

(2011) 12 CHH CK 0016
In the Chhattisgarh High Court
Case No : Writ Appeal No. 396 of 2011

Guru Ghasidas University, Bilaspur and Another	APPELLANT
Vs	
Pragya Pawar and Others	RESPONDENT

Date of Decision : 05-12-2011

Acts Referred:

Central Universities Act, 2009 — Section 28
Constitution of India, 1950 — Article 14, 16, 21

Citation : AIR 2012 Chh 54

Hon'ble Judges : I.M. Quddusi, J;Gulam Minhajuddin, J

Bench : Full Bench

Advocate : Ashish Shrivastava, for the Appellant; Prateek Sharma, Vinay Harjit, D.A.G. and P.S. Koshy, for the Respondent

Final Decision : Dismissed

Judgement

Dr. I.M. Quddusi, J.—This writ appeal has been filed by Guru Ghasidas University, Bilaspur (for short "the University") against the impugned order dated 8th August, 2011, passed by the learned single Judge in W.P. (C) No. 1568/2011 (Pragya Pawar v. State of Chhattisgarh) and other connected matters (Writ Petition (C) Nos. 1580, 1581, 1626 and 1673 of 2011). For the purpose of brevity, the appellants would be referred to as "the University", the respondents No. 1 to 33 would be referred to as "the petitioners", respondent No. 34 would be referred to as "the State", respondent No. 35 Shaskiya Mata Shabri Naveen Kanya Mahavidyalaya would be referred to as "the college" and the respondent No. 36 (Smt. Sunanda Maravi) would be referred to as "Assistant Lecturer".

2. Brief facts, in nutshell, necessary for disposal of this writ appeal are that the petitioners are the regular students of the college duly affiliated with the University for the academic session of 2010-2011 of BCA Parts I, II and III. The petitioners filled up their application forms in the month of October, 2010, which were duly accepted by the College as well as the University and after due scrutiny, the admit cards were issued. In the meantime, the Assistant Lecturer of

Hindi Subject (Smt. Sunanda Maravi) had filed a complaint on 18-2-2011 to the college and directly sent a copy thereof to the University stating that the attendance of the students/petitioners of above mentioned classes in one subject i.e. Hindi is short and surprisingly at the fag end, acting upon the complaint, the University conducted a unilateral enquiry without affording an opportunity of hearing to the petitioners and without passing any formal order, decided vide impugned order dated 7-3-2011 (Annexure P/1) in the meeting of Academic Council of the University, thereby debarring the petitioners from appearing in the annual examinations which were scheduled to start from 10-3-2011 and informed the college vide order dated 8-3-2011 (Annexure P/2), pursuant to which certain directions were issued by the college without any jurisdiction. The impugned action has been taken without consultation with the State.

3. Further, vide impugned order dated 15-3-2011 (Annexure P/3) it was communicated to the Deputy Secretary, State of Chhattisgarh, Higher Education Department by the University that the Academic Council of the University in its meeting dated 14-3-2011 has affirmed the impugned orders dated 7-3-2011 and 8-3-2011.

4. Being aggrieved, the petitioners filed the writ petition on 18-3-2010 for setting aside of the impugned orders dated 7-3-2011, 8-3-2011, 15-3-2011 and further sought a direction to the authorities to allow the petitioners to appear in the annual examination of their respective classes in the academic session 2010-11.

5. Learned single Judge, having regard to the facts situation, dealt with in details, vide interim order dated 22-3-2011 directed that the petitioners shall be allowed to appear in the examinations, which was to commence from 24-3-2011.

6. The case of the petitioners in the writ petition was that they had made several complaints in regard to the conduct of the Assistant Lecturer of Hindi subject and that is why, with mala fide intention, she made the complaint to the college as well as to the University. For short attendance, if any, in one subject only, the liability and responsibility was on the college administration and the Assistant Lecturer of Hindi subject, who maintains the attendance register. There was no fault on the part of the petitioners and the attendance of the petitioners was proper and satisfactory in all other subjects, except Hindi subject. In a whole academic session 75% attendance is required if the classes are taken for more than 180 days. The College administration had informed the University about practical and extra classes, whereby the attendance of the petitioners/students has crossed the limit of minimum required attendance.

