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W.P.No.27689 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.27689 of 2022

Amith Minsha. S

... Petitioner

Vs

1.The Tamil Nadu Dr.Ambedkar Law University,
Represented by its Registrar,
At M.G.R. Salai, Perugudi,
Chennai – 600 113.

2.School of Excellence in Law,
Represented by its Director,
At M.G.R. Salai, perugudi,
Chennai – 600 113.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to permit the petitioner to appear for the 2nd year 2nd semester exams, 3rd year 1st semester exams, to admit her in the 3rd year classes.

For Petitioner : Mr.K.Sakthivel
for Ms.D.Revathi Karthick

For Respondents : Mr.Arunkumar Rajan
Standing Counsel



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ORDER

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The prayer sought for in this writ petition is for a Writ of Mandamus directing the respondents to permit the petitioner to appear for the 2nd year 2nd semester exams, 3rd year 1st semester exams, to admit her in the 3rd year classes.

2. The petitioner joined in 5 years B.B.A., L.L.B., law course in the 2nd respondent College in the academic year 2020-2021 as she successfully completed the first year law degree course in the year 2021, she was moved to second year classes for 2021-22.

3. While that being so, on 27.12.2021 the petitioner met with an accident with the result she was sustained with multiple fractures.

4. Therefore, she was treated at Royapettah Government Hospital and the petitioner required to take certain surgeries, she was shifted to private hospital at Coimbatore.



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5. In the said hospital, the petitioner underwent several surgeries and finally discharged from the hospital only on 11.01.2022, however the petitioner was put in bedridden for a couple of months.

6. Because of this accident, the petitioner was unable to attend the college for the whole rest of the second year and though this absence on the part of the petitioner is not a wilful one, the petitioner has not been permitted to go to the next year i.e. third year law course and also the petitioner was not permitted by the respondents to write the second year second semester examination. Hence, at this juncture the petitioner has moved the present writ petition seeking the aforesaid prayer to permit the petitioner to go for the third year classes and to write the second year second semester examinations.

7. Heard Mr.K.Sakthivel, learned counsel appearing for the petitioner who would submit that, it is an admitted fact that due to the accident and subsequent surgeries she undertaken she had been put in the hospital for some time and thereafter had to take bed rest for some months, therefore she could not attend the rest of the second year course.



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8. It is also an admitted fact that, because of the absence on the part of the petitioner due to the aforesaid reason, she could not earn any attendance for the second semester of the second year course.

9. However, the learned counsel would submit that, in a case of this kind of medical reasons the University under the provisions of the Act under which the University has been established is empowered to give exemption to the candidates like the petitioner from the provisions of the statute under which otherwise the petitioner should have earned 75% of attendance in each semester or at least should have earned 66% of attendance in each semester and for the remaining 10% he/she may be eligible to seek for condonation on medical or any acceptable reasons which the University has to decide by exercising its powers vested in them under the provisions of the Act as well as the statute.

10. When that being so, the learned counsel appearing for the petitioner would contend that, under Section 45 of the Tamil Nadu Dr.Ambedkar Law University Act, 1996 (in short 'the Act'), such a power is



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vested with the Syndicate of the University. Therefore, the pathetic condition of the petitioner for not having attended the second semester course of the second year and the entire absence on the part of the petitioner for the second year second semester course can be condoned and by thus the petitioner may be entitled to go for the third year and also to allow to write the second semester in second year examinations.

11. In this context, the learned counsel relies upon Section 45 of the Act which reads thus:

“No candidates shall be admitted to any University examination unless he is enrolled as a member of a University college or of an affiliated or approved college and has satisfied the requirements as to the attendance required under the regulations for the same or unless he is exempted from such requirements of enrollment or attendance or both by an order of the Syndicate passed on the recommendation of the Academic Senate made under the regulations prescribed. Exemptions granted under this section shall be subject to such conditions as the Syndicate may deem fit.”

12. He would also relies upon Chapter IV of the University Ordinances wherein clause 3(d) of Chapter IV of the University Ordinances



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provides that, if a student earns any percentage of attendance less than 66% he/she is not eligible to write the University examination unless exemption is given otherwise by this University. In case of any student pursuing the study under the Semester pattern, he/she is not permitted to write that semester examination, if that student does not earn the required percentage of attendance in that semester as said above.

