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IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 18TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.9749 OF 2020 (EDN-RES)

BETWEEN:

SRI DAYAN WARSI
S/O MOHD. QAMAR,
AGED ABOUT 22 YEARS,
STUDENT,NATIONAL LAW SCHOOL OF INDIA
UNIVERSITY, BENGALURU
(SEEKING PROMOTION TO 4TH YEAR)
R/AT 592KA/353, VIKAS LANE,
DEFENCE COLONY, TELIBAGH,
LUCKNOW- 226025

... PETITIONER

(BY SRI. V R SARATHY, ADVOCATE)

AND:

1. THE VICE CHANCELLOR,
   THE NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
   TEACHERS COLONY,
   GNANABHARATHI ROAD,
   BENGALURU- 560 072

2. THE NATIONAL LAW SCHOOL OF INDIA UNIVERSITY,
   REPRESENTED BY ITS REGISTRAR,
   TEACHERS COLONY,
   GNANABHARATHI ROAD,
   BENGALURU- 560 072.

... RESPONDENTS

(BY SRI.ADITYA NARYANA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ENDORSEMENT ISSUE BY THE R-2 UNIVERSITY DATED 31.07.2020 VIDE ANNEXURE-H AND THE ORDER DATED 17.08.2020 PASSED BY THE R-1 AGAINST THE APPEAL OF THE PETITIONER VIDE ANNEXURE-M DENYING THE PETITIONER ADMISSION TO FOURTH YEAR B.A.LL.B(HONS.) FOR THE ACADEMIC YEAR 2020-21 AND AFTER PERUSAL SET ASIDE THE SAME AND ETC.,

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner who is pursuing his law degree in the respondent-University having been denied admission to 4th year of the course, is knocking at the doors of writ court seeking a direction to promote him by quashing the impugned orders dated 31.07.2020 & 17.08.2020 respectively at Annexures-H & M whereby his academic progression to the next level has been retarded.

2. After service of notice, the respondent-University and its Vice Chancellor having entered appearance through their advocate oppose the writ petition by filing a Statement of Objection on 17.10.2020; their counsel makes submission in justification of the impugned orders contending that: the Academic Examination Regulations [AER] being mandatory do not admit leniency; matters like this by their very nature need to be left to the University authorities sans judicial interference; lastly, petitioner's conduct disentitles him to any relief in the writ jurisdiction.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

I. As to applicability of AER 2020 and inapplicability of AER 2009:

Denial of admission to the petitioner to the 4th year of the course is on the specific grounds that: (i) he has a shortage of attendance in two courses, namely, History II (2nd year, VI Semester) & Child Rights Law (3rd year, VIII Semester) and, (ii) he has secured 'F' Grade in Criminal Law III (3rd year, VII Semester); for detaining him, respondents have invoked provisions of AER 2020 which this Court has already held to have no retrospective effect in W.P.No.11287/2020 between AAKASHDEEP SINGH Vs. NLSIU & ANOTHER, disposed off on 02.11.2020; that being the position, case of the petitioner ought to have been treated under AER 2009, and not under AER 2020 wrongly; thus there is an error apparent on the face of the record, that has caused enormous prejudice to the petitioner.

II. As to AER 2009 being mandatory and therefore not admitting leniency:

(a) Learned counsel for the respondents vehemently argues that even under AER 2009, which are mandatory, petitioner is not entitled to condonation of attendance shortage since he had a little less than 67% of attendance which is the minimum prescribed for seeking condonation; learned counsel for the petitioner, with equal vehemence, contends to the contrary; this controversy takes the court to the relevant provisions of these Regulations: Clauses (a) & (c) of Regulation II (1) of AER 2009 read as under:

> "(a): *Every student shall attend a minimum of 75% of classes held in every course, including all optional seminar courses. Failure to put in the minimum required attendance in one course in the academic year will lead to compulsory re-registration in the said course in the coming academic year*
>
> *(c) Failure to put in minimum required attendance in more than one course in a single academic year will lead to compulsory readmission to the same".*

Regulation II (7) which provides for condonation of shortage of attendance has the following text:

> *"(7)* ***Condonation on Medical Grounds:*** *Subject to Regulation 2(1)(a), shortage of attendance on medical grounds shall only be condoned when a student falls short of attending 75% of the classes in a particular course but, has still attended at least 66% of the classes in that same course. Students seeking condonation of shortage of attendance on medical grounds shall submit the application in the given medical pro forma, duly signed and sealed and supported by a Certificate from the Doctor, or in cases of hospitalization –*

from the Hospital in question, along with the Discharge Summary. The condonation on medical grounds shall be granted only when the student is incapacitated, such that he/she cannot attend classes. The University shall verify the same. No condonation will be granted if the doctor/hospital fails to certify such illness. The application for condonation shall be submitted to the Examination Department within 6 days of resuming class attendance".

