

# Ashok Chand Singhvi vs University Of Jodhpur & Ors on 18 January, 1989

**Equivalent citations: 1989 AIR 823, 1989 SCR (1) 230, AIR 1989 SUPREME COURT 823, 1989 (1) SCC 399, (1989) 1 APLJ 41.1, (1989) 1 JT 177 (SC), 1989 (1) JT 177, 1989 (1) UPLBEC 446, (1989) 1 UPLBEC 446, (1989) 15 ALL LR 356**

**Author: M.M. Dutt**

**Bench: M.M. Dutt**

PETITIONER:

ASHOK CHAND SINGHVI

Vs.

RESPONDENT:

UNIVERSITY OF JODHPUR & ORS.

DATE OF JUDGMENT 18/01/1989

BENCH:

DUTT, M.M. (J)

BENCH:

DUTT, M.M. (J)

NATRAJAN, S. (J)

CITATION:

1989 AIR 823                      1989 SCR (1) 230

1989 SCC (1) 399              JT 1989 (1) 177

1989 SCALE (1) 166

ACT:

Professional Colleges--Admission to Engineering Colleges-B.E. degree course--Admission to--Candidate--Diploma holder Administrator/Instructor in engineering--Conceals nothing from university--Granted admission by authorities--Later admission cancelled on account of mistake committed by the authorities--Held candidate cannot be made to suffer for mistake of authorities--Statutes, rules and regulations of University--To be clear and unambiguous.

HEADNOTE:

The appellant was a diploma holder and was serving as an Administrator/Instructor since 1976 in an Engineering College. In May 1987 he submitted an application to the Univer-

sity for study leave for three years to enable him to prosecute his studies in the B.E. Engineering Degree Course. The Study Leave Committee recommended the case on August 3, 1987 and the Syndicate of the University accepted the recommendation on August 14, 1987 and the appellant was granted study leave for a period of 3 years with full pay. This order was communicated to the appellant on October 29, 1987. The appellant submitted an application on November 14, 1987 for admission on the B.E. Degree Course. This application was made after the last date for admission in the general seats had expired. The Officer-in-Charge, Admissions raised certain objections to the effect that the appellant submitted the application after expiry of the last date and that he had obtained less than 60% marks in the Diploma Examination passed by him. The Dean considered the objections and recommended the case of the appellant for admission to the Vice-Chancellor. Thereafter the order for admission of the appellant was issued by the Dean, the appellant deposited the fees and joined classes from January 16, 1988.

On February 18, 1988 the appellant was communicated an order dated January 20, 1988 of the Dean directing that his admission was put in abeyance until further orders.

The appellant challenged the aforesaid order of withdrawal of his admission, before the High Court unsuccessfully.

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In the appeal to this Court, the objections that were raised to the admission of the appellant were that: (1) he had not secured 60% of marks which was the minimum requirement for admission, and (2) that he should not have been admitted after the last date. The admission it was submitted was illegal.

Allowing the Appeal, the Court,

HELD: 1. The appellant had secured more than 60% of marks in the aggregate in the Diploma Examination and was not disqualified for admission in that regard. [235B]

2. When the appellant made the application beyond the last date, his application should not have been entertained. But the application was entertained presumably on the basis of the resolution of the Syndicate dated December 13, 1970. The appellant also brought to the notice of the Dean the said resolution and also the implementation of the same by admitting seven teacher-candidates. [236E-F]

3. Although the admission to the B.E. degree course is governed by statutes of the University and admission rules, the Syndicate's resolution dated December 13, 1970 had also been kept alive. Neither the Dean, nor the Vice-Chancellor was aware of the true position, viz whether the resolution had become infructuous in view of the statutes and admission rules. The University should have revoked the said resolution to obviate any ambiguity in the matter of admission or included the same in the statutes as part of the admission rules. [236C-E]

4. It is the duty of the University to see that its statutes, rules and resolutions are clear and unambiguous and do not mislead bona fide candidates. [236D]

5. When after considering all facts and circumstances and also the objections by the office to the admission of a candidate, the ViceChancellor directs the admission of such a candidate such admission could not be said to have been made through mistake. [236G]

6. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. [236H]

#### JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 183 of 1989.

From the Judgment and Order dated 4.5.88 of the Rajasthan High Court in Writ Petition No. 521 of 1988. Sushil Kr. Jain for the Appellant.

C.M. Lodha and R.B. Mehrotra for the Respondents. The Judgment of the Court was delivered by DUTT, J. Special leave is granted. Heard learned Counsel for both parties.

