

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.13539 of 2019 (O&M)
Date of decision: 16.10.2019

Mahesh Jainth and another ...Petitioners

Versus

Central University of Haryana and others ...Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Ms. Abha Rathore, Advocate for the petitioner.

Mr. Sajjan Singh Malik, Advocate for respondents.

B.S. WALIA, J. (Oral),.

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for setting aside verbal orders barring the petitioners from appearing in the examination for the 6th semester of B.Tech. (Computer Science and Engineering) being run by respondent No.1-University and for modifying the list permitting the petitioners to appear in the 6th semester examination provisionally.

2. Brief facts of the case leading to the filing of the writ petition are that the petitioners took admission in four years B.Tech. (Computer Science and Engineering) course, being run by respondent No.1-University. First semester of the course commenced in September, 2016. During August 2018 classes for 5th semester were held irregularly. Attendance of the students was not marked properly.

However, the petitioners appeared in the mid-term internal as well as external practical for 5th semester in January, 2019.

3. Grievance of the petitioners is that one day prior to the commencement of theory papers of 5th semester in December, 2018, the petitioners were verbally told by respondent No.3/Dean that they would not be allowed to appear in the examination on account of non-fulfillment of the attendance criteria. Learned counsel for the petitioners contends that the action of the respondents in debarring the petitioners from appearing in the examination of 5th semester was illegal, since, monthly notice of attendance of each student was required to be notified on the notice board as well as website of the University giving details of attendance subject-wise but the same was not done. Consequently, the petitioners were not aware of the shortage of lectures. Clause 10.8 (iv) of Ordinance-XXXI is reproduced as under:-

“(iv) The Departments shall be required to notify the attendance position of each of their students for each month on the notice board and the website of the University, and clearly indicate the lectures/practical/presentation/tutorials held subject-wise and the numbers attended by each student.”

4. Consequently, as per Clause-10.8 (v) students were required to be notified their attendance five days after the dispersal of classes to enable them to claim benefit of condonation of shortage of

attendance in terms of Clause 10.8 (iii) of the Ordinance-XXIX.

Clause 10.8 (iii) and 10.8 (v) are reproduced as under:-

iii. The Head of the Department may consider, on the basis of the Medical Certificates produced, exceptionally hard cases of students who had fallen seriously ill or had met with an accident during the year disabling them from attending classes for a certain period, with a view to determining whether the lectures etc. delivered during the said period, or a part thereof, could be excluded for purposes of calculation of attendance of the year and decide each case on its own merits.”

v. The Department shall notify on the notice board and the website of the University, the final attendance position of each of its students within five days of the dispersal of the classes in the last session of the semester. Not later than five days thereafter, a student may, by an application to the Head, claim benefit of exclusion of lectures under sub-clause (iii) above on grounds to be specified and accompanied by the relevant documents. All such applications submitted within time shall be considered and disposed of by the Head of the Department at least 3 days prior to the commence of the examination in which the student is intending to appear.”

5. Plea is that, the petitioners were notified about the shortage of attendance only one day prior to the commencement of

examination in December, 2018 and in the circumstances, despite request and representation by the petitioner and their parents, the respondents did not permit the petitioners to appear in the 5th semester written examination. However, the petitioners were allowed to appear in the practical examination for 5th semester. Learned counsel for the petitioner contends that after the examination for 5th semester were over, respondent No.3 told the petitioners to sit in the classes of 6th semester, whereupon, the petitioners started attending classes of 6th semester and attended more than 75% lectures delivered, besides appeared in the 1st and 2nd mid-term test. However, respondent No.3 gave a false assurance to the petitioners that their files were being processed in the office of the Vice Chancellor and despite the petitioner's fulfilling the attendance criteria, their names did not find mention in the list of candidates put up by the University eligible to appear in the 6th semester examination. Subsequently, the Controller of Examinations also informed the petitioners that they could not appear in the 6th semester examination because their names had not been forwarded by the department concerned. In the circumstances, the petitioners invoked the jurisdiction of this Court.

