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Reserved

AFR

Court No.44

Case :- Case :- SPECIAL APPEAL No. - 167 of 2024
Appellant :- Devendra Singh
Respondent :- State Of Up And 4 Others
Counsel for Appellant :- Siddharth Khare
Counsel for Respondent :- C.S.C.,Yogesh Kumar Saxena

with

Case :- SPECIAL APPEAL No. - 200 of 2024
Appellant :- Jujhar Singh
Respondent :- State Of Up And 4 Others
Counsel for Appellant :- Siddharth Khare
Counsel for Respondent :- C.S.C.,Yogesh Kumar Saxena

Hon'ble Siddhartha Varma, J.
Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Siddhartha Varma, J.)

1. The two special appeals are being decided together as they involve a common question of law. The appellant-Jujhar Singh in Special Appeal No.200 of 2024 was appointed on ad-hoc basis on 31.8.1987 as an Assistant Teacher in CT grade in the institution known as P.N.V. Inter College, Chilli (Muskara), Hamirpur. His appointment on ad-hoc basis was also approved on 11.9.1987. Similarly, the appellant-Devendra Singh in Special Appeal No.167 of 2024 was appointed on ad-hoc basis on the post of Assistant Teacher in CT grade on 26.2.1989. His appointment was also approved on 25/26.7.1989. However, the services of both the appellants were terminated on 17.10.1989 by the District Inspector of Schools, Hamirpur on the allegation that the appellants had been posted on such posts which were in excess of

the sanctioned strength. Aggrieved thereof, the two appellants jointly filed a writ petition being Writ Petition No.19879 of 1989 (Jujhar Singh & Anr. vs. District Inspector of Schools, Hamirpur & Ors.). On 4.12.1989, the High Court in Writ Petition No.19879 of 1989, passed an interim order whereby the order dated 17.10.1989 was kept in abeyance. Thereafter in pursuance of the interim order granted on 4.12.1989, the appellants-petitioners continued to work and also they continued to receive their salaries. On 31.3.2006, it so happened that the appellants-petitioners were absorbed against substantively vacant posts. The order dated 31.3.2006 is being reproduced here as under :-

"**कार्यालय जिला विद्यालय निरीक्षक हमीरपुर**

आदेश संख्याः-96 /2005-06 दिनांक 31.03.06

समायोजन आदेश

उप शिक्षा निदेशक झांसी मण्डल झांसी के पत्रांक/मा०/10227-29/91-92 दिनांकित 05-02-1992 एवं पत्रांक/मा०/10550-51/93-94 दिनांकित 28-01-1994 में निहित निर्देशानुसार पी०एन०वी० इण्टर कालेज, चिल्ली (मुस्करा) हमीरपुर में स्वीकृत संख्या से अधिक सहायक अध्यापक (सी०टी०) की नियुक्ति मानक के आधार पर तत्कालीन जिला विद्यालय निरीक्षक हमीरपुर द्वारा की गई थी। ये नियुक्तियां अनियमित होने के कारण निरस्त कर दी गई थी, लेकिन माननीय उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश दिनांक 27-10-89 के अनुपालन में विद्यालय में कार्यरत हैं।

अतः प्रबन्धक, पी०एन०वी० इण्टर कालेज चिल्ली (मुस्करा) हमीरपुर के पत्रांक/197/पीएफ/2005-06 दिनांक 09-01-2006 के संदर्भ में पी०एन०वी० इ०का० चिल्ली (मुस्करा) हमीरपुर के श्री रामाधार सहायक अध्यापक के सेवानिवृत्त के फलस्वरूप रिक्त पद पर श्री जुझर सिंह सहायक अध्यापक एवं श्री सूरज प्रसाद सिंह सहायक अध्यापक के सेवानिवृत्त से रिक्त पद पर श्री देवेन्द्र सिंह सहायक अध्यापक माननीय उच्च न्यायालय इलाहाबाद के आदेश पर समायोजित किया जाता है। यदि इस सम्बन्ध में संस्थाधिकारी/कर्मचारी द्वारा कोई गलत तथ्य अथवा सूचना दी गयी है तो यह आदेश निरस्त कर दिया जायेगा।

