

(2012) 08 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39631 of 2012

Malvika Chowdhary and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2012) 9 ADJ 533 : (2013) 3 AWC 2665

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Advocate : Satyajeet Mukerjee and Rajiv Gupta, for the Appellant; Neeraj Tiwari and Neeraj Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble A.P. Sahi, J.—Heard learned counsel for the petitioners and the learned counsel for the University. The main contention of the petitioners is that even though admittedly their attendance is short they should be permitted to appear in the examinations and should not be denied the opportunity on the ground of shortage inasmuch as some other students who were facing shortage of attendance, have been allowed by the University/College to appear in the examinations.

To substantiate his submissions, learned counsel for the petitioners has invited the attention of the Court to paragraphs 23 and 24 of the writ petition. The said paragraphs are quoted herein under :

Paragraph 23. That the issuance of the circular dated 19.7.2011 has prompted the college to resort to certain malpractices because admittedly persons who have secured only 22.56% attendance have been permitted to appear in the end semester examination while bright students like the petitioners who have secured more than 30% attendance have been restrained from appearing in the said examination. This is evident from a bare perusal of the attendance report

dated 30.3.2012. A true copy of the attendance sheet dated 30.3.2012 is being filed herewith and marked as Annexure 10 to this writ petition.

Paragraph 24. That these are not the only examples but there are several such students who have very little attendance but all of whom have been permitted to appear in the end semester examinations. Mention may be made about one Shobhit Chowdhary S/o Shivraj Singh whose attendance sheet shows that his attendance was only 38.17 but since he was a student of Management Quota who had shelled out hefty donations, was permitted to appear in the second semester examinations of 2011-12 as would be evident from the statement of marks. A copy of the statement of marks pertaining to the second semester examinations of Shobhit Chowdhary is attached herewith and marked as Annexure 11 to this writ petition. Mention may also be made about the case of Deepankar Seth whose attendance was 41.48% (i.e. even more than Shobhit Chowdhary) according to the attendance sheet but was detained due to short attendance as would be evident from the statements of marks pertaining to the second semester examinations 2011-2012. A copy of the statement of marks of Deepankar Seth is being attached herewith and marked as Annexure 12 to this writ petition. It is specifically stated that out of the 313 students as mentioned in the attendance report dated 30.3.2012, eighty one (81) students were having an attendance below 60% but all were permitted to appear in the end-semester examinations.

2. The submission therefore is that the University has adopted a discriminatory attitude and further reliance has been placed by the learned counsel for the petitioners on *C.M. Vikrama Verma v. Avinash Mohanti*, 2011(4) ESC 664 (SC) paragraph 14 to contend that the University/College should be commanded to act evenhandedly and not practice hostile discrimination.

3. Sri Neeraj Tiwari on the other hand contends that so far as the attendance of the petitioner is concerned it is admittedly short and this fact has been categorically indicated in the order of the Vice Chancellor in terms of the mandamus issued by this Court. A copy of the said order dated 13th July, 2012 is Annexure 5 to the writ petition. Having heard learned counsel for the petitioners and keeping in view the nature of the prayer made, the argument that the University/College has discriminated, the petitioners cannot be accepted for the simple reason that there cannot be any equality in illegality. The petitioners allege that the University/College has allowed some students to appear in the examination inspite of shortage of attendance but there being no provision to grant any such relaxation, an illegal act cannot come to the aid of the petitioners nor any plea of Article 14 can be raised by the petitioners.

There is no merit in the petition. It is accordingly dismissed.