

(2012) 12 DEL CK 0132

In the Delhi High Court

Case No : LPA 792 of 2012

Nishant Gupta

APPELLANT

Vs

University of Delhi and Another

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Citation : (2013) 133 DRJ 359

Hon'ble Judges : D. Murugesan, C.J;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Mahendra Singh, for the Appellant; Mohinder J.S. Rupal, Advocate for R-1 and Mr. A.P.S. Ahluwalia with Mr. S.S. Ahluwalia, Advocate for R-2, for the Respondent

Judgement

Rajiv Sahai Endlaw, J

CM No. 20159/2012 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

LPA 792/2012

1. This intra court appeal impugns the judgment dated 19th October, 2012 of the learned Single Judge of dismissal of W.P.(C) No. 3121/2012

preferred by the appellant. Counsels for the respondent No. 1 University and respondent No. 2 Dayal Singh College appear on advance notice

and we have with consent heard the appeal finally. The appellant was in July, 2009 admitted to the first year of the B.Sc. (Honours), Maths course

in the respondent No. 2 College affiliated to the respondent No. 1 University. Though, at the end of the said year i.e. in 2010, he did not have the

requisite minimum attendance but was, in accordance with the Statute/

Ordinances of the University, on furnishing an undertaking to make up the deficiency in attendance in the next year, permitted to take the examination for promotion to the second year of the said three years course. The appellant, however, failed in the said examination and took re-admission in the first year of the course as an ex-student and again took the first year end term examinations in the year 2011, which he cleared and became a second year student of the said course and became eligible to appear in the examination held in March-May-2012 for promotion from the second to the third year.

2. It appears that the time gap between the date when the classes of the second year ended and the commencement of the examination was very short, not enough for the College to compute whether the students fulfilled the requisite minimum attendance criteria or not. It is the stand of the College that since admit cards for the examination were to be issued by the University, to save time, it requisitioned the admit card for all the students and issued the same to the students, subject to an undertaking that the same were provisional and in the event of their not fulfilling the attendance criteria, they would not be eligible to take the examination on the basis of the said admit cards. After the appellant had appeared in three examinations, the respondent No. 2 College realized that he had in the second year, attended only 278 out of 455 classes and the aggregate of his attendance of the first year (as a regular student) and of the second year was 44.24% only. Since the Statute/Ordinances of the University did not allow a student with such attendance to appear in the second year end term examination, the respondent No. 2 College stopped the appellant from appearing in the remaining examinations.

3. Impugning the aforesaid action of the respondent No. 2 College, the writ petition from which this appeal arises was filed. Vide interim order in the said writ petition the appellant was permitted to appear in the remaining examinations also and by subsequent interim order, on commencement of the academic session 2012-2013, the appellant was permitted to attend the classes of the second year with the stipulation that on his success in the petition, the attendance so marked would be counted against the attendance for the third year.

4. The learned Single Judge, however, vide impugned judgment dated 19th

October, 2012 dismissed the writ petition holding that the appellant, as per Ordinance-VII of the University, was required to attend minimum 66.6% classes in each year, which he had not attended.

5. Counsel for the appellant has drawn our attention to page 65 of Volume-II (Appendixes and Regulations) of the Calendar of the University of

Delhi (1989), to contend that the same permits a student of the second year who is short of attendance at the end of the first year but was allowed

to appear in the first year examination subject to making up deficiency during the second year, and who has not been able to make up the

deficiency but has attended not less than 55% of the lectures delivered during the first year and the second year classes taken together, may on the

discretion of the Principal of the College concerned, be allowed to appear in the second year examination, subject to his making up deficiencies of

two years taken together, during the third year. It is contended that the appellant is entitled to exercise of such discretion.

6. We have however, pointed out to the counsel for the appellant that the appellant does not fulfill the said standard also inasmuch as his aggregate

attendance of the first and second year is less than 55% i.e. 44.24% only.

7. The counsel for the appellant then contends that the attendance has not been computed correctly. It is stated that the respondent No. 2 College

produced only a computation of the total attendance and not the Attendance Registers on which attendance of each class was marked.

