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**(1999) 09 AHC CK 0003**  
**In the Allahabad High Court**  
**Case No : Special Appeal No. 253 of 1997**

Smt. Ram Dulari Devi and Others

APPELLANT

Vs

Joint Director of Education and Others

RESPONDENT

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**Date of Decision :** 07-09-1999

**Acts Referred:**

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,  
1982 — Section 16, 18

**Citation :** (1999) 3 UPLBEC 2069

**Hon'ble Judges :** N.K. Mitra, C.J;D.K. Seth, J

**Bench :** Division Bench

**Advocate :** R.G. Padia and Prakash Padia, for the Appellant; D.S.M. Tripathi, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.K. Seth, J.—This appeal is directed against an order dated 4th March, 1977 dismissing the writ petition No. 7173 of 1997 moved by the petitioners' appellants.

2. Kashi Balika Shiksha Niketan Uchattar Madhyamik Vidyalaya, Shivpurwa, Varanasi, a recognised Junior High School was recognised as High School on 28/29th April, 1988. The Regional Inspectress of Girls School (hereinafter referred to as "RIGS), Varanasi permitted introduction of Class-IX by an order dated 17th May, 1988. By an order passed on 13th November, 1991 the Institution was brought on the list of Institutions receiving grant-in-aid from the State Government and within the purview of the U.P. High School and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act, 1971 (hereinafter referred to as the Payment of Salary Act), with effect from 1st April, 1991. The Management had forwarded a requisition to the RIGS for the post of Head Mistress and 5 Assistant Teachers on 5th April, 1990 (Annexure-1 to the writ petition) for onward transmission to the U.P. Secondary Education Service Commission (hereinafter referred to as "The Commission"). On account

of continuance of the vacancies, the Management by its letter dated 19th May, 1990 (Annexure-2) addressed to the RIGS sought permission for making adhoc appointment against the said vacancies. The same having not been responded to, the Management decided to advertise the vacancies and the said decision was communicated to the RIGS on 31st May, 1990 (Annexure-3) since submitted to the Office of the RIGS on 2nd June, 1990. The vacancies were advertised in "Aaj" on 3rd June, 1990 (Annexure-4). The Management had also called for applications from the Regional Employment Exchange for candidates registered in the Employment Exchange, in pursuance whereof the Employment Exchange, Varanasi had forwarded the names of several candidates. The petitioners had applied pursuant to the advertisement and were selected by the Selection Committee, who had prepared a report dated 25th June, 1990 (Annexure-5). The Committee of Management on 25th June, 1990 approved the said selection and appointment letters were issued on the same date and the petitioners joined on that date. The Management forwarded the papers relating to such appointments to the RIGS but the RIGS took no steps on the basis thereof. After the school was brought within the purview of Payment of Salaries Act, with effect from 1st April, 1991, through a letter dated 11th February, 1992 (Annexure-8), the RIGS called upon the Management to submit full details along with original papers pertaining to the employees of the Institution for verification. All papers were submitted to the RIGS on 24th March, 1992 (Annexure-9) by an order dated 26th March, 1992 (Annexure-10), the RIGS sanctioned Payment of Salary to the Head Mistress and two Assistant Teachers. Thereupon the petitioners along with few others had approached this Court in Civil Misc. Writ Petition No. 17216 of 1992 challenging the order dated 26th March, 1992. On 4th May, 1992 (Annexure-11), this Court passed an interim order directing the RIGS to decide the petitioner's representation dated 3rd April, 1992 by a reasoned order within two months from filing of the certified copy of the order along with the copy of the representation. Since the said representation was not decided and no counter affidavit was filed by an order dated 8th December, 1993 (Annexure-12), an interim mandamus was issued directing the RIGS to pay salary to the petitioners from the date of their respective appointment or show cause within the said period. On 16th December, 1993, Counter Affidavit (Annexure-13) was filed. By an order dated 8th May, 1995 (Annexure-14), the interim mandamus was confirmed. In compliance of the order dated 8th May, 1995, the Deputy Director of Education, Varanasi Region-II by an order dated 2nd June, 1995 (Annexure-15) directed Payment of Salary to the petitioners. Pursuant to the said direction, salary was paid to the petitioners from June, 1995 till February, 1996. Since March, 1996, Payment of Salary to the petitioners was stopped. Thereupon, contempt proceeding No. 2409 of 1996 was initiated Pursuant to it, notices were issued on 9th October, 1996 (Annexure-16), Ultimately, by an order dated 7th November, 1996 (Annexure-18), the said writ petition No. 17216 of 1992 was disposed of. In the said judgment, it was held that there are factual controversies with regard to the validity of the appointment of some of the teachers, including the petitioners. Therefore, they were directed to appears