7. Further, during the pendency of the writ petition with the consent of learned counsel appearing for the parties vide order dated 12-7-2011 learned single Judge constituted a Committee, headed by a retired Hon"ble High Court Judge to enquire in to the matter and submit its report within seven days. Relevant paragraphs of the order reads as under :--

Having regard to the allegations in respect of the attendance of the students in

respondent College (Shashkiya Mata Shabri Naveen Kanya Mahavidlaya), whereunder the students have been denied permission to appear in the examination, with the consent of learned counsel appearing for the parties, Shri Justice Vijay Kumar Shrivastava, Retired Judge, High Court of Chhattisgarh Bilaspur, is requested to be the Chairman of the Committee to enquire into the allegations and counter allegations.

The Committee headed by Shri Justice Shrivastava, shall be comprising of Registrar, Guru Ghasidas University (for short "the University", Shri B.L. Goel, Additional Director, Department of Higher Education and Shri Sunil Otmani, Advocate.

.....Needless to say that an opportunity of hearing may be afforded to all the concerned parties.

8. The aforesaid Committee held seven sittings and submitted the enquiry report on 19-7-2011. It is evident that an independent report was also submitted by Dr. M.S.K. Khokhar on 19-7-2011 itself. After receipt of the above reports, vide order dated 28-7-2011 it was directed to supply copy of both the reports to all the counsels, appearing for the parties and they were granted liberty to submit their response.

9. Thereafter, learned single Judge vide common impugned order dated 8th August, 2011 allowed the writ petitions, holding that the contention of the University that there was short attendance in other subjects is rejected, The separate/independent report submitted by the Registrar of the University is not acceptable; There was no infirmity in the report submitted by the committee, as the report has considered all the aspects of the matter and has clearly come to the conclusion that there was no short attendance and the students have participated, but due to manipulation and ulterior motive of the Assistant Lecturer the petitioners were reported to be in short attendance of the required percentage as per Ordinance No. 6; and the petitioners have satisfied the basic requirements of attendance and thus they shall be treated as regular students for the examination wherein they had already appeared. The result of the examination shall be declared forthwith within a period of one week so that the petitioners could not be deprived of admission to further higher courses.

10. We have carefully perused the facts situation and the materials on record, which have been dealt with by learned Single Bench in its order. It would be profitable for us to quote paragraphs 3 to 38 of the impugned order, wherein the facts situation have been dealt with and the observations have been made by learned Single Bench. The same are quoted as under :--

3. The facts, in brief, as projected by the petitioners, are that the petitioners are the regular students of respondent No. 3 -- Shashkiya Maata Shabri Naveen Kanya Mahavidyalaya (for short "the respondent college") duly affiliated with the respondent No. 2 -- Guru Ghasidas University (Central) (for short "the respondent University") for the academic session of 2010-11 of BA/ BCA/B.Com.

Parts I, II & III. Accordingly, the students filled up their application forms in the month of October, 2010, which were duly accepted by the respondent College as well as the respondent University. After due scrutiny, the admit cards were issued. In the meantime, the respondent No. 5 has filed a complaint on 18-2-2011 directly to the respondent University stating therein that the attendance of the students of above mentioned classes in one subject i.e. Hindi is short and surprisingly at the fag end acting upon the complaint, the respondent University conducted an unilateral enquiry without affording an opportunity of hearing to the petitioners and without passing any formal order, decided vide impugned order dated 7-3-2011 in the meeting of Academic Council of the respondent University thereby debarring the petitioners from appearing in the annual examinations scheduled to be started from 10-3-2011 and informed the respondent college vide order dated 8-3-2011 whereby certain directions have been issued by the respondent No. 4 without any jurisdiction. The impugned action has been taken without consultation with the respondent State.

4. Despite all the above, vide impugned order dated 14-3-2011 the Academic Council of the respondent University had affirmed the impugned order dated 7-3-2011 and also issued the fresh schedule of examinations of above mentioned classes, which were to be started from 24-3-2011. The meeting of the Academic Council of the respondent University was held on 19-3-2011 and 21-3-2011, copies of the proceedings were served upon the respondent college on 22-3-2011 whereby it was decided that the final examination of above mentioned classes of the respondent college are suspended and would be declared separately, whereas the examination of all above mentioned classes of other colleges affiliated to the respondent University will be conducted as per the schedule starting from 24-3-2011. It is alleged by the petitioners that the said impugned action was taken by the Academic Council of the respondent University without application of mind for no rhyme or reason and having no jurisdiction to pass such order. In fact, the Executive Council alone is competent to take decision with regard to conduct of the examinations or cancellation of any examination. Thus, these petitions.

