

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

**W.P.NOS.7876, 7955, 7961, 8048, 8190, 9722, 9957, 13327,
13390 AND 13398 OF 2019**

COMMON ORDER

Since, the issue involved in all these writ petitions is one and the same, they are heard together and are being disposed of by this common order.

2. Petitioners in all these writ petitions are studying B.E./B.Tech. in Chaitanya Bharathi Institute of Technology, Gandipet, Hyderabad, in different branches of engineering. The said college is respondent No.4 in all the writ petitions. The petitioner in W.P.No.8190 of 2019 is studying second year of engineering, and the petitioners in all the other writ petitions, are studying their fourth year. By the impugned action of the 4th respondent – College, they were not permitted to write their second semester examination of their respective years of course of study, on the ground of shortage of attendance. Aggrieved by the said action, the present writ petitions have been filed.

3. Pending consideration of the issue, by virtue of the interim orders passed by this court, petitioners were permitted to write the examinations.

4. Learned counsel appearing for the petitioners submit that as per relevant rules, in a semester, a student shall have attendance of not less than 75% aggregate to appear for examination and in special circumstances, the Principal has the power to condone deficiency in attendance up to 10% on payment of condonation fee. Therefore, the learned counsel submits that if a student has attendance of 65% in a semester, he can seek for condonation of deficiency in attendance up to 10%, and thus it would be 75% (65% + 10%) in aggregate. Learned counsel further submits the petitioners in all the writ petitions have attendance ranging between 60% to 63% in the semester in question, and they have shortage of about 5% .

5. Learned counsel for the petitioners in W.P.Nos.7876, 8048, 8190, 9722, 9957 and 13327 of 2019, submits that the petitioners in these writ petitions participated in strike against the hike in college fee and during this period, they could not attend classes. The learned counsel for the petitioners in W.P.Nos.7955, 7961, 13390 and 13398 of 2019, submits that the petitioners in these writ petitions fell sick, and they also participated in college events, and in placement drive held in the campus, and further, though they also attended practical, no attendance was given. Learned counsel for these petitioners also sought to rely on some material produced from the college web site to support his contention that college events and placement drive has taken place in the college.

6. With these grounds, the learned counsel contend that if attendance is given by the college, considering the above circumstances, the petitioners will get attendance of 65%, and the remaining 10%, the Principal has power to condone on medical grounds and on payment of condonation fee, and then the petitioners would get aggregate of 75% of attendance in the semester, making them be eligible to appear for examinations.

7. Learned counsel further submits that most of the petitioners are in their final year of their course and if they are not permitted for the examination and detained, their future would be affected and hence, sought this court to take a sympathetic view of the matter and direct the 4th respondent to consider the above grounds and grant attendance.

8. The 4th respondent – College represented by its Principal, filed counter affidavits in W.P.Nos.7876, 7955, 7961, 8190, 9722 and 9957 of 2019 and disputed the grounds raised by the petitioners for their absence. The tenor of the counter affidavits is that under the relevant rules, to appear for examination in a semester, the student shall have attendance of minimum of 75% and the Principal of the college has jurisdiction to condone the deficiency in attendance

only to an extent of 10% in special circumstances, that too on medical grounds and beyond that, on any ground whatsoever, he has no jurisdiction to condone the shortage of attendance. As all the petitioners have attendance less than 65%, the deficiency in the attendance cannot be condoned by the Principal, and sought for dismissal of writ petitions.

9. Sri A.Venkatesh, learned Standing Counsel appearing for respondents 3 and 4 while reiterating the above grounds, further submit that college events will be conducted after the college, or they would be conducted in such a manner, that classes are not affected and, therefore the ground sought to be raised in this regard, cannot be considered. He further submits that if the deficiency is directed to be condoned taking into consideration, the grounds sought to be raised by the petitioners, the discipline in the college will be disturbed and hence, this court may not entertain the writ petitions.

10. Heard the learned Government Pleader for Education for 1st respondent, Sri Ch.Jagannadha Rao, learned Standing Counsel for the 2nd respondent – University.

11. The 4th respondent – College, which is an autonomous institution, and affiliated to Osmania University, Hyderabad, has framed Rules and Regulations applicable to students of four years degree course in engineering / technology admitted from the academic year, 2013-14. Relevant rules relating to attendance are extracted as under for ready reference:

2(i) A regular course of study for eligibility to appear at the B.E./B.Tech. examination of any semester shall mean putting in attendance of not less than 75% aggregate in lectures/theory, practicals, drawings, workshops, project, seminars etc. The cumulative monthly attendance in each subject and the aggregate attendance shall be displayed on the notice board.