(अखिलेश पाण्डेय)
जिला विद्यालय निरीक्षक
हमीरपुर।

पृष्ठांकन संख्याः-मा०/3641-43 /2005-06 तददिनांक।
प्रतिलिपिः- निम्नांकित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु सादर प्रेषित।
1- संयुक्त शिक्षा निदेशक, झांसी मण्डल झांसी।
2- सहायक वित्त एवं लेखाधिकारी (मा०शि०) कार्या०जि०वि०नि० हमीरपुर।
3- प्रबन्धक/प्रधानाचार्य, पी०एन०वी०इ०का० चिल्ली (मुस्करा) हमीरपुर।

(अखिलेश पाण्डेय)
जिला विद्यालय निरीक्षक
हमीरपुर।"

2. To put the record straight, it may be noted that the Writ Petition No.19879 of 1989 was dismissed as having become infructuous on 17.10.2001. The order dated 17.10.2001 is being reproduced here as under :-

> "The office has placed this writ petition in the group of cases relating to service matter on account of efflux of time, presuming suggesting that the writ petition has become infructuous on account of efflux of time. Be that as it may, since no one turns up on behalf of the petitioner to press this writ petition, it is accordingly dismissed."

3. This order was not known to the appellants-petitioners. However, when the petitioners came to know of the order dated 17.10.2001, they filed an application for recalling of the order dated 17.10.2001. When the case was taken up on 8.3.2010, the order dated 17.10.2001 was recalled and on the same day it was got dismissed as not pressed. Despite the order dated 8.3.2010 being passed by the High Court by which the Writ Petition No.19879 of 1989 was dismissed as not pressed, the petitioners-appellants continued to function and were paid their regular monthly salary on the strength of the order dated 31.3.2006. After a passage of quite some time i.e. on 1.6.2017, the Management/Principal of the college was put to notice by the District Inspector of Schools to explain as to on what basis they were paying the petitioners their salary. They were also required to provide the order dated 8.3.2010 by which the Writ Petition No.19879 of 1989 was dismissed as not pressed. This notice which was sent by the Committee of Management/Principal was

challenged by the petitioners jointly in Writ Petition No.34860 of 2017 and in that writ petition on 4.8.2017, this Court passed an order by which the order dated 1.6.2017 was stayed. The interim order dated 4.8.2017 is being reproduced here as under :-

> "It is contended on behalf of the petitioners that they are working since 1987 and 1989 respectively. Previously, they have preferred a writ petition and an interim order was granted therein. While they were working, the District Inspector of Schools vide order dated 31.3.2006 has regularized the services of the petitioners. Both the petitioners are working.
>
> It appears that in the meantime the petitioners have got the writ petition withdrawn. Consequently, the impugned orders have been passed and the salary of the petitioners has been stopped.
>
> Learned counsel for the petitioners submits that the petitioners are working for more than 25 years and there is no complaint with regard to their work and conduct and on the technical ground the respondents have stopped the salary of the petitioners.
>
> Matter needs consideration.
>
> Learned Standing Counsel appears for the State functionaries.
>
> Issue notice to respondent no. 4 returnable at an early date.
>
> Counter affidavit be filed within six weeks. Rejoinder affidavit, if any, may be filed within a week thereafter.
>
> List after expiry of the said period.
>
> Till the next date of listing effect and operation of the impugned orders dated 1.6.2017 and 6.6.2017 shall remain stayed. It is further provided that the petitioners shall be paid their salary."

4. It is thereafter the case of the petitioners-appellants that when the Education Department asked the petitioners to get their

