

(2002) 12 AHC CK 0077
In the Allahabad High Court
Case No : C.M.W.P. No. 27582 of 2002

Kumar Gandhrva and Others

APPELLANT

Vs

Principal, M.M.M. Engg. College and Others

RESPONDENT

Date of Decision : 04-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 1 AWC 226

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : H.R. Misra, for the Appellant; Ramesh Upadhyaya and Neeraj Tiwari, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—The prayer in this petition is for issuance of writ in the nature of mandamus commanding the respondents to permit the petitioners to appear in the examination of IInd Semester of B. Tech. Ist year which has already commenced and further to permit the petitioners to appear in the examinations of those subjects/papers of the aforesaid Semester in which they could not appear. There is another prayer for issuance of writ in the nature of certiorari quashing the notice dated 7.7.2002 (Annexure-I to the writ petition) so far as it relates to the petitioners.

2. As the pleading between the parties is complete, as prayed and matter has been heard and is being decided on merits.

3. Pleading as has been set forth in the writ petition, counter-affidavit, rejoinder-affidavit, supplementary-affidavit and supplementary counter-affidavits have been examined.

4. Heard Sri H. R. Misra, learned advocate who appeared for the petitioners, Sri Ramesh Upadhyaya, learned advocate who appeared for the respondent Nos. 1/2 and Sri Neeraj Tiwari, learned advocate who appeared for the respondent No. 3.

5. The question which emerges on the pleadings and during submission of the counsel for the parties which requires attention of the Court is that whether in the facts of the present case the respondent Nos. 1/2 in debarring the petitioners from appearing in the examination in question has taken correct decision? The facts of the present case runs in very narrow compass and for the purpose of adjudication they can be summarised thus. All the petitioners happen to be regular students of B. Tech. Ist year (IInd Semester) in Madan Mohan Malviya Engineering College, Gorakhpur (hereinafter referred to as the College). It appears that petitioners were required to secure at least 60% attendance for being permitted to appear in the examination and as the petitioners lacked, the impugned exercise by the respondent Nos. 1/2 came into existence making the petitioners aggrieved to approach this Court.

6. Learned counsel for the petitioners submits that action on the part of the respondents in debarring the petitioners from appearing in the IInd Semester examination besides being illegal and unjust is also arbitrary and discriminatory. It is pointed out that the respondent Nos, 1/2 were required to take precaution and to ensure the required percentage of attendance, and they were required to intimate the students in the end of the month and also to make a query about the reasons of their absence and in the event the students do not take care, the parents were required to be informed. It is argued that inspite of the circular/ letters issued by the Vice Chancellor of the U. P. Technical University, as no such steps were undertaken, the action on the part of the respondents in debarring the petitioners is not justified.

7. Learned counsel further submits that even otherwise also the respondents in the similar set of facts having permitted several students similarly situated, to appear in their respective examination whose attendance was less than 60% cannot be permitted to act in a discriminatory manner by debarring the petitioners.

8. Learned counsel who appeared for the respondent Nos. 1 and 2 in response to the aforesaid submission submits that as the petitioners have not secured the required attendance, they cannot claim as a matter of right permission to appear in the examination and the action on the part of the respondents being in conformity with the Rules in this respect, petitioners are not entitled to get any relief. It is further argued that the information which is to be given to the petitioners or to their parents in respect to the shortage of their attendance as argued by the learned counsel on the basis of circular issued by the U. P. Technical University cannot give strength to their claim as the said circular has no statutory force. Learned counsel further submits that only two students were permitted to appear in their respective examinations although they could not secure required percentage of attendance but it was on undertaking given by them, that in the event they do not improve in the subsequent semester they will not be permitted to continue.

