

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No. 8662/2018

[Arising out of impugned final judgment and order dated 08-12-2017 in SPLA No. 1102/2011 passed by the High Court of Judicature at Allahabad]

RAJEEV KUMAR

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(IA No. 48085/2018 - EXEMPTION FROM FILING O.T.)

Date : 04-11-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE VIJAY BISHNOI

For Petitioner(s) :

Mr. Raman Yadav, Adv.
Mr. Syed Mehdi Imam, AOR
Mr. Ansh Yadav, Adv.
Ms. Ritika Yadav, Adv.
Mr. Harshit Potangi, Adv.

For Respondent(s) :

Mr. S. R. Singh, Sr. Adv.
Ms. Sakshi Kakkar, AOR
Ms. Anusha Rathore, Adv.
Mr. Gaurav, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1) The brief facts involved in the instant petition are that the petitioner was appointed temporarily on 06.08.1997 to the post of Demonstrator (Physics) on short-term basis, subject to approval and confirmation of District Inspector of School, Mainpuri. The said

approval was not issued within time as contemplated in clause 2(3) (iii) of 'U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, Order' (in short '**1981 Order**'). However, on lapse of time as contemplated, the approval was deemed to have been granted.

2) It is to be noted that, prior to 1981, the selections of teachers, headmasters and principals in non-government secondary schools were made in accordance with 'Intermediate Education Act, 1921'. Upon there being complaints about irregularities in selection, the State enacted 'Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (Uttar Pradesh Act No. 5 of 1982)' (in short '**1982 order**'), providing for Secondary Education Services Commission and Selection Boards for selection of teachers and principals. Since, immediately on establishment they were not functional, therefore, certain removal of difficulties Orders were issued by the State in exercise of powers under section 33 of the 1982 order for making short term and *ad-hoc* appointments to fill up the vacancies.

3) On Commission becoming functional, it was noted that the removal of difficulties Orders lost their relevance and to obviate the misuse of removal of difficulties Orders, the 1982 order was decided to be amended to rescind those removal of difficulties Orders. To effectuate the said decision, the State through Hon'ble Governor *vide* notification dated 25.01.1999 promulgated the 'Uttar Pradesh Secondary Education Services Selection Board (Amendment)

Ordinance, 1999 (U.P. Ordinance No. 5 of 1999)' (for brevity '**1999 Ordinance**') and rescinded those orders. On account of 1999 Ordinance, the District Inspector of School Inspector referring the same observed that the appointment of the petitioner was made under the removal of difficulties Order which stood rescinded, therefore, his appointment as Demonstrator (Physics) for short-term on temporary basis has not been approved.

4) Learned counsel for the petitioner submits that after making appointment, when the removal of difficulties Order was in force, merely on account of rescinding those Orders, services of the petitioner cannot be dispensed with for want of grant of approval. Such an act would amount to retrospective operation of the ordinance, and it would seriously prejudice the appointment which has already taken place.

5) Learned counsel representing the State submits that the appointment was *ad-hoc* and temporary because even after constitution of the Selection Board, it was not functional, therefore such appointment cannot be treated as permanent and regular. Therefore, to extend permanent benefits, due procedure as prescribed has to be followed.

6) Since, the appointment which was *ad hoc* / temporary under the removal of difficulties Order, which stood rescinded after the 1999 Ordinance, no right accrued to the petitioner to continue in employment without his selection following the due procedure as

contemplated seeking appointment on regular basis.

7) After hearing learned counsel for the parties at length, we find much substance in the argument as advanced by the learned counsel for the State. In our view, if under the guise of removal of difficulties Order, some appointment has been made in the nature of *ad-hoc* or temporary basis, it cannot partake the character of regular appointment. In such a situation, on account of bringing the Ordinance rescinding those removal of difficulties Orders, the question of retrospectivity or prospectivity is not germane. It is a matter of employment of a person on a substantive vacancy without following the procedure as prescribed. As such, the appointment, if any, made on *ad hoc* / temporary basis, not approved, would not give any right to claim regular appointment.

8) In this view of the matter, we are not inclined to interfere with the order impugned passed by the High Court. Accordingly, the special leave petition is dismissed.

9) We make it clear that the dismissal of this special leave petition would not have any adverse impact on the future prospects of the petitioner, if he applies for any further regular employment.

10) Pending application(s), if any, shall stand disposed of.

(NIDHI AHUJA)
AR-cum-PS

(NAND KISHOR)
ASSISTANT REGISTRAR