5. Shri Sharma, learned counsel appearing for the petitioners, would submit that the impugned orders are bad, illegal and arbitrary and, as such, the same are in violation of Articles 14, 16 & 21 of the Constitution of India. The attendance of the petitioners in all other subjects is proper and satisfactory, therefore, particularly short attendance in Hindi subject of all the students is itself unbelievable and there is no reason for the students not to attend Hindi classes only. In fact, earlier the petitioners/students made several complaints against the respondent No. 5 stating that the respondent No. 5 never attended the classes and always tried to bunk her classes. Only to take the revengeful action, the respondent No. 5 filed the complaint against the students with mala fide intention. Even the respondent No. 5 is habitual in making complaints without any rhyme or reason.

6. Shri Sharma would further submit that the Principal of the respondent College stated that the respondent No. 5 was also responsible for the short attendance of the petitioners. The impugned action has been taken behind the back of the petitioners. Shri Sharma would next submit that the attendance register was maintained by the respondent No. 5 and deliberately the attendance of the petitioners has not been marked by her. As per the ordinance, the attendance is not properly calculated with regard to the petitioners. The attendance is to be counted on the basis of classes, not on the basis of subject. Even otherwise, after issuing the admit cards and receiving the payment of fees, the respondent University cannot take u-turn without affording an opportunity of hearing to the petitioners at the fag end, before commencement of the examination. As per Ordinance No. 5, Executive Council of the respondent University is the competent authority to take decision.

7. Shri Moorthy, learned Dy. Advocate General appearing for the State, would submit that the enquiry committee was constituted and the Additional Director, Department of Higher Education was directed to hold an enquiry into the issue of short attendance of the students in the respondent college. The Additional Director was not permitted to examine the original papers, as the University authorities declined to produce the same before him, thus, he could not complete the enquiry.

8. Shri Shrivastava, learned counsel appearing for the respondents No. 2 & 4/ University, would submit that pursuant to the complaint dated 18-2-2011 made by the respondent No. 5 to the respondent College and a copy thereupon endorsed to the respondent University with regard to short attendance of students of BA/B.Com./BCA Parts I, II & III, in Hindi subject, the respondent University constituted a two member committee to enquire into the short attendance of the students. The enquiry committee visited the respondent college on 6-3-2011 and after going through the relevant records, prepared the chart vide Annexure-R2/2 and submitted the report. On the basis of the said report and after following the due process the impugned orders were passed by the respondent University in accordance with law.

9. Shri Shrivastava would further submit that the authorities of the respondent University found that the students have failed to secure minimum attendance of 75% after condonation of 15%, 60% separately in each subject of the course. The impugned action has been taken by the respondent University after complying with the basic principles of natural justice. Thus, the same are legal, valid, just and proper. It is further submitted that the petitioners' attendance was short of even 60% not only in Hindi, but in other subjects also.

10. Ms. Shastri, learned counsel appearing for the respondent No. 5, would submit that the respondent No. 5 is an Assistant Lecturer (Hindi). She belongs to Scheduled Tribe category and she is a strict Lecturer. The respondent No. 5 is suffering from cancer and the treatment is going on. The respondent No. 5 has not made any complaint against the students and she has simply informed the

Principal of the respondent College vide letter dated 18-2-2011 about the short attendance of the students, and copy of the same was endorsed to the respondent University. Thereafter, the authorities after considering the facts and circumstances of the case, initiated appropriate proceedings and passed the orders. Except making submission with regard to short attendance of the students in Hindi subject, the respondent No. 5 has never misused her authority.

11. Ms. Shastri would further submit that the respondent No. 5 prepared the attendance register properly and attended the classes of her subject regularly, but the students have never appeared in her classes. In fact, in the complaints dated 15-9-2010, 17-9-2010 and 11-11-2010 were made against the respondent No. 5, the details of the complainants are missing. Even the Principal of the respondent college is acting against the respondent No. 5.

12. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

13. There is no dispute that minimum attendance required to appear in the examination after condonation of 15% by the University is 60% both in lecturers delivered and in the practical held separately in each subject of the course. On the question that the Academic Council has no jurisdiction, the respondent University has justified the decision.

14. Under proviso to Section 28 of the Central Universities Act and Statutes, 2009 (for short "the Act and Statutes, 2009") whereunder the present respondent University came into existence, it is clearly prescribed in the first proviso that till such time as first Ordinances are not so made, in respect of the matters that are to be provided for by the Ordinances under this Act and the Statutes, the relevant provisions of the Statutes and the Ordinances made immediately before the commencement of this Act under the provisions of the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 shall be applicable insofar as they are not inconsistent with the provisions of this Act and the Statutes.

15. Under clause 1 of Ordinance No. 5 (conduct of examinations) it is provided that all arrangements for the conduct of examinations to be held by the University shall be made by the Registrar in accordance with such directions as may be issued by the Executive Council in consultation with the Academic Council.

16. Under clause 8 of Ordinance No. 5 (conduct of examinations) it is specifically provided that the Executive Council may cancel an examination at all centres if it is satisfied that there has been a leakage of question papers or any other irregularity which warrants such a step.

17. Ordinance No. 6 (Examinations (General)) defines the "Regular candidate" and admission of a regular candidate to an examination of the University. Clause 2(1) provides that no regular candidate shall be admitted to an examination of the University unless he (i) has been enrolled as a student in a University

Teaching Department, School of Studies or College in accordance with the provisions of the Ordinances; (ii) possesses the minimum academic qualification for admission to the examination to which he seeks admission and has prosecuted a regular course of Study for that examination; (iii) has been enrolled as a student of the University;

(iv) satisfies all other provisions, applicable to him, of this Ordinance and any other Ordinances governing admission to the examination to which he seeks admission.

18. It appears that the power has been exercised under Part 2 of Ordinance No. 6 (Examinations (General)) where it is for the University to take decision. Thus, it cannot be held that to satisfy the qualification for admission of a regular candidate to an examination of the University has to be decided by the Executive Council only.

19. In the case on hand, the enquiry, as pleaded by the respondent University, was held and it was reported that the petitioners were short of 60% of attendance in Hindi. Thus, they were debarred from appearing in the examination. The decision was taken by the standing committee of the Academic Council on 7-3-2011, which was communicated by letter dated 8-3-2011. The subsequent letter dated 15-3-2011 of the Registrar and the amended resolution dated 19-3-2011 passed by the standing committee of the Academic Council and thereafter, approval dated 21-3-2011 of the Academic Council headed by the Vice-Chancellor whereunder it was decided that the examination of BA/B.Com./BCA in respect of respondent college be cancelled and a fresh date for examination of other colleges be decided.

20. In W.P. (C) No. 1568 of 2011, this Court by order dated 22-3-2011, passed an interim order to the effect that "the enquiry by the State Government is still pending and the examination is going to begin from 24-3-2011, it is directed that the petitioners shall be allowed to appear in the coming examination. However, the result of their examination shall be subject to the decision of the writ petition."

21. In W.P. (C) Nos. 1580, 1581 and 1626 of 2011, this Court by order dated 23-3-2011 directed the University to the effect that "the University is permitted to take the examination of the petitioners as private candidates, which is to commence from 24-3-2011. However, the result and status of the petitioners shall be subject to final decision of the writ petitions."

22. Thereafter, looking to the facts and circumstances of the case and in view of the contradictory submissions made by the parties and particularly, the Additional Director, Department of Higher Education of the State was not supplied with original documents and he could not complete the enquiry, this Court by order dated 12-7-2011, constituted a High Powered Committee headed by Shri Justice Vijay Kumar Shrivastava. Retired Judge, High Court of Chhattisgarh. Bilaspur, and comprising of Registrar, Guru Ghasidas University,

Shri B.L. Goel, Additional Director, Department of High Education and Shri Sunil Otmani, Advocate, to enquire into the allegations and counter allegations. In the meantime, the counseling for MCA at CSIT department of GGU, Bilaspur, was postponed.

23. Pursuant to the same, the committee enquired the matter and submitted its report on 19-7-2011 along with a copy of proceedings held on 13th, 15th, 16th, 17th, 18th and 19th July, 2011 by majority.

