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Mr. Fahad Hassan Vs Jamia Milia Islamia University and Another

Writ Petition (C) No. 2640 of 2011

Court: Delhi High Court

Date of Decision: April 28, 2011

Acts Referred:
Constitution of India, 1950 â€" Article 226#Jamia Millia Islamia University Examination Ordinance â€" Ordinance 15(15)

Citation: (2011) 179 DLT 423

Hon'ble Judges: Kailash Gambhir, J

Bench: Single Bench

Advocate: Sulaiman Mohd. Khan, in W.P. C Nos. 2640, 2641/2011 and Vikramjeet Banerjee, in W.P. C No. 2765/2011, for the Appellant; M.A. Siddiqui, for the Respondent

Final Decision: Dismissed

Judgement

Kailash Gambhir, J.
This common order will dispose of three petitions bearing W.P. (C) No. 2640/2011, W.P. (C) No. 2641/2011 and

W.P.(C) No. 2765/2011 filed under Article 226 of the Constitution seeking relaxation of attendance and to be allowed to appear in the

forthcoming final examinations.

2. The facts shorn of unnecessary details common to the three petitions are that the Petitioners are the students pursuing M.A. (Mass

Communication) from A.J.K. MCRC of Jamia Millia Islamia University. The Petitioner in W.P.(C) No. 2640/2011, a student of Ist year has

71.05% attendance; the Petitioner in W.P.(C) 2641/2011 is also a student of the Ist year and has secured 71.05% attendance and the Petitioner in

W.P.(C) 2765/2011, a student of I Ind year has secured 65.78; attendance. The short point involved in the present petitions is that the requisite

attendance for appearing in the annual examinations is 75% as per the relevant rules and therefore, the Petitioners herein being short of attendance

have been debarred from appearing in the forthcoming annual examinations. Being aggrieved with the said action of the Respondent University, the

Petitioners have preferred the present petitions.

3. Mr. Sulaiman Mohd. Khan, learned Counsel for the Petitioner submits that the Petitioner in W.P.(C) No. 2640/2011 was suffering from

jaundice and was thus disabled to attend his classes from 15.10.2010 to 22.10.2010. Counsel further submits that a duly qualified MBBS Doctor

practicing in Patna issued a medical certificate dated 22.10.2010 in favour of the Petitioner. Counsel also submits that the Petitioner has even

submitted the investigation report dated 16.10.2010 with the Respondent University which further proves the fact that the Petitioner was suffering

from jaundice during the said period. Giving explanation for the late submission of the medical certificate, counsel states that the Respondent

University is itself entertaining the medical certificates at the fag end, therefore the Petitioner cannot be blamed for submission of the medical

certificate at the fag end. Counsel also submits that the Petitioner in fact had a medical history of suffering from jaundice and to prove this fact, the

counsel has placed reliance on the similar medical report dated 1.6.2010 which is placed on record at page 12 of the paperbook. Counsel submits

that the Petitioner is entitled to the benefit of relaxation of 15% of the total attendance under the category of ""sickness"" as has been provided in the

Ordinance 15 (XV) of the Respondent University governing University Examinations. Counsel also submits that in the investigation report dated

16.10.2010, the concerned laboratory has clearly observed that SGPT and SGOT levels are above the normal range.

4. Mr. Sulaiman Mohd. Khan, learned Counsel for the Petitioner in W.P.(C) No. 2641/2011 submits that the Petitioner was suffering from very

high grade fever and was thus disabled to attend his classes from 7.11.2010 to 13.11.2010. Counsel further submits that duly qualified MBBS

Doctor practicing in Delhi issued a medical certificate dated 14.11.2010 in favour of the Petitioner. Counsel also submits that the Petitioner has

duly submitted the said medical certificate with the Respondent University. Counsel submits that the Petitioner could not file copy of the said

certificate as it was not retained by him and the same must be in the records of the Respondent. Counsel further submits that the Petitioner who is a

first year student of M.A.(Mass Communication) was quite regular in attending his classes. Counsel submits that it is an admitted case that the

Petitioner had secured 71.05% attendance till 31.3.2011 and is short of merely 3.95% and to meet the target of 75; attendance the Petitioner was

required to attend 23 classes. Giving explanation for the late submission of the medical certificate, counsel states that the Respondent University is

itself entertaining the medical certificates at the fag end, therefore the Petitioner cannot be blamed for the late submission of the medical certificate

at the fag end. Counsel submits that the Petitioner is entitled to the benefit of relaxation of 15% of the total attendance under the category of

sickness"" as has been provided in the relevant Ordinance of the Respondent University.

