

(2010) 08 J&K CK 0007

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1062 of 2009 and CMP No. 1367 of 2009

Vishavjeet Verma

APPELLANT

Vs

University of Jammu and Others

RESPONDENT

Date of Decision : 16-08-2010

Acts Referred:

Citation : (2010) 4 JKJ 705

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, Judge

1. ""Virtue is knowledge and conversely ignorance is vice"" is said by one of the great Philosopher viz. Socrates. The Education is a potential power,

which enables the human being to render services to the humanity. To acquire knowledge one has to go through established system for getting

himself educated. One attains education in Schools, Colleges and Universities. The education teaches one to lead a pure and honest life. Thus,

while attaining academic qualification from the educational institutions, one has to pursue honest methods to attain the said qualifications.

2. Petitioner has called in question notification No. 29/09 issued by respondent No. 2 vide which all his papers of B.Sc. Part III (Annual

examination) have been cancelled. It is pleaded in the writ petition that petitioner appeared in B.Sc. Part III (Annual Examination) Session 2009

under Roll No. 1190314. It is also pleaded that when the petitioner was waiting for the declaration of results of B.Sc. Part III (Annual

Examination), he received a notice bearing No. Conf/UFM/9/1811-75 dated 20th July, 2009 addressed by Assistant Registrar (Conf./UFM),

University of Jammu conveying the petitioner that his name figures in the list of candidates whose answer scripts were noticed to have distinctive

mark of identification in subject Mathematics Paper ""A"" of B.Sc. Part-ITI Examination 2009 (Session-Annual) held on 25th of May, 2009 and

petitioner was requested to appear before the competent authority on 27th July, 2009 at 11:00 a.m. to defend his case. It is further pleaded that

pursuant to the aforementioned notice, petitioner appeared before the competent authority on 27.07.2009 at 11:00 a.m. and he submitted before

the competent authority that inadvertently he had started writing his name on the answer script and before full name could be written he realised his

mistake and tried to erase the same by his own pen. It is further pleaded that name was not legible. Respondent No. 2, however, issued the

impugned notification in which petitioner also figures, ordering for cancellation of all the papers in which petitioner has taken examination in B.Sc.

Part III Examination, 2009 (Session Annual). Petitioner preferred an appeal to the Syndicate, but according to him no decision was taken thereon,

which constrained him to file the writ petition, inter alia, on the grounds that there is violation of the Statute 3 (a) of the Chapter XXXIX, Statute 33

of the Chapter XL, Statute 14(5) of Chapter XLI as also Statute 5(a) of the Chapter XXXIX of the University Statutes.

3. Respondents have filed the objections, in which it is stated that the; Statute on which reliance has been placed by the petitioner in the writ

petition has been amended. It is further pleaded that the Chapter XXXIX of the Statute governing misconduct/unfair means in the examination has

been amended vide Notification No. 06/December/157 dated 27.12.2006 with effect from 03.11.2006 and clauses (d) and (e) have been added

to regulation 3 of the Chapter XXXIX of the Statute. The said provisions of the Statute are reproduced as under:

(d). whenever an unfair means case is suspected or detected by a coding officer/ Sub/Single/Head/Practical examiner or any other concerned

officer of the University during coding/re-checking/evaluation/re-evaluation or even thereafter, he/she shall make a confidential report on a plain

paper to the Controller of Examination who shall hold a preliminary inquiry and in case he is satisfied that a prima facie case is made out against the

candidate he shall seek his/her explanation and place both the report and the explanation received, if any, before the concerned committee for

appropriate action under the statutes.

(e). In case of general disturbance of the nature of strike/boycott/walkout etc. By examinees, the officer Incharge/ over all Incharge/flying

squad/inspector shall make a detailed report concerning the incident to the Controller of the Examinations who after preliminary inquiry shall place

the matter before the Competent Authority for appropriate action under these Statutes.

4. It is also pleaded that the petitioner case falls in clause (j) and (u) of regulation 4 and same is reproduced as under;

(j) makes a distinctive marks in the answer-book with an intent to disclose his identity or

(u) Commits any other act before, during or after the examination which in opinion of the ""Competent Authority"" tantamount to unfair

means/misconduct.

