

(1995) 10 AHC CK 0002

In the Allahabad High Court

Case No : C.M.W.P. No's. 7282 of 1984, 2175 of 1987, 12435 and 25151 of 1988 and 31067 of 1992

Kumari Maya Goyal

APPELLANT

Vs

Vice-Chancellor, Bundelkhand University and Others

RESPONDENT

Date of Decision : 12-10-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12, 16, 31, 31A, 31B

Citation : (1995) 3 UPLBEC 1931

Hon'ble Judges : R.A. Sharma, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : R.N. Bhalla, for the Appellant;

Judgement

R.A. Sharma, J.—Writ Petition No. 7282 of 1984 has been filed by Km. Maya Goyal, who was appointed vide letter dated 8.10.1982 as a temporary lecturer in History in Pt. Jacamar Lai Nehru Maha Vldyalaya, Banda (hereinafter referred to as the college) with the approval of the Vice-Chancellor of Bundelkhand University. Vide letter dated 2.4.1984 her service was terminated by the President of the Committee of Management of the college. Being aggrieved, she has filed the above writ petition. At the time when this writ petition was entertained by this Court on 27.5.1984, Interim order was granted, staying the operation of the order of termination of service dated 2.4.1984. This order was, however, vacated on, 3.1.1985 with the observation that if any appointment is made on the post on which the Petitioner is claiming a right, that appointment shall be subject to the result of this writ petition.

2. Thereafter, the management appointed Dr. A.K. Mishra by appointment letter dated 3.10.1985 on ad hoc basis for six months or till the candidate recommended by the U.P. Higher Education Service Commission. (Hereinafter referred to as the Commission) Joins the post or till the passing of the order by this Court in Writ Petition No. 7282 of 1984, Km. Maya Goyal v. Vice Chancellor,

Butxdelkh and University and Ors. whichever is earlier. On 24.9.1984, his appointment was continued till 30.6.1987 with the same conditions about the term. By letter dated 26.5.1987 the service of Dr. A.K. Mishra has been terminated after 30.6.1987. Being aggrieved try it, Dr. Mishra has filed Writ Petition No. 21758 of 1987. In this writ petition also, an interim order was passed to the effect that if any appointment is made against the post held by Dr. Mishra that will be subject to any order, which may be passed subsequently in this writ petition.

3. Management again advertised the post of temporary lecturer in History in the college and this time Sri Lavkush Prasad Dwivedi was appointed as a temporary lecturer vide letter dated 5.12.1987 on ad hoc basis up to 30.6.1988 or till the candidate selected by the Commission joins, whichever is earlier, subject to the order, which may be passed in Writ Petition No. 7282 of 1984, Km. Maya Goyal v. Vice Chancellor, Bimdelkhand University and Ors. Sri Dwivedi joined the post and started working in the college. Vide letter dated 30.6.1988, his service was also terminated on the ground that it has come to an end on 30.6.1988 by efflux of time. Being aggrieved by it, he filed Writ Petition No. 12435 of 1988. On 8.7.1988, this Court passed an interim order staying the operation of the above order of termination of service.

4. Service of Sri Lavkush Prasad Dwivedi was again terminated by the management by letter dated 13.9.1988 on the ground that since its application for vacation of the stay order in Writ Petition No. 12435 of 1988 had not been disposed of within 14 days, the stay order stood automatically vacated vide Article 226(3) of the Constitution. Sri Lavkush Prasad Dwivedi filed another Writ Petition No. 25151 of 1988, challenging the above order dated 13.9.1988. In this writ petition also an interim order was passed by this Court directing thereby that the Petitioner therein shall be deemed to continue in service as ad hoc lecturer in History and shall be paid his salary till further orders of this Court.

5. Sri Lavkush Prasad Dwivedi applied for regularization of his service under Ordinance No. 43 of 1991. His request was rejected by order dated 23.6.1992 holding that he is not entitled for regularization. Sri Dwivedi filed another Writ Petition No. 31067 of 1992 challenging the above order dated 23.6.1992. Hon"ble M.P. Singh, J. allowed this Writ Petition No. 31067 of 1992 on 16.7.1992 and directed the Respondents therein to regularize his service after ignoring the artificial breaks in service. Dr. A.K. Mishra, who had also filed Writ Petition No. 21758 of 1987 In which the appointment of Sri Dwivedi was also challenged, made an application dated 25.4.1993 for recall of the said judgment dated 16.7.1992 in Writ Petition No. 31067 of 1992.

