
(1999) 04 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6271 of 1997

Pramod Chandra Pal

APPELLANT

Vs

University of Rajasthan and Others

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Rajasthan University Ordinances, 2009 — Ordinance 124

Citation : (1999) 2 RLW 1261 : (1999) 3 WLC 752 : (1999) 1 WLN 183

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—The petitioner is a Post Graduate in Second Division in Zoology having qualified from the University of Saugar. He applied for registration for Ph.D. in Zoology under the supervision of Dr. N.K. Lohya, Associate Professor of Zoology in the University of Rajasthan. Dr. Lohya has further certified that the subject choosen for research work had not been studied so far and has sufficient scope for keeping the candidate engaged for two years. His subject was approved by Dr. Lohya as is clear vide Annexure-2 attached to the writ petition.

2. In addition to being Post-Graduate, the petitioner is said to have worked on various research projects in All India Institute of Medical Sciences (A.I.I.M.S.) New Delhi. He had attended some International conferences on "Reproductive Physiology". He is a member of Scientific Society etc. etc.

3. The petitioner was informed vide Annexure-3 that he is not eligible for registration for Ph.D. on the ground that the Petitioner was not a graduate in Second Division and he is M.Sc. in second division, therefore, he does not fulfill the qualifications required under Ordinance 124 of the Rajasthan University Ordinance issued by the University of Rajasthan. The petitioner made representations. The then Head of Department also recommended the name of the petitioner enclosing a resume Carriculum Vitae of the petitioner for Ph.D.

registration on the ground that the petitioner had appreciably contributed in the field of "Reproductive Physiology" vide Annexure-4, but still his request was not agreed to. The Vice Chancellor of the University was informed by the Head of Department of Zoology vide Annexure- 8. The case of the petitioner was referred for registration to the Standing Committee of Research Board on 10.3.1995. The committee consisted of Prof. B. Pahi-Convenor, Prof. T. Bhattacharya -Dean Faculty of Law, Prof. J.L. Bansan-Dean Faculty of Science, Dr. Lalit Tiwari-Dean Faculty Social Science and Dr. (Mrs.) P.L. Kushwaha Deputy Registrar (Res) as its members.

4. After considering the academic qualifications of the petitioner i.e. B.Sc. in third Division and M.Sc. in second division with 52 marks, his case is said to have referred to the Research Board. Ultimately, vide order Annexure-9 dated 14.10.1996, the petitioner was informed that the Vice Chancellor on behalf of the syndicate had permitted the petitioner for registration as a research scholar to supplicate for the Ph.D. Degree of the University on the subject Ultra Structural (Sem/Tem) study of Spermatozoa from infertile human under the supervision of Dr. N.K. Lohya, Associate Professor, Department of Zoology. Registration was for a period of 3 years from the actual commencement of the research work. The University vide Annexure- 11 had accepted the date of commencement of Research work to be 1.12.1993. Extension was also granted by the University upto 1.12.1997 vide Annexure-13 on 14.3.1997. After depositing the requisite fee etc., the petitioner submitted his thesis on the subject stated, after having been recommended by the supervisor and Head of Department. The University through the Deputy Registrar (Research) refused to receive the thesis. The petitioner made representations.

5. Prayer of the petitioner in the writ petition is that the direction be issued for quashing the action of the respondents in not accepting the thesis, with a further prayer that writ of mandamus be issued to process the thesis in Ph.D. degree after its acceptance.

6. It is submitted on behalf of the petitioner that in view of the research work done by the petitioner and even if he is not a second divisioner in B.Sc. and otherwise he is a second divisioner in M.Sc. in view of the proviso to Ordinance 124 in the special circumstances, the candidate can be permitted to do the research work on the recommendation of the Head of the Department and the supervisor.

7. The University of Rajasthan has filed the written statement. The facts as stated are admitted, but the petition is being opposed on the ground that the petitioner cannot be allowed to do research work in view of Ordinance 124 of the Ordinance. It is stated that the Ordinance 124 was amended in the year 1985 and the proviso clause was deleted. It is further admitted in the written statement that the petitioner was permitted to carry on the research work only provisionally. It is submitted that the then Vice Chancellor had perhaps committed a mistake by allowing the petitioner to carry on the search work

provisionally. The letter which was communicated to the petitioner had omitted certain provisions which are now reproduced in Annexure R/1 to the writ petition. It is submitted that the recommendations of the Standing Committee were to be again referred to the Research Board. Such Board is said to have met on 24.7.1997 and the recommendations of the Standing Committee were not confirmed in the meeting held on 23.7.1997, 24.7.1997 and 1.8.1997 and, therefore, in view of the amended Ordinance 124, wherein such proviso had been omitted, according to the University, no right had vested in the petitioner to apply for or appear for registration for the Ph.D. degree.

