
(2006) 10 AHC CK 0086
In the Allahabad High Court

Kripal Singh Shishodiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2006) 10 AHC CK 0086

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bharati Sapru, J.—Heard Sri Manish Goyal learned Counsel for the petitioner in writ petition No. 17328 of 2002 and writ petition No. 37898 of 2002, Sri G.D. Misra appearing on behalf of the petitioner in writ petition No. 21768 of 2002 and writ petition No. 21822 of 2002 and the learned Advocate General on-behalf of the respondent State. Since the controversy involved in these writ petitions is common, the same is being decided by a common judgment with the consent of the parties treating the writ petition No. 17328 of 2002 leading one.

2. No counter affidavit has been filed by the State. Since there are no disputed questions of fact and there is consent of both parties, I am proceeding to hear and decide the matter finally under the Rules of the Court.

3. The petitioner has made the following prayers -

(i) issue a writ, order or direction in the nature of certiorari calling for the records and quashing the order dated 20.2.2002, passed by respondent No. 3 (Annexure-1 to the writ petition);

(ii) issue a suitable writ, order or direction striking down the provisions of Sub-section (6) of Section 33-C of the U.P. Secondary Education Service Selection Board Act, 1982 brought on the Statute Book w.e.f. 20.4.98;

(iii) issue a writ, order or direction in the nature of mandamus, commanding the

respondent No. 4 to pay the petitioner salary on the post of Principal;

(iv) issue any other suitable writ, order or direction which this Hon"ble Court may deem fit and proper in the circumstances of the case:

(v) allow this petition with costs.

4. The petitioner has made representation seeking regularization as per provisions of Section 33 C (1) of the U.P. Secondary Education Service Selection Hoard Act, 1982 (hereinafter referred to as the Act, 1982) on the ground of applicability of Section 33C(6) of the Act, 1982. It is the representation of the petitioner, which has been rejected by the impugned order dated 20.2.2001 (Annexure 1 to the writ petition).

5. The petitioner has therefore sought to challenge the vires of Section 33C(6) of the Act aforesaid as amended by the U.P. Act No. 25 of 1998. According to the petitioner by the impugned provision Section 33C(6), the right and entitlement for regularization conferred under the Act is sought to be taken away on the existence of a situation where either the vacancy has been filled up or selection for the vacancy has been made on the date of coming into force of the Amending Act, which came into being on 20.4.1998.

6. The undisputed facts of the case are set herein below.

7. On 20.07.1969 the petitioner was appointed a Lecturer in Mathematics in the College of respondent No. 4. A permanent vacancy on the post of Principal arose at the College in question due to the retirement of the permanent Principal of the College Sri Kashmir Singh Pundir on 30.6.1991.

8. On 14.09.1991 the petitioner was granted an ad-hoc appointment on the post of Principal of the College in exercise of the powers u/s 18(as it then existed) of U.P. Act No. 5 of 1982.

9. On 17.09.1991 the petitioner joined as Principal on the basis of the order of appointment dated 14.09.1991.

10. Financial approval accorded to the appointment of the petitioner by the office of the District Inspector of Schools on 5.5.1992.

11. On 4.09.1992 the order of approval was communicated to the respondent No. 4 by the District Inspector of Schools. Petitioner continued as an Ad-hoc Principal without any hindrance and without any break.

12. The respondent No. 2 issued advertisement for regular recruitment on the post of Principal vide advertisement No. 1/95-96 on 20/26.12.1995. The respondent No. 4 was included in the said advertisement as College No. 124 in Ghaziabad District.

13. On 01.11.1996 the date was fixed for interview as per the U.P. Secondary Education Service Selection Commission Rules, 1995.

14. Nov., 1996 Writ Petition No. 34757 of 1996 filed by the petitioner, inter-alia, challenging the validity of Rule 12 of U.P. Secondary Education Service Commission Rules, 1995. The petitioner was granted a stay order, inter-alia, permitting the petitioner to continue and discharge as duties as Ad-hoc Principal.

