



2026:AHC:55730-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 35 of 2014

Smt. Pratima Chauhan and another

.....Appellant(s)

Versus

Dios and 2 Ors.

.....Respondent(s)

Counsel for Appellant(s)	: Adarsh Bhushan, Amit Kumar Srivastava, Anil Bhushan
Counsel for Respondent(s)	: C.S.C.

Court No. - 2

A.F.R.

**HON'BLE ATUL SREEDHARAN, J.
HON'BLE SIDDHARTH NANDAN, J.**

(Per : Hon'ble Siddharth Nandan J.)

1. Heard Sri Anil Bhushan, learned Senior Counsel assisted by Sri Shashank Mishra, Advocate and Sri Anshul Nigam, learned Standing Counsel for the State.
2. The present intra-court appeal has been filed against the judgment dated 09.12.2013 passed in Writ-A No. 47082 of 2000 (Smt. Pratima Chauhan vs. D.I.O.S. & others).
3. Learned Senior Counsel has contended that, in an earlier round of litigation, this Court, vide its judgment dated 02.02.1999 passed in Civil Misc. Writ Petition No. 21353 of 1997 (Smt. Pratima Chauhan & another vs. Regional Deputy Director of Education and others), allowed the said writ petition with a specific direction to the Joint Director of

Education, Agra, to accord approval to the ad hoc appointment of the petitioners and to pay salary from the date of joining till the regular selection against the short-term vacancy, or the date of confirmation, or till the post becomes a substantive vacancy, whichever is earlier.

4. The undisputed fact in the present petition is that the petitioners were selected for appointment against a short-term vacancy after the publication of an advertisement. However, no approval was accorded to the proposed selection for appointment, and consequently, the petitioners filed a writ petition, being Civil Misc. Writ Petition No. 12163 of 1996, against the refusal to approve their ad hoc appointments. Initially, an interim order was granted, and subsequently, the said writ petition was allowed by order dated 14.03.1997, with a direction to the respondent authorities to consider the case of the petitioners. However, upon reconsideration, vide order dated 02.06.1997, the representation of the petitioners were rejected, and consequently, Civil Misc. Writ Petition No. 21353 of 1997 was filed which was also allowed vide judgement dated 02.02.1999.

5. It is not disputed that the petitioners, who are two in number, had joined the Institution on 27.02.1996 and have been functioning there since then, taking regular classes. Eventually, vide judgment dated 02.02.1999, the learned Single Judge, while allowing the writ petition, considered the objection of the respondents regarding non-publication of the advertisement in two newspapers and held that publication in only one newspaper did not stand in the way of allowing the petitioners to continue in service on an ad hoc basis, subject to the conditions mentioned therein, as had been held by this Court in the case of **Chatur Singh and another vs. Regional Deputy Director of Education, Agra, decided on 03.12.1996 in Writ Petition No. 37497 of 1996**. Accordingly, granting the same relief as given in the case of **Chatur Singh (Supra)**, the petitioners were allowed to continue in the same capacity till a regularly selected candidate from the Commission becomes available for joining and subject to the aforesaid direction was issued to grant approval. The said judgment has attained finality.

6. However, though the petitioners were continuing in service, they were not paid salary w.e.f. 02.09.1999, and were again forced to approach this Court by filing a writ petition with the following prayer:

“i) issue a writ order or direction in the nature of mandamus directing the respondents to continue the petitioners on their respective posts as ad hoc Assistant Teacher L.T. Grade till regular appointment/ad hoc appointment under section 18 is made on the post held by the petitioners and to pay salary to the petitioners with effect from after 2.9.1999 and continue to pay salary to the petitioners regularly month to month.

ii) issue any other writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.”

7. However, the prayer made by the petitioners did not find favour with the learned Single Judge, and accordingly, Writ-C No. 47082 of 2000 was dismissed, and the interim order granted earlier also stood vacated, vide judgment dated 09.12.2013, against which the present intra-court appeal has been filed.

