

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7517 of 2024

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Sonu Kumar Son of Ramanuj Singh Resident of Village- Jethian, P.S.- Atri,
District- Gaya, 823311, 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.

... .. Respondent/s

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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.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :07-03-2025

Heard learned counsel for the petitioner, 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 petitioner 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 fourth semester for academic year of 2022-23, of petitioner, who is a student of Electrical and Electronics Engineering branch of Darbhanga college of Engineering, Darbhanga of Session 2021-2025.

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 a requirement for appearance in examination in the light of the fact that he was facing unfortunate special circumstances during his academic period.

iii. For additional issuance of an appropriate order for directing the respondents to permit the petitioner 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 of the present case.

v. For issuance of an appropriate writ order direction to declare the Annexure – IV and V, arbitrary and discriminatory as students having attendance equal to the petitioner in the said college but of Junior Batch (Sessions 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 is against the actions of the respondent themselves as in case of other students who have declared failed have been allowed to face special examination though 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 different colleges has 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 fact of the present case is that the petitioner

is a student of 4th Semester, EEE Program of Darbhanga College



of Engineering, Darbhanga (21110111032) affiliated by AKU thereafter by and under Bihar Engineering University, Patna, and currently he is in the session of 2021-2025. The petitioner has been debarred to appear in the 4th semester examination 2023 vide order Dated 20.12.2023, bearing Letter no. 1767, however, he has also submitted the medical report for the claim of attendance and deserves his case to be considered with leniency however the respondents herein are not considering the medical report submitted by the petitioner without any valid reason. An official order has been issued whereby a direction has been issued by the office of the said college 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 2)

6. Learned counsel for the petitioner submits that the respondent No. 4, namely, Darbhanga College of Engineering, Darbhanga, vide administrative order 20.12.2023 bearing letter no. 1767 has also notified as *“students of 4th & 6th semester whose percentage attendance in biometrics were insufficient and who are debarred from the examination will have to complete the 4th & 6th semester classes in the next session as per the rules of the University in order to continue pursuing the degree.”* (Annexure 5



of the writ application). In addition to the above, the petitioner has not been given any notice or show cause notice prior to debarring him to appear in the exam and not even his parents have been informed during the course of the ongoing classes about the shortage of attendance of their wards. The petitioner has been allowed to fill the examination form along with fee of rupees 3700/- paid on 22.11.2023 and the university has accepted the same on the date of 24.11.2023 bearing examination form no. 111/487 (Annexure- 6 of the writ application).

7. Learned counsel for the petitioner submits that the petitioner has also been suffering from URTI with Oral Ulcerations during the period of 10-09-2023 to 23-09-2023 and has submitted medical report to the college administration, however, the same has not been appreciated and accepted by the concerned respondent (Annexure-7 of the writ application). He further submits that the respondent on one hand debarred the petitioner 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%.

8. A counter affidavit has been filed on behalf of Respondent Nos.1 to 3 in which it is stated that no question has



been raised against the functioning of the University in any paragraph of the writ petition rather all the grievances have been raised by the petitioner against the concerned college. The Principal Darbhanga College of Engineering is Respondent No. 4 and he is answerable to the statement made in the writ application. The Darbhanga College of Engineering is presently an affiliated unit of Bihar Engineering University but the problem of the petitioner is directly under the jurisdiction of Darbhanga College of Engineering. As per Rule, 75% attendance is essential for the students to appear in the examination. The concerned institution is empowered to take appropriate action, in case the aforesaid rules is violated by the student.

9. A counter affidavit has been filed on behalf of Respondent No.4 stating there in that as the petitioner did not ensure the minimum attendance of 75% and, therefore, he has been debarred from appearing in 4th semester examination. The Principal of the College got no power to condone the minimum attendance requirement of 75% subject to the provisions of regulation which provides condonation up to 15% on valid medical ground. Since the case of the petitioner did not come within the zone of consideration, his case was not considered. The college time and again issued the attendance details of the students



in order to enable the students to rectify their deficiency in attendance.

10. Learned counsel for the Respondent No.4 submits that since the petitioner did not follow the instruction of the college and fulfill the attendance requirement, he has not been allowed to appear in the end semester examination. The concerned College has proceeded on the basis of the regulation as well as the direction of the University which provides that minimum 75% attendance is mandatory to appear in the Semester Examination vide letter no. 470 dt. 05.10.2023 and letter dated 09.11.2023 (Annexure R-5/A Series) directing all concerned that as per the decision of the Academic Council 75% attendance is mandatory for appearing in Semester Examination. However, 15% relaxation in attendance was allowed on the basis of a valid medical ground/records (Annexure R4/A).

11. 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."

12. 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."

13. 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."

14. Further, the learned counsel for the petitioner 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 Darbhanga College of Engineering, Darbhanga, has allowed any such students having attendance below 75% to fill up the form and appear in the examination.

15. Having considered the whole crux of the matter and the judgment of the Hon'ble Apex Court, it is an admitted fact that the petitioner has attendance below 75 % and the same is not acceptable as per the rules and regulations of the college 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 college has been given discretionary power to condone the shortage of attendance that so upto 10-15% on medical grounds, but the present case lies on different footage, as on mere perusal of the records it manifests that petitioner has only 51% attendance. In such view of the matter, this Court does not find any merit in the instant writ petition and is, accordingly, dismissed.

16. I deeply regret the unfortunate reality that the petitioner stands to lose nearly a year of his academic journey. However, the supremacy of the rule of law remains paramount, binding all individuals without exception. I deem it appropriate to make no order as to costs.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	13.02.2025
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