before the Joint Director of Education, Varanasi on 2nd December, 1996, along with a certified copy of the judgment as well as any representation that might be made containing all legal and factual averments as well as material documents on which they would rely upon. The Joint Director of Education, Varanasi was directed to decide the same after fixing a date within three weeks and to summon all relevant records. He was further directed to hear all the parties and to give a decision relating to the controversy by a speaking order. Pursuant to this order, the petitioners submitted their representation on 2nd December, 1996 (Annexure-19) as well as list of all documents (Annexure-20) together with further representation made on 17th December, 1996 (Annexure-21) drawing attention to the facts pertaining to the Management of the Institution. The Joint Director conducted the hearing on 21st December, 1996. During the course of hearing, it is alleged that the petitioners were not permitted to submit their entire version. By an order dated 20th January, 1997 (Annexure-22), the Joint Director had held that the petitioners were not entitled to receive salary on account of alleged illegality in their appointment. It is this order, which has since been challenged in the writ petition No. 7173 of 1997 out of which the present appeal arises.

3. The writ petition No. 7173 of 1997 arising out of the said order dated 20th January, 1997 was dismissed by the learned Single Judge on 4th March, 1997. The order has since been appealed against in this appeal. While challenging this order, Dr. R. G. Padia, learned Counsel for the petitioner/appellants contended that the appointment was held to be illegal and invalid by the Joint Director only on the ground that advertisement was issued only in one newspaper in violation of the principle of procedure laid down in the case of Radha Raizada and Ors. v. Committee of Management, Vidyawati Darbari Girls Inter College and Ors. (1994) 3 UPLBEC 1551 overlooking the question that the said decision rendered on 12th July, 1994 was held to be effective prospectively and not retrospectively as was held in the case of Ashika Prasad Shukla Vs. District Inspector of Schools, Allahabad and another, He then contends that the appointment of the petitioners were made u/s 18 of the U.P. Secondary Education Service Commission and Selection Boards Act, 1982 (hereinafter referred to as "Service Commission Act") and, therefore, the provisions contained in the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981 (hereinafter referred to as the "First Removal of Difficulties Order") cannot be attracted. According to him, the procedure laid down therein was applicable only in cases covered by Paragraph 2 thereof. The present case does not fit in the contingencies specified in Paragraph 2 of the First Removal of Difficulties Order, and as such, outside the scope and ambit thereof and, therefore, the appointment is to be treated as an appointment u/s 18 of the Service Commission Act, which does not provided for any such procedure as has been prescribed in the First Removal of Difficulties Order. He next contends that the procedure as has been laid down in Radha Raizada (supra) cannot be applied in the present case since the selection and appointment were made and given before 12th July, 1994. He next contends that

