
(2015) 12 AHC CK 0119
In the Allahabad High Court
Case No : Writ-A No. 35140 of 2010

Nandini Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2015

Acts Referred:

Constitution of India, 1950 — Article 254(2)

Citation : (2015) 12 AHC CK 0119

Hon'ble Judges : Vimlesh Kumar Shukla and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Somesh Khare and T. Agarwal, for the Appellant; P.C. Jain, Komal Khare and V.K. Chandel, for the Respondent

Final Decision : Dismissed

Judgement

Vimlesh Kumar Shukla, J.—Mrs. Nandini Upadhyay performing and discharging her duties as officiating Principal of Dayanant College of Law, Civil Lines, Kanpur is before this Court assailing the validity of the communication order dated 8th June, 2010 (contained as Annexure No. 7 to the writ petition) wherein petitioner has been asked to hand over charge of Principal of College to Dr. Varsha Sharma on account of the fact that petitioner does not fulfil the requisite minimum qualification prescribed for the post of Principal of Law College.

2. Brief background of the case, as is emanating in the present writ petition in question, is that in the district of Kanpur, there is a Law College known as "Dayanand College of Law". The said Law College is affiliated to Chatrapati Sahuji Maharaj University and the affairs of the said college are to be run and managed as per the provisions as contained under "U.P. State Universities Act, 1973" read with "First Statutes" of the aforementioned University.

3. It so happened that post of Principal of Law College was lying vacant and said vacancy in question has been notified to U.P. Higher Education Commission Allahabad and U.P. Higher Education Service Commission, Allahabad, in its turn,

proceeded to recommend name of one M.P. Singh as Principal of the aforementioned Institution in question. The selection and appointment of Shri M.P. Singh has been subjected to challenge before this Court on the premises that he was not having to his credit requisite qualification, then by no stretch of imagination, he could have been offered appointment as Principal of a Law College, as he was not having concern with the concerned subject. This Court proceeded to approve the appointment of Shri M.P. Singh as Principal keeping in view the statutory provisions that have been holding the field but the said judgment of this Court has been subjected to challenge in Special (Leave to appeal) before the Apex Court and the Apex Court in the case of Bar Council of India v. Board of Management, Dayanand College of Law and others decided on 28th November, 2006 proceeded to set-aside the judgment of this Court on the premises that Shri M.P. Singh did not possess qualification of Law and hence he was not entitled to be appointed as Principal of Law College. Relevant paragraphs of the aforementioned judgment is being extracted below:--

"11. Rule 17(1) stipulates that no college after the coming into force of the Rules shall impart instruction in a course of study in law for enrolment as an advocate unless its affiliation has been approved by the Bar Council of India. Thus, though the Bar Council of India may not have been entrusted with direct control of legal education in the sense in which the same is entrusted to a University, still, the Bar Council of India retains adequate power to control the course of studies in law, the power of inspection, the power of recognition of degrees and the power to deny enrolment to law degree holders, unless the University from which they pass out is recognized by the Bar Council of India.

12. The first task of a court confronted with a set of parallel provisions relating to the appointment of a principal of a law college like the one in the amended provision of the Statute under the University Act and the Rules made by the Bar Council of India which could ultimately refuse to admit a graduate of law coming out of the University to enrolment as an advocate, which alone would entitle him to practice, is to see whether the provisions could not be reconciled or harmoniously construed so as to achieve the object of both the enactments. Prior to 13.1.1995, there was no conflict between Statute 11.14 and Rule 12 of the Rules of the Bar Council. In 1995, in the University Statutes, the requirement of the Principal having to be the holder of a doctorate in one of the subjects taught in the College, was done away with. Obviously, such a provision could not be understood as controlling fully professional education like that in Medicine, Engineering or Law. No doubt, the University has not made a distinction in that regard in this context. But obviously, it does not appeal to common sense to say that an engineer could be appointed the Principal of a Medical College or a Great Physician could be appointed as the Principal of an Engineering College. Same is the position regarding the appointment of a doctorate in Science or a doctorate in Philosophy as the Principal of a law college.

