



2025:AHC:171352-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL DEFECTIVE No. - 590 of 2025

State Of Up And 3 Others

.....Appellant(s)

Versus

Lalta Prasad Mishra And Another

.....Respondent(s)

Counsel for Appellant(s)	:	C.S.C., S.C.
Counsel for Respondent(s)	:	Sankalp Narain

Court No. - 21

HON'BLE MANOJ KUMAR GUPTA, J.

HON'BLE ARUN KUMAR, J.

Order on Delay Condonation Application

1. The appeal is reported to be beyond time by 66 days. The cause shown for delay is found to be sufficient. Accordingly, delay is condoned.
2. The application for condonation of delay is allowed.
3. Office is directed to allot regular number to the instant appeal.

Order on Memo of Appeal

1. Heard Sri Sudhanshu Srivastava, learned Additional Chief Standing Counsel for the appellants and Sri Govind Kumar Singh, learned Senior Counsel assisted by Sri Naveen Pandey, learned counsel for the contesting respondent (hereinafter referred to as 'the petitioner').
2. The present intra-court appeal is directed against the order and judgment of learned Single Judge dated 8.5.2025 passed in Writ-A No.56535 of 2015, whereby the writ petition has been allowed.
3. In the writ petition, the order of District Inspector of Schools dated 20.8.2015 was under challenge, whereby the District Inspector of Schools has held that the appointment of petitioner on the post of adhoc Lecturer being against short term vacancy, he was not entitled to continue after the

short term vacancy got converted into substantive vacancy and as such the salary received by the petitioner from the date the vacancy got converted into substantive vacancy i.e. 1.7.2003 is liable to be recovered from him.

4. The facts necessary for disposal of the instant appeal are as follows:-

(a). The petitioner was appointed as an adhoc Lecturer in English at Indrawas Kumari Memorial Intermediate College, Annapur, Allahabad, a recognized institution under the provisions of the U.P. Intermediate Education Act, 1921 vide appointment letter dated 27.10.1990. It seems that while the matter relating to grant of financial approval to the said appointment was pending before the DIOS, the Government imposed ban on adhoc appointments. Consequently, the petitioner was not paid salary although he started working in pursuance of the appointment. Aggrieved, he filed Writ Petition No.16990 of 1992. In the said writ petition, an interim order was passed on 13.5.1992, which is as follows:-

"List this petition on August 28, 1992.

Meanwhile the petitioner shall represent to District Inspector of Schools Allahabad within 15 days from now and the District Inspector of Schools shall decide the representation by a speaking and reasoned order and the decision so taken shall be communicated to the petitioner before the date fixed. The petitioner shall be at liberty to file a copy of the judgment of the High Court striking down the Government order imposing ban upon appointments. The DIOS shall examine the matter and take a decision in the matter in accordance with law. It is made clear that if the DIOS comes to a conclusion that the petitioner is duly appointed he would make it a point to ensure repayment of salary to the petitioner."

(b). In pursuance of the said order, the District Inspector of Schools examined the claim of the petitioner for approval to his appointment and for payment of salary. By order dated 27.8.1992, the District Inspector of Schools accorded financial approval to the appointment of petitioner. It is noteworthy that the short term vacancy on which the petitioner was appointed had occurred on account of promotion of one Bajrang Bahadur as Ad-hoc Principal in the institution. As he retired on 30.6.2003, therefore, the short term vacancy got converted into a substantive vacancy since 1.7.2003. It is also relevant to note that by U.P. Act No.1 of 1993,

Section 33-B was inserted in the U.P. Secondary Education Services Selection Board Act, 1982 (for short 'the Act') w.e.f. 7.8.1993 providing for regularization of certain appointments. The case of the petitioner is that thereunder he was entitled for regularization against the substantive vacancy caused due to retirement of Bajrang Bahadur Singh. He also made several representations but the same were not considered. On 30.01.2009, the writ petition was dismissed as infructuous, in absence of counsel for the petitioner. The said order was recalled on 30.06.2009. On the same date, 30.06.2009, the writ petition was disposed of, by the following order.

"Along with affidavit filed in support of Restoration Application, copy of order passed by D.I.O.S. Allahabad dated 27.08.92 has been annexed which was passed in pursuance of interim order dated 13.05.1992 passed in this writ petition. In the said order dated 27.08.92, by D.I.O.S. Allahabad, it has been mentioned that approval to the Ad-hoc appointment of the petitioner was being granted from the date of actual joining / appointment.

