

(2016) 06 KAR CK 0211

In the Karnataka High Court

Case No : Writ Petition No. 39211 of 2015 (GM-EDN)

Jennifer A

APPELLANT

Vs

ESIC College of Nursing

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) ILRKarnataka 4649 : (2016) 4 KCCR 452

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sri C.M. Poonacha, Advocate, for the Petitioner; Smt. M.P. Geethadevi, Advocate, for the Respondents No. 1

Final Decision : Disposed Off

Judgement

Aravind Kumar, J. - Petitioner has sought for the following reliefs:

"a) Issue a writ in the nature of Mandamus or any other appropriate writ/order directing the 2nd Respondent University to issue the admit card/Hall ticket permitting the Petitioner to write her 2nd year B.Sc. Nursing (basic) examinations.

b) Grant such other relief/s that this Hon''ble Court deems fit to grant in the interest of justice.

c) (Direct the Respondent No. 1 and 2 to permit the Petitioner to continue her course of study in B.Sc. Nursing 3rd Year in the first. Respondent College,

d) Direct the Respondent No. 2 to formulate a policy to ensure that female students, with deficit attendance on account of pregnancy are granted the benefit of condonation of deficit attendance,

e) Permit the Petitioner to makeup her deficit attendance by allowing her to attend the requisite number of practicals hours stipulated by the Respondent No. 2.

f) Direct the first Respondent to hold improvement examinations to enable the Petitioner to afford an opportunity to the Petitioner for the purpose of assessment of eligibility criteria of the Petitioner) (Addl. Reliefs c, d, e, f vide I.A. No. 3/15).

g) (Direct the Indian Nursing Council (Proposed respondent No. 3) to formulate a policy to ensure that female students, with deficit attendance on account of pregnancy are granted the benefit of condonation of deficit attendance). (Addl. Relief vide I.A. No. 1/16, allowed vide order dated 3.02.2016.)"

2. Petitioner joined B.Sc. Nursing (Basic) Course in first respondent - College in the Academic Year 2013-14 for pursuing 3 years course in nursing. First respondent - college is affiliated to second respondent -University. In the Academic Year 2013-14 petitioner completed her first year course by securing I Class, as is evident from her markscard - Annexure-C. In fact petitioner has stood first in the second respondent -college. Thereafter, she has secured admission to second year, which commenced on 06.10.2014 and on account of her pregnancy she is said to have not attended classes during the academic year regularly and on account of shortage of attendance she was not permitted to take-up her examination for second year B.Sc. (Nursing) hall-ticket/admit card was not issued by 2nd respondent - University.

3. It is the contention of petitioner that she had conceived and due to pregnancy she underwent medical complications and was advised rest and during August" 2015 she had approached first respondent - college to permit her to take up examination and claims to have received an email dated 2.08.2015 from first respondent - College intimating petitioner thereunder that she has to explain as to how she is entitled for being permitted to take up the examination. Petitioner also contends that she has approached the 1st respondent - College explaining the complications she underwent at the time of pregnancy and on account of college Authorities not permitting petitioner to write examination of second year B.Sc. Nursing Course and on account of their inaction in not issuing her hall-ticket, she has approached this Court by filing the present writ petition.

4. It is also contended by her that on account of advanced pregnancy she could not attend the classes and as such, there was attendance shortage and thereby she would lose an academic year. Hence, she has prayed for a direction to first respondent - college to permit her to take up the examination and contends that some of the students, who are also running shortage of attendance have been permitted by the College Authorities and despite request being made by petitioner that she did not intentionally absent herself when other students are afforded an opportunity to makeup shortage of attendance to take up practical examination, which was considered for internal assessment, she should also be permitted to make good the loss of attendance by attending the practical examination. On these grounds amongst others, she has sought for a direction to respondents to permit her to take up second year B.Sc. Nursing Course examination.

