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**(2003) 11 AHC CK 0177**  
**In the Allahabad High Court**  
**Case No : Second Appeal No. 1224 of 2003**

Harish Chandra Rai

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

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**Date of Decision :** 24-11-2003

**Acts Referred:**

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,  
1982 — Section 18, 33(1B), 33(1C), 33A, 33D

**Citation :** (2004) 1 AWC 379 : (2004) 101 FLR 18 : (2004) 1 UPLBEC 428

**Hon'ble Judges :** S.P. Srivastava, J;Ashok Bhushan, J

**Bench :** Division Bench

**Advocate :** R.G. Padia and P. Padia, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

Ashok Bhushan, J.—Heard counsel for the appellant.

2. By this appeal the appellant has challenged the order dated 5th November, 2003 passed by the learned Judge of this Court in Civil Misc. Writ Petition No. 14962 of 1988 by which the writ petition filed by the appellant has been dismissed. The appellant claimed to be appointed on ad hoc basis in C.T. grade in the substantive vacancy by the Committee of Management of Adarsh Inter College, Aunti Gauri, Azamgarh. After making ad hoc appointment of the appellant in C.T. grade the Committee of Management forwarded all the papers for approval of the District Inspector of Schools by letter dated 27.4.1988. The District Inspector of Schools then passed the order dated 11.7.1988 refusing to approve the ad hoc appointment of the petitioner on the ground that the ad hoc appointment was required to be made in accordance with the provisions of U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 but the process of selection was adopted by the Committee of Management hence the ad hoc appointment of the petitioner cannot be approved. The petitioner challenging the said order dated 11.7.1988 filed the writ petition in this Court in which interim order was granted by this Court. The writ petition

came for hearing before the Court and it was dismissed on 5.11.2003. The learned Judge of this Court observed in his judgment that the appointment of the appellant was disapproved by the District Inspector of Schools on the ground that even a C.T. grade teacher could be appointed on ad hoc basis only after following the procedure of appointment under Paragraph 5 of the Removal of Difficulties Order, 1981. Challenging the said order dated 5.11.2003 Dr. R. G. Padia, counsel for the appellant contended that the appellant's case is fully covered by the provisions of Section 33A (1C) of the U. P. Secondary Education (Service Selection Boards) Act, 1982 and the appellant is entitled for being given regular appointment by virtue of the said provision ; hence the learned single Judge of this Court committed error in rejecting the writ petition. Learned counsel for the appellant has also placed reliance on two Division Bench judgments of this Court in Smt. Shashi Saxena Vs. Deputy Director of Education and others, and District Inspector of Schools, Kanpur Nagar and another Vs. Diwakar Lal and others, He also relied on the judgment of the Apex Court in Karnataka State Private College Stop-Gap Lecturers Association Vs. State of Karnataka and Others, The thrust of the submission of Dr. R. G. Padia is that the appellant is fully entitled by the aforesaid provisions of Section 33A (1C) and he is entitled for regularisation and the learned Judge has wrongly rejected the writ petition. The provision for regularisation was to regularise every ad hoc appointment whether it was legal or illegal and since the case of the appellant is covered u/s 33A, the question as to whether his appointment is valid or not cannot be gone into.

