

(2008) 11 J&K CK 0041

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 91 Of 2008 & CMP No.97 Of 2008

Sheikh Talat Mustafa

APPELLANT

Vs

University of Jammu & Ors.

RESPONDENT

Date of Decision : 26-11-2008

Acts Referred:

Jammu and Kashmir University Statutes — Status 12.1

Citation : AIR 2009 J&K 2851 : (2009) 1 JKJ 418 : (2009) 2 SriLJ 667

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : W.S.Nargal, S.M.Choudhary, Advocates appearing for the Parties

Judgement

1. The petitioner is a student of B.E. Electronic and Communication of Model Institute of Engineering and Technology, Jammu, which is affiliated

with the University of Jammu. He was registered with the aforesaid Institution in the year 2004. His grievance in this petition is that he has not been

permitted to appear in the 7th semester examination which was to be commenced from 07.02.2008.

2. In order to understand the controversy involved in this writ petition, the interpretation of Statute 12.1 of the University Statute as also impact of

Notification dated 12.12.2007 on the said statute is required to be analyzed by this court. For facility of reference statute 12.1 is quoted herein

below:

If a candidate has after attending the course of studies in the college, appeared in any semester examination and failed in one or more courses for

that examination, he can reappear for such courses at subsequent examination(s) without attending a fresh course of studies for that semester in the

college. Such a candidate may, in the meantime, prosecute his studies for the next semester(s) and appear in the examination (s) for the same

alongwith the examination for the lower semester(s). Provided that a candidate shall not be allowed to attend classes and appear in the semester

examination(s) mentioned in column (a) unless he/she has passed 50% of the theory courses in semesters mentioned in col.(b) below:

(a)

5th semester 6th semester

7th semester 8th semester

(b)

1st to 3rd semester 1st to 4th semester 1st to 5th semester 1st to 6th semester

Provided further that a candidate shall not be allowed to attend classes in the next higher semester unless he has appeared in the examination of

immediate preceding semester.

3. Perusal of the above statute reveals that a person who has failed in one or more courses for that examination, he can reappear for such courses

at subsequent examination (s) without attending a fresh course of studies for that semester in the college and he can be permitted to prosecute his

studies for next semester(s) and appear in the examination(s) for the same along with examination for the lower semester(s). There is a rider

imposed in the said statute which states that a person will not be permitted to appear in the subsequent examination unless he has passed 50% of

the theory courses in the semesters mentioned therein. In other words permission in 1st to 4th semester would be automatic even if he has not

qualified the 50% requirement. This rider applies only when one is sitting in the 5th semester. It is necessary that he should have passed 50%

courses from 1st to 3rd semester. There is another proviso attached to the statute that a candidate will not be allowed in the next higher semester

unless he has appeared in the examination of immediate preceding semester. 7. The status of the petitioner from 1 to 5th semester is as under:

Semester	No. of courses passed	No. of courses appeared	No. of Backlog
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1st	6	6	0
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2nd	3	6	3
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3rd	0	6	6
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4th 0 6 61

5th 1 6 5

8. The detail hereinabove reveals that the petitioner has not qualified in some semesters in order to make him eligible for sitting in the next semester.

Reliance has been placed by the respondents on the statute which states that a person can be allowed to attend the classes in the next examination

irrespective of the backlogs. The import of this notification reveals that a student has to complete B.E.Degree course within eight years and in case

he fails to qualify within a period of eight years, his result shall stand cancelled. This notification will have prospective effect.

9. Heard learned counsel for the parties and perused the record.

10. Admitted facts in the case are that the petitioner was not eligible to sit in the 6th semester as also to appear in the examination as he did not

comply with the requirements of statute 12.1. It is also not in dispute that he could not appear in the 7th semester classes as he had not appeared in

the examination of 6th semester. The effect of notification dated 12.12.2007 could give benefit to the petitioner only after 12.12.2007. To put it

straight, impediment created by the statute 12.1 would cease to operate only after 12.12.2007. Prior to that date the petitioner did not qualify to sit

in 5th and 6th semesters.

11. The question arising for consideration is whether the petitioner can be permitted to sit in the 7th semester examination without having appeared

in the examination of 6th semester. By virtue of notice dated 20.12.2007, the petitioner was not permitted to sit in the 6th examination as he had

not satisfied the eligibility set out in Statute 12.1 of the University Statute. The petitioner had 15 backlogs on that date. According to the status of

the petitioner on that date he was not eligible to appear in the 6th semester examination as he has failed in 50% of the theory courses in the

semester 1st to 4th. The petitioner has not qualified the papers of 3rd and 4th semester. He states that he was allowed to attend the 7th semester

classes during the session 20072008 as an unregistered student. Much reliance has been placed by the petitioner on this letter.

12. The impediment not to sit in 7th semester examination was taken only because the petitioner has failed to satisfy the condition as envisaged in

statute 12.1 of the University Statutes. This embargo certainly comes in the way

of petitioner before the issuance of Notification dated 12122007.

The import of said notification reveals that a student of Engineering has to complete B.E. Degree Course within eight years. By necessary

implications, the embargo/impediment created vide Statute 12.1 would stand elapsed. To state it more explicitly, after the notification dated

12122007 there is no bar for the petitioner to appear in the 7th semester examination. The petitioner has also stated that he was not permitted to

sit in 6th semester examination as he had not qualified 50% subjects of theory in 1 to 4 semesters. As a consequence of that, he could not sit in 7th

semester examination. This embargo, in my view will no longer apply to the petitioner. The petitioner is entitled to appear both in 6th and 7th

semester examination, in case he has not appeared in aforesaid semester examinations till today.

13. In view of the above, I allow this petition and direct the respondents to permit the petitioner to sit in the ensuing examinations of 6th and 7th

semesters. During the course of hearing, the respondents had produced the record indicating that the petitioners result of 7th semester examination

has been withheld. In case the petitioner has appeared in 7th semester examination, his result shall be declared.

14. This petition is disposed of along with connected CMP(s), any.