

(2018) 03 DEL CK 0001

In the Delhi High Court

Case No : 1993 of 2018

PRATYUSH NARNAWRE

APPELLANT

Vs

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0001

Hon'ble Judges : Rekha Palli

Bench : Single Bench

Advocate : Lal Singh Thakur, Sudhir Tewatia, R.K. Solanki, Prabhas, Anita Sahani

Judgement

1. The petitioners in these four petitions are the students of the University School of Biotechnology, i.e. respondent No.2 affiliated to the respondent No.1-university which school is admittedly situated in the Main Campus of the respondent No.1 itself. They have approached this Court inter alia praying for a direction to quash the order dated 30.01.2018, whereby they have been detained in the end term Examination, of November-December 2017, due to shortage of their attendance in the Semester of August-November, 2017.

2. In all the 4 petitions, the petitioners are students of B.Tech. (Biotechnology) and had taken admission in the 5th semester in August, 2017 and had been regularly attending the classes being held in the respondent No.2. The petitioners in W.P.(C) Nos.1995/2018 and 1996/2018 claim to have missed college due to their involvement in extra-curricular activities while the petitioners in W.P.(C) Nos.1993/2018 and 1994/2018 claim that they had to miss college for a few days due to illness and other unavoidable reasons.

3. Learned counsel for the petitioners submits that at the end of the 5th semester, all the petitioners were issued admit cards by the respondent and had duly appeared in the examination of the 5th semester, which had commenced from 13.11.2017 itself. He further points out that though on 09.11.2017, a general notice was issued stating therein that the attendance of B.Tech. (BT) and

M.Tech. (BT) students had been finalized and displayed on the notice board as well as sent to their e-mail addresses, the students were also informed that in case, there was any discrepancy in their attendance, they could get the same corrected by approaching the concerned class teacher by 10.11.2017. He further submits that this notice did not, in any manner, state that in case of shortfall in attendance, any of the students would be detained.

4. Mr.Thakur further submits that much after the exams had already commenced, a notice dated 28.11.2017 was, for the first time issued, wherein the names of the 4 petitioners were mentioned by merely stating that they were short of requisite attendance for the End Term Examination, 2017. He submits that this notice did not debar the petitioners for appearing in the ongoing examination and they were all allowed to appear in the examination which continued till mid December, 2017. He further submits that after the petitioners had appeared in their 5th semester examination, they were all promoted to the 6th semester and had been regularly attending their classes of the 6th Semester from 08.01.2018 till 31.01.2018, till the impugned order dated 30.01.2018 ordering their detention in the end-term of examination held in November-December 2017, was handed over to them in the evening of 31.01.2018 from which date, they have been debarred from attending classes.

5. Mr.Thakur, submits that aggrieved by the impugned order, the petitioners have made representations to the Vice Chancellor of the respondent No.1-University, which have remained unanswered till date. In these circumstances, the petitioners have approached this Court on 28.02.2018.

6. When the matter was taken up on 28.02.2018, Ms.Sahani appearing for the respondents was requested to get instructions. Today, upon instructions, she submits that mere issuance of the admit cards to the petitioners or the action of permitting them to appear in the 5th Semester final examinations, cannot create any equity in their favour as while issuing the notice dated 09.11.2017 informing the students about their attendance, it had been clearly stated that their appearance in the practical examination was purely provisional subject to finalization of attendance till 10.11.2017.

7. Ms.Sahani, further submits that the petitioners were very much aware that their attendance was short which is evident from the fact that on 29.11.2017 itself, they had approached the Vice Chancellor of respondent No.1-University pointing out that they were short of the requisite attendance by a very meagre margin leading to possibility of the loss of a whole academic year. She draws my attention to letter dated 29.11.2017 written by the petitioners in support of her contention that the petitioners were aware that they would be detained due to shortage of attendance. The letter dated 29.11.2017, on which reliance has been made by the learned counsel for the parties reads as under:- "The Vice Chancellor

Guru Gobind Singh Indraprastha University Dwarka

Sector 16-C

New Delhi (110078)

29th November, 2017

Subject: Plea against detention due to shortage of attendance.

Sir,

This is to bring to your notice that five students of university school of biotechnology, (5th semester) are following short of the requisite attendance by a very meagre margin leading to a possibility of the loss of a whole academic year which will have serious implications on our career as well as our mental health.

The different reasons behind our absence were financial crisis, health issues & involvement in a number of co-curricular activities throughout the semester. All these situations were extremely unavoidable.

We humbly request you to consider our sensitive case as the situation now demands immediate intervention by higher authorities. Kindly find the essential details of all the five students attached with this application. Sir, we will ensure that such a situation will not arise in the future.

