
(2011) 05 AHC CK 0376
In the Allahabad High Court
Case No : Second Appeal No. 393 of 2002

State of U.P. and Others

APPELLANT

Vs

Surendra Nath Mishra and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 18, 33, 33F

Citation : (2011) 7 ADJ 32 : (2011) 5 AWC 4527

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—This is the Defendants' second appeal arising out of a suit, filed by the Plaintiff/Respondent, for permanent injunction restraining the Defendants not to interfere in the functioning of the Plaintiff as C.T. Grade Teacher, appointed against a short term vacancy, and further restraining them from withholding his salary and other allowances and directed to be paid monthly salary and allowances.

2. On behalf of the Respondents/Defendant Nos. 2 to 4 No. written statement was filed, but on behalf of the Appellants/Defendant Nos. 4, 5 and 6, written statement was filed denying the allegations made in the plaint with a specific averment that there was No. short term vacancy and the Plaintiff/Respondent's appointment was not in accordance with law. After exchange of the pleadings and after considering the claim of the Plaintiff, the trial Court has dismissed the suit against the Appellants/Defendant Nos. 4, 5 and 6 and decreed the suit against the Defendants/Respondent Nos. 2, 3 and 4 by order dated 31.1.2001. The Plaintiff/ Respondent No. 1 has filed an appeal. The appeal was allowed without setting aside the findings recorded by the trial Court.

3. The trial Court has recorded a finding that the alleged promotion of Sri Indra Dev Chaubey in L.T. Grade against the vacancy which has occurred after the

retirement of one Sri Shiv Shankar Dubey, L.T. Grade Teacher, on 30.6.1993 was not in accordance with law as No. intimation was given to the District Inspector of Schools for sending it to U.P. Secondary Education Service Commission. The lower appellate Court without setting aside the aforesaid finding has held that the said promotion was ad hoc and it was subject to the approval of the Commission and unless the Commission approves the vacancy occurred due to promotion of Sri Indra Dev Chaubey will be deemed to be a short term vacancy. The finding recorded to that effect is totally illegal and against the provisions of Rules 4 and 9 of the U.P. Secondary Education Service Commission Rules, 1983. It is further submitted that if the alleged promotion of Sri Indra Dev Chaubey in L.T. Grade itself was illegal, then there could be No. short term vacancy against which the Plaintiff could be appointed. The trial Court has also recorded a finding that the papers relating to the alleged appointment of the Plaintiff was never sent to the Office of District Inspector of Schools and the Plaintiff/Respondent has failed to prove the same that when the papers were sent, but the lower appellate Court without setting aside the aforesaid finding came to the conclusion that the Plaintiff's appointment was in accordance with law and in accordance with U.P. Secondary Education Service Commission (Removal of Difficulties-II) Order, 1982. Such finding recorded by the lower appellate Court is illegal and without consideration of the relevant provisions of Removal of Difficulties-II Order. Even the Plaintiff has accepted that the alleged appointment was made on 20.8.1993 and the appointment letter was issued on 21.8.1993 and the papers were received in the Office of District Inspector of Schools on 2.9.1993. If this fact is taken to be true, even then, alleged appointment is void ab initio in view of Clause 3(i)(ii) of the U.P Secondary Education Service Commission (Removal of Difficulties-II) Order, 1981, which requires prior approval of District Inspector of Schools before issuing the appointment letter to the alleged appointee or in any case after one week from the date of receipt of the papers sent by the Committee of Management to the District inspector of Schools. The lower appellate Court without considering the same has held the alleged appointment of Plaintiff valid and has directed to pay the salary and granted injunction not to interfere in service of the Plaintiff.

4. The lower appellate Court has committed a manifest error of law in treating the Plaintiff's alleged appointment against the short term vacancy valid without considering the provisions of the U.P. Intermediate Education Act and provisions of the U.P. Secondary Education Service Commission and Selection Board Act and the Rules framed thereunder. It is settled in law that if statute provides to do anything in a particular manner and in a prescribed manner and if it has not been followed, then out come of the same will be void ab initio. The lower appellate Court while decreeing the suit has erred in law in not considering the above aspect of the matter. Further submission has been made that treating appointment of the Plaintiff/Respondent on a short term vacancy in C.T. Grade, while C.T. Grade has been declared dying cadre in the year 1989. Without there being any prayer for declaration of appointment valid and without any pleading

to that effect, the suit of the Plaintiff could not be decreed for declaring him as a valid appointee and therefore, injunction cannot be granted in performance of duty of a Teacher in C.T. Grade.