...

(iii) In any semester of the course if a candidate fails to secure the minimum percentage of attendance, he/she shall not be eligible to appear in the examination of that semester and he/she shall have to enroll himself/herself to undergo afresh a 'Regular Course of Study' of corresponding semester in subsequent academic session, in order to become eligible to appear for the examination.

3(i) In special cases and for sufficient cause shown, the principal may, on special recommendation of the Head of the Department, condone the deficiency in attendance

to the extent of 10% on medical grounds subject to submission of medical certificate and payment of condonation fee.

From a reading of the above rules it is clear that in a regular course of study to become eligible to appear for B.E./B.Tech., examination of any semester, the student has to put in not less than 75% aggregate in lectures, practicals, drawings, workshops, field work, project, seminars extension etc. Under Rule 3(i), power is conferred on the Principal to condone the deficiency of attendance to an extent of 10% on medical grounds in special cases, and for sufficient cause shown, and on recommendation of the Head of the Department. Beyond 10%, no power is conferred on the Principal to condone the deficiency of attendance on any grounds.

12. Petitioners, in all these writ petitions have admittedly attendance ranging between 60 to 63 per cent, and beyond 65%, the Principal of the college has no jurisdiction to condone the deficiency in attendance. Hence, in the absence of any enabling provision, no direction can be given to the Principal of the 4th respondent – Institute to condone deficiency.

13. Considering similar facts and circumstances, the Apex Court in **ASHOK KUMAR THAKUR v. UNIVERSITY OF HIMACHAL PRADESH AND ORS.**¹ held as under:

“4. The only question that now remains is whether the petitioner’s deficiency in the matter of attendance could be condoned by any authority. The final lecture statement of the Bilaspur and Dharmsla colleges show that the petitioner was short of 20 lectures in Civics, of 10 lectures in Economics, of 10 lectures in History and of 8 lectures in English. Now the rules as to condoning of deficiency in the matter of attendance of lectures are to be found in Chapter XV of the Punjab University Calendar 1969. Volume III (Rules). The relevant Rule is 1(a) and the material portion of it is in the following terms:

“(I) Taking into consideration the results of the House examinations:

(a) The Principal of a College affiliated in the Faculties of Arts, Science and Oriental Learning may condone the deficiency in lectures as under:

(i) Upto 15 lectures in each of the subjects;”

Since the petitioner’s deficiency in the matter of attendance exceeded 18 lectures in Economics and 20 lectures in Civics, it was beyond the jurisdiction or competence of the Principal to condone this deficiency. In our opinion this completely destroys the case of the petitioner.

¹ AIR 1973 SC 221

5. 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."

14. A Division Bench of the High Court of erstwhile State of Andhra Pradesh, in ***K.PRADEEP vs. JAWAHARLAL NEHRU TECHNOLOGICAL UNIVERSITY, HYDERABAD***², considering identical set of facts and circumstances, and the law laid down in the earlier Division Bench in ***AKILESH LUMANI v. PRINCIPAL, SIR C.R. REDDY AUTONOMOUS COLLEGE, ELURU***³, held as under:

"7. In the instant case as the appellant has not secured the required attendance to make him eligible for appearance 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."

15. An other Division of the High Court of the erstwhile State of Andhra Pradesh, in ***M.SUNIL CHAKRAVARTHY vs. PRINCIPAL SREEKALAHASTEESWARA INSTITUTE OF TECHNOLOGY***⁴, in identical set of facts and circumstances, considering various judgments, held as under:

"4. Since nobody has power to condone the attendance below 65% therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the regulations cannot be subject-matter of a mandamus.

5. For these reasons, through we have sympathy with the petitioners, but we have no option, but to dismiss the writ appeals. No costs."

16. From the above judgment it is clear that when the deficiency of attendance sought to condone is beyond the jurisdiction or competence of the Principal, this court cannot compel the said authority, to do something, which is beyond his competence. As already noted above, the petitioners in all these writ petitions are having attendance below 65% and the required attendance for

² 2002(3) ALD 667

³ 2000(4) ALD 630

⁴ 2005(1) ALD 253

allowing a student to write semester examination as per Rules, is 75% and the Principal is conferred with jurisdiction to condone shortage of attendance only up to 10%.

17. In view of above facts and circumstances, though this court has sympathy for the petitioners who are mostly in their final year of their course of study, has no option, but to dismiss the writ petitions.

18. In the result, all the writ petitions are dismissed.

19. Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:03—07—2019

AVS

