

RAMAN SINGH

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v.

THE DISTRICT INSPECTOR OF SCHOOLS,  
JALAUN AT ORAI & ORS.

(Civil Appeal No.5265 of 2019)

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JULY 08, 2019

**[DR. DHANANJAYA Y. CHANDRACHUD AND  
INDIRA BANERJEE, JJ.]**

*Appointment – Adhoc appointment of Teacher – On the basis of leave vacancy – After the leave vacancy ceased to exist, ad hoc appointee absorbed in the substantive vacancy by school management – Writ petition seeking direction to State to release his salary treating his ad hoc appointment as an appointment on permanent basis – Dismissal of writ petition by Single Judge of High Court – Special appeal dismissed by Division Bench of High Court – On appeal, held: The purported appointment of the ad hoc appointee to the substantive post was without approval of District Inspector of Schools – No procedure as required by law was followed in making the appointment to the substantive post – The appellant had continued in service by virtue of interim orders – Appellant had no right to claim conversion of his ad hoc appointment into a substantive appointment – It is directed that steps be taken to fill up the post on a regular basis – However, in the facts of the case, appellant is allowed to continue on the post on purely ad hoc basis until a regularly appointed candidate is selected.*

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**Disposing of the appeal, the Court**

**HELD:** 1. The appellant was appointed purely on an *ad hoc* basis in a leave vacancy which arose in the institution. On the death of the regularly appointed candidate, the leave vacancy ceased to exist. Once a substantive vacancy arose, it was required to be filled up in accordance with law. The appellant had no right or entitlement to claim that his appointment on an *ad-hoc* basis in a leave vacancy should be converted into a substantive appointment. [Para 14] [277-F-G]

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- A        2. The purported appointment of the appellant to a substantive post was without the approval of the District Inspector of Schools (DIOS). The DIOS had rejected the application of the management to absorb the appellant to a substantive post over 24 years ago on the ground that his appointment would be in violation of the applicable law. No procedure as required by law was followed in making the appointment. The appellant however instituted proceedings and has continued in service by virtue of the interim orders. The person who was appointed on the post in accordance with law in 1997, was allegedly prevented from joining his post. The method adopted by the appellant and the management is unsustainable in law. [Para 15] [278-A-D]
- B        3. The ends of justice would be met if a direction is issued to the effect that necessary steps be taken to fill up the post on a regular basis as expeditiously as possible within a period of four months. In order to ensure that there should be no dislocation
- D        of work in the educational institution, the appellant, having regard to facts and circumstances of the present case, should be allowed to continue purely on an *ad-hoc* basis until a regularly appointed candidate is selected. In exercise of jurisdiction under Article 142 of the Constitution of India it is also directed that his salary should be paid over for the period for which he works until a regular candidate is appointed. [Para 16] [278-D-F]
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*Pramila Mishra v Deputy Director of Education*  
1997 (2) ESC 1284 ALL (FB) – referred to.

**Case Law Reference**

- F        1997 (2) ESC 1284 ALL(FB)      referred to      Para 13

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5265  
of 2019

- G        From the Judgment and Order dated 30.10.2017 of the High Court of Judicature at Allahabad in Special Appeal No. 1873 of 2013

Ms. Meenakshi Arora, Sr. Adv., Parmatma Singh, Mayank Jain, Madhur Jain, Advs. for the Appellant.

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Tanmaya Agarwal, Wrick Chatterjee, Advs. for the Respondents. A

The Judgment of the Court was delivered by

**DR DHANANJAYA Y CHANDRACHUD, J.** 1. Leave granted.

2. This appeal arises from a judgment dated 30 October 2017 of the Division Bench of the High Court of Judicature at Allahabad dismissing the Special Appeal filed by the appellant and affirming the judgment of the Single Judge dated 9 October 2013. B

3. The appellant was appointed by the Committee of Management of the third respondent as an ad-hoc Lecturer in English on 11 August 1993 against a short-term vacancy which arose upon the grant of three months' leave to the then incumbent in the post. On 1 October 1993, the regularly appointed lecturer who was on leave died. As a result, the appellant continued in service. On 30 June 1994, the management sought to absorb the appellant in the substantive vacancy which arose on the death of the regularly appointed candidate. C

4. The case of the appellant is that the management sought the approval of the District Inspector of Schools<sup>1</sup> on 2 July 1994 and again on 18 March 1996, but no intimation was received. Aggrieved, in April 1996, the appellant filed a writ petition before the High Court seeking a mandamus to treat his ad hoc appointment as an appointment on a permanent basis and for a direction to the State to release his salary, since the institution is an aided institution. D

5. The High Court issued an interim order on 16 April 1996 to the effect that until the next date of listing or until a regularly appointed candidate is available, whichever is earlier, the appellant shall be allowed to continue against the payment of due salary. F

6. On 30 June 1997, a candidate by the name of Nem Singh was appointed by the U.P. Secondary Education Service Selection Board. According to the State, the appellant and the management colluded to prevent the selected candidate from joining the post, though this is a matter of dispute. There is on the record a letter from the Deputy Director of Education dated 30 June 1997 stating that Nem Singh could not take over the charge of the school since he did not make any contact with the G

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<sup>1</sup> DIOS

A school. The admitted position is that the selected candidate did not join the post. In consequence, the appellant continued to be employed in the post. The salary of the appellant was stopped.

