

[2019] 14 S.C.R. 58

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RAVINDRA SINGH

V.

DISTRICT INSPECTOR OF SCHOOLS AND ORS.

(Civil Appeal No. 9228 of 2016)

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NOVEMBER 06, 2019

[R. BANUMATHI, A. S. BOPANNA AND

HRISHIKESH ROY, JJ.]

Uttar Pradesh Secondary Education Services Commission and

- C Selection Boards Act, 1982: First Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order dated 1981 – Second Removal of the Difficulties Order, 1981 – Appointment of appellant-teacher by Management in a substantive vacancy – Non-adherence to the procedure contemplated in paragraph 5 of the First Removal of Difficulties Order – Claim for salary by appellant – Refusal of financial approval by District Inspector of Schools – Correctness of – Held: The analysis of the 1982 Act and the Removal of the Difficulties Order by the Allahabad High Court in Radha Raizada suggested that the Management has very limited scope to make appointment to the substantive vacancy in their
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 - E Institution – s.18 of the Act of 1982, lays down the process for direct appointment of ad hoc teachers but before the Management takes any step to fill up vacancy, the conditions laid therein must be peremptorily satisfied – The Management is required to firstly notify the vacancy to the Commission and in turn, the Selection Commission is expected to recommend a suitable candidate within one year of such notification – Secondly, the post should have remained vacant for more than 2 months – Only if these two conditions are satisfied, the Management can take short term measures – Further stipulations to this process provided in paragraphs 4 and 5 of the First Removal of Difficulties Order are that only when the vacancy cannot be filled
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 - G by promotion under paragraph 4, the paragraph 5 permits ad hoc appointment by direct recruitment – Appellant's appointment by the Management, was not in accordance with paragraph 5 of the Removal of Difficulties Order – The decision repudiating the salary claim for the appellant was in order since the Management failed

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to adhere to the due process in filling up the substantive vacancy – Moreover, the State had imposed a ban on appointment during the relevant period – Therefore, the appellant cannot enforce a claim for salary against the State – Service law.

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Dismissing the appeal, the Court

HELD : 1.1 The UP Secondary Education Services Commission and Selection Boards Act, 1982 was enacted to constitute Selection Committees and Selection Boards to select teachers for appointment in Government Aided Private Educational Institutions. Since the Commission failed to commence functioning before 01.11.1983, in order to address the difficulties in the interregnum, the Government had issued the First Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order dated 1981 followed by the 2nd Removal of the Difficulties Order, 1981, to fill up short term vacancies. Section 16 of the Act of 1982, provides for recruitment of teachers by the Commission on the requisition made by the Management and then the selected teachers are allotted to the Intuitions/Colleges as per their requirement. When the Commission is unable to allot teachers, Section 18 comes into operation and permits appointment of ad hoc teachers, as a transient measure. [Para 9] [63-B-D]

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2. Section 18 of the Act of 1982, lays down the process for direct appointment of ad hoc teachers but before the Management takes any step to fill up vacancy, the conditions laid therein must be peremptorily satisfied. The Management is required to firstly notify the vacancy to the Commission and in turn, the Selection Commission is expected to recommend a suitable candidate within one year of such notification. Secondly, the post should have remained vacant for more than 2 months. Only if these two conditions are satisfied, the Management can take short term measures. Further stipulations to this process are provided in paragraphs 4 and 5 of the First Removal of Difficulties Order. Only when the vacancy cannot be filled by promotion under paragraph 4, the paragraph 5 permits ad hoc appointment by direct recruitment. [Para 12] [67-C-E-]

