

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3571 of 2024

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1. Shubham Kumar Son of Chitranjan Kumar Resident of A.F. STN Bihta, M.E.S. Collney, Q/No- 132, Bihta, P.S.- Bihta, District- Patna.
 2. Shashikesh Kumar Son of Ranjeet Prasad Resident of MOH- Bheluchak, P.O.- Kabirchak, P.S.- Sadar, District- Darbhanga (Bihar).

... .. Petitioner/s

Versus

1. The Vice Chancellor, Bihar Engineering University, patna
2. The Registrar, Bihar Engineering University, Patna.
3. The Examination Controller, Bihar Engineering University, Patna.
4. The Principal, Darbhanga College of Engineering, Darbhanga.
5. The Principal, Rashtrakavi Ramdhari Singh College of Engineering, Begusarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Hari Shankar Roy, Adv.
	:	Mr. Akash Shankar, Adv.
For the Respondent/s	:	Mr. Satyam Shivam Sundaram, Adv.
	:	Mr. Ankit, Adv.
	:	Mr. Chandra Shekhar Kr. Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :07-03-2025

Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the respondents.

2. The Interlocutory Application No.01 of 2024 has been filed on behalf of the petitioners to add some more reliefs in para-1 of the main writ petition.

3. Having heard learned counsel for the parties and for the reasons stated in the interlocutory application, the interlocutory application no. 01 of 2024 is allowed and the reliefs prayed in this



interlocutory application shall also be treated as a part of the relief prayed in the main writ petition.

4. This writ petition has been filed for seeking following reliefs:

“i. For issuance of an appropriate order, direction, observation preferably in the nature of a writ of Mandamus for directing the respondents for conducting re-examination of second semester for academic year of 2021-22, of petitioner, who are students of computer science and engineering branch of Darbhanga college of Engineering, Darbhanga of session 2022-2026.

ii. For further direction of an appropriate order commanding the Writ Preferably in the nature of mandamus for directing the respondents to consider the application of the petitioner sympathetically, understanding and compatibility for condoning the 75% of attendance as require for appearance in examination in the light of the fact that he was facing unfortune special circumstances during his academic period.

iii. For additional issuance of an appropriate order for directing the respondents to permit the petitioners to allow and appear in case the respondents conduct the same.

iv. For any other relief or reliefs to which the petitioner may be found entitled in the given factual matrix for the present case.

v. For issuance of an appropriate writ order direction to declare the Annexure – D arbitrary and discriminatory as students having attendance lesser to the petitioner in the said college but of Junior Batch (Session 2022-26) has been allowed to fill up form and attend in the end examination and result also been published.

vi For issuance of an appropriate writ order direction that not arranging special examination for the petitioner against the actions of the respondent themselves as in case of other students who have declared failed have been



allowed to face special examination through there is no rule regulation guidelines in this respect.

vii. For issuance of an appropriate writ order direction to declare that under the Jurisdiction of same University but different colleges have no authority to adopt different yard stick for debarring a student from appearing in examination on the basis of lesser percent attendance.”

5. The brief facts of the case is that petitioner no. 1 namely Shubham Kumar is a student of B.Tech Computer Science Engineering College (Session 2021-2025) of Rashtrakavi Ramdhari Singh College of Engineering, Begusarai affiliated by AKU and, thereafter, by and under Bihar Engineering University, Patna, and, the Petitioner No. 2, namely, Shashikesh Kumar is the student of B.Tech Civil Engineering (Session 2022-26) of Darbhanga College of Engineering, Darbhanga, falling under the jurisdiction of Bihar Engineering University, Patna. The college authority issued an official order whereby a direction has been issued by that the students whose names were published are restrained from filing the forms of examination of university due to low attendance as per the directions (Annexure-1 and Annexure-6 of the writ application).