15. On 5.2.1997 the petitioner was interviewed along with other candidates for the post of Principal by the respondent No. 2. It is submitted that the petitioner had not applied for appointment through regular recruitment but by virtue of being the senior most teacher he had to appear for interview directly as per the Rule 11(2)(b) of the 1995 Rules applied for recruitment. This fact has been clearly pleaded in para 7 of the writ petition.

16. On 15.4.1997 the result of the selection on the basis of interview was declared. List of the selected candidates was displayed. For the college in question the respondent No. 5 was declared to be the selected candidate.

17. On 17.4.1997 the State Government imposed a ban on the appointment to be made pursuant to the result (this is an averment in para 8 of connected writ petition No. 37898 of 2002 Inder Pal Singh v. Director of Education and Ors., No counter affidavit has been filed denying the said averment.

18. 20.04.1998 U.P. Act No. 25 of 1998 came into force and inter-alia provided for regularization of all the appointees u/s 18 working as Ad-hoc Principals after July 3 1,1988 and before 06.08.1993. This provision was brought in force by adding Section 33 C to the Act. Sub-section 6 of Section 33 C, however, made an exception to such regularization and deprived those Ad-hoc appointees u/s 18 where either the vacancy was filled up or selection had already been made on the date of coming into force of the amending Act which is 20.0 4.1998.

19. On 5.02.1999 Writ Petition No. 5261 of 1999 which also included the present petitioner as one of the petitioners was filed, inter-alia, seeking a direction of regularization of the service of all the Ad-hoc Principals who were working on the date of commencement of the amended Act. However, it may be stated that in the said writ petition the vires of the provisions were not challenged.

20. On 6.02.1999 the respondent No. 5 joined the College in question as a duly selected Principal replacing the petitioner.

21. On 23.2.1999 an interim order was passed in writ petition No. 5261 of 1999 that the petitioner working as an ad hoc Principal will not be disturbed. However the petitioner was not permitted to rejoin.

22. The petitioner filed representations dated 15.5,1999/27.5.1999 to the effect that the respondent No. 5 is not a qualified candidate who could be selected and his selection is void.

23. On 13.07.1999 the petitioner filed a writ petition No. 27772 of 1999, inter-alia, seeking relief that selection of respondent No. 5 is void and it must be quashed. The said writ petition is still pending.

24. On 7.11.1999 a Government Order was issued by which instructions were given to the Director of Education for taking immediate steps in making the selected candidates joined after the selection which was held on 15.0-1.1997 but the same shall be subject to the decision in the SLP of Kiran Gupta (this averment and the Government Order finds place in paragraph 10 of the connected writ petition No. 37898 of 2002 Inder Pal Singh v. Director of Education and Ors.

25. On 3.08.2000 Writ Petition No. 34757 of 1996 filed by the petitioner was disposed of with a direction to the Director of Education to consider the case of the petitioner for regularization.

26. On 28.9.2000, the Hon"ble Supreme Court delivered the judgment in the case of Kiran Gupta and Others Vs. State of U.P. and Others Etc., whereby, inter alia, it was observed that the left out ad hoc appointees may be accommodated where the vacancies were not filled on the date of coming into force of the Amending Act and in this regard they may approach the educational authorities.

27. In December 2000, the petitioner filed a representation seeking regularization as per Section 33C(1) of the Act.

28. On 20.2.2002 the claim of the petitioner for regularization was rejected on the ground of applicability of Section 33-C(6) of the Act.

29. The entire controversy in the present writ, petition is challenge to the vires of the provision of Section 33-C(6) of the Act, 1921. Section 33-C(6) of the Act is quoted hereinbelow:

(6) Nothing to this Section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Ordinance referred to in Clause (c) of Sub-section (J) such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

The petitioner seeks to challenge the validity of Sub-section (6) aforesaid. Learned Counsel for the petitioner has made twofold submissions. The first submission is that the impugned provision violates Article 14 of the Constitution of India and the second limb of the argument is with regard to the interpretation of the impugned provision. The first limb of the argument is in two parts -(i) the classification made in Section 33-C(6) is impermissible classification; and (ii) it does not bear nexus with the object sought to be achieved by the Amending Act.