5. Mr. Banerjee, counsel for the Petitioner in W.P.(C) No. 2765/2011 submits that the Petitioner has secured 65.78% of attendance and could

not complete the target of securing 75% attendance due to bona fide and genuine medical reasons. Counsel further submits that the Petitioner has a

medical history of suffering from debilitating attacks of migraine for the past three years and when such a attack strikes, the Petitioner cannot

function at all. Counsel further submits that the Petitioner was diagnosed with migraine for the first time in the year 2008 and since then he has been

under medication. Counsel further submits that in the year 2010 also the Petitioner has suffered severe attacks of migraine and on various

occasions he had to return back to Kolkata for proper medical treatment. Counsel further submits that the Petitioner had submitted medical

certificate and prescription of the Doctor attending him during which period the Petitioner could not attend his classes. Counsel also submits that

the Petitioner made various representations to the Respondent University for kind consideration of his case but vide letter dated 7.4.2011, the

request of the Petitioner to allow him to appear in the forthcoming exams was declined by the Respondent University.

6. Opposing the present petitions, Mr. Siddiqui, learned Counsel for the Respondent University submits that the Petitioners had failed to submit

their medical certificates within the prescribed time of two weeks as provided in the University Ordinance 15 (XV) Clause 2.2. Counsel further

submits that throughout the year the Respondent has been repeatedly intimating not only the Petitioners but the parents of the Petitioners as well

about the shortfall in their attendance. Counsel also submits that besides the said intimation, the attendance position of each and every student is

being placed on the notice board of the Respondent University. Counsel submits that each and every medical certificate as submitted by the

students is being thoroughly scrutinized by the medical experts of the Ansari Health Centre of the University in terms of the Ordinance 15 (XV)

Clause 2.2.

7. Counsel submits that the Petitioner in W.P.(C) 2640/2011 was not found to be suffering from jaundice during the relevant period as enzymes of

the Petitioner as per the report submitted by him were near to normal range. Dr. Irshad Husain Naqvi, Medical Officer in the Respondent

University is present in the Court. He submits that any person suffering from jaundice will denote extremely high SGOT and SGPT i.e. 100 or

more but the same below 50 are treated near normal. Dr. Naqvi further submits that in the present case the Petitioner"s SGOT and SGPT reached

at the level of 45 and 40 respectively which are absolutely within the normal range and the medical report submitted by the Petitioner thus falsifies

the claim of the Petitioner that he was suffering from jaundice during the relevant period.

8. Counsel for the Respondent submits that the Petitioner in W.P.(C) No. 2641/2011 was called upon to submit a complete investigation report to

prove the fact that he was suffering from very high grade fever w.e.f. 7.11.2010 to 13.11.2010 but he failed to submit the same. Counsel for the

Respondent also submits that the Respondent University is not inimical against any of its students and a strict view is being taken to enforce high

academic standards and discipline in the University. Counsel also submits that for the past many years, the Respondent has been observing the

tendency of the students submitting fabricated medical certificates with a view to meet the attendance target. In support of his arguments, counsel

for the Respondent has placed reliance on the recent order passed by this Court in W.P.(C) No. 2553/2011 titled as Arunima Sen v. Vice

Chancellor, Jamia Milia Islamia University dated 21.4.2011, denying relief to a similarly placed student. Counsel also submits that 15% relaxation

under the category of ""sickness"" is available in extreme cases, where the students are suffering from some medical problem which can prevent the

students to attend their respective classes.

9. I have heard learned Counsel for the parties at considerable length.

10. In all these cases, the Petitioners who are students of M.A.(Mass Communication) from A.J.K. MCRC of the Respondent Jamia Millia Islamia

University are seeking relaxation in attendance under the category of ""sickness"" as per Clause 2.2 of Ordinance 15(XV) of the Respondent

University. The case of all these Petitioners is that if the period of sickness during which they could not attend their respective classes is taken into

consideration, then they would make up the shortfall in their attendance to meet the target of 75% of the required attendance. It is not in dispute

between the parties that as per the said University Ordinance it is imperative for the students to be regular in their classes and attend not less than

75% of the aggregate of the lectures, tutorials of all compulsory/optional/honours and subsidiary subjects in order to be eligible to appear in their

respective examinations. It is also not in dispute that the relaxation to the extent of 15% of the total attendance is permissible by the University

under the category of ""sickness"". For better appreciation, the relevant clauses of Ordinance 15(XV) The University Examinations of the

Respondent University are reproduced as under:

Ordinance 15 (XV)

The University Examinations

2. Attendance (for Regular Students)

2.1 A Candidate shall be deemed to have under-gone a regular course of study in the University, if he/she has attended atleast 75% in the

aggregate of lectures, tutorials and practicals in order to be eligible to appear at the Examination. Provided that the Majlis-i-Talimi (Academic

Council) may, in special circumstances, condone any shortage in such attendance except otherwise provided by the Academic Council.