Section 18 of the Service Commission Act and the Removal of Difficulties Orders are totally different and they constitute two different sources of adhoc appointment as were held in the case of *Km. Nishi Bhargava v. Deputy Director of Education* (1987) 1 UPLBEC 415 (Paragraphs 9, 10 & 15) & *Pramod Shukla v. District Inspector of Schools, Unnao and Ors.* (1987) 2 UPLBEC 1026 (Paragraph 14) and *Committee of Management of Sanatan Dharm Intermediate College, Mainpuri v. District Inspector of Schools, Mainpuri and Anr.* 1985 UPLBEC 496 (Para 4). But these judgments were neither considered nor over-ruled in the case of *Radha Raizada* (supra) and therefore, these cases occupy the field of adhoc appointment till the amendments were made in Section 18 on 14th July, 1992 by the U.P. Amendment Act No. 24 of 1992. Since for the first time in the case of *Radha Raizada* (supra) it was held that appointment u/s 18 has to be made by-applying the provisions of Removal of Difficulties Order and both of them constitute one integrated source of appointment and that Section 18 recognised the power to give appointment and Removal of Difficulties Order prescribes the procedure, therefore, in absence of retrospectively in the operation of the judgment in the case of *Radha Raizada* (supra), the finding of the Joint Director relying on the principle laid down in *Radha Raizada* (supra) cannot be sustained in law. He next contends that the said three decisions were related to short term vacancies yet the principle laid down therein is equally applicable in respect of substantive vacancy since there cannot be any distinction in the application of the principle in respect of short-term vacancy or substantive vacancy. In as much as, in both the cases the appointments are adhoc appointments. In respect of retrospectively of the principle in the case of *Radha Raizada* (supra), it was contended by Dr. R. G. Padia that it would let loose a difficult situation relating to all appointments made before the said judgments exposed to the mercy of the management, who, if inimically disposed towards a teacher, would raise the issue and dispense with the service of such teacher. In the case of *Krishna Nand Dwivedi v. District Inspector of Schools, Ghazipur* (1994) 1 UPLBEC 461 (para 25), it was held that in respect of short terms vacancy, the provisions of Notice Board was illegal and violative of Article 16 of the Constitution of India. But it was held that said judgment would be applied prospectively and not retrospectively and the same logic was adopted in the case of *Sanjeev Kumar v. District Inspector of Schools* 1997 ALJ 33 while observing that since the appointment was against a substantive vacancy and, therefore, the principle laid down in the case of *Radha Raizada* (supra) has to be applied retrospectively. Therefore, the decision in the case of *Sanjeev Kumar* (supra), which did not take into consideration various other Division Bench judgments, should be regarded as per incurium. He further contends that the appointment has to be continued till a regular appointment is made and, therefore, even if there be some irregularities, "the same would not vitiate the selection of the candidates in as much as if the appointments are held invalid, then again the post would be exposed for another adhoc appointment, which should be avoided as has been held in the case of *Sardara Singh and others, etc. Vs. State of Punjab and others*, . Relying on the case of *Bhagwati Prasad Vs. Delhi State Mineral*

Development Corporation, , Dr. Padia contended that the question has to be seen at the time of initial entry and not subsequently and, therefore, the validity of the procedure is to be examined as it stood at the time of the appointment. Relying on the decision in the case of Ram Sarup Vs. State of Haryana and Others, , he contends that it was only an irregularity in the procedure and as such, the appointment may be irregular but cannot be invalid. He then contends that the petitioners have been working since 25th June, 1990 and the only lacuna that exists is that the advertisement was issued only in one newspaper and that names were also invited from the Employment Exchange, therefore such an irregularity should be overlooked. He then contends that the Management could not have challenged on its own the appointment made several years earlier. He also relied on the decision in the case of Khagesh Kumar and others Vs. Inspector General of Registration and others, in order to contend that even daily reacted workmen after having worked for three years were held to be entitled for consideration for regulation. On these grounds, he prays that the order dated 20th January, 1997 should be quashed.

4. Shri D.S.M. Tripathi, learned Counsel for the respondents, on the other hand, contends that the vacancy was never notified to the Commission until 1993 as is apparent from Annexure-11 Therefore, the Management could not have assumed jurisdiction even to appoint the petitioner appellants as teachers u/s 18 of the Act. The vacancy was against substantive post of Assistant Teachers sanctioned on 2-4-1990. The alleged advertisement was issued in only one newspapers by the Manager without mentioning the number of vacancy or subject against which such vacancy existed. The Selection Committee was constituted by the Manager and the selection and appointment were made on the same day viz. 25th June, 1990. According to him in the case of Ashika Prasad Shukla (supra) and in the case of Chatur Singh and Ors. v. Regional Deputy Director of Education, Agra (in Writ Petition No. 34097 of 1996, decided on 3rd December, 1996), the question was with regard to short term vacancy and as such the said decision cannot be attracted against substantive vacancy as is involved in the present case. He further contends that Ashika Prasad Shukla (supra), does not lay down that even in respect of substantive vacancy the decision in the case of Radha Raizada (supra) would be prospective. Whereas in the case of Ashika Prasad Shukla (supra) while dealing with the case of Sanjeev Kumar (supra), it was held that Section 18 in respect of substantive vacancy may allow appointment for which the procedure is laid down in the First Removal of Difficulties Order. In the case of Prabhat Kumar Sharma v. State of U.P. and Ors. (1996) 3 UPLBEC 1959 it was held, that the teachers selected must be in accordance with the procedure prescribed under the Act read with First 1981 Order. Relying on the decision in the case of Sanjeev Kumar (supra), Ashika Prasad Shukla (supra), Nityanand Shukla v. Director of Education, U.P. Lucknow and Ors., (1997) 1 AWC 220 (DB), Praveen Misra Vs. District Inspector of Schools, Allahabad and another, Harendra Kumar Singh Vs. District Inspector of Schools and Another, Vikas Chand Rai v. District Inspector of Schools and Ors. (1992) 10 ALR 457 Mr. Tripathi contends