Writ Petition No.34860 of 2017 withdrawn so that their case for regularisation could be considered, they withdrew the writ petition on 29.8.2022. Subsequent to that on 7.9.2022, the District Inspector of Schools, Hamirpur wrote to the Management of the Institution to forward the resolution for the regularisation of the services of the petitioners in view of the fact that Writ Petition No.34860 of 2017 had been withdrawn. For reasons best known to the Committee of Management, the communication/direction dated 7.9.2022 of the District Inspector of Schools was put to challenge by filing a writ petition being **Writ-A No.18341 of 2022**. This writ petition came to be disposed of on 14.11.2022 with a direction to the Joint Director of Education, Jhansi to consider the proceedings vis.-a-vis. the notice dated 1.6.2017. Before the decision could be taken by the Joint Director of Education, the Committee of Management took a decision to stop the petitioners-appellants from making their signatures on the attendance register and the petitioners were thereafter restrained from working in the institution. Consequently the petitioners-appellants filed Writ-A No.34990 of 2023 in which on 24.2.2023, an interim order was passed by which the Management was directed to permit the petitioners-appellants to work in the institution in question. On 2.6.2023, the Joint Director of Education, in pursuance of the order of the High Court dated 14.11.2022 passed in Writ-A No.18314 of 2022, decided the matter and concluded that since the appointment of the petitioner-

Jujhar Singh in the year 1987 and that of Devendra Singh in the year 1989 were made in the CT grade without there being any posts vacant, their appointments were to be considered as irregular and they were also not to be given any regularisation. In the meantime, Jujhar Singh retired from the service on 21.3.2023. Therefore, the appellant-Jujhar Singh filed Writ-A No.11163 of 2023 separately and Devendra Singh filed a separate writ petition being Writ-A No.11129 of 2023. Both these writ petitions were connected to each other and they were heard together and when by a common order dated 16.12.2023, the writ petitions were dismissed, separate special appeals were filed. The special appeal of Devendra Singh was numbered as Special Appeal No.167 of 2024 and that of Jujhar Singh was numbered as Special Appeal No.200 of 2024.

5. Learned counsel for the appellants submitted that the learned Single Judge did not appreciate the fact that the controversy with regard to absence of posts had come to an end with the passing of the order dated 31.3.2006 by the District Inspector of Schools, Hamirpur. Learned counsel for the appellants submitted that this was the error which was also committed by the Joint Director of Education in his order dated 2.6.2023 wherein he had not considered the order dated 31.3.2006 in its right perspective. Learned counsel for the appellants further stated that when independent of the orders passed in Writ Petition No.19879 of 1989, the order dated 31.3.2006 had been passed

then it mattered little if the Writ Petition No.19879 of 1989 was, to begin with, dismissed in default on 17.10.2001 and that thereafter, after it was restored on 8.3.2010, it was got dismissed as not pressed. Learned counsel for the appellants referred to the order dated 31.3.2006, which has also been reproduced earlier in this order. Referring to that order, he submitted that even though the order dated 31.3.2006 had stated that the appellants were working because of the order dated 27.10.1989, the actual reason for passing the order dated 31.3.2006 was that the Committee of Management had requested the District Inspector of Schools to adjust the appellants on posts which had become vacant on account of the retirements of two Assistant Teachers namely Sri Ramadhar and Sri Suraj Prasad Singh. He submits that on the post vacated by Sri Ramadhar, the appellant-Jujhar Singh was absorbed and on the post vacated by Sri Suraj Prasad Singh, the appellant-Devendra Singh was absorbed. He submits that if in the order it was mentioned that the absorption was being done on account of some order of the High Court then that statement had no basis.

6. Learned counsel for the appellants further submitted that section 33A(1-B) which was introduced in the U.P. Secondary Education Services Selection Boards Act, 1982 on 6.4.1981 was clearly to the effect that if a teacher was directly appointed after 12.6.1985 and before 13.5.1989 on an ad-hoc basis against a substantive vacancy in the CT grade in accordance with

paragraph 2 of the Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981 and was possessed with all the qualifications prescribed thereunder then with effect from the commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1991 that teacher shall be deemed to have been appointed in substantive capacity provided that teacher had been continuously serving in the institution from the date of ad-hoc appointment to the date of commencement of the Amendment Act.

7. Learned counsel for the appellants states that essential requirements, therefore, for getting regularized were definitely present in the instant case. The ad hoc appointments of the appellants were done under the Removal of Difficulties Order, 1981; the petitioners were possessing all their educational qualifications and that they had continued to teach in the institution till the date of their retirement and not just till 6.4.1991. Learned counsel for the appellants states that even if initially there was an irregularity which had subsequently been remedied conscientiously then the initial irregularity could not be made the basis for taking action against the appellants after the passage of several years. In the instant case, learned counsel for the appellants states that the appellant Jujhar Singh was appointed on 31.8.1987 whereas Devendra Singh was appointed on 26.2.1989. Realizing the mistake, the Committee of Management

and also the State Authorities had absorbed these two teachers on 23.1.2006 on substantive vacancies.