5. Respondent No. 1 has filed statement of objections by denying the averments made in the writ petition except to the extent expressly admitted thereunder. It is contended in the statement of objections that petitioner was permitted to reside outside the college since she was having 2 year old child, it is also contended that a minimum of not less than 80% attendance in theory and practical/clinical separately in each subject in each academic year is essential for a candidate to appear in the examination and second respondent - University's Regulations/Ordinance mandates 100% attendance in all practical classes before the completion of degree or course. It is further stated in the statement of objections, that in the second year petitioner attended college till 24.10.2014 regularly and thereafter, she remained irregular throughout the academic year and from October" 2014 to August" 2015 she remained absent without any prior intimation and at sometimes with prior intimation and sometimes intimation was furnished lately and at times she remained absent without any prior intimation. It is further contended that on 23.05.2015 she submitted a leave application seeking leave for few days and since then she remained absent for four months till the date of filing of writ petition. It is also stated that from 25.05.2015 to 25.08.2015 no information was received from petitioner, neither she joined back her classes nor attended the clinicals nor completed her assignments or complied the mandatory requirement prescribed under the amended Regulations of University, insofar as, it is applicable to II year B.Sc. Nursing Course. It is specifically stated that for the Academic Year 2014 =15 (II year B.Sc. Nursing Course) out of 252 days of classes and clinicals conducted by respondent, petitioner has attended only 74.5 days, which constitutes 29.56% attendance and has remained absent for 177.5 days, which is more than 70%. Hence, it is contended that she was having a shortage of attendance in all the subjects and petitioner has also not attended compulsory Sessional examination and as such, she lacks eligibility to appear for second year B.Sc. (P) examination. It is further pleaded that petitioner should have minimum 80% attendance and 50% of internal assessment marks in all subjects of theory and practicals separately to be eligible to write the II year B.Sc. Nursing examination and as per the statements - Annexures - R8 and R9 petitioner has secured less than 50% in theory and practicals. First respondent has also stated that course requirement has not been fulfilled by petitioner namely, in assignment of few subjects like "Communication & Educational Technology", "Community Health Nursing" and "Medical Surgical Nursing" and as such, petitioner is not eligible to take even March" 2016 examination if she does not attend 4.5 to 5 months classes during intervening period of October" 2015 to March" 2016 and hence, she has to appear as a repeater. It is also contended that Regulations of second respondent - University does not provide any provision for condoning the shortfall of attendance to permit the petitioner to take up examination. It is further contended that petitioner instead of concentrating on her studies and complying with the requirements has complained to many statutory bodies like National Commission for Women and other Institutions against college Principal and has attempted to tarnish the image of 1st respondent - college and same has been

redressed by 1st respondent and also the Principal of college by submitting suitable reply. On these grounds, first respondent has sought for dismissal of the writ petition.

6. A rejoinder has been filed to statement of objections by petitioner contending that though opportunity was afforded to other batchmates for making up the shortage of attendance in practicals, petitioner has not been extended such opportunity, first respondent - college has also deliberately discriminated the petitioner and it is due to gynecological medical problems petitioner could not attend the classes and Doctors had also advised her to take rest. It is also contended that petitioner has attended the classes regularly during February and March" 2015 and medical surgical postings have been assigned to petitioner by first respondent - college by posting the petitioner to the operation theatre and as petitioner was advised not to stand for long hours due to her advanced pregnancy, she could not attend the operation theatre posting. On these grounds, petitioner sought for grant of reliefs prayed in the writ petition.

7. First respondent - college has filed its additional statement of objections where under contentions raised in the statement of objections has been reiterated and it is specifically contended as under:

"a) petitioner did not have requisite attendance;

b) petitioner has remained absent for some Sessional examination and has failed in few Sessional examination;

c) petitioner has not submitted required assignment."

All these being mandatory requirements and notwithstanding any medical condition of medical student including pregnancy and by relying upon the Circular issued by Indian Nursing Council, Annexure-R11 which stipulates a candidate must have minimum of 80% attendance (irrespective of absence) in theory and practicals and in each subject and in each year to appear in the examination, which petitioner did not possess, respondent No. 1 - college contends that petitioner cannot claim that she should be permitted to write the examination of II year B.Sc. Nursing Course.

8. It is further contended that first respondent -college had notified the students by intimation letter dated 10.09.2015 by affixing it on the Notice Board regarding submission of requests by students who intend to makeup for remaining clinical hours in the subject of "Medical Surgical Nursing" and "Community Health Nursing" to makeup for 100% by calling upon the students to submit their request letter in that regard within a day and pursuant to same, some of the students submitted their representations and it was accepted by the Principal and they were granted permission to makeup the stipulated number of classes or attendance as prescribed by second respondent -University and as such, students who were short of 37 hours to achieve 80% were permitted to perform the makeup duty from 31.08.2015 onwards for 5 days and all these students

achieved 80% of the attendance just before the last date of payment of examination fee with fine to the college and only those students were given the opportunity as per Regulation of second respondent -University.

9. An additional rejoinder came to be filed by petitioner to the same contending that petitioner had met the Principal of first respondent - college on 25.08.2015 and had requested to hold improvement exams and assign additional makeup duties to enable her to appear and write II year B.Sc. examination, which first respondent - college refused to do and asked her to come back to the college in the next academic year and as such, petitioner had to approach this Court by filing the present writ petition.