2.2 A relaxation to the maximum extent of 15% of the total attendance shall be accorded to student on account of sickness, participation in

University functions and the prescribed Educational Tours/Field Trips/Field work, provided that the attendance record, duly counter signed by the

Teacher incharge, is sent to the Head of the Department concerned/Principal, University Polytechnic within two weeks of the function/activity etc.

Provided further in case of sickness/medical disability an application for the condonation shall be supported by a medical certificate issued by a

registered Medical Practitioner/Public Hospital and duly authenticated by the Ansari Health Centre of JMI. Such applications must be submitted

either during the period of treatment/hospitalization or within two weeks following recovery.

11. As would be seen from the aforesaid clauses of Ordinance 15 (XV) of The University Examinations, a student is required to attend 75% of the

lectures, tutorials and practicals to qualify to appear in his/her final exams. If a student achieves the said target, still there remains 25; which can

take care of many eventualities and exigencies which any student may be confronted with for not attending the classes as held by the Division

Bench of this Court in the case of Kiran Kumari v. Delhi University WPC No. 9143/2007.

12. To gain complete knowledge of any subject, attendance of the student in a class is a must. No student can excel in his/her life unless he or she

devotedly attends the classes of a course which he/she undertakes. Attendance is thus a rule and absence from class is an exception. Undoubtedly,

there can arise certain unforeseen situations and exigencies where a student may not be able to attend his classes and medical ground is one such

exception which can be considered by the Universities and Institutions to give the benefit of relaxation in attendance. In Clause 2.2 of the

Ordinance 15(XV), the University has prescribed a period of two weeks for submission of such medical certificates by the student after the

resumption of his classes but this rule is not being strictly observed either by the students or by the University. The plea taken by the University is

that they entertain the medical certificates even at the fag end so that the students should not have any grievance that the medical certificate although

submitted late by them was not entertained by the University. The University by entertaining such medical certificates at the fag end is itself creating

a kind of indiscipline in the University, besides defying its own rules. In certain cases the student may not be able to submit the medical certificate

within the prescribed time but certainly the student is required to submit a medical certificate within a reasonable time after he/she resumes

attending his/her classes. In any case it cannot be at the fag end of the academic session. It is a matter of common experience that when a student

comes to know that he/she would not be able to fulfill the laid down requirement of attendance then he/she adopts such type of fraudulent means to

procure one or the other medical certificates so as to cover up the shortfall in his/her attendance. This Court in the case of Vandana Kandari Vs.

University of Delhi, with regard to medical certificates held that:

It is also observed that the students after knowing that they are short of attendance at the last moment rush to the doctors who can make their

medical certificates to claim condonation of attendance on medical grounds. Therefore, if a student seeks to avail the benefit of relaxation bringing

his case within the four corners of an exceptionally hard case in terms of the proviso of Rule 2(8) (a), then in such circumstances it is directed that

such a student after returning from medical leave should submit the medical certificate for the same period immediately on rejoining the college and

not at the end of the semester so that the University has a record of the period the student was on medical leave.

Thus the University is directed to strictly follow its own rules and regulations and any relaxation in the said rules, would lead to making a mockery

of them in which situation, the students would not have any remedy but to rush to the courts alleging discrimination on the part of the University.

13. Dealing with the contention of the University which was fortified by the presence of Dr. Naqvi in the Court today, that the report of the

Petitioner in WPC No. 2640/2011 alleging that he was suffering from jaundice is false, this Court is of the clear view that the court would not go

into adjudicating upon the medical reports or their truthfulness in exercise of its writ jurisdiction. In cases where the Petitioners before this Court

allege their absenteeism on medical grounds, it would be preposterous to state whether who was more ill and who was less ill to decide as to who

would be entitled to relief by this Court.

14. This Court has time and again, through numerous judicial pronouncements, stressed the importance of attendance in educational institutions. As

the incorrigible lot of students still approaches the portals of law for seeking relief, it has but become incumbent upon this Court to reiterate in black

and white the dicta of law. In the detailed judgment of this Court in the case of Vandana Kandari Vs. University of Delhi, , while crystallizing the

legal position, declined to grant relief to the students falling short of attendance in L.L.B course of the Delhi University. This Court observed that

the problem of absenteeism has taken the face of a chronic disease plaguing the edifice of the education system as the students who do not attend

classes have a strong belief that they are not suffering significantly by their absence as the absenteeism does not affect their clearing the

examinations with good grades. However in the same matter, relaxation of attendance was given to two students who were pregnant, but setting

aside the same, the Division Bench of this Court in LPA No. 662/2010 decided on 10.1.2010 declined such exemption as well, elucidating the

legal position that in no case whatsoever, relaxation of attendance can be given.

