

Ram Shanker Verma Vs State of U.P. and Others

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: May 30, 2013

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (2013) 6 ADJ 54

Hon'ble Judges: Devi Prasad Singh, J; Abdul Mateen, J

Bench: Division Bench

Advocate: Ram Niwas Sharma and Anil Kumar Tiwari, for the Appellant;

Final Decision: Dismissed

Judgement

Devi Prasad Singh, J.

Instant writ petition under Article 226 of the Constitution of India, relates to an order whereby, the State

Government has terminated the petitioner"s engagement on contract basis for the period of three years (after attaining the age of superannuation)

on the ground that on the date when the petitioner was engaged, there was only one sanctioned post of Professor occupied by other incumbent.

The question cropped up in the present writ petition is, as to whether a person holding the rank of Professor under the Personal Promotion

Scheme, can equate his service with the regularly appointed persons in the cadre of Professor and in consequence thereof, can claim for

appointment on the post of Professor on contract basis in terms of Government order? The petitioner was substantively appointed as Lecturer in

the year 1978 in the Department of Pharmacy in GSVM Medical College, Kanpur and later on, his services were transferred to LLRM Medical

College, Meerut (in short the Medical College). The Medical College, Meerut is one of the six Government Medical Colleges, controlled and

managed by the State Government of U.P. and the employees are the Government employees. The Governor of the State is the appointing

authority of the teachers of the State Medical Colleges. The Medical College, Meerut is a constituent college of the Meerut University.

2. The petitioner attained the age of superannuation on 31.7.2011. At the time of retirement, he was availing the benefit of Personal Promotion

Scheme in pursuance of the Service Rules of the post of Professor. The Personal Promotion under the Rule was granted by the Office

Memorandum dated 14.8.2010, (Annexure 8 to the writ petition). The service conditions of the teachers of the Medical College (supra), is

governed by the U.P. State Medical Colleges Teachers Service Rules, 1990 (in short, the Rules). At the eve of retirement, in pursuance of the

recommendation of the Principal of the Medical College, Meerut dated 20.4.2011 (Annexure 10 to the writ petition), followed by

recommendation of the director, Medical and Health Education, dated 5.10.2010, the petitioner was appointed on contract basis for the period of

three years as Professor by Office Memorandum dated 31.12.2010 (Annexure 9 to the writ petition).

3. From the pleading on record of the writ petition, it appears that the Principal of the Meerut College, while sending recommendation, dated

20.4.2011, disclosed that in the Medical College, Meerut, there is only one post of unfilled vacancy of teacher and after petitioner's retirement one

more vacancy of teacher shall be available. Hence to meet out the exigency of services, the petitioner may be appointed on contract basis for the

period of three years. The Government issued appointment order in pursuance of the Government order dated 30.7.2008 which provides that a

retired teacher may be appointed against sanctioned strength on contract basis for specified period on fixed salary. In the present case, petitioner's

salary in accordance with the Government order dated 30.7.2008 (Annexure 6 to the writ petition), was fixed at Rs. 70,000/- per month, as

amended by Government order dated 7.6.2010 (Annexure 7 to the writ petition).

4. One startling fact has been brought on record by the petitioner's counsel is that in the Government medical Colleges in the State of U.P., a large

number of teachers have been appointed on contract basis for specified period against regular vacancies. According to Government orders

(supra), the appointment on contract basis, can be done of the teachers/Professors who attained the age of superannuation and retired or resigned.

The relevant material has been brought on record in paras 18 and 19 of the writ petition, which seem to have not been disputed. The number of the

contractual appointments in-different Government Medical Colleges seems to be in hundreds. In pursuance of appointment letter (supra), the

petitioner resumed duty and started to discharge his obligation. In Medical College, Meerut, there is only one sanctioned post of Professor which

has not been filled up since no regular selected joined. A reference has been made to Uttar Pradesh Public Service Commission, for selection and

the outcome is awaited.

5. One Dr. S.K. Bhatia was also Professor in the Medical College, Meerut in the Department of Pharmacology, who attained the age of

superannuation on 30.9.2010. Thereafter, he was appointed in accordance with the Government orders on contract basis for a period of three

years on the post of Professor.

