

HON'BLE SRI JUSTICE K.LAKSHMAN

WRIT PETITION No.7851 OF 2023

ORDER:

Heard Mr. Deepak Misra, learned counsel representing Mr. Mayur Mundra, learned counsel for the petitioner, learned Government Pleader for Higher Education appearing on behalf of respondent No.1, Mr. Ch. Jagannatha Rao, learned Standing Counsel appearing on behalf of respondent No.2 and Mr. M. Srikanth, learned counsel appearing on behalf of respondent Nos.3 to 6.

2. This writ petition is filed to declare the action of respondent No.5 in issuing proceedings dated 20.03.2023 whereby striking off the name of the petitioner from the rolls of respondent No.4 College and in non-forwarding the name of the petitioner for the forthcoming Semester on the pretext of shortage of attendance, as illegal, and for a consequential direction to the respondents to permit the petitioner to continue on the rolls of the College and to submit his examination fee for the VIII Semester examinations to be conducted from 19.04.2023 to 29.04.2023.

3. The petitioner herein is a Student of Five-Year LL.B., Degree Course and he is prosecuting his studies in respondent No.4 College, which is affiliated to respondent No.2 University. He is in 4th Year i.e., 8th Semester. He belongs to BC 'E' Category and he is getting Scholarship from the State Government under 'Fee Reimbursement Scheme'. According to him, respondent Nos.3 and 4 have to get fee reimbursement from respondent No.1.

i) It is the specific contention of the petitioner that office of the Principal of respondent No.4 College is vacant since May, 2022. Respondent No.6 is taking care of the said duties and she is currently Head of the Institution. When respondent Nos.3 to 6 attempted to halt him from appearing 7th Semester on the ground of shortage of attendance, he has filed a writ petition vide W.P. No.38161 of 2022, and the same was disposed of vide order dated 26.10.2022 directing respondent Nos.3 to 5 herein to collect fee from the petitioner, forward the same to respondent No.2 University, so that they will issue Hall Ticket to the petitioner to enable him to appear for 7th Semester exam of 4th Year LL.B., Degree Course scheduled from 02.11.2022.

ii) Feeling aggrieved by the said order, respondent Nos.3 to 5 herein have preferred an appeal vide W.A. No.715 of 2022 and the same is pending. There are disputes between the petitioner and respondent No.4 with regard to reimbursement of fee. Respondent No.6 bore grudge against the petitioner and attempted to stop the petitioner from appearing examinations for 8th Semester of 4th Year on the very same ground of 'shortage of attendance'. According to the petitioner, he is having 80% of attendance and the respondents are not maintaining attendance properly. Respondent No.6 has also issued a show-cause notice dated 08.03.2023 to the petitioner herein for which he has submitted explanation dated 13.03.2023. Without considering the same, vide order dated 20.03.2023, respondent No.4 struck off the name of the petitioner from the Rolls of the College as per Rules. Challenging the same, the present writ petition is filed.

4. Respondent Nos.3 to 6 have filed counter denying the allegations leveled against them by the petitioner herein. According to them, required attendance is 75% and the same is mandatory which the petitioner did not possess. In compliance with the aforesaid order in W.P. No.38161 of 2022, the petitioner

herein had appeared for the 7th Semester examination and passed the same. As per Regulations issued by respondent No.2 pertaining to LL.B., Degree Course w.e.f. 1995-96, more particularly, Regulation No.11 (j), the petitioner is required to put up 75% of attendance. The petitioner did not put up the same. Therefore, a show-cause notice was issued to the petitioner herein and he has submitted explanation. The same was considered and vide order dated 20.03.2023, his name was struck down from the Rolls of respondent No.4 College. There is no irregularity.

i) The petitioner herein had submitted a representation dated 09.12.2022 expressing his grievance of not following Biometric attendance by respondent No.4 College. Therefore, vide letter dated 15.12.2022, respondent No.4 sought clarification from respondent No.2 with regard to the implementation of Aadhar Enabled Biometric Attendance System (AEBAS). Respondent No.2 vide proceedings dated 17.03.2023, intimated about the implementation of AEBAS with immediate effect i.e., 17.03.2023. The said Circular was communicated to respondent No.4 College on 18.03.2023, by which time, the Semester (8th Semester) was already completed. Therefore, according to them, the petitioner is

not having requisite attendance of 75%, and as per the Regulations, he is not entitled to appear for examinations. In terms of Regulation No.11 (j) of respondent No.2 Regulations, the name of the petitioner has been struck down from the Rolls of respondent No.4 College. There is no error in it. With the said submissions, they sought to dismiss the present writ petition.

5. There is no dispute that the petitioner is prosecuting his Five-Year LL.B., Degree Course in respondent No.4 College and he belongs to BC 'E' Category. He is also getting scholarship from the State Government under Fee Reimbursement Scheme. There were some disputes between the petitioner and respondent No.4 College with regard to payment of fee and reimbursement of the same since there was also delay in reimbursement of scholarship.

