

**IN THE HIGH COURT OF MEGHALAYA AT
SHILONG**

: ORDER :

MC [WP(C)] No.211 of 2017
In WP (C) No.52 of 2017

Miss Anan Ashraf ... Applicant

-Versus-

Union of India and others ... Respondents

Date of Order : 29.11.2017

PRESENT

HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE
HON'BLE SHRI JUSTICE S.R. SEN

Shri R Mazumdar, for the applicant
Shri K Paul, for the respondent No.1
Shri A Khan, for the respondents No.2 to 4

BY THE COURT: (per Hon'ble the Chief Justice) (ORAL)

The petitioner was pursuing her graduation course with the respondent-University but was not permitted to take the Third Semester examination due to shortage of the requisite attendance. Aggrieved, the petitioner approached this Court in the earlier writ petition bearing No. 388 of 2016, essentially with the submissions that she remained deficient in the requisite attendance because of her long-drawn illness. It was also submitted that if the petitioner was debarred from appearance in the Third Semester examination, the situation might arise that she would forfeit the entire course because of Clause 10.7 of the Ordinance of the respondent-University.

At the given stage, it was noticed that even after the permissible relaxation, the petitioner would not be able to make up the deficiency of attendance. It was also noticed that the petitioner had not challenged the relevant Ordinance; and in the absence of any such challenge, the submissions of the petitioner could not have been considered. Thus, the

prayer as made on behalf of the petitioner to withdraw with liberty to file afresh was granted.

Thereafter, the petitioner has filed the present petition seeking to question the concerned Clauses of Ordinance - 10 and for the consequential relief. After finding a prima facie case, the writ petition has been admitted for hearing.

After filing of the counter affidavit by the respondents and after having heard the learned counsel for the parties, this Court found a case for grant of interim relief so as to allow the petitioner to pursue her course further without conferring any additional right on her. Accordingly, in the order dated 22.03.2017, this Court observed and directed as under:-

“Having given thoughtful consideration to the submissions of the learned counsel for the parties, we find that in the totality of facts and circumstances, in relation to the present petitioner too, a case for grant of conditional interim relief is made out.

The question as regards the effect of the Transfer Certificate issued to the petitioner is also a debatable one. Not much of comments appear requisite at this stage but suffice it to notice for the present purpose that no specific application of the petitioner for issuance of any such Transfer Certificate has been placed before us and the learned counsel for the respondent-University could not deny the fact that the petitioner had not applied for the same.

The other aspects of the matter would, of course, call for consideration at the final hearing of this writ petition but at the present juncture, as other grounds raised in this petition are similar to those raised in Risha Sarmah case (supra), we find it just and proper that an interim relief in parity be granted to the present petitioner but while making it clear that this interim arrangement will not be confer any additional right in the petitioner and all the objections of the respondents shall also be open for consideration at the final hearing.

Thus, MC [WP(C)] No.25 of 2017 stands disposed of with the directions that as an interim arrangement, the respondent shall permit the petitioner to attend the classes of Fourth semester after she makes payment of all the requisite fees and fulfills all other requirement, of course, at her own risk and subject to the final order to be passed in this petition. It is made clear that the interim relief granted shall not confer any additional right in the petitioner.

*The respondents shall file their counter affidavits within three weeks.
List this matter after three weeks, as prayed.”*

It appears that after passing of the order aforesaid, the petitioner has not only attended the classes of Fourth Semester but has even cleared her Fourth Semester and has further been admitted by the respondent-University to the Fifth Semester.

The petitioner has now filed another application for further interim relief that she may be permitted to undertake the Fifth Semester End Examination as also the Third Semester End Examination that had remained due and is likely to be held alongside the Fifth Semester examination. It is pointed out during the course of submissions that the examinations are likely to commence from 01.12.2017.

A reply to this application has been filed on behalf of the respondent-University, inter alia, with the submissions that so far Fifth Semester is concerned, the petitioner has already been permitted to attend the classes thereof and is to appear in the examination; and in that regard, no permission as such is required. However, as regards Third Semester Examination, the answering respondent would submit that the petitioner having failed to secure the prescribed percentage of attendance, is ineligible to appear.

The question relating to the prescribed percentage of attendance are forming the core of issues involved in the writ petition and would call for adjudication at the time of final disposal of the writ petition. The position obtaining at present is that under the interim order of the Court, the petitioner has been admitted to Fourth Semester and after having passed through the Fourth Semester, she has been admitted to attend the classes of Fifth Semester too and not much of objection is raised on behalf of the respondent-University in allowing her to take the Fifth Semester Examination. True it is that the question of shortage of attendance in the Third Semester would be adjudicated in the writ petition but we are clearly of the view that until such adjudication, when Third Semester Examination are nevertheless to be held alongside Fifth Semester Examination, if necessary arrangement is not made in continuity with the earlier interim arrangement, the petitioner may suffer irreparable injury and the very

purpose of the petition may get frustrated. On the other hand, no prejudice would be caused to the respondent-University if the petitioner is permitted to appear in the said Third Semester Examination too while keeping on hold the result of such examination until final disposal of this writ petition.

Accordingly, MC [WP(C)] No.211 of 2017 stands disposed of with the directions that as further interim arrangement, the respondents shall permit the petitioner to appear in Fifth Semester Examination as also in Third Semester Examination, of course, after making payment of all the requisite fees and fulfillment of other requirements at her own risk and subject to the final order to be passed in the writ petition. It is, however, made clear that the result of Third Semester Examination shall not be declared without specific order of this Court. Of course, the result of Fifth Semester Examination may be provisionally declared and if successful, the petitioner may be permitted to pursue the course further in the next semester.

Needless to reiterate that this interim arrangement shall not confer any additional right in the petitioner.

The writ petition be listed for final hearing in the month of March 2018.

JUDGE

CHIEF JUSTICE