

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 24.05.2010

Judgment delivered on: 31.5.2010

W.P.(C) No. 569/2010

Kangana Modi

.....Petitioner

and

W.P.(C) No. 2264/2010

Kusum

.....Petitioner

and

W.P.(C) No. 2267/2010

Ritika Jain

.....Petitioner

And

W.P.(C) No.2269/2010

Priyanka Aggarwal

.....Petitioner

and

W.P.(C) No.2270/2010

Gargi Maheshwari

.....Petitioner

Through: Mr. Gagan Chhabra with Mr.
Naveen Gaur and Mr. Vivek
Verma

Versus

National Institute of Fashion Technology
& Anr.

..... Respondents

Through: Mr. Vivek Tankha, ASG with
Ms. Vibha Datta Makhija with Mr.
Philemon Nongbi for respondent No.
1.
Mr. Anuij Aggarwal with Mr. Gaurav
Khanna for respondent No. 2/UOI.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. This common order shall dispose of a batch of five writ petitions bearing no. WP (C) Nos. 569/2010, 2264/2010, 2267/2010, 2269/2010 and W.P.(C) No. 2270/2010, filed by the petitioners who are students of different courses in National Institute of Fashion Technology, New Delhi. All these petitions raise a common question as all these petitioners were detained from appearing in their respective semester examinations on account of shortfall of their attendance. Out of these five cases, the petitioner in W.P.(C) No 569/2010 and W.P.(C) No. 2264/2010 seek relaxation in the shortfall of attendance on medical grounds. In W.P. (C) No. 2267/2010 and 2270/2010 the petitioners claim condonation of shortfall of attendance on account of reaching late in classes due to traffic congestion while in W.P. (C) No.2269/2010 the petitioner has claimed condonation on the ground that she could not attend classes due to the exigency of taking care of her mother who met with an accident.

2. Adumbrated relevant facts of each petition as per the petitioner are as follows:

- In W.P. (C) 569/2010 the petitioner is a student of IIIrd semester of Fashion Communication and had overall attendance of 74.25% and was short in two subjects of IT and HPOD with 64% and 63% respectively. She remained absent from 13.11.09 to 22.11.09 due to high fever and suspected swine flu and hence she made representations to the Director General on 25.11.09, 1.12.09, 16.12.09, 18.12.09 but they were rejected. Subsequently she appealed for appearing in the re-exams which were to be held in January, 2010 vide her request letters dated 12.1.10, 19.1.10 which were also rejected.
- In W.P.(C) 2264/2010 the petitioner is a student of VIIth semester of Fashion Design and had overall attendance of 63% and was short in two subjects of PD and Knitwear with 54% and 60% respectively. She remained absent from 20.10.09 to 30.10.09 due to typhoid and hence she made representations to the Director General, NIFT on 20.11.09, 24.11.09 and 3.12.09 but they were rejected. Subsequently, she appealed for appearing in the re-exams which were to be held in January,

2010 vide her letters dated 14.12.09, 14.1.10 which were also rejected.

- In W.P.(C) No. 2267/2010, the petitioner is a student of IIIrd semester of Masters in Fashion Management and had overall attendance of 78% and was short in two subjects of SCM & and FBM with 55 % and 58% respectively. She could not attend the first class on a number of days, reaching late due to traffic congestion. She made representations to the Director General for appearing in re-exams scheduled for January 2010 vide letters dated 9.12.09, 11.12.09 but the same were rejected.
- In W.P. (C) No. 2269/2010, the petitioner is a student of IIIrd semester of Masters in Fashion Management and had overall attendance of 72% and was short in two subjects of FBM and FMS with 58 % and 62% respectively. She had shortfall in attendance as she had to take care of her ailing mother who had suffered an accidental fall. She made representations on 27.11.09, 12.12.09 and her representation for attending the cluster program which were rejected. She then made representations for appearing in the re-exams to be held from January, 2010 which was rejected vide letter dated 22.1.10. Her grievance is also that her attendance in the subject of fashion

lifestyle& product appreciation which was 91% but was not taken into account while calculating the attendance.

