

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 4342 of 2019**

Prashant Kumar Kathale S/o S.K. Kathale Aged About 22 Years Student
Of 7th Semester, B.A. L.L.B, Guru Ghasidas Central University, Koni,
Bilaspur, Chhattisgarh

---- **Petitioner****Versus**

1. Vice Chancellor Guru Ghasi Das Central University, Koni, Bilaspur, Chhattisgarh
2. Registrar Guru Ghasi Das Central University, Koni, Bilaspur, Chhattisgarh
3. Dean Sos Law/head Of The Department, Guru Ghasi Das Central University, Koni, Bilaspur, Chhattisgarh

---- **Respondents**

For Petitioner	:	Mr. CJK Rao, Advocate
For Respondent/s	:	Mr. Neeraj Choubey, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****29/11/2019**

1. The present writ petition has been filed seeking for appropriate direction to the respondents to condone the shortfall of attendance on the part of the petitioner for appearing in the 7th Semester of BA LLB by the petitioner.
2. Perusal of the record would show that a shortfall of attendance of the petitioner was on account of petitioner being implicated in a criminal case for the offence under Section 363, 364, 354, 506 & 34 of the IPC read with Section 8 of the Pocso Act. The petitioner was in custody for a period between 10.08.2019 to 23.09.2019. Admittedly the petitioner during the said period has not attended classes and record show that total percentage of attendance that the petitioner has, is only 49.33% whereas the requirement of attendance for permission to participate in the examination is minimum of 75%. The relaxation if at all can be

granted is in only one of the subjects and that too is maximum of 10% by the Dean. The petitioner does not fall in any of the categories or the criterias under which the Dean could have condoned shortage of attendance.

3. Given the said facts, this Court finds that no strong case is made out by the petitioner for grant of any relief at this juncture.
4. The view of this Court stands fortified from the recent decision rendered by the Delhi High Court in the case of **Guru Gobind Singh Indraprastha University Vs. Naincy Sagar & Anr.** and connected petitions decided on 19.11.2019. The Delhi High Court in the said judgment in paragraph 27 has held as under :-

“27.The importance attached to attendance in classes in a professional course like BA LLB/BBA LLB cannot be overstated. There are a line of decisions of the Supreme Court and the High Courts, where it has been opined that fixation of qualifying standards including minimum percentage of attendance is a matter which is best left to expert academic bodies and courts should be slow to interfere in such policy matters unless the decision taken is patently and palpably arbitrary, illegal or in violation of the Constitution of India. Once an academic body has decided on a minimum percentage of lectures that a student must attend at every stage or in the aggregate, then courts must shows deference to the said decision as the presumption is that being an expert in the field, the body has applied its mind before prescribing an eligibility criteria. {Refer: [Ashutosh Bharti v. Ritnand Balved Education Foundation](#) reported as [MANU/DE/0024/2005](#), [Siddharth Kaul and Ors. v. Guru Gobind Singh Indraprastha University \[W.P.\(C\) 7610/2011](#), decided on 02.12.2011], [University Grants Commission and Anr. v. Neha Anil Bobde \(Gadekar\)](#) reported as 2013 (10) SCC 519 and [Prateek Singhal v. National Testing Agency & Anr.](#) reported as 2019 SCC OnLine 10873}”

5. A similar view has also been taken by the Allahabad High Court in the case of **Saurabh Kulshreshth Vs. Bhim Rao Ambedkar, University &**

Ors., 2010 LawSuit (All) 891 wherein in paragraphs 13 to 18 it has been held as under :-

“13. In *Regional Engineering College, Hamirpur and Anr. v. Ashutosh Pandey* the Supreme Court examined the provisions of the attendance regulations of the University which provided that though the requirement of attendance was 75%, but the Principal could condone further shortage upto 10% only if the candidate satisfied the conditions mentioned therein. The Supreme Court held that in view of the Regulations, under no circumstances the Principal could condone shortage of 11% attendance below the normal requirement of 75% since the Principal had the power to condone only upto 10%. The relevant observations are as follows:

A perusal of the Regulation shows that a candidate should first have 75% of minimum attendance in that course under Regulation 4.1. Regulation 4.2 mentions the circumstances under which further exemption can be granted by the Principal. The Principal can give further credit upto an extent of 10% of the total classes held in each course during the period of a student's participation in the programmes/competitions mentioned in Regulation 4.2. The Principal can exempt upto 10% of the total classes only in contingencies as mentioned in Regulation 4.2. Thus, 10% is the maximum in addition to 25%.

In addition, Regulation 4.3 is specific that the condonation on account of reasons listed under (4.2) shall not exceed 10% of the total lectures delivered during the semester. It also states that a candidate will have to apply to the concerned Head of Department on prescribed proforma along with the reasons and documents in proof of his absence. Condonation can be granted by the concerned Head of Department with the prior approval of the Principal. Thus, 10% in excess of 25% alone, is the maximum that can be condoned.

