

Ashok Kumar Thakur

Vs

University of Himachal Pradesh and Others

Civil Appeal No. 1169(N) of 1972

(A. N. Grover, K. K. Mathew, A. K. Mukherjea JJ)

06.11.1972

JUDGMENT

MUKHERJEA, J. -

1. This appeal by special leave from an order of the High Court of Himachal Pradesh dismissing a writ petition of the appellant concerns a young college boy who is now in the unhappy position where at least two years of his academic life are found to have been wasted in very unfortunate circumstances. The short facts of the case are as follows.

2. The appellant-petitioner (hereinafter described merely as 'petitioner') passed the Class examination in 1970 from Bishop Cotton School, Simla. On July 31, 1970 the petitioner applied for admission to Government College, Bilaspur (Himachal Pradesh) in Class XI which is ordinarily called the Pre-University class. The petitioner claims that he was duly admitted on July 31, 1970 while the respondents maintain that he was only provisionally admitted on that date. The following notes and endorsements appear on the admission form of the petitioner submitted by him for admission to the Pre-University class :

"Since the candidate has not submitted the required documents as per letter attached by August 15, 1970 and as such his admission may be cancelled.

(Sd.) Initialled. 14-8-70. Yes Initialled. 14-8-70. Admit provisionally subject to documents. Initialled."##

Nothing turns on this controversy for, in any case, it is quite clear that the petitioner was in law under an obligation to produce the eligibility certificate and the Inter-University Migration Certificate before he could be lawfully admitted to the Bilaspur College. It appears that on August 12, 1970, the petitioner was formally asked to produce the abovementioned documents and was told that failing such production his admission was to be treated as cancelled. The documents were furnished only on October 13, 1970. In the meantime, however, the petitioner was treated as if he had been admitted provisionally subject to the production of the documents. On December 24, 1970 the petitioner migrated to Government College, Dharamsala. He had the necessary permission of the University for this migration. The petitioner complains that just one day before he was to sit for the Pre-University examination, the Principal of Government College, Dharamsala informed his father over the telephone that the petitioner had not attended the requisite number of classes while he was at Bilaspur College. On the same day the petitioner filed an affidavit to the effect that he had attended all the classes regularly at Bilaspur and that he was "not falling short of lectures in English, Economics, History and Civics". He declared further that he had attended more than 75 per cent. of

the lectures delivered in each of these subjects in the Pre-University class in Government College, Bilaspur until he migrated to Government College, Dharamsala, Presumably on the basis of this affidavit the petitioner was allowed to sit for the Pre-University examination which commenced on April 20, 1971. On April 21, 1971 the petitioner was informed by the Principal that he was being permitted to sit for the examination provisionally at his own risk and if it was found that he was short of the required number of lectures his candidature would be cancelled. The Principal of Dharamsala College on the same day wrote a letter to the Principal of Bilaspur College asking for a lecture statement in respect of the petitioner. As a result of this enquiry it transpired that the petitioner was short of the requisite attendance and on April 29, 1971 the Principal of Dharamsala College recommended to the Registrar, Himachal Pradesh University that the candidature of the petitioner should be cancelled and the results obtained by him in the examination to which he had been provisionally admitted were to be quashed. Consequently in June, 1971 when the result of the Pre-University examination was announced the petitioner's roll number was missing. In July, 1971 the petitioner was admitted provisionally to the B.A. Part I class in a college at Simla. The petitioner and also his father thereafter approached several authorities for condonation of the shortage in attendance of lectures. The petitioner was, however, informed by a letter, dated December 1, 1971 that the University was not in a position to condone the shortage. The material portion of the letter, dated December 1, 1971 of the Registrar, Himachal Pradesh University is set out hereunder :

"Your kind attention is drawn to Regulation 2 relating to Regulations 'Condoning of deficiency in lectures' of Punjab University Calendar, 1969, Vol. III (Page 61) reproduced below :

'If the Principal is not satisfied with the reasons advanced by the candidate, he shall not be bound to condone the deficiency in lectures and there shall be no right of appeal against the decision of the Principal in refusing condonation'.

In view of this regulation, the University is not in a position to condone that shortage in question."

The petitioner went on making representations and by a letter, dated February 23, 1972 the Principal, Government College, Bilaspur informed him categorically that the shortage could not be condoned. Thereafter on or about March 10, 1972 the petitioner filed a writ petition in the Himachal Pradesh High Court. The petition was dismissed in limine. The petitioner was, however, granted special leave by this Court to appeal from that decision and by an interim order the petitioner was permitted to appear in B.A. Part I examination on a provisional basis. It appears that the hearing of the appeal was expedited and on August 16, 1972 this Court directed the University to consider the petitioner's application to B.A. Part II on merit as a result of which the petitioner was admitted to B.A. Part II class pursuant to the order of this Court.

3. The point involved is very short. So far as facts are concerned, there is little scope for doubt that the petitioner was indeed short of the required percentage of attendance in regard to the lectures in some subjects. The petitioner sought to make out a case that the petitioner has not been given credit for the classes he attended when he was first admitted to the Bilaspur College provisionally subject to the production of certain documents. In paragraph 10 of the petition, the petitioner made out a specific case that "the non-counting of the lectures attended by the petitioner during the aforesaid period of August 16, 1970, till October 13, 1970" was illegal. This has been denied by the respondents. We ourselves had an opportunity of examining the attendance registers and we are

satisfied that the lectures attended by the petitioner during this period were counted while calculating his attendance figures. The complaint of the petitioner on this ground is therefore baseless. Mr. Datta appearing for the petitioner tried to make out a case that he had attended some classes between July 31, 1970 and August 12, 1970 and his attendance during this period had not been recorded by the college authorities. This is a completely new case made up by the petitioner and we cannot take any notice of it. It is quite possible that non-recording of his attendance during this period may be explained by the fact that he did not actually attend any class during the period. In any event, the case that he made out in the petition has been denied by the respondents and we are satisfied on examination of the records that the petitioner's complaint is baseless.

4. The only question that now remains is whether the petitioner's deficiency in the matter of attendance could be condoned by any authority. The final lecture statement of the Bilaspur and Dharamsala colleges shows that the petitioner was short of 20 lectures in Civics, of 18 lectures in Economics, of 10 lectures in History and of 8 lectures in English. Now the rules as to condoning of deficiency in the matter of attendance of lectures are to be found in Chapter XV of the Punjab University Calendar 1969, Volume III (Rules). The relevant rule is 1(a) and the material portion of it is in the following terms :

"(1) Taking into consideration the results of the House examinations :

(a) The Principals of a College affiliated in the Faculties of the Arts, Science and Oriental Learning may condone that deficiency in lectures as under :

(i) Up to 15 lectures in each of subjects."

Since the petitioner's deficiency in the matter of attendance exceeded 18 lectures in Economics and 20 lectures Civics, it was beyond the jurisdiction or competence of the Principal to condone this deficiency. In our opinion this completely destroys the case of the petitioner.

5. Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the Principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to be lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner's appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs.

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