



2026:AHC-LKO:46-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 1065 of 2005

Roop Narain Dwivedi

.....Appellant(s)

Versus

State Of U.P.Through Prn.Secy.Madhyamik Shiksha And 3 Ors

.....Respondent(s)

Counsel for Appellant(s) : P.K.Khare, Har Govind Singh Parihar,
Meenakshi Singh Parihar, Prashant
Kumar Singh

Counsel for Respondent(s) : C.S.C.

Along with :

1. Special Appeal No. 1066 of 2005:

Sanjay Kumar Tripathi Inre W.p.no.742ss1994

Versus

State of U.p.through Prn.secy.madhyamik Shiksha and 3 Ors

2. Writ - A No. 740 of 1994:

Roop Narain Dwivedi

Versus

State of U.P.

3. Writ - A No. 742 of 1994:

Sanjay Kumar Tripathi

Versus

State of U.P.

Court No. - 1

HON'BLE RAJAN ROY, J.

HON'BLE ABDHESH KUMAR CHAUDHARY, J.

1. Heard Shri H.G.S. Parihar, learned Senior Advocate assisted by learned Counsel for the appellants and Shri Nishant Shukla, learned Additional Chief Standing Counsel for the State.

2. After hearing the parties and perusing the records ultimately what comes out is that while deciding the writ petition and dismissing it, the learned Single Judge on the one hand has observed that according to the petitioner, he was appointed by the management in accordance with the provisions of U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 (hereinafter referred to as 'Order,

1981') but immediately thereafter, it has been observed in the impugned judgment that -'It is not denied that it was a substantive vacancy which was fallen vacant on the retirement of Shri K.N. Mehrotra on 30.06.1993. The U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 provides the procedure only for filling up the short term vacancies caused by grant of leave or on account of suspension of a teacher. It is nowhere stated in the petition that the vacancy filled by giving appointment to the petitioner, was a short term vacancy caused by grant of leave or a suspension of a teacher. The aforesaid Removal Order also provides a procedure for giving appointment. It is not established that the procedure was followed. It is also established that the management had no right to make appointment on the substantive post against which the petitioner was given appointment.'

3. There can be no dispute that the provisions of Order, 1981 would not be applicable for filling up substantive vacancies. If the vacancy was a substantive one then at the relevant time when the advertisement was issued for filling it up i.e. on 14.11.1992, the unamended Section 18 of U.P. Act No.5 of 1982 was applicable under which even teachers could be appointed on ad-hoc basis, therefore, the observations of the Writ Court are incongruous. In fact, the Writ Court should have seen as to whether the vacancy was substantive, if so, whether the advertisement which was issued on 14.11.1992 was in accordance with the provisions of Section 18 of the U.P. Act No.5 of 1982 and the rules, if any, corresponding thereto and whether mere mention in the said advertisement that the appointment to be offered was short term would make any difference to the factual aspect, if ultimately it was found that the vacancy was substantive and there was a provision under Section 18 of the U.P. Act No.5 of 1982 for filling it up. Of course what was the mode and procedure for filling up such substantive vacancies under Section 18 of the U.P. Act No.5, 1982 at the relevant time when the advertisement was issued would also have to be seen by the Writ Court. In this very context, we may refer to paragraph No.3 of the counter affidavit filed by the State in Writ Petition No.740 (S/S) of 1994 (Roop Narain Dwivedi vs. State of U.P. and Others) wherein reference has been made to a Government Order dated

14.07.1992 to contend that the Committee of Management did not have authority to make regular appointment and that substantive appointment could not be made under Order, 1981. Of course, the Government Order dated 14.07.1992 has not been brought on record. Apart from it, it has also been stated that the number of lecturers working in the institution were more than the sanctioned strength or as per the norms prescribed for the said purpose. These aspects have also not been looked into by the Writ Court.

4. Similar is the situation with respect to the other appeal bearing Special Appeal No.1066 of 2005 (Sanjay Kumar Tripathi In re W.p.no.742ss1994 vs. State of U.p.through Prn.secy.madhyamik Shiksha and 3 Ors), the only difference being that in the said appeal the respondent was appointed as Assistant Teacher LT Grade whereas the appellant in Special Appeal No.1065 of 2005 was appointed as Lecturer (English).

5. Of course, it is the contention of the appellant's Counsel that subsequently some exercise was undertaken for considering regularization of both the appellants but the factual position is not very clear as to whether any decision was taken either regularizing them or rejecting their claim. At this stage, Shri Parihar, learned Senior Advocate appearing in the aforesaid appeals for the appellants says that in the connected appeal bearing Special Appeal No.1066 of 2005 there is communication of an order rejecting the claim for regularization which has been put to challenge by the said appellant by filing a separate writ petition.

6. Be that as it may, several issues which were relevant have not been considered appropriately by the learned Single Judge as already noticed hereinabove. First and foremost question which was to be considered by the learned Single Judge was as to whether the vacancy was substantive, if so, whether the Committee of Management had any authority to advertise the said vacancy for being filled up and the provision under which this could be done. If it had any such authority under any provision then whether the prerequisites for applying the said provision were adhered/satisfied or not and thereafter, a considered decision should have been taken considering all relevant pleas including the stand of the petitioner and respondent-State which has not been done. No doubt we

find that in the writ petition, the petitioner had himself asserted that the appointment was under Order, 1981 but this may be because of the condition mentioned in the advertisement itself. Now, Shri Parihar says that in fact such appointment is traceable to Section 18 of the U.P. Act No.5 of 1982 as it existed in the year 1992/1993. He has invited our attention to a letter of the D.I.O.S. dated 05.08.1998 by which he had requisitioned information from the Manager of the Institution regarding appointments made under Section 18 of U.P. Act No.5 of 1982. He has also invited our attention to a letter of the Deputy Director Education dated 12.12.1997 by which D.I.O.S., Kanpur Nagar has directed to pay salary to the appellants in compliance of the interim order of the Court dated 11.02.1994 but the same was not paid. All these aspects will have to be considered by the Writ Court afresh.

7. We are conscious of the fact that both the appellants have attained the age of superannuation but the appellant in Special Appeal No.1066 of 2005 has been allowed to continue till the end of the academic session i.e. 31.03.2026. The appellants are also staking claim to regularization, however, for considering such claim as also for considering their claim to salary from State Exchequer which was involved in the writ petitions out of which these appeals arise, first and foremost, the validity of the appointment is to be seen. Any such claim would be liable to be considered only if the initial appointment was valid.

8. For all these reasons, we set aside the impugned judgments in both the appeals, consequently, both writ petitions shall stand restored and shall be listed before the Writ Court on 02.02.2026.

9. At this stage, Shri Parihar says that the writ petitions may require some amendment so as to challenge an order dated 11.05.1994 which may have been passed on the representation of the appellants, therefore, it is left open for the appellants to seek such amendment as per law.

10. The appeals are **disposed of**, accordingly.

(Abdhesh Kumar Chaudhary,J.) (Rajan Roy,J.)

January 5, 2026

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