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**(2010) 07 AHC CK 0388**  
**In the Allahabad High Court**  
**Case No : Writ A. No. 66729 of 2009**

Dr. Rajesh Chandra Verma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 19-07-2010

**Acts Referred:**

**Citation :** (2010) 07 AHC CK 0388

**Hon'ble Judges :** Sunil Ambwani, J;Kashi Nath Pandey, J

**Bench :** Division Bench

**Advocate :** Gautam Baghel, P.S. Baghel and R.S. Baghel, for the Appellant;  
C.S.C. and A.K. Sharma, for the Respondent

**Final Decision :** Dismissed

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## Judgement

1. Heard Sri P.S. Baghel, learned Senior Advocate assisted by Sri Gautam Baghel. Learned standing Counsel appears for respondent Nos. 1 and 2, Sri Pankaj Misra for respondent No. 3 and Dr. Akhilesh Kumar Sharma for respondent No. 4.

2. The respondent No. 4 - Dr. Vinod Kumar was selected on the post of Lecturer in "Chemistry" in response to the Advertisement No. 32, issued by the U.P. Higher Education Service Commission. He secured 46th position in the OBC category and was placed higher than the petitioner at 48th position. He opted for the Agra College, Agra as his first choice. He was not offered placement. Instead the appointment in Agra College at Agra was given to Dr. Rajesh Chandra Verma - the petitioner in this writ petition who was at Sl. No. 48 in the select list. Aggrieved, respondent No. 4 filed a writ petition No. 12708 of 2006, which was disposed of by order dated 4.9.2009, with the directions to the Director of Higher Education to decide his representation. The Court directed as follows:

Legal position with regard to the appointment of Lecturers in the subject of Chemistry with reference to requisition of the Management with specialization in Organic Chemistry, Inorganic Chemistry, Physical Chemistry, has already been examined in detail by us in Civil Misc. Writ Petition No. 10610 of 2006, (Smt.)

Anshu Agarwal v. State of U.P. and Ors. decided today.

From the facts as they exist on record, we are of the considered opinion that in the facts of the present case the Full Bench judgment of this Court in the case of Dr. Vinay Kumar Vs. The Director of Education (Higher), Committee of Management K.K. College and State of U.P., is fully applicable. The requirement of a lecturer, who is possessed of degree of M.Sc. Chemistry having specialization of Organic Chemistry in Agra College, Agra is not in dispute. It is further not in dispute that the petitioner secured Higher Position than respondent No. 4 in the select panel prepared within the reserved category. It is also not in dispute that petitioner is possessed of degree of M.Sc (Chemistry) having specialization on Organic Chemistry. Therefore, there is little or no justification for his being not empaneled for Agra College, Agra specifically when in the list of institution supplied along with application form, vacancies in Agra College, Agra was earmarked for specialization in Organic Chemistry. This Court, therefore, holds that the claim of the petitioner requires reconsideration by the Director of Higher Education, U.P., Allahabad in light of the Full Bench Judgement in the case of Vinay Kumar (Dr.) (Supra).

Accordingly the present writ petition is disposed of by providing that the petitioner may make a representation, ventilating all his grievances, before Director of Higher Education, within two weeks from today along with a certified copy of this order. On such representation being made, the Director of Higher Education after affording opportunity of hearing to the petitioner, respondent No. 4 and Committee of Management of the Agra College, Agra shall decide the same by means of a reasoned speaking order, in light of the observations made above, preferably within six weeks. Appointment of petitioner and respondent No. 4 shall abide by the orders to be passed by the Director as indicated above.

3. The Director of Higher Education by the impugned order dated 23.11.2009 has held that since respondent No. 4 was higher in merit, and that his appointment has been made as Lecturer (Chemistry), he should be given placement in Agra College, Agra, as per his first choice, and that the petitioner should be given placement in his place in Janta College Bakewar, Etawah.

4. Sri P.S. Baghel submits that the Commission advertised the posts for Lecturer in Chemistry - Organic, Inorganic and Physical Chemistry. There was no break-up of disciplines given for the four vacancies in Chemistry in Agra College, Agra. Dr. Smt. Smita Chaturvedi at Sl. No. 31 was adjusted as Lecturer in Organic Chemistry. The petitioner is M.Sc, both in Organic and Inorganic Chemistry and that he was appointed in pursuance to the Government Order dated 30.1.2006, as Lecturer Chemistry (Inorganic) in the Agra College, Agra. Respondent No. 4 is M.Sc in Organic Chemistry and that there is no requirement of two teachers in Organic Chemistry in Agra College, Agra. He would submit that in the judgment of Dr. (Smt.) Anshu Agarwal v. State of U.P. and Ors. 2009 (9) ADJ 112 (DB) it was mentioned in paragraph 21, that preference be given to the larger interest of the students, as far as possible. The teachers should be appointed according to

the requirement of the college. He would submit that the Director of Higher Education has rightly appreciated the facts but has committed gross error in directing placement of two teachers of Organic Chemistry in the same College.

5. It is not denied that respondent No. 4 was higher in merit than the petitioner in the select list and has a procedure in choice for placement to the preferred college. The vacancies were not advertised according to the subjects in Chemistry, viz., Organic, Inorganic and Physical. The placements of the candidates were made according to the requirement of the Committee of Management of the College. In paras 25 and 26 of the judgment in Anshu Agarwal (Supra), the court held that the request of the management for the subject should not be interfered with the merit or the preference to be exercised by the candidate concerned. In the present case from the counter affidavit, it is apparent that the management required services of Lecturer in Chemistry (Organic) and asked the petitioner to join as Lecturer in Chemistry (Organic). He was allowed to join as Lecturer in Chemistry (Organic), on 7.3.2006. Respondent No. 4 is M.Sc in Organic Chemistry and is placed higher than the petitioner.

6. The Government Order dated 30.1.2006 was issued to deal with the special situation where the Commission had selected candidate as Lecturer in Chemistry in general, without taking care of the subjects. The ratio was disturbed and was attempted to be rationalized. The Government Order emphasized on the demand of the management of the College for the appointment. In the present case, the Management has not challenged the order of the Director of Higher Education.

7. The writ petition is dismissed.