10. Second respondent - University has appeared and filed its statement of objections contending inter alia that petitioner is not entitled to the reliefs sought for since the Ordinance governing B.Sc. Nursing Course i.e., Clause No. 6 mandates that a student must have a minimum of 80% attendance in theory, practical/clinical separately in each subject and in each academic year for being eligible to appear in the examination. It is also contended that candidate who satisfies the requirements of attendance criteria alone would be eligible to appear in the examination and in the instant case, petitioner herself has admitted that she does not have 80% attendance and thus, she is ineligible to appear in the examination and further contends that there is no provision to condone the shortage of attendance provided in the Ordinance. Second respondent - University has also contended that first respondent - college has not forwarded the name of petitioner to the University in the list of eligible candidates and hence, University has not permitted the petitioner to appear in the examination. It is contended that a student who has not undergone the entire Course of study cannot be permitted to appear in the examination since in the II year B.Sc. Nursing course there will be Intensive clinical training to be undergone by the student. On these grounds, second respondent has sought for dismissal of writ petition.

11. I have heard the arguments of Sri. C.M. Poonacha, learned counsel appearing for petitioner, Smt. M. Geethadevi Papanna, learned counsel appearing for respondent No. 1, Sri. N.K. Ramesh, learned counsel appearing for respondent No. 2 and Sri. Shivarudra, learned counsel appearing for respondent No. 3. Perused the records.

12. It is the contention of Sri. Poonacha, learned counsel appearing for petitioner that reasons for filing of this writ petition is petitioner has been singled out by the Principal of first respondent - college, since she did not act according to the dictates of Principal and there was exchange of words between petitioner and the Principal. He would submit that II year B.Sc. Nursing Course for the Academic Year 2014 : 15 commenced on 06.10.2014 and petitioner promptly attended theory classes namely, 17 out of 18 classes during October" 2014 and during November" 2014 she attended 18? classes out of 22 classes, However, on account of petitioner having conceived during this period and on account of

gynecological problems encountered by her, she could not attend the classes and it was purely on the advise of Doctors as per the medical certificate produced along with the writ petition. There being no guidelines in this regard formulated by the University, petitioner cannot be deprived of writing the examination or she should be given an opportunity for making up the deficit attendance, since it is the constitutional mandate enshrined under the Directive Principles of State Policy contained under Part IV of the Constitution of India. He would contend that Article 41 of the Constitution of India enjoins an obligation on the State to make effective provision for securing the right to work and education and Article 42 mandates the State should provide securing just and humane conditions of work and maternity relief and the objectives of these provisions is to facilitate maternity benefits to women, who are in service or pursuing education and the action of first respondent - college in not providing opportunity to petitioner to makeup her shortage of attendance, which was due to her pregnancy, is violative of constitutional mandate namely Articles 41 and 42 of Constitution of India.

13. He would elaborate his submission by contending that first respondent - college erred in not considering the physical condition of petitioner during her pregnancy and it ought to have realized the physical difficulties that would have been faced by the petitioner in performing her duties in nursing course while being pregnant and immediately after the child was born. He would also submit that second and third respondents -Universities have failed in their duties in not making any provision under the extant Ordinance or Regulations to woman and as such, it is violative of Article 15(3) of the Constitution of India, which mandates to make special provisions to women and children. It is contended that in the circumstances under which petitioner was placed, first respondent-college was not justified in denying the opportunity to petitioner from appearing in the examination and makeup her shortage of attendance. He would draw the attention of Court to Article 25 of the Universal Declaration of Human Rights (hereinafter referred to as "UDHR" for short) by contending that everyone has a right to standard of living and adequate for health and well being of himself/herself and of his/her family, including food, clothing, housing and medical care and necessary social services and right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood beyond his/her control. He further elaborates by contending that Article 25(2) of UDHR categorically provides a mother and child are entitled to special care and assistance and both second and third respondent -Universities have given a complete goby to the same and as such, petitioner has prayed for a direction to respondents 2 and 3 to formulate a policy to ensure that female students who suffer from deficit attendance on account of pregnancy, are granted benefit of condonation of deficit, attendance. On these grounds, he seeks for allowing the writ petition and in support of his submission he has relied upon an unreported judgment of the Delhi High Court rendered on 12.07.2010 in W.P.(C) No. 8302/2009.

14. Per contra, Smt. M. Geethadevi Papanna, learned counsel appearing for

respondent No. 1 vehemently contends that petitioner is not entitled for any of the reliefs whatsoever and she submits that petitioner having kept quite till she submitted a representation on 25.08.2015 where under she sought for permission to write the examination of II year B.Sc. and she had never approached first respondent - college or University seeking leave or intimating the Authorities as to why she would not be attending the classes i.e., both theory and practicals and on account of her intermittent attending the college, opportunity of intimating the petitioner of shortage of attendance by first respondent was not given and even otherwise, petitioner herself was fully aware of her shortage of attendance, which she has admitted in her writ petition. She also contends that Regulations of 2nd respondent - University does not provide for any relaxation of mandatory requirement of 80% attendance for both theory and practicals and as such, question of condoning the absence of petitioner and/or permitting her to write the examination despite there being shortage of attendance, cannot be undertaken by first respondent-college as it would result in violation of Regulations of University and invite the wrath of University. Hence, she seeks for dismissal of writ petition. In support of her submissions she has relied upon the following judgments:

"i. ILR 1996 Kar. 1455 Swati Jain v. University Of Mysore

ii. (1973) 2 SCC 298:- Ashok Kumar Thakur v. University Of Himachal Pradesh and Others

iii. ILR 2014 Kar. 5920:- Sri Milind Chaudary And Others v. Karnataka State Law University, Hubli And Others"

15. Sri N.K. Ramesh, learned counsel appearing for second respondent - University would reiterate the contentions raised in the statement of objections and submit that when University Regulations do not provide any provision for condonation of attendance shortage of any candidate on any ground whatsoever and if first respondent - college or University were to undertake such an exercise, it would be contrary to extant Regulations and as such, petitioner cannot be permitted to write II year B.Sc. Nursing examination. On these grounds, he seeks for rejection of the writ petition.

16. Sri Shivarudra, learned counsel appearing for respondent No. 3 adopting the arguments of respondent Nos. 1 and 2 would supplement his arguments by contending that Circular issued by Indian. Nursing Council would clearly indicate that 80% of attendance is mandatory and irrespective of the reason for abs said 80% attendance being compulsory both in theory and practicals and in each subject, which alone would entitle a candidate to appear for examination, as otherwise such candidate would not be entitled to appear for examination. Hence, he seeks for dismissal of the writ petition.

17. Having heard the learned advocates appearing for the parties and on perusal of records, it emerges therefrom that petitioner herein had joined for 3 years B.Sc. Nursing Course in first respondent - college commencing from Academic

Year 2013 : 14 and she had passed first year B.Sc. Nursing Course in I Class and she had stood first for the college. The II year B.Sc. Nursing Course Academic Year commenced from 06.10.2014 and final examination was scheduled to be held between 15.09.2015 to 24.09.2015. As per the Ordinance of second respondent - University a candidate has to undergo course instructions as indicated in Table No. 2 and it reads as under:

Table 2. Second Year Basic B.Sc. Nursing

Subjects	Theory Hours	Practical / Clinical Hours	Hours
1. Sociology	60		
2. Pharmacology	45		
3. Pathology	30		
4. Genetics	15		
5. Medical Surgical Nursing (Adult is including geriatrics)	210	20	
6. Community Health Nursing	90	135	
7. Communication and Educational Technology	60+30		
8. Library work / self study		50	
9. Co-curricular activities		35	
TOTAL	540	855	85

TOTAL HOURS = 1480 HRS

18. Said Regulation i.e., Regulation No. 6 mandates that a minimum of not less than 80% attendance in theory and practical/clinical separately in each subject in each academic year is essential for a candidate to be eligible to appear in the examination. A candidate pursuing in the course is required to study in the college full time student and would not be entitled to join any other course or study or appear for any other examination in the said university or any other university in India or abroad during said period and each academic year would be taken as a unit for calculating the attendance. Regulation No. 6 of the second respondent - University reads as under.

"6. Attendances

A minimum of not less than 80% attendance in theory and practical/clinical separately in each subject in each academic year is essential for appearing in the examination. A candidate pursuing in the course shall study in the college for the entire period as a full time student. No candidate is permitted to work in a hospital/nursing home/laboratory/college while studying this course. No candidate should join any other course of study or appear for any other examination conducted by this university or any other university in India or

abroad during the period of registration. Each academic year shall be taken as a unit for calculating the attendance."

19. Keeping above regulation in mind, when facts on hand are examined, records would disclose that petitioner has attended 17 classes out of 18 classes in October" 2014 and during November" 2014 out of 22 classes conducted, petitioner has attended 18? classes. Thereafter, she has intermittently attended the classes and out of 49 classes conducted during December" 2014 and January" 2015, she has attended only 6 classes. Though in the writ petition it has been contended that she had intimated the Authorities, there is no piece of paper produced to substantiate said claim. On the other hand, it is contended by the petitioner that on account of petitioner having conceived and suffering from "sub chorionic bleeding", she was under treatment at Santhosh Hospital and she was advised rest till 02.02.2015 as per Annexure D, as a ground on which she has remained absent during the said period and also thereafter.