24. A separate report dated 19-7-2011 was submitted by Dr. M.S.K. Khokhar, Registrar (Acting), of the respondent University, who was also a member of the committee.

25. The committee has afforded an opportunity to all the concerned parties. The respondent University has produced all the original documents before the committee relating to supply of attendance register and admission roll of students. The petitioners and the respondent submitted evidence on affidavits with respect to allegations and counter allegations. They were also afforded an opportunity to file counter evidence in rebuttal on affidavits.

26. Having considered all the aspects of the matter the committee framed the following issues :

10. Following questions emerges for determination in the present proceedings :

A. Whether committee constituted by the University was without jurisdiction.

B. Whether attendance register on the basis of which enquiry committee constituted by the University recording short attendance of the petitioners were manipulated and present or absent recorded therein could not be taken to be correct for recording short attendance of petitioners and also working days mentioned therein was not correct.

C. Whether for calculating attendance, extra classes attended by the petitioners are not been taken into consideration.

D. Whether respondent No. 5 Smt. Sunanda Maravi was recording correct attendance of students and was regular in taking her classes.

E. Whether University discriminated petitioners with other similarly situated students.

F. Whether without affording opportunity of hearing, petitioners were not liable to be disqualified from appearing in the examination.

G. Conclusion.

27. With respect to the question (A), the committee was of the opinion that the Vice-Chancellor was fully authorized to constitute the committee and there was no lack of jurisdiction.

28. In respect of question (B), the committee observed as under :--

13. It does not remained (sic "remain") in dispute that teachers were given attendance register on 31st of July classes starts from 16th of July but attendance were not marked for July, 2010 in many cases. Even on the basis of Registers supplied by Mahavidyalaya to teachers, attendance recorded in attendance register in the month of July was not acceptable to be correct. As per case of respondent No. 5 she could not get admission roll upto 23rd of August for which she constantly made applications to the Principal, this itself made it clear that she was unable to record any attendance in the month of July and upto 23rd of August. From the above scenario it is clear that for a good number of days students attendance was not recorded in the registers in a correct and acceptable manner.

14. From above discussions it is clear that attendance recorded by teachers was manipulated in a number of place working days counted by one of the teachers which has taken for example was not correct and for a good number of days although classes were committed but recording of attendance was not possible upto last of July and recording of attendance by teacher of Hindi Samanya and High Literature upto 23rd of August was not possible. When register and information contained therein were not correct in all respect how correct calculation sheet can be prepared by anybody. Although the Two member committee constituted by the University relied on those registers have determined the percentage of attendance of students but when the register itself was not acceptable to the correct and information contained therein also appears to be incorrect, report prepared by the aforesaid Committee cannot be said to be accurate having seen the aforesaid deformity in the record and information."

29. On the issue of question (C) it was held that the extra classes have been taken by the teachers and attended by the students, but the enquiry committee of the University failed to consider the same.

30. In respect of question (D) the committee held that some of the petitioners had made complaints against the respondent No. 5 that she was not regular in taking classes and was not taking attendance in the attendance register. Thus, it was further held that:

16.....So far as recording of attendance in respect of those days when lectures were not delivered by respondent No. 5 for some or the other reason neither those days can be calculated as working days nor students can be marked absent for the purpose of calculating attendance. In the instant case it appears that although lectures were not delivered by respondent No. 5 on the pretext of no student no class or otherwise still those days have been taken as working days and students were deprived of their attendance.

31. In respect of question (E) i.e. with regard to alleged discrimination against the respondent University, it was held that the petitioners were discriminated with other similarly situated students.

32. In respect of question (F) it was found that there was violation of principles of natural justice.

33. Conclusively it was held that the petitioners' attendance was not correctly calculated by the University on acceptable documents. The petitioners have been discriminated and they were also not afforded an opportunity of hearing before the decision to cancel their examination was taken. It was further held that their attendance does not fall below the percentage of attendance prescribed for attending the regular examination as a regular candidate.

34. The respondent No. 5 had submitted written submission in response to the enquiry report reiterating the same view, as was taken before the committee, however, no allegations of mala fide or arbitrariness was alleged against the committee.

35. The respondent University also submitted its response to the report of the enquiry committee alleging that the finding of the committee is contrary to the rules and regulations of Ordinance No. 6. No extra records were produced to held that they have satisfied the requirements of attendance.