13. The aim of most of the students who enter the law college, is to get enrolled

as Advocates and practice law in the country. To do that, they have necessarily to have a degree from a University that is recognized by the Bar Council of India. Therefore, the court, in a situation like the present one, has to ask itself whether it could not harmoniously construe the relevant provisions and reach a conclusion consistent with the main aim of seeking or imparting legal education. So approached, nothing stands in the way of the court coming to the conclusion that though under the relevant Statute of the University as amended, theoretically, it may be possible to appoint a Doctor of Philosophy or a Doctor of Science as the Principal of a Law College, taking into account the requirements of the Advocates Act, the Rules of the Bar Council of India and the main purpose of legal education, the Court would be justified in holding that as regards the post of the Principal of a Law College, it would be necessary for the proposed incumbent also to satisfy the requirements of the Rules of the Bar Council of India. Such a harmonious understanding of the position recognizing the realities of the situation, would justify the conclusion that a Doctorate holder in any of the law subjects could alone be appointed as the Principal of a Law College. The High Court, in our view, made an error in not trying to reconcile the relevant provisions and in not making an attempt to harmoniously construe the relevant provisions so as to give efficacy to all of them. A harmonious understanding could lead to the position that the Principal of a Law College has to be appointed after a process of selection by the body constituted in that behalf, under the University Act, but while nominating from the list prepared, and while appointing him, it must be borne in mind that he should fulfill the requirements of the Rules of the Bar Council of India framed under the Advocates Act and it be ensured that he holds a Doctorate in any one of the branches of law taught in the law college. We do not see anything in the University Act or the Statutes framed thereunder, which stands in the way of the adopting of such a course. Therefore, when a request is made for selection of a Principal of a law college, the University and the Selection Committee has to ensure that applications are invited from those who are qualified to be principals of a law college in terms of the Rules of the Bar Council and from the list prepared, a person possessing the requisite qualification, is nominated and appointed as the Principal of a law college.

14. It is clear from the decision of the Constitution Bench in *O.N. Mohindroo v. The Bar Council of Delhi & Ors.* (supra) that in pith and substance, the Advocates Act falls under Entries 77 and 78 of List I of the Seventh Schedule. That apart, it is not necessary to postulate a conflict of legislation in this case as we have indicated earlier. It is true that under the University Act, the selection of a Principal of a College affiliated to the concerned University has been left to a Higher Education Services Commission and respondent No. 5 was included in the panel of selected candidates pursuant to a due selection by that Commission. It is also true that theoretically the State Government on the recommendation of the Director of Higher Education could appoint any one from that list as Principal of any College including a Law College. But when concerned with the

appointment of a Principal of the Law College, there cannot be any difficulty either in the Recommending Authority or in the State Government recognizing the fact that a person duly qualified in law is required to be the Principal of that Law College in the interests of the students coming out of that College in the light of the Advocates Act, 1961 and the rules framed by the Bar Council of India governing enrolment of Advocates and their practice. It must be the endeavour of the State and the Recommending Authority to ensure that the students coming out of the College are not put to any difficulty and to ensure that their career as professionals is in no way jeopardized by the action of the Government in appointing a Principal to a Law College. Therefore, even while adhering to its process of selection of a Principal, it behooves the State to ensure that the appointment it makes is also consistent with the Advocates Act and the rules framed by the Bar Council of India. It may not be correct to say that the Bar Council of India is totally unconcerned with the legal education, though primarily legal education may also be within the province of Universities. But, as the apex professional body, the Bar Council of India is concerned with the standards of the legal profession and the equipment of those who seek entry into that profession. The Bar Council of India is also thus concerned with the legal education in the country. Therefore, instead of taking a pedantic view of the situation, the State Government and the Recommending Authority are expected to ensure that the requirement set down by the Bar Council of India is also complied with. We are of the view that the High Court was not correct in its approach in postulating a conflict between the two laws and in resolving it based on Article 254(2) of the Constitution. Of course, the question whether the assent to the Act would also extend to the statute framed under it and that too to an amendment made subsequent to the assent are questions that do not call for an answer in this case in the light of the view we have adopted.