6. It appears that when another Principal resumed duty in the Medical College, Meerut, he informed by letter dated 29.9.2010 to the Director,

Medical and Health Education of the fact that since there is only one sanctioned post of the Professor against which Dr. S.K. Bhatia was

appointed on contract basis for a period of three years, the appointment of the petitioner was not only violative of Government order but he cannot

be paid salary under the contractual obligation. There are only 8 sanctioned posts in the Pharmacy Department after retirement of Dr. S.K. Bhatia

and the petitioner and 6 teachers are working but so far as the post of Professor is concerned, out of 8, there is only one sanctioned post hence

two persons cannot be appointed on the post of Professor in accordance with the Government order. The Principal opined that resumption of duty

in pursuance of the appointment letter (supra) on 1.8.2011, seems to be not sustainable.

7. After receipt of subsequent recommendation of the Principal by the impugned Office Memorandum dated 23.7.2012, the petitioner's services

have been dispensed with on the ground that petitioner's appointment was against Rules as well as the Government order and he cannot be paid

salary since there is only one sanctioned post of Professor.

8. While assailing the impugned order, Sri Anil Tiwari, learned Senior Counsel, assisted by Sri R.N. Sharma, submitted that service rules does not

provide cadre wise sanctioned post i.e., Lecturer, Assistant Professor, Associate Professor or Professor in the State Medical Colleges (supra),

including the Medical College, Meerut. It is also submitted that the Treasury has never objected with regard to payment of salary. Rather, an

affidavit was filed by the Treasury Officer in the case at Allahabad that he has not objected with regard to payment of salary. He submits that new

Principal took a decision maliciously to dispense with the petitioner's services without adhering to Service Rules and the Government orders in

question. He further submits that the petitioner and Dr. S.K. Bhatia both, were Professors and granted the rank of Professor under Personal

Promotion Scheme and after attaining the age of superannuation in identical situation, both were appointed in terms of Government order hence, no

objection could have been raised at later stage. It is submitted that petitioner stands at equal footing and at par with Dr. S.K. Bhatia.

9. Learned Senior Counsel invited attention to the Government orders issued from time to time and Service Rules to impress that after retirement

of persons holding the post of higher cadre like Associate Professor, Professor, vacancy falls down to the post of Teacher or Lecturer. He further

submits that under Service Rules, the Lecturer i.e., feeder cadre, the Associate Professor, Associate Professor and Professor constitute two

categories namely, category "A" to which the petitioner belong and the category "B" which contains only one post of Professor. The Principal of

the Medical College falls within the category "C". He submits that after amending Service Rules, department wise sanction of each cadre strength

namely, Assistant Professor, Associate Professor and Professor under old rules had been abolished. The proviso (1) to Rule 4(2) further provides

that any post belonging to category "A" if falls vacant due to any reason, a post of the Lecturer shall be deemed to have been arisen in the cadre.

10. It has been emphasised by the learned Senior Counsel that appointment on the post of Lecturer is through direct recruitment whereas,

recruitment to the post of Assistant Professor, Associate Professor and Professor under category "A", is by personal promotion. However, he

does not dispute that recruitment to the post in the regular cadre of Professor under category "B" as provided in appendix "A" of Service Rules, is

by direct recruitment.

The letter and spirit of argument of the argument of the learned Senior Counsel is that the benefit assigned of the post of Professor under Personal

Promotion Scheme of the category "A" is at par with the regular post of Professor under category "B" Thus, learned Senior Counsel equated the

post of Professor under Personal Promotion Scheme with the regular Professor and accordingly, emphasised that two persons could have been

appointed after retirement of Dr. S.K. Bhatia and the petitioner on the post of Professor on contract basis in pursuance of the Government order.

11. On the other hand, Smt. Sangeeta Chandra, learned Additional Chief Standing Counsel though admits that after retirement of persons working

under category "A", the post of Lecturer shall be deemed to have arisen in the cadre. She further submits that persons appointed and working

under Personal Promotion Scheme, cannot equate the service benefit or claim of contractual appointment in pursuance of the Government order

against regular vacancies of Professors. She defended the impugned Government order on the ground that since there is only one sanctioned post

of Professor, salary cannot be paid to Dr. S.K. Bhatia and the petitioner.