20. There cannot be any dispute to the proposition that a candidate not possessing eligibility criteria would not be entitled to appear for examination during the academic year. The extant Regulations which govern the field would squarely be applicable to all the candidates/students. Until and unless the students fulfil the criteria of attendance prescribed, which is mandatory, Courts cannot compel the University to do something beyond its authority or legal competence. The Hon"ble Supreme Court in the case of Ashok Kumar Thakur v. University Of Himachal Pradesh And Others reported in (1973) 2 SCC 298 has by way of authoritative proposition held that power vests with the authority to condone the deficiency in attendance and if such authority having jurisdiction were to transgress the power vested in them, it would be beyond their jurisdiction and competence. It has been held by the Apex Court in the case referred to supra as under:

"4. The only question that now remains is whether the petitioner"s deficiency in the matter of attendance could be condoned by any authority. The final lecture statement of the Bilaspur and Dharmasala colleges shows that the petitioner was short of 20 lectures in Civics, of 18 lectures in Economics, of 10 lectures in History and of 8 lectures in English. Now the rules as to condoning of deficiency in the matter of attendance of lectures are to be found in Chapter XV of the Punjab University Calendar 1969, Volume III (Rules). The relevant rule is 1(a) and the material portion of it is in the following terms:

"(1) Taking into consideration the results of the House examinations:

(a) The Principal of a College affiliated in the Faculties of Arts, Science and Oriental Learning may condone the deficiency in lectures as under:

(i) Up to 15 lectures in each of the subjects."

Since the petitioner"s deficiency in the matter of attendance exceeded 18 lectures in Economics and 20 lectures in Civics, it was beyond the jurisdiction or

competence of the Principal to condone this deficiency. In our opinion this completely destroys the case of the petitioner."

21. So also is the view of Co-ordinate Bench of this Court in the judgments namely, in the case of Swati Jain v. University Of Mysore Reported In Ilr 1996 Kar. 1455 And In The Case Of Sri. Milind Chaudary And Others v. Karnataka State Law University, Hubli And Others reported in ILR 2014 Kar. 1520

22. Keeping the dicta laid down by Apex Court in mind and also the extant Regulations, which governs B.Sc. Nursing Course, which is the subject matter of present writ petition and grounds put forward by petitioner for not attending the college regularly or in other words, due to shortage of attendance of college, petitioner has not been permitted to appear for examination, the question that arises in the facts of present case is whether shortage of attendance, can be condoned by this Court in exercise of extraordinary jurisdiction vested under Article 226 of Constitution of India in the background of material placed before this Court.

23. On the one hand petitioner contends that she had conceived (pregnant) and on account of "sub chorionic bleeding" developed during the Pregnancy, she was under treatment from 20.12.2014 to 02.02.2015 and Doctors attending her had advised complete rest as per medical certificate Annexure-D and there being no serious dispute to this certification issued by the Hospital, she was forced to take rest and as such, she was unable to attend classes. However, question remains as to whether this would be a ground on which petitioner would be entitled to seek for waiver of shortage of attendance, which is mandatory for entitling her to take up II year B.Sc. Nursing examination. These are the grounds on which respondents are preventing the petitioner for taking up the examination.

24. It would be apt to note at this juncture itself that post independence major steps undertaken by the Indian leaders was establishment of Universities by the Education Commission headed by Dr. Sarvepalli Radhakrishnan. The Commission devoted a full chapter to women's education and its various dimensions. The National Committee (Durgabhai Deshmukh) on Women's Education in 1958-59 was one of the most significant Committee appointed to look specifically into the question of women's education. The recommendations of Hansa Mehta Committee on "Differentiation in Curricula" for Boys and Girls in 1964 were endorsed by Indian Education Commission (1966), known as "Kothari Commission". The "Kothari Commission" was followed by National Policy on Education in 1968. Culmination of all the governmental efforts was the declaration of this National Policy on Education in 1968. The National Policy on Education (NPE), 1986, as updated in 1992 envisaged the use of education as an instrument of basic change in the status of women. Dr. Sarvepalli Radhakrishnan, a philosopher, educationist and great teacher, which this country has produced has said "The Socialist implications of freedom were understood by Gandhi, we should work for social and national integration, emancipation of women, and absolute social equality, complete abolition of untouchability and caste

discrimination, and removal of economic disparities". In fact, he was the first Chairman of University Education Committee.

25. In the book written by Smt. Mamatha Anand on Dr. S. Radha Krishnan's life she has opined thus; "Radha Krishnan and Ruskin opine that Women serve what they love, this makes them the nursing souls, because the impulse of love is the fire at the heart of life itself it is the voice of all creation, all creations in the world are attributed to deep passion."

26. Last but not the least this is what was said by Dr. Radha Krishnan himself; "Women are human beings and have as much right to full development as men have. The position of women in any society is a true index of its cultural and spiritual level".

27. The International Committee of thinkers, socialists, educationists, policy makers having bestowed their attention on this issue has resulted in formulating Universal Declaration of Human Rights (for short "UDHR") and by Article 25 it has been declared that "Everyone has a right to standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his/her control."

28. Article 25(2) of UDHR categorically provides that a mother and child would be entitled to special care and assistance. The Directive Principles of State Policy contained in Part IV of the Constitution of India, under Article 41 mandates that State should make effective provision to secure their right to work and education and Article 42 requires that State shall make provision for securing just and humane conditions of work and maternity relief. Article 41 and 42 of Constitution of India reads as under:

"41. Right to work, to education and to public assistance in certain cases:-- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. Provision for just and humane conditions of work and maternity relief:-- The State shall make provision for securing just and humane conditions of work and for maternity relief."