3. We have considered the submissions of Dr. R.G. Padia, counsel for the appellant and perused the record.

4. On perusal of the writ petition it is clear that the appointment of the appellant was disapproved on the ground that the appellant's appointment on ad hoc basis has been made without following the procedure of appointment under paragraph 5 of the Removal of Difficulties Order, 1981. The power to hold the selection for ad hoc appointment is given to the District Inspector of Schools and since the Committee of Management has made ad hoc appointment of the petitioner hence the ad hoc appointment of the appellant cannot be approved. Dr. Padia elaborating his submission said that the Regularisation Rule, i.e., Section 33A (1C) only refers Rule 2 of the 1981 Order and do not refer to other rules hence only thing which was to be seen was as to whether the appointment was under Rule 2 or not. The main issue in the writ petition was as to whether the appellant was validly appointed or not. The ad hoc appointment of the petitioner has been disapproved by the District Inspector of Schools on 11.7.1988. Challenging the order dated 11.7.1988 of the District Inspector of Schools Dr. R. G. Padia submitted that the ad hoc appointment of the petitioner was in accordance with the provisions of law, The provision of Section 33A was enacted for giving regular appointment to certain ad hoc appointees in substantive capacity who fulfil the conditions mentioned therein. Every teacher referred to in the provision appointed on ad hoc basis will be deemed to have been appointed in substantive

capacity provided such teacher has been continuously serving the institution from the date of such appointment. The submission that has been raised by Sri Padia that the ad hoc appointment of the appellant was illegal or legal is not to be considered in the writ petition, cannot be accepted.

5. The provision of Section 33A (1C) which was inserted by the U. P. Act No. XXVI of 1991 was for purposes of regularising certain ad hoc appointments. The provision contemplated that every teacher appointed by promotion or direct recruitment from 31.7.1988 on ad hoc basis against substantive vacancy in accordance with Section 18 and who possess qualification prescribed and was continuing on date of commencement of Amendment Act, 1991 will be deemed to have been appointed under substantive capacity provided such teacher has been continuously serving the institution from the date of such appointment. Sub-section (1C) only covered ad hoc appointments made u/s 18. On the own submission of Dr. Padia that U. P. Secondary Education Service Commission and Selection Boards Act. 1982 do not contemplate appointment in C.T. grade, the ad hoc appointment u/s 18 of the appellant in the present case is out of question. The ad hoc appointment of the petitioner is claimed to have been made in accordance with the provisions of U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 for which Sub-section (1B) of Section 33A was inserted. Dr. Padia has much emphasised that Sub-section (1B) refers only to the ad hoc appointment against substantive vacancy in the certificate of teaching grade in accordance with paragraph 2 of the U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 and other paragraphs of Difficulties Order having not referred to under Sub-section (1B) has no application. Paragraph 2 of the 1981. Order is extracted below :

"2. Vacancies in which ad hoc appointment can be made.--The management of an institution may appoint by promotion or by direct recruitment a teacher on purely ad hoc basis in accordance with the provisions of this Order in the following cases, namely :

- (a) in the case of a substantive vacancy existing on the date of commencement of this Order caused by death, retirement, resignation or otherwise ;
- (b) in the case of a leave vacancy, where the whole or unexpired portion of the leave is for a period exceeding two months on the date of such commencement ;
- (c) where a vacancy of the nature specified in Clause (a) or Clause (b) comes into existence within a period of two months subsequent to the date of such commencement."

6. From perusal of paragraph 2 which is referred to in Sub-section (1B) of Section 33A it is clear that paragraph 2 contemplate, ad hoc appointment by promotion or by direct recruitment in accordance with the provisions of this order. When paragraph 2 itself contemplate ad hoc appointment in accordance with the provisions of said order all the provisions of the Order becomes applicable including paragraph 5 of the Order, 1981. Paragraph 5 of the 1981

Order provides for procedure for making ad hoc appointment by direct recruitment. Paragraph 5 of the Order is quoted below :

"5. Ad hoc appointment by direct recruitment.--(1) Where any vacancy cannot be filled by promotion under paragraph 4, the same may be filled by direct recruitment in accordance with Clauses (1) to (5).

(2) The management shall as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.

(3) Every application referred to in Clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied-

(a) by a crossed postal order worth ten rupees payable to such Inspector ;

(b) by a self-addressed envelope bearing postal stamp for purposes of registration.

(4) The District Inspector of Schools shall cause the best candidates selected on the basis of quality point specified in Appendix. The compilation of quality point may be done on remunerative basis by the retired Gazetted Government Servants under the personal supervision of such Inspector.

