

(2009) 03 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Owp. No. 202 of 2009

Bilal Ah. Wani and Others

APPELLANT

Vs

University of Kashmir

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Citation : (2011) 1 JKJ 108

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, Judge

1. In view of the urgency involved in this case as projected by learned counsel for the petitioner on 16th March 2009 that the examination for 7th

Semester of BE course is to start from 19th March, it was deemed appropriate to issue notice to Mr. Kawoosa, standing counsel for the

University of Kashmir. Mr. Kawoosa appears on behalf of respondent 1 & 2 and submits that he does not want to file the objection at this stage

but would like to argue the case on its merits.

2. Learned counsel for the petitioner in the writ petition has sought writ of mandamus to declare the impugned statute 15 of the university governing

the candidates admitted to four years BE course as unconstitutional being violative by Article 15 & 16. Learned counsel has further prayed for

issuance of writ of mandamus to command the respondents to allow the petitioner to appear in the 7th Semester Examination of BE course to be

held from 19th March 2009. The grounds for maintaining this petition have been detailed out in the writ petition, which inter alia provide that statute

15 of the university of Kashmir is unconstitutional as respondents are not conducting the supplementary examination in BE course after the result of previous semester are declared, as is being done for other professional course like MBBS, BUMS & MBA. It is further submitted that if

petitioners are not allowed to appear in the 7th Semester Examination they have to wait for one year, thus, losing one year of their academic

career. Statute 15 of the university of Kashmir governs the process of conducting of examination and is reproduced as under:

A candidate who has failed to secure a pass in any written paper/s of a Semester shall be allowed to join the following Semester Class of the BE

course. Detentions of students on account of backlogs shall be determined at the end of 3rd, 5th and 7th Semester results and a student shall not

have more than four back-logs (excluding the 1st Semester backlogs) in the immediately preceding two semesters for purposes of promotion to the

4th, 6th and 8th Semester respectively.

Provided that backlog paper/s of the 1st Semester Examination shall not be considered for purpose of promotion at the end of 3rd and 5th

Semester examination subject to the condition that the candidate has secured a pass in at least one subject of the 1st Semester examination. Such a

candidate shall be required to clear the backlogs of 1st Semester examination latest by the end of 6th Semester.

3. Learned counsel for the petitioner submits that the statute of Jammu university has been amended and the amended regulations provides that a student can have three chances to take supplementary examination to clear the backlog.

4. Heard learned counsel for the parties and considered the matter.

5. Petitioner has reiterated the grounds taken in the writ petition. Mr. Kawoosa, submits that an examination of the statute of Jammu university,

which has been presented by learned counsel for the petitioner to the court, shows that the original statute of the Jammu was not in Pari-matri with

the Kashmir university statute. Learned counsel further submits that the university authorities cannot be directed to disobey the statute which

disentitles the petitioner to take 7th Semester examination unless the backlogs are cleared. Learned counsel also submitted that in the event of

direction issued to the university authorities to permit the petitioner to take the

examination the whole programme of the' university will be shattered. He submits that the academic institution like university is conducting its exams strictly in accordance with the statute and the academic programs are time bound programs. Any interruption thereof would adversely affect not only the functioning of the university authorities but even at times affect the academic career of the students who are otherwise entitled to take the examination. Learned counsel has referred to case title Regional Officer, C.B.S.E. Vs. Ku. Sheena Peethambaran and Others, to indicate the Hon'ble Supreme Court has not approved the practice of issuing interim direction to the university to disobey the statute to which university owes its existence and the regulations made by the university itself. In response the learned counsel for the petitioner has referred to ex-parte interim orders passed by this court in some petitions. The said orders have been passed as the law laid down by Hon'ble Supreme Court was not brought to the notice of the Court. The interim orders otherwise do not have any binding force.

6. Plato in his ""Republic"" while referring to discourse of ""Socrates"" states that acquiring of knowledge leads a person to right path. It is further stated that ignorance leads to vice.