(emphasis supplied)

29. Article 38 provides that State shall strive to promote the welfare of people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. Sub-Clause (2) of Article 38 mandates that State shall strive to minimize the inequalities in Income, and endeavour to eliminate inequalities in status, facilities and opportunities. Thus, a very important useful provision for women's welfare

and well-being is incorporated under Article 42 in Constitution, which imposes an obligation upon the State to make provisions for securing just and humane conditions for work and maternity relief. Some of the legislations which promoted the objectives of this Article are Workmen's Compensation Act, 1923, Employees State Insurance Act, 1948, Minimum Wages Act, 1948, Maternity Benefit Act, 1961, Payment of Bonus Act, 1965 and like. Hon'ble Apex Court in the case of *Dattatreya v. State Of Bombay* Reported in AIR 1952 SC 181 has held that legal provisions to give special maternity relief for women working under Article 42 does not infringe Article 15(1) of the Constitution of India.

30. It is in this background, Article 42 will have to be seen and examined as to whether the claim of respondent - Corporation in denying the permission to petitioner to appear in II year B.Sc. Nursing examination is justifiable. Petitioner's absence from attending classes or course on account of she having conceived (pregnant) and during the period of pregnancy, whether she is entitled to the benefit of maternity relief as per the mandate of Article 42 of the Constitution though it is under the Directive Principles of State Policy, which is not enforceable in the Court of law, nevertheless for determining the legal efficacy of action complained can be looked into by this Court in extraordinary jurisdiction under Article 226 of Constitution of India.

31. Hon'ble Apex Court in the case of *B. Shah v. Presiding Officer, Labour Court, Coimbatore* reported In (1977) 4 SCC 384 while examining the claim for computation of maternity benefit for the entire period of women workers actual absence i.e., for all the days including Sundays, it came to be held that provisions of beneficial rule of legislation, the object which is sought to be achieved by social justice to women workers should be within the purview of Article 42 of the Constitution since such beneficial rule of construction would enable the working women not only to subsist but also to makeup her dissipated energy, nurse her child, preserve her efficiency worker and maintain the level of her previous efficiency and output, is the course which is to be adopted by the Courts.

32. In somewhat similar circumstances High Court of Delhi in W.P.(C) No. 8302/2009 and W.P.(C) No. 8419/2009 was examining the claim of two students, who sought for relaxation in the shortfall of the attendance by placing reliance on the extant Ordinance i.e., Sub-Rule (d) of Rule 2(9) and Ordinance VII read with Article 42 of the Constitution of India and contending they were in the advanced stage of pregnancy and as such they could not attend classes. In conclusion it was held that Sub-Rule (9) of Rule 2 of Ordinance VII would applicable to all courses excluding LLB Course and while discussing the power for condoning the attendance shortage it has been opined by the Delhi High Court to the following effect:

"53. Of all the rights of women, to be a mother is the greatest. Long ago, the Universal Declaration of Human Rights, by Article 25 had declared that everyone has the right to a standard of living adequate for the health and well-being of

himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Article 25(2) provides that:

2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

54. It would, while on the topic, also be essential to refer to the Convention for Elimination of All Forms of Discrimination Against Women (CEDAW). The Vienna Convention on the Elimination of all forms of Discrimination Against Women was ratified by the U.N.O. on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 thereof. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; hampers the growth of the personality from society and family and makes it more difficult for the full development of potentialities of women in the service of their countries and of humanity. It would be pertinent to quote the relevant provisions here:

11(2). In order to prevent discrimination against women on the ground of marriage or maternity and to ensure their effective right to work, states parties shall take appropriate measures;

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

In the case of *Madhu Kishwar & Ors. v. State of Bihar & Ors.* (1996) 5 SCC 125, the Apex court held that though the Directive Principles and Fundamental Rights provide the matrix for development of human personality and elimination of discrimination, these conventions (CEDAW) add urgency and teeth for immediate implementation. Hence, it is this court which has been enjoined upon the duty to put life into the provisions of these international conventions.

55. At this stage, it would also be significant to mention the case of *Air India v. Nergesh Mirza* (1981) 4 SCC 335 where the Apex Court was confronted with the constitutional validity of Regulation 46(i) (c) of *Air India Employees' Services Regulations* which provided that the services of the Air Hostesses would stand terminated on first pregnancy. It would be pertinent to quote the relevant para of the said judgment here:-

"Having taken the AH in service and after having utilized her services for four

years, to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. It seems to us that the termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. We are constrained to observe that such a course of action is extremely detestable and abhorrent to the notions of a civilized society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values. Such a provision, therefore, is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is, therefore, clearly violative of Article 14 of the Constitution.

