

Letter to Deans/Heads/Principals with regard to DUTA Dharna



UNIVERSITY OF DELHI दिल्ली विश्वविद्यालय

REGISTRAR

No. SPA/R/2012/R-3332
10th January, 2012

Dear Colleague,

Please find enclosed a copy of the letter from the Registrar dated 10.01.2012 addressed to the Secretary DUTA in connection with the call for day-long dharna – outside the office of the Vice-Chancellor on January 12, 2012 from 11 am to 4 pm – which has been issued by DUTA.

This call for a dharna is in violation of the standing orders of the Hon'ble Delhi High Court. (A copy of the order of the Hon'ble Delhi High Court dated 15.11.2010 in W.P.(C) 7248/2010 in *M. R. Gupta Vs. University of Delhi & Ors.* is available on the University website). Any action on the part of teachers in compliance with DUTA's call shall be deemed by the University to be a transgression of the Court's orders. Teachers absent from the College/Departments during these hours shall be treated to be on leave without pay. You are required to keep a record of attendance of all teachers during the proposed period of dharna, and to forward a copy of the same to the office of the Registrar on January 13, 2012.

The College/Department is furthermore required to cancel all leave except for medical emergencies.

Yours sincerely

Rus
10.1.12
Registrar

Encl: *As above.*

To

All Deans/Heads/Principals
Faculties/Departments/Colleges,
University of Delhi
Delhi-110007.



UNIVERSITY OF DELHI
दिल्ली विश्वविद्यालय

REGISTRAR

No. SPA/R/2012/R-3331
10th January, 2012

Mr. S. D. Siddiqui,
Secretary,
Delhi University Teachers' Association,
University of Delhi,
Delhi-110007.

Dear Mr. Siddiqui,

This is with reference to your letter dated 06.01.2012 and addressed to the Vice-Chancellor stating that DUTA shall be organizing a day-long dharna outside the office of the Vice-Chancellor during office hours on January 12, 2012. This is a working day in the University. Press reports indicate that DUTA has appealed to the teachers of the Colleges and Departments of the University to participate in the dharna.

The University has been seized of the various issues raised in your letter. Many of these matters have already been taken up by the competent statutory bodies of the University. Selection Committees for promotions are being regularly held and the process shall continue. The University is awaiting the recommendations of the Committee set up by the UGC to review the UGC Regulations, 2010 so that the appointment of Assistant Professors and appointment/promotions to the post of Associate Professors and Professors can be taken up in full measure. As you are aware, the matters pertaining to conversion of CPF to GPF and that of pensions is *sub-judice*. The University also notes that no letters/communication on any of the above points has been received from DUTA.

The University is conscious that DUTA is a teacher welfare association and is happy to receive any suggestions that will have the potential to enhance measures for the welfare of teachers.

The University of Delhi categorically informs you that staging the proposed dharna in the campus would lead to severe disruption of the academic and administrative functioning of the University. In this connection, the University draws your attention to the order of the Hon'ble Delhi High Court dated 15.11.2010 in W.P. (C) 7248/2010 in *M.R. Gupta v. University of Delhi and Ors* (copies enclosed). Organizing, holding and participating in such a dharna is violative of the said order of the Hon'ble High Court.

You are hereby directed to desist from staging /organizing/participating in the proposed dharna as indicated in your letter. The office-bearers of DUTA are urged to meet the Registrar and hand over a copy of their grievances, if any. The University is committed to the welfare of the teaching community and shall be looking into all the matters that may be raised therein with the utmost sympathy.

Yours sincerely

Rus
10.1.12
Registrar

Encl: As above.

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

% Decided on 15.11.2010

+ W.P.(C) 7248/2010

PROF. M.R. GUPTA Petitioner
Through: Mr.Saurabh Prakash, Advocate

versus

UNIVERSITY OF DELHI AND ORS. Respondents
Through: Mr.V.P.Singh, Sr.Advocate with
Mr.M.J.S.Rupal, Advocate for R-1&2
Mr. Sunil Gupta, Mr.V.K.Rao, Sr.
Advs. with Mr.Saket Sikri, Adv. for
R-3 to 6
Mr.Amitesh Kumar, Adv. for R-7
Mr.Neeraj Choudhary, Adv. for R-8
Dr. Aurobindo Ghose, Adv. for R-9
Mr. A.P.S. Ahluwalia, Sr. Adv. with
Mr.S.S. Ahluwalia, Adv. for R-11
Ms. Manisha Singh, Mr.Amit Bansal,
Advocates for R-12
Mr.Krishan Mahajan, Adv. for R-13
and 17
Ms.Maninder Acharya, Adv for R-14
& R-15
Ms. Beenashaw Soni, Adv. for R-16
Mr. Anurag Mathur, Adv. for R-18
Mr.Rajinder Dhawan and Mr.B.S.
Rana, Advocates for R-19
Mr. Jayant Mehta, Adv. for Maharaja
Agrasen College