6. Learned counsel for the petitioners submits that the petitioner no.1 is a student of 4th Semester, CSE Program of RRS DCE, Begusarai (211051250440) and has been not allowed to appear in the 4th semester examination 2023 vide order Dated 04-



01-2024 bearing Letter no- RRSDCE/EC/2024/001, however, he has also submitted the medical report for the claim of attendance and deserves to be consider his case with leniency, however, the respondents herein has not considered the medical report submitted by the petitioner no-1 without any valid reason (Annexure 4 of the writ application). The Respondent No. 5, namely, RRSDCE, Begusarai vide administrative order dated 09.09.2023 bearing letter No. EST/774 has also notified “*as students of 4th & 6th semester whose percentage attendance in biometrics are less than 40% are not allowed to appear at mid-sessional test examination after giving undertaking* (Annexure 5 of the writ application).

7. Learned counsel for the petitioners further submits that it is also imperative to note that the petitioner no. 2 has been debarred to fill the examination form due to shortage of attendance vide administrative order dated 19.09.2023 bearing letter no. 1325 (Annexure 7 of the writ application). In addition to the above despite the order dated 19.09.2023, the petitioner no.2 has been allowed to fill the examination form along with fee paid of Rs. 3700/- and the university has accepted the same on the date of 20.09.2023 bearing exam form no. 111/943 (Annexure 8 of the writ application). The petitioner no-2 has also been suffering from



jaundice during the period of 25.07.2023 to 16.09.2023 and has submitted medical report to the college administration however the same has not been appreciated and accepted by the concern respondent (Annexure 9 of the writ petition). The petitioner no.2 has also been allowed to submit the fee as per fee structure and bona-fide on the of 30.12.2023 and the college has accepted the same and given a receipt of Rs. 200/- bearing receipt no. 44812 (Annexure 10 of the writ application).

8. Learned counsel for the petitioners further submits that the respondent on one hand debarred the petitioners from appearing in the examination on the ground of having less than the 75 per cent attendance and at the same time on the other hand allowed other students to appear in the examination despite of their attendance below 75% (Annexure 11 of the writ application). The respondent no.2 has notified the commencement of end semester university examination scheduled from 20.02.2024 to 29/02/2024 by administrative order dated 18.10.2023 bearing letter no. BEU/EXAM/3138/2023/PATNA (Annexure 12 of the writ application). He further submits that the petitioner no.2 has been debarred due to shortage of attendance without giving any prior notice or show cause notice to the petitioner no.2 and without giving any communication to the parents of the petitioner no.2.



9. An Interlocutory application has been filed on behalf of the petitioners, in paragraph 4 of which, it is stated the some students having less attendance than required have also been allowed to fillup form and to appear in the examination of other semester and those students declared passed. A detailed list of such student is produced hereinbelow:

Sl.	Name	Session	Semester	College	Attendance
1.	Sumit Kumar	2020-24	6 th	Govt. Engg. College, Buxar	35%
2.	Sudhakar Kumar	2020-24	6 th	Govt. Engg. College, Buxar	28%
3.	Kavita Kumari	2020-24	6 th	Govt. Engg. College, Buxar	29%

10. Learned counsel for the petitioners further submits that in the evidence of the statement made above relevant document such as attendance showing percentage list of debarment of student due to lesser attendance, admit card of such students and copy of their results are annexed as Annexure-2 to the I.A. He further submits that the petitioner no. 1 with the permission of the Head of Department of Computer Science Engineering went to Dhanbad to participate in technical fest in event of galactic logic circuit challenge and AI of God 2.0 during CONCETTO'23 at IIT



(ISM) Dhanbad from 12.10.2023 to 18.10.2023 and this period is taken present in the college for purpose of 7 days class attendance the percentage of attendance of petitioner no. 1 might have approached 42 percent. He further submits that that the respondent on the one hand debarred the petitioners from appearing in the examination on the ground of having less than the 75 % attendance and at the same time on the other hand allowed other students to appear in the examination despite of their attendance below 75%. He further submits that there is complete violation of fundamental rights granted under Article 14 of the Constitution of India.

11. A counter affidavit has been filed on behalf of Respondent Nos.1 to 3 stating therein that the instant writ petition is not at all acceptable against the Bihar Engineering University because the University has not involved regarding the issues raised by way of this Writ Petition rather the issues and grievances of the petitioners are directly related to the concerned colleges. The colleges are empowered to count attendance and to allow the students to fill up the forms for exam. The University has very limited jurisdiction i.e., to accept the exam forms of the students sent by the colleges to the University. Apart from this, the University issues the schedule of examinations and publishes the



result accordingly. Thus, the University may be treated as formal party in this case.

