

(2009) 03 J&K CK 0015
In the Jammu And Kashmir High Court
Case No : Rev. (OWP) 3 of 2007

University of Jammu & Ors.

APPELLANT

Vs

Danish Wani

RESPONDENT

Date of Decision : 20-03-2009

Acts Referred:

Citation : (2009) 03 J&K CK 0015

Hon'ble Judges : Hakim Imtiyaz Hussain, J

Bench : Single Bench

Advocate : D.S.Thakur, A.V.Gupta, Advocates appearing for the Parties

Judgement

This petition has been filed for the review of judgment and order of this Court dated 18.10.2007 in the writ petition No. 11/2007 titled Danish

Wani v. University of Jammu & Ors.

In the main writ petition respondent Danish Wani had challenged the decision of the University whereby the University has cancelled the

examination of the petitioner in 5th and 6th semesters of Bachelor of Engineering Course under statutes relating to unfairmeans/misconduct in the examinations.

The Court while allowing the petition observed as under:

The alleged act of the petitioner falls within clause (t) as it is alleged that he has indulged in an act which in the opinion of the authorities amounts to

use of unfair means. Penalty for the act is prescribed in clause (d) of Statute 5, which provides cancellation of the paper in which

unfairmeans/Misconduct was committed.

Thus the penalty prescribed for an act which falls under clause (t) is cancellation of the paper in which unfairmeans/misconduct was committed.

Penalty of cancellation of all the papers is prescribed for acts which fall under clauses (1) (m), (p) and (r). The alleged act does not fall under any of these clauses.

It was submitted by Mr. Thakur that the alleged act of the petitioner being grave, the University authorities have in their wisdom thought it fit to ask

the petitioner to appear in all the papers. I appreciate the concern of the learned counsel for the respondents and of the University authorities in the

matter as they have a solemn duty cast on them to enforce strict discipline and ensure fairness so far the academic activities are concerned

particularly fairness and transparency in the conduct of examination and evaluation of answer sheets. This apart, once the statute provides a

particular penalty for a particular misconduct, I feel the authorities have to go by it and they cannot impose a penalty beyond what is provided by

the statute. This would amount to acting beyond the statute, which cannot in any circumstances be allowed by the Courts.

The matter needs afresh examination in light of clause (d) of statute (5) by the concerned authorities.

In the circumstances, I find due merit in the pleas raised in the petition. Accordingly, the order impugned is set aside. The respondents may act in

the matter in accordance with statute (5) afresh and pass proper orders within one month. While doing so, they may give due opportunity of

hearing to the petitioner.

The University of Jammu seeks review of the judgment on the ground that at the time of arguments before the Court, the University Counsel got a

copy of the statute but the University inadvertently handed over a copy of the statutes a reference would show that the said statutes were in force

with effect from 27.12.2006, the counsel for the University himself admitted before the Court that the powers exercised by the University in

respect of Statute 4 (U) would not be applicable inasmuch as the notification No. 6/December/157 dated 27.12.2006 was passed later than the

decision of the University to cancel the examination which decision was taken vide University's notification dated 4.7.2006. It was in light of these

circumstances that this court vide order dated 18.7.2007 observed that the University needs to have a fresh look after giving an opportunity of

being heard to the candidates.

The present petitioner further states that after passing of the judgment during the course of discussions with the Additional Controller of

Examinations, it transpired that statute 4 (u) read with second proviso to statute 5 (d), was, in fact, in existence on the date when the misconduct

had been committed and were brought into force vide notification No. 3 of 1999 dated 16th Nov. 1999. It is on these grounds that the review of

the judgment is being sought.

Heard. I have considered the matter.

Learned counsel for the present respondents raised a preliminary objection regarding the maintainability of present review petition on the ground

that the University of Jammu had already filed an appeal against the judgment and order. The learned counsel for the University on the other hand

has relied on AIR 1964 SC 1372 and AIR 1996 Delhi 21 and submitted that this would not be a bar for filing the present review petition.

The learned counsel for the present petitioner would argue that since the judgment is not based on the statute which was in force at the time the

judgment was passed, it needs review as there is error apparent on the face of record.

Per contra, Mr. A.V. Gupta appearing for the present respondents rely on AIR 1978 J&K 88, 1977 (4) SCC 478, 1997 (8) SCC 715 and 2000

(9) SCC 482 and submits that the omission to cite the proper provision of law could not be a ground to review the judgment. In this behalf the

learned counsel has also relied on *Sri Dokka Samuel v. Dr. Jacob Lazarus Chelly* 1997 (4) Supreme 643; where the Apex observed that omission

to cite an authority of law is not a ground for reviewing the prior judgment on the ground that there is an error apparent on the face of record. Mr.

Gupta contends that since the counsel failed to bring to the notice of the court the Relevant statute, he cannot seek review on this ground.

I find the authority cited by Mr. Gupta squarely applies to the facts of the present case and the ground that the proper statute was not referred to

by the learned counsel would not be a ground for review of the judgment in view of the law laid down by the Apex Court in the said authority.

In these circumstances I find the present review petition does not have any merit. The petition is accordingly dismissed.