

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.21555 of 2018

ORDER::

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 2nd respondent in not permitting the petitioner to appear in re-jury internal examination in Architectural Design subject in 6th Semester scheduled from 25-06-2018 to 29-06-2018 as also supplementary examination for all the subjects of 6th Semester scheduled in the month of July, 2018 along with students of 2015-16 batch on the ground of short of attendance of the petitioner in attending the classes and in not applying the new credit pattern examination rules to the petitioner who is a student of 2014-15 batch as being illegal and arbitrary and violation of Article 14 and 21 of the Constitution and for issuance of appropriate consequential directions.

2. The gravamen accusation of the petitioner is that in his 6th Semester during the academic year 2017-18, he did not attend classes from 10-01-2018 to 20-02-2018 (including the study tour during 04-02-2018 to 10-02-2018) as he suffered with Dengue fever and the same was brought to the notice of the 2nd respondent vide letter dated 22-02-2018 by enclosing a medical certificate issued by the Doctor in that behalf. Petitioner states that short of attendance on account of his illness is only 3% and against the minimum required attendance of 75%, as he has got attendance of 72%. That respondents condoned such minimal short of attendance in respect of similarly placed students, but singled out him for such preferential treatment. Hence, this writ petition.

3. Sri Mirza Safiulla Baig, learned counsel for the petitioner strenuously contended that in the light of the directions issued by the 1st respondent to the 2nd respondent and other 2 colleges in matters of granting relaxation of attendance on account of genuine medical grounds/exigencies, on such case

being the petitioner's case and the case of the petitioner had been recommended by the Dean Academics for admitting to such a relaxation, not allowing the petitioner to appear for 3rd year, 6th Semester springs despotism and such a pedantic approach jeopardized the career of the petitioner.

4. Dr. PB Vijaya Kumar, learned standing counsel appearing for respondents 2 and 3, on the other hand, contended that the petitioner in 6th Semester did not regularly attend the classes (including the study tour during 4th to 10th February, 2018) and hence the petitioner got an aggregate of 65% attendance at the end of Semester as against the aggregate attendance of 75%. It is also stated that the request of the petitioner made vide letter dated 18-04-2018 to condone attendance citing medical reasons was examined in the light of the directions issued by the 1st respondent vide letter dated 19-01-2018 regarding relaxation of prescribed attendance and the committee constituted to look into the grievance of short of attendance on account of medical grounds/exigencies

suggested for condoning the short of attendance to the extent of study tour and even if that is allowed to the petitioner, the petitioner got an aggregate attendance of 72% and still short of 3% attendance to reach the minimum attendance requirements of 75%. It is stated that due to this the petitioner was detained and is required to repeat the Semester as per the applicable Clause 3.1.1. of School of Planning and Architecture, Vijayawada, Examination Rules. It is also stated that requirement of fulfilling the prescribed attendance is not only a salutary one but also essential one and attending the college is an essential element of education. Decisions in

M. SUNIL CHAKRAVARTHY vs. PRINCIPAL,

SREEKALAHASTEESWARA,¹ & K. PRADEEP vs.

JAWAHARLAL NEHRU TECHNOLOGICAL² are relied on in support of his contentions.

5. As per the student report submitted by the 3rd respondent, it is to be seen that the petitioner in his 5th

¹ 2005 (1) ALD 253

² 2002 (3) ALD 667

Semester had failed in the end Semester Regular Examinations held in November, 2016 in three subjects i.e. Architectural Design (Studio), Building Science and Services (Lighting and Acoustics) and History of Architecture and appeared in the subsequently held supplementary examinations in December, 2016 and failed again in two subjects i.e. Architectural Design (Studio) and Building Science and Services (Lighting and Acoustics) and as such the petitioner was detained, as he could not meet the minimum academic requirements to get promoted into the next Semester. Clause 3.1.6 of the Regulations applicable to SPA, Vijayawada, stipulates that medical leave shall be included in the 25% permissible absence only and no further relaxation will be given on medical grounds. Clause 3.1.1 mandates that a student will be eligible to appear in the external examination if he/she has minimum 75% attendance on an average in overall lectures, studio, laboratories conducted taken together in all subjects and a minimum of 50% classes separately in

each lectures, studio, laboratories. In the event of the student failing to achieve 75% attendance, the student will be detained and will have to repeat the year in all subjects. Clause 3.3.2 stipulates that a student who secures less than 40% marks in internal assessment, he/she shall be detained and will not be permitted to appear for external examinations and shall have to repeat that whole Semester again and such a student shall attend all the classes again, for that subject. In this case, even if the petitioner is given relaxation on medical grounds which is stated to be coming to 72% attendance, still the petitioner could not meet the minimum attendance requirement of 75% in aggregate and 50% in each individual subjects. The claim of the petitioner that he should be governed by the amended examination rules made effective from the academic year 2017-18 cannot be considered as the Course Equivalence Scheme of Bachelor of Architecture, which is applicable to the students of B.Arch admitted to the course

