

**(1996) 01 AHC CK 0110**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 30897 of 1995

Vishwas Agarwal

APPELLANT

Vs

University of Allahabad and  
Another

RESPONDENT

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**Date of Decision:** Jan. 4, 1996

**Acts Referred:**

- Uttar Pradesh State Universities Act, 1973 - Section 2(19), 27(4), 27(5), 31

**Citation:** (1996) 1 UPLBEC 306

**Hon'ble Judges:** D.K. Seth, J

**Bench:** Single Bench

**Advocate:** A.C. Agarwal, for the Appellant; A. Bhushan, for the Respondent

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### **Judgement**

D.K. Seth, J.

In this case the Petitioner having passed Intermediate Examination applied for admission in the University of Allahabad, in B. Com. First Year. But he was refused admission on the ground that his marks were below the minimum cut off marks.

2. By means of this writ petition the Petitioner challenging the said refusal and has claimed that he is entitled to outright admission in view of Clause 12 of the Brochure for admission for the year 1995-96 which provides that a candidate who is the son or daughter of the existing teacher or an employee of the University is eligible for outright admission. Sri A.C. Agarwal. father of the Petitioner who appeared in person to argue the case In support of the Petitioner, contends that by virtue of his being an employee of the Motilal Nehru Regional Engineering College. Allahabad, the Principal whereof is an ex officio dean by reason of proviso to Sub-section (4) of Section 27 of the U.P. State University Act. Therefore, he is also a teacher of the University. He relies on the provision of Section 31 of the U.P. State Universities Act and contends that the teachers of associate college are appointed In terms of Section 31 of the said Act and by reason of such appointment, he is also to be

deemed to be a teacher of the University. He further contends that the dean of the faculty of Engineering is responsible as provided in Sub-section (5) of Section 27 of the Act for organisation and conducting of teaching and research work of the department comprised in the faculty relying on the definition of "teacher of the University" as contained in Sub-section (19) of Section 2 of the said Act, which includes a teacher imparting instruction and guiding or conducting research either in the University or in an institute or in constituent, college maintained by the University.

3. According to him, since he does the same work in the Moti Lal Nehru Regional Engineering College, Allahabad, therefore, he comes within the definition of teacher of the University", as provided in Section 2(19) of the Act.

4. Sri Baghel, learned Counsel appearing for the University, on the other hand contends that Clause 12 of the said Brochure is clear and specific and it applies only in respect of the candidates who are sons or daughters or spouse of the existing teacher of the University. It does not include any teacher who is not employed in the University. He points out relying on the provisions of the Statute 13.01 and 13.02 of the 1st Statute of the Allahabad University and contends that Motilal Nehru Regional Engineering College, Allahabad is an associate College of the University and it is neither constituent college nor an Institute maintained by the University. The associate college is recognised by reason of the provisions contained in the Statute 13.02 of the First Statute. He draws my attention to the Note under Statute 13.01 and points out that Motilal Nehru Regional Engineering College, Allahabad (hereinafter referred to as the said College) is not covered by the provision of the Statute which are inconsistent with the Memorandum of Association of the said college. He further submits that the Memorandum of Association of the said college clearly specifies that the provision of the Statute would not apply so far as the management of the said college is concerned. He further submits that there is no relation of employer and employee between the University and the father of the Petitioner. The father of the Petitioner is a lecturer of the said College. By no stretch of imagination, it can be said that he is a teacher of the University. Drawing my attention to Section 31 of the said Act, he points out that the appointment of the father of the Petitioner was not made by the University. It is the Board of Governors of the associate college which is responsible for appointment of the father of the Petitioner.

5. Sri Agarwal, in reply contends that since the Principal of the College is the dean of faculty of the Engineering. Therefore, the entire faculty is conducted and organised by the said faculty, of which the Principal of the college is the dean. By reason thereof, teacher of the said college shall be deemed to be a teacher of the University.

6. After having heard respective submissions made, it appears that the provisions of Clause 12 of the said Brochure applies only to the son, daughter and spouse of

existing teacher and some other categories with which we are not concerned at the present moment. I will be dealing with the question only with regard to the existing teacher at the moment. It is not disputed that Clause 12 is not applicable even to the teachers of the other associated colleges, as contained in Statute 13.01. Only because the Principal of the said college is dean of faculty of the Engineering, therefore, teachers of the said college should be treated to be the teacher of the University. But such contention is wholly misconceived in view of definition of "teacher of the University" as contained In Section 2(19) of the said Act which runs as under:

2(19). "teacher of the University" means a teacher employed by the University for imparting instruction and guiding or conducting research either In the University or in an Institute or in constituent college maintained by the University.

7. It clearly shows from the definition contained In Section 2(19) of the said Act that In order to be a teacher of the University, the first condition to be fulfilled is that he must be employed by the University and the second condition is that for Imparting instruction and guiding or conducting research, while the third condition is that such activities are to be conducted in the University or in the Institute or in constituent college maintained by the University.

8. Admittedly the father of the Petitioner has not been employed by the University. Sri Agarwal very fairly conceded that his services cannot be terminated by the Executive Council of the University and he has been appointed by the Board of Governors of the said college. There is no dispute that the college is altogether a different entity from the University. The note under Statute 13.01 clearly indicates that the Memorandum of Association would override the provisions of the Statute in case the provision of the latter are inconsistent with the former. Therefore, there cannot be any iota of doubt about the independence of the said college. So far as the father of the Petitioner is concerned, he being the lecturer in the said college and not being a member of faculty, cannot be said that he is an employee for imparting instruction and guiding or conducting research in the University. The said college is not a constituent college nor an institute maintained by the University. Sri Agarwal very fairly conceded that the funds for managing the said college is directly provided by the State or the Central Government. There is no dispute that the said college is not maintained by the University though it is recognised as an associate college. It is not disputed that the said college is neither an institute nor constituent college of the University. Since the father of the Petitioner has not been employed by the University for Imparting Instruction and guidance or conducting research either in the University or in an Institute or in constituent college maintained by the University. Therefore, by no stretch of imagination a teacher of the said college could be brought within the ambit of teacher of the University, thereby attracting the benefit of Clause 12 of the said Brochure in the case of son, daughter or spouse of such teacher.

9. In that view of the matter, I am unable to persuade myself to agree with the contention of Sri Agarwal that the Petitioner is eligible for outright admission by virtue of Clause 12 of the Brochure, as a son of the existing teacher of the University. The writ petition, therefore, fails and is hereby dismissed. There will be, however, no order as to costs.

10. Let a copy of this order be given to the learned Counsel for the parties on payment of usual charges within a week.