9. Learned counsel, who appeared for the respondent No. 3 submits that so far

the respondent No. 3 is concerned it has no major role in the matter as it is on receipt of the list of the students they just release/issue admit cards to the college and it is to be issued by the college to the students after verifying their required attendance and other formalities subject to which the admit card is to be issued to students. Learned counsel submits that so far the issuance of circular by the Vice Chancellor of the Technical University, as argued by the learned counsel for the petitioners, is concerned, that appears to have been issued in the interest and welfare of the students at large and although that have no statutory force, as the Vice Chancellor has issued the same in the interest of discipline that should have been taken care of, although the petitioners cannot insist for any relief in the event the respondent Nos. 1 and 2 have not adhered to the instructions so contained in the said circular. Learned counsel for the respondent No. 3 further submits that on the facts of the present case, petitioners are not entitled to get any relief and the petitioners cannot compel the authorities to condone shortage in attendance and even on the plea of discrimination, no relief is to be given to them. In support of his submission learned counsel has placed reliance upon the decisions in Parvez Ahmad and Ors. v. Aligarh Muslim University, Aligarh and Anr. 1987 UPLBEC 517 ; Regional Engineering College, Hamirpur and Another Vs. Ashutosh Pandey, and Chandigarh Administration and another Vs. Jagjit Singh and another, Learned counsel has further placed reliance on the decisions given in Civil Misc. Writ Petition No. 8426 of 2002. Ankur Sharma v. Examination Controller and Anr., decided on 25.2.2002 : Civil Misc Writ Petition No. 21110 of 2002, Abu Rehan v. Aligarh Muslim University, Aligarh and Ors., decided on 8.8.2002 and Civil Misc. Writ Petition No. 14253 of 2002, Pushpendra Singh v. Aligarh Muslim University, Aligarh and others, decided on 5.7.2002.

10. In view of the aforesaid submission, as has come on the record there appears to be no dispute about the fact that the petitioners could not secure the required percentage of attendance. Now the question is that whether this Court is to condone the shortage in attendance or even to give a direction to the concerned authority to do the same. The question appears to have been settled as is clear from several decisions as has been placed by the learned counsel who appears on behalf of the respondent No. 3. It has been held by the learned single Judge of this Court in the case of Ankur Sharma (supra) that in the event due to shortage of attendance university or the college refuses to allow the student to appear in the examination such decision should not be interfered with by the Court, on idealistic, sentimental suggestions made by the counsel. Observation in this respect as is contained in the aforesaid decision is quoted as under :

"If due to shortage of attendance the university and college refused to allow these students to appear in the examination due to shortage of their attendance, then such decision should not be interfered with by this Court on idealistic sentimental suggestions made by the learned counsel for the petitioner during the course of his argument."

11. In another decision given by this Court in the case of Pushpendra Singh (supra) the same view has been taken. Observation as has been made in the aforesaid judgment is hereby quoted :

"the extent to which general condonation of shortage of attendance would be granted is a matter essentially of the Academic Council to decide upon various factors. In the writ petition there is no averment, which may indicate that the decision of the Academic Council fixing the ceiling of general condonation of shortage attendance was arbitrary."

12. Following the decision as has been given in the case of Pushpendra Singh (supra) this Court in another writ petition filed by Abu Rehan (supra) has taken the same view. In another decision, as has been given by the Division Bench of our own Court in the case of Paruez Ahmad (supra) it has been laid down that rule of prudence requires that Court should hesitate to dislodge decisions of the academic body. The Apex Court in the decision given in the case of Regional Engineering College. Hamirpur and another (supra) has also ruled that the principal has no power to condone shortage of attendance and in another decision of the Apex Court as given in the case of Chandtgarh Administration and Anr. v. Jagjit Singh and Anr. (supra) it has been laid down that even on the ground of discrimination petitioner cannot be entitled to get the relief.

13. On a scrutiny and analysis of the aforesaid cases as has been referred by the learned counsel who appears for the respondent No. 3, there appears to be distinction in so far as the facts of the present case are concerned which is being discussed hereinafter and thus in the light of the distinction which is being drawn, any hurdle may not come in the way of the petitioners. In view of the various decisions, reference of which has been given above, it appears that the Apex Court as well as this Court has approved the decision of the academic bodies in the matter of condonation of shortage of attendance and has given preference to their views but at the same time, the Court should not feel that the decisions so taken by the concerned authorities in any manner is arbitrary and discriminatory and thus in the event the interference is required that should not be only on the basis of idealistic and sentimental suggestions. It is thus, clear, on the examination of the facts of all the cases referred above that in the event the action of the concerned authorities if is found arbitrary or discriminatory the Court can always take note of and can issue appropriate orders. Various observations laying down the guidelines on the subject as are contained in the judgments referred above, for arriving at this conclusion and for taking this view in this judgment will be useful to be quoted here in sequence :

"then such decision should not be interfered with by this Court on idealistic, sentimental suggestions made by the learned counsel for the petitioner during the course of his argument." (Civil Misc. Writ Petition No. 8426 of 2002).

"On the facts and circumstances, it cannot be said that the exercise by the respondents is arbitrary and discriminatory in any manner." (Civil Misc. Writ

Petition No, 21110 of 2002) :

"In the present case the petitioner neither pleaded nor proved such discrimination." (Civil Misc. Writ Petition No. 14253 of 2002).

"In the instant case the petitioners failed to establish that they have been discriminated by the respondents and that the treatment meted out to them in the matter of conditions is not uniform." 1987 UPLBEC 517.