*In the present case, the respondent did not make any application in the prescribed pro forma. Therefore, it is not possible to say whether his case comes within the contingencies mentioned in Regulation 4.2. It is no doubt stated that the respondent had gone to Delhi to appear in the examination/interview, but it is not clear whether that was an examination/interview held by a Government Organization/Public Limited Company. **In any event, admittedly after deducting admissible 25% exemption, further absence of the respondent comes to 11% which is more than the permissible discretionary percentage granted to the Principal. Therefore, the Principal was right in saying he had no power to condone the absence in excess of 10% in addition to 25%.***

We are, therefore, of the opinion that the High Court fell into an error in permitting condonation of absence beyond 10% in addition to 25%. We, therefore, set aside the judgment of the High Court and the directions given therein.

(emphasis supplied)

14. It is for this reason also that the petitioner could not have appeared at the LL.B. Part-III examination conducted by the University.

15. Learned Counsel for the petitioner then contended that a sympathetic attitude should be adopted since the petitioner had appeared at the LL.B. Part-III examination under the interim order of this Court and so a direction should be issued for declaration of the result.

16. This contention of the learned Counsel for the petitioner cannot also be accepted. The Supreme Court has held that misplaced sympathy should not be shown merely because a student has appeared at the examination under an interim order of the Court. In this connection reference can be made to the decision rendered by the Supreme Court in the case of Regional Officer, CBSE v. Ku. Sheena Peethambaran and Ors. [MANU/SC/0658/2003](#) : 2003 (7) SCC 719 wherein it was observed:

This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations....

In the background of the law as laid down by this Court, we find that in the case in hand the fact situation was even worse as compared to the decision cited above. The student, namely, Respondent 1 had failed to clear her Class IX examination which was a necessary requirement as provided under the bye-laws of the Board so as to be entitled to appear in Class X examination conducted by the Board. Despite notice, no one has put in appearance on behalf of Respondents 1 and 2 to indicate any fact or circumstance so as to take any different view. **Condoning the lapses or overlooking the legal requirements in consideration of mere sympathy factor does not solve the problem, rather breeds more violations in the hope of being condoned. It disturbs the discipline of the system and ultimately, adversely affects the academic standards.**

(emphasis supplied)

17. It also needs to be noticed that for ensuring compliance of the interim order passed by the Court provisionally permitting the petitioner to appear at the LL.B. final year examination, the University made attempts to serve the admit card upon the petitioner but instead of receiving the admit card so that he could appear at the examination, the petitioner filed a contempt petition in this Court and the counsel of the University had to supply a copy of the admit card to the learned Counsel for the petitioner appearing in the contempt petition. This document has been

annexed as Annexure CA-11 to the counter affidavit and the letter of the counsel clearly states that in spite of repeated information and request, the petitioner is not receiving his admit card and, therefore, the counsel may accept the admit card on behalf of the petitioner and the Court may advise him to appear at the examination. This apart, the petitioner had only appeared at the examination of two papers.

Thus, for all the reasons stated above, the petitioner was not eligible to appear at the LL.B. IIIrd year examination since his attendance was short. No relief, therefore, can be granted to the petitioner.”

6. The Supreme Court also in the case of **Regional Engineering College, Hamirpur Vs. Ashutosh Pandey, 2002 (9) SCC 720** in paragraph 8, 9 & 11 has held as under :-

“8. A perusal of the Regulation shows that a candidate should first have 75% of minimum attendance in that course under Regulation 4.1. Regulation 4.2 mentions the circumstances under which further exemption can be granted by the Principal. The Principal can give further credit upto an extent of 10% of the total classes held in each course during the period of a student's participation in the programmes/competitions mentioned in Regulation 4.2. The Principal can exempt upto 10% of the total classes only in contingencies as mentioned in Regulation 4.2. Thus, 10% is the maximum in addition to 25%.

9. In addition, Regulation 4.3 is specific that the condonation on account of reasons listed under (4.2) shall not exceed 10% of the total lectures delivered during the semester. It also states that a candidate will have to apply to the concerned Head of Department on prescribed pro forma along with the reasons and documents in proof of his absence. Condonation can be granted by the concerned Head of the Department with the prior approval of the Principal. Thus, 10% in excess of 25% alone, is the maximum that can be condoned.

11. We are, therefore, of the opinion that the High Court fell into an error in permitting condonation of absence beyond 10% in addition to 25%. We, therefore, set aside the judgment of the High Court and the directions given therein.”

7. Given the aforesaid legal position and the authoritative judicial pronouncement made by Supreme Court as well as by High Court, this Court is of the opinion that present writ petition also being devoid of merits deserves to be and accordingly stands rejected.

Sd/-
(P. Sam Koshy)
Judge