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**(2010) 09 AHC CK 0272**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 652 of 2000**

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| Akhilesh Kumar Kulshrestha       | Vs | APPELLANT  |
| University of Lucknow and others |    | RESPONDENT |

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**Date of Decision :** 29-09-2010

**Acts Referred:**

Uttar Pradesh State Universities Act, 1973 — Section 2(19), 31(3)(c), 68

**Citation :** (2010) 09 AHC CK 0272

**Hon'ble Judges :** Devi Prasad Singh, J and Vedpal, J

**Final Decision :** Allowed

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## Judgement

Vedpal, J.

1. Heard Shri Y.S.Lohit learned counsel for the petitioner and Shri S.P.Shukla learned counsel for the respondents.
2. Writ petition under Article 226 of the Constitution of India has been preferred by the petitioner challenging the decision taken by the Executive Council of the respondent University, rejecting the petitioner's claim for regularisation/absorption against the regular vacancy.
3. The petitioner claims himself to be appointed and served as Senior Research Assistant in the Department of Geology in the University of Lucknow from 15.9.1984 to 5.10.1989. Thereafter, he was reappointed again as Research Associate under the Scheme of C.S.I.R. in the Department of Geology from 13.7.1991 to 31.7.1996. Then again he was reappointed from time to time on the post of Research Associate in the Department of Geology under the scheme funded by the C.S.I.R. It has not been disputed that the petitioner was appointed in various schemes funded by C.S.I.R., U.G.C. and Department of Science and Technology and continued to serve the respondent University till date.
4. Petitioner staked his claim for absorption against regular vacancy existing in the Department and on failure on the part of the University, he submitted representation to the Chancellor on 27.9.1999 under Section 68 of the U.P.State

Universities Act(hereinafter referred to as the "Act"). The Chancellor directed the respondent University to take a decision being petitioner's appointing authority. Writ petition no.1883(S/B) of 1999 filed by the petitioner was dismissed on 25.11.1999 with liberty to avail the statutory alternative remedy.

5. In pursuance of the order passed by this Court and the order dated 13.10.1999, Chancellor sent the matter to the Executive Council and the Executive Council of the University on 29.4.2000 resolved as under :

"With reference to Order No.500/GS dated 15.1.2000 of the Chancellor, the Council considered representation dated 27.9.1999 of Dr. Akhilesh Kumar Kulshreshtha, exResearch Associate of the Department of Geology, for regularisation or absorption on a suitable post in the Geology Department as the tenure of DST project has already been completed.

The Council considered the request sympathetically. The Council was of the opinion that since there is no provision in the Act and Statutes to provide a suitable job to Dr. A.K.Kulshreshtha without facing any statutory selection commission and without any specific recommendations, suitable schemes he got prepared and sent to UGC, CSIR and other similar funding agencies so that suitable fellowship etc. can be provided to Dr. A.K.Kulshreshtha."

6. Feeling aggrieved with the aforesaid resolution of the Executive Council, the writ petition was amended and it has been impugned through amendment at later stage. A perusal of the resolution of the Executive Council at the face of the record reveals that the petitioner's claim for regularisation against regular vacancy has been turned down on the ground that under the Rules, there is no provision for regularisation of the service.

7. Learned counsel for the petitioner submits that the impugned order is based on unfounded fact and under Section 31.3. (c) of the U.P.State Universities Act, the petitioner is entitled for regularisation.

For convenience, Section 31.3.(c) of the Act is reproduced as under :

"31.3 (c).Any teacher of the University who was appointed as Lecturer/part time Lecturer on or before December 31, 1997 without reference to the Selection Committee by way of a short term or part time arrangement in accordance with the provisions with the provisions for the time being in force for such appointment, may be given substantive appointment by the Executive Council, if any substantive vacancy of the same cadre and grade in the same department is available if such teacher

(i).is serving as such on December 31, 1997 continuously since such initial appointment by way of short term/part time arrangement.

(ii).possessed the qualifications required for regular appointment to the post under the provisions of the relevant Statutes in force on the date of the initial appointment ;

(iii).has been found suitable for regular appointment by the Executive Council.

A teacher appointed by way of short term/part time arrangement as aforesaid who does not get a substantive appointment under this clause shall cease to hold such post on such date as the Executive Council may specify."

8. Submission of the petitioner's counsel is that the petitioner was selected by the duly constituted selection committee to discharge the duties as Research Associate from time to time which is at par with the post of lecturer hence he was entitled for the benefit of provision of Section 31.3 (c) of the U.P. State Universities Act.

9. On the other hand, Shri S.P.Shukla, learned counsel for the respondent University submits that though the petitioner has been continuously discharging duties in the Department of Geology but his appointments were made under various schemes with short breaks and salary was paid on the basis of the fund provided by the CSIR/UGC/DST. In nutshell, the submission of the respondent's counsel is that the petitioner's salary was founded under various schemes by the various organizations and he shall not be entitled for the benefit under Section 31.3 (c) of the Act(supra).

10. Attention has been invited by the petitioner's counsel to definition of "teacher" as defined in subsection 19 of Section 2 of the Act, which is reproduced as under :

"19. "teacher" in relation to the provisions of this Act except Chapter XI A, means a person employed in a University or in an institute or in a constituent or affiliated or associated college of a University for imparting instructions or guiding or conducting research in any subject or course approved by that University and includes a Principal or Director."

11. A plain reading of sub section 19 of Section 2 of the Act shows that the teacher in relation to the provisions of this Act means a person employed in a University or in an institute or in a constituent or affiliated or associated college of a University for imparting instructions or guiding or conducting research in any subject or course approved by that University and includes a Principal or Director. Meaning thereby any person employed by the University for imparting instructions or guiding or conducting research, shall be deemed to be a teacher/lecturer. It includes part time teachers. It has not been disputed that the petitioner was appointed though in various schemes formulated by the CSIR/UGC/DST but the duties assigned to him was to impart instructions or guide to the students in the subject in question. The duty of the petitioner was same as of a teacher/lecturer. Hence, fairly safely he can be treated as a teacher/lecturer of the respondent University.

12. Next question cropped up is as to whether the petitioner can be extended benefit of Section 31.3 (c) of the University Act. It is not disputed that the petitioner was selected in various schemes through a duly constituted selection

committee and continued to discharge duties since 1984 with short breaks, hence it may be treated as artificial break. It appears from the record that the petitioner has been discharging duties under the funded schemes formulated by the CSIR/UGC/DST. in the respondent University. While working in the University, the petitioner is deemed to be an employee of the University and he seems to be entitled for the benefit of section 31.3 (c) of the Act. At the face of it, Section 31 (3) (C) includes part time teachers/lecturers and appears to cover petitioner's case. However, benefit may be made available to the petitioner only in case the regular vacancy is available in the respondent University.

13. Subject to the observations made hereinabove, we are of the view that the petitioner shall be entitled for absorption/regularisation in the respondent University in case regular vacancy/sanctioned post is available in the cadre of teacher/lecturer in the department of Geology.

14. In view of the above, we allow the writ petition. A writ in the nature of certiorari is issued, quashing the impugned resolution dated 29.4.2000 passed by the Executive Council with consequential benefits. A writ of Mandamus is also issued directing the respondent University to reconsider the case of the petitioner for absorption/regularisation against the present or future vacancy in the cadre of teacher/lecturer expeditiously.