30. Learned Counsel for the petitioner has firstly argued that the Sub-section (1) of Section 33 C specifies the period within which the appointees of Section 18 will be considered for regularization. However the impugned sub-section seeks to cover the period subsequent to the classification done under Sub-section (1) and imposes limitation upon regularization for selection held after the cut off dates up to the date of coming into force of the enactment. This is clearly an impermissible classification inasmuch as such classification is not based upon an intelligible differentia and seeks to make the provision retrospective thereby

affecting the rights which the Legislature seeks to vest in ad hoc appointees up to a particular cut off date i.e., 06.08.1993. The provision could not be made retrospective and therefore the Legislation suffers from the vice of being not based upon an intelligible differentia, after the classification is done, with regard to the vacancy to be filled or selection to be made in accordance with the Act. It is evident that selection as per the Act is to be done for a particular year of recruitment after occurrence of the vacancy. The vacancy itself is the starting point and is the basis of adopting the process under the Act. Since the vacancy could not be filled in the year of recruitment, the alternative mode of appointment was adopted which is permissible under the Act. The regular mode of recruitment had to be given a go-by for a particular-year of recruitment due to the failing of the Commission and it is only when the Commission fails to recommend the candidate an alternative mode of appointment u/s 18 has to be applied. Thus the vacancy was filled up by adopting an alternative mode as provided u/s 18.. Such appointment u/s 18 is to be treated as a valid appointment u/s 16 of the Act and is not a void appointment. The impugned provision-seeks to give sanctity to the failings of the Commission and also seeks to undo alternative mode of appointments adopted due to the failings of the Commission itself. Such a course is an impermissible course and therefore the classification of fixing the cut off point for vacancy not to be filled and selection not to be held upto the date of coming into force of the enactment cannot be said to be based upon an intelligible differentia.

31. In support of his argument, the learned Counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in the case of B. Prabhakaran Rao v. State of A.P. reported in AIR 1996 SC 210 (para 20 and 22).

32. Learned Counsel for the petitioner has secondly argued that the impugned provision has the effect of discriminating two equally situated ad hoc teachers upon an impermissible classification of selection which it seeks to apply retrospectively. In the present case an ad hoc teacher in whose case the vacancy was not filled or the selection has not been made will march over an equally situated teacher who is otherwise entitled for regularization as per the Sub-section (1) but is made to suffer and is not granted the benefit merely because a selection has been done subsequent to his entitlement.

33. Moreover it is an admitted position that on the date of the vacancy the candidate who appeared in the process of selection was not eligible and thus an ineligible candidate is permitted to march over those candidates who were eligible on the date when the vacancy arose and were entitled to be considered in the year of recruitment.

34. Thirdly the learned Counsel for the petitioner has argued that the impugned provision is arbitrary inasmuch as it does not contain any guidelines as to what will be the situation where even though a selection has been made but the vacancy has not been filled on the date the Act came into force. Thus where the selected candidate does not come to join or due to some other reason the post in

question lies vacant but in which selection has been made on the date of coming into force of the Act, the ad hoc Principal who is otherwise entitled for regularization will be deprived of his right to be regularized merely on the ground that selection was done and therefore he is disentitled for due consideration on the date of coming into force of the enactment.

35. It is evident that the State Government itself placed a ban upon appointment of the candidates selected on 15.04.1997 vide its order dated 17.04.1997. Thus even though the selection was made but appointments were not done on the date of coming into force of the amending Act i.e., 20.04.1998 the State Government by an executive fiat restrained the appointments which resulted in the vacancy not being filled up. However the impugned provision, which does not contain any guidelines to deal with such a situation over, restricts the right of an ad hoc teacher by depriving him the benefit of regularization merely because a selection was done which was never implemented. Thus the impugned provision is dearly arbitrary in its application. Moreover, the impugned provision permits appointment of candidates selected merely on the basis of interview which selection cannot be considered to be a selection in accordance with the Act when substantial changes were made in the Rule on the date of coming into force of the amending Act and the selection process now required written examination coupled with interview. Thus there being no selection in accordance with the Act and the said selection having no sanction of the new body constituted after the amendment of the Act, could not fall within the term selection. However, the impugned provision seeks to regularize such selection by putting them at a higher pedestal than the right of those ad hoc teachers who nevertheless continued throughout in accordance with the provision contained under the Act. Such application of the Act is clearly arbitrary.

