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**(2012) 01 AHC CK 0752**

**Allahabad High Court**

**Case No:** Special Appeal No. - 1278 of 2011

Shiv Ram

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

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**Date of Decision:** Jan. 13, 2012

**Hon'ble Judges:** Yatindra Singh, J; Ram Surat Ram (Maurya), J

**Bench:** Division Bench

**Advocate:** Siddharth Khare and Ashok Khare, for the Appellant; Sailesh Pandey, for the Respondent

**Final Decision:** Disposed Of

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### **Judgement**

1. Shiv Ram (the Appellant) is a class IV employee in Chitragupta Inter College, Moradabad (the College). There are three class III posts in the College. Out of these three posts one post is of Head clerk and two posts are of Assistant Clerks. The one post of Assistant Clerk fell vacant on 28.2.2011 due to retirement of Amod Bhatnagar. The Appellant filed several representation that he should be promoted on the vacant post. However, when no order was passed on the same, he filed writ petition No. 13666 of 2011.

2. The aforesaid writ petition was disposed of on 8.3.2011 with the liberty to file representation before District Inspector of schools, Moradabad (The DIOS).

3. The representation of the Appellant was rejected by order dated 23.4.2011 by the DIOS. The Appellant filed the writ petition no. 28671 of 2011. It was dismissed on 19.5.2011. Hence, the present special appeal.

4. We have heard the counsel for the parties. With the consent of the counsel for the parties. The special appeal is being disposed of at this stage.

5. The following facts are admitted to the counsel for the parties:

There are three Class III posts (one of Head clerk and two of Assistant clerk), out of which two are to be filled by promotion;

One post of Assistant clerk was filled by promotion and the other post of Assistant clerk has become vacant and the question is should it be filled by promotion or direct appointment;

The question how the second post of Assistant clerk should be filled depends on the fact whether the post of Head clerk was filled by promotion or by direct appointment;

6. There is dispute between the parties how the post of Head clerk was filled. According to the Appellant it was filled by direct appointment; whereas, the management of the College claims that it was filled by promotion. Nevertheless, there is no finding in the order of the DIOS dated 23.4.2011 regarding appointment of Sri Suresh Chandra Saxena (Head clerk) as to whether he was appointed by promotion or by direct recruitment. The Single Judge, without any basis, has assumed that the post of "Head Clerk" was filled by promotion;

7. In view of above, the orders of Single Judge dated 19.5.2011 and the DIOS dated 23.4.2011 are set aside. The DIOS is directed to decide the representation of the appellant again. While deciding the question he will record a finding on the point, Whether the post of Head clerk was filled by promotion or by direct appointment.

8. The DIOS will pass a fresh order in accordance with law at an early date, if possible within a period of three months from the date of receipt of certified copy of this order. The Appellant along with a certified copy of this order will also file other necessary documents and a duly stamped self-addressed envelope. The DIOS after taking the decision will inform the Appellant.

9. Needless to say that District Inspector of Schools, Moradabad before passing any order will also give an opportunity to the Committee of Management of the College and Sri Pankaj Kumar Sharma who is said to be appointed during the pendency of this Special appeal. With the aforesaid observation, the Special Appeal is disposed of.