8. The Head of Department of Zoology has also filed reply to the writ petition. It is admitted that the Head of the Department, Zoology, had strongly recommended the case of the petitioner for being registered as a scholar. It is admitted that after examining the relevant documents of the case, the candidature of the petitioner was duly admitted he was enrolled as Enrollment No. 93/23812. It is submitted as per Annexure R-3/1 that the petitioner had devoted his full time for three years. The petitioner had been supported by the Head of the Department by saying that at the relevant time in the published books of the Rajasthan University there was no deletion of any proviso.

9. After hearing learned Counsel for the parties, I am of the opinion that the petition must succeed. Three books of original publishing by the Rajasthan University of the year 1985, 1990 and 1995 Hand Book of University of Rajasthan, do contain the proviso of Ordinance 124 to the effect that a candidate getting 2nd division at P.G. Examination with less than 55% marks may be permitted to do research work on a special recommendation of the Head of the Department/ Principal concerned and the supervisor. The complete Ordinance 124 as published at the University of Rajasthan press is reproduced as under-

Order 124. A candidate for admission to the degree of Ph.D. in the Faculties of Arts, Fine Arts, Music and Dramatics, Social Sciences, Science, Commerce, Education, Law, Engineering and Technology, Medicine and Pharmaceuticals and Ayurveda and the degree of Vidayavanidhi in the Faculty of Sanskrit Studies must have obtained the Master's degree (with atleast 55% marks at the Post-graduate Examination or Second division at the Post-graduate examination with atleast second division at the Degree Examination) of the University or of another University recognised as equivalent thereto in the subject or any allied subject in which he/she wishes to pursue research; provided that the Master's degree should have been obtained after taking the Bachelor's degree with full prescribed course for the degree provided that a candidate getting a second division at the postgraduate examination with less than 55% marks may be permitted to do research on the special recommendation of the Head of the Department/Principal concerned and the supervisor.

An Acharya Degree holder of a Statutory Body may be considered as equivalent to an M.A. degree holder for the purpose of Ph.D. registration, after qualifying in the papers on (i) Vedic Literature and Elements of Comparative Philology" and

(ii) "Literature and Cultural History of ancient India" of the M.A. (Sanskrit) Examination of the university.

Notes : 1. (a) this provision will, however, not debar those persons who have at least five years teaching experience of post-graduate classes.

(b) For teachers of a standing of at least ten years, the condition of obtaining second division at the degree examination may be relaxed at the discretion of the Research Board.

2. Candidates who take the B.A. degree of another statutory Indian University as oriental candidates after passing a public examination in a classical or a modern Indian language and thereafter the M.A. degree as regular students or teachers etc. will also be eligible for registration under this Ordinance.

3. In order to be eligible for registration for the degree, a candidate must be the holder of the Master's degree of at least two years standing at the time of conferment upon him the degree of Ph.D. which shall date from the convocation at which the Masters degree was conferred upon him.

4. No candidate will ordinarily be permitted to do research work for the degree of Ph.D. in a Faculty different from the one in which he/she has obtained his/her Master's degree, permission to supplicate for the degree of Ph.D. in different Faculty/Subject may be granted in special case on the recommendation of the Research Board subject to the condition that such a candidate shall be required to qualify in a written test to be held by the University. The written test shall consist of one paper of three hours duration carrying 100 marks and is intended to test proficiency of a candidate in the subject in which he/she seeks registration.

5(a) The candidate may present himself for the degree of Doctor of Philosophy/ Ph.D., in the medical sciences of Anatomy, Physiology, Bio-Chemistry, Pharmacology, Pathology, Microbiology and Preventive and Social medicine provided that he is M.Sc. (Med.) or M.D. or M.S. in the medical science concerned, of this University or of any other University recognised by the Syndicate for the purpose, and at least two years, have lapsed since he qualified for the degree of M.D. or M.S. and three years have lapsed in the case of those who had qualified for the degree of M. Sc. (Med.)