36. On perusal of the documents, in addition to the enquiry report submitted by the committee, it was found that on 5-8-2010 (Annexure R5/5) the respondent No. 5 has written to the Principal of the respondent college to provide a copy of the admission list. On 23-8-2010 the respondent No. 5 has again written to the Principal of the respondent college that for want of admission list it was not possible for her to record attendance of the students in the class room. Thus, it is clear that till 23-8-2010 the attendance of the students was not recorded in Hindi literature and Hindi language in all the classes. Thereafter, on 2-11-2010 (Annexure-R5/8) the respondent No. 5 has reported short attendance.

37. On perusal of the report submitted by the enquiry committee constituted by the respondent University, it was found that there was no short attendance in other subjects and the extra classes of 32 days in case of B.A. in Political Science was taken into consideration. In B.C.A. (1st year) out of 40 students, the attendance of 39 students was reported to be above 60% to 75% and 1 student's attendance was above 75%. In case of B.C.A. (2nd year) the attendance of the students was more than 60%. In B.C.A. (3rd year) also it was found to be more than 60% except in case of 2 students whose attendance was below 60%. In case of B.Com. also the attendance is more than 60%, except in case of 2 or 3 students.

38. In the emergent meeting of the Academic Council meeting held on 14-3-2011 it was observed as under :

The attendance of the students in different subjects including the attendance of Hindi Bhasha and Hindi Sahitya was complied. As per the attendance record; only 6 students in B.A. Part I, 00 in B.A. II, 6 in B.A. Part III, 14 in B.Com. Part I, 11 in B.Com. Part II and 1 B.Com., Part III and 30 in B.C.A. Part I, 24 in B.C.A.

Part II and 15 in B.C.A. Part III were found eligible to appear as regular students as they are having more than 60% of attendance in aggregate after condoning 15% absence under the provision of Ordinance No. 6.

11. The appellants-University has filed the instant writ appeal on 11-8-2011 for setting aside of the impugned order dated 8-8-2011 passed by the learned single Bench on the ground that the enquiry report dated 7-3-2011 was prepared by two members committee, which was duly constituted by the University and according to the report of that committee it was crystal clear that the petitioners had not only failed to secure minimum required attendance even after condonation i.e. 60% in Hindi (Language) and Hindi (Literature) but further failed to secure minimum required attendance in other subjects. Thus, the decision of the University was in accordance with the Ordinance No. 6, Clause 7(iii). Learned single Judge has failed to appreciate that there is no provision of extra classes under the Ordinance No. 6 and the classes which were taken just 28 days prior to commencement of the main examination cannot be considered as regular classes. Learned single Judge has erred in law in allowing the writ petition observing that the contention of the respondent University that there was no short attendance in other subjects is rejected. The emergent Academic Council in its meeting dated 14-3-2011 having regard to the compilation of the attendance of the students in different subjects, including Hindi Bhasha and Hindi Sahitya took a decision that excluding 106 total number of students of BA/B.Com/BCA (Parts I, II, III) rest of the students of BA/B.Com. (I, II & III) would be entitled to appear as private candidates as there is provision for appearance of such students as private students in the Ordinance No. 6. However, since there is no provision of private candidates in BCA (Part I, II, III) under Ordinance No. 74, therefore, only those students of BCA (Part I, II, III) would be entitled to appear in the examination who are regular students and having their attendance more than 60% after condonation of 15%. Further, learned single Judge has erred in law that the separate report submitted by the Registrar of the University is not acceptable.

12. We have heard learned counsel appearing for the parties at length and perused all the relevant papers available on record.

13. Clause 7(iii) of Ordinance No. 6-Examinations (General), Part II-Admission of a regular candidate to an examination of the University of Guru Ghasidas University, Bilaspur, reads as under :

(7)(iii) The Principal of the College or Head of the University Teaching Department or School of Studies concerned shall send to the Registrar at least three weeks before the commencement of the examination concerned three separate lists as detailed below--

List:- A -- Of those candidates who have attended at least 75% both of the lectures delivered and of the practicals held separately in each subject of the courses of instructions for the examination (in the case of faculties of Medicine

and Ayurveda, the minimum attendance in theory shall be 75 per cent, and in practicals and ward clinics 85 per cent, separately and in the case of faculty of Engineering the minimum shall be 85 per cent, separately of lectures for each theory paper and for practicals/sessionals).