5. It is also pleaded that during the re-evaluation process, it surfaced that the petitioner and some other candidates have adopted unfair means by

making a distinctive mark on the answer script of the Paper A of the Mathematics of B. Sc. Part III. It is also pleaded that case of the petitioner

was referred to the competent authority of the University and petitioner was granted an opportunity to appear and defend himself before the

committee, which he did and ultimately his case was dealt with in accordance with regulations 5(d) Column A and B and all his papers in which he

has taken examination were ordered to be cancelled.

6. Heard learned counsel for the parties. Considered the matter.

7. Learned counsel for petitioner submitted that a duty was cast on the Superintendent of the Examination to want the candidates not to write their

names on the answer script and under Statute 34, Superintendent had to forward to the Controller of Examinations, a declaration on prescribed

form signed by him and witnessed by Deputy Superintendent to the effect that such warning was issued to the candidates. Learned counsel

submitted that no such warning was issued. Learned counsel also submitted that Statute 40(5) falling under Chapter XLI of University Statute

provided that, checking Assistant shall check the answer scripts and remove any

mark of identification from the answer script and as petitioner had inadvertently written his half name on the answer script, which was removed by him, accordingly the Checking Assistant could not find any distinctive mark on the answer script of the petitioner. Learned counsel also submitted that the alleged misconduct of the petitioner has happened for the first time. The notice under Statute 5(a) of the Chapter XXXIX was to be issued within ten days from the date of the report of the officer Incharge directing petitioner to appear before the Sub-Committee, but respondents have failed to comply with the Statute, as notice was issued after more than two months from the date of examination. It is also submitted that in terms of the notice, petitioner was directed to appear before the competent authority, but in terms of Statute 5(b) of the Chapter XXXIX, petitioner had to appear before the Sub-Committee. Respondents having failed to comply with the University regulations have consequently passed an illegal order. It was also pleaded that as the petitioner has admitted the mistake, the respondents were under an obligation to seek an undertaking from the petitioner that he will not repeat misconduct in other examinations and consequently, was to be imposed lesser punishment of cancellation of only one paper in which misconduct was attributed. It is on the aforementioned grounds that the petitioner seeks quashment of the impugned notification so far it pertains to him and for declaration of his result.

8. Learned counsel for respondent-University submitted that University Statute relating to the misconduct/unfair means in examination has been amended. Learned counsel also submitted that the case of the petitioner falls under Clause (j) and (u) of the regulation 4. Learned counsel also submitted that on the basis of pleading at page 3 and 4 of the objections, the committee after hearing the petitioner was of the opinion that petitioner has made distinctive marks and his case was dealt with as per statute governing unfair means which falls under regulation 3(d), 4(j) and 4(u). Learned counsel referred to and relied upon Column A and B of the Regulation 5(d). The relevant part of regulation 5 is reproduced as under:

d. On consideration of the record of the case if the Sub-Committee is satisfied that the candidate has committed Misconduct/Unfair means it shall

disqualify him from passing or from appearing at all University examinations for a period of one year.

Provided that if the Sub-Committee is of the opinion that the candidate is repentant and willing to sign an undertaking that he shall not repeat the

Misconduct/unfairmeans in any examination it may impose punishment designed in column -B for Unfair means/Misconduct of the nature described

in column-A below:

A (Nature of Unfairmeans/ Misconduct) B (Punishment)

1. Statute-4 Paragraphs (a), (b), d), (d), (d), (j), (k), Cancellation of the paper in which

(n), (o), (q) and (t) Unfairmeans/Mis-conduct was committed.

2. Statute- Paragraphs (1), (m), (p) and (r) Disqualification from passing and appearing at that

examination in all papers.

Provided further that cases of unfairmeans/misconduct of the nature described in paragraphs i(b), i(c), g, h and (s) of Statute-4 shall not be referred

to the Sub-Committee but to the Competent Authority for decision by the Controller of Examinations. The Competent Authority shall have the

Authority to punish this kind of misconduct by disqualifying the candidate from passing or from appearing in all University examinations for a period

of two to five years.

Provided also that in cases involving Subsection F and i(a) of Statute-4 the Sub-Committee may impose punishment to the extent of disqualification

for a period of one year or cancellation of all papers accordingly to the gravity of each case.