(b) There is no explicit preamble or purpose clause in these Regulations; however, the phrasing of these and other contextual Regulations reveals their purpose; the subject Regulations which wear both a right situation-reason and a clear scope-criterion on their face yield reckonability and justice; one has to bear in mind that what is being construed are the Campus Regulations and not the Cattle Trespass Act; true it is that, law speaks through language and not music; the rules which are promulgated to regulate & discipline the young minds in educational institutions should sing justice; this happens if a purposive construction based on language, purpose and discretion, is placed on these Regulations that admit a range of possibilities; they also vest some discretion since their purpose does not point to a single, unique legal meaning regardless of myriad circumstances; respondents ought to have used discretion to formulate, as objectively

as possible, the purpose at the core of the legal text; however, they have been unjustifiably swayed away by the Rule of Textualism, to the prejudice of the poor student.

(c) The aforesaid provisions of the AER 2009 are not couched in a mandatory language, their employing 'will' & 'shall', notwithstanding; this becomes clear by the structure of other contextual provisions apparently having a mandatory language; they are as under:

(i) Regulation II (5) & (6) provide for condonation of shortage of attendance on non-medical grounds upto a maximum of 20% of the total classes conducted; the condonable range of attendance shortage on medical grounds between 75% & 67% is less than 20% of the total classes; the extent of condonable shortage cannot differ depending upon the varying grounds availing therefor; in other words, if a maximum condonable shortage of 20% on non-medical grounds does not compromise educational excellence, the same shortage on medical grounds too logically does not; if that be so, a Regulation prescribing less than 20% as the condonable limit of shortage cannot be treated as mandatory; it hardly needs to be stated that petitioner's shortage of attendance by simple arithmetic works out to be far below the maximum condonable extent

of 20%; an argument to the contrary gives scope for attacking the subject Regulation as being discriminatory & arbitrary; in such circumstances it is wise to place such interpretation as would save the Regulation from such possible attack.

(ii) Regulation III (2)(d) relating to submission of Project Assignments begins with a negative phrase as "*No interchange of submission of projects in the trimester is permitted…*"; Regulation III (9)(f) begins as "*No Viva voce shall be conducted for the course in which the student has been granted exemption;*"; similarly, Regulation III (9)(g) reads: "*Under no circumstances shall a student avail of more than two exemptions in a trimester…*"; Regulation VIII (1) relating to promotion of student is texted as "*No student shall be promoted to the next year unless he/she has cleared 9 out of 12 courses in a given year…"*; thus, there is a marked difference between the language of Regulation II (1) & (7) invoked by the petitioner on the one hand and that in the aforesaid contextual provisions on the other; a premier law university of the country would not have employed different texts without significance and therefore, the subject Regulation needs to be held as directory

consistent with its purpose and in recognition of such significance.

III. As to how the University treated the subject Regulations in the past:

a) The precedents & practice of the University show that the subject Regulations have been treated only as directory, and not mandatory; pursuant to Court's direction dated 11.11.2020, the Registrar of the University has filed an affidavit admitting that in a case of one particular student, condonation has been granted even when the he had less than prescribed minimum of 67% attendance; in a serious matter like this involving the career of a student, the argument of the kind that "*one sparrow makes not the summer*" (Shakespeare's) would not come to the rescue of respondents; it is more so when it is not their case that this condonation was legally inadmissible; for the same reason, the principle that there is no estoppel against law, is not invocable.

b) Petitioner has filed a counter affidavit dated 23.11.2020 giving several such instances with material particulars wherein condonation was accorded despite

attendance being much short of the prescribed minimum; they are:

> *i) Mr. Karan Dhalla - ID No. 2307 having attendance shortage of 55% in Criminal Law III and 55.67% in Law of Evidence;*
>
> *ii) Sri Suyesh Ojha – ID No.2265 having attendance shortage of 55% in History II, 52% in Political Science III & 58% in Philosophy of Political Imagination;*
>
> *iii) Mr. Adithya Vardhan Sharma – Id No.1952 having attendance shortage of 39% in International Law 1, 57% in Labour Law 1 & 45% in Professional Ethics.*

IV. AS to culpable conduct of the University:

(a) It is noteworthy that this assertion of the petitioner on oath is not disputed by the respondents nor they have produced any record to discount its veracity; in fact, the affidavit filed on behalf of the respondents arguably borders perjury, since information relating to condonation of attendance in respect of above three more students has been withheld from the Writ Court with no justification whatsoever despite a specific direction; ideally speaking the respondent law University ought to have stated about the fact in the very beginning when it had filed its Statement of Objections; this is unjust & unfair, to say the least; however, it is not desirable that on this

ground *per se,* the defence of the respondents be struck off.

(b) The vehement contention of learned counsel for the respondents that the full details relating to assertion of the petitioner as to aforesaid three cases are not now available and that in any circumstance, that might have happened during the tenure of previous incumbents of the Offices, is too feeble a justification for denying relief to the petitioner, especially when the respondents have not filed another affidavit disputing the version of the petitioner, as already mentioned above nor have they produced any material to vouch their stand.

V. As to discriminatory act of the University:

As already mentioned above, in several cases the University had granted condonation of shortage of attendance under the very same Regulations; however, in the case of the petitioner, a step-motherly treatment is meted out to his detriment; this is not a happy thing to happen at the hands of the University which enjoys a great academic reputation in the country; the Apex Court in **PRINCIPAL, KING GEORGE'S MEDICAL COLLEGE,**

LUCKNOW Vs. DR. VISHAN KUMAR AGARWAL AND ANOTHER, (1984) 1 SCC 416, has observed as under:

> *"16. Whether the Regulations contained in the Ordinance governing admission to the post-graduate course of studies are mandatory or directory is a matter which the University shall have to consider after taking all relevant factors into account like the nature of the requirement, its purpose and the consequences of its relaxation on educational excellence. …One thing, however, must be made clear that if the University considers that any provision is not mandatory, its relaxation in particular cases has to be governed by objective considerations.* ***No public authority, least of all a University which is entrusted with the future of the student community, can pick and choose persons for receiving the benefit of relaxation of the Regulations. In the first place, the rigour of a rule can be relaxed provided such relaxation is permissible under the Regulations or if the rule is directory and not mandatory. …"***

VI. As to alleged lapse on the part of petitioner:

Petitioner was away in his home State from 26th to 30th December 2019 having been diagnosed with malaria; he could procure the medical certificate on 7.1.2020 after Medical Officer of the university insisted on the production of the one in physical form for attestation; on 9.1.2020, the said doctor refused to attest the medical records on the ground that petitioner's attendance being about 65%, was less than the prescribed 66%; the contention that petitioner ought to have submitted an application seeking

condonation of attendance shortage within six days of resuming the class attendance sounds unreasonable; it is not that the University was launching a Satellite within those six days and delay of a few day s has prevented it from launching one; even otherwise such a contention cannot be countenanced when said requirement arose under the directory provisions of Regulations which admit a lot of discretion & leniency, by their very nature.

VII. As to petitioner not being a habitual defaulter

The last contention vehemently advanced by the learned counsel for the respondents that Regulation II (1)(c) r/w Regulation II (1)(b) of AER 2009 corresponding to Regulation III (4) r/w Regulation III (5) of AER 2020 disentitles the petitioner to seek promotion to the next academic year when he has attendance shortage in more than one course in an academic year, is bit difficult to countenance; much is being made out with the English words namely, 'in' employed and 'of' not employed in the text of subject Regulations or the *vice versa*; such a jugglery of words does not protect their impugned action; after all, law is not a slave of dictionary; it is not the case of respondents that the petitioner is a habitual defaulter or

that he would have gained advantage by courting absence from the classes.

In the above circumstances, this Writ Petition succeeds; a Writ of Certiorari issues quashing the impugned endorsements dated 31.7.2020 & 17.8.2020 respectively at Annexures-H & M; a Writ of Mandamus issues directing the respondents to promote the petitioner to the 4th year B.A. LL.B (Hons) for the academic year 2020-21, forthwith.

Costs made easy.

Sd/-
JUDGE

Snb/