
(2007) 03 AHC CK 0162
In the Allahabad High Court
Case No : Special Appeal No. 281 of 2007

Principal, Allahabad Degree College,; Allahabad and Ors. APPELLANT
Vs
Ashish Kumar Rai RESPONDENT

Date of Decision : 12-03-2007

Acts Referred:

Citation : (2007) 03 AHC CK 0162

Hon'ble Judges : H.L.Gokhale, CJ and Vikram Nath, J

Final Decision : Allowed

Judgement

1. Heard Mr. Ravi Kant, learned Senior Counsel with Mr. Rohit Agarwal and Mr. Basu for the respondent.

2. The appeal is admitted.

3. The appeal by the Allahabad Degree College in Law seeks to challenge the order passed by the learned Single Judge on 2322007 in Civil Misc. Recall/ Restoration Application No. 227371 of 2006, whereby the learned Judge recalled his own order dated 1392006, whereby he had dismissed Civil Misc. Writ Petition No. 47231 of 2006, which was filed by the respondent.

4. The short facts leading to this appeal are this wise; the Allahabad Degree College in Law holds an Entrance Examination for the admission to the LL.B. Degree Course. Such examination was held for the admission to the Course to start in June, 2006. The relevant rule of the Bar Council of India, which is circulated to all the authorities concerned on 2141998, reads as follows :

?The following is the requirement prescribed by the Bar Council of India regarding percentage of marks required in the qualifying examination for admission in the three year as well as five year Law Courses :

?If there is entrance test, the percentage should be 40, but if there is no entrance test, the percentage should be 45 for LL.B. admission.?

5. The interpretation of this rule by the University is that since it was holding an entrance test, it was mandatory for the student concerned to obtain 40% of the marks in the examination. The marks consisted of three papers totalling to 300 marks and, therefore, a student has to secure 120 marks.

6. It is not in dispute that as far as the respondent is concerned, he has obtained 115 marks. It was his contention that he was eligible for addition of 5% of his marks under another relevant rule No. 7D framed by the Faculty of Law. This rule provides that an addition of 5% of the standard score shall be applicable to the student, who holds "C" Certificate of National Cadet Corps. The respondent had such certificate and, therefore, it is his case that he be treated as having secured 121 marks. The respondent was denied admission and, therefore, he filed a Civil Misc. Writ Petition No. 47231 of 2006.

7. The learned Judge, who heard the matter, dismissed the petition on 13/9/2006. Subsequently a recall application was filed, which has been allowed on 23/2/2007. Being aggrieved by this order, the Allahabad Degree College in Law has filed this appeal.

8. Mr. Ravi Kant, learned Senior Counsel appearing for the appellant submitted that the rule framed by the Bar Council of India requires that the student concerned must obtain 40% marks in the entrance examination held by the University. In the instant case, the respondent did not obtain those marks and since he did not obtain those marks, he could not be admitted. As against that, the submission of Mr. Basu, learned Counsel for the respondent is that the respondent was eligible to this addition of 5% under the relevant rule and thereafter he was entitled to be given admission. He has relied upon a judgment of the Hon'ble Apex Court in *Mohan Bir Singh Chawla v. Punjab University, Chandigarh & Anr.*, reported in AIR 1997 SC 788, and particularly paragraph 15 thereof which reads as under :

?Now let us examine the facts of the case before us from the standpoint of above principles. The reservation being universitywise, it cannot be said to be bad. Having regard to the fact that the case is one of admission to LL.B. course and also having regard to the fact that admissions are not made on the basis of marks in an entrance test but on the basis of marks obtained in the qualifying examination we are inclined to think that addition of ten percent of marks is yet on the higher side. The result of the rule is evident in the figure mentioned hereinbefore. The representation of students from other universities appears to be coming down steadily. In the present competitive age, ten percent of marks will make a substantial difference. May be, the addition, if any, should not exceed five percent?.

9. Now as can be seen from this paragraph, it is clear that where admissions are given on the basis of qualifying marks such as examination of the Board, the addition which is provided was held to be available and it was available to the extent of 5%. The paragraph clearly makes distinction between such qualifying

examination and entrance test taken by the admitting body. It is, therefore, not possible to accept the interpretation canvassed by Mr. Basu that the respondent was entitled to get the addition of 5% marks even though he had not obtained the minimum qualifying percentage.

10. The University closed its admissions on 8/9/2006. Initially, amongst these students who were admitted, the last student admitted, obtained 121 marks. Some three vacancies were available, therefore, students, who had secured 120 marks were also admitted. The writ petition came to be dismissed on 13/9/2006. However, subsequently, accepting the interpretation canvassed by the learned Counsel for the respondent on the recall application, the learned Judge has allowed the recall application and issued a mandamus that the respondent be admitted to the 1st Year LL.B. Course. The learned Judge has also directed the Principal of the College to explain her conduct why appropriate proceedings be not initiated against her for making false statement.

11. As far as first part of the order is concerned, surely in view of the view that we have taken, the learned Judge was in error in accepting the interpretation canvassed by the respondent and allowing the recall application. And as far as the alleged false statement made by the Principal is concerned, Mr. Ravi Kant has taken us through the affidavit filed by the Principal who has clearly stated that initially the student last admitted had secured 121 marks, but subsequently some vacancies became available and, therefore, the students securing 120 marks were also admitted. We do not find that any false statement was made by the Principal and, therefore, there is no occasion to hold any inquiry against the Principal.

12. There is one more reason why we cannot grant any relief to the petitioner/respondent. That is principally for the reason that the academic course started way back in June, 2006 and now the second semester is going on. If what the learned Judge directed has to be followed, it will mean retrospective admission from June 2006, and such a course is not permissible.

13. Mr. Ravi Kant, has drawn our attention to paragraph 7 of an Hon'ble Apex Court judgment in the case of Supreet Batra & Ors. v. Union of India & Ors., reported in 2003(1) LBESR 576 (SC) : (2003) 3 SCC 370, which was in the context of the medical admission. In that paragraph, the Hon'ble Apex Court has gone to this extent that assuming if there are some seats remaining unfilled, it cannot be a ground for making midsession admission by holding further Counselling beyond last date. This essentially is for benefit of students; they are expected to attend certain number of classes in the College. Directing any such admission, will mean that the student, who has not attended the College at all throughout the first semester will be permitted to go into second semester. This cannot be permitted.

14. For these reasons, we allow this appeal. The order passed by the learned Single Judge on the recall application dated 23/2/2007, is hereby quashed and set

aside.

15. There will be no order as to costs.