6. Vide order dated 21.05.2019, the petitioners were provisionally allowed to appear in the 6th semester examination with a direction that the result of the petitioner would not be declared without the permission of the Court and the same would be subject to the outcome of the writ petition and further that merely because the petitioners had been allowed provisionally to appear in the

examination would not confer any equity in their favour and declaration of the result of 6th semester examination would be subject to the claim being allowed eventually in accordance with the rules applicable. Learned counsel contends that in the circumstances, points for consideration before this Court are :

i) Whether the action of respondent No.1-University in denying the petitioners to appear in the 5th semester examination of B.Tech. (Computer Science and Engineering) in December, 2018 is legally unsustainable ;

ii) Whether having allowed the petitioners to attend classes of the 6th semester and the petitioners having fulfilled 75% attendance requirement, the respondent No.1-University could deny the petitioners from appearing in the examination for 6th semester ;

iii) That respondent No.1-University was required to ensure delivery of 345 lectures in the 5th semester but only 268 lectures were delivered and that had 345 lectures been delivered during the 5th semester, the petitioners would have been made good the deficiency in lectures.

7. Learned counsel for respondent No.1-University, on the other hand, has produced the attendance record of the 5th as well as 6th semester and on the basis of record contended that as against the requirement of having attended 75% lectures, petitioner No.1 attended 44 lectures out of 265 lectures delivered while petitioner No.2 attended 38 lectures out of 265 lectures delivered in 5th semester whereas petitioner No.1 attended 160 lectures out of 256 lectures while

petitioner No.2 attended 177 lectures out of 256 lectures delivered in the 6th semester, the percentage of which works out to 16.6% (rounded off to 17%) in respect of petitioner No.1, as 14.3% (wrongly recorded as 17% in the record) in respect of petitioner No.2 qua 5th semester and 63% in respect of petitioner No.1 and 71% in respect of petitioner No.2 qua 6th semester. Learned counsel for respondent No.1-University states that as per Clause 10.8(i) of Ordinance-XXIX, a student of B.Tech. is required to attend 75% of the lectures/presentation and practical separately delivered in the University in each subject for the course of study in each semester and that condonation is permissible under Clause 10.8 (ii) and (iii), but in any case it cannot exceed the limit stipulated in Clause (vi) of the Ordinance. Clauses (ii and vi) of Ordinance-XXIX are reproduced as under:-

“ii. In case of a student who

a) is selected as a member of the N.C.C. to participate in the annual N.C.C. Camps or is deputed to undertake Civil Defence work and allied duties; or

b) is enrolled in the National Service Scheme and is deputed to various public assignments by or with the approval of the Head of the Department concerned; or

c) is selected to participate in sports as part of their Curricular Activities (CA);

d) represents the University in Inter-University tournaments, or student selected for coaching camp, University team Camp organized by the University or a student who represents Haryana state in National tournaments organized by National Sports Federations, or a student who represents the University in tournaments organized by Association of Indian Universities, or a student who represents India in International Tournaments organized by International Federations/ Associations and FISU (selection through AIU) or a student who represents India in Olympics/Commonwealth Games/Youth Games/World Championships/organized by International Olympic Committee, or in national or international fixtures in games and sports approved by the Competent Authority; or

e) is required to represent the University at the Inter-University Youth Festival; or

f) is required to participate in periodical training in the Territorial Army or a student who is deputed by the University to take part in Inter-University sports or fixtures, debates, seminars, symposia or social work projects or a student who is required to participate in curricular activities held in other Universities or such other activities held in other Universities approved by the Head for this purpose. On calculating the total number of

lectures etc. delivered in the University for his/her course of study in each Semester, the number of lectures etc., delivered in each subject, during the period of absence and as approved by the Head for the above purpose, shall be deemed to have been attended by the student.

vi) The benefit of exclusion of lectures contemplated in para (iii) above shall, in no case, exceed 1/3 of the total number of lectures / practicals / presentation / tutorials delivered.