that in all these cases this Court has propounded that in respect of substantive vacancy the procedure for appointment was always as provided in Para 5 of the First Removal of Difficulties Order, 1981. Thus, Section 18 recognises the power, for exercise whereof the procedure is to be found was in Removal of Difficulties Order. He further contends that if the appointment is not legal and valid and has been made transgressing the procedure then such appointment is void and confer no right on the appointee, relying on the decision in the case of Prahhat Kumar Sharma (supra). In the case of Dr. Ram Murti Chaturvedi Vs. Chancellor, Sampurnanand Sanskrit Vishvavidyalaya and Others, this Court had also taken the same view. According to the First Removal of Difficulties Order, the Management was entitled in respect of substantive vacancy only to intimate the vacancy to the District Inspector of Schools who then would do the rest. In as much as the District Inspector of Schools has to advertise the post for inviting application through newspaper as well as from the Employment Exchange and then the Inspector himself has to make the selection according to the procedure prescribed and on his recommendation only the appointment could be issued by the Committee of Management. Neither the Manager nor the Selection Committee could usurp the power of the District Inspector of Schools. Since there was no requisition to the Commission nor there was proper requisition before the District Inspector of Schools and there having been no advertisement in its sense, the petitioners-appellants cannot reap any benefit out of the same. He had also pointed out that there were some collusion and that there was in fact no appointment at all and the alleged appointment is only a paper transaction in order to secure benefit for the petitioners who were otherwise consoled by the then Manager of the Committee of Management. While elaborating his submission Shri Tripathi had drawn attention of the Court to the various materials placed before this Court as well as decisions cited by him.

5. We have heard both the learned Counsel at length.

6. The Point raised by Dr. Padia is that in case the ratio decided in the case of Radha Raizada (supra) is applied to all cases of appointment made prior to the decision in Radha Raizada (supra) in that event, it would open Pandora's Box and lead to innumerable disputes and spurt of litigation. The question was answered in negative in respect of short-term vacancy in the case Ashika Prasad Shukla (supra) and Chatur Singh (supra). In fact the decision in the case of Radha Raizada (supra) has not looked at the question in respect of substantive vacancy. Whether the same, as in respect of short-term vacancy, would be applied in respect of substantive vacancy is a question, which requires an answer in present case with regard to retrospectively of the said decision.

7. Decisions unless specifically lay down does not operate retrospectively in order to render all actions taken prior to such decision void. Such appointment if made prior to such decision cannot be reopened on the basis of such decision unless it is expressly and specifically provided or laid down in the decision itself. The decision even if of the Full Bench on a question of law is confined to the case

involved it does not nullify the binding effect of the earlier decisions so far as parties are concerned. But such decisions over rule the existing decision and all decisions contrary even decided before the Full Bench are impliedly over ruled is held not to be a good law.

8. The question of retrospectivity has to be examined in the context of the situation having regard to its impact. It may not open a Pandora's box and expose all appointments made prior to such decision prone to attack. But those cases in which the orders have not reached its finality then in such cases the principle may be applied and those cases in which the appointments have not been approved because of some infraction in such appointment is said to be enforced through Court and in such cases the Court has every right to examine whether appointment is made legally as on the law that stood at the time when the appointment was made and has been so decided by the Full Bench. Once the judgments are overruled by the decision of the Full Bench, the decision that will be rendered after the Full Bench cannot fall back on the over ruled decision when enforcement of appointments are sought for on the ground that appointments were not approved by the authority concerned. As such a stage it is not open to render a decision on the basis of over ruled decision and creates a legal right, which was otherwise nonexistent. In the present case the appropriate authority did not approve the appointment of the petitioners and they were not paid their salary, when the earlier writ petition was moved in 1992, the question was not decided in favour of the petitioners. If it was decided in 1992 or before the decision of the *Radha Raizada* (supra), in the event it would have concluded the issue. But the same having been left open and having been directed to be decided in accordance with law, now after the Full Bench decision it cannot be said that such decision given on 20-6-1994 was wrong. The Full Bench decision may not reopen all such appointments made prior to the Full Bench and expose them to scrutiny and cancellation after such appointment having been approved or deemed to have been approved such approval in case of adhoc appointment against short-term vacancy may be direct or deemed approval in terms of Paragraph 2, sub-paragraph (3), clause (iv) of the Second Removal of Difficulties Order. Whereas in case of adhoc appointment against substantive vacancy there being no scope of approval, grant of financial sanction to such appointment, without the aid of any interim order passed by a Court in a proceeding pending after the decision *Radha Raizada* (supra), shall be treated to be the deemed approval. Such deemed approval shall also include those cases where financial sanction was granted pursuant to interim order or otherwise in a proceeding concluded before the decision in *Radha Raizada* (supra), making such interim order or direction absolute.

