

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 04.11.2023
Pronounced on:08.11.2023

WP(C) No.1783/2022

ADIL FAROOQ BHAT

...PETITIONER(S)

Through: - Mr. M. A. Makroo, Advocate.

Vs.

**VICE CHANCELLOR CENTRAL UNIVERSITY
KASHMIR & OTHERS**

...RESPONDENT(S)

Through: - Mr. Arshid Ahmad, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has sought a direction upon the respondents to conduct his examination for End Semester of Post-graduation course in Convergent Journalism.

2) As per case of the petitioner, he is Post-graduate student of Journalism in the Department of Convergent Journalism, Central University, Kashmir, under Enrolment No.1704CUKMR01 and is pursuing his End Semester i.e., 4th Semester. It has been submitted that on 10th August, 2021, the petitioner was arrested by the police of Police Station, Shaheed Gunj, Srinagar in FIR No.84/2021 and because of the arrest, he missed the End Semester examination which was held last year, therefore, the petitioner desires that the respondent University may be directed to conduct his End Semester by making proper arrangement inside the jail. According to the petitioner, his father approached the

respondent University a number of times in this regard but no heed has been paid to his requests. It has been further submitted that the petitioner has completed the Narrative Project of his 4th Semester titled “Bachkot-Choir Boys of Kashmir” but the same has not been accepted by the Department of Convergent Journalism of the respondent University.

3) It has been submitted that the admission expires after five years and if the petitioner would not be able to complete his degree, there would be no chance for him to appear in his last session/ End Semester. It has been contended that the petitioner has not been convicted as yet and is only an accused, as such, he has a right to complete his studies. According to the petitioner, the right to education is a fundamental right, therefore, the respondents cannot deny him such right merely because he has been incarcerated as an accused.

4) The respondents have contested the writ petition by filing a reply thereto. In their reply, the respondents have admitted that the petitioner is a student of Post-graduate course in Journalism. It has been submitted that the representation of the petitioner was forwarded to the competent authority for consideration but it was found that the petitioner is ineligible for final examination. According to the respondents, the petitioner was supposed to complete his PG Programme with the ongoing Semester students in the year 2020-2021 but he failed to complete the course due to non-fulfilment of essential eligibility criteria laid down in Ordinance 5 of the University. The respondents have submitted that as per Clauses (9) and (13) of Ordinance 5, a student has

to fulfill the essential eligibility criteria for End Semester Examination, which includes minimum of 75% attendance and passing of CIA examination and related projects. It has been submitted that the petitioner has not appeared in any of the components of CIA, as such, he remains ineligible for the End Semester exams. According to the respondents unless the petitioner clears his eligibility conditions for End Semester Examination by attending the required classes/interactions and completes CIA parameters, he cannot be allowed to sit in the said examination.

5) I have heard learned counsel for the parties and perused the record of the case.

6) Admittedly, the petitioner due to his arrest and lodgement in jail could not attend the regular classes of 4th Semester of PG Journalism Course. It is also not in dispute that the petitioner could not undergo the Continuous Internal Assessments and other examinations because of his arrest. According to the respondents, the petitioner did not participate in the Internal Assessment. The question that arises for consideration is whether in the face of this admitted position, the respondent University can be directed to allow the petitioner to sit in the End Semester examination by making special arrangements in the jail.

7) Ordinance 5 of the respondent University issued in terms of Section 28 (1)(b) of the Central Universities Act, 2009, is applicable to all the Masters Degree programmes conducted by the said University.

Clause (9) of the said Ordinance relates to attendance. It reads as under:

9. ATTENDANCE

9.1 A candidate to be eligible to appear in the internal continuous assessment/end semester examination of a course or a complete semester shall have to put in a minimum of 75% attendance in that course/semester in addition to satisfying all other relevant conditions laid down in the Regulations.

9.2 The Dean of School, on the recommendation of the HOD concerned, shall condone the shortage of attendance to a maximum of 5% if the claim is justified and supported by valid documents.

9.3 The Vice Chancellor, on the recommendation of the HOD and Dean of the Faculty shall condone shortage beyond 5% but only up to 10% for valid reasons (to be supported by documentary evidence).

9.4 However, no student shall be allowed to avail of the concession provided under Clause 9.2 & 9.3 in more than 50% of the total semesters of the programme.

9.5 The teacher concerned shall be responsible for maintaining the record of attendance of the students registered for the course.

8) A perusal of the aforesaid Clause reveals that in order to make a candidate eligible to appear in the End Semester examination, he is supposed to put in at least 75% attendance in that course/semester, in addition to satisfying all other relevant conditions laid down in the Regulations. Dean of the School, on the recommendation of the HOD concerned, has power to condone the shortage of attendance upto a maximum of 5% whereas the Vice Chancellor has power to condone shortage beyond 5% but upto 10% for valid reasons.

9) In the instant case, the petitioner has not attended the regular classes of End Semester even for a day because of the reason that he was lodged in jail. There is no provision in Ordinance 5 of the respondent University governing the matters relating to eligibility for sitting in examination that would vest power with any authority of the respondent

University to condone shortage beyond 10%. Therefore, the petitioner cannot seek a direction upon the respondents to do an act which the Statute/Rules do not permit.

10) Another condition which is relevant to the context relates to examination and evaluation. Clause (13) of the Ordinance (supra) in this regard requires to be noticed. It reads as under:

13. EXAMINATION AND EVALUATION

13.1 A student shall be continuously evaluated for his/her academic performance through continuous Internal Assessment (tutorials, practical, home assignments, class assignment, term papers, field work, seminars, periodical tests and Non-Scholastic areas (Personality, Attitude, Scientific temper, Creative thinking, values and Social/Community Work) and the End Semester examination as prescribed in the examination scheme of the respective course and duly approved by the Authority.

