next semesters for the reason that they had participated in the extra curricular activities which is not the case of the present petitioners. This Court also notes the submission of the petitioners that their case is being treated more harshly than the others for the

reason that they had approached this Court and were openly fighting for their rights before the Competent Authority.

26 Record of the petitioners shows that if the attendance of the 3rd and 4th semesters is counted together, their attendance is around 40%. The discretionary quota which is available with the Principal of the college is contained in the second proviso of Ordinance VII. This is a wide discretion. The Principal of the college may permit a student to appear in an examination even if he has not fulfilled the attendance requirements if in his opinion the said student may make up the deficiency of attendance in the succeeding academic year meaning thereby that if an undertaking on affidavit is given by the petitioners that they would make up the deficiency shortfall of their attendance in the 5th and 6th semester (3rd academic year) and make good the said attendance of which they have fallen short in the previous year, the Principal can permit such a student to appear in an examination. This Court also notes the submission of the petitioners that Dr. Abha Wadhwa had given a 18 day full attendance to each of the petitioners certifying that they had attended a course being taught by her which was a course of 'E-filing of Returns'. The fact that the petitioners could change their options through an online application is not disputed. The case of

petitioners is that they had changed their option i.e. E-filing of Returns in January 2017. The affidavit of Dr. Abha Wadhwa who was teaching this course was to the effect that each of the petitioners had attended 18 classes out of a total 18 held in January 2017. The fact that such a letter had been given by the Professor of respondent No.2 namely Dr. Abha Wadhwa is not in dispute. The contention of the respondent college is that this certificate appears to be incorrect and action is now being contemplated against Dr. Abha Wadhwa. Admittedly this certificate was given by Dr. Abha Wadhwa in May 2017. Additional affidavit of respondent No.2 was lastly filed in August 2017. Till that date i.e. in this intervening period of 3 months no action has been taken against Dr. Abha Wadhwa; if an incorrect certificate had been issued by the said Associate Professor, nothing prevented the college from taking appropriate action; till the date of filing of the additional affidavit, they were only contemplating action. If this attendance of 18 days which as per Dr. Abha Wadhwa was an attendance of each of the petitioners for a course being taught by her (i.e. E-filing of Returns) and is taken into account, the case of the petitioners would qualify for a complete attendance in terms of clause (a) of Ordinance VII (2). There is no reason as to why this certificate of Dr. Abha Wadhwa should be disbelieved; the attendance record

has been submitted by Dr. Abha Wadhwa; it cannot be at the whim and fancy of the respondent college to reject such a certificate when admittedly Dr. Abha Wadhwa is a Associate Professor of the college of respondent No.2. Even presuming that a fake certificate has been issued by her, why no action has been taken against her in this intervening period of 3 months for which there being no explanation, this Court is not inclined to accept this stand of the respondent.

27 The submission of the petitioners that the stand of the respondent is being adopted harshly against the petitioners for the reason that they have approached the Court is also a submission which cannot be ignored at this stage. This Court also notes that the petitioners are willing to submit respective affidavits of each of them undertaking to make good the shortage of their attendance in the last semester by attending all classes in the ensuing semesters. If the 18 classes certified by Dr. Abha Wadhwa are taken into account, the petitioners fully qualify for promotion to the next semester as also for their right to appear in the supplementary examination for the 4th semester which will now be held along with the exams of the 6th semester. In the alternate, even if these 18 classes are not taken into account, the second proviso of Ordinance VII (2) gives a discretion to allow such students to be

promoted to the next semester on their undertaking to make up the deficiency in the succeeding academic year. This discretion has to be exercised by the Principal fairly and justly and for no other reason. The discipline of an Institute no doubt has to be maintained but noting the circumstances of the case this Court deems it fit to allow the prayer of the petitioners.

28 The judgment relied upon by the learned counsel for the respondent are distinct on their facts in Vandana Kandari (supra) Ordinance VII of the University of Delhi was the subject matter of discussion. A Law student who had not adhered to the attendance pattern of Ordinance VII and had not followed the norms and standards laid down by the Bar Council of India was not considered sympathetically; facts of that case are distinct. The judgment of Neeraj Bahl (supra) is also distinct on its own facts. The shortage of attendance was not condoned for the reason that there was no explanation by the students on any count. In the instant case the petitioners have been able to show that they had attended 18 classes of Dr. Abha Wadhwa which was not taken into account; the fact that Dr. Abha Wadhwa was teaching a course which has been opted for by the petitioners (as his evident and admitted by the respondent) Associate Professor of respondent No.2 having certified this

position, the said judgment would not apply to the facts of the instant case. The third judgment relied upon by the learned counsel for the respondent in Heena Bahal (supra) is also distinct on its own facts. That judgment was delivered prior to the amendment in Ordinance VII(2). In the unamended Ordinance VII (2) the second proviso which is the discretion of the Principal of the College to allow a student to appear in an examination was not prevalent; this has been added only now. In fact in none of the judgments relied upon by the learned counsel for the respondent this amended proviso was present; this amendment come into force with effect from 28.05.2015. Learned counsel for the respondent has not placed on record any judgment which has examined or interpreted the second proviso of Ordinance VII.

29 This Court is of the view that the case of the petitioners, in the light of its facts, has to be considered sympathetically by the respondent. If the 18 classes of Dr. Abha Wadhwa are added, respondent No.2 would have no quarrel with the petitioners qua a shortage of attendance. The case of the petitioners must accordingly succeed. They are permitted to be promoted to the next semester on their giving an undertaking on affidavit to respondent No.2 college that they will make good the shortfall of the attendance in the last semester. This undertaking/affidavit shall be adhered to by them failing

which the Principal of the college will have discretion to take appropriate action against the said students. This affidavit shall be filed before respondent No.2 college within a period of 1 week from today. Respondent No.2 will permit the petitioners to appear in the supplementary examination of 4th semester which will be held along with 6th semester. This Court had given certain interim directions qua the status of petitioners no. 4 and 7. Those orders stand confirmed.

30 Petition allowed and disposed of in the above terms.

INDERMEET KAUR, J

AUGUST 25, 2017

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