

(2014) 07 P&H CK 0321

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 26291 of 2013

Kevin Singh Grewal

APPELLANT

Vs

Guru Nanak Dev University

RESPONDENT

Date of Decision: July 30, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 14

Hon'ble Judges: Gurmeet Singh Sandhawalia, J**Bench:** Single Bench**Advocate:** Vineet Sharma, Advocate for the Appellant; Amrit Paul, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

G.S. Sandhawalia, J.

Challenge in the amended writ petition is to the order dated 09.12.2013 (Annexure P9), passed by respondent No. 3, whereby the representation of the petitioner dated 25.11.2013 for sitting in the major examinations of B.Tech-I (Urban & Regional Planning) in November-December, 2013 was rejected on account of shortage of lectures.

2. The pleaded case of the petitioner is that he had taken admission in the said course and the classes started on 15.07.2013. The petitioner had been attending classes but due to medical condition, being a patient of thyroid, had remained absent in July and August, 2013, for different periods. Medical reports in support thereof were also annexed and it was stated that he had lost 20 kgs of body weight. The classes could only be attended regularly in September-October, 2013 and the last class was held on 08.11.2013 and no classes were held thereafter. Due to his illness, he was short of lectures and in the meeting dated 19.11.2013, the Board of Control (its acronym, "BOC") decided to condone the 10% of the lectures attended and also recommended to condone 5% of the lectures on medical grounds. The

petitioner had given a representation dated 25.11.2013 (Annexure P4) that his case be considered as special case and he be allowed to sit in the major examinations of the said course. He had appeared in the 2 minor examinations and secured good marks in all subjects. The BOC, in an emergent meeting held on 25.11.2013, recommended the request of the petitioner as special case and allowed him to sit in the said examination which was to start on 26.11.2013 but the petitioner was not allowed to take his examinations due to which, he filed the present writ petition. Vide interim order dated 29.11.2013, he was allowed to take the remaining 4 examinations by this Court and was stated to have passed the said examinations. However, order dated 09.12.2013 came to be passed subsequently, due to which, the decision dated 25.11.2013 was rejected and earlier decision dated 19.11.2013 was upheld by the Vice Chancellor which is the subject matter of challenge in the amended writ petition.

3. In the written statement filed, it was pleaded that as per the Ordinance 1.1 of the University Calendar 2008 Volume II, power of condonation was upto 10% of the lectures to the Head of the Department and other 5% to the Vice Chancellor, on the recommendation of the BOC and there was no authority to condone the lectures beyond what is provided in the said Ordinance. Accordingly, the meeting dated 19.11.2013 of the BOC was stated to be wrong and illegal. Para 7(f) of the Ordinance on Credit Based Continuous Evaluation Grading System clearly lays down that if the student falls short of attendance in more than 2 courses/subjects, in a particular semester, he will not be eligible to sit in the examination of the said semester. Accordingly, the order dated 09.12.2013, passed by the Vice Chancellor was justified and it was stated that the Syndicate had already ratified the said order on 23.12.2013 (Annexure R3) and the said decision was not subject matter of challenge. The classes had started on 15.07.2013 and ended on 13.11.2013 and more than 15 weeks of teaching had been done and the schedule applied to all the students and the lectures which had become short was because of the absence of the petitioner. It was submitted that the petitioner never informed the Department of his ailment and it came to their knowledge only when the application dated 25.11.2013 was received by them which the petitioner had submitted after knowing the BOC's decision dated 19.11.2013 and his attendance was not regular since September, 2013. In the subject of Communicative English, classes started on 22.07.2013 and the petitioner was not short of lectures therein and thereafter, he had shortage of lectures in 4 subjects, even after grant of condonation of maximum 15%. Only one student who was having extreme shortage of attendance and was not having 75% lectures and had met with a serious accident in October, 2009, was allowed to sit as a special chance to appear in the B.Tech 3rd semester examination. The Credit Based Continuous Evaluation Grading System was not in force at that point of time and had only come into force in 2010-11 and therefore, the said case could not be made precedent. Even otherwise, mere giving a wrong benefit would not entitle this Court to give the petitioner similar relief.

4. In replication, the resolution of the Syndicate dated 28.05.1983 (Annexure P13) was relied upon to show that the power of the Vice Chancellor was there to condone the shortage of lectures and it was submitted that the petitioner was not informed of the said shortage.

5. Counsel for the petitioner has also relied upon judgment passed by this Court in *Salil Trikha Vs. Guru Nanak Dev University, Amritsar* & another 2011(1) SCT 587 to submit that if the petitioner was prevented from attending classes for the circumstances beyond his control which was due to the medical problem, then he was entitled for the condonation. It is also submitted that the petitioner, by virtue of the interim order, has also given his examination and would be greatly prejudiced and there would be set-back of one year in case he is not given the said benefit.

6. Counsel for the University, on the other hand, submitted that as per the provisions of the statute that the students have to attend 75% of the total lectures and only deficiency upto 10% subject-wise, could be condoned on the recommendation of the BOC and conditional 5% on the basis of other unavoidable reasons. It was, accordingly, submitted that the order dated 19.11.2013 was duly ratified on 23.12.2013 and was liable to be upheld. Clause 1.1 of the Ordinance of the University Calendar Volume II, 2008 reads as under:

1.1 In the University Teaching Departments

The students will have to attend 75% lectures of the total delivered lectures. The Head of a University Teaching Department may condone the deficiency in lecture up to 10% subject-wise on the recommendations of the Board of Control in the various Faculties except LLB 3 yrs and LLB 5 yrs courses.