In view of the order dated 27.08.92 this writ petition has become infructuous, and is dismissed as such.

However, it is clarified that in case, the order dated 27.08.92 is otherwise in accordance with law then the same shall not be questioned or set aside, merely on the ground of dismissal of this writ petition as infructuous."

(c) It seems that salary of the petitioner was withheld since March, 2009 in view of the dismissal of the writ petition in default. According to the petitioner, he started getting salary again from December 2009. He made representation on 16.01.2010 for payment of salary for the period March 2009 to December 2009.

(d). It further appears that one Girish Shankar Dwivedi filed Writ Petition No.21300 of 2010 alleging that the respondent-institution has appointed certain persons illegally and they are being paid salary from the State Exchequer in an illegal manner. The said writ petition was disposed of vide order dated 23.4.2010 with direction to the District Inspector of Schools to examine the allegation in terms of Section 16-E(10) of the Act, 1921, after due opportunity of hearing to the concerned. In purported

compliance of the said direction, the District Inspector of Schools examined the validity of the appointment of the petitioner along with certain other teachers and he passed an order on 26.7.2011. In respect of the petitioner, it has been observed that by order dated 30.01.2009, the previous writ petition of the petitioner was dismissed as infructuous and consequently, the interim order passed therein stood vacated. Although, the said writ petition was restored on 30.06.2009 but the petitioner has failed to produce his educational certificates, therefore, it is not possible to take decision regarding validity of his appointment. Consequently, it would not be lawful to pay salary to him. Moreover, for his post, the vacancy had already been notified to the Commission. The petitioner feeling aggrieved thereby preferred Writ Petition No.59681 of 2011. The writ petition has been allowed by order dated 6.4.2015. The District Inspector of Schools was directed to decide the matter afresh. While remitting the matter back to the District Inspector of Schools, the Writ Court observed as under:-

"15. The appointment of the petitioner appears to have been made on a short-term vacancy and his appointment was approved by the DIOS on 27 August 1992. There is nothing on the record to indicate that the order of the approval of the petitioner dated 27 August 1992 has either been recalled or set aside by the competent authority.

16. Indisputably, the petitioner is working in the Institution and his writ petition was dismissed on 30 January 2009. The said writ petition was recalled on 30 June 2009. It appears that the observation made by this Court in its order dated 30 June 2009 has escaped the notice of the DIOS. Moreover, as noticed above, the petitioner has brought on the record his educational certificates.

17. In the facts and circumstances, noted above, in my view the order of the DIOS insofar it relates to the petitioner, is unsustainable for the reasons stated hereinabove. Accordingly, the order of the DIOS dated 26.7.2011, as it relates to the petitioner, is set aside. The matter is remitted to the DIOS to decide it expeditiously.

18. Till the decision is taken by the DIOS, the petitioner shall be allowed to continue and his current salary shall be paid."

(e). In compliance of the said order, the petitioner was permitted to join again on 17.4.2015. The District Inspector of Schools has thereafter

passed the order dated 19.8.2015 holding that the appointment of the petitioner was against a short term vacancy consequent to the promotion of Bajrang Bahadur. It is stated that he retired on 30.6.2003, and therefore, the vacancy got converted into a substantive vacancy from 1.7.2003. On happening of the aforesaid event, the short term appointment of the petitioner automatically came to end. It has further been held that the petitioner succeeded in receiving salary upto 26.7.2011 on basis of order of this Court, although his services had come to end on 1.7.2003. Further, as there is no provision for regularization of such appointment, therefore, he cannot be permitted to continue nor paid his salary. Even, salary paid from 01.07.2003 has been held to be recoverable. It has also been held that the petitioner has not worked from 26.07.2011, the date on which his predecessor passed adverse order against the petitioner till the date he was again permitted to work i.e., 17.04.2015, therefore, he would not be entitled to salary for the said period.