36. The second limb of the argument of the learned Counsel for the petitioner is that statement of objects and reasons of U.P. Act No. 25 of 1998 shows that the mischief of non-selection in the year of recruitment due to the failings of the Service Commission was sought to be remedied by regularizing the services of teachers and it was for this purpose the Act was enacted.

37. For ready reference, statement of objects and reasons of U.P. Act No. 25 of 1998 are given below:

... With, a view to ensuring transparency in the selection of the said candidates as also regularizing the services of certain teachers it was decided to amend the said Act to provide for:-

(3) regularization of the services of such teachers as were appointed by promotion or by direct recruitment on or after May 14, 1991 but not later than August 6, 1993, on ad hoc basis in the Lecturer grade or Trained Graduate grade and of such Principals or Headmasters as were appointed by promotion on or after July 31, 1983 but not later than August 6, 1993 on ad hoc basis; and

(4) regularization of the services of teachers in Certificate of Teaching Grade who

are trained graduates by making special provisions therefore that every such teacher shall be deemed to have been appointed in the Trained Graduate Grade with effect from January 1, 1986 if he completes ten years of continuous satisfactory service in the Certificate of Teaching Grade on or before January 1, 1986 and from the date of completion of such service if he completes ten years of service in the Certificate of Teaching Grade after January 1, 1986.

38. Learned Counsel for the petitioner has further argued that the mischief of non-selection on one hand and the legitimate expectations of the ad hoc appointees who supplanted the vacant posts were sought to be balanced by deciding to regularize the service of such class of ad hoc teachers. The object was to invest the ad hoc teachers with a substantive right and to recognize them as duly appointed within the framework of the Act. However, impugned provision seeks to defeat the aforesaid objective by placing a limitation upon such right of regularization and has the effect of conferring right upon a mere selectee on the date of the coming into force of the Act even though such persons have not been appointed on the date of the coming into force of the Act.

39. Learned Counsel for the petitioner next argues that it is a settled law that mere selection does not create any indefeasible right in a selectee for being granted appointment. The date on which the provision for regularization of teachers appointed as ad hoc teacher within the cut off date came into force, it was intended to treat them as duly appointed on a substantive post. However, the impugned provision has the effect of ensuring appointment to a mere selectee as against the entitlement of the ad hoc teachers who were to be provided substantive appointment. In this manner it defeats the objectives of the Act which were to invest the ad hoc teachers with a substantive right by treating them to be substantively appointed on the date of the coming into force of the Act.

40. Learned Counsel for the petitioner has argued that the following four principles needed to be considered in the present case with regard to rules of interpretation:

Whether in the impugned clause "OR" can be read as "AND"?

(ii) What is the scope and effect of non-obstante clause?

(iii) Statutes conferring the benefit must be liberally construed in favour of the beneficiary.

(iv) Relevant Service Rules applicable.

41. It is the submission of the petitioner that the word OR occurring in between vacancy has already been filled and selection for such vacancy may be read as "AND". If the statute is so read then it will save the same from the vice of arbitrariness. The effect of replacing OR with AND will be that in such case both the requirements ought to be existing namely the vacancy should also be filled up and selection for such vacancy should also have been made, in order to

deprive an ad hoc teacher from the benefit of regularization as provided under Sub-section (1) section 33 C. If the statute is so read then it will also be in harmony with the Sub-section (1)(c) inasmuch as then Clause (c) and Sub-section 6 will become mutually exclusive i.e., to say if Clause (c) of Sub-section (1) is available then Sub-section 6 will not apply and vice-versa if Sub-section 6 is to apply then Clause (c) of Sub-section (1) will not be available. Thus the entire Section 33C will be harmoniously interpreted.