13.2 Unless provided otherwise the marks distribution for each course shall be as under;

End Semester Examination (ESE) : 60 Marks
Continuous Internal Assessment (CIA) : 40 Marks

13.3 Unless provided otherwise the breakup of Continuous Internal Assessment shall be as below:

Test 10 Marks
Comprehensive Viva 15 Marks
Assignments through PPT 10 Marks
Attendance 05 Marks
40 Marks

Marks break-up for Attendance

75% to 80% : 1 mark
81% to 85% : 2 marks
86% to 90% : 3 marks
91% to 95% : 4 marks
96% to 100% : 5 marks

13.4 The continuous internal assessment shall be conducted by the teacher concerned under the overall supervision of the HOD and Dean of the School. The Head of the Department shall report the award list of CIA in respect of all courses to the Controller of Examination through the Dean.

13.5 In case of a student who could not appear in any of the components of the CIA due to medical reasons or for extraordinary circumstances(supported by documentary

evidence), a separate examination in that component may be arranged by the Department concerned before the end semester examination.

13.6 The end semester examination shall be organised by the Controller of Examination, with the evaluation to be undertaken by the examiners to be appointed by the Vice Chancellor.

13.7 There shall be four End Semester Examinations, first semester examination at the middle of the first academic year and the second semester examination at the end of the first academic year. Similarly, the third and fourth semester examinations will be held at the middle and the end of the second academic year respectively.

13.8 There shall be one End semester examination of 3 hours duration carrying 60% of Marks in each course covering the entire syllabus prescribed for the course.

13.9 End Semester Practical Examinations (wherever applicable) shall ordinarily be held before the theory examinations.

13.10 A student shall be permitted to appear in the End-semester examination as per the Conduct of Examination Rules after filling up the prescribed examination form, payment of the prescribed Examination Fee, satisfying the attendance requirement and fulfilling other eligibility criteria.

13.11 To be eligible to appear in the End Semester Examination of a course the student shall have to clear the CIA with a minimum of 50% marks.

13.12 The question paper pattern of End Semester Examination shall be prescribed by the School concerned.

13.13 Unless prescribed in the Regulation and Scheme of examination of a particular programme a candidate shall be deemed to have completed his/her courses successfully if he/she obtains at least 50% marks in each of the theory / practical course, and 50% marks in aggregate (Internal Assessment and End-semester evaluation) or 'B' Grade, measured on the following ten point scale.

Marks	Grade Point	Letter Grade	Class
90-100	9-10	O	Outstanding
80-<90	8-<9	A+	Excellent
70-<80	7-<8	A	Very Good
60-<70	6-<7	B+	Good
50-<60	5-<6	B	Average
0-<50	0	F	Fail

13.14 If a student fails in less than 50 % of prescribed courses of a semester or falls short of attendance in a course he/she shall be allowed to appear in that course(s)

as ex-student during the End-Semester Examination of the corresponding semester with the regular students. No separate/ supplementary examination shall be arranged for such students. However, the Vice Chancellor may authorize special examination (CIA/ESE) for students who have total of up to 4 backlogs after the declaration of last semester result. The marks of all internal assessment as applicable shall however, be carried forward in such cases.

13.15 The student/s appearing in all the courses in End semester examination in odd semesters shall be allowed to take admission in the even semesters without emphasizing on qualifying 50% of courses in a semester. However, only those students of even semesters shall be allowed to take admission to next odd semester who have qualified at least 50% courses of all previous semesters.

13.16 A student with a backlog can repeat End Semester Examinations of a course for a maximum of three chances, excluding the 1st appearance, in the subsequent regular End Semester Examinations without putting in any additional attendance. The internal assessments marks obtained by the student shall be carried over for declaring the result.

13.17 A student after declaration of his/her results can request for providing of photocopies of answer sheets of End Semester Examinations within a period of 7 days on the prescribed format and on payment of prescribed fees.

13.18 Provisions for re-evaluation-:

(a) In case a student is not satisfied with the End Semester evaluation, he/she can apply for reevaluation on payment of prescribed fee within a period of 15 days after the declaration of the results.

(b) In case a student is not satisfied with the End Semester evaluation, he/she can apply for re-evaluation on payment of prescribed fee within a period of 15 days after the declaration of the results. The answer script will be sent to the two examiners for reevaluation and the result shall be compiled by taking average of two evaluators which are nearer to each other.

11) From a perusal of the aforesaid Clause, it is clear that besides requirement of attendance, a student in order to be eligible to appear in End Semester examination of a course has to clear Continuous Internal Assessment with a minimum of 50% marks. In the instant case,

admittedly the petitioner has not appeared in Continuous Internal Assessment and, as such, he has not secured a minimum of 50% marks.

12) In the face of the aforesaid situation, the petitioner is not eligible to sit in End Semester examination. In case the petitioner would have been held eligible to sit in the examination, then the next question that was to be determined was as to whether the respondent University can be asked to make special arrangements for the petitioner to take examination while being in custody but because the petitioner is ineligible to sit in the End Semester examination, therefore, the question of making special arrangement for him to sit in the examination inside the jail does not arise. It is true that the right to education is a fundamental right but then this right cannot be taken to mean that an ineligible candidate should be allowed to sit in an examination.

13) For the foregoing reason, I do not find any merit in this petition. The same is, accordingly, dismissed.

(Sanjay Dhar)
Judge

SRINAGAR

08.11.2023

"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No