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

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

DIPAK MISRA, CJ

In this public interest litigation the petitioner, a retired professor, as *pro bono publico*, has invoked the jurisdiction of this Court under Article

226 of the Constitution of India seeking the following reliefs:

“(a) directing respondents 3 to 6, all their teacher members and all other teachers to forthwith start teaching the new syllabi for all the prescribed 13 under-graduate science courses according to the semester system as directed by the University and to complete it before the examinations scheduled from December 6, 2010 onwards;

(b) directing respondents No. 3 to 6 not to continue any strike / dharna and to declare such forms of protests by teachers as illegal and / or unconstitutional;

(c) directing respondent No.1 and / or the relevant college managements to implement order dated 12.8.2010 of Respondent No.2 under Statute 11-G(4) of the University of Delhi Act, 1922 and the policy decision of the University of ‘No Work-No Pay’ against those teachers who are resorting to strikes, dharnas and / or not teaching the students in semester mode / according to the new syllabi in the concerned science courses;

(d) directing respondent no.1 and / or the relevant college managements to take disciplinary action against the erring teachers who have not given full effect to the implementation of semester system at undergraduate level in the 13 science courses in the current academic year 2010-2011;

(e) directing the UGC to withdraw all funding of those colleges that do not take immediate steps to make their teachers follow the semester system as directed by the Delhi University;

(f) Pass such and further orders as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

2. When this matter was listed on 29th October, 2010 after noting certain aspects the following order came to be passed:

“Learned counsel for the petitioner submitted that the present case having a different scenario, this court may command the respondents to teach and not to go on strike so that the students can participate in the semester examinations.

In the course of hearing, a suggestion was given to Mr.Rao, learned senior counsel for the representing respondents No.3 to 6.

Mr.Rao, after obtaining instructions from the competent authority of Delhi University Teachers Association (DUTA), submitted that the strike shall be withdrawn today and the teachers shall start teaching with effect from today.

However, it is submitted by Mr.Rao that the University would be well advised to take the teachers into confidence before introducing the semester System. The facet shall be debated after the counter affidavits are filed. As undertaken by Mr.Rao, learned senior counsel for the respondents No. 3 to 6, no deviation would be tolerated and teachers must join and start teaching from today. In case of any kind of deviancy, this court shall take a serious view of the matter.

Call on date fixed.”

3. Today when the matter was taken up for hearing, Mr. Sunil Gupta, learned senior counsel appearing for respondent Nos. 3 to 6, namely, the Secretary, the Joint Secretary and Treasurer of Delhi University Teachers Association (for short ‘DUTA’), submitted that the University has imposed the semester system on the teachers in flagrant violation of Sections 23, 30 and 31 of Delhi University Act, 1922 (for short ‘the 1922 Act’). It is urged by him that the Vice-Chancellor, in the facts and circumstances of the case, could not have exercised the emergency powers bestowed on him under Statute 11G(4) read with the provisions of the 1922 Act as such exercise of power is impermissible. The learned senior counsel submitted that if there is a change in the mode of teaching and introduction of a different system, there has to be deliberation, debate and discussion in the academic council and the executive council and the same could not have been ostracized at the whim and fancy of the Vice-Chancellor by usurpation of emergency power.

It is also contended by him that the power exercised by the Vice-Chancellor tantamounts to colourable exercise of power which the law does not countenance. Quite apart from the above, a submission has been propounded by him that the High Court, in exercise of power under Article 226 of the Constitution of India, should not issue a writ of mandamus unless it is found that there is violation of any statutory provision. To put it differently, Mr. Gupta would submit that issue of a command does not arise when there is no violation of any kind of law.

4. Mr. V.P. Singh, learned senior counsel assisted by Mr. Mohinder J.S. Rupal, learned standing counsel for the Delhi University and Mr. Saurabh Prakash, learned counsel for the petitioner submitted that whether the Vice-Chancellor does possess the power or not and whether there is violation of procedure in exercise of such power can be a matter of debate and adjudication but when the teachers themselves had not come forward but had taken the law unto themselves by taking recourse to strike and abstaining from teaching, such a plea is unsustainable. It is urged by them that the teachers who have a sacrosanct duty to impart education cannot play with the lives of the students and jeopardize their career however bonafidely and honestly they may harbour the idea that they have a point in law to canvass.

