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**(1997) 12 AHC CK 0014**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 6040 of 1997**

Shashi Bhushan Srivastava

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 11-12-1997

**Acts Referred:**

Uttar Pradesh Intermediate Education Act, 1921 — Regulation 5

**Citation :** (1997) AWC 809 : (1998) 3 UPLBEC 2162 : (1998) 3 UPLBEC 2161

**Hon'ble Judges :** S.C. Verma, J

**Bench :** Single Bench

**Advocate :** S.C. Mishra, for the Appellant; C.S.C., for the Respondent

**Final Decision :** Dismissed

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## Judgement

S.C. Verma, J.—In the present petition under Article 226 of the Constitution, the petitioner has assailed the order of the District inspector of Schools, Sultanpur dated 7.8.1997 by which the financial sanction for payment of salary to the petitioner on the post of Assistant Teacher to L.T, grade was refused.

2. The Institution Janta Higher Secondary School. Kurebhar. Sultanpur, is a recognised institution under the provisions of U.P. Intermediate Education Act and is also governed by the U.P. Act No. 24 of 1971 as also U.P. Secondary Education Service Commission and Board's Act. On the basis of the strength of the students the Institution was granted sanction for one extra sanction in 9th Class by the District Inspector of Schools. The Institution treating it as a vacancy available on a sanctioned post, initiated proceeding for selection and appointment of a Teacher in L.T. grade. The Committee of Management of the Institution after making necessary selection appointed the petitioner as Assistant Teacher in L.T. grade with effect from 3.7.1997. The petitioner joined the post on 5.7; 1997 at the Institution. The Institution in making the appointment on ad hoc basis treated it to be a short-term vacancy and filled it after advertising the post, in daily newspapers "Danik Lokmitra" on 15.9.1996.

3. According to the institution, the District Inspector of Schools by order dated 26.11.1996 granted permission for an extra section in 9th Class and the petitioner was appointed a Mathematics Teacher on the basis of his qualifications. The Institution sent the necessary record relating to the aforesaid appointment of the petitioner for grant of approval and financial sanction to the District Inspector of Schools through letter dated 7.8.1997. The District Inspector of Schools by the impugned order dated 7.8.1997 refused to grant approval for payment of salary on the ground that there was no duly sanctioned post at the Institution on which the petitioner has been appointed.

4. The petitioner claimed that he has been performing his duties on the basis of the said appointment letter and claimed payment of his salary from the date of appointment.

5. The District Inspector of Schools did not grant approval to the said appointment on the ground that no post for appointment was sanctioned as required under Regulation 5, Chapter II of the U.P. Intermediate Education Act. It was also pointed out that the procedure for appointment on ad hoc basis has not been complied and as such the petitioner cannot be paid salary under the provisions of the U.P. Act No. 24 of 1971. The Institution can make the payment from the own sources if the petitioner had worked.

6. The learned Counsel for the petitioner submitted that after the Institution was sanctioned one extra Section of Class IX on the basis of strength of the students, it automatically became necessary to appoint a teacher to teach the subject of Mathematics and for this reason the petitioner was appointed after undergoing the procedure prescribed for appointment on short-term vacancy. The said appointment was made in anticipation of the sanction of the post which in any case was bound to follow. The learned Counsel for the petitioner placed strong reliance on the decision in an identical case of Committee of Management, Krishak Intermediate College, Gaur, Basti and Anr. v. Director of Education, U.P. and Ors., being writ petition No. 7002 of 1989 (Allahabad) decided on 31.1.1991.

7. In my opinion the contentions raised by the learned Counsel for the petitioner in support of his appointment are not tenable in law. The provisions of Regulation 5 of Chapter II under the U.P. Intermediate Education Act provided as under :-

"5. (1) Every vacancy in the post of teacher in a recognised institution shall except as otherwise provided in clause (2) be filled by direct recruitment.