8. Relying upon the judgments of the Supreme Court in **Mansaram vs. S.P. Pathak & Ors.** reported in **(1984) 1 SCC 125** and **Madras Aluminium Company Limited vs. Tamil Nadu Electricity Board & Anr.** reported in **(2023) 8 SCC 240**, learned counsel for the appellants states that if any mistake was committed initially then action should have been taken with regard to it within a reasonable time, specially when there is no limitation prescribed. However, what would be the 'reasonable time' would depend upon the facts and circumstances of each case; the nature of default; prejudice caused and whether any third party rights had been created. Relying upon the two judgments, learned counsel for the appellants states that even if the appointments were made irregularly in the year 1987 and 1989 respectively of the two teachers namely Jujhar Singh and Devendra Singh, the mistake was rectified conscientiously by the Education Department on 31.3.2006 and now it did not lie in the mouth of the Education Department or the Committee of Management of the Institution to say that the initial appointments were made without any vacancies and, therefore, the regularisation could not be done.

9. Learned counsel for the appellants relied upon another judgment of the Supreme Court in **Radhey Shyam Yadav & Anr. vs. State of U.P. & Ors.** reported in **2024 SCC OnLine SC**

10 and submitted that admittedly the appellants were appointed on posts which were not vacant. This did not happen because of any fault of theirs. Also the initial appointments were definitely approved on 11.9.1987 and 25/26.7.1989. Learned counsel, therefore, submitted that definitely then it could not be said that the appellants were to suffer for no fault of theirs.

10. In the judgment of **Radhey Shyam Yadav (supra)** the three petitioners namely Lal Chandra Kharwar; Radhey Shyam Yadav and Ravindra Nath Yadav were appointed as Assitant Teachers in a Junior High School in the year 1999. However, their salaries were stopped in the month of October 2005. There was a dispute as to whether the petitioners were appointed on vacant posts and as to whether fraudulently the vacancies were shown and the petitioners therein were appointed. The petitioners had approached the Allahabad High Court which (learned Single Judge) on 10.9.2013 dismissed the writ petition and their Special Appeal was also dismissed on 15.9.2021. However, the Supreme Court reversed the judgment of the learned Single Judge and that of the Special Appellate Court saying that the petitioners definitely were not at fault and that the State could not, after taking work for such a long time, stop the salaries of the petitioners/appellants therein. Relying upon this judgment of **Radhey Shyam Yadav (supra)** learned counsel for the appellants states that in this case also the appellants were appointed after due procedure and their appointments were also

approved and thereafter realizing that they had been appointed on non-existing posts, when the vacancies occurred, the appellants were also absorbed on 31.3.2006. Learned counsel for the appellants states that this order dated 21.3.2006 was never challenged by the State or the Committee of Management and it would be deemed that the appellants were continuing on substantive vacancies which was a primary requirement of section 33-A(1-B) of the 1982 Act.

11. Learned counsel for the appellants thereafter referring to a decision of the Supreme Court in **Vinod Kumar & Ors. vs. Union of India & Ors.** reported in **(2024) 9 SCC 327** submitted that in view of the continuous service of the appellants in the capacity of regular employees and in view of the fact that the appellants were performing duties similar to those in permanent posts ought to have been regularized. Learned counsel for the appellants, relying upon this judgment of **Vinod Kumar (supra)** submitted that any irregular appointment which is not an illegal appointment ought to be considered for regularisation. Learned counsel for the appellants relied upon paragraph nos.7 and 8 of this judgment and, therefore, the same are being reproduced here as under :-

> "7. The judgement in the case State of Karnataka vs. Umadevi : (2006) 4 SCC 1 also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or

interviews as in the present case. Paragraph 53 of the Uma Devi (supra) case is reproduced hereunder:

> "53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in State of Mysore vs. S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa vs. T. Thimmiah : (1972) 1 SCC 409 and B.N. Nagarajan vs. State of Karnataka [(1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such *irregularly* appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."
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> (emphasis in original)

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognise the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations."