12. A counter affidavit has been filed on behalf of the Respondent No.4 stating therein the action taken against the Petitioner No. 02 was equally made applicable to all the students of the College. It is also relevant to point out here that the college has acted in accordance with the standard set by the AICTE, The Bihar Engineering University as well as the Science and Technology Department, Govt. of Bihar, Patna, according to which the minimum 75% attendance is mandatory for appearing in the next semester examination. After filling the examination form on College Website, the process is considered complete only after verification by the principal's login and the Verification was not done by the principal's login. Further, it is mentioned that no student having lesser percentage of attendance has been allowed to appear in the next semester examination. Time to time the class attendance of the students has been displayed through notice board and other means. The notice dated 08.07.2023, notice dated 15.07.2023 and notice dated 22.07.2023 has been issued and was also published on Notice Board as a warning to each student and to alert them. (Annexure-R4/A)



13. Learned counsel for the Respondent No.4 submits that it is pertinent to mention here that according to the University Regulation only 10 – 15 % of relaxation in attendance is to be given on medical grounds and the college administration is acting in terms of the guidelines issued by the AICTE, University as well as the Department. The petitioner no. 02 did not fulfill the prerequisite criteria of minimum 75% attendance for appearing in the next semester examination and time to time notices issued by the college Administration directing the concerned students to complete the shortage of attendance. Accordingly, he has not been allowed to appear in the next semester examination. The attendance of the petitioner no.2 is only 26 percent. He further submits that the Petitioner No.2 has been provided ample opportunity to correct his percentage of attendance but the same was not availed of. It is further stated that the decision of the College Administration has been made applicable for all students equally. There is no question of any violation of Article 14 as no discrimination has been made with the petitioner.

14. A counter affidavit has been filed on behalf of Respondent No.5 in which it is stated that the instant writ application is not maintainable since the petitioners did not avail the alternative remedy, which has been provided under Rule – 6 of



the Disciplinary Rules for Government Engineering Colleges/Polytechnics, notified by the Department of Science and Technology, Government of Bihar. According to the said rule, students may represent his case against the order of the Principal to the Director, Science and Technology and the decision of the Director, Department of Science and Technology, Government of Bihar will be final.

15. Learned counsel for the Respondent no.5 submits that the action taken against the Petitioner No.1 was equally made applicable to all students of the College. It is also relevant to point out here that the College has acted in accordance with the standard set by the AICTE, the Bihar Engineering University as well as the Science and Technology Department, Govt. of Bihar, Patna, according to which the minimum 75% attendance is mandatory for appearing in the next semester examination, and it is further stated that no student having lesser percentage of attendance has been allowed to appear in the next semester examination. The petitioner no.1 attendance is only 34 percent It is stated that the petitioner No.1 being registration No.21105125040 has not been allowed to appear in 4th semester examination 2023 in accordance with the guidelines issued by the AICTE, Bihar Engineering University, Patna as well as the department of Science and Technology, Govt.



of Bihar, Patna. As per the Academic council meeting held on 09.11.2023, the University has discussed and approved the pre-requisite criterion of 75% attendance mandatory in a subject to appear in the next semester examination. It is further decided in the academic council meeting that 15 % relaxation in attendance shall be provided on the basis of valid medical ground. (Annexure R/5-A Series). Further, those students whose attendance was more than 40% were assumed to complete their minimum attendance criteria at the time of end semester examination. In So, they were allowed to appear in mid sessional test examination after giving undertaking and those students whose attendance is less than 40% would not be allowed to appear in mid sessional examination. The mid sessional examination had been conducted for those students who had completed their attendance criteria 2nd time. (Annexure R/5-B Series)