15. According to us therefore, notwithstanding the procedure to be followed under the University Act and Statute 11.14 as amended, it is necessary for the Recommending Authority and the State Government when concerned with the appointment of a Principal of a Law College, also to adhere to the requirements of the Advocates Act and the rules of the Bar Council of India. This would ensure a harmonious working of the Universities and the Bar Council of India in respect of legal education and the avoidance of any problems for the students coming out of the Institution wanting to pursue the legal profession. We therefore hold that the State Government and the Recommending Authority were not justified in recommending and appointing respondent No. 5 as the Principal of the Dayanand Law College.

17. It was stated during the course of arguments that the Bar Council of India itself has watered down the requirement that the Principal of a Law College must have a Postgraduate degree in law and has now provided that it is enough if he has a mere degree in law. This again is a matter for the Bar Council of India to ponder over and to consider whether there is any justification in watering down the qualification for a Principal as either a doctorate in law or a postgraduate

degree in law. We are sure that what was envisaged as the body of Peers would seriously consider this question. Similarly, the argument by learned counsel for the respondents that the Bar Council of India takes no interest in legal education or in keeping up the standards of the profession, is something that the Bar Council of India should take note of so that it could take steps to rectify the situation, if there is any substance in that submission."

4. On account of exit of Shri M.P. Singh as Principal of Law College, U.P. Higher Education Service Commission recommended name of one Dr. Naseem Akhtar but he has chosen not to join the Institution concerned and in between petitioner, who was having to her credit B.Sc. (Hons.), L.L.B., L.L.M. Degree, was offered appointment as officiating Principal on 5th August, 2003 by the Managing Committee of the Institution concerned and petitioner claims that she joined on 7th August, 2003. Petitioner submits that such an action in her favour has been taken in consonance with the provisions as contained under Statute 13.20 of the University concerned as senior incumbents qua her in writing proceeded to decline to accept appointment as officiating principal. Statute 13.20 is being extracted below:--

"13.20. When the office of the Principal of an affiliated college falls vacant, the management may appoint any teacher to officiate as Principal for a period of three months or until the appointment of a regular Principal, whichever is earlier. If on or before the expiry of the period of three months any regular Principal is not appointed, or such a Principal does not assume office, the senior-most teacher in the college shall officiate as Principal of such college until a regular Principal is appointed."

5. Petitioner has stated that thereafter she has continued to function and during her continuance as officiating Principal, petitioner submits that Bar Council of India, vide resolution No. 110 of 2008 in its meeting held on September, 2008, passed resolution for amending rules and resolution No. 110 of 2008 has been converted in the shape of Rules under Part IV and based on the same, petitioner claims that she has been sent with the communication dated 8th June, 2010. Petitioner, at the said juncture, has preferred writ petition before this Court and this Court on 16th June, 2010 proceeded to pass following order:--

"Heard learned counsel for the petitioner, learned Standing Counsel appearing for the Respondents No. 1 & 4 and Sri V.K. Chandel for the Respondent No. 3.

Learned Standing Counsel prays for and is allowed a month's time to file counter affidavit. The petitioner will have three weeks thereafter to file rejoinder affidavit.

The petitioner shall take steps for service of notice upon Respondents No. 2 & 5 by registered post. Steps be taken within two weeks. Office shall send notice returnable at an early date.

List on the date fixed by the office in the notice.

Learned counsel for the petitioner has urged that when the petitioner was

appointed as Officiating Principal at that time there was no requirement of Ph.D. degree by the Bar Council of India and the petitioner possessed L.L.M. Degree which was the qualification for the appointment of the Officiating Principal of the college, therefore the petitioner is entitled for interim relief.

Until further orders of this Court the effect and operation of the order dated 08.06.2010 passed by Respondent No. 5 (Annexure-7 to the writ petition) shall remain stayed. The respondents are restrained from interfering in the functioning of the petitioner as Officiating Principal of Dayanand College of Law, Civil Lines, Kanpur."

6. Counter affidavit has been filed on behalf of the Law College concerned and mention has been made therein that as per the qualifications laid down by Bar Council of India Legal Education Rules framed under the Advocates Act, 1961 (Part IV Schedule III, para 16), the minimum qualification as laid down by the U.G.C. for the post of Principal have necessarily to be followed and as per the Rules, the Principal has to be a Ph.D. holder and allegations to the contrary are of no avail.

