

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 4987/2019 & CM APPLs. 22145/2019, 11781/2020, 18462/2021**

Date of Decision: **27.03.2023**

IN THE MATTER OF:

ANJISHTHA

D/O SUDHIR KUMAR

R/O 353-C, CHANAKYA MARG, SHAHDARA,

DELHI -110032

..... PETITIONER

Through: Ms.Simran Chawla and
Mr.Deevanshu Sharma,Advocates.

Versus

UNIVERSITY OF DELHI

THROUGH REGISTRAR,

BENITO JUAREZ MARG, SOUTH CAMPUS,

SOUTH MOTI BAGH,

NEW DELHI, DELHI 110021

.... RESPONDENT NO.1

VIVEKANANDA COLLEGE

THROUGH CHAIRMAN,

VIVEK VIHAR,

DELHI, 110095

..... RESPONDENT NO.2

Through: Mr.Mohinder J.S.Rupal and Mr.Hardik
Rupal and Mr.Madhav Mehrotra,
Advocates.

Mr.Santosh Kumar, Mr.Prakhar Prakash
and Mr.Daksh Arora, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner has filed the instant petition under Article 226 of the

Constitution of India seeking directions against respondent No.2/College for the issuance of admit card and to further allow her to appear in the 6th Semester Examination which had commenced from 11.05.2019.

2. Learned counsel appearing on behalf of the petitioner states that the petitioner is a meritorious student studying in the respondent No.2/College and is pursuing B.A.(Hons) English course and was to appear in her final examination i.e. 6th Semester Examination. However, on account of the shortage of attendance, the admit card was not issued to her. She states that as per the Ordinance of respondent No.1/University, the attendance in the 6th Semester required was 66.66 per cent and if the benefit of certain other clauses of the Ordinance is given to her, she would be eligible to appear in the examination. She also states that the respondent No.1/University earlier considered her attendance up to 63.01 per cent, however, later on, the respondent No.1/University indicates that the petitioner had attended up to 60.84 per cent classes.

3. Learned counsel appearing on behalf of petitioner further states that by way of an interim order dated 10.05.2019, while recording the *prima facie* finding in her favour, this court directed the respondent No.1/University to allow the petitioner to appear in the examination, however, it was further directed not to declare the result, but it appears that the respondent No.1/University, inadvertently declared the result of the petitioner. She further states that once the result of the petitioner has already been declared, the same should be validated and at this stage, i.e. after passing the of more than four years, she should not be asked to appear in the 6th Semester Examination again.

4. Learned counsel appearing on behalf of the respondent

No.1/University and the respondent No.2/College, vehemently oppose the prayer and they state that the present writ petition is misconceived. According to them, the petitioner attended classes only up to 60.84 per cent and therefore, in accordance with the Ordinance, the petitioner cannot be allowed to take the benefit of the interim order as the same was passed on the basis of equity and without creating any right in favour of the petitioner.

5. I have heard learned counsel appearing on behalf of the parties and perused the record.

6. A perusal of the interim order dated 10.05.2019 indicates that various facts have been recorded by this court, including the position under the applicable Ordinance VII. In paragraph No.10 it has been noted that the petitioner's attendance works out to be 63.63 per cent on consideration of certain aspects as have been indicated therein. Paragraph No.10 to 15 are reproduced as under:-

"10. In order to demonstrate this, learned counsel has drawn my attention to Annexure A-6 to the writ petition, which contains the list of the detained students, for the academic year 2018-19. A perusal of the entries relating to the name of the petitioner as contained therein, indicate that (i) up to the 5th Semester, the petitioner had attended 674 lectures out of 1068, (ii) in the 6th Semester she attended 129 lectures out of 261, (iii) resultantly, therefore, if all the 6th Semesters put together, the petitioner had attended 803 lectures out of 1329 (iv) the petitioner was given allowance of 67 lectures on medical grounds, (v) as a result, the petitioner's attendance would be reckoned as 803 out of 1262 which works out to 63.62%.

11. Learned counsel for the petitioner states, on instructions from his client who is present in court, that the figures of 164 and 129, in the said table, a readable copy of which has been separately filed at page 127 of the paper book, represent the actual number of classes attended by the petitioner in the first five semesters and in the 6th Semester, respectively, without including the classes missed by her on account of her participation in extra-curricular activities.

