

D.C. Venkateshulu S/O D.V. Chandramohan Vs. Karnataka Pre-university Education by Its Secretary and the Principal, Bes College of Arts Commerce and Science

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Court : Karnataka

Decided On : Jun-06-2006

Reported in : 2006(6)KarLJ318

Judge : D.V. Shylendra Kumar, J.

Appeal No. : Writ Petition No. 4715 of 2006

Appellant : D.C. Venkateshulu S/O D.V. Chandramohan

Respondent : Karnataka Pre-university Education by Its Secretary and the Principal, Bes College of Arts Commerce

Advocate for Def. : H.M. Manjunath, HCGP for R-1 and ;T.S. Mahantesh, Adv. for R-2

Advocate for Pet/Ap. : B.M. Baliga, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

D.V. Shylendra Kumar, J.

1. Writ petition by a student who had attended classes in the two-year pre-university course and whose desire to write the examinations and complete the course was snuffed out by the Karnataka Pre-university Education, an organization of the Department of Education, Government of Karnataka, for conducting examinations for the course, and the second respondent college, where the petitioner had admitted and had undergone the course of study.

2. The student was not permitted to write the examination on the premise that he had not put in the requisite percentage of attendance in the class; that in a subject or two, the attendance was even below 60% of the total number of classes held for the year and as such the student was not entitled to take up the examinations, but was required to repeat the course.

3. It is in such circumstance, the present writ petition contending that the first respondent organization has not properly understood or appreciated the relevant provisions regulating attendance in classes by students and that even within the regulation, the student could have been permitted to take up examination etc.

4. Notices had been issued and interim order had also come to be passed by this Court, directing the respondents to permit the petitioner to write the examinations subject to the result of this writ petition in terms of the interim order granted by this Court on 27-3-2006. It appears that notwithstanding the interim order, the petitioner was able to write the examinations in four subjects held on and after 29-3-2006 and was

not able to write the examinations in three papers which had been held prior to this date.

5. The result of the examinations has also been withheld. In the meanwhile, as the authority is receiving fee for appearance of students for the supplementary examinations scheduled to be held during the month of July 2006, it is urged on behalf of the petitioner by Sri Baliga, learned Counsel for the petitioner that the result of the examinations written by the petitioner should be directed to be announced and the petitioner be permitted to write the other papers.

6. The respondents have entered through counsel and have filed statements of objections.

7. A few more facts are that the actual attendance of classes by the petitioner as indicated by the first respondent in its statement of objection is as under:

Kannada 70%English 65%Physics 63%Chemistry 56%Maths 64%Biology 51%

and this factual data is not disputed by the petitioner either. What is submitted by the learned Counsel for the petitioner is that the petitioner has no means of verifying the correctness or otherwise of the data, but was forced to accept the version of the college.

8. What is urged on behalf of the respondents is that the attendance in the course is compulsory i.e. the student has to put in a minimum of 75% attendance for being eligible to take up the examinations; that an element of discretion is given to the head of the institution where the student is studying if the shortfall of attendance is between 60 and 75%, and if within that there is a shortfall, the head of the institution i.e. the principal of the college can, on the student furnishing a certificate and affidavit that the shortfall was attributable to some genuine reason or due to ill-health etc., supported by medical certificate, to condone such shortfall by accepting a fine of Rs. 25/-; that in the instant case, the shortfall being even below 60% in respect of two subjects i.e. in Chemistry and Biology, there was no discretion left to the principal of the college even if he would wish to exercise such discretion and accordingly there is no way to permit such students to write the examinations in the second year PUC.

9. In the light of such factual background, Sri Baliga, learned Counsel for the petitioner urges that the regulations in terms of guidelines issued for the purpose of regulating the attendance of classes by students for the academic year 2004-05 should be looked into and interpreted so as to advance the cause of students whose attendance may fall short by marginal percentage but who has nevertheless on the aggregate has an attendance of not less than 60% and in the overall, to enable such students to write the examinations.

10. The relevant provisions are, as contained in para-4 of the guidelines, as under:

11. A perusal of these provisions relating to attendance indicates that the qualifying percentage of attendance is 75% in terms of para 4.1 and in terms of para-4.2 read with the government Order No. ED 209 SLB 99 dated 7-4-2000, if the attendance is less than 60% in each subject, the student will not be eligible to write the first or the second year examination, as the case may be. In other words, the students should have compulsory minimum attendance of 60% in each subject for securing eligibility to take up the examination. Para-4.3 indicates that if the attendance should fall short of 75% i.e. minimum requirement, and if it is not less than 60%, then the discretion as discussed above is given to the head of the institution to condone such shortage and to permit the student to take up the examinations.

12. It is taking cue from para-4.3 of these regulations, learned Counsel for the petitioner has vehemently urged that the provisions for condoning the shortage of attendance should be so interpreted so as to advance the cause of a student to take up the examinations; that an interpretation which can admit students to write examinations than one which can keep out the student from writing the examination should be preferred; that the discretion permitted in favour of a head of institution above 60% and below 75% of attendance should be so understood as to be a discretion to be exercised in a situation where the student has in the aggregate a 60% attendance; that in the present case the petitioner in fact has an aggregate of 61.5%

i.e. it is above 60% and qualifies for exercise of the discretion in his favour by the head of the institution, on an unfortunately the discretion has not been so exercised in favour of the petitioner by the head of the institution with erroneous understanding of the regulations by the principal, who has given more prominence to para-4.2; that in the absence of a minimum 60% in each subject, the student is ineligible is the view which both respondents appear to have taken that such is not the rule; that such understanding is not in consonance with the spirit and purpose of para-4.3 and therefore the principal of the college should be directed to exercise the discretion by holding that the cases where in the aggregate a student has put in a minimum 60% attendance, it is a case qualifying for exercise of the discretion by the head of the institution, irrespective of the fact that in a subject or two the attendance may marginally fall below 60%.