- In W.P. (C) No. 2270/2010, the petitioner is a student of IIIrd semester of Masters in Fashion Management and had overall attendance of 79% and was short in the subject of Fashion marketing with 61%. She could not attend the first class on a number of days, reaching late due to traffic congestion on the Delhi-U.P border and she made representations on 21.11.09,12.12.09,13.1.10 and 18.1.10 which were rejected and also for appearing in re-exams scheduled for January 2010 on 28.11.09 which was rejected vide letter dated 22.1.10.

3. As per the attendance policy of the respondent institute the minimum requirement is an overall attendance of 75% and 65% in each subject to appear in the end semester examinations and the petitioners unable to fulfill the same, were not allowed to appear in the examination commencing from 2.12.09 vide impugned letter dated 14.12.09. The appeal filed by these petitioners to appear in the re-exams scheduled for January, 2010 was also

rejected vide impugned letter dated 22.01.10. Feeling aggrieved with the same, the petitioners have approached this court.

4. Counsel for the petitioners submitted that so far the writ petition Nos. 569/2010, 2264/2010 are concerned, the case of the petitioners deserves consideration by the respondent as they could not attend some of the classes due to medical exigencies. The contention of counsel for the petitioner was that so far Kangana Modi (in W.P.(C) No.569/2010) is concerned, she could not attend the classes between 13th November, 2009 to 22nd November, 2009 on account of high fever and suspected swine flu. Counsel further submitted that before the said period of illness, the petitioner had attended over 78% classes in aggregate and 70% in each subject. Counsel thus submitted that there was a shortfall of just 2 lectures, otherwise she would have fulfilled the required criteria.

5. As regards the petitioner Kusum (in W.P.(C) No.2264/2010) is concerned, the contention of counsel for the petitioner was that she could not attend the classes from 20th October, 2009 to 30th

October, 2009 on account of suffering from typhoid. Counsel submitted that prior to the said period, the petitioner had been quite regular in attending the classes and her overall attendance was 80% in aggregate and more than 70% subjectwise. Counsel further submitted that if the said period of typhoid is not taken into consideration then the petitioner Kusum fulfilled the required criteria of attendance.

6. So far the students in W.P.(C) Nos.2270/2010, 2269/2010 and 2267/2010 are concerned, counsel submitted that all these students are the students of post graduate course i.e. Master of Fashion Management and were quite regular in attending the classes. There is only shortfall of few lectures, which they could not attend due to certain exceptional circumstances.

7. In the case of Gargi Maheshwari (in W.P. (C) No. 2270/2010), counsel submitted that she is residing in Modi Nagar (U.P.) and was using public transport to cover a distance of 50 km each side and on few occasions due to heavy rains she reached late and thus was not given attendance by the concerned faculty.

Counsel further submitted that otherwise she had attended all subsequent classes of the same day but still was not given attendance in the first class although the teacher allowed the other students to attend the classes.

8. As regards Priyanka Aggarwal (in W.P.(C) No.2269/2010), counsel submitted her mother had an accidental fall in her house due to which she remained hospitalized and bedridden for about six months and the petitioner had to attend to her ailing mother due to which she some times reached late by 5 or 10 minutes in the class, but was not given attendance. Even father of the petitioner was posted out of station i.e. at Mathura, so the petitioner being all alone in the family was required to take care of her ailing mother. Counsel further submitted that otherwise the petitioner was quite regular in her classes and is a meritorious student and was sent by the respondent to Switzerland in a summer exchange programme.