Section	33C(1)(c)	Section	33C(6)
Has been continuously			
Nothing to this serving the Institution Section shall be from the date of such construed to entitle appointment up to the any teacher to date of the commencement of the Uttar Pradesh Secondary Education Services Commission Ordinance referred to in Clause (c) (Amendment) Act, of Sub-section (1) 1998; filed or selection for such vacancy has already been made in accordance with this Act.			

42. It is noteworthy that Clause (c) of Sub-section (1) finds due mention in Sub-section (6) and this is all the more reason that Sub-section (6) must be read harmoniously with Clause (c) of Sub-section (1). Therefore in a case where merely a selection has been done but the vacancy has not been filled up an ad hoc teacher will not lose his right for getting substantive appointment and will be entitled for regularization u/s 33 C which is in complete harmony with the object sought to be achieved under the Act. In support of his contentions, the petitioner relied on the following cases:

1. Punjab Produce and Trading Co. Ltd. Vs. Commissioner of Income Tax, West Bengal II, Calcutta,
2. Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another,
3. The State of Bombay Vs. R.M.D. Chamarbaugwala,

43. Learned Counsel for the petitioner has argued that it has been well-settled vide judicial interpretations that the enacting part of statute must be taken to control the non-obstante clause. Non-obstante clause cannot have the effect of cutting down the clear terms of an enactment and restrict the scope of its operation. The non-obstante clause could only be understood to have been incorporated by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment. In the present case the non-obstante clause places limitation upon the right to regularization as conferred by the enacting part under Sub-section (1) and seeks to cut down the benefit which is otherwise available to an ad hoc teacher who has fulfilled all the conditions mentioned under Sub-section (1). Therefore, the non-obstante clause cannot be construed in such a manner which may place the limitation upon the benefit, which has been conferred upon the class of ad hoc teachers falling within cut off dates mentioned under Sub-section (1) Clause (a). In support of this argument,

the learned Counsel for the petitioner relied on the following decisions:

1. Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another, Constitution Bench (Paragraph 27);
2. The Dominion of India and Another Vs. Shrinbai A. Irani and Another, Constitution Bench (Paragraph 10);

44. Thirdly the learned Counsel for the petitioner has argued that it is a settled law that a statute which confers benefit has to be liberally construed in favour of the subject to whom the benefit must go. The Act seeks to confer the benefit upon ad hoc teachers by giving them substantive appointment by virtue of their fulfilling the necessary qualifications under the Act and having been appointed within a period when the entire situation regarding selection was extremely fluid. This is a rational classification and therefore the benefit must be made available to the entire class without making any under-classification that will scuttle the benefit to some falling within the said class, He placed reliance on the following decisions:

1. Workmen of Messrs Binny Ltd. Vs. Management of Binny Ltd. and Another,
2. Indian Bank Vs. K. Usha and Another,
3. Mohd. Shafi Vs. Additional District and Sessions Judge (VII), Allahabad and Others,

45. Fourthly the learned Counsel for the petitioner has argued that for the vacancies, which arose between cut off dates, the relevant rules as applicable were existing during the time period when the vacancies arose and the subsequent rules will have no application. The amendments in the rule will therefore not be a valid criteria for making the selection and such selection therefore cannot be termed as a selection done in accordance with the Act. The impugned provision seeks to legitimize even though selections, which have been done on the basis of subsequent rules for those years of recruitment when the 1983 rules were in operation. This submission of the petitioner is based upon the consistent view taken by the Hon"ble Apex Court. Thus there is no selection in the eyes of law and such selected candidates therefore do not get any right of appointment and defeat the claim of the petitioner. In support of this argument, he placed reliance on the following decisions:

1. Union of India and others Vs. N.R. Banerjee and others,
2. P. Ganeshwar Rao and Others Vs. State of Andhra Pradesh and Others,
3. Y.V. Rangaiah and Ors. v. J. Sreenivasa Rao reported in (1983) 3 SCC 283 (Paragraph 9)

46. Sri G.D. Mishra appearing on behalf of the petitioner in the other writ petition has also argued that the impugned provision Section 33-C (1)(6) violates Article 14 of the Constitution of India.

47. Learned Advocate General appearing for the respondent State has repelled the arguments made by the learned Counsel for the petitioner very strenuously.