(f). The learned Single Judge has allowed the writ petition by impugned judgment dated 8.5.2025 and has held that the order according financial approval dated 27.8.1992 has never been set aside nor recalled, and therefore, it was not open to the respondents to go into the validity of the appointment of petitioner. It has also been observed that the issue as regards continuance of the petitioner after the vacancy got converted into a substantive vacancy is covered by judgment of Full Bench of this Court in **Jahaj Pal Vs. District Inspector of Schools and another**, reported in **2019 (3) ADJ 424**. The Full Bench has answered the question in favour of the petitioner. As the petitioner was working against the short term vacancy on the date, the Amending Act came into effect i.e. 7.8.1993 and consequently, he was entitled to regularization under the provisions of Section 33-B of the Act, 1921. The operative part of the order of learned Single Judge is as follows:-

"9. Considering the submissions of learned counsel for the

parties and perusal of record, as the other factual aspects are not in dispute initially when the payment was not made, the petitioner has approached this Court and based on the interim order passed by this Court on 13.05.1992 the salaries were released and subsequently on the proposals sent by the Management his appointment was approved vide order dated 27.08.1992. While disposing of the said writ petition this Court has categorically held that the order dated 27.08.1992 is otherwise, in accordance with law and should not be set aside. The fact remains so far the said orders were not interdicted by any authority. Further, when the payment of salaries for particular period was not accorded, the petitioner has approached this Court in Writ Petition No.59681 of 2011, this writ petition is also disposed of considering the entire facts and by taking note of continuous service of petitioner. Surprisingly, contrary to both the orders, now the respondent has rejected the claim of the petitioner once again on the ground that the petitioner was appointed on a short term vacancy and subsequent to transforming the said vacancy to regular vacancy he is not entitled for any relief.

10. Perusal of the observations made by this Court in larger bench in Special Appeal No.280 of 2013 (Jahaj Pal Vs. District Inspector of Schools and Another), this issue has been clarified that any appointment made to the short term vacancy, they are entitle to continue till 06.08.1993 and further clarified from 07.08.1993, they are entitle to protection under Section 33-B.

11. In view of the said circumstances, as the ground raised in the impugned order is contrary to the observations made in the above judgment and accordingly, is quashed. It is needless to mention that as observed by this Court in earlier judgments there is no liberty given to the authorities to go into validity of the appointment. Hence, the respondents ought to have released the salaries to the petitioner and also all the consequential retirement benefits within a period of two months from the date it is due.

12. Accordingly, the present writ petition is disposed of."

5. Sri Sudhanshu Srivastava, learned Additional Chief Standing Counsel appearing for the appellants does not dispute the legal position that in view of Full Bench Judgment in **Jahaj Pal** (supra) the short term vacancy against which the petitioner was working, on getting converted into a substantive vacancy, would not result in automatic cessation of the service of the petitioner and he was entitled to be considered for regularization as per the provisions of Section 33-B of the Act, 1921. The submission, however, is that the order of learned Single Judge insofar as it directs the appellants to pay all retiral benefits is not sustainable, as the petitioner is still required to be considered by selection committee as stipulated under sub-section (2) of Section 33-B of the Act, 1921 before

his services could be treated to be regularized. He further submits that there has been a disruption in service from 26.7.2011 upto 17.4.2015 and benefit of Section 33-B could only be extended to a teacher who has worked continuously.

6. Sri Govind Kumar Singh, learned Senior Counsel assisted by Sri Naveen Pandey, learned counsel appearing for the petitioner, on the other hand, submits that the absence of the petitioner during the said period was wholly attributable to the appellants and the then Committee of Management. He submits that the petitioner was prevented from working in the institution on basis of order dated 26.7.2011, until the said order was set aside on 6.4.2015 in Writ Petition No.59681 of 2011. Thus, the submission is that the appellants cannot claim benefit of absence of the petitioner during the said period. He, however, very fairly concedes that the service of the petitioner could be regularized only on basis of recommendations of the Selection Committee as per the procedure prescribed under Section 33-B of the Act.

7. Section 33-B of the Act is as follows:

"(1) Any teacher, other than the Principal or Headmaster, who--

(a) (i) was appointed by promotion or by direct recruitment in the lecturer grade or Trained Graduate grade on or before May 14, 1991 or in the Certificate of Teaching grade on or before May 13, 1989 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 and such vacancy was subsequently converted into a substantive vacancy, or

(ii) was appointed by direct recruitment on or after July 14, 1981 but not later than June 12, 1985 on ad hoc basis against a substantive vacancy in the Certificate of Teaching grade through advertisement and such appointment was approved by the Inspector, or

(iii) was appointed by promotion or by direct recruitment on or after July 31, 1988 but not later than May 14, 1991 on ad hoc basis against a substantive vacancy in accordance with section 18, as it stood before its substitution by the Uttar

Pradesh Secondary Education Services Commission and Selection Boards (Second Amendment) Act, 1992.

