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**(1997) 09 AHC CK 0179**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No 10210 of 1994**

Raghvendra Babu Mishra

APPELLANT

Vs

District Inspector of Schools, Etah and others

RESPONDENT

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**Date of Decision :** 03-09-1997

**Acts Referred:**

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,  
1982 — Section 33B

**Citation :** (1998) 1 AWC 248

**Hon'ble Judges :** O.P. Garg, J

**Bench :** Single Bench

**Advocate :** V.S. Dwivedi, for the Appellant;

**Final Decision :** Dismissed

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## Judgement

O.P. Garg, J.—Counter and rejoinder-affidavits have been filed. Heard Sri V. S. Dwivedi, learned counsel for the petitioner and the learned standing counsel on behalf of the respondent No. 1.

2. In the short-term leave vacancy, which had arisen on account of proceeding on leave by one Sri Ramanand Misra, who was a Lecturer in Physics in Gandhi Vidya Mandir inter College, Fatehpur (Etah), the petitioner Raghuvendra Babu Misra was appointed on 15.7.1989 under the provisions of U. P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. The appointment of the petitioner was duly approved by the District Inspector of Schools (for short "D.I.O.S.") on 16.9.1989. The petitioner was paid the salary and he continued to work. On 17.1.94, the petitioner received a letter from the Manager of the institution stating therein that the leave of Sri Ramanand Misra was going to be over on 31.1.1994, and, therefore, the petitioner shall be relieved from the post in case Sri Ramanand Misra joins.

3. The case of the petitioner is that under the newly added provisions of Section 33B in U. P. Secondary Education Service Commission Act, 1981, which came

into force w.e.f. 7.8.1993, his ad hoc appointment in short-term vacancy is liable to be regularised. The petitioner, therefore, prays that the respondents be directed to regularise his services as Lecturer in Physics and that they be also commanded to pay arrears of increment since the year 1989. The respondent No. 1 has challenged the stand taken by the petitioner. It is alleged that the short-term vacancy was converted into a substantive vacancy on 8.2.1990 on which date Sri Ramanand Misra was absorbed and confirmed as Head Master in Ucchattar Madhyamik Vidyalaya, Talesra (Aligarh) and that on the said date, the petitioner ceased to be a Lecturer in Physics.

4. Learned standing counsel placed reliance on a recent decision of the Full Bench of this Court in Smt. Promila Misra v. Deputy Director of Education, Jhansi Division. Jhansi and others (1997) 2 UPLBEC 1329, wherein it was held that in case of ad hoc appointment in a short-term vacancy, paragraph 3 of the Second Order specifically lays down that the appointment will come to an end if the short-term vacancy otherwise ceases to exist. The Full Bench further observed :

"It follows, therefore, that when a vacancy caused due to grant of leave to or suspension of the permanent incumbent becomes a substantive vacancy on account of his death, resignation or termination or removal from service, the short-term vacancy ceases to exist and a substantive vacancy is created in its place."

It was further observed :

"There appears to be no provision which directly or even indirectly vests a right in a person appointed as an ad hoc teacher in a short-term vacancy to continue even after the said vacancy has ceased to exist and a substantive vacancy has been created in its place."

The Full Bench rejected the contention raised on behalf of the respondents that such an appointee (in short-term vacancy) is entitled to continue in the post (substantive vacancy) till a candidate selected by the Commission/Board joins the post, in view of the decision of the Full Bench in the case of Smt. Pramila Misra (supra), the petitioner ceased to work on the post of Lecturer in Physics on 8.2.1990 on which date Sri Ramanand Misra who had gone on leave was finally absorbed and confirmed on the post of Head Master in another institution.

5. Learned counsel for the petitioner further urged that the petitioner is entitled to be regularised in service in view of the newly added provision contained in Section 33B as on the date on which the said amendment came into force, i.e. on 7.8.1993, the petitioner was working as Lecturer in Physics. Learned standing counsel pointed out that after the cessation of employment of the petitioner on 8.2.1990, his subsequent continuance cannot be reckoned for the purpose of regularization of service as his continuance was unauthorised and, at best, on account of mercy of the management. In support of his contention, the learned standing counsel placed reliance on a decision of Supreme Court in Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager

and another v. Sree Kumar Tewary and another 1997 14 SC 572. On the authority of the aforesaid ruling, the continuance of the petitioner on the post of Lecturer in Physics after 8.2.1990 was not by virtue of his own right. Therefore, one of the essential requirements for regularization of services under the newly engrafted provision of Section 33B that the petitioner should continue to be in service on 7.8.1993, on which date the amended section came into being, is lacking as the petitioner, on legal matrix, ceased to be a Lecturer in Physics w.e.f. 8.2.1990. The services of the petitioner, therefore, cannot be regularised under the provisions of Section 33B of the Act.

6. In view of the above discussion, the petitioner is not entitled to any relief. The writ petition falls and is accordingly dismissed.