Either side have not cited any case law to defend their argument but relied upon the Rules, Government orders.

RULES

12. It is not disputed that the condition of service of teachers of Medical Colleges (supra), is regulated by the Uttar Pradesh State Medical

Colleges Teachers" Service Rules, 1990 as amended from time to time. Under clause (g) and clause (i) of Rule 3, the "member of the Service" and

"substantive appointment" has been defined which is reproduced as under:

(g) "member" of the Service" means a person substantively appointed under these rules or the rules or orders in force prior to the commencement

of these rules to a post in the cadre of the service and includes substantively appointed teachers of King George's Medical College and Gandhi

Memorial and Associated Hospitals to whom King George's Medical College and Gandhi Memorial and Associated Hospitals (Employees

transferred to the Government) Service Rules, 1984, apply.

(i) "substantive appointment" means an appointment, not being an ad hoc appointment on a post in the cadre of the service, made after selection in

accordance with the rules and, if there were no rules in accordance with the procedure prescribed for the time being, by executive instructions

issued by the Government;

13. Keeping in view the aforesaid definition of member of service and substantive appointment of a person, an incumbent shall be member of

service only in case he is appointed under Service Rules to a post in the cadre of service. Rule 5 of Service Rules deals with the source of

recruitment and it provides that post of Assistant Professor, shall be filled up by direct recruitment. The post of Associate Professor and Professor

shall be filled up by direct recruitment as well as by promotion. The strength of cadre is to be determined in accordance with Rule 4 of the Service

Rules. The Service Rules have further been amended by the Uttar Pradesh State Medical Colleges Teachers" Service (Second Amendment),

Rules, 2005 (in short 2005 Rules) (contained in Annexure 5 to the writ petition). Under 2005 Rules, a fresh provision has been inserted under Rule

3 of the old Service Rules which defines Personal Promotion. Under clause (k) of 2005 Rules, the personal promotion has been defined as under:

(k) "Personal Promotion" means a time bound promotion of substantively appointed persons in the cadre on the basis of fulfilling the qualifying

services, prescribed qualifications and experiences.

14. While amending Rule 4 under 2005 Rules, the cadre of service has been further re-defined and under the proviso to Rule 4, it has been

provided that in case any post belonging to category "A" falls vacant due to any reason, the post of Lecture shall be deemed to have arisen. Under

Rule 5, the source of recruitment has been further modified to some extent. For convenience, Rule 4 and 5 of 2005 Rules are reproduced as

under:

4. Cadre of service--(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Governor

from time to time.

(2) The strength of the service and of each category of posts therein shall, until orders varying the same are passed under sub-rule (1), be as given

in Appendix "A";

Provided that--

(1) In case any post belonging to category "A" falls vacant due to any reason, a post of Lecturer shall be deemed to have arisen in the cadre.

(2) The appointing authority may leave unfilled or the Government may hold in abeyance a vacant post of Lecturer/Assistant Professor without

thereby entitling any person to compensation.

(3) The Governor may create such additional permanent or temporary posts as he may consider proper.

5. Source of recruitment--Recruitment to the various categories of posts in the Service shall be made from the following sources namely:

(1) Lecturer--

[By direct recruitment.

(2) Assistant Professor/Associate Professor/Professor falling in category "A" as indicated in Appendix "A".

[By personal promotion of the teachers as prescribed in Rule 15.

(3) Professor covered by Category "B" [By direct recruitment.

(4) Principal--

[By direct recruitment.

15. The academic qualification for the posts under different category, has been further amended under 2005 Rules. Rule 8 contains the academic

qualification, which is reproduced as under:

8. Academic qualifications--(1) A candidate for recruitment to the various categories of posts in the service other than the department of Pharmacy

must possess the qualifications prescribed by the Medical Council of India from time to time.

Provided that the qualification for the post of Lecturer shall be requisite recognised Postgraduate qualification in the respective subject and three

years teaching experience in the subject in a recognised Medical College as Resident Registrar Demonstrator/Tutor as Postgraduate student.

