

(2013) 07 KL CK 0116
In the High Court Of Kerala
Case No : W.A. No. 899 of 2013

Ajith Chandran

APPELLANT

Vs

University of Kerala and Others

RESPONDENT

Date of Decision : 08-07-2013

Acts Referred:

Citation : (2013) 4 KHC 392 : (2013) 4 KLT 392

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : D. Kishore, for the Appellant; George Poonthottam, Standing Counsel, Kerala Uty. and B. Renjithkumar, for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—The entire controversy in this appeal revolves around B.Tech. Degree Course, 2008 Scheme Regulations, especially, Regulation 5.2(iii) which reads as under:

5.2. End Semester University Examinations:

i) There will be University examinations at the end of the first academic year and at the end of every semester from third semester onwards in subjects as prescribed under the respective scheme of examinations. Semester classes shall be completed at least 10 working days before the commencement of the University examination.

ii) The examination will be held twice in an year-April/May session (for even semester) and October/November session (for odd semester). The combined 1st and 2nd semester is reckoned as equivalent to an even semester for the purpose of conduct of examination and the University examination will be held during April/May. However VII and VIII Semester examination will be conducted in both the sessions. This schedule will not be changed.

iii) A student will be permitted to appear for the university examination only if he/she satisfies the following requirements:

- a. He/She must secure not less than 75% attendance in the total number of working periods during the first year and in each semester thereafter and shall be physically present for a minimum of 60% of the total working periods. In addition, he/she also shall be physically present in at least 50% of total working periods for each subject
- b. He must earn a progress certificate from the head of the institution of having satisfactorily completed the course of study in the semester as prescribed by these regulations
- c. It shall be open to the Vice-Chancellor to grant condonation of shortage of attendance on the recommendation of the head of the institution in accordance with the following norms
- d. The attendance shall not be less than 60% of the total working periods
- e. He/She shall be physically present for a minimum of 50% of the total working periods
- f. The shortage shall not be condoned more than twice during the entire course
- g. The condonation shall be granted subject to the rules and procedures prescribed by the university from time to time
- h. The condonation for combined 1st and 2nd semesters will be reckoned as a single condonation for attendance purposes.
- iv) A student who is not permitted to appear for the University examinations for a particular semester due to the shortage of attendance and not permitted by the authorities for condonation of shortage of attendance shall repeat the semester when it is offered again. This provision is allowed only once for a semester.
- v) The university will conduct examinations for all subjects (Theory, Drawing & Practical)
- vi) The scheme of valuation will be decided by the chief examiner for theory & drawing subjects.
- vii) For practical examinations, the examiners together will decide the marks to be awarded. The student shall produce the certified record of the work done in the laboratory during the examination. The evaluation of the candidate should be as per the guidelines given in the syllabus of the practical subject.

Reading of the above Regulations, it is very clear, if a student complies with three conditions, namely, 5.2(iii)a, i.e., having not less than 75% attendance in the total number of working periods during the first year and in each semester thereafter and shall be physically present for a minimum of 60% of the total working periods and in addition above two, he/she also shall be physically present in at least 50% of total working periods for each subject, the student has to be permitted to appear for the University examination. In case, there is deficit of any of the three conditions, the Vice-Chancellor of the University has

discretion to grant condonation of shortage of attendance on the recommendation of the Head of the institution in accordance with the norms, i.e., Regulations 5.2(iii) d to h and (iv) to (vii).

The above Regulations refer to under what circumstances a student can repeat the semester and how examination for all subjects have to be conducted including declaration of result based on the theory and practical examinations. So far as the college is concerned, the Head of the institution must put in all the details available with them and forward the application of the student with their remarks so that the Vice-Chancellor of the University could exercise his discretion depending upon the particulars available with reference to a particular student. Definitely, the recommendation or refusal to recommend by the Head of the institution will not come in the way of the Vice-Chancellor to consider the application independently based upon the material furnished as required under Regulation 5.2(iii) c to h. In that view of the matter, even if the Head of the institution were to opine that there is deficit so far as the practicals, to permit a student for writing the examination, the factors required in participation at a practical examination may not be of any relevance at this stage, as the student must be first allowed to write the theory examination and then the result will be declared later depending upon the marks obtained by him/her in the theory as well as practical classes. In order to forward the application, we do not think the contention of the institution that Regulation 5.2(vii) also comes in the way. If any information has to be furnished by the Head of the institution including with regard to practical examination, he is at liberty to say so, but, the Vice-Chancellor of the University has to consider such application only for the purpose of permitting a student to attend the examination keeping in mind at this stage he is not concerned with the material which is required for declaration of results. In other words, he has to apply his mind independently to the details depending upon the facts and circumstances of each case. The discretion of the Vice-Chancellor of the University would come into play only if a student is not satisfying any of the three conditions mentioned at Regulation 5.2(iii)a.

2. Having regard to the Regulations issued by the University of Kerala, the Head of the institution is only required to forward the application. From the counter-affidavit of the Principal of the College, though at one place he denies receiving any application from the student, on the other hand, he says the application is filled up with incorrect statements. We fail to understand what exactly the stand of the institution is? Whenever application is filed, with the progress certificate mentioning all the details necessary for consideration of the application by the Vice-Chancellor, the Head of the institution is required to forward the same to the Vice-Chancellor for his consideration as Vice-Chancellor alone has the discretion to condone the shortage of attendance in accordance with norms and with factual details of the attendance of the student. In that view of the matter, we are of the opinion, the judgment of the learned Single Judge deserves to be set aside. Accordingly, we set aside the judgment of the learned Single Judge and allow the appeal, directing the 5th respondent to forward the application with necessary

details to the Vice-Chancellor within two weeks from today and the same shall be considered by the Vice-Chancellor without further delay.