

**(2011) 03 AHC CK 0178**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 89 of 2011**

Alok Kumar Pandey

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

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**Date of Decision :** 03-03-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2011) 03 AHC CK 0178

**Hon'ble Judges :** R.K. Agrawal, J;Kashi Nath Pandey, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

1. Supplementary counter affidavit and rejoinder affidavit filed today be taken on record.
2. Present appeal has been filed against the judgment and order dated 20.12.2010, passed by the learned Single Judge, whereby the writ petition preferred by the Appellant has been dismissed.
3. The Appellant was a regular student of B. Sc (Agriculture) Course during the Session 2009-10 in Banaras Hindu University, Varanasi. According to him he fell ill and consequently failed to attend the classes. His attendance in the first semester was 31%, while in the second semester he did not attend any class, resulting in 0% attendance. The aggregate attendance came 15.5%. He sought readmission for pursuing his studies. His application was not being considered, whereupon he approached this Court by filing Civil Misc. Writ Petition No. 51032 of 2010, which was disposed of vide order dated 25.8.2010, calling upon the University to consider the request of the Appellant so as to enable him to continue his studies as Ex-student. Appellant's representation has been rejected by the University on the ground that there is no provision in the Ordinances framed by it, which permits the students to appear and pursue the studies as Ex-student. Further under the Ordinances readmission is permitted only where the

attendance is minimum 25%. As the Appellant did not fulfill the requirements the readmission was not granted and request of permitting as Ex-student was also declined.

4. We have heard Sri R.P. Mishra, learned Counsel for the Appellant and Sri Arun Prakash who represents the University and the learned Standing Counsel, perused the judgment and order dated 20.12.2010, passed by the learned Single Judge, giving rise to the present appeal, grounds taken in the memo of appeal and the documents filed along with it.

5. Sri Mishra, learned Counsel for the Appellant submitted that the Appellant should not be made to suffer for no fault of his as he had fallen ill and was hospitalized, as a result of which he could not attend his classes and the provisions of the Ordinance should be so interpreted so as to advance the cause of justice and the interest of the student. He, therefore, submitted that this Court should direct the University to grant readmission to the Appellant in B.S.c (Agriculture) Course for the session 2011-12, so that his academic career would not suffer. Even though we have full sympathy with the Appellant but we are of the considered opinion that in exercise of power under Article 226 of the Constitution of India, we can not give a direction which is contrary to the Ordinances framed by Banaras Hindu University regarding readmission of the students, who have not attended the classes, or have failed to attend the classes to a desired minimum percentage, as it would amount to re-writing of the Ordinances framed by the University. It has a statutory force and which power the court does not have. We are, therefore, of the considered opinion that the order does not suffer from any legal infirmity.

6. The appeal fails and is dismissed accordingly.