6. Each of the writ petitions and the application for recall mentioned above are being decided as under:

Writ Petition No. 7282 of 1994, Km. Maya Goyal v. Vice Chancellor, Bimdelkhand University and Ors.

7. By letter dated 10.3.1981, the Chancellor of the University granted provisional affiliation to the college for M.A. in History subject to certain conditions, one of which relating to the payment of salary to the teachers is reproduced below:

The management of the college will bear the expenses on the academic posts till they are created sanctioned by the Director of Higher Education, U.P.

The college accordingly invited applications by a notice published in a newspaper for appointment to various posts including two temporary posts of lecturers in History (likely to be made permanent). In pursuance of the above notice, various persons including the Petitioner, and Respondent No. 4 applied. Petitioner was issued an interview letter dated 28.8.1982 in which it was mentioned that "this appointment will be temporary against leave vacancy at present and its continuance shall be subject to the approval of the U. P. Higher Education Commission". The Selection Committee selected both, the Petitioner and Respondent No. 4, placing Respondent No. 4 at serial No. 1 and the Petitioner at serial No. 2. The Petitioner's appointment was approved by the Vice-Chancellor of Bundelkhand University to which the college is affiliated for the period till a candidate duly selected by the Commission joins the post. Petitioner was issued appointment letter dated 8.10.1982 in which it was mentioned that her appointment has been approved by the Vice-Chancellor for the period till the candidate selected by the Commission joins the post. This appointment letter also contains the following four conditions:

- (i) you will be paid the salary in the pay scale of Rs. 700-1600 plus dearness allowance approved by the Government ;
- (ii) as you do not have M. Phil, or equivalent Degree, if you are not able to obtain such a Degree within five years, your annual increment will be stopped ;
- (iii) If your post is not approved by the Director of Higher Education, U.P., your salary will be paid from general maintenance fund and your period can be extended only on approval by the Director; and
- (iv) Your service can be terminated by giving one month's notice and you can also resign by giving a similar notice.

8. Petitioner joined the service as temporary/ado lecturer in pursuance of the above appointment letter. The Director of Higher Education, U.P. sanctioned a post in the History Department of the college in 1983 against which Respondent No. 4, who was placed at serial No. 1 by the Selection Committee, was absorbed. The second post of lecturer in the History Department was sanctioned by the Director on 14.2.1984. The Director, however, by his letter dated 23.3.1984 informed the college that the Petitioner is not entitled to the benefit u/s 31(3) of the State Universities Act (hereinafter referred to as the University Act) and after 3.1.1984, no ad hoc appointment of a teacher could be made. The management thereafter by impugned order dated 13.3.1984 terminated the service of the Petitioner. On her representation, the President of the managing committee of

the college passed an order dated 2.4.1984 terminating her service with effect from 1.6.1984. Being aggrieved by it, the Petitioner has filed the above writ petition.

9. The terms of the notice inviting the applications, interview and the appointment letters issued to the Petitioner and the order of the Vice Chancellor approving the appointment of the Petitioner are different. According to the notice (Annexure 1 to the writ petition), applications were invited for appointment to two temporary posts in History Department of the college. Although the period for which the appointment was to be made was not specified but it was mentioned in the said notice that those two temporary posts are likely to be made permanent. In the interview letter (Annexure 2 to the writ petition), it was stated that the appointment will be temporary against leave vacancy at present and its continuance shall be subject to the approval of the Commission. The order of the Vice-Chancellor, however, mentions that the Petitioner's appointment has been approved for the period till the candidate selected by the Commission joins. But the appointment letter after referring to the letter of the Vice-Chancellor approving the Petitioner's appointment for the period till the candidate selected by the Commission joins, contains four conditions, one of which is that her service will be terminated at any time by one month's notice. The other condition was that if the post is not approved by the Director, the salary would be paid to her from general maintenance fund. The contention of the Petitioner is that In view of the terms of the advertisement and the order of the Vice-Chancellor Petitioner is entitled to continue in service on ad hoc basis till the candidate selected by the Commission joins the post. The Respondents, however, rely upon one of the conditions contained in the appointment letter where under he service can be terminated by one month's notice.