5. Learned Standing Counsel has placed reliance upon a judgment of this Court in *Smt. Pramila Mishra v. Deputy Director of Education, Jhansi Division, Jhansi* and Ors. 1997(2) ESC 1284 (AII)(FB). Taking support of the aforesaid judgment, learned Standing Counsel has submitted that there is a clear distinction between substantive vacancy and short term vacancy of the post of a Teacher. The authority to make the appointment, the procedure to be followed in making the appointment and the considerations to be made in making the appointments in the two cases are distinct and different from each other. In each case the duration of ad hoc appointment is also laid down under the statutory provisions. In the 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. It follows that when a vacancy causes due to grant of leave 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 as soon as the substantive vacancy is created in its place. He has placed reliance upon para 16 of the said judgment. The same is being reproduced below:

From the provisions of the Acts, Rules, Regulations and Removal of Difficulties Orders discussed above, it is manifest that a clear distinction has been maintained between substantive vacancy and short term vacancy of the post of a teacher. The authority to make the appointment, the procedure to be followed in making the appointment and the considerations to be made in making the appointments in the two cases are distinct and different from each other. In each case the duration of ad hoc appointment is also laid down under the statutory provisions. In the 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. It follows that when a vacancy caused due to grant of leave 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. On a perusal of the relevant provisions of the Acts, Rules and Removal of Difficulties Orders and giving our anxious consideration to the matter, we do not find any 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 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 does not get any support from the statutory provisions and, therefore, cannot be accepted. The contention is also not acceptable for the reason that it runs counter to the intendment of the

provisions of the Acts, Rules and Regulations. We should not be understood to be saying that an ad hoc teacher in a short term vacancy cannot be appointed in a substantive vacancy. He can be appointed in the substantive vacancy if he is selected in accordance with the procedure and in the manner laid down in the relevant provisions of the Acts, Rules, Regulations and Removal of Difficulties Orders. What we want to stress and which is clear to us is that he cannot claim as a matter of right that he is entitled to continue in the post till the candidate selected by the Commission/Board joins even if the short term vacancy has ceased and a substantive vacancy in the post of teacher has been created in its place.

6. Further, he has placed reliance upon a judgment of this Court in *Surendra Kumar Srivastava v. State of U.P. and Ors.* 2007 (1) ESC 118 (All) (DB), para 9, 10 and 35 of which are reproduced below:

9. In our view, two questions require consideration in this appeal: (1) Whether the appointment of the Petitioner-Appellant at all was in accordance with law (2). Whether the Appellant was entitled to continue till a regularly selected candidate from Commission is available pursuant to the short term vacancy of the teacher become substantively vacant or at least till an ad hoc appointment is made u/s 18 of the Act read with First Order.

10. The question regarding validity of the appointment of the Petitioner-Appellant has come up as a consequence of the order dated 7.9.1997 passed by this Court in Petitioner-Appellant's earlier writ petition Nos. 14703 of 1997 where, while disposing the writ petition, this Court specifically directed the DIOS to examine these issues -(1) Whether Daya Ram is entitled for grant of leave in accordance with Rule (2) Whether his leave is sanctioned in accordance with the provisions of law (3) If the committee of management has No. objection for extension of service of the Petitioner, he may accord financial sanction for the period of leave vacancy of Daya Ram.

35. In the result, we are of the view that the Hon''ble Single judge has rightly dismissed the writ petition and the Petitioner-Appellant is not entitled for any relief though we have given our own reasons for reaching the same conclusion.

Taking support of the aforesaid judgment, learned Counsel for the Appellants has submitted that Second Order clearly provides that an ad hoc appointee against a short term vacancy shall cease as soon as the short term vacancy comes to ar(sic)end. If some persons appointed on ad hoc basis against short term vacancy have continued and subsequently the vacancy became substantive entitling the incumbent to claim benefit u/s 33-F, that would not have an effect of amendment or alteration of the provisions of Second Order. In such circumstances, learned Standing Counsel has submitted that order passed by the lower appellate Court is liable to be quashed.