7. Acquiring of knowledge in different disciplines of academics or in other walks of life has to be prime concern of an individual. Knowledge has to be acquired so as to illuminate one's surroundings and the purpose of acquiring knowledge should not be to convert oneself into a vessel which would be filled with coins. The academic institutions have not only to impart education but are duty bound to regulate and maintain the standards of education. In order to accomplish this purpose, the academic institutions frame rules, by laws, statutes. The university of Kashmir has also formulated statutes which are aimed at regulating and preserving academic standards. Statute 15 of the University regulations assumes significance for the disposal of this case. The said regulation, it appears is formulated to ensure academic excellence. Strict adherence to this regulation by the authorities is thus held to be sine-qua-non to the purpose for which the academic institution is established. The students must not only emerge with flying colors from the university but should burn the candles on both ends to ensure that when they walk out of university premises and enter the

prevents of life they should be beneficial not only to their own persons but to the society as a whole.

8. The challenge thrown to the statute 15 in the writ petition is not supported by any legal ground. Regulation 15 provides that a student cannot be

permitted to take 7th Semester examination unless he clears the backlog in accordance with the said statute. The restriction placed on taking

further exams is reasonable to accomplish the purposes underlying therein for providing good citizens to the society. The claim of the petitioners

that in some other courses, supplementary exams are being taken cannot become ground to declare statute 15 to be unconstitutional. The

academic experts in their wisdom make regulation for different courses on the basis of their requirements. Courts normally do not interfere into the

expert decisions of academicians. Another ground taken by the petitioners is that in case they are not permitted to take 7th Semester exams then,

they shall have to wait for one year. Petitioners, it is assumed must be knowing that they have to clear the backlog in order to become eligible for

taking 7th Semester exams. In order to achieve this purpose, petitioners are required to work very hard. The failure on the part of the petitioners to

clear all the backlogs cannot justify for issuance of direction to the respondents to allow the petitioners to take 7th semester exams. Petitioners are

studying very important branch of academic viz. engineering and after graduating from the university much depends on their competence for

carrying forward the obligation of the state. A hard working person not only gains more knowledge but is also possessed of more wisdom and more

vision. The statute 15 which is sought to be declared illegal, though no legal foundation thereof has been laid in the writ petition, is the statute which

permits the petitioner to take further exams. Effort was made to pursue the court to show sympathy to the petitioners and allow them to take the

7th Semester exams. The sympathy factor in the fact situation of this case will cause harm not only to petitioners but to the society at large. The

sympathy factor otherwise cannot be invoked in the face of the statute. Assuming a situation that the petitioners are allowed to take 7th semester

exams, but other similarly circumstanced persons who have not approached the court will be denied of the said benefit and secondly by issuing

such directions a group of ineligible persons will be clubbed with the eligible persons which would violate the constitutional guarantee as contained

under Article 14 of the Constitution. The rules/orders of the court cannot be issued which would create not only an anomalous situation but would

also be violating the constitutional guarantees as contained in para III of the constitution. The court are constituted to enforce the laws and to

ensure that the fundamental rights of people are not violated. The writ petition in this circumstance cannot be allowed. The Hon'ble Supreme Court

in the above referred judgement while considering the like situation and considering the earlier judgement has stated as under:-

The order of the High Court was set aside. Another decision reported in *Guru Nanal Dev University v. Parminder Kr. Bansal*, a three Judges

Bench decision, was relied upon in the case of *Sunil Kumar*. A passage from the above noted decision was also quoted therein which reads as

follows; (SCC p. 403, para 7)

We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to

anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as

interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline,

or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates.

Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications

might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an

accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic

authorities by themselves taking over their functions." Yet another decision referred to is reported in *A.P. Christina Medical Educational Society v.*

Govt, of A.P. again a three-judge Bench decision, it was observed in this case; (SCC p. 678, para 10). We cannot by our fiat direct the University

to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of

the rule of law than a direction by the court to disobey the laws.

The above-referred matter relates to the admission and examination of MBBS

courses.

9. The university have their own programmes and schedules. By issuing direction which are sought for in this writ petition without laying any legal

foundation has potential of disturbing the whole academic/examination schedule of the university.

10. For what has been stated above, this petition is dismissed in limini. Dismissed.