5. At this juncture, we enquired from Mr. Singh, learned senior counsel for the University about certain aspects which we proceed to enumerate. We have been apprised that there are 85 colleges which are affiliated to Delhi University. Out of the said 85 colleges, in 31 colleges in 13 courses the

semester system was introduced with effect from 21st July, 2010. After introduction of the said system, a cavil erupted and the teachers belonging to the aforesaid DUTA went on strike. The learned senior counsel submitted that despite best efforts, no solution could be arrived at and thereafter the present public interest litigation has been preferred by a retired professor.

6. Mr.Singh also apprised this Court that out of 31 colleges, 21 colleges have communicated their confirmation to the University that they are following the semester system and the teachers teaching therein are teaching as per the semester system and they have not taken path to any kind of deviancy after the order dated 29th October, 2010.

7. Be it noted, a student association has also filed another public interest litigation forming the subject matter of WP(C) No. 7658/2010 highlighting that the students are interested to be imparted teaching and they do not want that their careers to be destroyed by non-imparting of teaching which would eventually result in non-appearance in the examination.

8. At this juncture, it was thought apt to enquire from the other respondents about the steps taken by them. Dr. Aurobindo Ghose, learned counsel for respondent No.9, Bhaskaracharya College of Applied Sciences, stated that the said College has already introduced the semester system and all teachers are teaching as per the said semester method. Mr. A.P.S. Ahluwalia, learned senior counsel appearing for Respondent No.11, Deshbandhu College, also echoed what Dr. Aurobindo Ghose has stated. Ms. Manisha Singh, learned counsel appearing for Respondent No.12,

namely, Gargi College, also submitted that the College has no problem for imparting education in the semester system and all the teachers are cooperating. Mr. Krishan Mahajan, learned counsel appearing for Respondent No.13, Hindu College, submitted that barring the stream of zoology, in all other branches the semester system is being followed. The learned counsel apprised us that the teachers in the department of zoology are not following the semester system but the annual system as a result of which there is a discordant note. As far as respondent No.14, Miranda House, is concerned, it is put forth by Ms. Maninder Acharya, learned counsel that barring ten teachers in English, one in zoology and three in physics, all other teachers are teaching as per the semester method. It is further urged by her that as far as Respondent No.15, namely, Motilal Nehru College is concerned the teachers have given an undertaking that they will teach as per the ordinance mode. As far as Respondent No.16 Rajdhani College is concerned, we have been apprised by Ms. Beenashaw Soni, learned counsel that majority of the teachers in the said college are not following the semester system. So far as Respondent No.17, Ramjas College, is concerned, it is submitted by Mr. Krishan Mahajan, learned counsel that all the teachers are imparting education in the semester mode and there is no difficulty on that score. Similar is the submission of Mr. Anurag Mathur, learned counsel who has appeared on behalf of Respondent No.18, namely, Shivaji College. As far as Respondent No.19 Sri Aurobindo College is concerned, barring chemistry and zoology, all the teachers are imparting education as per the semester method.

9. We have been apprised by Mr.Singh and Mr.Rupal, learned counsel for the University, that Kirori Mal College has not implemented the semester mode.

10. At this stage, we may also take note of one aspect that in the first year of admission in the Delhi University, 55000 students have taken admission out of which in science faculties in which semester system has been introduced, 7800 students are involved. It is contended by Mr.Singh and Mr. Rupal that all the students have filled up the forms for being taught in the semester mode. Quite apart from the above, it is put forth by them that barring a few teachers who are imparting teaching to hardly a thousand students, all other teachers are cooperating.

11. Regard being had to the totality of circumstances, we are inclined to think that three questions, namely, whether this Court at this juncture should debate on the validity of the introduction of the semester system on the anvil of the 1922 Act as vehemently urged by Mr.Gupta or deal with the matter as an interim measure to see that the students are taught and not suffer from any kind of difficulty and not waste time, for time is the most precious thing in a man's life and more precious in the life of a student; secondly, whether a writ of mandamus can be issued or not, and thirdly, whether the teachers can go on strike and not teach in the education system as introduced by the University and claim their salary, emerge for consideration.

12. As far as the first aspect is concerned, the legal debate can be held, as we are inclined to think, at a later stage. The teachers by and large, as we

perceive, are following the semester system and the students are being taught. Though Mr. Gupta being instructed by some teachers had to make an enormous complaint that there is no possibility of buzzing an inch from the stand that they have to teach in the annual mode and not by the semester system, yet teaching is not a war field where one fights for inches when one performs one's duty in all sacrosanctity towards the students. Thus, the issue has to be deferred despite the submissions of Mr. Gupta with immense vehemence on behalf of DUTA which he represents.