List:- B -- Of those candidates whose attendance is short by not more than 15 per cent, for condonation by the Kulpati. The Principal or the Head of the University Teaching Department/School of Studies concerned are required to give specific reasons for condonation of shortage along with their recommendation.

List:- C -- Of those candidates whose shortage of attendance exceeds 15 per cent, and who are to be debarred from appearing at the examination."

14. We have gone through the entire proceedings of the Enquiry Committee and perused the enquiry report submitted by the Committee as well as the separate report submitted by Shri M.S.K. Khokhar, Registrar of the University, who differs on some points of the report of the Enquiry Committee.

15. On perusal of the proceedings of the Enquiry Committee it is evident that the proceeding had commenced on 13-7-2011 and the Registrar of the University was directed to produce all the original records relating to the enquiry conducted by the University in respect of attendance of the petitioners and similarly situated students and also of list ABC as required under ordinance Part II No. 7 and shall also disclose through relevant evidence what is the criteria for issuance of admit card.

18. On 17-7-2011 respondents No. 2 and 4 filed their evidence on affidavit along with documents. Respondents No. 1 and 3 also filed their counter-affidavit and a document. Respective parties had filed their counter-affidavits. The documents, as directed were produced before the committee. All the parties were advised to make their submissions in addition to their arguments on the following two points :--

1. Whether to produce relevant circulars and guidelines, if any, issued by the University. Further, the enquiry conducted by Department of Higher Education was to be produced by the Additional Director Shri B.L. Goel.

16. On 15-7-2011 both the enquiry reports and records were produced before the Committee. All the parties were permitted to inspect the reports and the documents and copies of the enquiry reports were supplied to all the parties. The college was directed to produce documents relating to supply of attendance register and admission roll of the students to the Assistant Lecturer.

17. On 16-7-2011 evidence and documents on affidavit were filed by all the petitioners and respondents No. 1, 3 and 5. While permitting the respondents No. 2 and 4 to file their evidence on affidavits on the next sitting after going through the evidence of petitioners and respondents No. 1, 3 and 5, they were directed to produce documents relating to constitution of the enquiry committee by the University and list of eligible candidates who were allowed to appear in

the examination as regular candidates. They were further directed to adduce evidence in respect ademic Council or standing committee have authority to condone attendance upto 15% and whether in absence of any special reasons attendance upto 15% can be condoned by VC, Academic Council or standing committee?

2. Whether Academic Council or standing committee has power to disqualify students from appearing in the examination ?

19. On 18-7-2011 final arguments were heard, including the arguments on the afore-stated two points. In the second sitting on the same day i.e. 18-7-2011 the matter was discussed for preparation and finalization of the report and on 19-7-2011 the final report was prepared and signed by all the members of the Enquiry Committee. However, Shri M.S.K. Khokhar, Registrar of the University deferred on some points of the enquiry report and submitted his separate report.

20. In view of the aforesaid, it is evident that the Enquiry Committee was constituted by learned single Bench with the consent of the parties, the Enquiry Committee, headed by a retired Hon"ble Judge of the High Court, afforded ample opportunity to all the parties to peruse the relevant records and documents, all the parties appeared before the Enquiry Committee on all the dates of sittings, they tendered relevant evidence in support of their submissions and each of the parties were granted opportunity to file their response in rebuttal/defence, all the parties tendered their evidence on affidavits and counter-affidavits and also filed relevant papers, and thereafter on examining the controversy involved in the matter from all angles, the report of the Enquiry Committee was prepared and was submitted before the learned Single Bench.

21. On perusal of the report it is evident that the Enquiry Committee has reported that attendance have been recorded by the teachers in the attendance register by marking "P" for "present" and "A" for "absent". After going through all the attendance register it was found that at some places there were overwriting, as "A" has been made "P" and "P" has been made "A" and thus by such manipulation, recording of calculation of correct attendance was not possible. Teachers have incorrectly calculated working days upto 17-2-2011 to be 51 and the enquiry committee, constituted by the University, relied on the same for calculation and took 51 days in their chart. It appears that in, August, September and October only 22 days were working days. In November and December actual working days were 8 but teacher recorded the same for November 5 days and December 5 days and in January in place of 5 days the teacher recorded 9 days. It appears that in place of actual working days more working days have been shown in the register and above enquiry committee took the figures as mentioned by the Teacher, which prejudicially affected the attendance of students.