10. Section 31 of the Universities Act provides for appointment of teachers of the University and affiliated or associate colleges. According to this section, teachers of an affiliated or associate college are to be appointed by the college management on the recommendation of the Selection Committee constituted in the manner provided therein. Sub-section (3) of the said section authorizes the management of the college to make officiating appointment in a vacancy caused by the grant of leave to an incontinent for a period not exceeding "en months. Sub-section (3) permits under certain conditions the appointment of a temporary/ officiating teacher in a substantive capacity. The position, however, has been changed by the U. P. Higher Education Service Commission Act, 1980 (hereinafter referred to as the Commission Act), Section 12(1) of which has provided that notwithstanding anything contrary contained in the Universities Act or in the Statute made there under, every appointment as a teacher of any college shall be made by the management only on the recommendation of the Commission except the appointment made Under Sections 16, 31A and 31B of the Commission Act. which can be made by the management of the college without any recommendation of the Commission. Section 16 provides for appointment of ad hoc teacher where the vacancy has been notified by the

management to the Commission and the Commission has failed to recommend the name of suitable candidate within three months from the date of such notification. Sub-section (2) of Section 16, which has laid down the period of such ad hoc appointment. Is reproduced below:

16. (2) Every appointment of an ad hoc teacher under Sub-section (1) shall cease with effect from the earliest of the following dates, namely:

(a) when the candidate recommended by the Commission joins the post:

(b) where the period of two months from the date of receipt of the recommendation of the Commission under Sub-section (1) of Section 12 expires ;

(c) thirtieth day of June following the date of such ad hoc appointment.

(d) Section 31A empowers the State Government to issue Removal of Difficulties Order for the purpose of removing any difficulty in the implementation of the Act for such period as may be specified in the order itself. As per proviso appended to Sub-section (1) of this section, no order shall be made there under after the expiry of two years from the date of commencement of the Act. u/s 31 A, the State Government has issued on 4.1.1982 the U.P. Higher Education Service Commission (Removal of Difficulties) Order, 1982. This order was operative for a period of one year commencing from the date of its issue. The Government issued another Removal of Difficulties Order in 1983 for a period of another year with effect from 4.1.1983. Under these orders, ad hoc appointment could be made by ^ the management of the college without consultation with the Commission " against a newly created post also and such appointment, according to paragraph 3 of the Order, will cease on the date when the Commission recommends a candidate for appointment. Paragraph 3 of the said Order is reproduced below:

3. Manner and Duration of appointment. Every appointment of teacher under paragraph 2 shall be made in consultation with an expert nominated by the Vice-Chancellor and shall cease on the date when the U. P. Higher Education Service Commission recommends a candidate for appointment in accordance with the provisions of the U.P. Higher Education Service Commission Act, 1980.

Section 31B provides for regularization of certain ad hoc appointment made on or before 3.1.1984 under Removal of Difficulties order.

11. Petitioner was selected as temporary/ad hoc lecturer by a duly constituted Selection Committee and her appointment was approved by the Vice-Chancellor in pursuance whereof she was issued appointment letter dated 8.10.1982. This appointment letter does not specify the provisions under which she was appointed. But after 21.8.1981 on which date the Commission Act was enforced, no appointment could have been made under the Universities Act in view of the provisions of Section 12(1) of the former Act. Sub-section (4) of Section 12 of the Commission Act ha^, however, laid down that if any vacancy, in respect of which an appointment of a teacher has been made, was advertised before the