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- A 3. Paragraph 2 of the Removal of Difficulties Order, was substituted by the Second Removal of the Difficulties Order, which enabled the Management to make appointment against substantive vacancy either by promotion or by direct recruitment. In the instant matter, it was not the District Inspector of Schools but the Management, which resolved to appoint the appellant.
- B This is contrary to the prescribed process in paragraph 5(4) of the First Removal of Difficulties Order. The State coffer should not be burdened with salary obligation for an appointment, not made by them. The decision repudiating the salary claim for the appellant is also found to be in order since the Management failed
- C to adhere to the due process in filling up the substantive vacancy. Moreover, the State had imposed a ban on appointment during the relevant period. Therefore, the appellant cannot enforce a claim for salary against the State. [Paras 13, 14] [67-G-H; 68-A, D-E]
- D *Prabhat Kumar Sharma and Others v. State of U.P. and Ors.* (1996) 10 SCC 62 : [1996] 3 Suppl. SCR 424 – relied on.
- E *Radha Raizada v. Committee of Management Vidyawati Darbari Girls Inter College and Ors.* 1994 All.L.J. 1077 – approved

Case Law Reference

F	1994 All.L.J. 1077 [1996] 3 Suppl. SCR 424	approved relied on	Para 6 Para 8
G	CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9228 of 2016.		
H	From the Judgment and Order dated 20.05.2016 of the High Court of Judicature at Allahabad in Special Appeal No. 345 of 2016.		

Manoj Prasad, Sr. Adv., Prakash Kumar Singh, K. Uma Shanker, Ms. Purnima Jauhari, Advs. for the Appellant.

Harish Pandey, Ms. Asha Jain Madan, Mukesh Jain, Advs. for the Respondents.

The Judgment of the Court was delivered by A

HRISHIKESH ROY, J.

1. This appeal is directed against the Judgment and Order dated 20.05.2016 in the Special Appeal No. 345 of 2016, of the High Court of Judicature of Allahabad. Under the impugned order, the Division Bench rejected the Appeal of the Writ Petitioner and upheld the judgment dated 12.04.2016 whereby, the learned Single Judge dismissed the Writ - A No.38790 of 2000, filed by the present appellant. B

2. Before the High Court, the appellant challenged the decision dated 16.02.2000 of the District Inspector of Schools, Kanpur Nagar whereunder, the appellant's representation for financial consent and approval for his service was negated. While rejecting the representation, the authority observed in the speaking order that Government has placed a ban on all types of recruitment by the Management and that the concerned *Bilhaur Inter College*, (hereinafter, "the Institution"), was not empowered to make any appointment. Moreover, the appellant was found to be appointed without any financial implication. The District Inspector of Schools passed the impugned speaking order in pursuance to the High Court's earlier direction dated 10.07.1998 in the Writ Petition (C) No.21713 of 1998 and hearing was afforded to the appellant and the Manager of the Institution. C D

3. Adverting to the speaking order (16.02.2000) of the Inspector of Schools, which was challenged in the Writ - A No.38790 of 2000, the Learned Judge noted that the appellant was appointed in a substantive vacancy which has occurred after transfer of one Ramesh Chandra Pandey who was serving in the Institution as a LT Grade Teacher. While appointing against a substantive vacancy, the Management according to the High Court, failed to adhere to the procedure contemplated in paragraph 5 of the *First Removal of the Difficulties Order, 1981*. The Learned Judge in his Judgment dated 12.04.2016 accordingly found no infirmity in the authority's decision, to refuse financial approval for appellant's appointment. E F G

4. The above decision was challenged in the Special Appeal where the appellant reiterated his argument that Management is competent to appoint even against a substantive vacancy. The full Bench Judgment in *Radha Raizada vs. Committee of Management Vidyawati Darbari* H

- A *Girls Inter College and Ors.*¹, was cited to argue that the Managing Committee is not denuded of its power during the ban period, to make *ad hoc* appointment under *Section 18* of the *U.P. Act No.5 of 1982*.

5. However those contentions did not impress the Division Bench and the High Court observed in the impugned order dated 20.05.2016
B that the procedure prescribed under *paragraph 5* of the *First Removal of Difficulties Order*, was disregarded by the Management, in appointing the appellant. Accordingly, the appeal was found devoid of merit and same was dismissed resulting in the present challenge.