7. It has also been sought to be contended that the Institution in question has nothing personal against the petitioner and the fact of the matter is that College has been granted permanent recognition by the Bar Council of India, which has been revoked in the year 1998 because the person holding office of Principal did not possess the qualification prescribed for the post of Principal and as per the requirement of the Bar Council of India, the candidate who has to function as Principal must possess Ph.D. degree so that permanent recognition of the College is restored by the Bar Council of India. It has also been reiterated that the post necessarily has to be held by a person, who possesses Ph.D. degree as laid down by the Bar Council of India Rules, Part IV.

8. Counter Affidavit has been filed on behalf of Bar Council of India and therein mention has been made that rules are framed by virtue of the powers conferred on Bar Council of India and rules are framed after due consultation with the Universities as well as Bar Councils and the Rules in question have been notified in the Gazette on 21st-27th March, 2009.

9. To this Counter Affidavit, Rejoinder Affidavit has been filed disputing the averments mentioned in the counter affidavit.

10. After pleadings mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal.

11. Shri Somesh Khare, Advocate appearing for the petitioner has assailed the validity of the order/action of the Managing Committee of the Institution concerned on the premises that under the First Statutes of the University concerned, in case, post of Principal has fallen vacant, then right is conferred on the senior most teacher to function as officiating Principal and the said right in question is independent of the right of making substantive appointment on the

post of Principal and it has to be accepted as an interim arrangement till regular selection is made on the post in question and in view of this, the incumbent holding the office of Principal on officiating basis is not at all required to possess the requisite qualification that are prescribed under the First Statutes of the University concerned or the Rules framed by the Bar Council of India and in view of this, the opinion that has been sought to be formed by the Committee of Management of the Institution asking the petitioner to hand over the charge is per-se bad and contrary to the spirit and intent of Statute 13.20 and as such, the action taken be declared per-se bad and petitioner has every right to continue on the post in question till a regularly selected candidate comes and joins the post in question.

12. The claim in question has been resisted by Shri H.N. Singh, Senior Advocate appearing for the Managing Committee of the Institution concerned, Shri P.C. Jain, Advocate appearing for the Bar Council of India and learned Standing Counsel by submitting that even in the matter of officiating arrangement, an incumbent necessarily has to have to his/her credit the minimum requisite eligibility criteria that is provided for, inasmuch as, an incumbent once he cannot be accorded placement on the post of Principal on permanent basis, then even on temporary officiating basis, such arrangement should not be made and Statute 13.20 should be read and understood in the manner that charge of officiating principal should be handed over to the senior most teacher, who is eligible to hold the post of Principal and in view of this, as petitioner is ineligible to hold the office of Principal rightful directives have been issued by the Managing Committee of the Institution concerned and no interference should be made as any interference by this Court would tantamount to perpetuation of illegality.

13. After respective arguments have been advanced, the factual situation that is so emerging that Shri M.P. Singh has been recommended by U.P. Higher Education Service Commission to function as Principal of the Institution concerned and his selection and appointment has not at all been approved by the Apex Court concerned by clearly providing that Principal of law college should fulfil the requirement of Rules of Bar Council of India framed under the Advocates Act and it be ensured that he holds doctorate in any one of the branches of law taught in law college and Shri M.P. Singh was not at all fulfilling the aforementioned eligibility criteria accordingly, his appointment in question has been struck down.

14. Petitioner, on account of the fact that various senior teachers have refused to accept the assignment of officiating Principal based on letter issued by the Managing Committee of the Institution, was issued appointment order to function as officiating Principal and petitioner took over the charge on 7th August, 2003 and has been performing and discharging her duties. This much is also clear that after the petitioner's appointment has been made on officiating basis, Dr. Naseem Akhtar has been recommended to join as Principal of the Law College

but Dr. Naseem Akhtar did not report for joining and request was thereafter made by the Institution concerned on 19th March, 2009 to the Director of Education to recommend name of any other candidate and this is accepted position that till today, no one has been recommended and during this period, petitioner has continued to function as officiating principal and it transpires from the record that there has been an issue in respect of permanent recognition being restored to the Law College and as there has been no permanent Principal, insistence was being made that the Institution in question should have a qualified Principal and in view of this, the Management, in its turn, proceeded to make officiating arrangement in favour of candidate who has to her credit all requisite eligibility.