6. When respondent No.4 did not permit the petitioner to pay the examination fee on the ground of shortage of attendance, he has filed a writ petition vide W.P. No.38161 of 2022. Considering the relevant regulations with regard to maintenance of attendance and also the submissions made by respondent No.4 College, respondent No.2 University and also considering the fact

that there are discrepancies in the attendance particulars produced by respondent No.4 College, this Court granted relief to the petitioner herein. This Court directed respondent Nos.3 to 5 herein to collect fee from the petitioner, forward the same to respondent No.2 University, so that they will issue Hall Ticket to enable the petitioner to appear for the 7th Semester examination of Five-Year LL.B., Degree Course scheduled on 02.11.2022. The same was complied with though a writ appeal by respondent Nos.3 to 5 is pending.

7. Now, respondent No.2 University had issued a Circular dated 17.03.2023 to all its Constituent and Affiliated Colleges making the implementation of AEBAS as mandatory. According to respondent No.4, they have received the said Circular on 18.03.2023, by which time, 8th Semester was completed.

8. Respondent No.4 had filed the extract of attendance statement of the petitioner, which is as follows:

Name	Labour Law			Interpretation of Statutes			Pvt. International Law			Land Laws			Citizenship Law		
	Attended (in hours)	Absent (in hours)	Total (in hours)	Attended (in hours)	Absent (in hours)	Total (in hours)	Attended (in hours)	Absent (in hours)	Total (in hours)	Attended (in hours)	Absent (in hours)	Total (in hours)	Attended (in hours)	Absent (in hours)	Total (in hours)
Md. Absar Ahmed	57	33	90	44	46	90	59	31	90	55	35	90	49	41	90

Therefore, according to respondent No.4, the petitioner is having 58.66% of attendance as against required attendance of 75%. As per the Regulations, the petitioner can seek waiver of 10% of attendance only on the reasons mentioned in the Regulations. The petitioner herein is not falling in any of the aforesaid Categories. Of course, his contention is that he is having 80% of attendance. Therefore, he is not entitled for waiver of 10% of the attendance. If waived also, he has to possess 65% of the attendance and as against the same the petitioner has only 58.66%.

9. It is relevant to note that respondent No.4 College has filed Registers of Students' attendance for the Academic Year 2022-23 in respect of Five-Year LL.B., Degree Course, wherein the name of the petitioner is mentioned at serial No.22. They have also filed copies of the said Attendance Registers and produced the originals for perusal of this Court and on perusal, the same were returned to the learned counsel for respondent No.4. Apart from the petitioner, there are eight (08) other students, who failed to put up the mandatory attendance in various classes and, therefore, show-cause notices were issued as per Regulation No.11 (j) of respondent No.2 Regulations. Contending that to allay the

apprehensions of the petitioner, respondent No.4 College started taking attendance along with the signatures of the students on the additional sheet which was an additional requirement to the existing conventional system. Respondent No.4 has filed copies of the same and produced originals of the same for perusal of this Court and after perusal, the originals were returned. There is specific allegation against the petitioner that he had been involved in tampering with the attendance sheets by scribing unwarranted remarks in the columns meant for marking present by the Faculty. A show-cause notice was issued.

10. The aforesaid facts would reveal that after the order dated 26.10.2022 in W.P.No.38161 of 2022, respondent Nos.3 to 5 herein became more wiser and started maintaining attendance and also taking the signatures of the students including the petitioner. In the aforesaid order, this Court pointed out with regard to the discrepancies in the attendance and also non-maintenance of Biometric attendance by respondent No.4 College. On the said ground, this Court granted the relief to the petitioner.

11. Now, respondent Nos.3 to 6 became more wiser and they are maintaining the attendance properly and they are also

obtaining signatures from all the students including the petitioner herein. Now, according to this Court, there is no discrepancy in maintenance of attendance. This Court is satisfied with the attendance particulars of the petitioner submitted by respondent No.4 and also the attendance registers filed by respondent No.4 College along with counter.

12. Respondent No.2 has issued Regulations pertaining to LL.B., Degree Course w.e.f. 1995-96 and Regulation No.11 deals with 'Rules of Attendance' and the same is relevant and it is extracted as under:

“RULES OF ATTENDANCE:-

11-a)

b) A 'Regular Course of Study' means, putting an attendance of not less than 75% of the lectures and prescribed practical training if any and this provision shall be enforced strictly; but, in special cases and for, sufficient cause shown, the Vice-Chancellor, may, on the specific recommendation of the Principal/Head of the Department, condone the deficiency in attendance to the extent of 9% on Medical grounds subject to production of Medical Certificate.

c) The fee for condonation of attendance on Medical Certificate shall be Rs.20/-.

d)

e) The attendance shall be calculated from the date of commencement of the classes as per the almanac prepared by the University. The attendance shall be calculated on the aggregate of papers/subject.

f)

g).....