6. We have heard Mr Manoj Prasad, the learned Senior Advocate
C representing the appellant. The State of Uttar Pradesh and their officers (Respondent Nos.1, 2 & 4) are represented by Mr. Harish Pandey, the learned Counsel. We have perused the impugned judgment and considered other the materials on record.

7. Assailing the legality of the impugned judgment of the Allahabad
D High Court, Mr Manoj Prasad, the learned Senior Counsel projects that the appellant has served without remuneration since 1997 and, therefore, approval for paying his salary should have been accorded by the authorities. According to the learned Counsel, the High Court misconstrued the ratio in *Radha Raizada*. The counsel argues that the Management of the Institution is competent to make short term *ad hoc*
E appointment in available vacancies and since the appellant was appointed after selection and advertisement, his salary should have been approved by the authorities.

8. Per contra, Mr Harish Pandey, the learned Counsel representing the authorities of the State of Uttar Pradesh firstly argues that during
F the Government imposed ban period, the Management of the Institution had no authority to make appointment against substantive vacancy. The Government Counsel then refers to the *Uttar Pradesh Secondary Education Services Commission Procedure (Removal of Difficulties) Order, 1981* notified under *Section 18* of the *Uttar Pradesh Act No.5 of 1982* and submits that at first instance, the Management should attempt to fill up the substantive vacancy by promotion and should not take recourse to direct recruitment. Mr Pandey then refers to the decision/ratio in *Prabhat Kumar Sharma and Others vs. State of U.P. and Ors.*², to point out that the High Court's Judgment in *Radha*

H ¹1994 All.L.J. 1077
²(1996) 10 SCC 62

Raizada(supra) was approved by this Court and it is too late in the day for the appellant to argue that he is entitled to financial approval for his service, although he was unauthorizedly appointed against a substantive vacancy, by the Managing Committee of the Institution.

9. The *UP Secondary Education Services Commission and Selection Boards Act, 1982* hereinafter “*the Act, 1982*”, was enacted to constitute Selection Committees and Selection Boards to select teachers for appointment in Government Aided Private Educational Institutions. Since the Commission failed to commence functioning before 01.11.1983, in order to address the difficulties in the interregnum, the Government had issued the *First Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order dated 1981* followed by the *2nd Removal of the Difficulties Order, 1981*, to fill up short term vacancies. The *Section 16 of the Act of 1982*, provides for recruitment of teachers by the Commission on the requisition made by the Management and then the selected teachers are allotted to the Intuitions/ Colleges as per their requirement. When the Commission is unable to allot teachers, *Section 18* comes into operation and permits appointment of *ad hoc* teachers, as a transient measure.

10.1 Analyzing the above prescription of the *1982 Act* and also the provisions of the *Removal of the Difficulties Order*, the Allahabad High Court in *Radha Raizada*(supra) had formulated for itself the following two questions to be answered by the Full Bench:

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QUESTION NO. (c)

What would be the criteria and procedure for ad hoc appointment of a teacher or Principal either under Removal of Difficulties Order or under Section 18 of the U.P. Act, No. 5 of 1982?

QUESTION NO. (d)

Whether any approval or prior approval of the District Inspector of Schools or Regional Inspectors of Girls Schools, as the case may be, is necessary for making ad hoc appointment of a teacher or Principal either under Removal of Difficulties Order or under Section 18 of the Act?”