(b) possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the intermediate education act, 1921,

(c) has been continuously serving the Institution from the date of such appointment up to the date of the commencement of the Act referred to in sub-clause (iii) of clause (a),

(d) is not related to any member of the Management or the Principal or Head Master of the Institution concerned in the manner specified in the explanation to sub-section (3) of section 33-A;

(e) has been found suitable for appointment in a substantive capacity by a Selection Committee constituted under sub-section (2), shall be given substantive appointment by the Management.

(2) (a) For each region, there shall be a Selection Committee comprising--

(i) Regional Deputy Director of Education of that region, who shall be the Chairman,

(ii) One officer holding a Group 'A' post (specified as such by the State Government from time to time) in any department other than Education department, to be nominated by the State Government,

(iii) Regional Inspectors of Girls School of that region;

Provided that the Inspector of the district shall be co-opted as a member while considering the cases for regularization of that district.

(b) The Selection Committee constituted under clauses (a) shall consider the case of every such teacher and on being satisfied about his eligibility and suitability in view of the provisions of sub-section (1) shall, subject to the provisions of sub-section (3) recommend his name to the Management for appointment under sub-section (1) in a substantive vacancy.

(3)(a) The names of the teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment.

(b) If two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(4) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(5) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by

order specify.

(6) Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Act referred to in sub-clause(iii) of clause (a) of sub-section (1), such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act."

8. The Full Bench in **Jahaj Pal** (supra) has specifically considered the issue as regard fate of a teacher working against a short term vacancy consequent to its conversion into a substantive vacancy. Issues No. 1, 2 & 3 formulated by the Full Bench are as follows:

"5. Based on the above facts, learned Senior Counsel appearing for the petitioner has contended that on earlier occasion this Court has passed order dated 30.06.2009 with specific finding that in view of the order passed by the competent authority on 27.08.1992 i.e. the approval of the appointment of the petitioner, is otherwise in accordance with law and the same shall not be questioned or set aside. In the said circumstances, as once the Court has considered the approval order while disposing of the earlier writ petitions, the writ petition are restored owing to the validity or irregularity of the appointment which were made on 27.10.1990. Further, as the present rejection orders were passed by the DIOS in compliance of the order of this Court dated 06.04.2015, it is contrary to the law laid down by the larger bench of this Court in Special Appeal No.280 of 2013 (Jahaj Pal Vs. District Inspector of Schools and Another). In the said judgment the Court has formulated the following questions:-

"(a) Whether an ad hoc appointee, appointed against a short term vacancy, would automatically cease to be in employment upon conversion of the vacancy into a substantive vacancy?

(b) Whether the ad hoc appointee against a short term vacancy is entitled to continue to serve, even though the vacancy is converted into a substantive vacancy, until appointment of either an ad hoc teacher in accordance with the provisions of the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 or till appointment of a regularly selected teacher recommended by the Commission/ Board whichever is earlier?

(c) Whether the benefit of regularization as provided under Section 33-B of the UP Act No.5 of 1982 is available only where the short term vacancy gets converted into a substantive vacancy after the commencement of U.P. Act No.1 of 1993 i.e. 7.8.1993 and not before?"

9. The said questions were answered with the following observations:-

"A. Question (a) is answered in affirmative. We hold that

tenure of ad hoc appointed teachers against short-term vacancies, provided in Para 3 of Second Order, is mandatory and will continue to hold the field till 06.08.1993. On and after 07.08.1993, when Section 33-B was enacted and enforced, teachers who come within the ambit of Section 33-B and entitled to be considered for substantive appointment thereunder, their tenure would be governed by sub-section (5) and till such teachers are not considered by Selection Committee for substantive appointment, they will be entitled to continue even if any contingency, referred to in Para 3 of Second order, has arisen on and after 07.08.1993. In other words, Section 33-B wherever applicable, shall prevail over Para 3 of Second Order, but, in cases where Section 33-B is not applicable and ad hoc appointment is made against short term vacancies as per procedure prescribed in Second Order, in those cases only, even after 07.08.1993, tenure provided in Para 3 shall be applicable.

