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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 662/2010

UNIVERSITY OF DELHI & ANR. ..... Appellants

Through Mr. M.J.S. Rupal, Advocate.

versus

VANDANA KANDARI & ANR. ..... Respondents

Through Mr. R.K. Saini, Advocate.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

O R D E R

% 10.01.2011

CM NO. 16542/2010

It is an application for condonation of delay. Having heard Mr. M.J.S. Rupal, learned counsel for the appellants and Mr. R.K. Saini, learned counsel for the respondent, we are inclined to think that sufficient ground exist for condonation of delay and accordingly the same stands condoned.

The application is disposed of.

LPA No. 662/2010

In this intra-Court appeal, the assail is to the order dated 12th July, 2010 whereby the learned single Judge has extended the benefit of realization of attendance on the ground that the said respondents were on maternity leave. Mr. M.J.S. Rupal, learned counsel for the appellants has very fairly stated that he was required to file two appeals but he has filed a composite appeal. Learned counsel has submitted that the learned single Judge has committed an error by making a distinction between the

medical leave and maternity leave. He has placed reliance on the Division Bench decision in ***Sukriti Upadhyay versus University of Delhi*** (LPA No. 539/2010 decided on 4th October, 2010) wherein this Court after referring to the rules invoked in paragraphs 8 to 12 has held thus:-

> "8. Rule 3 of the 1975 Rules reads as follows:
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> > *"The students shall be required to put in a minimum attendance of 66% of the lectures on each of the subjects as also at tutorials, moot courts and practical training course. Provided that in exceptional cases for reasons to be recorded and communicated to the Bar Council of India, the Dean of the Faculty of Law and the Principal of law colleges may condone attendance short of those required by the Rule, if the student had attendance 66% of the lectures in the aggregate for the semester or examination as the case may be"*
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> 9. On a perusal of the aforesaid Rule, it is quite clear that a student is required to have the minimum attendance of 66% of the lectures on each of the subjects as also on tutorials, moot courts and practical training course. The exception that has been carved out is that if the student has 66% attendance of the lectures aggregate for the semester or examination, as the case may be, the Dean of the Faculty of Law and the Principal of law colleges may condone attendance short of those required by the Rule. The learned counsel for the parties fairly stated that the case of the present appellant does not fall in the said exceptional class.
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> 10. The question that falls for consideration is whether Rule 3 of the 1975 Rules or the

Statutes framed by the University pertaining to obtaining of percentage of attendance would prevail. It is not in dispute that the Ordinance of the University deals with matters relating to admission to the university, transfer of students from one course to the other, migration of students, conditions for admission to examination, conduct of examination and various other aspects. In the case of ***S.N. Singh*** (supra), the Division Bench noticing the stipulation in the relevant clauses in the Statute VII and the Rule framed by the Bar Council of India has held as follows:

> *"28. Since the Bar Council of India recognises the LL.B. Degree Course of the University of Delhi and the Bar Council of India is a statutory body constituted under the Advocates Act 1961 and is empowered to lay down standards of legal education, University of Delhi would be required to bring its rules in conformity with the rules of the Bar Council of India."*

Eventually, the Division Bench directed as under:

> *"37. For future, directions contained above, namely, no relaxation would be given from the requirement of clearance of 5 or 15 papers as the case may be for promotion to the third and fifth term shall be adhered to by the University. Further, the attendance rules shall be amended by the University of Delhi and shall be brought in conformity with the attendance rules framed by the Bar Council of India. The permissible relaxation would be as per the rules framed by the Bar Council of India*

and manner of exercise shall be as so framed there under."

11. In ***Kiran Kumari*** (supra), another Division Bench of this Court referred to the decisions in ***Baldev Raj Sharma v. Bal Council of India & Ors.***, **1989 Supp. (2) SCC 91**, ***Bar Council of India & Another v. Aparna Basu Mallick & Ors.***, **(1994) 2 SCC 102**, ***S.N. Singh*** (supra) and expressed the view as under:

"13. In the light of the above, we find it difficult to appreciate as to how the requirements of 66% in each subject or as a condition of eligibility for appearance in the examination or the requirement of 66% attendance in the aggregate for purposes of granting the benefit of condonation in the shortfall can be said to be either illegal or arbitrary. The decisions delivered by the Supreme Court and by this Court to which we have referred above have in our view authoritatively held that the LLB course was a professional course in which the candidates have to ensure regular attendance of lectures and those who do not attend the stipulated percentage of lectures would not even be eligible for enrolment as members of the Bar. Such being the importance given to the attendance of lectures, there is no question of the requirement stipulated by the Rules being either irrational, unconstitutional or illegal in any manner. The quality of training which a candidate gets during the time he undergoes the course is directly proportional to the number of lectures that he attends. The failure of a

candidate to attend the requisite number of lectures as stipulated by the relevant rules can legitimately disentitle him to claim eligibility for appearing in the examination.