13. In support of the submissions, learned Counsel for the petitioner has placed reliance on the following decisions:

1. P. Raghu Vamshi v. Vice Chancellor, Jawaharlal Nehru Technological University AIR 2006 NOC 280 (AP)

2. State of Kerala v. K. Balakrishna : AIR1961Ker25

holding that an authority which has been conferred with such discretion cannot deny the discretion by self-imposed practice or regulation or restriction and also a decision of the Supreme Court in the case Union of India v. G. Ganayutham : (2000)IILLJ648SC again indicating that the rule enunciated in Wednesbury's case can be applied even in service matters Involving administrative discretion etc., and urges that if so, the rule should necessarily be applied even to a situation or a person where the discretion is conferred on the head of the institution to use that power for the purpose of condoning the shortage in attendance and not to deny the same. Submission is that the discretion should be exercised to condone and not to decline the discretion.

14. It is per contra argued by Sri Mahanthesh, learned Counsel for the second respondent-college that in the light of the provisions of para-4.2, the element of discretion is not left to the head of the institution in a situation where the student has even below 60% percentage in a particular subject; that in the present case, in two subjects, the attendance of the petitioner falls short of 60% and therefore there is no scope for interpreting any provisions particularly para-4.3 as such interpretation will go against para-4.1 and para-4.2.

15. Sri Manjunath, learned Government Pleader, appearing for the first respondent has urged that the requirement of rule is to ensure that students attend minimum number of classes and that they acquire sufficient skill and proficiency in the subjects concerned; that the requirement of attendance is in the interest of student community and having regard to various provisions, the minimum attendance itself is reduced to 75% of the total number of classes; that even if an element of discretion provided to the head of the institution for condoning the shortage (in attendance) between 60 and 75%; that when a student has attendance below 60% in a particular subject, the student has to repeat the entire course and no discretion is given to the head of the institution in such a situation; that just because in the aggregate, a student has put in 60% attendance and on that basis the head of the institution cannot exercise the discretion if the attendance is below 60% in any of the subjects. In this regard, the learned Government Pleader has placed reliance on a decision of a Single Bench of this Court in the case of Satish v. Vice Chancellor : AIR1994Kant379 .

16. While the ratio of the decisions cited by the learned Counsel for the petitioner as well as the respondents does not in any way pose any difficulty in either understanding or following the same, the submission of Sri Baliga, learned Counsel for the petitioner that para-4.3 should be so understood that it confers an element of discretion in favour of a student who has put in even less than 60% attendance in one subject but has put in a minimum of 60% attendance in overall aggregate is one entitled for the exercise of discretion by the head of the college for condonation of shortage of such attendance is the one which poses problem for acceptance. The ratio of the decision of the Supreme Court in the case of G. Ganayutham [supra] or the ratio of the decision of the Division Bench of the Kerala High Court in the case of K. Balakrishna [supra] does not support the submission of learned Counsel for the petitioner for accepting the interpretation as is sought to be placed on para-4.3.

17. It is no doubt true that when there is scope for interpretation, an interpretation which can advance the cause or purpose for which the provision is made can be accepted, and even when two views are forthcoming, the view that advances the cause of the students or even the view that can confer a discretion for condoning the shortage (in attendance) could have been accepted. It is no doubt true that para-4.3 by itself does not speak of the requirement of minimum 60% attendance in each subject, but only speaks of condonation of shortage in attendance between 60 and 75%. But it is para-4.1 that comes in the way of the petitioner, as the case of the petitioner cannot such the stage for exercise of discretion allowed under para-4.3, as if a student has less than 60% attendance in any one subject, the matter ends with para-4.1 and does not travel upto the discretion permitted under para-4.3 of the notification, because of the requirement or non-fulfillment of para-4.1. If one should examine the sequence in which these paragraphs are placed, it is indicated that the minimum attendance is 75% and that is the general rule under para-4.1. Next comes para-4.2, providing for a situation where there may be shortage and even then how a student can acquire eligibility here. It is indicated that the eligibility is subject to the condition that the attendance in each subject is not less than 60%. It is thereafter i.e. when the attendance is not less than 60% in each subject, the provision for condoning the shortage as envisaged in para-4.3 operates and comes into play and it is a situation where the element of discretion is given to the head of the institution to condone the shortage. One can reach the provision for discretion only after qualifying for having become eligible under para-4.2 after putting in a minimum of 60% of attendance in each subject.

18. Unfortunately, the petitioner having put in less than 60% attendance in two subjects will not be able to get over the requirement of para-4.2 to qualify for writing the examination but is falling short of the minimum of 75% and not otherwise.

19. It is for this reason, I am unable to accept the submission of the learned Counsel for the petitioner to accept that even in a situation where a student has in the aggregate of minimum attendance, the discretion should be exercised notwithstanding he had less than 60% attendance in each subject, cannot be accepted. I am of the view that there is no scope for interpreting para-4.3 in the manner as is urged by the learned Counsel for the petitioner, even applying the principles laid down in the cases cited by judicial dictates. The requirement of law particularly the requirement of minimum attendance or requirement of standards like securing minimum attendance cannot be diluted. These are all matters best left to the educational institution and the university concerned.

20. When there is no scope also for interpreting the provision in the manner as is sought by the petitioner, there is no question of entertaining the writ petition for grant of relief. Writ petition is accordingly dismissed. Interim order is dissolved.

21. Petitioner can continue/repeat the second year in the very college where he had studied in first year and if the petitioner seeks admission for the second year, then the second respondent college shall admit the petitioner for the second year PUC course in its college.