12. Learned counsel for the appellants further relied upon the judgment of the Supreme Court in **Jaggo vs. Union of India & Ors.** reported in **2024 SCC OnLine SC 3826** and submitted that

long and continuous service, nature of work and the fact that there was no illegal entry into the job ought to have been considered for the purposes of regularisation. Since, learned counsel for the appellants relied upon paragraph nos. 10 and 20 of the judgment, the same are being reproduced here as under :-

> "10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.
>
> ……..
>
> 20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly "irregular", and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgement of this Court in Vinod Kumar and Ors. Vs. Union of India & Ors. [2024] 1 S.C.R. 1230, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed "temporary" but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgement have been reproduced below:
>
> "6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive

> rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).
> 7. The judgement in the case of Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case…"

13. Learned counsel for the State in opposition to the two Special Appeals has relied upon the judgment of **Abhishek Tripathi vs. State of U.P. through Secy. Secondary Education, Lucknow & Ors. (Writ Petition No.655 (S/S) of 2014)** dated 17.12.2015 and has submitted that any appointment which was made dehors the rules could not be considered to be an appointment worth regularisation. He has also laid much stress on the fact that when the initial appointment was made, the same was not so made on a regular vacancy.

14. Having heard learned counsel for the appellants and Sri Devesh Vikram, leaned Additional Chief Standing Counsel, the Court is of the view that both the Special Appeals deserve to be allowed. The appellants after they were appointed on 31.8.1987 and 26.2.1989, their appointments were also approved on 11.9.1987 and 25/26.7.1989. After their services were terminated on 17.10.1989, they had approached the High Court by means of Writ Petition No.19879 of 1989, wherein an interim order was

passed on 4.12.1989 and the termination order dated 17.10.1989 was kept in abeyance. The writ petition was thereafter dismissed as having become infructuous on 17.10.2001. Upon an application moved by the petitioners, the said order was recalled on 8.3.2010 and on the same day, it was got dismissed as not pressed. However, during the intervening period, the appellants had been absorbed on two existing vacancies by means of an order dated 31.3.2006. The appellants having been absorbed on existing vacancies, the irregularity, if any initially in their appointments, would be deemed to have been cured as per the judgments of the Supreme Court cited by learned counsel for the appellants i.e. **Mansaram (supra)** and **Madras Aluminium Company Limited (supra).** As per these judgments definitely if any action had to be taken, it ought to have been taken within reasonable time and that having not been taken, the appellants could not now be penalized. Further, the Court is of the view that as per the judgment of the Supreme Court in **Radhey Shyam Yadav (supra)** the appellants definitely were not at fault. As per the judgment of the Supreme Court in **Vinod Kumar (supra)** and **Jaggo (supra)** we find that definitely when there was an irregularity in the appointments of the appellants, that irregularity had been removed and the appointments were regularized.

15. In the ultimate analysis, we are thus of the view that the writ petitions had to be allowed. The orders of the Joint Director

of Education which were passed on the fact that the initial appointment was wrongly made, were erroneously passed.

16. For all the reasons which we have stated above, we are of the considered view that if there was any irregularity in the initial appointment, it was done away with by the State and, therefore, it cannot be said that the appellants did not come within the purview of the relevant provisions relating to regularisation. The appellants after they were absorbed on regular vacancies, it had to be taken that they were always working on the regular vacancies and since they were throughout teaching till the date when they retired, it could be taken that they were always in continuous service.

17. Thus, for the reasons stated above, Special Appeal No.167 of 2024 and Special Appeal No.200 of 2024 are allowed. The judgment and order of the learned Single Judge dated 16.12.2023 passed in Writ-A No.11129 of 2023 and Writ-A No.11163 of 2023 is set-aside. The writ petitions are allowed and the order dated 2.6.2023 passed by the Joint Director of Education, Jhansi Region, Jhansi is also quashed. The appellants be treated as having been regularized and they be provided with all consequential benefits.

Order Date :- 28.05.2024
GS

(Siddhartha Varma, J.)

(Dr. Y.K. Srivastava, J.)