This appeal is directed against the judgment of the Rajasthan High Court whereby the High Court dismissed the writ petition of the appellant challenging the order of the Dean of the Faculty of Engineering of the Jodhpur University, putting in abeyance the admission of the appellant in the B.E. Degree Course till further orders. The appellant is a diploma-holder and is serving in the 1 N.M. Engineering College (Faculty of Engineering), Jodhpur since 1976 as an Administrator/Instructor. In May, 1987, the appellant submitted an application to the Study Leave Committee of the University of Jodhpur for study leave for three years enabling the appellant to prosecute his studies in the B.E. Degree Course. On August 3, 1987, the Study Leave Committee recommended the case of the appellant for the grant of study leave and on August 14, 1987 the Syndicate of the University accepted the said recommendation and granted study leave to the appellant for a period of three years with full pay. Pursuant to the leave granted to the appellant, he made an application on November 14, 1987 for admission in the B.E. Degree Course.

At this stage, it will be pertinent to refer to a resolution dated September 21, 1970 passed by the Faculty of Engineering recommending that the teachers of the University should be granted leave so as to enable them to join the B.E. Degree Course as a regular candidate on a full time basis. The said resolution was accepted by the Academic Council of the University on March 25, 1970 and the Syndicate in its turn approved the resolution of the Academic Council.

According to the appellant, the above resolution of the Syndicate was acted upon and, as a matter of fact, certain teachers of the University were admitted to B.E. Degree Course. In his application dated November 14, 1987, the appellant specifically mentioned the names of seven teacher candidates who

had been admitted to the various Departments of the Engineering College in pursu- ance of the above resolution of the Syndicate and the policy of the University. The case of the appellant is that it is the practice of the University to give admissions to teach- ers by creating extra seats in addition to general seats. The appellant made the application for admission after he had been communicated with the resolution of the Syndi- cate granting leave on the recommendation of the Study Leave Committee. Admittedly, the application was made on November 14, 1987 after the last date for admission in the general seats had expired. Accordingly to the appellant, he was communicated with the decision of the Syndicate granting study leave to him on October 29, 1987 and soon thereafter he made the application for admission. It is the case of the appellant that in view of the practice of the University, as the teachers who are granted study leave are admitted by the creation of extra seats, the question of making applications after the last date for admission in the general seats is irrelevant.

Be that as it may, the application of the appellant was forwarded by the Professor and Head of the Mechanical and Engineering Department and the Dean, Faculty of Engineering, to the Vice-Chancellor. The Vice-Chancellor referred the application back to the Dean observing that the Dean was competent to make admissions. Certain objections were raised by the Officer-in-Charge, Admissions, including the objec- tion that the appellant had obtained less than 60 per cent marks in the Diploma Examination passed by him. The Dean considered the said objections and recommended the case of the appellant for admission to the Vice-Chancellor with the following observation:

"However, there is another aspect of this case which deserves consideration. The University has in the past, allowed the teacher candi- dates of this faculty, securing less than 60 per cent marks in their Diploma Examinations, admission to B.E. Course. This was perhaps to encourage the Faculty Staff to improve their qualifications so that they serve the faculty in a better capacity.

With these precedents in view, Shri A.C. Singhvi, Instructor, may be admitted to B.E. Degree course as a very special case."

The Vice-Chancellor, after considering the facts of the case, accepted the recommendation made by the Dean. Thereaf- ter, on January 16, 1988, the order for admission of the appellant was issued by the Dean, Faculty of Engineering, admitting the appellant in B.E. Second Year Engineering Course. Pursuant to the said order, the appellant deposited the requisite fees on the same date and joined the classes from January 16, 1988. The appellant was, however, communi- cated on February 9, 1988 with an order dated January 20, 1988 of the Dean directing that the appellant's admission was put in abeyance until further orders.

Being aggrieved by the said order dated January 20, 1988 of the Dean, the appellant filed a writ petition in the High Court and, as stated already, the High Court dismissed the writ petition. Hence this appeal.

The first objection that was raised to the admission of the appellant was that the appellant had not secured 60 per cent of marks which was the minimum requirement for admission. Indeed, the appellant also stated that he had obtained only 59.72 per cent of marks in his Diploma Examination. It appears that both the University and the appellant proceeded on the assumption that the appellant had secured in the Diploma Examination less than 60 per cent of marks. It is the case of the appellant that though for teacher-candidates it was not necessary to secure 60 per cent of marks in the Diploma Course yet, according to the computation mentioned in the Admission Circular, the appellant had secured 60 per cent of marks. The Admission Circular provides as follows:

"It is further provided that no such candidate who has secured less than 60% marks in the aggregate in the diploma examination shall be eligible for admission to this programme and the admission will be made strictly on the basis of merit determined by taking the percentage of marks obtained at the three diploma examinations passed as follows:

-- I Year: 40 per cent of marks.

-- II Year: 60 per cent of marks.

-- III Year: 100 per cent of marks.

The candidates must submit, along with their application, true copies of marks sheets of all the three diploma examinations."