13. The learned counsel would insist upon the rest of the clause 3(d) which reads thus:

“However, he/she may be permitted to proceed to the next semester subject to the condition that the candidate shall redo that semester in which he/she did not put in sufficient attendance, for which permission must also be obtained from the Head of the Department.”

14. Giving interpretation to the second limb of Section 3[1](d) of Chapter IV of the Ordinances of the University, the learned counsel would contend that, no doubt the second semester of second year course has to be redone by the petitioner. However, there is one provision i.e. the second limb of clause [1](d) is that, in such situation he/she i.e. the student



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concerned can be permitted to go for the next year and after completing the whole course the student has to redo the semester where he/she was stuck due to any medical reasons and not attended the class and earned the necessary attendance of either 66% or 75% as the case may be.

15. If this interpretation is possible to be given, certainly the intention of the Ordinance making authorities according to the learned counsel appearing for the petitioner, thought of only the students like the petitioner who have any such unforeseen reason like this medical reasons where the petitioner unexpectedly met with an accident and suffered with multiple injuries that resulted in taking surgeries and bed rest for several months making the petitioner being absent for the whole semester. Therefore, in such circumstances, employing the second limb of clause 3[1](d) of Chapter IV of the statute of the University, the petitioner may be permitted to go for the third year course and after successfully completing the entire 5 years course, the petitioner of course to redo the second year second semester course and thereafter she would be entitled to get the degree provided if she is able to complete all the semesters successfully.



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16. By giving this interpretation, the learned counsel for the petitioner would submit that, there can be no impediment for the petitioner to go for the third year by using this clause and also in an extraordinary circumstances like this, a decision can be take by the University Syndicate under Section 45 of the Act referred to above and that exercise also since has not been undertaken by the Syndicate as the request made in this regard by the petitioner has not so far been considered and no decision yet to be taken, the learned counsel for the petitioner seeks indulgence of this Court to issue suitable direction to the respondent University.

17. Heard Mr.Arunkumar Rajan, learned Standing Counsel appearing for the respondents.

18. The learned Standing Counsel has relied upon the following averments made in the counter affidavit:

“5. I submit that the Ordinances of the Tamil Nadu Dr. Ambedkar Law University, prescribes the Rules and Regulations concerning the Conduct of Examination of the University and the conditions subject to which students shall be admitted to such Examinations. As per the rules therein, the Petitioner must possess at least 66% of attendance in the IV Semester for being eligible to attend the semester examination (Rule 3 (d) of Chapter IV of the Ordinances of the University).



The said rule is as extracted below:

“Rule 3(d): If a student earns any percentage of attendance less than 66%, he / she is not eligible to write the University examination, unless exemption is granted otherwise by the University.....”

6. Now the only option available to the petitioner is that she should redo the IV Semester of the 2nd Year and only on completion of the same she would be eligible to be admitted in the III year of the Course (Rule 6(c) of Chapter I of the Ordinances of the University). The said rule is as extracted below;

“Rule 6(c): Redo: A student who does not earn sufficient attendance in a class / semester and as a consequence gets disqualified to write the University examination in any particular year /semester, he or she shall be deemed to have been detained in the class for that year / semester and such a student shall also secure admission to redo the course in the same class / semester in which he / she did not earn sufficient attendance, and only after satisfactory completion of a lower semester, he / she shall be permitted to proceed to the next higher semester.”

7. I submit that in this context it is also pertinent to highlight upon the Rule 12 of the Legal Education Rules, 2008, in Part IV of the Bar Council of India Rules:

“12.End Semester Test: No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the moot court room exercises, tutorials and practical training conducted in the subject taken together.



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Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorized representative in the absence of the Dean of Law.

Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India.

8. The B.B.A.LLB(Hons.) course being a professional course, the University is also bound by the above rule and since the Petitioner has not even attended a single class of the 2nd Year IV Semester, she is not eligible to appear for the semester examination. In the light of the said rule, the University cannot give any exemption to the Petitioner and any such concession given to the Petitioner would hamper her very eligibility for enrollment to the Bar.”