9. Counsel for the respondent further submitted that in the case of Gargi Maheshwari (in W.P.(C) No.2270/2010), she was

informed by the respondent that she was short of attendance in one particular subject vide communication dated 27th November, 2009 whereas under the RTI information supplied to the father of the petitioner it revealed that she was in fact short of attendance in two subjects. The contention of counsel for the petitioner was that the respondents are not maintaining the attendance records properly and in the case of Priyanka Aggarwal (in W.P. (C) No. 2269/2010) she was also informed that she was having shortage of attendance in two subjects while under the RTI information supplied, it is shown she had shortage only in one subject.

10. Counsel for the petitioner further submitted that in the case of one student Yoonji Lee, who was having 57% attendance subject wise but was still allowed to sit in the re-exam held in January, 2010. The contention of counsel for the petitioner was that the relaxation was granted to this student on medical grounds but on the same medical ground the petitioner Kangana Modi and Kusum were not given indulgence by the respondent. Similarly counsel submitted that in the case of one Rishika

Jairath, who was doing a Masters Degree course and her attendance was 58% in one subject and was granted relaxation by the respondent on the ground that she was commuting from Gurgaon and was not able to attend her first class due to traffic jams. The case of one Sabeer Alam was also entertained by the respondent who was allowed to sit in the exams although he had also shortage of attendance in one of the subjects and the relaxation to this candidate was given by the respondent as he was not able to attend the classes in the said subject during the Ramzan period.

11. Refuting the said submissions of counsel for the petitioner, counsel for the respondent submitted that the respondent in some of the cases has allowed the students to appear in the exams in consonance with the Students Attendance Policy. The contention of the counsel was that under the said policy there cannot be any compromise so far the overall attendance of a student is concerned, which as per the policy has been laid down as 75% overall and 65% subjectwise. Counsel thus submitted that in the

case of Yoonji Lee, she had overall 75% attendance and in the modular course subject she had 65% attendance. So far the case of Rishika Jairath is concerned, counsel submitted that her overall attendance was 85%, 95%, 100% and except in one subject her attendance fell short, therefore, she was also permitted to appear in her exams. Counsel further submitted that in the case of petitioner Kangana Modi, she had secured 74% attendance overall and in the non-core subjects of HPOD & IT she had secured 63 % and 64% attendance respectively. Counsel further submitted that the petitioner was duly warned through reminders sent to her on 31.8.09, 8.10.09 and 26.11.09, reminding her to complete the shortfall of her attendance. Counsel submitted that same is the case of Priyanka Aggarwal as she had secured 70% overall attendance while in the two core subjects of FBM and FMS, she had 52% & 65% respectively. In the case of Ritika Jain although she had 77% in the overall but in FBM, which is a core subject, she had only 52% attendance and in the non core subject of SCM she had 52% attendance. In

the case of Gargi Maheshwari she had 78% overall attendance but in FBM and Strat which are core subjects she had 64% and 61% attendance respectively. As regards the case of Kusum, she had 68% overall attendance and in the non core subject of Knitwear she had 60% attendance and in the core subject of PD she had 59%. Counsel thus submitted that reasons given by these candidates were not found satisfactory to grant them relaxation in comparison to the other candidates in whose case the relaxation was given keeping in view their attendance. Counsel further submitted that not only these 4-5 petitioners, but there are 104 students of various centers of NIFT all over India who were similarly placed but they were not permitted to appear in the exams due to shortfall in attendance. Counsel further submitted that the cases of very deserving candidates were considered that too where they fulfilled the criteria of overall attendance and even in the individual subjects they had high attendance and their shortfall in one or two subjects was quite marginal. Counsel further submitted that the respondent has applied the

attendance policy uniformly in all the centers of the respondent and there is no malice or ill will towards any of the students. Counsel thus submitted that so far graduate students are concerned, they can now continue with their III semester commencing from July 2010 and after qualifying the same they would be entitled to appear in the IV semester commencing from January 2011 and same in the case of post graduate students as they would be entitled to continue the semester from July 2010.