commencement of that Act, the provision of the said Act shall not apply to such appointment. Although the Petitioner has filed the notice inviting applications, in pursuance of which she was appointed, as Annexure 1 to the writ petition; but it does not bear any date. Its date has also neither been given in the writ petition nor in the rejoinder affidavit filed by the Petitioner. Even the Respondents have not given its date in the counter-affidavit. Petitioner's ad hoc/temporary appointment dated 8.10.1982 is referable to the Commission Act only. Ad hoc appointment u/s 16 of the Commission Act could not have been made, because the post was temporary and till her appointment no vacancy was notified to the Commission. Only other provision under which the Petitioner could have been appointed was Removal of Difficulties Order notified u/s 31A of the Commission Act. This is also clear from paragraph 5 of the counter-affidavit of Dr. Gorakhnath Dwtvedi, who at the relevant time was the Principal of the college, in which it has been mentioned that the Petitioner was given ad hoc appointment under the Commission Act. Any appointment made under that Order has to last till the candidate is selected by the Commission for regular appointment. It is for this reason that the Vice-Chancellor approved the Petitioner's appointment for the period till a candidate selected by the Commission joins the post. A Division Bench of this Court in *K.N. Mishra v. Principal. S.M. College, Chandausi, District Moradabad and Ors.* 1988 UPLBEC 310, has held that an ad hoc appointment under the Removal of Difficulties Order comes to an end in the manner provided by the Order itself and it does not leave any option with the management to insert any condition providing for termination before the candidate selected by the Commission joins the post. Such a condition being in conflict with paragraph 3 of Removal of Difficulties Order has to be ignored and is liable to be struck down. The relevant passage from the said judgment is reproduced below:

An ad hoc appointment under Removal of Difficulties Order comes to an end in the manner provided by the Order itself. It does not leave any option with management to insert any condition that the appointment shall come to an end after six months. Clause (2) in the appointment Order being in conflict with Clause (3) extracted above has to be struck down. It was liable to be ignored. The Petitioner on his appointment acquired right to continue till a regular selected candidate from the Commission joined. It being a statutory right could not be curtailed by the management.

The condition in the appointment letter of the Petitioner providing for termination of service before a regular candidate is selected by the Commission being in conflict with paragraph 3 of the Removal of Difficulties Order has to be ignored, being without jurisdiction.

12. In this connection, It may also be mentioned that as regards cases where ad hoc appointments are made u/s 16(1) of the Commission Act regarding which Sub-section (2) of Section 16 has provided that such ad hoc appointment shall cease with effect from earliest of the following dates, namely, when the candidate recommended by the Commission joins the post or 30th June following

the date of ad hoc appointment, the Division Bench of this Court in Sub hash Chandra Gupta v. Committee of Management, K.C.M. College, Moradabad and Ors. 1988 UPLBEC 492, has held that such ad hoc appointment shall continue till the candidate selected by the Commission joins the post. Relevant extract from this Court's judgment in the above case is reproduced" below:

This Court in the case of Shiv Chandra Mishra and Ors. v. District Inspector of Schools, Allahabad 1986 UPLBEC 248, had an occasion to consider the provisions of Section 18 of the U.P. Secondary Education Service Commission and Selection Boards Act, 1982 which are pair material with the provisions of Section 16 of the Act. This Court has taken the view that a person appointed on ad hoc basis, u/s 18 shall continue till a proper selection is made by the Commission. The position, therefore, is that the Petitioner's appointment on ad hoc basis in the aforementioned college will continue to subsist till a selection is made by the Commission and the person so selected joins the college.

In view of the legal position stated above, the Petitioner would be entitled to salary from month to month till a selection is made by the Commission and the person so selected Joins the post.

In Anr. case Pankaj Krishna v. Vice-chancellor. Kanpur University, Kanpufand Ors 1988 UPLBEC 484. the Division Bench followed the same principle and in this connection has laid down as under:

In view of the decisions of this Court while interpreting the provisions of Section 18 of the Secondary Education Service Commission Act, the provisions whereof are analogous to those contained in Section 16 of the U.P. Higher Education Service Commission Act, 1980, the following position has emerged:

(1) The Petitioner is entitled to be treated as a lecturer in Chemistry in the institution concerned and to be paid on that post till some one else is recommended for appointment on the post held by the Petitioner by the U. P. Higher Education Services Commission and the recommended of the Commission had joined the post held by the Petitioner.

(2) The service of the Petitioner has not been terminated in accordance with law.

That apart, it is not open to the management to replace one ad hoc or temporary teacher by another ad hoc or temporary teacher. An ad hoc or temporary teacher can be replaced only by a candidate selected by the Commission. Reference, in this connection, may be made to State of Haryana and others Vs. Piara Singh and others etc. etc., , relevant extract from which is reproduced below:

Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.

The management of the college was, therefore, not Justified to terminate the

Petitioner's service and to appoint another person on ad hoc basis in her place.

