

**(1996) 11 AHC CK 0044**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 30753 of 1993

Sadanand Dwivedi

APPELLANT

Vs

District Inspector of Schools and Others

RESPONDENT

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**Date of Decision :** 05-11-1996

**Acts Referred:**

**Citation :** (1997) 1 UPLBEC 95

**Hon'ble Judges :** M. Katju, J

**Bench :** Single Bench

**Advocate :** R.N. Singh and G.K. Singh, for the Appellant;

**Final Decision :** Allowed

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## **Judgement**

M. Katju, J.—Heard counsel for the parties.

2. This petition has been filed against the impugned orders dated 25-5-1980 and 18-8-1993, Annexures 4 and 6 to the petition. The controversy in this case is about the post of ad hoc lecturer in Hindi in Maharshi Sheobrat Lal Inter College, Radha Swami Dham Gopiganj Varanasi. This post fell vacant on the retirement of one Surya Bali Pandey on 30-6-1989. It is settled law that all ad hoc appointments are to be filled in only by promotion and by recruitment vide decision in Charu Charan Tiwari v. D.I.O.S. 1990 (1) UPLBEC 160 and the Full Bench decision in Radha Raizada's case reported in 1994 (3) UPLBEC 1551. Admittedly, the petitioner was a teacher in the institution in question whereas the respondent No. 3 was an outsider. Hence the respondent No. 3 could not have at all been appointed unless there was No eligible teacher in the institution. The submission of the learned counsel for the petitioner is that the petitioner was at serial No. 3 in the seniority list among L. T. grade teachers and he was eligible for promotion as lecturer. It is alleged in the writ petition that the persons at serial Nos. 1 and 2 were not interested to be promoted as lecturer in Hindi because they were interested for being promoted in Ors subjects. At any event, the connect procedure should have been followed and the senior most eligible

L.T. grade teacher should have been first offered promotion, and if he refused then the person at serial No. 2 in the list of seniority should be offered, and if that person also refuses then the third person in the list and so on. In outsider should not be brought in the institution unless there is no eligible teacher in the institution. The fact that the persons at serial Nos. 1 and 2 were senior to the petitioner only means that they should have first been made the offer for promotion, and if they refused then the petitioner was entitled to be promoted as ad hoc lecturer in Hindi. The respondent No. 3 being an outsider was not eligible at all to be appointed as ad hoc lecturer unless there was no eligible candidate in the institution, which is not the case.

3. Learned counsel for the respondent submitted that the petitioner participated in the selection and was not selected. In my opinion, there was no question of selection at all because as an eligible teacher was available in the Institution, the post cannot be filled in by direct recruitment except through the Commission. Thus the petition is allowed. The impugned orders dated 25-5-1990 and 18-8-1993 are quashed. The petitioner shall be appointed as ad hoc lecturer in Hindi in the institution in question since in the supplementary affidavit filed by the petitioner it is stated the Sri Mohan Lal Pandey who was the senior most in the seniority list has been promoted as lecturer in Economics and approval has been given by the D.I.O.S., and Sri Mahima Shanker who is at serial No. 2 in the seniority has filed a writ petition in this Court claiming the post of lecturer in Zoography. The petition is allowed with the direction indicated above. No order as to costs. Petition allowed.