7. Further submission has been made that in view of the fact that C.T. Grade has been declared dying cadre in view of the Government Order dated 4th

September, 1990, which states that from 11th August, 1989, C.T. Grade has been declared dying cadre and certain clarification regarding appointment in the C.T. Grade and L.T. Grade has been made on the basis of queries made. He has submitted that as soon as C.T. Grade has been declared dying cadre, all the sanctioned posts in C.T. Grade will be treated to be converted automatically under the L.T. Grade, therefore, the appointment can be made accordingly. Admittedly, the appointment of the Plaintiff/Respondent has been made in C.T. Grade only on the basis of promotion of one Teacher, who has been promoted in L.T. Grade, therefore, the appointment itself on the day when it was made was illegal. But, the tower appellate Court has not taken into consideration the said fact and has wrongly allowed the appeal.

8. On the other hand, learned Counsel for the Plaintiff/Respondent has submitted that Teacher working in the L.T. Grade one Shiv Shankar Dubey retired from service and Sri Indra Dev Chaubey, who was working as C.T. Grade Teacher, was promoted to L.T Grade Teacher on ad hoc basis. Due to promotion of Sri Indra Dev Chaubey in L.T. Grade on ad hoc basis a short term vacancy occurred in C.T. Grade in the College. The vacancy was advertised and published in the Newspaper and a Selection Committee was constituted in which the Plaintiff/Respondent was appointed on 20.8.1993 and in pursuance thereof he took charge on 21.8.1993. As the salary was not being paid, therefore, a suit was filed for injunction against the Management as well as against the State of U.P. The trial Court partly allowed the suit holding that as No. approval was granted from the District Inspector of Schools, therefore, the appointment was not in accordance with law and directed the Management to pay the salary.

9. The appeal filed by the Plaintiff/Respondent was allowed and the suit was decreed for making the payment of salary from the date of his appointment. It has been submitted that Sri Indra Dev Chaubey, who was working as C.T. Grade Teacher, was promoted in L.T. Grade on ad hoc basis, therefore, vacancy occurred due to promotion can be treated only a short term vacancy in C.T. Grade as it has been held in Arjun Kumar Jaiswal v. District Inspector of Schools and Ors. (1994) 2 UPLBEC 1250, paras 3 and 5 of which are being quoted below:

3. In exercise of the power conferred u/s 33 of the U.P. Secondary Education Services Commission and Selection Boards Ordinance, the Governor promulgated Several Removal of Difficulties Orders. One of them is the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 hereinafter referred to as (I) Order. Paragraph-2 of this order deals with vacancies against which ad hoc appointment can be made. It runs as follows:

The management of an institution may appoint by promotion or by direct recruitment a teacher on purely ad hoc basis in accordance with the provisions of this Order in the following cases, namely:

(a) in the case of a substantive vacancy existing on the date of commencement of this order caused by death, retirement, resignation or otherwise:

(b) in the case of a leave vacancy where the whole or unexpired portion of the leave is for a period exceeding two months on the date of such commencement, and

(c) where a vacancy of the nature specified in Clause (a) or Clause (b) comes into existence within a period of two months subsequent to the date of such commencement.

This paragraph was completely substituted by Paragraph 5 of the (II) Order which reads as follows:

The management of an institution may appoint by promotion or by direct recruitment, a teacher on purely ad hoc basis in accordance with the provisions of this order in the case of a substantive vacancy caused by death, retirement, resignation, or otherwise.

Under this clause ad hoc appointment can be made only against a substantive vacancy caused in the manner referred to therein. Death, retirement and resignation are certain events. However, apart from these three events the paragraph uses the term "otherwise" also. The use of this term shows that the vacancy should be one which is analogous to the vacancies denoted by the term death, retirement and the resignation. When these three events take place there is No. likelihood of the earlier incumbent of the post returning thereto. This is not the vacancy referred to in Paragraph-2 of the (II) Order with the filing up of short term vacancies. Clause (I) of this paragraph reads:

If short term vacancy on the post of a teacher caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise shall be filled by the management of the institution, by promotion of the permanent senior most teacher of the institution, in the next lower grade. The management shall immediately alongwith the particulars of the teacher so promoted.