13. There was also no Justification on the part of the State in not paying the salary to the Petitioner on the ground that she is neither entitled to the benefit of Section 31(3) of the Universities Act nor Is it permissible to make any ad hoc appointment after 4.1.1981. Even if she is not entitled to benefit of permanent appointment u/s 31(3) of the Universities Act. her service cannot be terminated nor can she be denied the payment of salary, because she Is entitled to continue till a candidate selected by the Commission joins the post. It is true that the Removal of Difficulties Order came to an end on 4.1.1984 and thereafter no ad hoc appointment could have been made there under; but the lapse of the said order can neither have the effect of nor can be a ground for terminating her service and not paying her salary. If the right of enduring character has been created and vested in a person by a statute, it cannot be taken away even if that statute has lapsed. In this connection, reference may be made to the case of State of Orissa Vs. Bhupendra Kumar Bose, , wherein it was laid down as under:

In our opinion, what the effect of the expiration of a temporary Act would be must depend upon the nature of the right or obligation resulting from the provisions of the temporary Act and upon their character whether the said right and liability are enduring or not. As observed by Parker, B. in the case of Steavenson v. Oliver (1841) 151 JER 1024.

There is a difference between temporary statutes and statutes which are repealed ; the latter {except so far as they relate to transactions already completed under them) become as if they had never existed ; but with respect to the former, the extent of the restrictions imposed, and the duration of the provisions, are matter of construction.

In this connection, it would be useful and interesting to consider the decision in the case of Stevenson (1841) 151 ER 1024 at pp. 1026-1027, itself. That case related to 6th Geo. 4, C 133, Section 4 which provided that every person who held a commission or warrant as surgeon or assistant - surgeon in His Majesty's navy or army should be entitled to practice as an apothecary without having passed the usual examination. The statute itself was temporary and it expired on August 1, 1826. It was urged that a person who was entitled to practice as an apothecary under the Act would lose his right after August 1, 1826 because there was no saving provision in the statute and its expiration would bring to an end all the rights and liabilities created by it. The Court rejected this contention and held that the person who had acquired a right to practice as an apothecary, without having passed the usual examination, by virtue of the provision of the temporary Act, would not be deprived of his right after its expiration.

If the right created by the statute is of an enduring character and has vested in the person, that right cannot be taken away because the statute by which it was created has expired."

Same principle has been reiterated by the Supreme Court in T. Venkata Reddy

and Others Vs. State of Andhra Pradesh, . The aforesaid law was laid down by the Supreme Court while considering the effect of expiry of temporary statute (Ordinance) on the vested right of the persons even though Section 6 of General Clauses was held not to be applicable to such cases. These principles will also be applicable to the case of lapse of Removal of Difficulties Order, which is one of the forms of subordinate legislation provided the right of enduring nature has vested in a person. By appointment orders under Removal of Difficulties Order the right was created in favors of the Petitioner to continue in service till the person duly selected by the Commission Joins the post. Such a person has also been given right to be appointed on substantive basis u/s 31B of the Commission Act. Such a right is right of enduring nature and such an appointment will continue even after the lapse of Removal of Difficulties Order under which it was passed.

14. In fact, the scheme of the Commission Act is that ad hoc appointments already made under the Removal of Difficulties Order will continue till the candidate selected by the Commission Joins unless such an appointment has been regularized u/s 31B, which was inserted in the aforesaid Act by U.P. Act No. 22 of 1985. Sub-section (2A) was further inserted in Section 31B"by U.P. Act No. 2 of 1992, which has provided for regularization of ad hoc teachers appointed In vacancies referred to in Clause (iv) or Clause (v) of sub-Para (1) of paragraph 2 of Removal of Difficulties Orders, 1982 and 1983. If the Legislature wanted to terminate the service of ad hoc teachers after the expiry of Removal of Difficulties Orders, it would not have made provisions for their regularization under Sub-sections (1) and (2A) of Section 31B. The intention of the Legislature to continue the service of such ad hoc appointees after the lapse of the Removal of Difficulties Orders is thus clear. Section 31C, which provides for regularization of ad Ivan teachers appointed u/s 16 of the Commission Act, has provided in its Sub-section (4) that if service of such a teacher is not regularized and he does not get substantive appointment under Sub-section (1), he shall cease to hold ad hoc appointment after June 30, 1992. There is no such provision in Section 31B. There was thus, no justification to terminate the Petitioner's service.