48. Learned Counsel Advocate General has argued that in the present writ petition as well as in the connected writ petitions, the petitioners have prayed that provisions of Section 33C(6) of the Act 1982 be declared ultra vires and the order dated 20.2.2002 passed by the Director of Education (Madhyamik) by which the petitioner's representation had been rejected, be set aside.

49. Learned Advocate General had argued that undisputedly the petitioner was appointed as an ad hoc principal by the committee of management of the institution due to retirement of the then principal. The ad hoc appointment was only till the period the regularly selected principal by the Commission is appointed.

50. Learned Advocate General has also argued that the regular selection on the post of principal was made by the Commission in accordance with the provisions of the Act and the select list was finally published in the month of March, 1997.

51. Learned Advocate General has brought to the notice of this Court the following directions of the Hon''ble Apex Court in the case of Kiran Gupta (Supra):

In so far as claim based on Section 33C(I)(a)(ii) is concerned, the candidates has to show that the following conditions are satisfied:

(i) a teacher was appointed by promotion on ad hoc basis in the post of Principal/ Headmaster;

(ii) the appointment by promotion was made on or after July 31, 1988 but not after August 6, 1993;

(iii) though the appointment was an ad hoc appointment, it was against a substantive vacancy;

(iv) the appointment was in accordance with Section 18 of the U.P. Act No. 5 of 1982; and

(v) the appointee has been continuously serving in the institution/school from the date of such appointment upto the date of commencement of Uttar Pradesh Secondary Education Service Commission (Amendment) Act, 1998 (i.e. April 20, 1998). Even if an incumbent satisfies all these conditions his right will be defeated by Sub-section (6) of Section 33 C if on April 20, 1998 such vacancy has already been filled or selection for such vacancy has been made in accordance with the U.P. Service and Selection Board Act, 1982. Here again, the particulars of the appellants who claim to fulfill these requirements are not available therefore, we consider it appropriate to leave it to the Director of Education, who shall look into the claims made under the provision.

52. Learned Advocate General stated that in pursuance to the aforesaid observations of Hon''ble Supreme Court in the case of Kiran Gupta (supra) the

petitioner moved representation which was rejected vide the impugned order on the ground that the list of selected candidates on the post of Principal was issued by the Commission in the month of March, 1997 while Section 33 C was substituted by U.P. Act No. 25 of 1998 w.e.f. 20.4.1998 and therefore in view of the provisions of Sub-section (6) of Section 33 C the claim of the petitioner for regularization on the post of Principal is not sustainable and they cannot be regularised on the post on which the regular selection has already been made by the Commission and the selection list has been issued.

53. He argues that in so far as the impugned order is concerned, the same do not suffer from any error of law and the petitioner has completely failed to point out any illegality in the impugned orders.

54. He further argues that so far as the constitutional validity of Section 33C(6) of the Act is concerned, the petitioner had participated in the regular selection process but was unsuccessful, therefore he cannot be allowed to challenge the validity of the rules. In support of his submissions, the learned Advocate General has placed on reliance the following judgments:

- (1) R.N. Gosain Vs. Yashpal Dhir, (relied on para 10 of the reports;
- (2) K.H. Siraj v. High Court of Kerala and Ors. reported in JT 2006 (11) SC 424 (relied on para 70 of the reports);

55. Learned Advocate General has submitted that presumption is that the legislature understands and correctly appreciates the need of its people. He has also submitted that the legislature does not exceed its jurisdiction. The provisions should be construed in the manner which will uphold its validity. The Act made by the legislature represents the Will of people. In support of this submissions, the learned Advocate General has relied on the following decisions:

- (i) The Anant Mills Co. Ltd. Vs. State of Gujarat and Others, (relied on para 20 of the reports;
- (ii) Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, (relied on para 10 of the reports);
- (iii) Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. and Others etc., (relied on para 9 of the reports);
- (iv) The State of Bihar and Others Vs. Charusila Dasi, (relied on para 14 of the reports);
- (v) Kedar Nath Singh Vs. State of Bihar, (relied on para 26 of the reports);
- (vi) Corporation of Calcutta and Another Vs. Liberty Cinema,
- (vii) Sunil Batra Vs. Delhi Administration and Others etc.,
- (viii) Calcutta Jute Manufacturing Co. Ltd. v. Commercial Tax Officer reported in (1997) U.P.T.C. 1241 (Supreme Court) (relied on para 19);