13. Presently, we shall proceed to deal with the second facet. It has to be remembered that in a democratic body polity, governance is the primary factor. Governance in the field of education is the genesis of good governance in a democracy where Rule of Law prevails. The largest democracy is known for its governance by Rule of Law. From the ancient days, this country had respected education and in fact almost 2300 years back, Kautilya had said, "*parents who do not send their children to school to get education deserve to be punished by the king*". In the first decade of twenty-first century, it is inconceivable that the teachers should take law unto their own hands and not allow the students to be taught in the mode prescribed by the University, a statutory authority, on the foundation that they have a cavil in law with the University for introduction of the semester system. True it is, they are entitled to file a substantive writ petition questioning the introduction of the semester system but it is unthinkable that they can take the law unto themselves and proclaim from the roof top "We are the law". It is absolutely impermissible in a country governed by law.

Quite apart from the above, it is apt to note that the respondent association has not called in question the constitutional validity of the Ordinance or any illegality by filing a petition on its own.

14. It is worth remembering that civilization, culture, economic growth, peace and harmony flow from good education. Education fosters an attitude in a person as a consequence of which he becomes disciplined, civilized and a man of compassion. A true teacher has the potentiality to influence the career and the character of a student and his influence continues for long. Albert Einstein had said “it is the supreme art of the teacher to awaken joy in creative expression and knowledge”. The imparting of training is also dependent upon the individual chemistry and personal patience. The capacity of a teacher can gradually change a student with slow osmosis. A teacher with experience has the requisite knowledge, both theoretical and practical. One can have experience only when he undergoes it. An experience is basically a harvest of knowledge and hence, it has been said that ‘practice is the supreme teacher’. This being the role of the teacher, the question that arises for consideration is whether they can take recourse to strike and refuse to teach. In this context, we may refer with profit to the decision in *Coimbatore District Central Cooperative Bank Vs. Coimbatore District Central Cooperative Bank Employees Assn. And Another*, (2007) 4 SCC 699, wherein their Lordships expressed the view that the persisting with illegal strike, unlawfully threatening others and preventing others from rejoining and receiving any pay warrants punishment.

15. In *Dr. P.G. Najpandey Vs. State of M.P. and Others*, AIR 2008 MP

55 in paragraph 11 and 12 it has been held as under:

“11. It should be borne in mind that in the name of demonstration or protestation, the life in a civilized society cannot be paralyzed, in the name of legitimate exercise of ones right to protest the fundamental right of others cannot be scuttled. In a democratic polity the fundamental right of each citizen is sacrosanct. The collective cannot destroy the same. No one, however big he may be should foster a misgiving that he can create a tremor in the fundamental rights of others and tremble the spine of the members of the society at large by forming a group or a political party. The splendor of right to move the glory to live with dignity by carrying out a lawful profession or calling cannot be abridged in the name of mass protest or mass demonstration. The collective protest cannot be allowed to take the shape of collective passion to project a fractured mind thereby creating a dent in the concept of 'Rule of law' and bringing in a concavity in the constitutional philosophy which sings the song of highly cherished fundamental rights of millions of people. Be it noted the rights of others cannot be crucified at the fanciful pedestal of a group or a party and by no stretch of imagination it can be guillotined in a cavalier fashion from any pupil. The law of this country does not so countenance.

12. The great society gets further nurtured and fostered by the high ideals of Rule of Law'. The essentiality of Rule of Law' cannot be allowed to be sent to the sky in a huge balloon to burst. The serenity of body polity cannot be permitted to be destroyed in the name of political pulse making a citizen 'A traveler betwixt the life and death'. The law should be allowed to reign supreme with the splendid vision, in its glorious resplendence.”

16. In this context, we may refer with profit to the decision in *Destruction of Public and Private Properties, In Re vs. State of Andhra Pradesh and others*, (2009) 5 SCC 212, wherein the Apex Court decried the mass destruction due to protests and how the liability has to be fixed. True, the same has been rendered in a different context but we are referring to the

same how the protest can be totally unconstitutional and damaging to the society. In this context, we may also refer with profit to a passage from Lord Denning as it finds place in his book 'What next in the Law':

“2. Recourse to law – In order to ensure this recourse, it is important that the law itself should provide adequate and efficient remedies for abuse or misuse of power from whatever quarter it may come. No matter who it is – who is guilty of the abuse or misuse. Be it government, national or local. Be it trade unions. Be it the press. Be it management. Be it labour. Whoever it be, no matter how powerful, the law should provide a remedy for the abuse or misuse of power, else the oppressed will get to the point when they will stand it no longer. They will find their own remedy. There will be anarchy.”