9. In the present case the question is as to whether there is any procedure provided in Section 18 to make appointment. Section 18 had never laid down any procedure for making appointment. It had only recognised the power of the Committee of management to make appointment. But because of the embargo created by Section 16, Section 18 had allowed the relaxation. Thus, Section 18 is

the source or foundation of power to appoint by the Committee of management. But as soon the Removal of Difficulties Orders were promulgated the procedure having been specifically laid down in respect of substantive vacancy and the short-term vacancy in the second Order and in the absence of any specific procedure having been provided in Section 18, the procedure provided in Removal of Difficulties Order is the procedure in which the power u/s 18 is to be exercised. Section 18 and the First Removal of Difficulties Order were already there and were held to be supplementing each other. Any appointment in violation of such provision cannot be upheld in the basis of the over ruled decision on a date after the Full Bench decision is rendered in a case where the alleged appointment has not reached its finality.

10. But that as it may, the Removal of Difficulties Order itself provides publication of advertisement in two newspapers one in Hindi and the other in English. In the present case the advertisement having been issued only in one newspaper, there has been an infraction. But then it is not the only infraction that is present in the case. The Manager without disclosing the number of vacancy and subject issued the advertisement. Where a such advertisement is to be issued by the District Inspector of Schools and the selection is to be made by the District Inspector of Schools. Whereas in the present case the Manager himself had constituted the selection Committee and the selection Committee constituted by the Manager had made the selection. That apart though it is claimed that requisition was sent but in the absence of any proof of sending of such requisition or receipt of any such requisition either in the office of the District Inspector of Schools or in the Office of the Commission, it is not possible to recognise the power of the Committee to appoint u/s 18. The question whether requisition was so sent or not is a question of fact. No material has been shown to this Court that the finding by the Joint Director of Education that no requisition was sent, is perverse, by production of such proof as would impel the Court to hold that the finding of fact arrived at by the Joint Director of Education is perverse. On the other hand, the constitution of the selection Committee, holding of selection, finalisation of the selection and appointment having been made on the one and the same day, raises a presumption of some doubt which can only be removed or cleared or cleared by specific proof by production of such material to bring this case beyond the scope of disputed question of fact and enable this Court to conclusively determine such fact on the basis of such material. In the absence of such material this Court is not supposed to interfere with the finding of fact of the Joint Director of Education. Therefore, in view of so many infraction in the process adopted it is not possible for this Court to hold that the decision given by the Joint Director of Education suffers from any infirmity and as such it is not possible to agree with the contention of Dr. Padia.

11. The decision in the case of Pramod Shukla (supra), also does not help the contention of Dr. Padia who relied upon paragraph 14 of the said decision. The said case proceeds on the basis that adhoc appointments made either u/s 18 or under the Removal of Difficulties Order last till a regularly selected candidate

joins and with the expiry of the session, the appointment should be deemed to have been renewed. The said case did not deal with the question, which is raised in this case. On the other hand, it was concerned with the question of limitation/duration of adhoc appointment. While considering the same, it had held that adhoc appointment would continue till a regularly selected candidate is available. Thus, this decision is of no use for the present case.

12. The decision in the case of Kumari Nishi Bhargava (*supra*), cited by Dr. Padia does not help us in the present facts of this case. The said case dealt with the question of regularisation of teacher appointed on adhoc basis on or before 12th of June, 1985. Then again in the said case, it was held that Management could make appointment only if the Commission fails to recommend any teacher in a vacancy notified. In the absence of any notification of vacancy, Section 18 does not operate. On this analogy an artificial distinction was sought to be drawn in respect of adhoc appointment u/s 18 on one hand and under the Removal of Difficulties Order on the other. But such distinction cannot hold the field after the Full Bench decision taking altogether a different view and cannot resorted to in a case decided after the Full Bench over-ruling the decision. Here in this case, there is nothing to show that the vacancy was notified to the Commission before the adhoc appointment was made. Therefore, according to the ratio decided in Kumari Nishi Bhargava (*supra*), there could not be any appointment u/s 18.