15. For the reasons given above, the Petitioner was entitled to continue as ad lion lecturer in the college till the candidate selected by the Commission joins the post. It was, therefore, not open to the Management of the college to terminate the Petitioner's service by the Impugned order because no candidate has been selected by the Commission. Hence, this writ petition is liable to be allowed.

Writ Petition No. 21758 of 1987. Dr. A.K. Mishra v. U.P. Higher Education Service Commission and Ors.

16. After terminating the service of Km. Maya Goyal, the management of the college invited applications for appointment of temporary lecturer in History Department vide notice (Annexure 1 to the writ petition) for a period of six months or till the candidate selected by the Commission Joins the post, whichever Is earlier. Dr. Mishra was selected by the Selection Committee and he

was appointed vide appointment letter dated 3.10.1985 for a period of six months or till the candidate selected by the Commission Joins the post or till passing of the order by this Court in Writ Petition No. 7282 of 1984, Km. Maya Goyal v. Vice Chancellor, Bundelkhand University and Ors., whichever is earlier. This appointment was continued by order dated 2.4.1986 up to 30.6.1987 with the same three alternative conditions about the period of its operation. The Principal of the college vide letter dated 26.5.1987 informed Dr. Mishra that his appointment will come to an end on 30.6.1987. Dr. Mishra filled this writ petition, challenging the order of termination of his service as well as the notice dated 6.11.1987 Inviting fresh applications for appointment of ad hoc lecturer in History Department of the college. As in the meantime Sri Lavkush Prasad Dwivedi has been appointed as ad hoc lecturer in the college on the same post, which was held by Dr. Mishra earlier, his appointment was also challenged and he was impleaded as one of the Respondents.

17. As the appointment of Dr. Mishra was made subject to the result of the writ petition filled by Km. Maya Goyal and as Km. Maya Goyal's writ petition is being allowed, no effective relief can be given to him and the writ petition filed by him is liable to be dismissed.

Writ Petition No. 12435 of 1988, Lavkush Prasad Dwivedi v. Bundelkhand University and Ors.

and

Writ Petition No. 25151 of 1988. Lavkush Prasad Dwivedi v. Bundelkhand University and Ors.

18. Sri Lavkush Prasad Dwivedi was appointed as a temporary lecturer on ad hoc basis up to 30.6.1988 or till the candidate selected by the Commission Joins, whichever is earlier subject to the order passed in the writ petition filed by Km. Maya Goyal. By letter dated 30.6.1988 his service was terminated on the ground that the period for which he was appointed has come to an end. Being aggrieved by it he has filed Writ Petition No. 12435 of 1988. Sri Dwivedi filed another Writ Petition No. 25151 of 1988 against the second order dated 13.9.1988, terminating his service.

19. By interim order passed by this Court on 3.1.1985 in Writ Petition No. 7282 of 1984, Km. Maya Goyal v. Vice-chancellor, Bundelkhand University and Ors. (supra), any appointment made after the termination of her service was to be subject to the order, which may be passed in that writ petition. Mr. Dwivedi's appointment was also made subject to the order, which may be passed in the writ petition filed by Km. Maya Goyal, and as we are allowing the writ petition of Km. Maya Goyal, no relief can be given to Sri Lavkush Prasad Dwivedi in any of these two writ petitions.

Writ Petition No. 31067 of 1992, Lavkush Prasad Dwivedi v. Director of Education (Higher Education), U.P. and Ors.

20. This writ petition was filed by Sri Lavkush Prasad Dwivedi against the order dated 23.6.1992 rejecting his claim for regularization of his service. The writ petition was allowed by Hon''ble M.P. Singh, J. on 16.7.1992 and direction was issued to the Respondents therein to regularize his service. Dr. A.K. Mishra has filed an application in this writ petition for recall of the judgment dated 16.7.1992, passed by Hon''ble M.P. Singh, J. As Hon''ble M.P. Singh, J. has been transferred to another High Court, this application has also come up before us.