22. Further, indisputably, the teachers were given attendance register on 31st of July, the classes started from 16th July but attendance were not marked for July,

2010 in many cases. The Assistant Lecturer of Hindi was provided with the attendance register on 23rd August, 2010. Thus, it is clear that for a good number of days students attendance was not recorded in the registers in a correct and acceptable manner. When the register itself was not acceptable to be correct and information contained therein also appears to be incorrect, the report prepared by the University committee cannot be said to be accurate having seen the aforesaid deformity in the record and information.

23. It was further reported that the extra classes have been taken by the teachers and attended by the students but the University committee failed to consider the same. So far as recording of attendance in respect of those days when lectures were not delivered by the Assistant Lecturer for some or the other reason neither those days can be calculated as working days nor students can be marked absent for the purpose of calculating attendance. In the instant case it appears that although lectures were not delivered by the Assistant Lecturer (respondent No. 5 therein) on the pretext of no student no class or otherwise, still those days have been taken as working days and students were deprived of their attendance.

24. In the facts situation aforesaid, the Enquiry Committee has reached to the conclusion that "From the aforesaid discussion we are of the view that petitioners attendance calculated by the University was not correctly calculated on acceptable documents, petitioners have been discriminated in respect of attendance with other similarly situated students and without affording opportunity of hearing University accepted short attendance reported by the Enquiry Committee against the petitioners and accordingly we are of the view that petitioners are correct in saying that their attendance does not fall below the percentage of attendance prescribed for attending the regular examination as a regular candidate.

25. We have also perused the attendance registers in regard to the petitioners, who are students of B.C.A. Parts - I, II and III -- Hindi Language and found the working days marked by the Assistant Lecturer, which are as under:--

(i) In B.C.A. -I, the marking of attendance was started on 4th August, 2010 and the month wise total classes were held as under :

August

6 days

September

8 days

October

8 days

November

4 days

December

4 days

January & February -- 5 days -- (remark till 17-2-2011 absent on all days, though no separate attendance were recorded)

(ii) In B.C.A.- II, the marking of attendance was started on 16th August, 2010 and the monthwise total classes were held as under :--

August

3 days

September

8 days

October

10 days

November

4 days

December

4 days

January & February -- 2 days -- (remark till 17-2-2011 absent on all days, though no separate attendance were recorded)

(iii) In B.C.A. - III, the marking of attendance was started on 12th August, 2010 and the monthwise total classes were held as under :--

August

4 days

September

3 days

October

3 days

November

2 days

December

1 days

January & February -- 1 day -- (remark till 17-2-2011 absent on all days, though no separate attendance were recorded)

Thus, it is clear that no regular classes were being conducted in every month which may have resulted in short attendance of the petitioners/students and therefore the petitioners/students were not at fault. However, some extra classes were taken thereafter which were not taken into account by the University. In the Ordinance of the University there is no bar of taking extra classes.

26. We have seen that learned Single Bench, before reaching to a conclusion was very much conscious about the future of the budding students in the college and therefore, looking to the controversy involved in the matter, which needed a thorough enquiry, involving examination of documents, recording of evidence, opportunity of personal hearing, examination of allegations and counter allegations etc. constituted the Enquiry Committee, with the consent of all the parties, under the Chairmanship of a retired Hon"ble Judge of the High Court. The Enquiry Committee was competent to examine all the relevant records/ documents, enquiry reports of the University and the State, record the evidence, examine the allegations and counter allegations and thereafter to make report/ recommendations.

27. In view of the discussions aforesaid, having examined the controversy involved in the matter from all angles, we are of the considered opinion that there would be no violation of any of the laws or the Ordinance of the University, governing the matter of short attendance of petitioners, if the petitioners are treated as regular students for the examination in which they have already appeared because it is established that their attendance was not correctly calculated on acceptable documents and it appears that they have been discriminated in respect of attendance with other similarly situated students.

28. For the reasons aforesaid, we do not find any irregularity, illegality or perversity in the impugned order passed by the learned Single Bench. The writ appeal deserves to be and is dismissed accordingly. In the facts of the case, there shall be no order as to costs.