In *Sharron A. Frontiero v. Filliot L. Richardson* 36 L.Ed. 2d 583 the following observations were made:

Moreover, since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon the members of a particular sex because of their sex would seem to violate "the basic concept of our system that legal burdens should bear some relationship to individual responsibility.

What is said about the fair sex by Judges fully applies to a pregnant woman because pregnancy also is not a disability but one of the natural consequences of marriage and is an immutable characteristic of married life. Any distinction therefore, made on the ground of pregnancy cannot but be held to be extremely arbitrary".

56. In the light of the above discussion, if any female candidate is deprived or detained in any of the semester just on the ground that she could not attend classes being in the advanced stage of pregnancy or due to the delivery of the child, then such an act on the part of any of the university or college would not only be completely in negation of the conscience of the Constitution of India but also of the women rights and gender equality this nation has long been striving for. It is a saying that "Motherhood is priced of God, at price no man may dare to lessen or misunderstand". By not granting these students relaxation, we will be making motherhood a crime which no civilized democracy in the history of mankind has ever done or will ever do. We cannot make them pay the price for the glory that is motherhood."

It has been held that by not granting relaxation to those students it would amount to making motherhood a crime, which no civilized democracy in the history of mankind has ever done or will ever do.

33. Keeping these principles and afore stated discussion in mind when the facts on hand are examined, it would disclose that petitioner had attended most of classes during October" 2014 and November" 2014 and decline in attending classes started in December" 2014 and reasons assigned by the petitioner as per

medical certificate - Annexure-D is that she was suffering from "sub chorionic bleeding" due to pregnancy. However, averments made in the writ petition does not even remotely suggest that immediately thereafter petitioner had brought to the notice of Authorities i.e., either first respondent - college or second respondent - University about such development. Writ petition is silent on this issue. On the other hand, petitioner has stated that for the first time she sought permission from first respondent - college on 25.08.2015 to take up the examination. Attendance shortage of petitioner, which has been extracted herein above would indicate that during the period between December" 2014 to May" 2015 she has intermittently attended the classes. During December" 2014 and January" 2015, a total number of 49 classes were conducted, out of which petitioner has attended only 6 classes; during February" 2015 she has attended 12 classes out of 22 classes; in March" 2015 11 classes; in April" 2015 out of 21 classes, 8.5 classes and in May" 2015 out of 24 classes she has attended only 12.5 classes. This would clearly indicate that petitioner was aware that she was not attending the classes regularly or consistently which might be on account of her medical problems. However, the fact remain petitioner has not attended most of the classes.

34. There cannot be any dispute with regard to the fact that petitioner was pregnant and she might have developed certain gynecological problems during the pregnancy period. However, after attending the college intermittently the minimum and least that was expected from her, was to intimate the college - Authorities as to the reason for her not attending the college regularly, either theory or practical classes. As already observed herein above, petitioner has not placed a single piece of paper for demonstrating that she had intimated the Authorities. Petitioner contends that she had orally intimated the college, which fact is denied by first respondent. Thus, this is an oath against oath.

35. This Court in exercise of extraordinary jurisdiction will not be able to undertake this exercise namely, ascertaining as to whether contentions of either of the parties is acceptable or otherwise. Having gone by the records, the only irresistible conclusion that can be drawn by this Court is that there is no material placed by the petitioner to establish the fact that she had in fact intimated first respondent - college about her inability to attend the classes or in other words, she had made an application or request to first respondent - college seeking for either conducting special classes or makeup classes for practicals. In the absence of such material, petitioner cannot be heard to contend that irrespective of her not submitting a representation, yet she would be entitled for being granted a remission of attendance shortage and as such she should be permitted to take up the examination.

36. Though petitioner is fully justified in contending that after request was made by her on 25.08.2015, first respondent - Principal has singled out petitioner in not granting the opportunity for making up deficit in attendance, insofar as, practical classes are concerned. However, the fact remains that shortage of

attendance in theory is staring at the petitioner prima facie. Petitioner is also justified in contending that there has been discrimination meted out to her by the Principal of first respondent - college for reasons more than one; firstly, it can be seen from tenor, tone and the language of statement of objections filed by first respondent at paragraph 14 where under she has raised a hue and cry on account of petitioner having redressed her grievances before various authorities. This seems to be the starting point for acrimony between petitioner and the Principal of first respondent - college as could be gathered from the averments made in paragraph 14 of statement of objections. The only irresistible conclusion which has to be drawn is on account of petitioner having complained against first respondent - college as well as Principal there has been hostility between the petitioner and Principal of the college. The averments made in paragraph 14 of the statement of objections reads as under:

"14. The petitioner, on the basis of this false xxxxx examinations. The petitioner instead of concentrating on her studies and complying on these requirements has written letters to many statutory bodies like National Commission for women and other institutions complaining against the college principal and tarnishing the image and reputation of the principal and the institution and suppressing her own shortcomings. This Respondent has submitted suitable reply to these institutions when they have been called for explanation."