Provided that, on the recommendation of concerned Board of Control and Dean Academic Affairs the Vice-Chancellor shall have power to condone overall 5% lectures in case of illness, accident or any other unavoidable reason.

Note: In the light of the above amendment the existing ordinances relating to condonation of lectures printed in the various chapters except Faculty of Law, of GNDU Calendar Vol. II, 1999 shall automatically stand deleted.

(Syndicate Para 15(IV) dated 23/4/08)

7. Perusal of the said clause shows that the plea taken by the University is justified. Admittedly, the BOC had power to condone only 10% of the lectures delivered. The initial meeting dated 19.11.2013 had been passed as per the said Ordinance. However, in an emergent meeting held on 25.11.2013, in pursuance of the representation of the petitioner, the case of the petitioner was recommended as special case for allowing him to sit in the major examination. The petitioner, as per Annexure P6, had shortage of 7 lectures in Fundamentals of URP, 15 in Social & Demo. Consi. in Planning, 4 lectures in Punjabi Compulsory/Basic Punjabi and 5 lectures in Planning Studio-I. The submission of the counsel for the petitioner that

vide decision dated 28.05.1983, the University Syndicate had given the Vice Chancellor the power to condone shortage of lectures in exceptional cases, over and above the various teaching departments, is also without any basis since thereafter, the Calendar had come into force in 1999 and the discretion had only been restricted to 5%. This would be clear from the above reproduced provision.

8. It is also apparent to note that the petitioner had made no application earlier for bringing to the notice of the BOC that he was falling short of attendance, as has now been alleged that he was suffering from medical ailment. At the last moment, the representation dated 25.11.2013 was filed, as noticed above. Reliance upon the case of Salil Trikha (supra) is also without any basis as a perusal of the said judgment would go on to show that the relevant provisions had not been brought to the notice of the Court and it was specifically observed that the statutory rules and ordinance had not been placed before the Court and it was in such circumstances, the direction was issued for condoning the shortage on the ground of illness. The Apex Court in [Regional Engineering College, Hamirpur and Another Vs. Ashutosh Pandey](#), had set aside the order of the High Court whereby the shortage of lectures beyond the permissible limit had been allowed against the regulations. Relevant observations read as under:

8. A perusal of the Regulation shows that a candidate should first have 75% of minimum attendance in that course under Regulation 4.1. Regulation 4.2 mentions the circumstances under which further exemption can be granted by the Principal. The Principal can give further credit upto an extent of 10% of the total classes held in each course during the period of a student's participation in the programmes/competitions mentioned in Regulation 4.2. The Principal can exempt upto 10% of the total classes only in contingencies as mentioned in Regulation 4.2. Thus, 10% is the maximum in addition to 25%.

9. In addition, Regulation 4.3 is specific that the condonation on account of reasons listed under (4.2) shall not exceed 10% of the total lectures delivered during the semester. It also states that a candidate will have to apply to the concerned Head of Department on prescribed pro forma along with the reasons and documents in proof of his absence. Condonation can be granted by the concerned Head of the Department with the prior approval of the Principal. Thus, 10% in excess of 25% alone, is the maximum that can be condoned.

10. In the present case, the respondent did not make any application in the prescribed pro forma. Therefore, it is not possible to say whether his case comes within the contingencies mentioned in Regulation 4.2. It is no doubt stated that the respondent had gone to Delhi to appear in the examination/interview, but it is not clear whether that was an examination/interview held by a Government Organization/Public Limited Company. In any event, admittedly after deducting admissible 25% exemption, further absence of the respondent comes to 11% which is more than the permissible discretionary percentage granted to the Principal.

Therefore, the Principal was right in saying he had no power to condone the absence in excess of 10% in addition to 25%.

11. We are, therefore, of the opinion that the High Court fell into an error in permitting condonation of absence beyond 10% in addition to 25%. We, therefore, set aside the judgment of the High Court and the directions given therein.

12. Pending this appeal there was stay of the impugned order and this Court also observed that it would be open to the respondent to appear in the examination in December, 1998 provided he had complied with all other requirements for appearing in the supplementary examination.

9. In [A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another](#), the Apex Court held that direction could not be issued to the University to do something which it is forbidden from doing, under the University Regulations and it was noticed that though students had lost money and lost one or two years of his career but they were to be blamed themselves for that. The submission that similarly situated persons had been earlier allowed in the year 2009 is also without any basis. It is settled principle of law that taking of a wrong decision would not invoke Article 14 of Constitution of India and it does not apply in a negative manner. The respondents have justified the decision stating that the Credit Based Continuous Evaluation Grading System was not in vogue at that point of time and therefore, on account of shortage of lectures in more than 2 subjects, the petitioner cannot be allowed to sit in the examination. The plea that he has given the examination under the orders of this Court is also without any basis since the orders were very specific that they were provisional in nature and the petitioner would have no right of equity on the strength of the said interim orders.

10. In such circumstances, no relief can be granted to the petitioner, against the statute. Accordingly, the present writ petition is dismissed. All interim orders stand vacated.