We shall always remain indebted to you."

8. Ms.Sahani also draws my attention to Para 9.3 of the Ordinance 11-"Conduct and Evaluation of examinations for programmes leading to all Bachelor's/ Master's Degrees and Under-Graduate/ Post-Graduate Diplomas following Semester System" in support of her plea that the petitioners were always aware that in case it is subsequently found that any detained student had appeared in the examination, his result will be treated as null and void. Ms.Sahani also draws my attention to Para 9.1 of the said ordinance to contend that under no condition, a student who has an aggregate attendance of less than 70% in a semester can be allowed to appear in the semester term end examination. She submits that once it is an admitted case of the petitioners that they were all having attendance less than 70%, the shortfall in their attendance could not be condoned in any manner and therefore, they had no right to appear in the semester term end examination. In these circumstances, she submits that the petitions are liable to be dismissed and the petitioners are not entitled to any interim relief of whatsoever kind.

9. At this stage, it may be appropriate to refer to Para 9.1 and 9.3 of the Ordinance which reads as under:- "9.1 For programmes other than Bachelor of Education (B.Ed.) and Master of Education (M.E.d.):-

A student shall be required to have a minimum attendance of 75 % in the aggregate of all the course taken together in a semester, provided that the Dena of the Scholl in case of University Schools and Principal/Director in case of

University maintained/affiliated institutes may condone attendance shortage upto 5% for individual student for reasons to be recorded. However, under no condition, a student who has an aggregate attendance of less than 70% in a semester shall be allowed to appear in the semester terms end examination.

For B.Ed and M.Ed programmes:

* The minimum attendance of B.Ed students shall be 80% for all course work and practicum, and 90% for school internship.

* The minimum attendance of M.Ed. students shall be 80% for Theory Courses and Practicum, and 90% for field attachment.

9.3 In case any detained student appears in the semester/supplementary term end examination, his/her result shall be treated as null and void."

10. Having examined the rival contentions of the parties, I find that a glaring and most disturbing fact which emerges from the record, is that even though the respondents could have perhaps at the appropriate time in November 2017, initiated action to detain the petitioners, who were not meeting the criteria of requisite attendance and directing them not to appear in the examinations held in November-December 2017, but the admitted fact is that till the passing of the impugned order dated 30.01.2018, no order was ever passed detaining the petitioners or directing them not to appear in the examination and all of them were duly and without any demur permitted to appear in the Examination. I find no merit in the submission of learned counsel for the respondents that only because the notice dated 09.11.2017 itself clarified that the appearance in the practical exam was purely provisional and was subject to finalization of attendance on 10.11.2017, the permission granted to them to appear in all the subsequent examinations, which continued till mid December 2017, was also provisional specially since, there is no denial to the fact that the examination had started only on 13.11.2017 i.e. after the date mentioned in the said notice. In my view, there was no reason for the petitioners to believe that they had been allowed to appear in the examination only provisionally. In case, the respondents wanted to ensure that the appearance of the examination of the petitioners was only provisional, they had to abide by their own circular, which clearly stated that the finalization of the attendance would be done by 10.11.2017 and ought not to have permitted the petitioners to appear in the 5th semester examinations held in November-December 2017 or ought to have atleast informed them that the permission to appear in the examination was in any way provisional.

11. It also emerges that not only the petitioners were admittedly never detained in the 5th semester and were permitted to appear in the final examinations of the 5th semester, without any demur but were also allowed to attend classes of the 6th semester for almost one month. In these circumstances, upon completion of pleadings, the question whether the respondents had the power to pass any detention order with retrospective effect only by relying on Para 9.3 of the Ordinance, would need to be decided.

12. Issue notice. Ms.Sahani, Advocate accepts notice for the respondent Nos.1 and 2 and seeks four weeks time to file the counter affidavit. Time prayed for is granted. Rejoinder thereto, if any, be filed within two weeks thereafter.

13. In my considered view, the petitioners have been able to make out a prima facie case and irreparable loss and damage would be caused to them and in case the operation of the impugned order dated 30.01.2018 passed by the respondent is not stayed, it would lead to loss of an entire academic year of the petitioners.

14. Accordingly, the operation of the impugned order dated 30.01.2018 is stayed and the respondents are directed to permit all the petitioners to appear in the classes and the ensuing exams of the 6th semester. Needless to state that the observations in this order are only prima facie and the interim directions would remain subject to outcome of the present petitions.

15. List on 17.05.2018.

16. Dasti under the signatures of Court Master.