h)

i) in respect of those who have put in less than 40% in attendance they have to seek admission afresh after going through the Entrance Test as a fresh candidate, provided that they must seek admission within four years from the time of their admission in the first year.

j) Candidates who fail to put in a minimum of 20% attendance in a particular month/fortnight and with some possibility of getting in 75% attendance in the entire academic year/term will be given notice by the Head of the Department/Principal calling for explanation as to why his name should not be struck off the rolls. On a satisfactory reply the candidates name may be kept in rolls. If the candidate

continues to maintain less than 10% of attendance for the second month/fortnight also with possibility of getting 75% attendance in the entire Academic Year/term he will be given a second and final chance by the Head of the Department/ Principal to explain why his name should not be removed from the rolls, under intimation to his parents. On satisfactory reply, his name may be continued on rolls. If the candidate puts in less than 20% of attendance for the third month/fortnight and there is no possibility of getting 75% attendance (66% on medical grounds) in aggregate in the entire academic year, his name shall be struck off the rolls. Once the name is struck off, it will not be appearing in the attendance register.”

Therefore, as per the aforesaid Regulation, student has to possess 75% of attendance in the entire Academic Year/Term to become eligible to appear for the Semester examinations.

13. As per Regulation No.11 (j) of the aforesaid Regulations, if a candidate put up minimum attendance which is not less than the aforesaid prescribed attendance, the Head of the Department/Principle of the College has to issue notice to the Student and call for his explanation.

14. In the present case, respondent No.4 has followed the procedure laid down in the aforesaid Regulations, issued the aforesaid show-cause notice and called for explanation from the petitioner and on consideration of the same, vide proceedings, dated 20.03.2023, struck down the name of the petitioner from the Rolls of respondent No.4 College. This Court do not find any irregularity in the same. However, now respondent No.2 vide proceedings, dated 17.03.2023, informed respondent No.4 to maintain AEBAS as mandatory.

15. This Court is not having power to waive or reduce the attendance of a student including the petitioner herein. Considering similar facts and circumstances, the Apex Court in **Ashok Kumar Thakur v. University of Himachal Pradesh**¹ held as under:-

“4. The only question that now remains is whether the petitioner’s deficiency in the matter of attendance could be condoned by any authority. The final lecture statement of the Bilaspur and Dharmsla colleges show that the petitioner was short of 20 lectures in Civics, of

¹. AIR 1973 SC 221

10 lectures in Economics, of 10 lectures in History and of 8 lectures in English. Now the rules as to condoning of deficiency in the matter of attendance of lectures are to be found in Chapter XV of the Punjab University Calender 1969. Volume III (Rules). The relevant Rule is 1(a) and the material portion of it is in the following terms:

“(I) Taking into consideration the results of the House examinations:

(a) The Principal of a College affiliated in the Faculties of Arts, Science and Oriental Learning may condone the deficiency in lectures as under:

(i) Upto 15 lectures in each of the subjects;”

Since the petitioner’s deficiency in the matter of attendance exceeded 18 lectures in Economics and 20 lectures in Civics, it was beyond the jurisdiction or competence of the Principal to condone this deficiency. In our opinion this completely destroys the case of the petitioner.

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."

16. A Division Bench of the High Court of erstwhile State of Andhra Pradesh in **K. Pradeep v. Jawaharlal Nehru Technological University, Hyderabad**² considering identical set of facts and circumstances and the law laid down in earlier judgment of a Division Bench in **Akilesh Lumani v. Principal, Sir C.R. Reddy Autonomous College, Eluru**³ held as under:

"7. In the instant case as the appellant has not secured the required attendance to make him eligible for appearance at the examination, this Court cannot issue a mandamus as prayed for. In our opinion the requirement prescribed by the University is not only a salutary one but also essential one and that attending the college or educational institution is an essential element of education."

². 2002(3) ALD 667

³. 2000(4) ALD 630

17. Another Division of the High Court of the erstwhile State of Andhra Pradesh in **M. Sunil Chakravarthy v. Principal, Sreekalahasteeswara Institute of Technology**⁴ in identical set of facts and circumstances and considering various judgments held as under:

“4. Since nobody has power to condone the attendance below 65% therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the regulations cannot be subject-matter of a mandamus.

5. For these reasons, through we have sympathy with the petitioners, but we have no option, but to dismiss the writ appeals. No costs.”

18. As discussed above, the petitioner herein is having 58.66% of attendance as against the required attendance of 75%. It is not in dispute that respondent No.4 College can reduce the said attendance to a maximum of 10% on certain conditions. According to respondent No.4, the petitioner herein is not falling in such categories. Even if the same is considered, the petitioner has to put

⁴. 2005(1) ALD 253

up 65% of attendance which the petitioner did not put up. He is having attendance of 58.66% only. Therefore, the petitioner is not entitled for any relief, much less the relief sought in the present writ petition. Therefore, the writ petition is liable to be dismissed.

19. The present writ petition is accordingly dismissed. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition shall also stand closed.

29th March, 2023
Mgr

K. LAKSHMAN, J