

**(1989) 12 AHC CK 0016**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 19683 of 1989

Vimal Kishore Bajpai

APPELLANT

Vs

The District Inspector of Schools and Others

RESPONDENT

**Date of Decision :** 01-12-1989

**Acts Referred:**

Constitution of India, 1950 — Article 14  
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,  
1982 — Section 11(4), 18, 33A

**Citation :** (1990) 1 AWC 500

**Hon'ble Judges :** V.K. Khanna, J; R.A. Sharma, J

**Bench :** Division Bench

**Advocate :** Shyamji Gaur, for the Appellant;

**Final Decision :** Dismissed

## Judgement

R.A. Sharma, J.—We have heard learned Counsel for the Petitioner and learned Standing Counsel and we find no merit in this petition.

2. Petitioner claims to be the L.T. Grade teacher in Guru Narain Khatri Inter College, Civil Lines, Kanpur (hereinafter referred to as the College) and further claims to have been promoted on 9-7-84 to the sub-stantive post of Lecturer which fell vacant on account of retirement of Sri. S.K. Awasthi, English Lecturer of the College. According to the Petitioner this appointment was made u/s 18 of U.P. Secondary Education Services Commission and Selection Board Act, 1982 (hereinafter referred to as the Act). District Inspector of Schools vide his letter dated 22-7-85 has approved the appointment of the Petitioner u/s 18 of the Act, with the observation that upon the appointment of duly selected candidate by the U.P. Secondary Education Service Commission (hereinafter referred to as the Commission) the Petitioner promotion shall cease to be effective.

3. It appears that the Commission advertised the post of Lecturer in English of the College and according to the Petitioner's claim in the writ petition he also applied for the same but he has not been selected. District Inspector of Schools,

Kanpur vide his letter dated 28-9-89 addressed to the Authorised Controller of the College has informed that Commission has selected Respondent No. 4 as a Lecturer (English) for the College and that the said Respondent No. 4 should be permitted to join within a month in the College. By means of this writ petition, Petitioner has challenged the appointment of Respondent No. 4 as Lecturer in English in the College by the Commission and has further requested for an appropriate direction in the nature of mandamus to regularise the services of the Petitioner in the Lecturer's grade.

4. Respondent No. 4 has been selected by the Commission under the Act for the post of Lecturer in English in the College in accordance with law. Petitioner was appointed as adhoc Lecturer in English in the College u/s 18 of the Act. Section 18 is quoted below:

18. Ad hoc Teachers-(1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and

(a) the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification; or

(b) the post of such teacher has actually remained vacant for more than two months, then, the management may appoint, by direct recruitment or promotion, a teacher on purely ad hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder.

(2) The provisions of Sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on ad hoc basis with the substitution of the expression "Board" for the expression "Commission".

(3) Every appointment of an ad hoc teacher under Sub-section (1) or Sub-section (2) shall cease to have effect from the earliest of the following dates, namely:

(a) When the candidate recommended by the Commission or the Board, as the case may be, joins the post;

(b) when the period of one month referred to in Sub-section (4) of Section 11 expires;

(c) thirtieth day of June following the date of such ad hoc appointment. Ad hoc appointment of teachers by direct recruitment or promotion u/s 18 is valid only till the candidate recommended by the Commission joins the post. Order of the District Inspector of Schools, Kanpur dated 22-7-85 where the Petitioner's promotion u/s 18 was approved expressly laid down that promotion of the Petitioner shall come to an end upon joining of the duly selected candidate by the Commission. Petitioner has accepted this appointment and he is bound by its terms. He has to leave the post and is bound to be reverted from lecturer grade

to the L.T. grade upon joining of a duly selected candidate by the Commission. Petitioner as such, cannot challenge the appointment of Respondent No. 4.

5. Petitioner is also not entitled to get his services as Lecturer in English regularised. Section 33A of the Act provides for regularisation of directly appointed teachers under U.P. Secondary Education Services Commission (Removal of Difficulties), Order, 1981 (hereinafter referred to as the Removal of Difficulties on ad hoc basis and services of the promotees cannot be regularised. Section 33A of the Act is quoted below:

33-A Regularisation of certain appointments-Every teacher directly appointed before the commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985, on ad-hoc basis against a substantive vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of the Intermediate Education Act, 1921, shall with effect from the date of such commencement, be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such appointment upto the date of such commencement.

(2) Every teacher deemed to have been appointed in a substantive capacity under Sub-section (1), shall be deemed to be on probation from the date of such commencement.

(3) Nothing in this section shall be construed to entitle any teacher to substantive appointment-

(a) if on the date of such commencement, such post had already been filled or selection for such post had already been made in accordance with this Act, or

(b) If such teacher was related to any member of the committee of management or the Principal, or

Head Master of the institution concerned.

Explanation-For the purposes of this Sub-section a person shall be deemed to be related to another if-

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the Second Schedule to the Intermediate Education Act, 1921.

6. For regularisation of services of ad hoc appointees u/s 33A of the Act following conditions precedent are to be satisfied:

(i) He must have been appointed directly before the commencement of U.P. Secondary Education Services Commission and Selection Board (Amendment) Ordinance, 1985.

(ii) Appointment must have been made under the Removal of Difficulties Order, 1981 as amended from time to time.

(iii) These appointments must be against the substantive vacancy.

(iv) Must possess the requisite qualifications prescribed under or exempted from such qualifications in accordance with the provisions of Intermediate Education Act, 1921.

(v) Must be working continuously in the College from the date of his appointment upto the date of such commencement.