12. The case of the petitioner is, therefore, that, had the classes missed by her on account of her participation in extra-curricular

activities, been treated as classes attended, by her, by applying Ordinance VII (2)(b) (supra), she would have made up the deficiency in attendance, which was only 3.01%.

13. Mr. Mukul Gupta, learned Senior counsel for Respondent No. 2-College has, on the other hand, provided another tabular statement, which reflects that (i) the petitioner has attended 718 classes out of 1136 upto 5th Semester, (ii) 132 classes out of the 161 in the 6th Semester, (iii) she had, therefore, attended, in all six semesters, put together, 850 classes out of 1397, (iv) no benefit of classes on the ground of medical has been granted to the petitioner and, therefore, the total number of classes attended, which is 850 out of 1397, works out to 60.84%.

14. Clearly, there is a discrepancy between the table, annexed as Annexure A-6 to the writ petition, by the petitioner and the table handed over by Mr. Mukul Gupta across the bar.

15. Mr. Mukul Gupta's submission is that the figures of classes attended, as contained in the aforesaid table, include the classes which were missed by the petitioner on account of her participation in extra- curricular activities and that, therefore, even if the benefit of the said classes is granted to the petitioner she fails to reach the figure of 66%."

7. It be also noted that in paragraph No.22 of the said order, taking into consideration the balance of equities, the petitioner was permitted to appear in the 6th Semester Examination. The court directed that the appearance of the petitioner in the said examination shall not be treated as creating any equities in the favour of the petitioner and the petitioner shall abide by the outcome of the present writ petition.

8. In paragraph No.23, it was directed that the result of the petitioner shall be kept in a sealed cover and would only be opened on the basis of the outcome of the present petition.

9. Paragraph 22 & 23 of the said order are reproduced as under:-

"22. In order to balance the equities for the present, the petitioner is permitted to appear in the 6th Semester examinations, which is stated to commence on 11th May, 2019. However, this latitude is being granted only because the petitioner is a student, and if she is not permitted to appear in the examination, possibly irreparable loss would ensue. It shall not be treated as creating any equities in favour of her and shall abide by the outcome of the writ petition.

23. The result of the petitioner, shall, however, be kept in a sealed cover of an appropriate index and shall be opened on the bases of the outcome of the writ petition."

10. Today when the matter is called out, this court heard learned counsel appearing on behalf of the parties. It be noted that the stand of the respondent No.1/University is unequivocally clear that the petitioner has not attended 66.66 per cent of the classes as mandated under the applicable Ordinance. From whatever angle the case of the petitioner is considered, the attendance of the petitioner cannot be 66.66 per cent in the concerned Academic Year. This court in exercise of power under Article 226 of the Constitution of India cannot direct the respondent No.1 University to act in disobedience of the applicable rules and regulations. Therefore, in absence of undisputed attendance i.e. 66.66 per cent, the petitioner was not eligible to appear in the 6th Semester Examination which was conducted in the year 2019.

11. This court at this stage, considers another alternate submission of the petitioner to confirm her already declared result. In view of the fact that the petitioner was permitted to appear in the 6th Semester Examination by way of interim order dated 10.05.2019, passed by this court and despite a direction to the contrary, the result of the said examination was declared by respondent No.1/University inadvertently, this court is inclined to accept the submission made by the petitioner. After four years since the petitioner sat in the examination and also inadvertent declaration of result, this court does not deem it appropriate to cancel the result of the examination and direct the petitioner to study in 6th Semester and appear in the examination again.

12. Hence, in the peculiar facts and circumstances of the present case, and without going into the merits of the controversy, which can be

decided in an appropriate case, this court makes the interim order dated 10.05.2019, absolute and confirms the declaration of 6th Semester Examination of the petitioner by respondent No.1/University. Needless to state that if the University has withdrawn the declaration of result later on, the said decision stands set aside.

13. With the aforesaid terms the instant petition stands disposed of.

PURUSHAINDR KUMAR KAURAV, J

MARCH 27, 2023/MJ



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