12. In support of his arguments counsel for the respondent placed reliance on the following judgments:

1. Director(Studies), Dr. Ambedkar Institute of Hotel Management Nutrition & Catering Technology, Chandigarh & Ors. Vs. Vaibhav Singh Chauhan, (2009) 1 SCC 59.
2. A.P. Christrians Medical Educational Society Vs. Govt. of Andhra Pradesh & Anr. (1986) 2 SCC 667.
3. Central Board of Secondary Education Vs. Nikhil Gulati & Anr. 1998 (1) SCALE 634.

13. I have heard learned counsel for the parties at considerable length and gone through the minutes of the meeting of the Board of Governors and given my conscious consideration

to the facts of the each case and the arguments advanced by the counsel for the parties.

14. Five petitioners have approached this Court so as to challenge the decision of the respondent whereby the appeal of these petitioners to seek relaxation in their shortfall of attendance was rejected. Three students were undergoing post graduate course i.e. Master of Fashion Management while two others were students of Fashion Communication and Fashion Design, which is a graduate course for a period of four years. The exact status of these petitioners can be succinctly given as under:-

S. No.	Name	Shortage of attendance subject-wise as per petitioner	Overall % as per petitioner	Shortage of attendance subject-wise as per respondent	Overall % as per respondent	Ground
1.	Kangana Modi (FC) – III sem	HPOD-63% (Non Core) IT Interface- 64% (Non Core)	74.25 %	HPOD-63% (Non Core) IT Interface- 64% (Non Core)	74%	She could not attend classes from 12.11.2009 to 23.11.2009 due to suspected swine flu, as a result of which her attendance has fallen short.

2.	Kusum (FD) – VII sem	PD (Core) - 54% Knitwear (non –core) 60%	63%	PD – 59% (Core) Knitwear – 60% (Non Core)	68%	She has been suffering from severe back pain. She also informed that from 20 th October to 30 th October, 2009 she suffered from Typhoid and was on bed rest, as a result of which her attendance has fallen short.
3.	Ritika Jain (MFM) – III sem	FBM -58% (Core) SCM -55% (Non Core)	78%	FBM -52% (Core) SCM -50% (Non Core)	77%	For attending classes at NIFT she comes by public transport from Ashok Vihar (North Delhi). Due to heavy traffic on roads, in few classes she reached late and she has been marked absent, as a result of which her attendance has fallen short in two subjects.
4.	Priyanka Agarwal (MFM) – III sem, NIFT Delhi Centre	FBM-58% (Core) FMS-62% (Core)	72%	FBM-52% (Core) FMS-65% (Core) SCM-56% (Non Core)	70%	She could not attend classes because her mother met with an accident and was bed ridden for six months. During this period her father being a govt. employee was transferred to Agra, UP. During this period she

						had to help her sick mother and her younger sister, as a result of which her attendance has fallen short.
5.	Gargi Maheshwari (MFM) – III sem	Strat - 61% (Core)	79%	FBM -64% (Core) Strat – 61% (Core)	78%	For attending classes she comes by public transport from Modinagar, U.P, about 50 Kms away from Delhi. Due to heavy traffic on roads, in few classes she reached late by about 5 to 7 minutes. Though she has attended the class, but she has been marked absent, as a result of which her attendance has fallen short in two subjects.

15. Clause 4(IV) of the student attendance policy of the respondent institute which prescribes the minimum necessary attendance which a student is required to have in the total sessions/classes attended by him and also in each individual subject taught in the semester is as under:-

“4(IV) The attendance norm for a student for being allowed to appear in the re-exams is that a student should have an overall attendance of at least 50% during the semester.”