15. The issue before us is as to whether an officiating Principal is required to fulfil the requisite eligibility criteria as is provided for under the First Statutes of the University for the post of Principal of Law College alongwith the eligibility criteria provided for by the Bar Council of India for being appointed as Principal of Law College or seniority should be the sole criteria for making officiating arrangement on the post of officiating Principal from amongst the teachers serving in the Institution.

16. Under the First Statutes of Chartrapati Sahuji Maharaj University, Kanpur, minimum qualifications for the post of Principal has been provided for degree college is as follows:--

"Part II Statute 11.14: In the case of any college affiliated to the University the following shall be the minimum qualifications for the post of Principals for a

(1) Degree College

(a) a consistently good academic record (that is to say, the overall record or all assessments throughout the academic career of a candidate) with first or high second class (that is to say, with an aggregate of more than 54 percent marks) Master's degree, or an equivalent degree of a foreign University in one of the subject taught in the college or in a subject allied of inter-connected therewith; and

(b) a doctorate degree in one of the subjects taught in the college, with 7 year's experience of teaching degree class:

Provided that if a candidate possess 12 years or more experience of teaching degree classes or 7 years or more experience of post-graduate classes, or if he is or has been a confirmed Principal of four years or more standing of any Degree college the Selection Committee may relax the requirement of doctorate degree.

Provided further that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard it may relax any qualifications prescribed in sub-clause (a).

(2) Post Graduate College.

(a) a consistently good academic record (that is to say, the overall record of all assessments throughout the academic career of a candidate with first or high second class (that is to say, with an aggregate of more than 54 percent marks) Master's degree, or an equivalent degree of a foreign University, in one of the subjects taught in the college; and

(b) a doctorate degree in one of the subjects taught in the college with 7 years experience of teaching post-graduate classes or 5 years experience of Principalship of a degree college.

Provided that if a candidate possesses 10 years experience of teaching post-graduate classes or 20 years or more experience of a degree college or 7 year's experience of Principalship of a degree college or if he is or has been a confirmed Principal of five years or more standing of any post-graduate college, the Selection Committee may relax the requirements of doctorate.

Provided further that if the Selection Committee is of the view that the research work of a candidate as evident either from his published work is of a very high standard it may relax any of the qualifications prescribed in sub-clause (a)."

17. A bare perusal of the provisions quoted above would go to show that for being appointed as Principal of a Degree College, twin qualifications are required (i) a consistently good academic record with first or high second class, masters degree or an equivalent degree of the Foreign University in one of the subject taught in the college; (ii) a doctorate degree in one of the subjects taught in the college with 7 years experience of teaching post-graduate classes or 5 years experience of Principalship of a degree college.

18. Selection Committee has been conferred with the authority to relax when a candidate possesses 10 years experience of teaching post-graduate classes or 20 years or more experience of a degree college or 7 year's experience of Principalship of a degree college or if he is or has been a confirmed Principal of five years or more standing of any post-graduate college to relax the requirements of doctorate

19. The issue as to whether officiating principal is also required to have the qualifications of Principal is no more res-integra, inasmuch as, two co-ordinate Benches of this Court in the case of Paras Nath Chaubey Vs. State of U.P. and Others, has already answered the issue wherein a categorical mention has been made that a person, who is not in possession of the prescribed qualification, cannot be permitted to discharge the duties on the post of Principal of the institution, even for a period of three months and the Lecturer of the Degree College not possessed of prescribed minimum qualification as is provided for under the statutory powers, cannot be permitted to be appointed as officiating Principal. Relevant extract of the said judgment reads as follows:--

"In view of the aforesaid statutory provisions, we have no hesitation to record

that no person can be appointed on the post of Principal in an affiliated degree college, unless he is possessed of the prescribed minimum qualifications on the post in question. The appointment may be officiating/ad-hoc or regular. Possession of the minimum essential qualifications for the post prescribed by Statutes is a condition precedent for any valid appointment. It is immaterial that appointment is regular or officiating as contemplated by Statute 10.20. A person not possessed of the prescribed minimum essential qualification cannot be appointed on the post of Principal in any capacity whatsoever. The conclusion so drawn by us is supported by the following judgments:

(a) Division Bench of this Court in the case of Dr. Raghvendra Pratap Singh v. Director of Higher Education, Allahabad and Ors. reported in 1997 2 A.W.C. 2.214 (NOC) i.e. Civil Misc. Writ Petition No. 25259 of 1992 decided on 16th December, 1996, wherein with regard to the issue of appointment on ad-hoc lecturers in degree colleges affiliated to Purvanchal University, has held that even for ad-hoc appointment, essential minimum qualifications prescribed have necessary to be possessed by the candidate concerned, otherwise the appointment would be void in view of the provisions of the Commission Act, 1980. We may clarify that although Section-15 has been deleted but the legal principal stated therein qua officiating/ad-hoc appointment apply with full force.

(b) Division Bench Judgment of this Court in the case of Shamshul Zama Vs. District Inspector of Schools, Chandauli and Others, wherein with regard to the appointment on the post of Officiating Principal in an intermediate college governed by the provisions of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982, same principal has been stated.

Even otherwise it does appeal to this Court that a person not possessed of the prescribed qualification can be permitted to discharge the duties on the post of Principal of the institution, even if for a period of three months. We therefore record that a lecturer of degree college not possessed of the prescribed minimum qualification as provided for under the Statutory Provisions of the First Statutes of the University cannot be appointed as officiating principal under Statute 10.20 of the First Statutes of the University"

20. This particular judgment has been followed in the case of Civil Misc. Writ Petition No. 52520/2011 (Dr. Prem Nath Singh v. Vice Chancellor and others). The relevant extract of the said judgment reads as follows:--

"We do not find substance in the preliminary objections of the petitioner, as the petitioner had approached the Vice Chancellor by making a representation on 16.7.2011. The University returned the representation with the observation that the petitioner may decide at his own level under Statute 17.15 of the University. Statute 17.15 of the University provides for determination of the seniority. In this case there is no dispute regarding seniority between petitioner and respondent No. 5. It is admitted that the respondent No. 5 is senior to the petitioner. The

question, which was raised and was required to be considered by the Vice Chancellor was as to whether the respondent No. 5, holds the essential qualifications for being appointed as Officiating Principal, which are the same qualifications required for appointment of permanent Principal under Statute 14.14 (2) of the First Statute of the University.

On the admitted position, and in view of the legal position settled in Paras Nath Chaubey's case (Supra), the respondent No. 5 could not be appointed as Officiating Principal of the college. The Administrator of the college ignored the provisions of First Statute of the University and the law declared by this Court in Paras Nath Chaubey, which is binding upon him. The Vice Chancellor also did not appreciate the issues raised and referred the matter, as if the question of seniority is involved in appointment to the post of Officiating Principal.

We find that in this case on the admitted position both with regard to seniority and qualifications the respondent No. 5 could not have been allowed to officiate as Principal. The petitioner next in seniority and qualified for appointment as Principal of a Post Graduate college, with consistently good academic record and Doctoral degree should have been permitted to officiate as Principal. If there was any dispute, it was to be raised by the respondent No. 5, and not by the petitioner."

21. The consistent view of this Court has been that an incumbent even if he is to be given charge of Principal on officiating basis, he/she is required to have to his/her credit the requisite qualification provided for and should have a doctorate degree to his/her credit.

22. On its face value Statute 13.20 does talk of handing over of charge of Principal to the senior most teacher but by means of judicial pronouncements, consistent view of this Court has been that mere seniority is not good enough and in such a situation and in this background alongwith seniority an incumbent has to have to his/her credit eligibility also. There is no occasion or reason for us to take a contrary view to the view that is already holding the field. Apex Court, in the case of U.P. Power Corporation Ltd. Vs. Rajesh Kumar and Others, has extensively dealt with the principles of judicial decorum and propriety and in the said direction has mentioned that what is expected from Judges when they are confronted with the decision of Co-ordinate Bench on the same issue, any contrary attitude however adventurous and glorious it may be, would lead to uncertainty and inconsistency. As already mentioned above, once consistent view of this Court has been that even in the matter of officiating Principal, the incumbent should fulfil the eligibility criteria, the said view is neither arbitrary nor unreasonable warranting disagreement with the earlier view. Moreover, a Division Bench of our Court in the case of Smt. Prem Balika Rai Vs. Regional Inspectress of Girls Schools and Others, has taken the view that what cannot be achieved on permanent basis, the same cannot be permitted to be achieved on ad-hoc/temporary basis by observing as follows:--