8. Learned counsel for respondent No.1-University, however, conceded that as per Clause 10.8(iv), the department was required to notify the attendance position of each of the students on the notice board and website of the University indicating the lectures / practicals / presentation / tutorials held subject-wise and the attendance of each student and that as per Clause 10.8 (v), the department was to notify on the notice board and website of the University, the final attendance position of each student within five days of dispersal of the classes for the last session of the semester and that not later than five days thereafter a student may by an application to the Head, claim benefit of exclusion of lectures under sub-clause (iii) on the grounds stipulated therein and accompanied by the relevant documents and that any such application submitted within time permitted would be considered at least three days prior to the commencement of the examination in which the student was intending to appear. Attendance position as per requirement of Clause 10.8 (iv) was put up on the notice board for all the months and on the website only for the months

of October and November, 2018 reflecting the attendance of the petitioners from the commencement of the semester till October, 2018 and again from the commencement of the semester till 30.11.2018. Copies of the notices as were put up on the website of the University are taken on record as Mark-A and Mark-B respectively and copies thereof handed over to learned counsel for the petitioners. Learned counsel for respondent No.1-University further contended that month-wise attendance record of the students concerned including the petitioners was put up on the notice board and that notice of shortage of attendance of students ineligible to appear in the mid-term examination commencing in December, 2018 was put up on 03.12.2018 (Annexure R/3) and that roll number of petitioner No.1 appeared against Sr. No.27 while that of petitioner No.2 appeared at Sr. No.31 with percentage of attendance of both the petitioners being shown as 17% each. No application was submitted by the petitioners for condonation of lectures pursuant to notice Annexure R/3 and that had any such application been submitted, the same would also have been of no avail since the maximum condonation permissible is 1/3rd of the total lectures delivered. In other words as against 265 lectures delivered, the petitioners would have been entitled to condonation of only 88 lectures each, thus, raising the percentage of both the petitioners from 17% to 49.8% and 14.3% to 47.4% respectively. Learned counsel contends that in fact the petitioners are not entitled to any condonation because their case does not fall either under Clause 10.8 (ii) or 10.8 (iii) of Ordinance-XXIX but even if for the sake of arguments, the maximum condonation of lectures as permissible as per

Clause 10.8 (vi) is granted i.e. 88 lectures out of 265 lectures delivered still the percentage of lectures attended by the petitioners works out to 49.8% and 47.4% respectively, which is much below the minimum requirement of 75% attendance under clause 10.8 (i) of Ordinance-XXIX. Learned counsel for respondent No.1-University further contended that apart from the fact that there is no prayer in the writ petition qua the petitioners having been declared ineligible to appear in the 5th semester examination on account of shortage of lectures, the verbal grievance as is now sought to be made is highly belated. Learned counsel further contended that as per Clause 14.1 of Ordinance-XXIX, a student who does not fulfill the attendance requirement is not eligible to be promoted to the next even semester. Clause 14.1 of Ordinance-XXIX is reproduced as under:-

Eligibility for Promotion:

14.1 There shall not be any restriction for promotion for an odd semester to the next even semester, provided the student has fulfilled the attendance requirement.

9. Learned counsel for respondent No.1-University by referring to Annexure R/6 contends that the petitioners were provisionally allowed to sit in the classes of even semester in the year 2018-19 on their own risk as they had not been promoted to the next semester due to shortage of attendance. However, representation of the petitioners, was rejected by the competent authority, therefore, the claim of the petitioners for appearing in 6th semester examination was legally unsustainable. Learned counsel contended that the claim of the

petitioners for permission to appear in the 6th semester examination was declined on 22.02.2019, where after the proposal was again mooted by respondent No. 3 on 23.04.2019. The same was considered in the light of the following points :-

1. The clause 10. 8 (viii) of B.Tech. Ordinance No.XXIX clearly specifies that it is applicable on those students who have satisfied the required condition of 75% attendance and other condition but have preferred poorly in the department test (written or oral) or has not appeared in it. In all those case the HOD will have the power to detain the above mentioned student from appearing in the University Examination.