(ix) Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, (relied on para 175 of the reports);

56. Learned Advocate General has argued that the petitioner has failed to rebut the presumption as to constitutional validity of the provisions of Section 33 C(6) of the Act. He further argued that the provisions of Section 33-C have been held by the Division Bench of this Hon'ble Court to be valid. He refers to the judgment in the case Anand Narain Singh v. U.P.S.E. Services Selection Board, Allahabad reported 2004 ALJ 1211.

57. Learned Advocate General further argues that the provisions of Sub-section (6) of Section 33-C protect the rights of regularly selected candidate and on whose selection, the right to continue as an ad hoc principal by the petitioner came to end even as per their own appointment letter as an ad hoc principal issued by the Committee of management of the college.

58. He argues that Section 33-C(6) eliminates the possibility of disputes by securing rights of regularly selected candidate prior to the substitution the provisions of Section 33-C for regularization of an ad hoc principal. Thus the provisions of Section 33-C is wholly valid and, by no stretch of imagination be said to be arbitrary or unreasonable.

59. He argues that the challenge to the constitutional validity is wholly misconceived inasmuch as regular selection was made by the Commission and the list of regularly selected candidate on the post of principal of the respective colleges was issued in the month of March, 1997 i.e. prior to substitution of Section 33-C in the Act w.e.f. 20.4.1998.

60. Learned Advocate General also argues that an ad hoc principal like the petitioner does not have better rights than the regularly selected candidate on the post of principal by the Commission.

61. He also submitted that Sub-section (6) and Sub-section (1) both are part of Section 33-C and therefore Sub-section (1) cannot be read independent of Sub-section (6). In fact Sub-section (6) is in the nature of proviso to Sub-section (1) and therefore has to be read together to reach to a logical conclusion and to remove possibility of any anomaly or unwarranted results.

62. Learned Advocate General has argued that it is abundantly clear from the plain reading in para 7 of the writ petition that in fact the petitioner had participated in selection process and now therefore it was not open to him to make a challenge of the vires. Para 7 of the writ petition is quoted hereinbelow:

7. That however, since the selection process was going on, the petitioner appeared for the interview which was held on 5.2.1997. The respondent No. 2 issued the list of selected candidates on 15.4.1997. For the college in question, the respondent No. 5 was shown as the selected candidate.

63. Learned Advocate General has argued that the law develops on the basis of

experience. The present provision he says has been enacted in order to bring to an end ad hocism. The entire purpose of the Act, he has argued, is to advance the cause of proper selection and not to lend perpetuity, to ad hocism. The process of selection, he argues, ensures that best candidate is brought forward to serve the needs of the people. He has argued that the provision has been brought in for the benefit of all persons and also to ensure complete fairness.

64. Learned Advocate General has argued that the purpose of the Act to make selection, as such it cannot be said that the provision of Section 33C(6) is in any manner unconstitutional. He has also argued that a particular Statute must be construed in a manner that would make it effective and operative. He has argued that presumption is that legislature has not exceeded his jurisdiction and it cannot be said that any constitutional mandate such as those relating to fundamental rights has been violated. He has argued that the petitioner has failed to discharge the burden that legislation in question has transgressed the limits laid down by the organic law of the Constitution and the nature way to read a Statute is to read it as true expression of the Will of the people. The Statute cannot be struck down only for reason that one person finds it unreasonable.

65. In reply to the learned Advocate General, the learned Counsel for the petitioner has argued in rejoinder affidavit that the case of Kiran Gupta (supra) did not decide the constitutional validity of the Section 33C(6) and it was left open to be decided. He has argued that it was open to the petitioner to make a challenge u/s 33C(6) of the Act as cause of action arose to the petitioner only being the Director of Education held the petitioner appointment to be bad u/s 33C(6).