(2) (a) Forty per cent of the total number of the sanctioned posts in lecturer's grade or in the L.T. grade amongst the teachers promotion from against the teachers working in the institution in the L.T. and the C.T. grades respectively and promotions shall be made subject to availability and eligibility of such teachers for promotion.

Explanation (1)--The expression "sanctioned post" mean any post not being a post created temporarily for a specified period, which is created by an order of

the authority competent to create such post and includes a post on which appointment has been made with the approval of the Inspector."

8. It is not disputed that after permission is granted for creation of a new section on the basis of strength of students, a sanctioned post has to be created by the competent authority. Admittedly no sanctioned post was available on the date when the present appointment was made. The itself for a new sanction was granted on 26.11.1996 and the post was yet to be created and sanctioned by the competent authority. The recognition of the Institution and the number of posts to be sanctioned is required to be done by the State Government through Director of the Education and the District Inspector of Schools. The financial burden of the post has to be borne by the State and as such the ultimate sanction of the State is necessary. It is also the discretion of the competent authority to either sanction the post on fixed term, on temporary basis or on permanent basis. The appointment on the said post will have to be made according to the nature of the post sanctioned by the authority. If the post sanctioned is a permanent post, it cannot be treated as short term vacancy to be filled by the Committee of Management of the Institution alone in accordance with the provisions of the U.P. Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981, which provides for filling up short term vacancies on ad hoc basis. "The ad hoc appointment on such posts will have to be made in a accordance with the provisions of U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981, para 5 providing for ad hoc appointment by direct recruitment through the District Inspector of Schools. After the post has been sanctioned It has also to be seen as to whether it has to be filled In accordance with the provisions of the First Removal of Difficulties Order by making ad hoc appointment by promotion of the seniormost teacher in the lower grade.

9. I have pointed out all these aspects for consideration which have to be made after a post comes into existence and appointment is required to be made. Thus it cannot be left to the discretion of the Committee of Management to make an appointment In anticipation of sanction of the post and to treat it as a short term vacancy.

10. In the case of Committee of Management, Krishak Intermediate College, Gout, Basti and Anr. v. Director of Education, U.P. and Ors. (supra), the requirement of a teacher was felt in the year 1980 and teaching started since then and appointment on two posts of Lecturers were made. By order dated 27.11.1985 the Institution was permitted to run Agriculture classes and it was also provided that the appointment of teachers could be made having prescribed qualifications. The said condition provided in the recognition granted to the Institution through letter dated 27.11.1984 was treated by the Hon"ble High Court as sanction of posts from the authorities. The Institution has repeatedly since then made representations before the authorities since then made representation before the authorities for sanction of the post but the same was

not forthcoming. The respondents have not filed any counter- affidavit in the aforesaid writ petition and on the basis of the evernments made by the petitioner the Committee of Management of the Institution, it was held that the Institution was entitled to make appointments on two posts of Lecturers and the incumbents so appointed would be entitled to the salary.

11. In my opinion the said case wherein it was held that by virtue of order dated 27.11.1984, the Institution was authorised to make appointment for carrying out teaching work and there being no further requirement of obtaining sanction of post from the authorities was necessary, the appointment was held to be valid.

12. In the present case, the said law cannot be made applicable, firstly there was no condition placed on record as contained in the order dated 27.11.1984 requiring the Institution to make appointments and secondly the sanction to run extra section itself has been shortly granted on 26.11.1996. There appears to be no justification for the Institution to have made appointment with effect from 3.7.1997 without waiting for actual sanction of the post from the competent authority. The facts in the writ petition No. 7002 of 1989 are absolutely different and the findings recorded in that case cannot be made applicable In the present case.

13. The appointment of the petitioner was nor made on a sanctioned post not it has been made In compliance of the correct procedure laid down for appointment. The Institution was not correct in appointing the petitioner on a short term vacancy. The impugned order of the District Inspector of Schools, in my opinion, is correct and does not suffer from any illegality or infirmity.

14. The writ petition Is devoid of merits and is accordingly dismissed.