14. That brings us to the contention vehemently urged by Mr. Mittal that insistence upon 66% lectures in the aggregate as a condition precedent for the exercise of the power of condonation was irrational, for it amounts to empowering the competent authority on the one hand and denuding him of that power on the other. We do not think so. What is the minimum percentage of lectures which a candidate must attend in each subject or on the aggregate is a matter on which the academic bodies like the University and the Bar Council of India are entitled to take a decision. If in the opinion of the Bar Council and the University, a candidate cannot be said to have taken proper instructions or meaningfully undergone the course, unless he attends a minimum of 66% lectures in the aggregate, this Court cannot but respect that opinion. In matters relating to academics and standards of education, the Court would show deference to the opinion of the academicians unless a case of patent perversity is made out by the petitioners. The present is not, however, one such case where the requirement of the rule can be said to be so perverse or irrational as to call for the intervention of this Court. As a matter of fact, the minimum percentage of lectures having been fixed at 66%, still gives to the students

freedom to miss or abstain from 34% of the such lectures. That is a fairly large percentage of lectures which a student may miss for a variety of reasons including sickness or such other reasons beyond his control. No student can however claim that apart from 34% lectures which he is entitled to miss even without a cause, the shortage to make up 66% should be condoned if he shows good cause for the same."

12. In ***Smt. Deepti v. Vice Chancellor, University of Delhi***, **WP(C) No. 18051/2006** decided on 20.04.2007, a learned Single Judge of this Court has observed as follows:

"11. The main difference between the amended and un-amended provision is that while the un-amended provision pertained to the number of lectures delivered in a year, after amendment the provision relates to the number of lectures in each of the subjects and has reference, in the proviso, to the aggregate of lectures for the "semester examination". Thus, the Ordinance, by virtue of the said amendment, was sought to be brought in line with the provisions of Clause 3 of Section B of Part IV (Standards of Legal Education and Recognition of Degrees in Law for admission as Advocates) of the Bar Council of India Rules. The implication of this amendment is that rather than requiring an average of 66% attendance in the year, students preparing for the LL.B. Degree must attend 66% lectures in each subject in

order to be eligible to sit for semester examinations.

12. Unfortunately, somewhat of a dilemma has emerged. Although the University amended clause 2 (8) (a) of the Ordinance VII to be consistent with The Bar Council of India Rules, it did not bring about any change in Clause 2(8) (b) or 2 (9) (a), (b), (c) or (d) of the said Ordinance. This has created an apparent inconsistency in the language of the attendance rules. It seems that although amended clause 2 (8) (a) requires calculation of attendance on a subject-wise semester-wise basis, Clause 2 (8) (b) (albeit pertaining to the LL.M. Programme) and Clause 2 (9) (which refers to all courses in general and is not limited to the courses offered by the Law Faculty) continue to refer to attendance calculated on a yearly basis. There is no doubt that the piecemeal amendment brought about by the University in the Ordinance has introduced a certain degree of confusion."

2. Thereafter, the Division Bench has proceeded to state as follows:-

"13. We entirely agree with the aforesaid pronouncement of law. The University would have been well advised to compartmentalize the clauses in the Ordinance or put it differently so that such a situation could have been avoided, but the same has not yet been done. Be it noted, the learned counsel for the University submitted with all fairness that that the 1975 Rules have to prevail and clause 9 of the Ordinance VII does not apply to the students

who prosecute LL.B course. We have already accepted the said submission. As has been indicated earlier, the appellant has obtained 56% of attendance. That apart, she does not come within the relaxation clause. Thus, extension of benefit of relaxation does not arise.

13. Before parting with the case, we are obliged to state that the field of legal education has its own sacrosanctity. With the passage of time, the field of law is getting a larger canvas. A well organized system for imparting of education and training in law has become imperative. In a democratic society where the rule of law governs, a student of law has a role to play. Roscoe Pound has said "Law is experience developed by reason and applied continually in further experience". A student of law has to be a dedicated person as he is required to take the study of law seriously as pursuit of law does not countenance any kind of idleness. One may conceive wholesome idleness after a day"s energetic and effective work. An active mind is the mother of invention. A student prosecuting study in law, in order to become efficient in the stream of law, must completely devote to the learning and training. One should bear in mind that learning is an ornament to continuous education and education fundamentally is how one engages himself in acquiring further knowledge every day. If a law student does not attend lectures or obtain the requisite percentage of attendance, he cannot think of taking a leap to another year of study. Mercy does not come to his aid as law requires a student to digest his experience and gradually discover his own ignorance and put a progressive step thereafter."

3. We are of the considered opinion that the maternity leave could not have been put in a different compartment for the purpose of relaxation of attendence. In view of the aforesaid, the decision rendered by the learned single Judge to this extent suffers from an infirmity and is accordingly set aside. Be it noted, a peculiar circumstance has emerged in this case. Though we have allowed, appeal, we have asked Mr. M.J.S. Rupal whether the University has any objection to the benefit of relaxation to the two respondents. Regard being had to the special features of the case, Mr. M.J.S. Rupal has fairly stated that the University has no objection to give the benefit of relaxation to the respondent students. We record our appreciation for the statement made by Mr. M.J.S. Rupal after obtaining instructions from the University. We may also aptly note that the said concession has been given by the University as the result of the respondents have already been declared. Needless to say that when a case is decided and benefit of concession is given, the same cannot be cited as a precedent in future cases. There shall be no order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

JANUARY 10, 2011
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