16. The said clause 4(IV) was amended as the Academic Affairs Committee of the respondent found that as per the said norms, the students who fall short of attendance below the required 65% minimum attendance in the individual subjects were not allowed to take re-exam even in those cases where due to unavoidable/medical reasons they were not able to meet the required target of 65% attendance. The Academic Affairs Committee thus amended para 4(II), para 4(IV) and the same was replaced with the following sub-rule, which is reproduced as under:-

“The students who have an over all minimum attendance of the required 75% but where attendance in an individual subject taught on a modular basis is less than the required 65% (due to medical or other unavoidable reasons) may be allowed to write the main examinations with prior permission, to be obtained on a case to case basis strictly on merits, from the Director General. However, they shall be required to submit special assignments as may be prescribed by order within a clearly specified time frame to

make up for their attendance default. The COE of the respective Centre after consultation with the CC of the department will formulate the special assignments related to the topic that the student missed out in the module and inform the student well in time. The final result of the student in the subject will be decided on the basis of their cumulative performance in all aspects of the course including the marks obtained in the special assignments. In each such case, the Director General shall take a decision based on merits and such decision shall be final.”

17. With the introduction of the said amendment, the Director General could give the relaxation where the attendance of the student in individual subjects taught on a modular basis is less than the required 65% either due to medical or other unavoidable reasons, but with the pre-requisite of minimum overall attendance of the required 75%. The said rule further postulates that in such a circumstance the case of each individual student for allowing him/her to write the main examinations would be strictly examined on merits and in all such cases the student would be required to submit special assignments within a specified time frame so as to make up for their attendance. A bare reading of the said rule evinces that there is no compromise so far the over

all minimum attendance of 75% is concerned and the relaxation could be considered only in individual subjects that too for a subject taught on modular basis, if a student due to certain medical or other unavoidable reasons was not able to secure the required attendance of 65%. The subjects which were taught on modular basis as per the counsel for the respondent, are non-core subjects and as per him, so far core subjects are concerned, there cannot be any relaxation even in the individual subjects. Counsel for the respondent has also placed on record various instances to show that in none of the cases where the student did not meet the required target of 75% in the over all attendance, relaxation was granted by the respondent irrespective of the reasons advanced by the candidate. The details of some of the students whose appeals were considered and allowed by the respondent to appear in the exams clearly shows that all these students met the target of 75% or more so far the overall attendance position was concerned and there was a shortfall in the non-core subjects

except in the case of Rishika Jairath in whose case there was a shortfall of attendance in one of the core subjects.

18. None of the petitioners in the present case has challenged the attendance policy of the respondent and, therefore, the case of those petitioners who do not meet the target of securing minimum 75% attendance in the overall subjects are not entitled to reappear in their respective exams. The petitioners Priyanka Agarwal, Kusum and Kangana Modi (in W.P. (C) No. 2269/10, 2264/10 and 569/10 respectively) since, they do not meet the said target of over all attendance of 75%, therefore, they are not entitled to reappear in their respective exams. I find merit in the submission of counsel for the respondent that the cases of these three students do not fall within the student attendance policy of the respondent and any indulgence shown to them would impact the discipline of the respondent institution. Counsel also apprised the Court that in all, 104 students all over the NIFT centers had been debarred from appearing in the July – December, 2009 semester end term exam/jury due to shortage of attendance and

out of these, 64 students made appeal to Director General and only 7 students were allowed on the basis of the individual merit of each case. Although other students are not before the Court, but certainly they will be demoralized if these three students are allowed to appear in the exams, even though they do not fulfill the attendance requirements of Student Attendance Policy of the respondents.

19. There is no royal road to education. Absenteeism has become chronic in the present day and it has to be cured by making the students realize that education teaches only those in attendance. Students take admissions in various courses and they are required to fulfill the laid down attendance norms of each University/college or institution. No doubt that because of youthful age, students sometimes do bunk classes or even sometimes due to certain exigencies, medical or otherwise, are not able to attend the classes, but for that the provision of abstaining from 25% in over all subjects and 35% in the core subjects has already been made by the respondent institute.

Further provision of relaxation has already been made if a student is short of attendance in modular subject/non-core subject if due to medical or other unavoidable reasons the student has not been able to attend his/her classes.