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A 10.2 The Court then observed the following:

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AD HOC APPOINTMENT BY PROMOTION

- B 35. Paragraph 5 of the First Removal of Difficulties Order provides that where any vacancy cannot be filled by promotion under Paragraph 4 of the order, same may be filled by direct recruitment in accordance with the procedure laid down in Clauses 2 to 5 of Paragraph 5 of the order.
- C 36. Second Removal of Difficulties Order provides for ad hoc appointment against the short-term vacancy in the posts of teacher caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise. Thus, these provisions show that section 18 and First Removal of Difficulties Order, both independently empower the Management of Institutions to make ad hoc appointment of teachers in the institutions. But section 18 does not provide the method and manner of such appointment. Whereas Removal of Difficulties Order while empowering the Management of the Institutions to appoint teachers on ad hoc basis further lay down the procedure of such ad hoc appointment of teachers.
- D 37. When a substantive vacancy has been notified to the Commission and duly selected teacher is not available for appointment, controversy has arisen as to whether the management is required to appoint teacher either by direct recruitment or by promotion. The power of ad hoc appointment either by direct recruitment or by promotion can be exercised only when the management has notified the substantive vacancy to the Commission and the Commission has failed to recommend the name of suitable candidate within one year from the date of such notification or the posts of teacher has actually remained vacant for more than two months. Thus one of the two conditions is sine qua non for enabling the management to exercise the power to appoint a teacher on ad hoc basis, either by promotion or by direct recruitment in the institution. If the condition is absent, such a power to appoint on ad hoc basis either by promotion or direct recruitment is not available to the management of the institution. In case the pre-condition is found to be present, the management
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is first required to fill up the substantive vacancy by promotion on ad hoc basis from amongst the senior most teachers of the institution. Paragraph 4 of the First Removal of Difficulties Order provides that every vacancy in the posts of teacher in lecturer grade shall be filled by promotion of the senior most teachers in the institution in the trained graduate. Similarly, every vacancy in the post of teacher in the trained graduate (grade) is to be filled by promotion by the senior most teacher of the institution from the trained undergraduate grade C.T. (grade (now we are not concerned with it since it is reported abolished)).

38. Paragraph 5 of the First Removal of Difficulties Order provides that where any vacancy cannot be filled by promotion under paragraph 4 of the Order, same may be filled by direct recruitment. Thus, it is mandatory on the part of the Management to first fill up the vacancy by promotion on the basis of seniority alone. This method has to be resorted to as the teachers are available in the institution and any other method of recruitment may cause disturbance in teaching of the institution which may affect the career of student. Another reason why the vacancy has to be filled by ad hoc appointment by promotion is that it is a short term appointment in the sense that shortly a duly selected teacher would be available for appointment against the said vacancy. So long the posts can be filled under paragraph 4 of the Order by promotion, it is not open to the Management to take resort to the power to appoint ad hoc teacher by direct recruitment under paragraph 5 of the First Removal of Difficulties Order.

AD HOC APPOINTMENT OF TEACHERS BY DIRECT RECRUITMENT:

40. It has already been noticed that Section 18 of the Principal Act provides for power to appoint a teacher purely on ad hoc basis either by promotion or by direct recruitment against the substantive vacancy in the institution when the condition precedent for exercise of powers exist namely that the Management has notified the said vacancy to the Commission in accordance with the provisions of the Act and the Commission has failed to recommend the name of any suitable candidate for being appointed as teacher within one year from the date of such notification or the post of such teacher has actually remained vacant for more