(5) If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and names of the institutions shall be arranged in Hindi alphabetical order. The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the institution. This process shall be repeated till both the lists are exhausted.

Explanation.--In relation to an institution imparting instruction to women the expression "District Inspector of Schools" shall mean the "Regional Inspector of Girl's Schools".

7. Perusal of paragraph 5 Sub-rule (2) indicates that applications have to be invited by the District Inspector of Schools from the local employment exchange and also through public advertisement in two daily newspapers having adequate circulation. In the present case admittedly the District Inspector of Schools did not invite any application to conduct any selection for ad hoc appointment. The appellant's case in the writ petition is that the Management issued advertisement inviting application and management selected the appellant. The appointment of the appellant was thus clearly contrary to paragraph 5 of 1981 Order and the appointment of the appellant cannot be said to be in accordance with paragraph 2 of 1981 Order. The object of provision of Section 33A is to give regular appointment to certain ad hoc appointments who were appointed prior to a particular date who possess qualification and are continuing under such

appointment on the date of such commencement. The statutory provision itself contemplated ad hoc appointment in accordance with paragraph 2 of the 1981 Order. Thus, when the appointment of the appellant is contrary to paragraph 2 of 1981 Order, he cannot claim benefit of regularisation. The submission of the counsel for the appellant that Section 33A contemplate regularisation of all the ad hoc appointments who were appointed prior to cut-off date irrespective of the fact as to whether their appointment was valid or not cannot be accepted. The interpretation sought to be put up by the counsel for the appellant has no merit. The purpose of Section 33A was not to regularise all ad hoc appointments made prior to particular cut-off date as substantive appointment irrespective of the fact as to whether their appointments were valid or not. Section 33A never intended to regularise the ad hoc appointments which were void or which were not in accordance with law.

8. The judgment of the Division Bench in the case of District Inspector of Schools, Kanpur Nagar and others was considering the case of an ad hoc appointment of Assistant Teacher on short-term vacancy. The said judgment did not consider the question of ad hoc appointments under the U. P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 nor the question pertaining to Section 33A with regard to regularising the appointment under the First Removal of Difficulties Order was in issue. The said judgment has no application in the facts of the present case. The decision in other case Smt. Shashi Saxena and others (*supra*), was also a case where the Division Bench was considering the ad hoc appointment made on short-term vacancy. The question which has been raised in the present appeal is not the question of ad hoc appointment made on short-term vacancy and this case has also no application in the present case.

9. Coming to the Apex Court judgment in the case of Karnataka State Private College Stop-Gap Lecturers Association (*supra*), the Apex Court with regard to ad hoc teacher appointed on the short-term vacancy has given direction to the State Government in paragraph 7 of the judgment. The said directions are extracted below :

(1) Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.

(2) If regular selections have been made the Government shall create additional posts to accommodate such selected candidates.

(3) The teachers who have undergone the process of selection under the directions of the High Court and have not been appointed because of the reservation policy of the Government be regularly appointed by creating additional posts.

(4) From the date of judgment every temporary teacher shall be paid salary as is admissible to teachers appointed against permanent post.

(5) Such teachers shall be continued in service even during vacations.

10. The aforesaid judgment was a case pertaining to ad hoc teachers appointed on the short-term vacancy and for regularisation of teachers those directions have been issued in the facts of that case. The statutory rule as mentioned in the said case does not apply to the present case as in the present appeal the question is as to whether the appointment was valid or not. The judgment of the Apex Court does not consider the question which has arisen in the present appeal and the said judgment cannot be pressed into service by the appellant.

11. Dr. Padia has relied on the provisions of Section 33D which is being quoted below :

"33D. Special provision for certificate of Teaching grade teachers.--Every teacher in the Certificate of Teaching grade, who is a trained graduate and,

(a) has completed ten years continuous satisfactory service in the said grade on or before January 1, 1986 shall, with effect from January 1, 1986 ; or

(b) completes the said service of ten years after January 1, 1986 shall with effect from the date of completion of the said service of ten years ;

be deemed to have been appointed in the Trained Graduate Grade."

