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**(2011) 06 AHC CK 0006**

**In the Allahabad High Court**

**Case No :** Service Single No. 3629 of 2011

Ajai Kumar Gupta and Anr — APPELLANT

Vs

The State of U.P. and Others — RESPONDENT

**Date of Decision :** 24-06-2011

**Acts Referred:**

**Citation :** (2011) 06 AHC CK 0006

**Hon'ble Judges :** Shabihul Hasnain, J

**Bench :** Single Bench

# Judgement

Shabihul Hasnain, J.—Heard learned Counsel for the Petitioners and learned standing counsel for the opposite parties.

2. The case of the Petitioners is that despite being appointed on the post of Assistant Teacher and continuously discharging the duties, the Petitioners are not getting the salary. The appointment has been made on the post of Assistant Teacher. The procedure for such appointment has been undertaken. There was publication in two daily newspapers and the requisition has also been sent for the regular selection. The Petitioners possess requisite qualification for the post and has been selected by the selection committee for ad-hoc appointment. The Petitioners are working without any salary in the interest of students. The salary is not being paid because the District Inspector of Schools has refused to grant approval to the appointment of the Petitioners.

3. Learned Counsel for the Petitioners has placed reliance on the case of Rakesh Chandra Misra, reported in 2004 (22) L.C.D. 1604 Allahabad. The Petitioner says that in this case, it has been held that the interest of the education to be students is paramount. This judgment was referred to a larger Bench. The larger Bench at Allahabad in the case of Daya Shanker Misra v. State of U.P. in Civil Misc. Writ Petition No. 20843 of 2002 has decided on 31.3.2010 that the judgment in Rakesh Chandra Misra''s case is a good law. The law laid down by his Lordship in the case of Rakesh Chandra Misra''s case has thus been upheld by the Division Bench of this Court.

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4. I am of the opinion that the interest of students and the education, is paramount in the democracy. The students cannot be made to suffer for the time, which is taken by the Board in filling up of the vacancies. Be it, due to procedure or otherwise. If the students cannot be allowed to be without a teacher for a short term vacancy, then it cannot be permitted by this Court that the students should be without a teacher for longer period than the short term vacancy period. Accordingly, if the appointment has been made and the teacher is discharging his duty of teaching the students, then it will be equitable that he should be paid salary.

5. Keeping in view the above two judgments, this Court feels that in case the Petitioners is continuously working, they are entitled for the payment of salary by the opposite parties. Accordingly, this Court directs the opposite parties to make regular payment of salary to the Petitioners forthwith and operation and implementation of the impugned order dated 22.2.2011 passed by opposite party No. 2 shall remain stayed.

6. Learned standing counsel prays for and is granted four weeks'' time to file counter-affidavit, to which rejoinder-affidavit may be filed within a week thereafter. List thereafter.

7. It is made clear that the appointment of the Petitioners shall come to an end as soon as the regularly selected candidate comes in pursuance of the requisition by the Board. No separate order for termination of the Petitioners'' services will be required to be passed.

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