21. From the perusal of this writ petition, it appears (hat Sri Lavkush Prasad Dwivedi has concealed relevant facts from this Court. In paragraph 18 of the writ petition, which is reproduced below, it has been stated that at no point of time any objection has been raised against the validity of his appointment made in 1987:

18. That at no point of time any objection whatsoever had been raised with regard to the validity of the appointment of the Petitioner made in the year 1987 and regular payment of salary is being made to the Petitioner from the Government funds by the education department itself without any objection whatsoever till date."

The above statement is incorrect, Dr. A.K. Mishra has challenged the appointment of Sri Lavkush Prasad Dwivedi in his Writ Petition No. 21758 of 1987 in which Sri Dwivedi is one of the Respondents. That apart, Dr. Mishra has made an application in his Writ Petition No. 21758 of 1987 for direction against the regularization of service of Sri Lavkush Prasad Dwivedi. This application was rejected by learned Single Judge with the observation that Dr. Mishra's interest is fully protected by interim order dated 26.11.1987, whereby it has been directed that any appointment made on the post held by Dr. Mishra will be subject to the result of his writ petition.

22. No order regularizing the service of Sri Lavkush Prasad Dwivedi could have been passed without first setting aside the orders terminating his service against which he has" filed two writ petitions referred to above. That apart, the appointment of Sri Dwivedi was subject (o the order, which may be passed in Writ Petition No. 7282 of 1984, filed by Km. Maya Goyal. Therefore, all these writ petitions including the writ petition, filed by Sri Dwivedi for regularization of his service should have been heard and disposed of together. In any case Dr. A.K. Mishra, who has challenged the appointment of Sri Lavkush Prasad Dwivedi in his writ petition, was entitled to be heard before passing any order of regularization of service of Sri Dwivedi, but no such opportunity was given to him. It appears that Dr. Mishra was not even imp leaded as a party in the writ petition filed by Sri Dwivedi. The judgment of Hon''ble M.P. Singh, J. dated 16.7.1992 is, as such recalled.

23. As the appointment of Sri Lavkush Prasad Dwivedi was subject to the order, which may be passed in the writ petition filed by Km. Maya Goyal and as her writ petition is being allowed, no direction can be issued for regularizing the service of

Sri Dwivedi.

24. The contention of Sri Ashok Khare, learned Counsel for Sri Lavkush Prasad Dwivedi, however, is that Writ Petition No. 7282 of 1984, *Km. Maya Goyal v. Vice-Chancellor, Bundelkhard University and Ors.* and Writ Petition No. 21758 of 1987; *Dr. A.K. Mishra v. U.P. Higher Education Service Commission and Ors.* have become in fructuous, because of the amendment effected in the Commission Act from 22.11.1991 on account of which none of the above two Petitioners can be reinstated in service for the reasons that Section 16 providing for ad hoc appointment has been deleted and no ad hoc appointment can be made or continued after 22.11.1992 in view of the provisions contained in Sub-section (4) of Section 31C of the Commission Act. Relevant part of Section 31C is reproduced below:

31C. Regularization of other ad hoc appointments

(1) Any teacher, other than a principal who

(a) was appointed on ad hoc basis after January 3, 1984 but not later than June 30, 1991 on a post

(i) which after its due creation was never filled earlier, or

(ii) which after its due creation was filled earlier and after its falling vacant, permission to fill it was obtained from the Director; or

(iii) which came into being in pursuance of the terms of new affiliation or recognition granted to the college and has been continuously serving the college from the date of such ad hoc appointment up to the date of commencement of the Uttar Pradesh Higher Education Service Commission (Amendment) Act. 1992 ;

(b) was so appointed after three months of the notification to the Commission under Sub-section (1) of Section 16 as it stood before its omission by the Act referred to in Clause (a), or if appointed within such period, no recommendation was made by the Commission within such period;

(c) possessed on the date of such commencement, the qualifications required for regular appointment to the post under the provisions of the relevant statutes in force on the date of such ad hoc appointment;

(d) Is not related to any member of the management or the principal, of the college concerned in the manner mentioned in the explanation to Section 20 of the Uttar Pradesh State Universities Act, 1973;

(e) has been found suitable for regular appointment by a Selection Committee constituted under Sub-section (2);

may be given substantive appointment by the management of the college, if any substantive vacancy of the same cadre and grade in the same department is available on the date of commencement of the Act referred to in Clause (a).