(emphasis supplied)

37. Even in the additional statement of objections at paragraph 19 it has been contended by the first respondent college to the following effect"

"19. This respondent xxxxx of the petitioner. The petitioner is in the habit of remaining absent from the college on some pretext or the other and all the imaginary grievances of the petitioner emerge whenever she goes into shortage of attendance and all such grievances will be intimated by the petitioner to all and she has even host them on the social media-face book and still the petitioner claims that it was not the intention of the Petitioner to tarnish the image and reputation of the Principal or the institution. The petitioner's xxxx which is untenable."

(emphasis supplied)

38. Yet another argument which was canvassed by Sri. Poonacha, learned counsel appearing for petitioner as already noticed herein above with regard to discrimination made by first respondent - college to petitioner and other students, his contention deserves acceptance, inasmuch as, as could be seen from Annexures - R-18A to R-18F students who are having shortage in practical examinations for making up the attendance shortage of 80%, has been afforded an opportunity. Smt. Geethadevi Papanna, learned counsel appearing for respondent No. 1 has contended that since those students had submitted a representation it was considered and opportunity was extended, but petitioner did not make any such representation and as such she was not given opportunity

cannot be accepted and same is not true, inasmuch as, first respondent admit in the statement of objections particularly in additional statement of objections at paragraph 4 that petitioner had submitted a leave letter on 22.05.2015. In fact first respondent also admit that petitioner had forwarded a representation or expressed orally on 28.05.2015 at 12.48 in the Chambers of Principal that petitioner intends to write II year B.Sc. Nursing examination due to be held on September" 2015. This communication i.e., email dated 10.09.2015 - Annexure-C when read in conjunction with Annexure - R-18A to R-18F the only conclusion that can be drawn is the Principal of first respondent - college though being aware of such request having been made by petitioner yet did not extend opportunity to the petitioner. As to whether Principal of first respondent - college was entitled to deny such prayer, is a different issue which would not be gone into in this writ petition. However, by grant of such request whether petitioner would have made up the shortage of attendance is the question which is required to be considered and when so considered, records would disclose that petitioner could not made up the short fall of the attendance within a period of 7 days when shortage of attendance is more than 76%. Though, action of Principal of first respondent - college in singling out the petitioner is not in good taste, relief sought for by the petitioner on these grounds also cannot be granted.

39. Shortage of attendance of petitioner commenced from December" 2014 and continued upto August" 2015 though might be for a justifiable reason. Prayer sought for by the petitioner cannot be granted on the following grounds, namely;

"a) petitioner at the first available opportunity did not seek leave to absent herself from the college on account of pregnancy or advanced pregnancy;

b) petitioner had not submitted representation from the beginning seeking for corrective classes or special classes being held for making up shortage of attendance;

c) the extant regulations of second respondent - University mandates that 80% attendance is compulsory both in theory and practicals and mandate of Regulation cannot be waived and it would result in writ being issued by this Court contrary to extant Regulation, which is impermissible and Courts would not issue such writ which are contrary to Rules and Regulations governing the issue."

40. However, it is not too late in the day for this Court to issue suitable directions to respondent Nos. 2 and 3, to plug in the loop-hole in their Regulations so that situation as it has arisen in the instant case can be encountered in future and litigation of this nature can be avoided. It would be sufficient if a direction is issued to respondent Nos. 2 and 3 namely, Rajiv Gandhi University and Indian Nursing Council to formulate a policy so that female students who are studying in various courses, if on account of pregnancy are not able to attend the classes or deprived of the benefit of appearing in an examination as a result of their absence either in theory or practicals by introducing such remedial measures since amendment to Regulations in that regard would be in consonance with

Article 15(3), Article 41 and Article 42 of the Constitution of India. Respondent Nos. 2 and 3 would be at liberty to seek opinion from experts in the field of Education and medicine and after obtaining such expert opinion, they shall take steps to formulate policy to grant relaxation in the matter of shortage of attendance in exceptional like ill health, bereavement in the family, medical grounds requiring hospitalization or absolute bed rest or any other compelling circumstances where under student is not in a position to attend classes.

Hence, I proceed to pass the following:

ORDER

(i) Writ petition stands disposed of by directing respondent Nos. 2 and 3 to formulate a Policy relating to female students studying in second respondent - University, who on account of pregnancy would be deprived of the benefit of appearing in the examination due to their abs in theory and practical classes, by introducing a policy and take remedial measures, as may be necessary after obtaining reports from experts in the field of education.

(ii) Decision of second respondent -University denying the claim of petitioner to take up the examination of II Year B.Sc. is upheld and it does not prevent the petitioner from taking up the supplementary examination, which may be held in due course.

(iii) in peculiar circumstances of the case, there is no order as to costs."