9. Learned counsel for respondents submitted that action taken by the respondents for cancelling all the papers of the petitioners in which he has

taken examination was justified in the facts and circumstances of the case.

10. The examinations are being conducted by the educational institutions to evaluate the merit of the competing candidates and to find out whether

they qualify the standards fixed by the institutions. The Educational institutions are duty bound to ensure that students burn the candle on the both

ends to attain the excellence in the academic field, so as to enable them to serve the society to the best of their capabilities after they step out of the

educational institutions. In these highly competitive times, students toil round the clock to: achieve excellence in their field of the activity. It becomes the duty of the Institutions, which are charged with duty of conducting the examinations, to ensure that no unfair means are practised by any of the student, so as to enable him to steal an illegal march over the meritorious candidate. The unfair means pollute the atmosphere of educational institutions and in order to arrest deterioration in education standards, it becomes necessary for those, who are charged with the sacred duty of conducting examination, to come down with heavy hand on those, who indulge in unfair means, while taking examinations. The Statute regulating the conduct of examination as also procedure to be followed, when the cases of unfair means adopted by a student are detected, are to be interpreted in a manner so as to achieve the sacred goal and purpose under lying such statutes.

11. Record has been submitted by the learned counsel for the respondents. Perusal of the record reveals that while scrutiny of the scripts in the evaluation centres in respect of B.A./B.Sc./B.B.A/B.Com./BCA Part III (Annual Examination) Session 2009, it was found that some candidates have left clear marks of identification on the scripts. Record further reveals that when these answer scripts were evaluated and result thereof was ready for tabulation by Computer Agency, it was proposed to withhold the result and to convey the matter to the competent authority to consider them under unfair means cases. The note dated 09.07.2009 reveals that matter was recommended to be placed before the competent authority with a request to inform the Computer Agency to withhold the result of the candidates. UFM, AR(DESK) approved it. DR/(Euvl)NP also approved it on the same date. AR (Evaluation-NP) requested for doing the needful. Record further reveals that the meeting of the competent authority was held on 27.07.2009 at 11:00 a.m. in the officer Chamber of the Vice Chancellor, University of Jammu. In the meeting, besides, Vice Chancellor, Dean Faculty of Law, Professor Kuldeep Sharma, Controller of Examinations, Smt. Taranum Khan (Deputy Registrar Eval-NP), as Special invitee, and Smt. Shobha Khajuria (Assistant Registrar UFM) were present. The Item No. 2 of the minutes of the meeting reveal that the competent authority considered the cases of those candidates who had made identification marks while taking B.A./B.Sc./ B.B.A/B.Com./BCA

Part III (Annual Examination) Session 2009. It was observed that these candidates have made identification marks similar to those made in B.

A./B.Sc./ B.B.A/B.Com./BCA Part II (Bi-annual) 2008. It was also observed that such an offence is punishable under Statute 4(j) and 4(u). The

minutes of the meeting also reveal that two candidates accepted their guilt and Committee in terms of Statute 5(d) ordered for cancellation of the

concerned papers of those candidates and in respect of other candidates, which include the petitioner, the examination of all the papers were

ordered to be cancelled by having recourse to Statute 5(d) Record reveals that meeting of 95th University Syndicate was held on 27.11.2009 and

16.12.2009. Syndicate has considered at item No. 95.46, appeal of the aggrieved candidates who had made identification marks on the answer

scripts, against the decision taken by the competent authority in its meeting held on 27.07.2009. It was resolved that appeal of the aggrieved

candidates, who had made identification marks on the answer script against the decision taken by the competent authority in its meeting held on

27.07.2009 regarding disposal of the unfair means/misconduct cases pertaining to the B.A./B.Sc./ B.B.A/B.Com./BCA Part III (Annual

Examination) of the University held in 2009 annual session, is not agreed to and, as such rejected. Petitioner's appeal was thus rejected. Record

also reveals that petitioner has been informed by the Controller of Examination University of Jammu vide his Order No.Conf/UFM/10/5440-88

dated 04.03.2010 that his appeal has been rejected. The original answer script of the petitioner of B.Sc. Part III Math Paper ""A"" has also been

produced by the respondents. The petitioner has clearly mentioned in the column II Subject the following words ""Vwg Vishajeet Math"". On the

reverse of the first page of the answer script some instructions are written in bold letters, paragraph- 4 of the instructions is reproduced as under:

4. Disclosing of identity by writing name or any other identification mark in the Answer Book tantamount to use of unfair means.

