

(2003) 04 AHC CK 0244

Allahabad High Court

Case No: Special Appeal No. 117 of 2003

Rajesh Kumar Upadhyay

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** April 9, 2003**Citation:** (2003) 2 UPLBEC 1884**Hon'ble Judges:** Tarun Chatterjee, C.J; Vineet Saran, J**Bench:** Division Bench**Advocate:** Anil Bhushan, for the Appellant; Ranvijai Singh, S.C., for the Respondent**Final Decision:** Dismissed

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### Judgement

Tarun Chatterjee, C.J. and Vineet Saran, J.

In our view, this appeal has no merit as it is concluded by a decision of the Full Bench of this Court in the case of [Gopal Dubey Vs. District Inspector of Schools, Maharajgani and another](#),

2. The writ-petitioner was appointed by a Committee of Management to take Intermediate Classes in English. It is true, that the writ petitioner-appellant has been working and functioning as an English Teacher since then. It is admitted position even today that without taking prior approval u/s 9 of U.P. Act No. 24 of 1971 from the Director the writ petitioner-appellant was appointed to the English classes in the aforesaid College. The writ petitioner-appellant had moved the writ application praying for payment of salary since 1985.

3. In view of Section 9 of U.P. Act No. 24 of 1971, we are unable to accede to the claim made by the writ petitioner-appellant as no prior approval of the Director for creation of post to teach English classes was taken by the Committee of Management.

4. In the Full Bench decision in the case of the Gopal Dubey (supra) it has been clearly held that Section 9 of the Salaries Act, provides that no institution shall create a new post of Teacher or other employee except with the previous approval of the

Director, or such other officer as may be empowered in that behalf by the Director. In the present case, as noted above no such approval or sanction was taken from the Director or from anyone authorised by the Director to grant such approval.

5. Sri Anil Bhushan, learned Counsel appearing for the appellant relied upon a decision of the Supreme Court in the case of [The Chandigarh Administration and Others Vs. Mrs. Rajni Vali and Others,](#)

6. In our view, this decision of the Supreme Court is distinguishable in the facts of this case. In the present case, Section 9 clearly provides that no payment of salary or creation of post could be made without the approval of the Director or any person nominated by him. In that decision the Supreme Court was considering the approval in respect of certain Teachers in the State of Punjab and Chandigarh in which similar position like Section 9 was not incorporated. That being the position there is no merit in this appeal and is, thus, dismissed. There shall be no order as to cost.

7. However, we are being informed that prayer for approval from the side of the Committee of Management has been made in the year 1985 which has not yet been considered by the concerned authority. In the event the prayer has not yet been considered, it will be open for the authorities to consider the prayer in accordance with law.