This clause also uses two definite terms which are grant of leave and suspension. The vacancy contemplated by the term "otherwise" will have to be analogous to these two vacancies. When an incumbent is granted leave he has all the prospects of returning and joining the post. Such a vacancies cannot be said to be a substantive one. Similarly when an incumbent is placed under suspension he has all the chance of returning to the post when the suspension order is revoked. Similarly when an incumbent is appointed to a post on temporary or ad hoc basis he has all the chance of returning to the post if his appointment does not; got converted into a permanent one. In the present case, at the stage the Appellant was appointed it could not be said that Shri Upadhya had No. prospect of returning to the post from which he had been promoted to the post of Principal on ad hoc basis. We are accordingly of the opinion that the vacancy to which the Appellant was appointed could not be said to be a substantive one, it was a short term vacancy within the meaning of Paragraph-2 of the (II) Order. Our conclusion is reinforced by third explanation to Paragraph 2 which reads:

(III) short term vacancy is not substantive and is of limited duration.

In the present case, the vacancy was not substantive in as much as Shri Upadhyaya had all the prospects of returning to the post and it was also of limited duration the limitation of duration being till Shri Upadhyaya was appointed to the post, of Principal on permanent basis.

5. In view of the above, the appeal is allowed and the judgment and order of the learned Single Judge and also the order of the District Inspector of Schools dated 18th March, 1993 are hereby set aside. The District Inspector of Schools shall decide the controversy treating the vacancy as a short term one, in accordance with the procedure prescribed in Paragraph-2 of the (II) Removal of Difficulties Order, within a period of two months from the date of presentation of certified copy of this judgment before him. He shall also pass specific order regarding payment of salary. There shall be No. order as to costs.

10. It has also been submitted that Committee of Management had full power to appoint a person on a short term vacancy. Admittedly, the Teacher who was working in C.T Grade was promoted in L.T. Grade on ad hoc basis. Unless and until his appointment is approved by the competent authority, the vacancy caused due to ad hoc promotion cannot be treated to be substantive vacancy, therefore, the appointment of the Plaintiff/Respondent could have only been made in C.T. Grade. The principle as submitted by the Appellant to this effect is that as C.T. Grade was declared dying cadre in 1989, therefore, No. appointment can be made in C.T. Grade. Learned Counsel for the Respondent submits that clarification dated 4th September, 1990, clearly states that in case of death, retirement or resignation, if a vacancy has taken place in C.T. Grade, then No. appointment can be made in C.T. Grade being the fact that it will immediately be converted from the date of declaration of dying cadre as L.T. Grade, therefore, if any appointment is made that will be in C.T. Grade after following proper procedure as provided, but admittedly in the present case Clause 1 of the Government Order dated 4th September, 1990, states that in a case of short term vacancy caused due to promotion of any C.T. Grade Teacher in L.T. Grade the appointment can only be made in C.T Grade. In the present case also the Teacher who was working in C.T. Grade was promoted in L.T. Grade due to retirement of a Teacher working in L.T. Grade, therefore, a short term vacancy arose and after following the proper procedure by the Committee of Management, as provided under the Act, the appointment of the Plaintiff/Respondent has been made.

11. Learned Counsel for the Respondent has placed reliance upon a Division Bench judgment of this Court in District Inspector of Schools, Kanpur Nagar and Ors. v. Diwakar Lal and Ors. 2000 (3) ESC 1670 (All) of which are being quoted below:

3. Consequently, "short term vacancies" occurred on four posts of Assistant Teachers in L T. Grade under Removal of Difficulties Second Order 1981. The

management sought to fill up the resultant short term vacancies by making short term ad hoc appointments of the Petitioners-Diwakar Lal, Deepak Kumar Shukla, Surendra Mohan Srtvastava and Lai Bahadur and appointment letters (Annexures-1, 2, 3 and 4 to the writ petition) were issued. Papers were sent to the District Inspector Schools and they were allowed to Join the posts. In paragraph 10 of the writ petition, it is stated that these Petitioners actually joined the College and started discharging their duties to the full satisfaction of the Management. The District Inspector of Schools refused to approve these appointments and withheld financial sanction. The Petitioners made representations until the District Inspector of Schools officially passed order dated 9th February. 1994. (Annexure-10 to the writ petition) Informing the Manager of the College that resultant vacancies could not be filled up under Removal of Difficulties Order, 1981.

15. Consequently, this Court refuses to go into factual dispute.

The learned Counsel for the Appellant states that Deepak Kumar Shukla has already left the college and Joined another college elsewhere as such he is not Interested in the reliefs in present proceedings. In view of the judgment in 1992 (2) UPLBEC1420, we are of the opinion that the incumbents working on ad hoc basis against short term vacancies should not be automatically thrown out of service-in view of the decision in the case of Pramila Mishra (supra), when "short term" vacancy became "substantive vacancy". In such a situation, an ad hoc appointee should normally be allowed to continue (if there is No. complaint about his working), till a regular ad hoc appointment is made against substantive vacancy as contemplated under Removal of Difficulties Orders.