The courses in the cases hand are no doubt related to Fashion but the legal proposition as set out is similar to the case of ***Kiran Kumari Vs. Delhi University & Ors in W.P. (C) No. 9143/2007*** where the Hon'ble division Bench of this court was confronted with a case where the students of LLB course in the Delhi University, where the minimum attendance required is 66% overall and subject wise as well, were short of attendance. This court observed that:

"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."

The Apex court has time and again held that misplaced sympathy should not lead to granting relief to the students in academic matters. It would be useful to refer to the recent judgment of the Apex Court in the case of ***Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh v. Vaibhav Singh Chauhan***, (2009) 1 SCC 59, where it observed that:

"Before parting with this case, we would like to refer to the decisions of this Court which has repeatedly held that the High Court should not ordinarily interfere with the orders passed in educational matters by domestic tribunals set up by educational institutions vide Board of High School & Intermediate Education v. Bagleshwar Prasad⁶ (vide AIR para 12), J.P. Kulshrestha (Dr.) v. Allahabad University⁷ (vide SCC para 17 : AIR para 17), Rajendra Prasad Mathur v. Karnataka University⁸ (vide SCC para 7 : AIR para 7). We wish to reiterate the view taken in the above decisions, and further state that the High Courts should not ordinarily interfere with the functioning and orders of the educational authorities unless there is clear violation of some statutory rule or legal principle. Also, there must be strict purity in the examinations of educational institutions and no sympathy

or leniency should be shown to candidates who resort to unfair means in the examinations.”

Hence, on the touchstone of the above said principles, there can be no compromise with the said conditions laid down by the respondent in their attendance policy. Moreover it is not the case of the petitioners that the said policy is arbitrary or irrational and should be struck down by the Court. This Court can be sympathetic with these students, but the sympathy and emotions cannot override the academic standards set out in the policy of the respondent, which the students were well versed with. Therefore, the petitioners, namely, Priyanka Agarwal, Kusum, Kangana Modi are thus not entitled to the grant of any kind of relaxation in their attendance. The writ petitions of these petitioners are accordingly dismissed.

20. So far the case of petitioners Ritika Jain and Gargi Maheshwari are concerned, it is not in dispute between the parties that both of them had overall attendance of more than 75%. According to the respondent, Ms. Ritika Jain secured 52% in FBM core subject and 50% in SCM non core subject while Gargi

Maheshwari secured 64% in FBM core subject and 61% in Strat core subject. Both these petitioners have given a ground that they could not attend the classes in the said subjects being held up in the traffic jams in the peak hours of the morning. The respondent institute has already allowed Rishika Jairath, a student of FMS III semester to appear in re-exam although she had 58% attendance in the core subject, which is below 65%, although the stand taken by the counsel for the respondent was that the respondent has not allowed any relaxation to any student if there was a shortfall of attendance below 65% in the core subject. The ground given by Rishika Jairath was also that on couple of occasions she could not reach to attend the first class of individual subjects as she was commuting from Gurgaon and the faculty upon finding that in fact she had attended subsequent classes on the same day in other subjects, allowed her to appear in the re-exam. The position of these two students are in no way dissimilar to Rishika Jairath as their attendance chart in the individual subjects clearly shows that the student was attending the other subsequent classes on

the same day, but missed the morning session beginning from 9.15 a.m. till 11.15 a.m. on being late. Although these students did remain absent throughout the day on some occasions and did not attend even a single class on those days, but certainly if these students are given the benefit of not attending the morning session due to traffic congestion for those days when they had attended the remaining classes on the same day, then certainly they can make up the shortfall of the attendance to be entitled to reappear in their said exams. These two petitioners are thus entitled to reappear in their exams of December, 2009 of III semester of MFM on parity with the case of Rishika Jairath and, therefore, the respondent is directed to hold the examination for them within a period of 20 days from the date of this order.

21. With the said directions, these petitions are disposed of.

May 31, 2010
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KAILASH GAMBHIR, J.