17. In this regard, we may fruitfully refer to the order dated 24th September, 2009 passed in Writ Petition No. 9821/2009 by a Division Bench of the High Court of Madhya Pradesh which is as follows:

“17. Regard being had to the aforesaid facets, we, as advised at present, observe that the Professors, the Lecturers, the Teachers and the non-teaching staff may have a right in law to agitate their grievance in a Court of Law. They may be entitled to the revised pay-scale as they claim. But the sixty-four thousand million dollar question is whether the mode and method adopted by them is justified? Can the Professors, Lecturers, Teachers and non-teaching staff paralyze the education system in a State, as a consequence of which the students are deprived of teaching, lose their time, cannot undertake examination and envision only darkness in future? When a student takes admission in a college or university it is expected that he shall be imparted education. In the days of yore, Chankya commanded that the parents deserve punishment if they do not send their children for getting education. The same was the philosophy in the ancient Greece. But today how does want conceive that the teachers will be on the streets to get their monetary claim by paralyzing the system of education? How can one conceive that they would stand in circles and block the road to create an impediment in the day-to-day movement of the life of the citizen? How

can one accept that students would suffer because of the teachers not holding examination and doing their duties? Strike is definitely not the way and by no stretch of imagination it can be said that it is their fundamental or legal right.”

18. It is worth noting that in certain countries a single day absence by way of strike from teaching is regarded as illegal and not treated as a legal protest. But in the case at hand, the Professors and teachers have gone on strike to cripple the education system.

19. In view of the aforesaid, we are inclined to think certain directions are to be issued so that the education system in Delhi University, in respect of the students who have undertaken to prosecute their studies through semester system, do not fall into peril. This Court has a role of *loco parentis* in a case of this nature.

20. Be it noted, the first semester examination has been scheduled to be held on 6th December, 2010. On a query being made from Mr. Singh, learned senior counsel appearing for the University, whether the students should be well prepared to appear, he fairly stated that there shall be some difficulty and the Delhi University has no objection to defer the examination by an appropriate span of time so that the students can properly be taught and appear in the examination. Mr. Singh also further conceded that the practical examination shall also be deferred as the same is scheduled to commence 23rd November, 2010.

21. In view of the aforesaid discussion, we proceed to issue following directions:

- i) The teachers serving in all 31 colleges, out of which in 13 colleges wherein semester system has been introduced as have been identified by the University shall teach in the semester mode and not deviate from the same as most of the colleges have followed it and students have no objection as submitted by Mr. S.N. Singh, learned counsel representing the students union in WP(C) No. 7658/2010.
- ii) The colleges which are facing difficulty in certain subjects may bring it to the notice of the University within three days so that the University shall dwell upon the problem, address to it with utmost objectivity and solve it so that the students would not face any kind of difficulty from being imparted education in the requisite semester method.
- iii) If any teacher does not cooperate in teaching as per the semester system, it would be treated as absenteeism and accordingly steps shall be taken by the management and the University would be at liberty to make alternate arrangement, for the simple reason education cannot be thrown to the Pacific ocean at the caprice of anyone.
- iv) The absenteeism shall not be counted towards leave.
- v) The deferment of the examination by the University shall be in consultation with all the colleges and the University Grants Commission.
- vi) The University shall constitute a three member Committee to address

the core issue as we are desirous that problem of such a nature should be amiably and amicably solved. Mr. Singh fairly stated that for the constitution of the Committee, they will request the UGC to nominate a reputed educationist. Mr. Amitesh Kumar, learned counsel appearing for the UGC fairly stated that if the University will send the request the UGC shall nominate a reputed educationist as a member of the Committee.

vii) The Committee shall go into all the facets as well as analyze arena for holding the examination at a proper time and in an appropriate manner.

22. Before parting with the aforesaid directions, Mr. Gupta submitted that as this Court has taken up the issue as it has immense impact on education, the things of the past should be given a decent burial. We appreciate the said submission. To put it differently, what Mr. Gupta has urged is that the teachers who had not cooperated or taught in the past should not be deprived of their salary. If the said teachers start teaching as per the semester system from 16.11.2010, as Mr. Singh, learned senior counsel for the University, concedes, they shall be paid their salary inclusive of arrears.

23. Let the matter be set out for final disposal on 13th December, 2010 at 2:15 PM for further hearing.

CHIEF JUSTICE

NOVEMBER 15, 2010
Pk/dk

MANMOHAN, J