

## Virendra Kumar Singh Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Jan. 9, 2008

**Citation:** (2008) 1 AWC 795

**Hon'ble Judges:** Tarun Agarwala, J

**Bench:** Single Bench

**Final Decision:** Allowed

### Judgement

Tarun Agarwala, J.

Heard Sri R.K. Ojha, the learned Counsel for the petitioner and Sri Ashok Khare, the learned senior counsel

appearing for respondent No. 5. Since no factual controversy is involved in the present writ petition, the same is being disposed of at the admission

stage itself without calling for a counter affidavit.

2. The respondent No. 5 was appointed as an adhoc Principal in the institution managed by respondent No. 4. The said respondent reached the

age of superannuation and the Committee of Management resolved to appoint the petitioner as an ad-hoc Principal. The committee of management

forwarded the papers to the District Inspector of Schools for, approval. The District Inspector of Schools by the impugned order directed the

Committee of Management to permit respondent No. 5 to continue as an ad-hoc Principal till the end of the academic session, i.e., till 30.6.2008.

The petitioner, being the senior most teacher and being entitled to be appointed as an ad-hoc Principal has filed the present writ petition.

3. The learned Counsel for the petitioner submitted that the controversy involved in the present writ petition is squarely covered by two Division

Bench judgments, namely, in the case of Raja Ram Chaudhary Vs. Satya Narain Gupta and Others, and in the matter of Hari Om Tatsat Brahma

Shukla v. State of U.P. and Ors. 2007 (1) UPLBEC 479 wherein it has been held that a teacher continuing till the end of the academic session is

not entitled to continue as an ad-hoc Principal after attaining the age of superannuation. The benefit of continuing to avail the benefit of the

academic session after attaining the age of superannuation is not applicable for the appointment on the post of ad-hoc Principal. On the other hand,

the learned Counsel for the respondent No. 5 made a feeble attempt to distinguish the aforesaid judgments contending that the said judgments

pertain to the post of Principal in the Degree College, in which the Rules and Regulations were different from that of the post of Principal in an

Intermediate college.

4. In my opinion, the submission made by the learned Counsel for the opposite party is bereft of merit. Regulation 21 of Chapter III of the

Regulations framed under the Intermediate Education Act, 1921 relates to the extension of service which reads as under:

21. Superannuation age of Principal, Headmaster, Teacher and other employees would be 60 years. If above said superannuation age of any

Principal, Headmaster and Teacher falls on any date in between 2nd July and 30th June, except in the condition when he himself, before two

months of the date of superannuation, furnishes in writing the information for not seeking extension of service, extension of service upto 30th June

shall be deemed to be conferred on him so that after summer vacation, substitute can be arranged in the month of July. In addition to this, extension

of service could be granted only in such special cases which may be decided by the State Government.

If date of superannuation of any clerk or fourth class employee falls in the middle of any month, his extension of service would be deemed to be

given up to the last date of that month. But if the date of appointment of any employee falls on the first date of any month, he shall be retired on the

last date of the preceding month.

5. The said provision has been interpreted in the case of Hari Om Tatsat Brahma Shukla (supra), in which the Court held-

We have considered the submissions and perused the record. In so far as the proposition that when a teacher is continuing till the end of academic

session after attaining the age of superannuation he is not entitled for any appointment on a post other than his substantive is well settled. After

attaining the age of superannuation neither higher post can be conferred nor an incumbent can claim promotion on a higher post. The proposition

will both apply for appointment on substantive basis or appointment on ad hoc basis. The ad hoc appointment u/s 18 of the U.P. Act No. 5 of

1982 is the appointment as a Principal on a higher post in a different grade. During the period a person is continuing to avail the benefit of

academic session after attaining the age of superannuation he is not entitled for appointment even on ad hoc basis. The said proposition finds full

support for Division Bench judgments reported in 2000 (1) E.S.C. 645 Committee of Management, Jagdish Saran Rajvansi Kanya Inter College

and Anr. v. Joint Director of Education; 2003 (2) E.S.C. 956 Raja Ram Chaudhary v. Satya Narain Gupta and Ors. and Division Bench judgment

of R.C. Gupta (Dr.) v. State of U.P. and Ors. (2002)1 UPLBEC 767.

Similarly in the case of Raja Ram Chaudhary (supra), the Court held-

The contention is totally misconceived. The purpose of extension till the end of the academic session after attaining the age of superannuation is

only to secure the benefit in favour of the students and the institution as clarified by this Court in the aforesaid two decisions.

The fact that the appellant has already attained the age of superannuation is not in dispute. Further, the fact that question of seniority has not yet

been determined and on account of the appellant having attained the age of superannuation, it has lost all its significance is also not disputed. These

additional factors also do not justify an interference in the discretion exercised by the learned single judge.

6. The ratio of the decision of the aforesaid two judgments is squarely applicable to the present facts and circumstances of the case.

In view of the aforesaid the impugned order cannot be sustained and is quashed. The writ petition is allowed. The District Inspector of Schools is

directed to pass consequential orders on the resolution sent by the committee of management within two weeks from the date of presentation of a

certified copy of the order.