13. The decision in the case of Committee of Management of Sanatan Dharam Intermediate College (*supra*), also deals with the limitation/duration of adhoc appointment while making a distinction between the appointment u/s 18 and an appointment under the Removal of Difficulties Order holding that if the appointment is under the Removal of Difficulties Order, then clause (c) of sub-section (3) of Section 18 would not be attracted. Thus, the ratio involved in the said case is completely different from one we are now considering. Therefore, this decision does not help us with regard to the point involved in the case.

14. The decision in the case of Krishna Nand Dwivedi (*supra*), in paragraph 25 had held that the provision of notifying the vacancy in the notice board was held to be ultra vires and such vacancy has to be notified in two newspapers, was held to be prospective from the date of the decision rendered in the case of Radha Raizada (*supra*). We are in agreement with the said decision and we do not find any reason to differ with the view taken. But our agreement is subject to the observations made here in before to the extent that by reason of such pronouncement in the case of Radha Raizada (*supra*), cases cannot be reopened a new. But the cases which were disputed and were awaiting assertion and have not been approved or accepted, if comes to be decided, after the decision in the case of Radha Raizada (*supra*), then it is very difficult to decide the cases on the basis of law that prevailed before the decision the case of Radha Raizada (*supra*), ignoring the Full Bench decision the ratio whereof is binding. This view seems to have been taken though on a different note in the case of Sanjeev Kumar (*supra*), wherein the learned Single Judge had held that the law that was

declared in the case of Radha Raizada (supra), is the law that existed and after the Full Bench decision, no case could be decided on the basis of law contrary that what has been declared in Radha Raizada (supra), even though the appointment might have been made before the said decision. The decision by the Full Bench may not re-open the decided cases nor re-open the cases already settled or accepted and was not subject matter of dispute in pending cases. The principle laid down in the case of Radha Raizada (supra), is very much attracted in the cases, which are decided thereafter in respect of the cases, which have not been approved or accepted till the decision in the case of Radha Raizada (supra) was rendered. In that way the application of the decision of Radha Raizada (supra) is surely prospective and would not affect the decided cases or accepted or approved appointments but would very much prospectively apply to the cases in which non-accepted appointments are pending decision challenged in this Court when it is stated after the decision of Radha Raziada (supra). The principle laid down in the case of Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., was rightly held to be non-applicable in the context of the decision of prospective application of Radha Raizada (supra) by the learned Single Judge in the case of Sanjeev Kumar (supra). Comparing the reasoning given in paragraph 25 of the decision in the case of Krishna Nand Dwivedi (supra) and that of paragraph Nos. 5, 6 and 7 of Sanjeev Kumar (supra), it seems to us that the prospectivity of the decision on Radha Raizada (supra) would be to the extent as metered down in the case of Sanjeev Kumar (supra) and clarified by us in this judgment herein before.

15. The decision in the case of Sardar Singh (supra) also does not lend any help to Dr. Padia. Inasmuch as in the said case the notification of the vacancy in the Notice Board would inviting application from outside though was deprecated, yet not interfered since none who had list opportunity to apply had raised any grievance. However, it was observed that since there were large number of applicants, it may be necessary to call candidates afresh from the Employment Exchange or through public advertisement. But this proposition was based on the particular facts of the case with which the Court was concerned. It had not laid down any general proposition. At the same time in this background the Court had observed that the procedure of notifying vacancy only in the notice board was not commendable.

16. The decision in the case of Bhagwati Prasad (supra) also does not throw any light on the question involved in this case. In the said case, the question as to the applicability of law since declared ultra vires after such decision, was not under consideration. On the other hand, in the said case, the three years" experience as requisite qualification was to be satisfied even though there were breaks of three months in between.