2. A student of any B.Tech. programme will not be eligible to appear any examination of any semester unless he/she has attended, in all subject 75% of the lecturers/presentations and practical separately, delivered in the University for the course of study in each semester as per clause 10.8 (i) of the Ordinance XXIX.

3. The list submitted to the examination section via email date 07.12.2018 shows the above mentioned student as not eligible in fact one of the student Mr. Pankaj Singh Roll No.9530 (B.Tech. CE) is shown as having 05% attendance only (Attachment at Flat-A). The list shows the student as eligible, not eligible and eligible with

medical. There is no mention of student as not legible on the basis of performance.

4. Attendance have to be earned separately in each semester and on the basis of current semester attendance. Previous semester attendance cannot be calculated.

5. The clause 14.1 of the Ordinance XXIX clearly states that 'there shall not be any resection for promotion from odd semester to the next even semester provided the student has fulfilled the attendance requirement.

Submitted for your information and further necessary action please.

XX XX XX

As per the observation of the COE, the Ordinance does not permit a student for promotion if he/she has not attained the minimum 75% of attendance as required t be eligible. In such case, the proposal does not seem to be justified.

Submitted please.”

10. Learned counsel states that the proposal as was put up by respondent No.3 was rejected not only on 22.02.2019 but the second request of respondent No.3 was also rejected on 09.05.2019 and in view thereof, the petitioners who had been allowed to attend classes by respondent No.3 at his own level were not eligible to appear in 6th semester examination. Learned counsel states that there was no

permission granted by any person other than respondent No.3 to the petitioners to sit in the classes and the same is evident from Annexure R/6. Learned counsel contends that in the circumstances the writ petition is devoid of merit and the petitioners are not entitled to any relief.

11. Learned counsel for the petitioners on the basis of affidavit dated 24.09.2019, filed along with CM No.14526 of 2019 contended that : 1) respondents had not maintained the attendance register in regular manner; 2) there was no individual register for each subject for 5th semester from August 2018 to November, 2018; 3) Attendance registers for 5th semester was not signed by the concerned Teacher, HOD; 4) that in the attendance register all the dates are overwritten, whereas in the month of November, 2018, attendance of the petitioners has been shown as blank and there was no mark of attendance, whether absent or present etc.

12. Reply to CM has been filed by the Registrar of the respondent-University along with affidavit of the Registrar contending that 1) attendance registers were maintained faculty wise, teacher wise and not subject wise; 2) that attendance registers were maintained by the faculty and it was not mandatory to have the signatures as the entry in the attendance in the register was made by the faculty itself. However, attendance record were displayed on the notice board regularly and students were apprised of their attendance status by the concerned faculty in the class room; 3) that the students of 5th semester of subject operating system laboratory were divided into two groups

i.e. G-1 and G-2 as per details give in register No.10 and there was no cutting/correction in the marking of the attendance register and there was a minor correction for the month of November, where inadvertently digit '10' was written erroneously in place of '11', to signify the month of November and in the subject operating system laboratory, petitioner No.1 continuously did not attend any of the classes from 05.09.2018 onwards, therefore a symbol (-) was marked in the month of November, 2018 while petitioner No.2 also did not attend any classes from 18.09.2018 onwards and same symbol (-) was marked in the month of November, 2018.

13. Learned counsel for the respondent-university on the basis of record contends that in fact there was an inadvertent omission by the concerned faculty in recording the name, roll number of two students including petitioner No.1 at the appropriate register in the register of August, 2018, therefore, name of petitioner No.1 was recorded at the end of list of students, but the same was corrected in the subsequent months. Learned counsel further contended that the subjects 'Wireless Communication' and 'Computer Graphics Lab' were initially taught by Ms. Sangeeta (Assistant Professor) in the month of August and September, 2018, attendance for which was recorded in Register No.2 and after that in the month of October, Ms. Sonika (Assistant Professor) joined and started taking 'Computer Graphics Lab' course, therefore, attendance register No.2 was reflecting attendance record for the courses 'Wireless Communication' and 'Computer Graphics Lab'. Learned counsel further contended that

when notice Annexure R/3 regarding shortage of lectures was put up petitioners did not submit any representation for condonation of lectures and rightly so. Accordingly, learned counsel for the respondents prayed for dismissal of the writ petition.