8. We have perused the judgment of the learned Single Judge and find that, at the said stage, the issue as to whether an ad hoc appointee, against a short-term vacancy, would automatically cease to be in employment upon conversion of the vacancy into a substantive vacancy, or whether such an ad hoc appointee is entitled to continue in service, even after the vacancy is so converted, until the 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 a regularly selected teacher recommended by the Commission, whichever is earlier, along with other issues, was pending consideration before a Larger Bench in the case of **Jahaj Pal vs. District Inspector of Schools and another, reported in 2019 (3) ADJ 424**. For ready reference, the issues referred to the Full Bench are reproduced below:

“(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?

(d) Whether the Full Bench decision in the case of Smt. Pramila Mishra (supra) lays down correct law as it fails to consider the legislative intent reflected by the insertion of Section 33-B in UP Act No.5 of 1982?"

9. It is the contention of the learned Senior Counsel that, once the Full Bench in the case of **Jahaj Pal (supra)** was pending consideration, propriety demanded that the writ petition ought to have been made subject to the outcome of the aforesaid Full Bench. However, the Full Bench in **Jahaj Pal (supra)** was decided on 21.02.2019, answering the reference in the affirmative, and held that the tenure of ad hoc teachers appointed against short-term vacancies, as provided in paragraph 3 of the Second Order, is mandatory and continued to hold the field till 06.08.1993. On and after 07.08.1993, when Section 33-B was enacted, the tenure of such teachers who fall within the ambit of Section 33-B and are entitled to be considered for substantive appointment would be governed by sub-section (5), and until such teachers are considered by the Selection Committee for substantive appointment, they would be entitled to continue, even if any contingency referred to in paragraph 3 of the Second Order arises on or after 07.08.1993. For ready reference, paragraph 209 answering the reference is reproduced below:

209. In view of above discussion, we answer questions referred to this Bench as under:-

:

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. Learned Senior Counsel in view of the now settled position and the fact that the petitioners have retired, has submitted that, admittedly, the appointment of the petitioners was made on 26.02.1996, and they have continued to discharge their duties till attaining the age of superannuation. He has relied upon Section 33-G, which was inserted by U.P. Act No. 7 of 2016, published in the U.P. Gazette (Extraordinary), Part-1, dated 22.03.2016, to contend that the petitioners are to be considered for regularization from the date of their appointment in the Trained Graduate Grade being appointed after 07.08.1993 against a short-term vacancy, in accordance with paragraph 2 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, if they are found eligible for such regularization.

For ready reference, Section 33-G of the Act, 1982 is reproduced hereinbelow:-

"33-G. (1) Any teacher, other than the Principal or the Headmaster, who-
(a) was appointed by promotion or by direct recruitment in the lecturer's grade or trained graduate grade on or after August 7, 1993, but not later than January 25, 1999 against a short term vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, as amended from time to time, and such vacancy was subsequently converted into a substantive vacancy;
(b) was appointed by promotion or by direct recruitment on or after August 7, 1993, but not later than December 30, 2000 on adhoc basis against substantive vacancy in accordance with section 18, in the Lecturer grade or Trained Graduate grade;
(c) possesses the qualifications prescribed under, or is exempted from such qualification in accordance with, the provisions of the Intermediate Education Act, 1921;
(d) has been continuously serving the institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2016;
(e) has been found suitable for appointment in a substantive capacity by the Selection Committee referred to in clause (a) of sub-section (2) of section 33-C in accordance with the procedure prescribed under clause (b) of the said sub-section.
Shall be given substantive appointments by the Management.
(2) (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.
(3) 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.
(4) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under the said sub-section shall cease to hold the appointment on such date as the State Government may by order specify.
(5) Nothing in this section shall be construed to entitle any teacher to substantive appointment if on the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2016 such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.
(6) The services of the adhoc teachers and the teachers who have been appointed against short term vacancies shall be regularized from the date of commencement of the Uttar Pradesh Secondary Services Selection Board (Amendment) Act, 2016.
(7) Reservation Rules shall be followed in regularization of adhoc teachers and teachers who are appointed against short term vacancies.
(8) Adhoc teachers, who have not been appointed either in accordance with the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 or in accordance with section 18 of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 and are otherwise getting salary only on the basis of Interim/Final orders of the court shall not be entitled for regularization." (emphasis added)