17. The ratio decided in the case of Ram Swaroop (supra) cannot be attracted in the present case. In the said case the petitioner did not possess the requisite qualification of five year" experience when he was transferred as Labour-cum-

Conciliation Officer, a post held by him for nine years. In such circumstances, it was held to be an irregularity but not illegality. The said decision was rendered in the background that the petitioner an employee confirmed in the Government service as a Statistical Officer was appointed as Deputy Chief Inspector of Shops. After he had worked in that post for about ten months, he was transferred to the post of Labour-cum-Conciliation Officer, since the post of Statistical Officer and Labour-cum-Conciliation Officer were inter changeable, according to Government decision though the rule was not amended in-conformity with such decision. For the post of Labour-cum-Conciliation Officer, qualification of five years" experience in the working of Labour Laws as Labour Inspector or Deputy Chief Inspector of Schools or Shop Inspector was absolute whether it was made by promotion or by direct recruitment or by transfer. In such circumstances, it was, therefore, held that the petitioner was ineligible to be appointed as Labour-cum-Conciliation Officer. But having regard to the fact that he had continued for nine years, it was held that he had been regularised and in this background, it was held to be an irregularity and not invalidity or illegally. It seems that the question that it weighted with the Apex Court was the continuation of the petitioner in service after being appointed on transfer from an inter-changeable post. It appears that the inter-changeability of the post was one of the reason due to which though the petitioner was held ineligible, was exempted since he was allowed to continue for nine years, a period deeming regularisation.

18. The ratio decided in the case of Khagesh Kumar (*supra*) cannot be attracted in the present case in view of the distinguishing features of the facts involved in thesis case and those in the present case. Inasmuch as in the said case it was the question of regularisation of daily wage registration clerk having completed more than three years" continuous service, which was the basis for the said decision. The said decision was taken in view of the peculiar situation where a large number persons who were appointed as daily wage registration clerks in the Registration Department were continuing for a very long time, creating a different situation unlike the present one where it involves only four persons. Thus, the said decision does not help Dr. Padia in his contention that since the petitioners had been teaching for some time, he should be regularised or allowed to continue. Inasmuch as the appointment had never been accepted or approved by the District Inspector of Schools, which has since been challenged in this case.

19. The decision in the case of Ashika Prasad Shukla (*supra*) cited by Dr. Padia rendered by a Full Bench of this Court has made distinction between the adhoc appointment approved or deemed to have been approved and adhoc appointment not approved in the matter of application of the operation of the law declared by Radha Raizada (*supra*). In the said case, it was held that the Law declared in Radha Raizada (*supra*) having not been given retrospective effect expressly or by necessary implication, the same would not automatically denude or strip off the status and right of adhoc appointees so accrued to them merely because of the subsequent in law. In order to appreciate the ratio laid down by the Division Bench in the case of Ashika Prasad Shukla (*supra*), it would be

beneficial to quote paragraphs 10 and 11 of the said judgment hereinafter :

"10. However, the question of legal nicety that arises for consideration is as to whether the direct appointment made in short term vacancy prior to K.N. Dwivedi or the Full Bench decision in Radha Raizada by notifying the vacancy only on the notice board of the institution and without following the procedure of notifying the vacancy as prescribed in the First Removal of Difficulties Order would be void? In K. N. Dwivedi, a learned Single Judge holding the provisions providing for adhoc appointment by direct recruitment by merely notifying the vacancy on the notice board of the institution to be repugnant to the fundamental right guaranteed by Article 16 of the Constitution gave prospectivity to this judgment and saved the direct appointments already made against short-term vacancies by merely notifying the same on the notice board of the institution. This question, however, was neither raised nor decided by the Full Bench in Radha Raizada and Radha Raizada has not over ruled any previous decision of the Court on the question as to whether the appointment of a teacher by direct recruitment in a short-term vacancy made by notifying the vacancy on the notice board of the institution sans any public notification would be void. Rather, some words have been read in the Statute (Second Removal of Difficulties Order) both in K. N. Dwivedi and the Radha Raizada and the decisions therein are tantamount to amending the Statute by reading the requirement of giving public notice of the vacancy in addition to its notice on the notice board of the Institution with a view to saving the Statute from being struck down as violative of Article 16(1) of the Constitution, on one hand and advancing the object of the Act on the other. It cannot be repudiated that addition of words in the Statute by aid of judicial interpretation is permissible in certain situations viz. Where it is considered necessary to do so in order to give effect to the intention of the legislature or to avoid the particular provision being struck down as violative of any provisions of the consideration. In a situation where addition of words is made in the Statute by Court, the "doctrine of overruling" in its stint sense is not attracted. Instead the statute stands altered and/or modified as per the verdict of the Court. We are therefore. Of the considered view that the principle governing interpretation of legislative encasements is-a-is retroactively would apply to a situation where the statute is altered by judicial verdict and the principal is that the change so brought about, would not project on the past events wreaking changes in the statute by "reading in" or "reading down" is itself given retrospective operation.