14. I have considered the submissions of learned counsel for the parties.

15. Admittedly the petitioners were not allowed to appear in theory examination for 5th semester conducted in December, 2018 on account of shortage of lectures with petitioner No.1 having attended 16.6% of the total lectures delivered, whereas petitioner No.2 attended only 14.3% of the total lectures delivered. If the maximum condonation of lectures permissible under Clause 10.8 (vi) is granted, then maximum of '88' of 265 lectures delivered can be granted to each of the petitioners, thus, raising the percentage of lectures attended by the petitioners to 49.8% and 47.4% respectively, which is much less than the stipulated 75% of lectures required to be attended in each subject in terms of Clause 10.8 (i). Besides the petitioners never challenged their being debarred from appearing in the 5th semester examination on the basis of shortage of lectures in December, 2018 and for that matter even in the instant writ petition, there is no prayer qua the petitioners having been detained from appearing in examination for 5th semester except for a legal question framed in paragraph No.17 that the petitioners could not have been debarred from appearing in 5th semester examination one day prior to the conduct of examination without following the procedure as laid down

under Clause 10.8 (iv) of Ordinance-XXIX. However, as has been noted above, the monthly attendance details of all the students are stated to have been put up by the respondent-University each month on the notice board besides the attendance of all the students from the commencement of the examination till 18.10.2018 was put up on the website while the complete attendance details of all the students from commencement of 5th semester till 30.11.2018 was also put up in the month of October and November, 2018 respectively showing the percentage of lectures attended by the students including the petitioners. The petitioners have miserably failed to show having attended the lectures, consequently, they were rightly detained and not allowed to appear in 5th semester examination. The decision to permit the petitioners to attend 6th semester classes was taken by respondent No.3, vide Annexure R/6 exclusively at his own level on provisional basis and that too in derogation of Clause 14.1 of Ordinance-XXIX. The proposal as was mooted by respondent No.3 for permitting the petitioners to attend 6th semester classes was rejected by the Controller of examinations on 22.02.2019 as also on second request of respondent No.3 on 09.05.2019 in the light of the Ordinance applicable. Thus the claim of the petitioners of having been wrongly detained from appearing in the 5th and 6th Semester examinations is without any merit. Accordingly, the writ petition is dismissed. Besides, I am of the considered view that the respondent-University ought not to have permitted a student not fulfilling the attendance requirement to attend classes of the next semester in derogation of Clause 14.1 of Ordinance-XXIX. Learned counsel for the respondent-University states that

already an inquiry has been initiated against respondent No.3 but the same has been deferred on account of respondent No.3 having met with a serious accident and sustained serious injuries besides having lost his wife in the accident.

16. At this stage, learned counsel for the petitioners states that the petitioners would be seriously prejudiced if the respondent-University is not directed to conduct classes of 5th semester of the petitioners to enable them to appear in the examination to be held in December, 2019.

17. Learned counsel for respondent-University on instructions from Dr. Phool Singh, Assistant Professor, states that the respondent-University would conduct classes for 5th semester including extra classes, if so required, in order to enable the petitioners to meet the requirement of attendance as per the Ordinances to enable them to appear in 5th semester examination to be held in December, 2019. The same satisfies learned counsel for the petitioners.

18. Resultantly, the petitioners would appear in 5th semester examination to be held in December, 2019 on acquiring the requirement of attendance as stipulated in the Ordinances and would thereafter appear in the 6th semester as per the rules and regulations.

19. In the light of the position as noted above, claim of the petitioners for their having been detained for appearing in 5th semester examination and as also for debarring them from appearing in 6th

semester examination, is found to be bereft of merit. Accordingly,
finding no merit the writ petition is dismissed.

(B.S. WALIA)

JUDGE

16.10.2019

rajesh.k.khurana

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| 1. Whether speaking/reasoned | : | Yes/No. |
| 2. Whether reportable | : | Yes/No. |