12. Placing reliance upon aforesaid judgment, learned Counsel for the Respondent submits that it is settled in law now that provisions requiring advertisement is procedural in nature in case by way of temporary arrangement dispense with public notice/advertisement in Newspaper. The Division Bench has held that when a short term vacancy becomes substantive vacancy the incumbents working on ad hoc basis against a short term vacancy should not be automatically thrown out of service. In such a situation an ad hoc appointee should normally be allowed to continue (if there is No. complaint about his working) till a regular ad hoc appointment is made against the substantive vacancy as contemplated under the Removal of Difficulties Orders. Learned Counsel for the Respondent submits that the Division Bench of this Court has considered the Full Bench judgment and has clarified that in such situation if a short term vacancy has taken place and in case subsequently it became substantive vacancy the person concerned should be permitted to continue. The contention of the Appellants to this effect that as soon as the appointment of the promottee to the L.T. Grade post is approved, the post on which the Plaintiff/ Respondent was working became substantive and, therefore, he cannot be permitted to continue on the said post.

13. Further reliance has been placed upon a judgment in Shri Niwas Singh Vs.

District Inspector of Schools and Others, , para 7 of which is being quoted below:

7. Respondent No. 1 has refused to accord financial sanction for three reasons. Firstly, the Petitioner had not taken permission from the District Inspector of Schools prior to making of the appointment. It is not disputed that the Petitioner was being appointed on a short term vacancy caused due to ad hoc promotion of Digvijay Singh on the post of Lecturer from L.T. grade Teacher. The procedure for making ad hoc appointment on short terms vacancy has been given in U.P. Secondary Education Services Commission (Removal of Difficulties Order) (Second), 1981. The power has been given to the Committee of Management to make short terms appointment on the basis of the procedure prescribed therein. It does not require that any permission of the District Inspector of Schools is to be obtained before any selection for appointment is to be made. Para 2(3) only provides that the Management shall intimate the vacancy to the District Inspector of Schools and after making the selection in the manner prescribed therein, the names of the selected candidates shall be forwarded to the District Inspector of Schools and on such communication, the District Inspector of Schools shall communicate his decision in respect of approval of selection within seven days of the date of receipt of papers by him failing which the Inspector will be deemed to have given his approval.

14. The Court has considered that if an appointment on short term vacancy has been made after intimating vacancy to the DIOS and adopting proper procedure, the District Inspector of Schools cannot refuse to grant approval on the ground that No. prior permission was taken for making appointment. The law does not require taking of such permission.

15. It is not the case of the Appellants that short term vacancy has not been notified and advertisement was not made. The appointment cannot be held to be invalid only on the ground that No. prior approval has been taken. In such circumstances, the appellate Court has considered the issue and allowed the appeal, therefore, it cannot be said that the judgment, passed by the lower appellate Court, is bad in law.

16. I have considered the submissions of the parties and perused the record. From the record, it appears that due to retirement of one Sri Shiv Shaker Dubey, who was working as L.T. Grade Teacher, there became a vacancy and one Sri Indra Dev Chaubey who was working as C.T. Grade Teacher, was promoted, therefore, a short term vacancy was created in C.T. Grade, on which Plaintiff/ Respondent was appointed. The promotion of Sri Indra Dev Chaubey was to be approved, therefore, unless and until it is approved, the vacancy in the C.T. Grade will always be treated to be a short term vacancy as in case of non-approval he has to return to his substantive post, therefore, on promotion of Sri Indra Dev Chaubey only a short term vacancy was created.

