

**(2009) 04 AHC CK 0567**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 1424 of 2008**

Swati Rai

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

---

**Date of Decision :** 07-04-2009

**Acts Referred:**

**Citation :** (2009) 04 AHC CK 0567

**Hon'ble Judges :** Janardan Sahai, J and Rakesh Sharma, J

**Final Decision :** Dismissed

---

## Judgement

1. Heard Sri U.N. Sharma learned counsel for the petitioner/appellant assisted by Sri Jay Prakash Rai and Sri Ankur Agarwal holding brief of Smt. Sunita Agarwal learned counsel for the respondents.

2. This is an appeal against the order of learned Single Judge dated 25.9.2008 by which the writ petition of the appellant seeking a mandamus for her admission in the B.D.S. Course 200809 of the Aligarh Muslim University has been dismissed.

3. It appears that Medical Entrance Examination for the B.D.S. Course 200809 was held by the Aligarh Muslim University and the appellant could not secure a position in the main merit list. However, she was placed on the waiting list.

4. It appears that some of the candidates from the main merit list could not join and hence candidates from waiting list were called. The University issued chance memos to the candidates on the waiting list. The matter relating to the admission of students is covered by the Rules 23 and 24 framed by Academic Council of the University. The said rules are being quoted below:

"23. Candidates not reporting for admission on the stipulated date and time shall forfeit their claim for admission and no correspondence in this regard shall be entertained.

"24. The University shall issue or display "Chance Memos" if there is any likelihood of a vacancy caused due to removal of name or any other reason.

Chance Memo is not an offer of admission but is issued only in case there is likely to be a vacancy due to one or more candidate with Chance Memo No. 1 shall be given admission provided he/she reports on the specified date and time. In case the candidate with Chance Memo No. 1 does not report for admission, the vacancy is offered to the candidate with Chance Memo No. 2, and so on."

5. The appellant was given a chance memo number 99 and was required to report on 15.6.2008 for the vacancies to be filled up on 16.7.2008. However, as the appellant did not report in time on 15.7.2008, she was not considered for admission on 16.7.2008.

6. Sri U.N. Sharma, learned Senior Advocate appearing for the appellant submitted that although the appellant had no right to claim admission against the vacancies which were filled up on 16.7.2008 as she could not report on time but she had a right to be considered for admission against the vacancies which had subsequently arisen. It is stated that the appellant had appeared before the Controller of Examination and ViceChancellor of the University on 16.7.2008 and had requested for admission when subsequent lists were issued, therefore, the appellant should have been considered for admission against the vacancies which had subsequently arisen but the respondents have given admission to the candidates who were lower to the appellant in the waiting list. Reliance has been placed by the counsel upon certain decisions.

(i) Dr. Swapnil Chauhan v. Director, Medical Education, Lucknow, 1995 (3) ESC 516 (All),

(ii) Dr. Dharmendra Narain Dwivedi v. Director General (Medical Education & Training) Lucknow and others, 1998 (3) ESC 2218 (All),

(iii) Amanjit Singh Gill v. Director General of Health Services, 1998 UPLBEC 1005,

(iv) Paval, Ammal Vaiyapuri Education Trust v. Government of Tamil Nadu and others, 1994 (2) ESC 614 (SC),

(v) Dr. Rajeev Madan v. Principal, LLRM Medical College, Meerut, 1998 UPLBEC 1294,

(vi) Dr. Vijay Kumar Shukla v. State of U.P. and others, 1986 UPLBEC 1379.

7. Counsel for the appellant also relied upon the decision of the learned Single Judge of this Court in Mayank Srivastava v. Indian Institute of Information Technology, Allahabad, 2002(3) ESC 492 (All).

8. In our opinion none of the decisions are applicable to the facts of the case. It has been held in these cases that admissions have to be made in accordance with merit. This proposition that admissions have to be made in accordance with merit is not in dispute.

9. The appellant was given a chance memo No. 99 and was required to report on a particular date. The rule of merit was, therefore, followed by the University.

The appellant failed to avail that opportunity and could not appear on that date. What the University has done is that on account of the absence of the candidates, like the appellant who were higher up in the merit it offered admission to the candidates lower down in the merit in accordance with their chance memos.

10. Sri U.N. Sharma submitted that in respect of subsequent vacancies a fresh list of chance memo ought to have been drawn by the University according to merit.

11. In our opinion this contention cannot be accepted. Rule 24 clearly states that in case, a candidate with a chance memo does not report, the candidates having next chance memo would be called. If Rule 23 and 24 are read together it would be clear that one chance is given to a candidate, under Rule 23 and that if the candidate is required to report on particular date and the chance is not availed of the right of admission stands forfeited. In our opinion the same position is intended in Rule 24. This is clear from Rule 24 which says that if the candidate fails to report the candidate with the next chance memo would be called.

12. In our opinion, if the University has taken a consistent stand in respect of candidates in the waiting list by proceeding to consider the candidates according to the serial number of chance memos which had been given to the candidates according to their merit, no exception can be taken to it. It appears that the University has enforced Rule 24 in the case of the appellant and in respect of other candidates uniformly. We, therefore, do not find any illegality committed by the University in giving admission to the candidates in the order of the chance memos even in respect of vacancies subsequently arising. It appears that there were other candidates higher up in the waiting list than the petitioner who did not report and in respect of those candidates also no fresh chance memos were given. It appears that a list of 94 candidates who had failed to report was drawn up by the University and the name of the appellant finds place at serial No. 65 according to merit. It is thus evident that 64 candidates were higher up than the appellant in the waiting list candidates who could not report. For these reason also the appellant has no case.

We do not find any merit in this appeal hence dismissed.