7. The Petitioner was not directly appointed as ad hoc Lecturer and his appointment was not under Removal of Difficulties Order, inasmuch as he was appointed u/s 18 of the Act. Appointment under Removal of Difficulties Order is different than the appointment u/s 18 of the Act. Appointments u/s 18 of the Act cannot be treated to be the appointment under Removal of Difficulties Order and as such Petitioner cannot claim regularisation of his services u/s 33A of the Act.

8. Petitioner has also not been directly appointed to the post of Lecturer in English in the College. On the other hand, he was promoted to the said post with approval of District Inspector of Schools. u/s 33A of the Act the services of only those ad hoc teachers, who were directly appointed, can be regularised. It is clear from the language of Section 33A itself as the section opens with the phrase "every teacher directly appointed". A Division Bench of this Court in Chandrika Prasad Yadava v. State of U.P. 1986 UPLBEC 410 : 1986 Education Cases 223, had laid down that services of the promotees are not liable to be regularised u/s 33A of the Act. Relevant extract from the aforesaid judgment is quoted below:

In the first place, the benefit of Section 33A is available only to those teachers who were appointed on ad hoc basis directly and not to the teachers who were appointed on ad hoc basis under the Removal of Difficulties Order of 1981 by way of promotion.

9. In the aforesaid case the validity of Section 33A of the Act was also challenged on the ground that it is hit by Article 14 of the Constitution of India inasmuch as it confers the benefit of regularisation only on the teachers, who were directly appointed on ad hoc basis and the ad hoc promotees as such has been discriminated against. This contention was also repelled by this Court. Relevant extract from judgment is quoted below:

Ad hoc teachers who were appointed directly under the Removal of Difficulties Order of 1981 issued under the U.P. Act No. 5 of 1982 and the Ordinance which was replaced by the said Act constitute a class by themselves and cannot be

legitimately equated with the ad hoc promotees. In the case of Chandra Datt Patni v. State of Uttar Pradesh reported in 1985 UPLBEC 212, a Division Bench had occasion to consider the nature of ad hoc appointments made under the aforesaid Removal of Difficulties Order. In that connection several Government orders issued by the State Government providing for regularisation of ad hoc appointments made under various services of the State were examined. Each of those Government orders which provided for regularisation of ad hoc employees was made applicable only to those who were directly appointed. The benefit of regularisation was not extended to ad hoc promotees. In doing this what had weighed with the Government was that persons who were directly appointed on ad hoc basis to various services, if not retained in service after having worked continuously for several years, would find it hard to secure jobs elsewhere as with the passage of time most of them must have become over age for other services. They would hence immediately face unemployment and all the concomitants flowing therefrom. The ad hoc promotees, on the other hand, would on their ad hoc employment ceasing continue to belong to the services, only they would revert to their substantive lower post a situation which is materially different and distinct from that implied in the total loss of employment.

10. A Division Bench of this Court again in Kumari Nishi Bhargava v. Deputy Director of Education Agra 1987 UPLBEC 415 : 1987 Education Cases 131 interpreted Section 33A of the Act and laid down that services of directly appointed teachers on ad hoc basis are liable to be regularized. Relevant extract from judgment is quoted below:

In 1985 Section 33A was added to the Act regularising appointment of a teacher directly appointed before the commencement of Uttar Pradesh Secondary Education Service Commission and Selection Board (Amendment) Ordinance, 1985 on ad hoc basis against substantive vacancy in accordance with para 2 of Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981.

11. As the Petitioner was ad hoc promotee and was not directly recruited on ad hoc basis, his services cannot be regularised u/s 33A of the Act. Petitioner has, however, relied on para 12 of the judgment of Kumari Nishi Bhargava which is quoted below:

Ad hoc appointments have also been made by promotion. Such appointments, if made in substantive vacancies against 40% quota reserved for promotion satisfying other requirements also stand regularised.

12. We have already extracted the relevant portion of the judgment pertaining to the effect of Section 33A in Kumari Nishi Bhargava's case where by it was laid down that the services of directly appointed teachers is liable to be regularised. In para 15 of the said judgment, Division Bench has laid down 12 conclusions. In all these conclusions, the Court has referred to the ad-hoc appointees and not to ad hoc promotees. In none of these conclusions the Court has laid down for

regularisation of ad hoc promotees and has always referred to the ad-hoc appointees only.

13. Section 33A is very clear and refers to a teacher directly appointed. In the case of Chandrika Prasad Yadava this Court categorically laid down that promotees cannot be regularised and even in Kumari Nishi Bhargava's case the same position has been affirmed. In para 12 of the judgment, however, general observation had been made about regularisation of the promotees. Section 33A of the Act does not provide for said regularisation of promotees and no other provision of law has been placed before us by the learned Counsel for the Petitioner which provide for regularisation of promotees. The observation in para 12 regarding the regularisation of services of promotees u/s 33A of the Act appears to have been made on account of inadvertence or over-sight and this part of the judgment in para 12 can be treated as judgment per incuriam. Supreme Court in the case of Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., considered this aspect and the relevant extract from the judgment of Supreme Court is quoted below:

Certainty of the law, consistency of rulings and comity of Courts-all flowering from the same principle converge to the conclusion that a decision once rendered must later bind like cases. We do not intended to detract from the rule that, in exceptional instances, whereby obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents.

14. The observation made by this Court in para 12 of Kumari Nishi Bhargava's case as such cannot have the binding effect.

15. For the reasons given above, this petition has no merit and dismissed accordingly.