"If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of the case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ petition compelling the respondent-authority to repeat the illegality or to pass another warranted order." Chandigarh Administration and another Vs. Jagjit Singh and another,

14. After referring to the aforesaid quotations, to support the view that the Court may interfere in the matter, in the event it is found that discrimination is a conscious one and not by mere oversight, reference can be made to the decision by Division Bench of our own court in the case of Khalid Ansar Haq and Anr. v. Aligarh Muslim University and Anr. 1985 UPLBEC 1514 in which it has been held that if the university permits a candidate having shortage of attendance to appear in the examination, debarring others who fell in the same category is discriminatory and those students were allowed to appear in the examination. In another decision as has been given by this Court in the case of Parvez Ahmad (supra), the Division Bench in paras 19 and 20 has observed as thus :

"19. In our view, discrimination envisaged under Article 14 of the Constitution is conscious discrimination and a discrimination arising out of over-sight is no discrimination.

20. It was said by the Supreme Court in State of Orissa Vs. Durga Charan Das, that it could not be contended that because a mistake was committed in one case, the same should be allowed to continue in other cases."

15. In view of the aforesaid, on examination of the facts of the present case, there appears to be no dispute about the fact that two students, namely Abshishek Srivastava of the second year Computer Science and Gaurav Anand Srivastava of the Ist year Computer Science whose attendance was less than 60% were allowed to appear in their respective examinations. This aspect has been clearly pleaded on behalf of the petitioners in paras 5 and 6 of the supplementary affidavit which in fact stands admitted in the reply which is contained in paragraphs 3 and 4 of the supplementary counter-affidavit dated 13.10.2002 sworn by Sri Ausaf Ahmad, Legal Assistant of the college. The respondents have taken stand that the aforesaid students were permitted to appear in the examination after taking undertaking that they will improve in the next semester. In view of above, it is clear that permission to other students to appear in examination, having less than 60% attendance is neither by oversight

or by way of mistake, rather that was a conscious act. In view of the aforesaid, it appears that the present case is covered by the clear exceptions in which interference can be made and is well within the limit of the jurisdiction/discretion of this Court as provided under Article 226 of the Constitution. There is another aspect of the matter from which also controversy can be viewed. The counsel who appears for the U. P. Technical University has clearly admitted and in fact counsel appearing for the respondent Nos. 1 and 2 also admits that a circular has been issued by the Vice Chancellor by which all the colleges were commanded to ensure the proper attendance of the students for which a guideline was provided to the effect that students in the event of shortage of required attendance are to be called upon to explain and thereafter if they do not improve even the parents were required to be informed in this respect. Copy of the aforesaid circular dated 30.5.2002 has been annexed as Annexure-1 to the supplementary-affidavit filed by the petitioners which clearly indicates that the aforesaid circular was issued after having good deliberations with the concerned authorities of the colleges/institutions who are under the control of the Technical University which clearly means that it has been issued in their full knowledge and with their concurrence. Although for the sake of argument, it may be accepted that the aforesaid circular has no statutory force but at the same time, none of the respondents have taken any plea before this Court that the aforesaid circular has not been issued with due deliberation or the same is not in their knowledge and thus in the event the aforesaid circular takes care of the interest of the students and in fact, it was issued as a matter of caution, related to the discipline and also with an intention to improve the merit of the students, the respondent Nos. 1 and 2 and all the other colleges/institutes were required to take its care. Although petitioners may not be permitted to take any plea of their lapses but at the same time as this Court at the time of initial hearing of the matter has permitted the petitioners to appear in their respective examinations of IInd Semester and now on examination of the fact, it is a clear case in which it can be safely said that the respondents have acted in an arbitrary and discriminatory manner, the petitioners are entitled to get relief from this Court so prayed in this petition. At the same time, it will be also the concern of the Vice Chancellor, U. P. Technical University who has issued the circular dated 30.5.2002, reference of which has come in the preceding paragraphs to again issue circular to the concerned institution under its control to do the needful in furtherance to earlier instructions which is clearly bona fide, pious and is in the best interest of the students at large who are the future of our society.

16. For the reasons stated above, this writ petition succeeds and is allowed. The impugned notice dated 7.7.2002 (Annexure-1 to the writ petition) so far as it relates to the petitioners is hereby quashed and as the petitioners have already appeared in their B. Tech. Ist year (IInd Semester examination) the result of the petitioners shall also be declared forthwith so that they may be entitled to join/attend the next semester and to proceed with their studies in accordance with law. So far papers in which the petitioners could not appear, the respondent Nos.

1 and 2 will do the needful in accordance with law.