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**(2011) 04 AHC CK 0302**  
**In the Allahabad High Court**  
**Case No : Writ A No. 44332 of 2003**

Malvika Shekhar

APPELLANT

Vs

Director, Higher Education and Others

RESPONDENT

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**Date of Decision :** 11-04-2011

**Acts Referred:**

Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1992 —  
Section 16

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 12

**Citation :** (2011) 5 ADJ 709 : (2011) 2 UPLBEC 1209

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

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## Judgement

1. Smt. Arti Raje appears for the Petitioner. Learned Standing Counsel appears for the State Respondents.

2. By this writ petition the Petitioner has prayed for following reliefs:

A. An order, direction or writ in the nature of certiorari quashing the advertisement dated 26.6.2003 (Annexure-6 to the writ petition).

B. An order, direction or writ in the nature of mandamus commanding the Respondents to permit the Petitioner to work as a teacher in the subject of Botany in pursuance to her appointment letter dated 14.6.2003 till a person regularly selected by the Higher Education service Commission joins the post.

C. Such other and further order, direction or writ of suitable nature which this Hon'ble Court may deem fit and proper in the circumstances of the case.

D. An order awarding cost of this petition to the Petitioner.

3. A Division Bench of this Court had dismissed the writ petition on 29.9.2003, with directions to all the concerned authorities that the appointments on honorarium basis, are not made any more, and that any appointments already

made, are terminated forthwith. The posts of lecturer in the Degree/P.G. Colleges should be filled strictly in accordance with the provisions of the Act i.e. by selection through the U.P. Higher Education Services Commission.

4. The Court was of the view, that every appointment in the Degree/P.G. College in the State has to be made in accordance with the U.P. Higher Education Services Commission Act, 1980, as amended from time to time. There is no provision in the Act to make appointment on honorarium basis. Section 12 of the Act states that every appointment as a teacher of any college shall be made by the management in accordance with the provision of this Act, and every appointment made in contravention thereof shall be void. Section 12 of the Act states that no appointment can be made without complying with the provisions of the Act and any such appointment made in contravention thereof will be totally void abinitio. The Court also relied upon the deletion of the provisions of adhoc appointment u/s 16 by the amendment to the Act in the year 1992 w.e.f. 22.11.1991. It was observed that there is no statutory provision enabling appointments on ad-hoc basis.

5. Taking into account a large number of vacancies of teachers in Degree/P.G. Colleges, and the delay caused by the U.P. Higher Education Service Commission in making advertisements and selections on the posts, the State Government issued a Government Order on 7.4.1998, providing for appointment of teachers on honorarium basis, on contract for a period of one academic session only. These appointments were not on adhoc appointment and were not made in accordance with any statutory rules. They were directed to be made in exigencies of service from amongst eligible persons by the Committees of Management on the substantive vacancies on the sanctioned posts, subject to approval of the Director of Education (Higher Education). The appointees were to enter into a contract with a provision that they will not claim any right of regularization. It, however, appears that in some cases directions were issued by the Court to allow the appointees on honorarium basis to continue on the ground that the vacant posts requisitioned by the Committee of Management were not filled up by the U.P. Higher Education Service Commission by making advertisements and selections and that services of the honorarium teachers were being dispensed with every year and such appointments were made by the selection committees constituted by the Committee of Management.

6. In this writ petition the Petitioner had also made prayers to quash the advertisement, which was apparently beyond the rights conferred upon the Petitioner by the Government Order dated 7.4.1998.

7. The judgment dated 29.9.2003, in this writ petition was challenged in the Supreme Court.

8. The Supreme Court, in Civil Appeal No. 3075 of 2008 along with other connected Civil Appeals, disposed of the matters on 28.4.2008, with following directions:

The difficulty has arisen because the impugned order is passed in Civil Miscellaneous Writ Petition No. 44332 of 2003 in the case of Malvika Shekhar v. Director, Higher Education, U.P. and Ors. where under the High Court vide sweeping direction has directed the concerned authorities to see that appointment of all teachers on honorarium basis should be immediately terminated. The said order which is quoted hereinabove is passed even without hearing the affected parties. Therefore, to that extent alone, we set aside the above quoted part of the order and we direct the High Court to once again consider the said Civil Miscellaneous Writ Petition No. 44332 of 2003 in the light of the later developments, namely, selection of certain candidates by U.P. Higher Education Service Commission. It would be open to the affected parties to move an I.A. in the pending Writ Petition No. 44332 of 2003 since the Management has prepared the Chart of number of selected to be fitted against some of the posts. If, however, the High Court is of the view that every affected teacher should file separate Writ Petition, on the basis that they had not done so earlier it may so direct accordingly.

We make it clear that till the High Court decides the above matters, as directed above, the present status quo will continue. Accordingly, to above extent, the said Civil Miscellaneous Writ Petition No. 44332 of 2003 filed in the High Court stands restored to the file of the High Court for fresh disposal in accordance with law. Civil Appeals stand disposed of accordingly.

Sd/...J. [ S.H. Kapadia] New Delhi, Sd/...J. April 28, 2008 [ B. Sudershan Reddy]

9. A number of impleadment applications have been filed in this writ petition. Ms. Malvika Shekhar filed a separate Writ Petition No. 75884 of 2010 with the prayers to continue to serve on honorarium basis. The writ petition was heard separately. It was found that Ms. Malvika Shekhar was appointed as honorarium lecturer in CMP Degree College on the vacancy caused on the resignation of Shri Sarad Kumar on 10.10.2000. The Committee of Management had appointed her on 14.6.2003. The Director of Education granted approval to her services as honorary lecturer on 29.5.2003. In the Allahabad University Act, 2005, CMP Degree College, Allahabad was included as a constituent College of the Allahabad University. The College is governed and financed by the funds given by the Ministry of Human Resources Development, Government of India. The State authorities constituted under the U.P. State Universities Act, 1973 and the U.P. Higher Education Service Commission established under the U.P. Higher Education Service Commission Act, 1980 has no application to the Central University. After the enforcement of the Act, the Director of Higher Education does not have any right to regulate the service conditions of teachers and employees of the CMP Degree College, Allahabad.

10. In the circumstances, the Court found in its judgment dated 4.1.2011 in Writ Petition No. 75884 of 2010 that the Petitioner did not have any right to continue as a Lecturer on honorarium. Her appointment under the Government Order dated 7.4.1998 issued by the Government of Uttar Pradesh did not continue to

her benefit as the appointees of the U.P. Higher Education Service Commission could not have replaced her.

11. After the decision of the writ petition filed by Ms. Malvika Shekhar being Writ Petition No. 75884 of 2010 on 4.1.2011, her claim no longer survives. This writ petition (Writ Petition No. 44332 of 2003) has thus become infructuous. The Supreme Court in its order dated 28.4.2008 had allowed similarly situate persons, who were appointed in pursuance to the Government Order dated 7.4.1998 to either seek impleadment or to file separate writ petitions.

12. Since the claim of Ms. Malvika Shekhar has been adjudicated and that the writ petition filed by her in the year 2010 has been dismissed, we direct that all those persons, who sought impleadment, may seek their remedies by filing separate writ petitions. The general directions issued by this Court, by which the services of honorarium lecturer were directed to come to an end, have already been dealt with and is beyond the prayers made in the writ petition. In view of the order of the Supreme Court, the general directions given in this writ petition will not be operate as against those, who are not parties to the writ petition.

13. The writ petition is disposed of with these observations.