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- A than two months. However, since the State Government was alive to the situation that the establishment of the Commission may take long time and even after it is established, it may take long time to make available the required teacher in the institution and as such issued three Removal of Difficulties Orders namely Removal of Difficulties Order dated 11-9-1981, Removal of Difficulties Order dated 30-1-1982 and Removal of Difficulties Order dated 14-4-1982. In fact these Removal of Difficulties Orders were issued to remove the difficulties coming in the way of a Management in running the institution in absence of teachers. This power to appoint ad hoc teachers by direct recruitment thus, is available only when pre-conditions mentioned in Section 18 of the Act are satisfied, secondly the vacancy is substantive vacancy and thirdly, the vacancy could not be filled by promotion.
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- D Thus, if contingency arises for ad hoc appointment of teacher by direct recruitment the procedure provided under the First Removal of Difficulties Order has to be followed. Paragraph 5 of the First Removal of Difficulties Order provides that the management shall, as soon as may be, inform the District Inspector of Schools about the details of vacancy and the District Inspector of Schools shall invite application from the local employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.
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- F 41. In view of these provisions the ad hoc appointment of a teacher by direct recruitment can be resorted to only when the condition precedent for exercise of such powers as stated in paragraph 18 of the Act are present and only in the manner provided for in paragraph 5 of the Removal of Difficulties Order. However, it goes without saying that if a management without following the procedure indicated above makes an ad hoc appointment the District Inspector of Schools possess general power under the Payment of Salaries Act to stop payment of salary to such teachers.
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11. The above analysis would suggest that the Management has very limited scope to make appointment to the substantive vacancy in their Institution. Adverting to the ratio in *Radha Raizada*, the Division Bench observed in the present impugned order that the Management of the Institution failed to adhere to the procedure under *paragraph 5* of the *First Removal of Difficulties Order*; in appointing the appellant, against a substantive vacancy. On this basis, the High Court declined to interfere with the salary disapproval decision of the District Inspector of Schools, Kanpur Nagar.

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12. Section 18 of the *Act of 1982*, lays down the process for direct appointment of *ad hoc* teachers but before the Management takes any step to fill up vacancy, the conditions laid therein must be peremptorily satisfied. The Management is required to firstly notify the vacancy to the Commission and in turn, the Selection Commission is expected to recommend a suitable candidate within one year of such notification. Secondly, the post should have remained vacant for more than 2 months. Only if these two conditions are satisfied, the Management can take short term measures. Further stipulations to this process are provided in *paragraphs 4* and *5* of the *First Removal of Difficulties Order*. As can be seen, only when the vacancy cannot be filled by promotion under *paragraph 4*, the *paragraph 5* permits *ad hoc* appointment by direct recruitment. Besides, recourse to direct appointment is visualized only in accordance under sub-clauses 2 to 5 of *paragraph 5*. It is also important to bear in mind that when *ad hoc* appointments are made under *paragraph 2* of the *First Removal of Difficulties Order*, the duration of such *ad hoc* appointment automatically expires after six months, under *paragraph 3(b)* of the Order.

13. Proceeding with the above understanding of the norms the question to be decided now is whether the High Court was correct in its view that the Management of the Institution, did not adhere to the procedure prescribed under the *First Removal of Difficulties Order* to make appointment against a substantive vacancy. The *paragraph 2* of the *Removal of Difficulties Order*, was substituted by the *2nd Removal of the Difficulties Order*, which enabled the Management to make appointment against substantive vacancy either by promotion or by direct recruitment. In the present matter, it was not the District Inspector of Schools but the Management, which resolved to appoint the appellant. But as earlier discussed, this is contrary to the prescribed process in

- A *paragraph 5(4)* of the *First Removal of Difficulties Order*. The learned Single Judge in the High Court specifically noted that there was no adherence to the procedure prescribed under *paragraph 5* of the *First Removal of Difficulties Order*. There was concurrence of views of the learned Single Judge and the Division Bench to the effect that the State authorities rightly denied financial approval to the illegal appointment of the appellant.
- B 14. When the impugned judgment is analysed in light of the applicable norms, there is no escape from the conclusion that the appellant's appointment by the Management, was not in accordance with *paragraph 5* of the *Removal of Difficulties Order*. We are also of the view that the ratio in *Radha Raizada* (supra) of the Allahabad High Court (approved by the Supreme Court in *Prabhat Kumar Sharma* (supra)) was correctly applied to the present facts. The State coffer should not according to us, be burdened with salary obligation for an appointment, not made by them. The decision repudiating the salary claim for the appellant is also found to be in order since the Management failed to adhere to the due process in filling up the substantive vacancy. Moreover, the State had imposed a ban on appointment during the relevant period. Therefore, the appellant cannot enforce a claim for salary against the State. The Appeal accordingly is found devoid of merit and is dismissed. The parties to bear their respective cost.

Devika Gujral

Appeal dismissed.