(b) The candidate may present himself for the degree of Doctor of Philosophy (Ph.D. in the medical sciences of Experimental Medicine, Experimental Surgery, Experimental Obstetrics and Gynaecology and Experimental Ophthalmology) provided that he is M.B.B.S. followed by M.D. or M.S. in the Medical science concerned of the University or of any other University recognised by the Syndicate for the purpose and at least two years have lapsed since he qualified for the degree of M.D. or M.S.

6. The candidate may present himself for the degree of Doctor of Philosophy (Ph.D.) in the Faculty of Ayurveda provided that he/she is Ayurved Brahmaspati of

the University or its equivalent degree recognised by the University for the purpose. Provided further that a teacher who possess Bhishgacharya/ Ayurvedacharya (Rajasthan)/Ayurvedacharya of Rajasthan University or its equivalent degree recognised by the University and having at least five years teaching experience of degree level in an affiliated Ayurvedic College may be allowed registration for the Ph.D. degree directly.

7. The degree of Ph.D. in the Faculty Sanskrit Studies shall be designated as Vidya-Varidhi (Ph.D.) and for the purpose of this degree, Master's Degree and the Bachelor's degree mean the Acharya Degree and the Shastri Degree respectively.

10. The contention of the University to say that the proviso was deleted in the year 1985 has not been supported by the proceedings of the meeting which might have taken place without any subject agenda, nor any such record has been attached or produced. If any such proviso was deleted, it is un-imaginable that the original Ordinance 124 would be printed and published for the notice of the public in all the subsequent editions of 1990 and 1995.

11. The above said contention is also strengthened with the fact that in case there would have been no power of relaxation or proviso, where was the necessity for referring the matter to the Standing Committee or to the Research Board. The Research Committee or Research Board could have only considered the matter of the petitioner if there was any power vested in them under the Ordinance, otherwise there would have been no necessity for putting the case of the petitioner to the Standing Committee or to the Research Board of recommendation.

12. The Ordinance as reproduced above, enables the University to relax the provisions in special cases where on special recommendation of the Head of the Department/Principal or the Supervisor, even if a candidate has possessed less than 55% marks in the P.G. Examination. The University vide its order Annexure-9 did permit the petitioner for Registration as Ph.D. Scholar. Nothing has been mentioned in Annexure-9 that the permission is provisional or subject to decision of any committee or Board. The petitioner who is otherwise highly qualified as stated above, did make his preparation. He was highly recommended by the Head of the Department and also the Supervisor. He was enrolled as scholar and was registered as such. No objection Certificates were issued to him and after the hard work of more than 3 years, when he goes to submit his thesis, the Depty Registrar does not entertain it. The struggle of the petitioner of three years is lost. Interestingly, no letter has been written to him as to why the thesis had not been accepted or entertained. All is oral exercise. Nothing has been brought on record either by the University or the petitioner for not entertaining or receiving the thesis by the office. In my opinion, it is a case where the University is estopped to go back on its commitment.

13. The ordinance which continues to be the same as un-amended in the

publications made by the University, does enable the respondent to accept the thesis as submitted. It is also settled law that the notification of amendment or otherwise is made applicable when it is published and the public is so informed. Even if the Syndicate, had taken any decision as alleged, except that it remained in the proceedings of the meeting, it seems that it was never published for the public notice. What remained in the statute book of the original Ordinance is clear from the Hand Books published by the University of Rajasthan in the years 1985, 1990 and 1995. The University had also been acting upon the provisions by considering the case of the petitioner for relaxation and as such the University is estopped from saying that the thesis of the petitioner cannot be entertained.

14. In *Rajendra Prasad Mathur v. Karnataka University and Anr.* AIR 1986 SC 14448, where certain ineligible students were allowed to pursue the course of Engineering by giving admission, the students were allowed to continue the studies. It was observed as under-