11. At this juncture, the learned Standing Counsel has submitted that the prayer of the petitioners in the writ petition was confined to their continuance on their respective posts as ad hoc Assistant Teachers in L.T. Grade till a regular appointment or an ad hoc appointment under Section 18 is made, and for payment of salary to the petitioners w.e.f. 02.09.1999, with a direction to continue to pay the same on a month-to-month basis. Accordingly, the cause of action, if any, available to the petitioners has come to an end on account of their retirement. The date of retirement of Smt. Pratima Chauhan is 31.03.2020, and that of Smt. Raj Kumari Sharma is 31.03.2022.

12. Per contra, the learned Senior Counsel has submitted that, admittedly, the petitioners have attained the age of superannuation; however, after the judgment in the case of **Jahaj Pal (supra)**, they had a right to be considered for regularization under Section 33-G of the Act, 1982. On account of the pendency of the aforesaid Special Appeal, they could not assert this right. In order to place the parties in an equitable position, and in view of the second prayer made in the prayer clause of the writ petition, the Court may consider directing the respondent authorities to consider their regularization under Section 33-G of the Act, 1982.

13. The Court is conscious of the fact that, in the intra-court appeal, consideration has to be confined to the judgment of the learned Single Judge; however, on perusal of the judgment and order dated 09.12.2013, we find that the Court was aware that the Full Bench judgment in **Jahaj Pal (supra)** has been constituted and is ceased with issues that would have a material bearing on the rights of the petitioners; and failing to consider this legal position has caused material prejudice to the petitioners and accordingly, we find that the judgment of the learned Single Judge cannot be sustained.

14. We now proceed to examine the objection raised by the learned Standing Counsel, to the effect that, since no relief was prayed for in the

prayer clause of the writ petition, the petition has, for all practical purposes, become infructuous.

15. Sri Anil Bhushan, learned Senior Counsel for the petitioner has contended that in intra-court appeal the jurisdiction which is conferred either under the Letter Patent Appeal or under the relevant statutory provisions, both the Single Bench and Division Bench, exercises the same jurisdiction under Article 226 of the Constitution of India and the exercise of intra-court appellate jurisdiction, is warranted when a judgment and order under challenge is demonstrably erroneous or suffers from perversity. It is the internal working of the High Court which splits it into two different “ Benches” and yet the Court remains one.

16. In the case of **Baddula Lakshmaiah Vs. Sri Anjanaya Swami Temple reported in 1996 (3) SCC 52**, the Apex Court had held that a Letter Patent Appeal, is a normally an intra-court appeal where under the Letter Patent Bench, sitting as a court of correction, corrects its own orders in exercise of the same jurisdiction as vested in the Single Bench. He has also relied upon the judgment in the case **Rama Sonekar Vs. M.P. State Public Service Commission 2018 (17) SCC 106** to contend that the learned Single Judge as well as the Division Bench exercises the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court and it does not mean that the Single Judge is subordinate to the Division Bench.

17. Being a writ proceeding, the Division Bench is called upon, in the intra-court appeal, primarily and mostly to consider the correctness or otherwise of the view taken by the learned Single Judge; and in view of the aforesaid, the Apex Court in case of **Rama Sonekar (Supra)** has clearly held that the Division Bench hearing the intra-court appeal has to consider the appeal on merits, by deciding the correctness of the judgment of learned Single Judge, instead of remitting the matter back to the learned Single Judge.

