
(1991) 08 AHC CK 0079
In the Allahabad High Court
Case No : Special Appeal No. 56 of 1991

Smt. Anupama Jain

APPELLANT

Vs

U.P. Higher Education Service Commission and Others

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 16
Uttar Pradesh State Universities Act, 1973 — Section 31(3)

Citation : (1991) 2 AWC 408 : (1991) 2 UPLBEC 1311

Hon'ble Judges : B.P. Singh, J;A.N. Varma, J

Bench : Division Bench

Advocate : S.V. Misra and V.C. Misra, for the Appellant; P.S. Baghel and V.B. Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Varma, J.—Having heard Sri V.C. Misra, learned Counsel for the Petitioner as well as Sri P.S. Baghel holding brief of Sri V.B. Singh for the Respondent, we find no error in the judgment of the learned Single Judge, dismissing the petition filed by the Petitioner by an order dated 17-7-1991. We entirely agree with the learned Single Judge that the adhoc appointment of the Petitioner is not referable to Section 31(3)(b) of the U.P. State Universities Act. On the material furnished by the Petitioner herself, it is material furnished by the Petitioner herself, it is apparent that her appointment was made on adhoc basis u/s 16 of the U.P. Higher Education Services Commission Act. The letter of appointment issued to the Petitioner as well as the approval accorded by the Vice Chancellor unmistakably point to the conclusion that her appointment was made u/s 16 to last till 30th June 1990 or till a regular appointment is made by the U.P. Higher Education Services Commission, Allahabad. The terms of her appointment brings her case squarely u/s 16.

2. Sri V.C. Misra, learned Counsel for the Petitioner, however, submitted that an appointment u/s 16 can be made only against a substantive vacancy and not

against a leave vacancy. He further submitted that temporary appointment against leave vacancies could be made only u/s 31(3)(b) of the U.P. State Universities Act.

3. We are unable to agree. No material was furnished by the Petitioner to substantiate her allegation that her appointment was made against a leave vacancy or against any temporary post or in any other contingency envisaged by Section 31(3)(b). Section 31(3)(b) of the U.P. State Universities Act makes provision for appointment of a teacher to a temporary post likely to last for more than six months, where such post is subsequently converted into a permanent post or to a permanent post in a vacancy caused by the grant of leave to an incumbent for a period exceeding ten months and such post subsequently becomes permanently vacant etc.

4. None of these contingencies has been established in the present case. The burden to prove that the Petitioners' appointment was under Clause (b) of Section 31(3) was undeniably on the Petitioner. Mere bald allegation in the petition that her appointment was made under that provision was not enough, particularly when there was overwhelming material to prove that the appointment was u/s 16 of the U.P. Higher Education Services Commission Act.

5. We also find no substance in the submission that the adhoc appointment of the Petitioner was not against any substantive vacancy. Annexure 4 to the affidavit filed with the stay application is a copy of the advertisement issued by the Commission which shows that there was a substantive vacancy.

6. There is no merit in this petition and the same is dismissed.