19. Relying upon these averments made in the counter affidavit and also the Rule 6(c) of Chapter I of the Ordinances of the University as well as Rule 12 of the Legal Education Rules, 2008 in Part IV of the Bar Council of India Rules, the learned Standing Counsel would submit that, the minimum attendance required for permitting a student to write the semester examination is 75% and at the most condonation would be permissible only



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for 10% provided if the student earned atleast 66% or more, then only such a condonation would be possible that too on medical grounds or any other fitting reasons which would be considered by the University authorities. In this regard, the learned Standing Counsel would submit that, it is an admitted case and everyone knows that the petitioner could not attend even a single day in the semester i.e. second semester of second year course. Therefore, the question of condoning the shortage of attendance by using any of the provisions of the University as well as the Rules called Legal Education Rules, 2008 framed by the Bar Council of India under the Advocates Act would not arise as those rules if are employed, it can only be employed for those who secured atleast 66% of attendance not for a person who earned 0% attendance. Hence, the learned Standing Counsel would submit that, under these circumstances, Section 45 of the Act cannot be invoked as such a recommendation cannot be made to the University bodies of the Syndicate to their consideration, therefore the question of placing the plea made by the petitioner before the University Syndicate also does not arise, he contended.



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20. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

21. The admitted facts are that, the petitioner during the second year course at second semester due to the accident she met could not attend even a single day, therefore absolutely there was a 0% attendance insofar as the petitioner for second year second semester course.

22. In that circumstances, whether the provisions of the University Ordinances as well as the provisions of the Act would come to the rescue of the petitioner is the question. In this context, the learned counsel for the petitioner has heavily relied upon Section 45 of the Act which has already been quoted herein above.

23. If we look at Section 45, it makes clear that unless the student has satisfied the requirements as to the attendance required under the regulations for the same or unless he is exempted from such requirements of enrollment or attendance or both by an order of the Syndicate passed on the



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recommendation of the Academic Senate, such kind of student shall not be permitted to write the examinations of the University.

24. If we look at the language used in Section 45, it has made clear that, first the student must satisfy the requirements as to the attendance, here the satisfactory attendance is 75%. In case the satisfactory attendance of 75% is not earned by a student, still the student is entitled to write the examination or to pass on to the next year of the course concerned is to be decided by the University by providing some condonation to the student concerned, that is the second limb of Section 45 which says unless he is exempted from such requirements of enrollment or attendance.

25. The word “such requirement” is nothing but the earning of minimum attendance of 75%. Such requirement is to be exempted means such minimum attendance of 75% may not be insisted upon by a decision of the Syndicate provided the student must have earned atleast 66% attendance.

26. This is the only possible interpretation to Section 45, because, if



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Section 45 is interpreted as sought for by the petitioner's counsel that a total exemption can be given by the Syndicate for a student who earned by 0% attendance, then the other provisions of the University viz., the University Statute i.e., Ordinances as well as the Bar Council of India Rule would not reconcile Section 45.

27. No doubt it is a settled proposition of law that, the act of a Parliament or Legislature will have a primacy over the subordinate legislations, therefore the provisions of the subordinate legislation, no doubt, would not over come the import of the main act, but at the same time the subordinate legislations are framed only to exercise or only to execute the provisions of the Act. Here the very intention of Section 45 as per the said Act is to ensure that the minimum attendance must be earned by every student and there must be a satisfaction to the University with regard to the minimum attendance.

28. Only such a minimum attendance to some extent can be condoned in case of deserving cases, that is what the exemption provision or power given or vested with the University Syndicate.

29. For instance a student secured 67% attendance unless exemption



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is provided by the University that student also cannot write an examination.

Such kind of cases would be placed before various authorities of the University including Syndicate if need arises and such kind of exemption can be given by the University and if that kind of exemption is provided, certainly that student even though not even having the minimum 75% of the attendance that is the satisfaction of the University as per the first limb of Section 45 he/she can also be permitted to write the examination.