66. He has once again argued in the rejoinder affidavit that word "or" should be read as "and" in order to save the constitutionality of the section, because that will lie twin conditions to be fulfilled. He has argued that scheme of Section 33-C does not take into consideration any improvement in the mode of the selection but was introduced only for the purpose of the lending credence to the regularization, because no candidate is to be removed on the ground of unfitness.

67. He has also argued that parameters of the merits of the selection were to be judged on the basis of the rules itself.

68. While summing, he has argued that the provision is wholly discriminatory as it creates discrimination between a single class of persons.

69. Having heard both parties at length, I have come to the following conclusion - firstly the provision of Section 33-C is to be read as a whole and not in isolation. The validity of the Section 33C has been upheld by the Apex Court in the case of Kiran Gupta (Supra) and therefore if the provision is to be read as a whole then the provision of Section 33C(6) cannot be held to be ultra vires. The entire argument of the learned Counsel for the petitioner is based on the premise as if the purpose of the Act is to make regularizations alone. This premise itself is

faulty. The purpose of the U.P. Secondary Education Service Selection Hoard Act, 1982 is to make proper selection and to put to an end ad hocism. Therefore the best candidate is always a candidate who comes after a fair selection.

70. The Hon''ble Apex Court has deprecated ad hocism and the regularization of ad hoc employees. The petitioner who was an appointed on an ad hoc post, cannot claim to be on better footing than those candidates who have been selected by a proper procedure.

71. It is wholly wrong on the part of the petitioner to say that the petitioner is equally placed with the selected candidates and therefore to say that the provision of Section 33C(6) differentiate between the same class is wholly wrong. The purpose of the Section 33C(6) is only to give preference to a duly selected candidate and to see that the rights of duly selected candidate are not defeated. It cannot be therefore said that the provision of Section 33C(6) contains any ambiguity. The purpose of adding Section 33C(6) was only to bring to an end the existence of any situation where a selected candidate would be a pitted against an ad hoc candidate. The purpose of enacting Section 33C(6) is clear i.e. to give preference to a duly selected candidate.

72. The Division Bench of this Court has in fact examined the rights of the officiating/ad hoc principal who claim regularization in case of Balak Singh Kushwaha Vs. State of U.P. and others, and framed this very question in question No. 7, which is as under:

QUESTION No. 7

25. On behalf of the officiating/ ad hoc principals who have been found entitled for regularization by the screening committee u/s 33-C(1)(a)(ii) inserted in the Act by the U.P. Ordinance No. 3 of 1998 with effect from 20th April, 1998, the selection made by the Commission against the posts occupied by such officiating/ ad hoc principals is also illegal and cannot be enforced. We have considered the submissions of the learned Counsel for the petitioners, however, we do not find any merit in the claim. It cannot be disputed that the impugned selections of candidates in 1996 and 1997 for the post of principals in the present writ petitions are with regard to the vacancies already intimated to the Commission long back. The provisions of Section 33-C came into force on 20th April, 1998 i.e. long after the vacancies were notified to the Commission and selections were completed. Sub-section (6) of Section 33-C contains complete answer to the question raised by the learned Counsel for the petitioners which is being reproduced below:

Section 33-C(6)

Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of the commencement of the ordinance referred to in Clause (c) of Sub-section (1) such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.

26. From perusal of Sub-section (6), it is clear that the claim of only such teachers will survive who occupied the post in respect of which the appointment has not yet been made or the candidate was not selected by the Commission in accordance with the provisions of the Act. Thus on the basis of the claim based on Section 33-C(1)(a)(ii), the selections already made by the Commissions cannot be disputed, The contention raised deserves outright rejection.

73. The Division Bench of this Court has already examined this matter and come to the conclusion that Section 33C(6) of the Act provide the answer to the question raised by officiating/ad hoc principles raising claim to be regularization as the

74. For reasons mentioned above, there is no merit in the writ petition, which is dismissed. I uphold; the vires of the provision of Section 33C(6) of the Act. Section 33C(6) is wholly constitutional and reflects the Will of the people and protects the interest of the people by ensuring that only persons who are duly selected are brought forward to serve educational institution as head and teachers of the institution.