We accordingly endorse the view taken by the learned Judge and affirmed by the Division Bench of the High Court. But the question still remains whether we should allow the appellants to continue their studies in the respective Engineering Colleges in which they were admitted. It was strenuously pressed upon us on behalf of the appellants that under the orders initially of the learned Judge and thereafter of this Court they have been pursuing their course of study in the respective Engineering Colleges and their admissions should not now be disturbed because if they are now thrown out after a period of almost four years since their admission their whole future will be lighted. Now it is true that the appellants were not eligible for admission to the Engineering Degree Course and they had no legitimate claim to such admission. But it must be noted that the blame for their wrongful admission must lie more upon the Engineering Colleges which granted admission than upon the appellants, it is quite possible that the appellants did not know that neither the Higher Secondary Examination of the Secondary Education Board, Rajasthan nor the first year B.Sc. examination of the Rajasthan and Udaipur Universities was recognised as equivalent to the Pre-University Examination of the Pre-University Education Board, Bangalore. The appellants being young students from Rajasthan might have presumed that since they had passed the first year B.Sc. examination of the Rajasthan or Udaipur University or in any event the Higher Secondary Examination of the Secondary Education Board, Rajasthan they were eligible for admission. The fault lies with the Engineering Colleges which admitted the appellants because the Principals of these Engineering Colleges must have known that the appellants were not eligible for admission and yet for the sake of capitation fee in some of the cases they granted admission to the appellants. We do not see why the appellants should suffer for the sins of the managements of these Engineering Colleges. We would, therefore, notwithstanding the view taken by us in this judgment, allow the appellants to continue their studies in the respective Engineering Colleges in which they were granted admission.

15. In *Ashok Chand Singhvi Vs. University of Jodhpur and Others*, , it was observed as under-

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* 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.

16. In *Kanishka Aggarwal Vs. University of Delhi and others*, wherein it was observed as under-

What do we find in this case? It is the Professor-in- charge who may make provisional admissions. It is he, who, as the so called Convenor, may admit provisionally even those who do not find their names in any of the List. There was no Waiting List and as many as 72 vacancies were crying to be filled up on he very last date of admissions. The petitioner was there. So were the like of him. They were all waiting in the wings with money in their wallets to pay admission fees. They were invited. They paid the fees. (It was argued by Mr. Rao that the petitioner must have named the person who had invited him to pay the fees. We regard it immaterial. There was some Barker somewhere who was Willing a la Divid Copperfield. And, then how could fees be deposited without the other side willing to accept? Have we not heard and heard again that line from the Goblin Market; "One may lead a horse to water, twenty cannot make him drink") They were issued regular receipts for the same. Let us not forget that as per Clause IX of the Bulletin fees is to be paid only by an "applicant selected for admission."

Let us also not forget that before the payment of fees, the applicants admitted provisionally have to produce all the requisite certificates in original and their confirmation is to be made by none other than the Professor-in-charge himself, and as per the applicant, he had actually produced those certificates. (See clause VII (c) As per Clause IX(3) The applicant also furnished two copies of his latest passport size photograph, the same being essential to "effect his/her admission by payment of fees." He was allotted a roll number. He was issued even the requisite identity card. He was also assigned to one of the seven sections. He even started attending the lectures. And later, in all the communications of the University he was shown to have been provisionally admitted. Does all this not constitute a representation? What is all this if not the requisite conduct? Was the applicant not justified, under the circumstances, to raise the "assumption"? (See Sanatan Gauda Vs. Berhampur University and others,

17. A word or two more before we come to judgment and the University to its grief.

Mr. Rao spoke of "detriment. We do not know if this expression has ever been defined. However, what we do know is that it is very much at the discretion of the court in individual instances. If that be so, has the "representation" and the conduct" of the University Knot let the applicant to burn his boats? He could easily have looked out for other equally greener pastures. He has lost one full academic year. What is this, if not "detriment"?

18. We hold that the plea of estoppel is available and applicable.

19. Counsel for the petitioner also relies on the decision of this court in the case of Sandhya Singh v. University of Rajasthan and Anr. S.B. Civil Writ Petition No. 2193/89 decided on 23.1.1991, a Full Bench decision of Punjab & Haryana High Court in Baldev Singh v. State of Punjab and Ors. 1980(3) SLR 385 and in the case of State of Maharashtra Vs. Jagannath Achyut Karandikar,

20. For the reasons mentioned above, I allow the writ petition and issue a writ of mandamus to the respondents to entertain the thesis of the petitioner forthwith if not already entertained in view of the orders passed by this court on 20.11.1997, wherein an interim order was passed by this court for allowing the petitioner to submit his thesis and final acceptance was made subject to the consideration of his plea in the present case.

21. For the reasons mentioned above, the writ petition is allowed and the thesis submitted shall be processed in accordance with law, if already not processed and the result shall be declared forth-with. The petitioner shall be entitled to a cost of Rs. 5,000/-.