30. Here in the case in hand, the petitioner admittedly has earned only 0% attendance of course on medical reason but it is the call of the nature, therefore no one can be blamed.

31. Coming to the another interpretation sought to be given on the second limb of Clause 3[1](d) of the Chapter IV of the University Ordinances, the learned counsel for the petitioner points out that he/she may be permitted to proceed to the next semester subject to the condition that, the candidate shall redo that semester in which he/she did not put in sufficient attendance means, no doubt the candidate who have not earned the attendance in a particular semester of a particular year may be permitted to



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go for next year and after completing the whole course, again the student would redo the particular semester where he/she did not earn the necessary attendance.

32. Absolutely it is a very strange proposition as it would destroy the very scheme of the Act as well as the Ordinances. Insofar as the requirement of minimum attendance in the academic programmes of any academic institution much less the respondent University is concerned, it is a must for maintaining the academic standard.

33. The meaning of the second limb of Clause [1](d) as stated supra is that, the candidate who could not earn the attendance in a particular semester would be permitted to go for the next semester or next year, provided he must have redone the course where he/she could not earn the attendance and after redoing the course or semester, then only such a permission will be given to go for the next semester or next year, that would be the interpretation be given to the second limb of Clause [1](d). Therefore, in that count also the arguments advanced by the learned counsel for the petitioner is liable to be rejected, accordingly it is rejected.



34. That apart, the Bar Council of India in exercise of its rule making power under the Advocates Act, 1961 has made rules called “Bar Council of India Rules” wherein Rule 12 reads thus:

“12. End Semester Test.- No student of any of the degree program shall be allowed to take the end semester test in a subject if the student concerned has not attended minimum of 70% of the classes held in the subject concerned as also the Moot Court room exercises, tutorials and practical training conducted in the subject taken together.

Provided that if a student for any exceptional reasons fail to attend 70% of the classes held in any subject, the Dean of the University or the Principal of the Centre of Legal Education, as the case may be, may allow the student to take the test if the student concerned attended at least 65% of the classes held in the subject concerned and attended 70% of classes in all the subjects taken together. The similar power shall rest with the Vice Chancellor or Director of a National Law University, or his authorised representative in the absence of the Dean of Law.

Provided further that a list of such students allowed to take the test with reasons recorded be forwarded to the Bar Council of India.”

35. Therefore, this rule also, which is almost *pari materia* to the University Statute, makes it clear that, a student must have earned atleast 70% of the attendance and condonation would be possible for those who earned atleast 65% of the attendance.



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36. Therefore there is no difference between the Bar Council of India Rules as well as the Ordinances of the University except the minimum percentage that the University fixed at 75% and the Bar Council fixed at 70%. Like that the medical condonation or any other condonation would be permissible at 66% as per the University prescription, whereas the Bar Council prescribed at 65% therefore even the minimum attendance itself i.e. prescription of 65% attendance has not been earned by the petitioner.

37. Therefore, even under Rule 12 of the Bar Council of India Rules also the petitioner cannot seek any shelter to seek for any condonation or exemption.

38. When that being so, the plea raised by the petitioner to place the request made by the petitioner to the University Syndicate does not arise or would not fall under the purview of the University Syndicate to take any decision within the meaning of Section 45 of the Act as everybody knows that it would be an empty formality. However for that kind of recommendation to be made by the University Council they must have first satisfy Section 45 where if the student earned 66% only the exemption



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would be given for the remaining 10% make it as 75%. Therefore that kind of recommendation also cannot be made to place the request of the petitioner to the University Syndicate to take a decision, hence in that count also the plea raised by the petitioner's counsel cannot be countenanced.

39. For all these reasons stated herein above and the discussion made in this order, this Court is not inclined to entertain this writ petition as the petitioner has not made out a case to succeed, accordingly the Writ Petition is liable to be dismissed, hence it is dismissed. No costs.

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Index : Yes

Speaking Order : Yes

Sgl

To

1.The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
At M.G.R. Salai, Perugudi,
Chennai – 600 113.

2.The Director,
School of Excellence in Law,
At M.G.R. Salai, perugudi,
Chennai – 600 113.



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R. SURESH KUMAR, J.

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