7. The writ petition filed by the appellant was dismissed by a learned Single Judge of the High Court on 9 October 2013. The appellant B filed a Special Appeal against the dismissal of the petition.

8. During the pendency of the Special Appeal, there was an interim order in favour of the appellant in terms similar to the interim protection which was granted earlier on 16 April 1996 by the Single Judge of the High Court. By the impugned order dated 30 October 2017, the Special C Appeal was dismissed by the Division Bench. The High Court held that the appellant was appointed in a leave vacancy, in terms of the Second Removal of Difficulties Order 1981. The High Court observed that in the absence of approval to his appointment by the competent authority, any further direction for his continuance or for payment of salary is not permissible in law.

D 9. From the order of the High Court, it emerges that a counter affidavit was filed in the course of the Special Appeal where it was stated on behalf of the DIOS that by a letter dated 14 July 1994, approval for the appointment of the appellant had been declined since it was not in conformity with the provisions of Section 18 of the UP Secondary E Education Services Selection Board Act 1982 and the Removal of Difficulties Order. Consequently, while affirming the judgment of the learned Single Judge, the Division Bench directed that the salary which was paid over till the date of the judgment shall not be recovered, but the appellant will not be entitled to any further emoluments.

F 10. Assailing the decision of the Division Bench in Special Appeal, the appellant moved this Court under Article 136 of the Constitution of India. On 10 January 2018, when the Special Leave Petition was taken up, the following statement made on behalf of the appellant was recorded:

G “Learned counsel for the petitioner says that he does not claim any right over the post of lecturer in the school, but says that the petitioner may be allowed to continue till regular or other appointment is made.”

H 11. Subsequently on 13 August 2018, there was a direction that the salary should be paid to the appellant for the period for which he has

worked. Admittedly, these directions have been complied with. The A  
appellant continues to remain in service and his salary has been paid.

12. Ms. Meenakshi Arora, learned Senior Counsel appearing on behalf of the appellant submits that the appellant has seriously disputed the stand of the DIOS to the effect that his services had been disapproved by the issuance of a letter dated 14 July 1994. It has been urged that there was no reference to this letter before the learned Single Judge and it was only when a counter affidavit was filed in the Special Appeal before the Division Bench that the department adverted to the issuance of this letter declining approval. It has been urged that in consequence, though under the interim orders of the High Court, the appellant has continued to remain in service and discharged his duties since 1993 and as the senior most teacher, the management has submitted a proposal for the continuance of the appellant as an in-charge principal.

13. On the other hand, it has been urged Mr. Tanmaya Agarwal, learned Senior Counsel appearing on behalf of the first respondent that the High Court has correctly come to the conclusion that the ad hoc appointment of the appellant could not have, in any case materialised into a substantive appointment, on the death of the then incumbent. It has been urged that no procedure was followed in making a regular appointment and the law has since been settled in a judgment of a Full Bench of the Allahabad High Court in **Pramila Mishra v Deputy Director of Education**.<sup>2</sup> The ad-hoc appointment, necessarily came to an end upon the ceasing of the short term vacancy on the death of the incumbent. Hence, it was urged that there was no vested right on the part of the appellant to claim a regular appointment or, for that matter, to continue in service.

14. The appellant was appointed purely on an ad hoc basis in a leave vacancy which arose in the institution. On the death of the regularly appointed candidate, the leave vacancy ceased to exist. Once a substantive vacancy arose, it was required to be filled up in accordance with law. The appellant had no right or entitlement to claim that his appointment on an ad-hoc basis in a leave vacancy should be converted into a substantive appointment. The view which has been taken by the learned Single Judge and in appeal by the Division Bench, therefore, cannot be faulted.

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<sup>2</sup>1997 (2) ESC 1284, ALL(FB)

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- A        15. It is evident that the purported appointment of the appellant to a substantive post was without the approval of the DIOS. The DIOS had rejected the application of the management to absorb the appellant to a substantive post over 24 years ago on the ground that his appointment would be in violation of the applicable law. No procedure as required by law was followed in making the appointment. The appellant however instituted proceedings and has continued in service by virtue of the interim orders which were passed in the writ proceedings by the learned Single Judge and thereafter, during the pendency of the Special Appeal, by the Division Bench. Even during the pendency of these proceedings, following the statement which has been made on his behalf on 10 January 2018,
- B        there was a direction on 13 August 2018 for the payment of the salary to him for the period for which he has worked. Eventually, the management proposed to post him as an in-charge Principal. Nem Singh, who was appointed in accordance with law in 1997, was allegedly prevented from joining his post. The method adopted by the appellant and the management is unsustainable in law.
- C        16. Hence, we are of the view that the ends of justice would be met if a direction is issued to the effect that necessary steps be taken to fill up the post on a regular basis as expeditiously as possible within a period of four months from the receipt of a certified copy of this order.
- D        In order to ensure that there should be no dislocation of work in the educational institution, the appellant, having regard to facts and circumstances of the present case, should be allowed to continue purely on an ad-hoc basis until a regularly appointed candidate is selected. We also direct, in exercise of our jurisdiction under Article 142 of the Constitution of India, that his salary should be paid over for the period
- E        F        for which he works until a regular candidate is appointed.
- G        17. We clarify that disposal of this appeal will not come in the way of the management pursuing the representation which has been submitted by the management, which shall be duly considered by the competent authority in accordance with law and in accordance with the principles enunciated above.
- G        18. The appeal is accordingly disposed of in the above terms. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.