The appellant secured 21.54 (as per 40 per cent weightage), 36.27 (as per 60 per cent weightage) and 65.18 (as per 100 per cent weightage). The total comes to 122.99 out of

200. As per the admission rules, this works out to about 61.5 per cent. Thus, it appears that the appellant had secured more than 60 per cent of marks in the aggregate in the Diploma Examination and was not disqualified for admission in that regard.

The next question is whether the appellant should have been admitted after the last date. We have referred to the resolution of the Academic Council and the Syndicate with regard to the admission of teacher-candidates. It is, however, the case of the University that the said resolution has no effect whatsoever and admissions are governed by the statutes of the University. There is much controversy whether in the past the teacher-candidates were admitted in extra seats created over and above the general seats. The appellant has referred to certain cases where the teacher-candidates were admitted in additional seats created by the University with a view to giving the teachers an opportunity to acquire higher knowledge which may be used in the interest of the institution and which may raise the standard of teaching.

It may be that the previous policy of the University is not in force and the admissions are governed strictly by the statutes or the admission rules framed thereunder. In the objections raised by the Officer in-Charge, Admissions, it was specifically pointed out that the seats were limited and all

admissions were made strictly on the basis of merit list drawn amongst all eligible candidates, and that no preferential treatment could be given to anyone including employees of the University (non-teaching/teaching) in any discipline in any Faculty. In spite of that objection, the Dean recommended for the admission of the appellant. The Vice-Chancellor also considered the office note, but approved the recommendation of the Dean. In consequence of such approval by the Vice-Chancellor, the appellant was admitted. It is urged by Mr. Mehrotra, learned Counsel appearing on behalf of the respondents, that the appellant could not be admitted and his admission was illegal. There may be some force in the contention of the learned Counsel, but when all facts were before the Uni-

versity and nothing was suppressed by the appellant, would it be proper to penalise the appellant for no fault of his? The admission of the appellant was not made through inadvertence or mistake, but after considering even all objections to the same, as raised by the said Officer-in-Charge, Admissions, in his note. The appellant was communicated with the decision of the Dean as approved by the Vice-Chancellor admitting him to the Second Year B.E. Course. The appellant deposited the requisite fees and started attending classes when he was told that his admission was directed to be put in abeyance until further orders without disclosing to him any reason whatsoever.

It is curious that although the admission to the B.E. Degree Course of the University is governed by statutes of the University and admission rules, the said resolution of the Syndicate dated December 13, 1970 has also been kept alive. Neither the Dean nor the Vice-Chancellor was aware of the true position, namely, as to whether the said resolution had become infructuous in view of the statutes and the admission rules. A teacher-candidate is likely to be misled by the said resolution. It is the duty of the University to see that its statutes, rules and resolutions are clear and unambiguous and do not mislead bona fide candidates. The University should have revoked the said resolution in order to obviate any ambiguity in the matter of admission or included the same in the statutes as part of the admission rules.

When the appellant made the application beyond the last date, his application should not have been entertained. But the application was entertained, presumably on the basis of the said resolution of the Syndicate. The appellant also brought to the notice of the Dean the said resolution and also the implementation of the same by admitting seven teacher-candidates.

It is submitted on behalf of the University that it was through mistake that the appellant was admitted. We are unable to accept the contention. It has been already noticed that both the Dean and the Vice-Chancellor considered the objections raised by the Officer-in-Charge, Admissions, and thereafter direction for admitting the appellant was made. When after considering all facts and circumstances and also the objections by the office to the admission of a candidate, the Vice-Chancellor directs the admission of such a candidate, such admission could not be said to have been made through mistake. Assuming that the appellant was admitted through mistake, the appellant not being at fault, it is difficult to sustain the order withholding the admission of the appellant. In this connection, we may refer to a decision of this Court in *Rajendra Prasad Mathur v. Karnataka University and another*, [1986] Suppl. SCC 740. In that case, the appellants were admitted to certain private engineering colleges for the B.E. Degree Course, although they were not

eligible for admission. In that case, this Court dismissed the appeals preferred by the students whose admissions were subsequently cancelled and the order of cancellation was upheld by the High Court. At the same time, this Court took the view that the fault lay with the engineering colleges which admitted the appellants and that there was no reason why the appellants should suffer for the sins of the management of these engineering colleges. Accordingly, this Court allowed the appellants to continue their studies in the respective engineering colleges in which they were granted admission. The same principle which weighed with this Court in that case should also be applied in the instant case. The appellant was not at fault and we do not see why he should suffer for the mistake committed by the Vice-Chancellor and the Dean of the Faculty of Engineering.

In the circumstances, we set aside the judgment of the High Court and also the impugned order dated January 20, 1988 of the Dean of the Faculty of Engineering and direct that the admission of the appellant will continue. The appeal is allowed. There will, however, be no order as to costs.

N.V.K.

Appeal allowed.