

**(2012) 08 UK CK 0012**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/B) No. 284 of 2007**

Mohan Singh Bisht

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

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**Date of Decision :** 03-08-2012

**Acts Referred:**

**Citation :** (2012) 3 UC 1750

**Hon'ble Judges :** Barin Ghosh, C.J; Umesh Chandra Dhyani, J

**Bench :** Division Bench

**Advocate :** Rakesh Thapliyal, for the Appellant; K.P. Upadhyay, Chief Standing Counsel for the State for Respondent Nos. 1 and 2, for the Respondent

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## **Judgement**

Barin Ghosh, C.J.—On 14th April, 1978, petitioner was appointed on ad hoc basis as a Lecturer (Commercial Practice). On 9th September, 1984, Rule 9 was inserted in the U.P. Regularisation of Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979. By reason of the said insertion, petitioner became entitled to be considered for regular appointment before any other person is appointed in the post of Lecturer (Commercial Practice). A writ petition was filed in the Hon'ble Allahabad High Court by the petitioner asking for his regularization. A learned Single Judge allowed the said writ petition and directed that the petitioner be regularized with effect from 22nd March, 1984, inasmuch as, the notification for insertion of Rule 9 to the said Rules was made on 22nd March, 1984, though the same was published in the U.P. Gazette only on 8th September, 1984. In compliance of the Order of the learned Single Judge passed on the said writ petition, petitioner was regularized with effect from 22nd March, 1984. While such step was taken, an appeal was also preferred against the order of the learned Single Judge. The said appeal was decided by a Division Bench of the Hon'ble Allahabad High Court, which Bench permitted fixation of the appropriate date of regularization of the petitioner. Accordingly, the direction to regularize the petitioner with effect (sic) 22nd March, 1984 lost its ground and it became obligatory on the part of the State to

fix the date of regularization of the petitioner. The State Government fixed the said date as 28th August, 1991 and hence the present writ petition. In the petition, it has been contended that juniors to the petitioner have been regularized before regularization of the petitioner, which contention has been denied in the counter affidavit. Petitioner did not furnish any particulars of juniors to the petitioner, who have regularized prior to him. In the supplementary affidavit, petitioner indicated the names and particulars of some of the juniors to the petitioner, who have been regularized before the petitioner obtained his regularization. In the counter affidavit to the supplementary affidavit, it has been pointed out that the persons named in the supplementary affidavit of the petitioner, were not in the same branch, but were in different branches and, accordingly, comparison of the petitioner with them does not arise.

2. A look at the said Rules would make it clear that any person, who was directly appointed on ad hoc basis before 1st May, 1983 and, was continuing in service as such on 8th September, 1984, and possessed requisite qualification prescribed for regular appointment at the time of ad hoc appointment and has completed three years" continuous service, shall be considered for regular appointment in permanent or temporary vacancy, as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules. Therefore, petitioner acquired a right be considered for appointment in an available vacancy before any regular appointment is made in such vacancy, inasmuch as, he was appointed on ad hoc basis before 1st May, 1983, he had requisite qualification for regular appointment at the time of such ad hoc appointment and he had already completed three years" continuous service as such ad hoc appointee. In the body of the petition or in the supplementary affidavit, there is not one single whisper that any direct appointee was appointed in any vacant post of Lecturer (Commercial Practice) before the petitioner was regularized, but after 8th September, 1984. Petitioner purported to compare himself in the supplementary affidavit with people with whom he could not at all compare himself, since the right, that the petitioner acquired, was to be considered for regular appointment in available vacancy, in other words, vacancy that is available in the post, in which he has been appointed on ad hoc basis. Therefore, when the vacancy for the post of Lecturer (Commercial Practice) became available, petitioner was regularized in the said vacancy. Petitioner has failed to establish that the said vacancy took place on any date before 28th August, 1991. In the circumstances, the writ petition fails and the same is dismissed.