11. As notice above, K. N. Dwivedi (decided earlier in point of time than Radha Raizada) directed in no uncertain language that the decision would be prospective in operation. Radha Raizada was completely reticent on the point and we are of the considered view that Radha Raizada would not affect adhoc appointments of teachers by direct recruitment in short-term vacancies approved or deemed to have been approved by the District Inspector Schools in terms of paragraph 23(3) (iii) of the Second Removal of Difficulties Order, for once the District Inspector of Schools, approves, or is deemed to have approved, of the

selection, the selectee acquires the statute of an adhoc teacher upon joining the post and a right to continue as per statutory stipulations. The appointee could not be automatically denuded/stripped off the status and right so accruing merely because of the subsequent change of law, not given retrospective effect expressly or by necessary implication. In other words, adhoc appointments of teachers by direct recruitment made in short-term vacancies by notifying the same on the notice board of the institution without giving any public notice through advertisement in News papers having wide circulation if already approved or deemed to have been approved, would not be invalidated on the strength of Radha Raizada. We accordingly subscribe the view taken in K. N. Dwivedi."

20. Dr. Padia had also relied on the decision in the case of Umesh Kumar and Ors. v. Joint Secretary. U.P. Government and Ors., (1990) 3 UPLBEC 1925. Relying thereon he contended that the qualification is to be seen at the time of appointment and the subsequent situation cannot affect the appointment. The ratio decided in the said case cannot be attracted in view of the facts of the present case where it is not a question of qualification as on the date where recruitment was made. This case did not deal with the question of validity of appointment pursuant to the law declared ultra vires since been held in the case of Ashika Prasad Shukla (supra) to be applicable only in cases of adhoc appointments, whose appointment has neither been approved nor is deemed to be approved. The question involved in the present case being completely different from that of Umesh Kumar (supra), the ratio decided therein cannot be attracted to the proposition advanced by Dr. Padia.

21. In the case of J.C. Yadav and others Vs. State of Haryana and others, , the question of regularisation of requisite qualification was under consideration, which has nothing to do with the question involved in the present case.

22. The question whether the ratio decided in the case of Ashika Prasad Shukla (supra) could be attracted in the case of substantive vacancy or not is a question which does not seem to be material, though Mr. Tripathi had contended that Ashika Prasad Shukla (supra) was concerned with short-term vacancy. The ratio decided therein with regard to the prospectivity cannot be attracted in the case of substantive vacancy does not seem to be sound. Whether the decision deals with substantive or short-term vacancy is immaterial, because, it is fact, has dealt with Section 18 and the Removal of Difficulties Order to the extent that it has been so dealt in the case of Radha Raizada (supra) in Ashika Prasad Shukla (supra), no distinction appears to have been made in respect of short-term or substantive vacancy. On the face of it, it has laid down a principle of cutting off. Those cases where the approval has been granted to the appointment or where the appointment is deemed to have been approved has since been protected by the prospectivity of the ratio laid down in the case of Radha Raizada (supra) while exempting all other case. In as much as in the said case the protection is not available where the appointment has neither been approved nor appears as

deemed to be approved.

23. Thus, the case, which requires determination, even if, initiated earlier, cannot be decided on the basis of law as it stood prior to the decision in Radha Raizada (supra). As observed earlier. Ashika Prasad Shukla (supra) had clearly laid down the principle that except approved and deemed approved cases, all appointments are to be looked into on the basis of the law laid down in Radha Raizada (supra). The other decisions, which were rendered before the decision in Radha Raizada (supra), have taken the same view as in the case of Sanjeev Kumar (supra). The view expressed in the case of Sanjeev Kumar (supra) has since been found support in Radha Raizada (supra). Because there had been conflicting decision, it was felt necessary to lay down the law through the Full Bench in the case of Radha Raizada (supra). The cases decided after Radha Raizada (supra), relied on namely. Vikas Chand Rai (supra), Chatur Singh (supra), Prabhat Kumar Sharma (supra), Chatur Shukla (supra), Praveen Mishra (supra). Harendra Kumar Singh (supra) and Ram Murti Chaturvedi (supra), by Mr. Tripathi seems to aid the view we have taken.

24. All those controversies appear to have been finally settled in Ashika Prasad Shukla (supra). The little doubt which could be harboured that required clarifications after Ashika Prasad Shukla (supra) is being clarified by us to the extent we have held and explained here-in-above.

25. In the result, the Special Appeal fails and is accordingly dismissed.