15. However, the Hon''ble Division Bench of this Court while upholding the abovesaid order in Vandana Kandari(supra) whereby relaxation of

attendance was declined to seven other students, in LPA 539/2010 titled Sukriti Upadhyay v. Delhi University decided on 4.10.2010 held that the

quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures he attends and

the failure to attend the requisite number of lectures can legitimately disentitle him to claim eligibility for appearing in the examination.

16. In the subsequent order of this Court in the case of Gagandeep Kaur v. Govt of NCT of Delhi WPC No. 2790/2010 decided on 20.10.2010

this Court held that even if it were to be held that the Petitioners were prevented for bonafide reasons beyond their control from attending some of

the classes, there is no explanation as to why the Petitioners could not have attended all the other classes during the remaining duration so as to

fulfill/secure their eligibility for attendance. Thus it has to be stated firmly here that once the student by regular letters and notices put up on the

notice board of the University is made aware of his shortage in attendance compelled by whatever reason, it becomes the solemn duty of the

student to try and attend all the subsequent classes to make up for the attendance so that he does not stand the risk of getting ineligible for

appearing in examinations.

17. The strict view in not granting relief to the students has been further reiterated in the recent orders by this Court in Choudhary Ali Zia Kabir v.

Guru Gobind Singh Indraprastha University WPC No. 3129/2010 and Vibhor Anand v. Vice Chancellor, GGSIP University WPC No.

3163/2010. In view of the above cited detailed judgments, it is unnecessary to burden this judgment with more reasoning.

18. The importance of attendance can hardly be overemphasized. The students must understand that the attending the classes is not only important

in terms of their clearing the examinations but also to shape their minds, aims and perspectives in life. It would be befitting to quote here the

observations of the Division Bench of this Court in the case of Ashutosh Bharti and Ors. v. The Ritanand Balved Education Foundation (regd.) and

Ors. under:

3. It may be noted that the grooming up and progressing of the students at the college is an important aspect for assessing the students. Their

presence is a must. That system has been recognised all over the world. If the student is not attending the classes regularly, the teacher will not be

in a position to watch the progress of that student. Academic authorities are best judges in the field of education to make suitable rules, regulations

or ordinances. It is for the college or the University to put the conditions on the students to attend a particular number of classes so as to be

satisfied that the student has attended regular classes and he has taken education at the college/school.

4. Attendance is a must. Curriculum does not mean only examination, but it includes various other aspects such as discipline, behavior in the class

room with the teachers and other co-students, answering the questions, time taken for answering the questions etc. These are the relevant aspects

to be taken into consideration by a teacher and this can be done only if a student is attending the classes regularly. The University has prescribed

75% minimum for this purpose and it cannot be said that it is not in accordance with law or it is an arbitrary provision.

5. If any step is taken towards better educational method and standard, not only the Court should not come in the way, but must command and

encourage it. Those who fail to maintain such standard round the year may lose the very valuable year of the young career, just as they lose if they

fail in the examination. Matters of academic judgment are not for the courts to entertain. Better standards are required for learning and it can be

only from experiences and different modalities. Educational institutions are the best judges to impose appropriate restrictions and conditions.

Merely because the conditions which are imposed may be found inconvenient to some students, it cannot be challenged as being arbitrary. All the

students who are appearing in te examinations have attended classes for not less than 75%. Merely because a few students are before the Court, it

cannot be said that the rule or regulation is arbitrary.

Thus, the students must understand that there is no royal road to education and education teaches only those in attendance.

19. However, before parting with the judgment, this Court is constrained to observe that the similar seekers of relief in hope of garnering sympathy

and pity are pouring manifold everyday before this Court. It has thus become imperative for them to hear the clarion call of the court that for the

protection of rule of law as is luculent from the various judicial pronouncements referred above and of maintaining discipline, the law courts are not

inclined to grant relief to students falling short of attendance.

20. Certainly, this Court has great sympathy with these Petitioners who due to shortage of marginal percentage of attendance would waste their

one precious academic year, but if any indulgence, if given, to such students due to sympathy and compassion then the same would result in total

indiscipline and chaos thus opening a Pandora"s box. Strict view in such like cases would be in the larger interest not only of a student but also of

any institution or University.

21. In the light of the above discussion, I do not find any merit in these petitions, and the same are hereby dismissed.

DASTI under the signature of Court Master.