During 2012-13 and prior to 2015-16. Para 1.2 of Course Equivalence Scheme stipulates that the Scheme is aimed to keep the old course structure and academic regulations unchanged for such students as per his/her year of admissions till he/she passes out, in spite of he/she being required to sit with the batches where new course structure has been initiated. Hence, this equivalence regulation is to be ideally read together with the course structure and academic regulations/exam rules, applicable to be students as per his/her year of admission for its complete applicability.

6. In the light of the above stipulation, the petitioner cannot seek to apply the amended examination rules made effective from the academic year 2017-18. In the counter affidavit filed by the 3rd respondent it is clarified that some of the students who were given relaxation are students admitted after coming into force of the amended examination rules and they were given relaxation having regard to the precarious condition, to refer to one of the student named by the petitioner is

Annapurna Garimella who has been given relaxation suffered an electric shock in SPAV college campus and due to her resultant mobility restriction, classes were conducted for her in SPAV hostel i.e. within the premises of SPA, Vijayawada campus and therefore there is no selective treatment being meted out to the petitioner.

7. In **M. SUNIL CHAKRAVARTHY**'s case (1 supra) in a similar case of engineering students of different semesters and it is a case of short of attendance, Division Bench of this Court observed that if it is not permitted under the Regulations and Rules, shortage of attendance cannot be condoned by the authority and even on sympathy and concerns the career of students and the students would lose almost two precious years of their academic life, it is beyond the legal competence to direct or compel an authority to do something beyond his competence to condone the shortage of attendance.

8. In **K. PRADEEP vs. JAWAHARLAL NEHRU**

TECHNOLOGICAL UNIVERSITY's case (supra 2) this Court at penultimate portion of the order observed as follows:-

“.....It is well recognized, since ages, that a student can never get complete education by merely reading the text books sitting at home under a personal tutor. For the all-round development of one's personality it is essential that one should attend an educational institution, call it by any name Gurukulam, Madrasa, or College, along with other students who come from various cross-section of the society. This was the reason that why the great Kings and Emperors of this country always sent their sons to the Gurukulas headed by famous Masters, who were residing mostly in the deep forests. The Princes were made to sit along with the other common students, work along with them and serve the Master like the other commoners. Even Lord Krishna, who was the depository of all knowledge had to attend the Gurukulam headed by that Great Teacher Sandipani along with others including the poor Kuchela. It is also well recognized that learning by attending the college, unlike learning from books, will broaden the vision of the students and develop a sort of camaraderie amongst them, which is very essential for understanding the intricate problems of the country and for its good governance. That apart, the job of a lecturer is not only teaching the subject but also to help the student in the full development of his personality. This will only be possible if a student attends the lectures regularly, enabling the teacher to constantly watch his performance and guide him in the right direction. Thus, attending the College or an educational institution, regularly, is an essential element of education, which will be lost if a student fails to attend a minimum number of lectures.

8. In the instant case as the appellant has not secured the required attendance to make him eligible for appearing at the examination, this Court cannot issue a mandamus as prayed

for. In our opinion the requirement prescribed by the University is not only a salutary one but also essential one and that attending the college or educational institution is an essential element of education.”

9. In the circumstances, a mandamus cannot be issued to mitigate the shortage of attendance of 3% to the petitioner when the regulations specify requirement of attendance at minimum 75%. The writ petition fails and it is accordingly dismissed.

10. After pronouncing the order, learned counsel for the petitioner submits that because of the pendency of writ petition, the petitioner could not be re-admitted into classes in which he is retained. In view of the same, it is open for the petitioner can make representation in that behalf to the respondent-authorities and on such representation being made, the respondent-authorities to consider the same take action accordingly as to re-admitting the petitioner into the classes in which he is retained. Miscellaneous petitions if any

pending in the writ petition shall stand closed. There shall be
no order as to costs.

A.RAJASHEKER REDDY, J

Dated: 06-09-2018
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HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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