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**(1999) 01 AHC CK 0028**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 42000 of 1998**

Prabhakar Misra

APPELLANT

Vs

Banaras Hindu University and others

RESPONDENT

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**Date of Decision :** 07-01-1999

**Acts Referred:**

**Citation :** (1999) 2 AWC 931 : (1999) 3 UPLBEC 129

**Hon'ble Judges :** D.K. Seth, J

**Bench :** Single Bench

**Advocate :** V.P. Varshney, for the Appellant; V.K. Upadhya, for the Respondent

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## Judgement

D.K. Seth, J.—The petitioner was appointed on daily wage basis as a Draughtsman (Civil) with effect from 8th June. 1985 for a limited period of 6 months Initially. Said appointment was extended from time to time till 31st March. 1988. Thereafter, the petitioner was orally asked not to attend his duties. But the petitioner had continued to work till 23rd June. 1988. The petitioner had moved a writ petition being number Nil of 1988 since been disposed of on 5th July. 1988 by directing the Registrar to decide the representation of the petitioner within 2 months. The representation was disposed of by the Registrar on 24th September. 1988 rejecting the petitioner's case on the ground that there was no sanction of the post beyond 31st March. 1988 and that the petitioner had made unauthorised attendance from 31st March. 1988 to 23rd June. 1988 and there was no policy of absorption of Class III employees working on daily wage basis and that the work having been transferred to C.P.W.D.. the petitioner was rightly discontinued. Thereupon, the petitioner moved a Writ Petition No. 5123 of 1989. which was disposed of on 3rd April. 1996 directing the University to consider the case of the petitioner sympathetically. Pursuant to the said order, the representation made by the petitioner was considered by the Vice-Chancellor and was disposed of by an order dated 14th May, 1996 refusing the claim of the petitioner on the ground that the University did not require a Draughtsman (Civil) on account of the fact that departmental works and major

constructions were transferred to the C.P.W.D. Thereupon the petitioner moved Writ Petition No. 33006 of 1996 since been disposed of on 17th October, 1996 with the direction that in case the petitioner prefers an appeal before the Executive Council, then the same may be considered in accordance with law. The Executive Council accordingly examined the representation of the petitioner and found that the petitioner was appointed on daily wage basis during the period when the University was undertaking construction work at its own level. Thereafter, the construction of the University was contracted out to C.P.W.D. The service of Draughtsman, therefore, was no longer needed and accordingly the engagement of the petitioner was discontinued. Appeal for regularisation of the petitioner's services preferred by the petitioner was ultimately decided by the Registrar of the University by an order dated August 26, 1997, September 4, 1997 rejecting the petitioner's case on the ground mentioned in the said order, which is Annexure-9 to this writ petition. It is this order, which has since been challenged In this writ petition.

2. Mr. V. P. Varshney. learned counsel for the petitioner contends that the juniors to the petitioner who were appointed in 1986 have since been regularised. Whereas, the petitioner has been discriminated upon in the matter of regularisation, which facts have been pleaded in paragraphs 27, 28 and 29 of the writ petition. He also contends that the appointment was made against a permanent vacancy as would be apparent from the appointment letter contained in Annexure-3 coupled with the statement made in paragraph 5 of the writ petition. According to him, the post still exists. By reason of continuation of the petitioner for more than 240 days in a year and almost for 3 years continuously, the petitioner had acquired a right for being regularised even independent of the discrimination as pleaded in paragraphs 27, 28 and 29 of the writ petition. According to him, the petitioner's service could not be terminated by an oral order. The University has followed unfair labour practice in refusing the petitioner's claim. Therefore, the writ petition should be allowed.

3. Mr. Pankaj Naqvi, learned counsel for the University on the other hand contends that even if the post remains vacant, it is the discretion of the University to fill up or not to fill up a particular post. According to him. it is a question as to the necessity of the University of a person, who is recruited against a particular post. He points out from the various documents, particularly the order contained in Annexure-7 relying on an order dated May 14, 1996 that there is no requirement of a Draughtsman (Civil) on account of the fact that the job of the department concerned, that is construction work, has since been contracted out to C.P.W.D. He next contends that the question as to whether there is any necessity or not or whether there is any vacancy or not is a disputed question of fact and this Court exercising writ jurisdiction cannot enter into such disputed question of fact. He again contends that the petitioner was given limited appointment on daily wage basis from time to time pursuant to the sanction of such appointment accorded. In absence of any sanction, such appointment could not be continued and then again by reason of appointment on daily wage basis,

the petitioner did not acquire any right which could be enforced through writ jurisdiction. He further contends that the appointment limited by time, does not confer any right either to be regularised or to continue on the expiry of time limited in the appointment itself. He further contends that the order impugned contains sufficient reasons which are based on finding of facts and are now being disputed by the petitioner. As such, the same cannot be interfered with in exercise of writ jurisdiction.

4. I have heard both the learned counsel at length.

5. Admittedly, the petitioner was being appointed for a limited period though successively from 1985 till 1988. But in each case the appointment was for a limited period on a daily wage basis. The appointment limited by time does not confer any legal right, which could be enforced through writ jurisdiction as has been held in the case of *State of Uttar Pradesh and Another Vs. Kaushal Kishore Shukla*, and *Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava*, . Such appointment does not confer any right on the petitioner either to claim to continue after the expiry of time limited in the appointment itself or to claim regularisation.

6. That apart, in the present case, the University has taken a ground that it does not require the service of a Draughtsman on account of the fact that the construction work has been contracted out to the C.P.W.D. or such other organisation. It is wholly on the discretion on the employer to fill up or not to fill up a post. Court cannot direct an employer to fill up a particular post when the employer discontinues the said post on account of absence of any work. Whether there is absence of work or not is a question of fact, which cannot be decided by this Court, even if disputed by the petitioner. Concurrently, in different orders, it has been consistently mentioned that the work of construction has been handed over to C.P.W.D. and such other Government agencies like I.R.C.O.N.. R.P.N.N. Therefore, this Court does not find any reason to interfere with such finding of fact that there is no necessity of the post and in such circumstances, it cannot be compelled upon the University to engage a person in such a post.

7. The other question that some persons, who were appointed in 1986 have been regularised and the petitioner has been thereby discriminated upon cannot be gone into in the present case in absence of details as to how and in what circumstance the others, who were juniors to the petitioner were regularised in respect of the posts at this stage particularly when there is no necessity of the post and such persons have not been made parties to the writ petition. Since this Court cannot direct creation or filling of a particular post or for grant of sanction for a particular post, or to continue a post it would be wholly impractical to go into that question of discrimination in the facts and circumstances of the case. In such circumstances, it is not possible to issue any direction to the University to regularise the petitioner in a particular post, which the University does not require as has been sought to be advanced by Mr. Naqvi on the basis of the materials available on record, particularly Annexures-7 and 9 respectively to the

writ petition.

8. In these facts and circumstances of this case, I do not find any merit in this writ petition. It is, accordingly dismissed. No cost.