16. Learned counsel for the Respondent No.5 further submits that the Petitioner No. 1 had been given notice many times before debarring him for mid-term examination as well as the end semester examination. The notice No.764 dated 08.09.2023, notice No.774 dated 09.09.2023 and notice No.EST-1035 dated 16.11.2023 has been issued and biometric attendance report was also published on Notice Board. The departmental notice has also



published in departmental notice board by Head of the department (Computer Science & Engineering) Notice No. RRS DCE/CSE/2023/16 dated 05.10.2023 for intimation to students that whose attendance is less than 75% will not be allowed to fill the end semester examination form, (Annexure R5/C Series). Further, the remedial class was conducted vide notification No.1035 dated 16.11.2023 for those students whose attendance was respectively low at the time of notification for filling up examination form for 4th and 6th end semester examination 2023. Those students who appeared in the remedial classes and completed the required attendance criteria were allowed to fill-up examination form.

17. Considering the arguments advanced on behalf of the parties and perused the records and the judgment rendered by the Hon'ble Apex Court in the case of ***Ashok Kumar Thakur vs. University of Himachal Pradesh*** reported in AIR 1973 SC 221 has considered this aspect and made the following observations:-

"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."

18. Further, relying on the aforesaid judgment and other judgments of the Hon'ble Supreme Court, this Hon'ble Court (Division Bench) in the case of **All India Student Federation reported in 2019 (3) PLJR 727** made interference in identical matter to the extent of issuing direction to the Principal and Vice Chancellor to exercise their discretion as delegated through the Regulation and condone the shortage of attendance upto 15%. The relevant paragraph of the aforesaid judgment is reproduced as:-

"59. We, therefore, direct that the Principal, Patna Women's College, to condone the attendance of all those students, who have inadequate attendance to the extent of 70%. We also direct the Vice Chancellor, Patna University, to condone the attendance of those students, who have inadequate attendance up to 60%. All these students be allowed to appear in their respective examinations within a period of 15 days from today. The results of the examination of the students, who have already appeared in their respective examinations, be published and declared along with the results of examinations of those students, whose inadequate attendances have been directed to be



condoned by us. The entire result shall be declared within the scheduled date so that the students do not suffer any further. Upon publication of the results, the Vice-Chancellor of the Patna University and the Principal, Patna Women's College, shall lay before this Court a comprehensive report so as enable this Court to give such further direction(s) as may be warranted by the facts and attending circumstances of the present case."

19. So far as the question of violation of Article 14 of the Constitution is concerned, it is stated that the principle of equality is not applicable in the case where certain illegal act has been done and thus the petitioners cannot claim parity to those illegal action. The Hon'ble Supreme Court has elaborated the concept of Article 14 in the case of ***Basawaraj and Another*** reported in **(2013) 14 SCC 81**. The relevant paragraph of the said judgment is reproduced hereinbelow:-

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in



favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible."

20. Further, the learned counsel for the petitioners has filed Interlocutory Application stating therein some of the students of Government Engineering College, Buxar, having attendance less than 75%, have been allowed to fillup the form and to appear in the examination. However, it has not been established that Rastrakavi Ramdhari Singh College of Engineering, Begusarai, has allowed any students with attendance below 75% to do the same, nor does it indicate that Darbhanga College of Engineering, Darbhanga, has allowed any such students having attendance below 75% to fill up the form and appear in the examination.

21. Having considered the whole crux of the matter and the judgment of the Hon'ble Apex Court, it is an admitted fact that the petitioners have attendance below 75 % and the same is not acceptable as per the rules and regulations of the colleges so affiliated from the respective university. Further, I find no such violation of Article 14 herein considering the case of **Basawaraj**



(*supra*). Moreover, the principal of the colleges have been given discretionary power to condone the shortage of attendance that so upto 10-15% and medical grounds, but the present case lies on a different footage as on mere perusal of the records it manifests that both the petitioners have less than 50% attendance. In such view of the matter, this Court does not find any merit in the instant writ petition and is, accordingly, dismissed.

22. I deeply regret the unfortunate reality that the petitioners are on the verge of losing nearly a year of their academic journey. However, the supremacy of the rule of law remains paramount, binding all individuals without exception. In light of the circumstances of this case, I deem it appropriate to make no order as to costs.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	13.02.2025
Uploading Date	07.03.2025
Transmission Date	NA