12. Petitioner was thus conscious at the time he was given answer script that disclosing of identity by writing name or any identification mark in the

answer book will tantamount to use of unfair means. The petitioner has not completely scored-off his name from the answer script, but just has

marked a line over his name. The words ""Vishajeet"" written on the answer script are quit visible and are seen by the naked eye. The argument of

the learned counsel for petitioner that it was duty of the officers, who were conducting examination to inform the petitioner that he has not to write his name on the answer script, pales into insignificance, in view of clear instructions written in the answer script itself. The Chapter XXXIX provides for Statutes relating to misconduct/unfair means in examinations. Clause (c) of the Statute 1 defines the "Competent Authority" to mean a committee constituted under the provision of these Statutes for scrutiny and disposal of unfair means/misconduct cases in the examination. The Clause (d) of the Statute 1 defines "Sub Committee to mean any Sub-Committee of the competent authority. Statute 4 deals with misconduct/unfair means and provides that a candidate commits misconduct/unfair means in respect of examination if he/she; (j) makes a distinctive mark in the answer script with an intend to disclose his identity. Statute 3 Clause (d) of Chapter XXXIX provides that whenever an unfair means case is suspected or detected by a coding officer/Sub/ Single/Head/Practical examiner or any other concerned officer of the University during coding/ re-checking/evaluation/re-evaluation or even thereafter, he/she shall make a confidential report on a plain paper to the Controller of Examination who shall hold a preliminary inquiry and in case he is satisfied that a prima facie case is made out against the candidate, he shall seek his/her explanation and place both the report and the explanation received, if any, before the concerned committee for appropriate action under the statutes.

13. Petitioner himself has admitted in the writ petition that he inadvertently wrote part of his name on the answer script which fact was thereafter detected during the evaluation process. Record reveals that matter was considered by the authorities at various levels including Controller of Examination and it was finally decided to submit the case to the competent authority. It is admitted fact that the petitioner was issued notice by the competent authority in which he was specifically informed that it has been noticed that answer script of the Math Paper "A" of the petitioner has distinctive mark of identification and he was further informed that in order to ascertain the factual position of the case and to arrive at some decision by the competent authority, a meeting of the competent authority is scheduled to be held on 27.07.2009 at 11:00 a.m. Petitioner was accordingly

informed about the nature of allegations made against him and was accordingly granted opportunity to defend himself. Petitioner's defence is that he inadvertently wrote his name on the answer script and after realising that it was wrong he, according to his pleadings made in the writ petition, scored-off his name. The assertion, however, is belied by the record. Petitioner's name still exists on the answer script and can be seen by the naked eye. Petitioner, in these circumstances, has committed an act which is covered by definition of use of unfair means in the examination. The competent authority having given opportunity of hearing to the petitioner cannot be said to have committed any mistake, while issuing impugned notification.

14. The above narrated circumstances, as appearing from the pleading of the writ petition and the record, do show that petitioner has committed a misconduct for which he has rightly been awarded the punishment. In the writ petition, petitioner has specifically pleaded at paragraph 7 that he has filed an appeal to the Syndicate, which has not been decided till date of the filing of the writ petition. Writ petition has been filed on 01.10.2009.

As already stated that appeal has been decided by the Syndicate University in its meeting held on 27.11.2009/16.12.2009 and his appeal was rejected which fact, as per the record of the University, has been intimated to the petitioner by the communication dated 04.03.2010. The decision of the competent authority has, thus, merged in the decision of the appellant authority viz. University Syndicate. The challenge thrown to the decision of the competent authority in this writ petition is thus, inconsequential, as no challenge has been thrown to the order passed by the University Syndicate on the appeal of the petitioner. The writ petition, in these circumstances, is held to be not maintainable.

15. For the above stated reasons, this petition, being meritless, is dismissed. Registry to return the record to learned counsel for respondents.