18. Per contra the learned Standing Counsel relying upon the decision in **A.A.I. Vs. Pradeep Kumar Banerji (2025 (4) SCC 111)** and **Management of Narendra & Company Private Limited v. The Workmen of Narendra & Company (2016) 3 SCC 340** and **Bihar Industrial Area Development Authority & Ors. Vs. M/S Scope Sales Pvt. Ltd. 2026 SCC OnLine SC 112** has contended that in an intra-court appeal, the Appellate court must refrain itself; and the interference into the judgment passed by the learned Single Judge is permissible only if the judgment of the learned Single Judge is perverted or suffers from an error apparent in law.

19. Now applying the aforesaid settled legal position, we find that the learned Single Judge while considering the prayer to continue the Petitioner on their respective post, as Ad hoc Assistant Teacher LT Grade, till regular appointments/ad hoc appointments under Section 18 is made and also for the payment of the salary, was confronted with the facts that the petitioner's appointment was in jeopardy on account of the impugned orders which were based on the reasoning that since the ad hoc post on which the petitioners were working has now been converted into a substantive vacancy.

20. Learned Single Judge also referred to the reference to the Larger Bench in the case **Jahaj Pal (Supra)**, which was ceased with the very same issue.

21. The right of the Petitioners to be regularized under Section 33-G of the Act was also crystallized subsequently by way of its insertion by U.P. Act No. 7 of 2016

22. In view of the aforesaid, Sri Anil Bhushan, learned Senior Counsel submitted that since the present appeal remained pending and during its pendency, the petitioners have retired, the relief for consideration for regularization, which was otherwise not available at the time of filing of the aforesaid writ petition, could not be agitated by the petitioners and the said cause of action could have only arisen subsequent to the decision of the present appeal.

23. The aforesaid arguments, at the first instance though seems to be very attractive but having considered the scope of jurisdiction that is vested in this Court, as a continuation of the proceedings under Article 226 of the Constitution of India, we find that as an ad hoc employee having retired during the pendency of the aforesaid appeal, the petitioners could have either amended the relief or by filing a fresh writ petition could have agitated the aforesaid claim.

24. It is trite that even if some defect is found in the decision making process, the Court must only exercise its discretionary power under Article 226 of the Constitution of India, only in furtherance of a public interest and not merely on making out the legal point. The Court should always keep the public interest in mind in order to decide whether its intervention is called for or not, as has been held in the case of **AIR India Ltd. Vs. Cochin International Air Port Ltd.** (2000 (2) SCC 617) and as noted with affirmation in the case of **M/S Master Marine Services Pvt. Ltd vs Metcalfe & Hodgkinson Pvt. Ltd. & Anr** (2005 (6) SCC 138).

25. Today at a belated stage, this Court finds that on one side the petitioners have retired and there is no prayer for seeking a direction to regularize the petitioners under the statutory right which has been inserted by the U.P. Act No.7 of 2016 i.e. Section 33-G of the Act; and on the other side the non-consideration being given by the learned Single Judge, on the issue which was pending at the said point of time in the case of **Jahaj Pal (Supra)** and which ultimately crystallized in favour of the petitioners.

26. In view of the aforesaid facts, though we find that the judgment of the learned Single Judge cannot be sustained in the eyes of law. However, we refrain ourselves from issuing any directions for the regularization of the petitioner under Section 33-G of the Act, 1982; but we keep it open for the petitioners to move an appropriate applications before the authorities, for consideration of their claim under Section 33-G of the Act 1982.

27. In view of above, we set aside the judgment of the learned Single Judge dated 09.12.2013 and the present intra-court appeal is disposed of with request to the respondent authorities to consider the petitioners' claim under Section 33-G of the Act, 1982 in accordance with law and the observations made herein above.

28. The present appeal stands allowed.

(Siddharth Nandan,J.) (Atul Sreedharan,J.)

March 18, 2026

piyush