17. From the findings recorded by the Court below it is admitted case that Shiv Shankar Dubey was L.T. Grade Teacher and retired on 30.6.1993. Rule 9 of the

U.P. Secondary Education Service Commission Rules, 1983, provides posting by promotion and according to that Rule senior most Teacher in C.T. Grade may be promoted in L.T. Grade. The management will prepare a panel and the list of panel alongwith character roll will be forwarded to the Commission through DIOS for the purpose of approval. If the promotion is not approved the person who has been promoted has to return to his substantive post. Unless and until the promotion is approved the vacancy in C.T. Grade is always called a short term vacancy because there was a possibility that promotion of Sri Indra Dev Chaubey may not have been approved. In the Removal of Difficulties Order, the term used is "otherwise". Use of this word shows that vacancy should be one which is analogous to the vacancies denoted by the term death, retirement and resignation. When these three events take place there is No. likelihood of earlier incumbent of the post returning thereto. This is not the vacancy referred to in paragraph 2 of the (II) Order which deals with filling up of short term vacancies. Clause (1) of this paragraph uses two definite terms which are grant of leave and suspension. When a person is granted leave there is prospect that he may return and join the post, therefore, such a vacancy cannot be said to be a substantive one. Therefore, if a person is appointed to a post on temporary or ad hoc basis there are chances that he may return back. Therefore, a clear presumption can be made that a vacancy arising due to promotion of a Lecturer as a Principal on ad hoc basis cannot be termed as substantive one. It can only be a short term vacancy.

18. Sri Indra Dev Chaubey was promoted on ad hoc basis and his promotion was subject to approval by the Commission, therefore, it cannot be said that the post which has fallen vacant due to his promotion has become substantive, it can only be termed as a short term vacancy. As regards contention of the Appellants is concerned regarding declaration, of dying cadre of C.T. Grade, it is clear that a temporary appointment can be made in a short term vacancy, but if the pay scale of a Teacher has been revised in L.T. Grade the vacancy created by him will be filled up by L.T. Grade Teacher, therefore, it is clear that the vacancy caused due to promotion till it is approved can be treated to be a short term vacancy and in a short term vacancy only the appointment can be made in C.T. Grade, therefore, on promotion of Sri Indra Dev Chaubey the vacancy which has created was purely short term vacancy. From the record it also appears that it was published in the Newspaper and applications were invited and the Plaintiff/Respondent was selected on the basis of highest marks obtained by him.

19. According to Para 2(3) of 1981 Order, if the appointment to the short term vacancy has been made by the Management and there is No. irregularity in procedure adopted the person posted is entitled to his salary. The contention of the Appellants to this effect is that promotion of Sri Indra Dev Chaubey was illegal, therefore, the appointment of the Plaintiff/Respondent is also illegal. If the Appellants come with a case that the post of L.T. Grade Teacher due to retirement was not a post under 50% promotion quota and Sri Indra Dev Chaubey was not entitled to be promoted in that case the contention of the

Appellants would have been correct, but it is not the case of the Appellants that promotion of Sri Indra Dev Chaubey was not under 50% quota. It is also not the case of the Appellants that intimation regarding promotion of Sri Indra Dev Chaubey was not given to relevant authority. Only on the ground that prior approval was not taken the appointment of the Plaintiff/Respondent cannot be held to be invalid in view of the Division Bench judgment of this Court reported in District Inspector of Schools, Kanpur Nagar and Ors. case (supra). It is settled in law that unless and until the person, who is promoted on a higher post, his appointment is approved by the competent authority, the vacancy caused will always be treated to be a short term vacancy and admittedly the Management had full power to appoint a person on a short term vacancy. The Division Bench of this Court while considering the judgment of Full Bench in Smt. Pramila Mishra case (supra) has held that if an appointment has been made in a short term vacancy and ultimately if such vacancy became substantive in due course of time, then ad hoc appointee whose appointment has been made in short term vacancy should be permitted to continue unless and until something is otherwise. Admittedly, on the day of appointment of the Plaintiff/ Respondent a short term vacancy was there and if it is converted subsequently in a substantive vacancy he should be permitted to continue unless and until his appointment is totally illegal and without procedure. It is not the case of the Appellants that procedure as provided has not been followed. Only on the ground that as soon as the promotion has been approved and substantive vacancy has taken place, the Plaintiff/Respondent has to go and he is not entitled to continue.

20. In my opinion, the contention of the Appellants cannot be accepted in view of the findings recorded by the lower appellate Court, as it has held that appointment on short term vacancy was after publication in the Newspaper and the applications were invited and the appointment was made on the basis of quality points marks by the Selection Committee. In case No. prior approval has been taken, as submitted by the Appellants, the appointment cannot be held to be invalid.

21. In my opinion, findings recorded by the Court below are based on evidence, after perusal of various documents and decisions, therefore, it cannot be said and held that the judgment passed by the lower appellate Court is illegal. The findings recorded by the Court below are findings of fact, needs No. interference, as such, the appeal is hereby dismissed.

No order as to costs.