12. The aforesaid provision of Section 33D of the U. P, Secondary Education (Service Selection Boards) Act, 1982 provides special provision for certificate of teaching grade teachers who has completed ten years satisfactory service before or after January 1, 1986 and they may be deemed to have been appointed in the Trained Graduate Grade. The said proposition presupposes the valid appointment in certificate of teaching grade. Admittedly the appellant was continuing on the basis of the interim order. Final order resulted in dismissal of the writ petition. The working of the appellant on the basis of the interim order, cannot enure to the benefit of provisions of Section 33D.

13. The Apex Court had occasion to consider similar submissions which are being raised in this Special Appeal in Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, In the case before the Apex Court ad hoc appointment was made on 1.8.1986 against short-term vacancy which appointment was terminated on 30.5.1988 with effect from 30.6.1988. The termination order was challenged in a writ petition and pending writ petition, an interim order was granted by the High Court. Submission was made that since the respondent was continuing as ad hoc teacher, he is entitled for the benefit of Section 33B (1) (a) (i) of the U. P. Secondary Education Service Selection Board Act, 1982. The Apex Court held that the respondent was not entitled for the benefit of provision of Section 33B of U. P. Act of 1982. Following was laid down by the Apex Court in paragraphs 6 and 7 :

"6. In view of the respective contentions, the question that arises for

consideration is whether the respondent is entitled to the benefit of the Third Removal of Difficulties Order as indicated hereinbefore. Section 33B (1) (a) (i) of the U. P. Secondary Education Service Commission Act, 1982, postulates among others, regularisation of a candidate who was appointed by promotion or by direct recruitment in the certificate of teaching grade before 13.5.1989 against a short-term vacancy in accordance with para 2 of the U. P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy. It is seen that the regular incumbent retired from service on 30.6.1988. Consequently, the temporary vacancy was deemed to have been converted into a substantive vacancy w.e.f. 30.6.1988. But the crucial question is whether the respondent was continuously serving the institution under Clause (c) of Section 33B (1)? Admittedly, the service of the respondent came to be terminated w.e.f. 30.6.1988. Though he had obtained the stay order and continued to be in service, it was not by virtue of his own right under an order of appointment, he continued in the office with permission of the management. In fact, in the recommendation made before the Selection Committee, they have stated as under :

"Ad hoc appointment of Shri Sri Kumar Tiwari was made on 1.8.1986 L.T. grade and vide notice dated 30.5.1988 his services were terminated. On the basis of the above order Shri Sri Kumar Tiwari obtained stay order No. 13565, dated 29.7.1988 from the Hon'ble High Court. Therefore, appointment is disputed."

7. In fact, the regularisation order passed by the District Inspector of Schools also says that it was subject to the result in the writ petition. The appeal being the continuation of the writ petition, the question arises whether the respondent is entitled to claim the benefit of Section 33B (1) (a) (i) of the U. P. Secondary Education Service Commission Act, 1982. We have seen that his services came to be terminated on 30.5.1988 and the Amendment Act has no application. Hence, the Division Bench was not right in giving direction that his regularisation will be subject to the further orders since the regularisation order itself means that it was subject to the result of the writ petition."

14. In view of law laid down by the Apex Court in the aforesaid case the appellant is clearly not entitled to the benefit of Section 33A (1C) or (1-B) and Section 33D of U. P. Secondary Education Service Selection Boards Act, 1982 and the submission of Dr. Padia made on the basis of said provisions is to be rejected.

15. In view of what has been said above, there is no merit in this appeal and the same is dismissed. We, however, make it clear that the appellant is not liable to refund any of the salary which was received by the appellant while working as ad hoc teacher under interim order of this Court.