8. We are unable to agree. There is no reason for us to doubt the record of attendance maintained by the respondent No. 2 College. Even

otherwise, if the appellant disputes the attendance, such disputed questions of fact cannot be adjudicated in writ jurisdiction. One of us i.e. Rajiv

Sahai Endlaw, J has in Choudhary Ali Zia Kabir Vs. Guru Gobind Singh Indraprastha University and Another Vibhor Anand and Others Vs. Vice

Chancellor, GGSIP University and Others and in Vikash Kumar Singh Vs. University of Delh and Others held that this Court cannot in writ

jurisdiction entertain such pleas and the record of attendance maintained by the University or its affiliate Colleges have to be believed and the

Colleges/Universities cannot be put to proof thereof and if so directed, would forever be involved in the same only, rather than in their academic

pursuits. LPA No. 191 of 2011 preferred against the judgment in Vibhor Anand

supra was dismissed vide judgment dated 3rd March, 2011.

9. The counsel for the appellant has next contended that the respondent No. 2 College has allowed several other students, who as per the

attendance record filed by the respondent No. 2 College before the learned Single Judge, had lesser attendance than even the appellant, to take

the examination.

10. The said argument also does not cut any ice before us. There is no negative equality in law. As long as the appellant, as per the Rules of the

University, was not eligible to appear in the examination owing to being short of attendance, he cannot be so permitted in violation of the Rules

merely because the Rules have been violated vis-à-vis other students. Moreover, we do not have the facts of such other students and no finding

vis-à-vis them can be returned. It is the case of the respondent No. 2 College that such other students have also been treated in accordance with

the said Rules and their cases are different from the appellant. If the appellant feels that the respondent No. 2 College has violated the Rules vis-

à-vis other students, it is always open to the appellant to bring such facts before this Court by way of Public Interest Litigation and in which

appropriate orders can always be made.

11. The counsel for the appellant has lastly contended that the name of the appellant was not put up in the first list published of defaulters in

attendance and because of his having been permitted to take three examinations, he should be allowed to be promoted to the third year, having

already passed in the examination taken under the interim orders of the learned Single Judge.

12. No equity flows in favour of the appellant from the interim orders made in the course of legal proceedings. Even otherwise, the appellant is not

found entitled to exercise of any discretion by this Court. The appellant, out of 305 classes held in the first year, appeared only in 58 classes. The

result thereof is evident. Even though the appellant was permitted to appear in the first year end term examination, but flunked the same. A student,

who shows scant regard for the Rules and Regulations of the educational institution to which he is admitted and is short of the requisite attendance,

not only in the first year but also in the second year, and has not shown any remorse, is not deserving of any indulgence from this Court. It cannot

also be lost sight of that in our country of scarcity of educational facilities, the admission of one student is always at the cost of several others. The

appellant, instead of learning from the institution to which he had gained admission, has been skipping the classes. Lackadaisical attitude of the

appellant is apparent from the delay of one and a half months after which this appeal has been preferred.

13. There is another aspect of the matter. Now, more than half of the current academic session is over. The appellant, admittedly, has not attended

even a single class of the third year. Even if any indulgence were to be exercised in favour of the appellant, i.e. even if he is to be promoted to the

third year, he cannot possibly take the third year end term examination having not attended the classes of the third year. We, therefore, do not find

any merit in this appeal and dismiss the same. We have however, enquired as to what would be the fate of the appellant. We are informed that the

appellant will have to take the second year end term examination to be held in March-May-2013, if fulfills the attendance criteria. The counsel for

the appellant states that even though the appellant has been attending classes of the second year under interim orders of the learned Single Judge

but his attendance is not being marked. The counsel for the respondent No. 2 College states that whatever classes the appellant had attended, his

attendance has been marked on a separate sheet. He however states that it be clarified that subject to the appellant fulfilling the attendance criteria,

he will be entitled to appear in the second year end term examination as aforesaid, since the appellant has not been admitted to the second year

within the prescribed date and the University may raise objection. We, accordingly, clarify that subject to the appellant fulfilling the attendance

criteria, he shall be treated as a student of the second year in the academic session 2012-2013 of the course and he will be entitled to take the

second year end term examination to be held in March-May-2013.

No costs.