"It may be observed that of candidate who was totally ineligible for being considered for promotion against a vacancy in the post of in Lecturer"s Grade could not be deemed to be eligible to hold such promotion post on ad-hoc basis for an indefinite period."

23. A Full Bench decision of this Court in the case of Jai Prakash Narayan Singh Vs. State of U P, , that has been heavily relied upon by the counsel for the petitioner, will not at all come to the rescue and reprieve of the petitioner for the simple reason that the issue that is being raised in present writ petition, was not at all issue before the Full Bench as the issue before the Full Bench was only in reference to the entitlement of salary to an incumbent who has functioned as officiating Principal and in the said context, the Full Bench has proceeded to make a mention of the fact that Statute 13.20 stipulates that the senior most teacher would act as Principal and in the said background in reference of entitlement to salary, answer has been given that an officiating Principal appointed under the Statutes of the University, which are pari materia to the provisions of the first statutes would be entitled to claim payment of salary in the regular grade of Principal for the period during which he/she has worked until the regularly selected candidate has been appointed and has assumed charge of the office. At no point of time before Full Bench of this Court, there has been any issue that the officiating Principal should only be the senior most teacher even though he is not at all eligible. The Full Bench judgment of this Court has to be understood in the factual matrix involved therein. The consistent view of this Court that even a senior most teacher who desires and who is appointed as a Principal of the Institution, has to have to his credit requisite minimum eligibility criteria.

24. In view of this, the submission that has been so advanced before us that in reference of officiating appointment on the post of Principal, a senior most teacher is not required to have to his/her credit the minimum eligibility criteria provided for, cannot be accepted.

25. In this backdrop, once we see the eligibility of petitioner, then it is reflected from the record in question that petitioner"s induction in the Institution in question has been on 1st July, 1991 and her appointment in question has been regularized as per her claim in the year 2000 and this is an accepted position that petitioner is not at all having to her credit Ph.D. degree.

26. Once petitioner is not at all having to her credit Ph.D. Degree, then on the date when she has been offered appointment on the post of officiating principal, it has to be accepted that an ineligible person has been offered appointment to officiate as Principal and in view of this, once insistence is being made by the Bar Council of India to have a Principal with the qualifications prescribed, then there is no infirmity in the opinion that has been so formed by the Managing Committee of the Institution.

27. As per the Apex Court in the case of Bar Council of India (Supra), an

incumbent who intends to be appointed as Principal of a Law College affiliated to University has to have to his/her credit, the qualifications as are required under U.P. State Universities Act, 1973 and the First Statutes framed thereunder alongwith qualifications prescribed by the Bar Council of India and any incumbent who does not fulfil the aforementioned eligibility criteria, it may be true that office of the officiating Principal is an interim arrangement till regularly selected candidate recommended by U.P. Higher Education Service Commission joins, but even in the matter of interim arrangement, if eligible persons are available, then the eligibility has to be looked into on the criteria of senior-cum-eligibility and if in the Institution concerned, in case, no one is eligible to hold the office of Principal on the ground of eligibility, then by invoking the doctrine of necessity, the senior most incumbent though prima facie ineligible can be handed over the charge. In view of this, once factual situation that has so emerged in the present case that petitioner lacks the minimum eligibility criteria and the Managing Committee of the Institution, in its turn, has merely asked her to hand over the charge to a duly qualified candidate, then there is no occasion for us to permit the petitioner to continue as officiating principal.

28. As we have noticed that adhocism is perpetuating in the Institution since August 2003, therefore in the interest of students at large as well as the Institution in question, we direct the U.P. Higher Education Commission to expedite the process for filling up the post of Principal on permanent basis in the Institution and it is expected that process must be completed within six months.

29. In view of the above, writ petition sans merit and the same is dismissed accordingly.