(4) A teacher appointed on ad hoc basis referred to in Sub-section (1) who does not get a substantive appointment under that Sub-section and a teacher appointed on ad hoc basis who is not eligible to get a substantive appointment under Sub-section (1) shall cease to hold the ad hoc . appointment after (June 30, 1992).

Section 31C provides for regularization of service of the ad hoc appointees u/s 16 of the Commission Act, if they fulfill the conditions laid down therein. Sub-section (4) of the same section has further laid down that if an ad hoc appointee does not get substantive appointment under Sub-section (1), he shall cease to hold ad hoc appointment after 30.6.1992. But this section is not applicable to these teachers, who were appointed before 3.1.1984 under Removal of Difficulties Orders. Section 31B provides for regularization of the service of such teachers, who have been appointed before 3.1.1984; but there is no such provision under this section, which provides for automatic termination of service of such teachers if their service is not regularized under the said section. Therefore, Km. Maya Goyal, who has filed Writ Portion No. 7282 of 1984 cannot get regularization of her service u/s 31C, because It is applicable only to such teachers, who are appointed after 3.1.1984. Whereas she was appointed on 8.10.1982. Her case for regularization of service is liable to be considered u/s 31B of the Commission Act. The appropriate authority will, therefore, consider her case for regularisation of her service u/s 31B in accordance with law as expeditiously as possible.

25. Normally if an order of termination of service of an employee Is set aside by the court, he/she Is entitled to be reinstated with full back salary and other consequential benefits unless he/she was gainfully employed somewhere else after the termination of service. Km. Maya Goyal filed the writ petition in 1984. There is nothing on the record to indicate that she was employed after termination of her service elsewhere. She is, therefore, entitled to be reinstated with full salary and other consequential benefits, subject to the condition that she files her own affidavit before the Principal of the college mentioning therein that she has not been gainfully employed anywhere after the termination of her service by the Impugned order.

26. Writ Petition No. 7282 of 1984, Km. Maya Goyal v. Vice-Chancellor, Bundelkhand University and Ors. is allowed with costs. The Impugned order dated 2.4.1984 is quashed. Respondents are directed to reinstate her forthwith with full salary and other consequential benefits from the date from which she was made to cease to work as lecturer In the college till the date of her reinstatement In pursuance of this judgment, subject to the condition that she files her own affidavit before the Principal of the college mentioning therein that she has not been gainfully employed anywhere after termination of her service by the impugned order and/or If employed was getting salary less than the salary of a lecturer in History Department in the college. If she files an affidavit of employment elsewhere after the impugned order was passed getting salary less than that of the lecturer in History Department of the college, she will be

paid the balance. The payment of the back salary shall be made to her within three months from the date of presentation of certified copy of this judgment. In case no such affidavit is filed by her, she will only be reinstated without back salary. The appropriate authority will also consider her case for regularisation of service u/s 31B of the Commission Act as expeditiously as possible. If Km. Maya Goyal joins the service in pursuance of this judgment and her service is not regularized u/s 31B Respondents will take immediate steps for making permanent/regular appointment of a lecturer in the History Department of the college.

27. In case of Km. Maya Goyal declines to join the college in pursuance of this judgment, Respondents shall consider the case of Dr. A.K. Mishra, who has filed Writ Petition No. 21758 of 1987, for regularisation of his service u/s 31C of the Commission Act in accordance with law at the earliest. If Dr. Mishra does not get regularisation/substantive appointment u/s 31C of the Commission Act, the case of Sri Lavkush Prasad Dwivedi will be considered for regularisation/substantive appointment under the said Section. In case service of Sri Lavkush Prasad Dwivedi is also not regularized and he does not get substantive appointment u/s 31C of the Commission Act, Respondents will take immediate steps for making regular/permanent appointment of lecturer in history Department of the college.

28. Writ Petition Nos. 21758 of 1987, Dr. A.K. Mishra v. U.P. Higher Education Service Commission and Ors., 12435 of 1988, Lavkush Prasad Dwivedi v. Bundelkhand University and Ors., 25151 of 1988, Lavkush Prasad Dwivedi v. Bundelkhand University and Ors. and 31067 of 1992, Lavkush Prasad Dwivedi v. Director co-Education (Higher Education), U.P. and Ors. are disposed of with the observations made above.