B. In view of the conclusion noted above and answer to question

(a), question (b) is answered in negative.

C. Question (c) is answered in affirmance.

D. Question (d) is answered as under:

(i) Decision in District Inspector of Schools, Kanpur Nagar and others vs. Diwakar Lal and others (supra) is overruled to the extent as stated in para 180 to 182 above.

(ii) Decision in Raj Kumar Verma and others vs. District Inspector of Schools, Saharanpur and others (supra) is overruled to the extent as stated in para 183-188 above.

(iii) Decision in Smt. Shashi Saxena and others vs. Deputy Director of Education and others (supra) is overruled to the extent as stated in para 189 above.

(iv) Decision in Raghuvendra Babu Misra vs. District Inspector of Schools, Etah and others (supra) is overruled to the extent as stated in para 190 above.

(v) Decision in Surendra Kumar Srivastava vs. State of U.P. and others (supra) is overruled to the extent as stated in para 191 to 199 above.

(vi) The Full Bench judgment in Smt. Pramila Mishra vs. Deputy Director of Education, Jhansi Division, Jhansi and others (supra) to the extent of observation made in para 16 of the said judgment, are clarified in the manner as stated in para 206 above.

E. We reiterate that so far as cases which are within the ambit of Section 33-B of Act, 1982, to that extent tenure of ad hoc teachers appointed against short term vacancies following procedure prescribed in Para 2 of Second Order shall be governed by sub-section (5) of Section 33-B. It shall prevail over otherwise inconsistent provision contained in Para 3 of Second Order. Further, for interregnum period such teachers so long as are not considered by Selection Committee constituted under sub-section (2) of Section 33-B, for that

period also such ad hoc teachers will continue and will not stand terminated by taking recourse to Para 3 of Second Order on and after 07.08.1993."

10. As noted above, the short vacancy against which the petitioner was appointed got converted into a substantive vacancy since 01.07.2003, i.e., after Section 33-B came into operation. Thereafter, the petitioner became entitled to continue till he is considered for regularization under Section 33-B, as held by Full Bench in **Jahaj Pal** (supra). The limited issue, which therefore arises before this Court, is with regard to the relief to which the petitioner would be entitled to. We find that despite there being order passed by the District Inspector of Schools on 27.8.1992 granting financial approval to the appointment of the petitioner and the petitioner continuously working in the institution and in the meantime, Section 33-B being inserted in the Act, 1921 entitling the petitioner to be considered for regularization, the respondents did not constitute the selection committee nor made him appear before the same. On the other hand, the District Inspector of Schools, by misreading the order of this Court dated 30.06.2009 by which the previous writ petition of the petitioner was disposed of, proceeded to pass a wholly illegal order dated 26.7.2011 and on the basis thereof prevented the petitioner from working in the institution. Even while passing the said order, the District Inspector of Schools has not recorded any adverse finding which may go to indicate that appointment of the petitioner was in any manner illegal. The said order was also set aside by this Court vide judgment and order dated 6.4.2015 in Writ Petition No.59681 of 2011.

11. Learned Single Judge has rightly taken notice of the fact that the order according financial approval to the appointment of the petitioner passed on 27.8.1992 has not been recalled or set aside, so far. In such circumstances, where the respondents have themselves prevented the petitioner from working during the period the order dated 26.7.2011 was under challenge, they cannot deprive the petitioner from salary for the said period, or his claim for regularization, under Section 33-B being

considered.

12. As parties are *ad idem* on the aspect that even after the order impugned in the writ petition is set aside, the case of the petitioner has to be considered by the selection committee to adjudge his eligibility and suitability, with reference to the date he became entitled for such a consideration, we ***dispose of*** the instant appeal by providing that the respondents would, within a period of six weeks from today, constitute a selection committee as stipulated under Section 33-B of the Act, 1921 and take appropriate decision in relation to the regularization of the services of the petitioner.

13. We once again clarify that the break in service from 26.7.2011 upto 17.4.2015 would not be treated to be disruption in service while considering the claim of the petitioner for regularization under Section 33-B of the Act, 1921.

14. Dependent upon the decision of the selection committee, the respondents would take appropriate decision with regard to entitlement of the petitioner to pension and other retiral benefits.

15. In all other respects, the order and judgment of learned Single Judge is upheld.

September 23, 2025

Anil

(Arun Kumar,J.) (Manoj Kumar Gupta,J.)