(2) A candidate for recruitment to the various posts in the Department of Pharmacy must possess the qualifications given in Appendix "B".

16. The qualification with regard to recruitment to various post of Pharmacy as provided in substituted Appendix-B in column-2, is reproduced as

under:

COLUMN 2

Appendix as hereby substituted

APPENDIX "B"

17. A combined reading of Rule 8 read with Appendix-B reveals that separate qualification has been provided for the post of Professor, Associate

Professor and Assistant Professor for the Pharmacy Department. Under old Rule 15, there was no provision with regard to personal promotion.

The old Rule 15 has been substituted by new provision under 2005 Rules which deals with recruitment by Personal Promotion. For convenience,

Rule 15 is reproduced as under:

15. Procedure for recruitment by personal promotion--(1) The following procedure shall be followed for personal promotion of a teacher to the

higher posts belonging to category "A"--

(i) A substantively appointed Lecturer shall, after completing three years satisfactory service, as such, be given personal promotion with his own

post to the post of Assistant Professor.

(ii) A Teacher who is substantively appointed on the posts of Lecturer or Assistant Professor shall, after completing four years satisfactory service

as Assistant Professor and a teacher who possesses a recognised D.M./M.C.h. qualification in the concerned speciality after completing two years

satisfactory service as Assistant Professor, be given personal promotion with his own post to the post of Associate Professor.

(iii) An Associate Professor who is substantively appointed on the post of Lecturer or on the post of Assistant Professor or Associate Professor

shall, after completing six years satisfactory service as Associate Professor or eight years satisfactory service as Assistant Professor and Associate

Professor including at least four years service as Associate Professor shall be given personal promotion with his own post to the post of Professor:

Provided that notwithstanding the fact that a teacher has completed the requisite length of service prescribed for personal promotion to the next

higher post before the date of the commencement of the Uttar Pradesh State Medical Colleges Teachers' Service (Second Amendment) Rules,

2005, he shall not be given personal promotion to the next higher post from such earlier date which falls before such commencement.

(2) For the evaluation of satisfactory service a Selection Committee shall be constituted as follows:

(a) Principal Secretary/Chairman Secretary to the Government in the Medical Education Department.

(b) Director General or Member Additional, Director Medical Education and Training, as the case may be.

(c) Senior most Principal Member of a Government Medical College to be nominated by the Chairman of the Committee.

(d) Director IMS, BHU Member Varanasi/Director SGPGI Lucknow/Senior most Professor of the concerned speciality of AIIMS/BHU/AMU/KGMU.

NOTE--If there is no officer belonging to Scheduled Castes or Scheduled Tribes and an officer belonging to Other Backward Classes in the

Selection Committee one officer of each category shall be nominated by the Chairman of the Committee as additional member.

(3) An Associate Professor who is getting non functional selection grade of Professor on the date of the commencement of the Uttar Pradesh State

Medical Colleges Teachers" Service (Second Amendment) Rules, 2005 shall be designated as Professor under the aforesaid conditions.

18. A combined reading of definition under clause (b) of Rule 3 (supra) read with Rule 15 reveals that a time bound promotion of substantively

appointed person, may be granted in the cadre subject to fulfillment of requisite condition like qualifying service, prescribed qualification and

experience. The appointments are done after the specified period of service without any selection on merit but subject to fulfillment of necessary

qualification and experience. With regard to evaluation of satisfactory service, a provision has been made to constitute selection committee

consisting of Principal Secretary or Secretary of the Principal Secretary/Secretary to the Government in the Medical Education Department as

Chairman; Director General or Additional Director Medical Education and Training as Member; Senior most Principal of a Government Medical

College to be nominated by the Chairman of the Committee as Member and Director IMS, BHU Varanasi/Director SGPGI Lucknow/Senior most

Professor of the concerned speciality of AIIMS/BHU/AMU/KGMU as Member of the Committee.

19. Amended Rule 15 further postulates that promotion under the Personal Promotion Scheme is not a regular promotion on the higher post. The

legislature to their wisdom has used the word, "...shall be given personal promotion with his own post to the post of Professor..." Meaning thereby,

an incumbent given personal promotion with rank, status and salary of higher post, cannot equate the promotion as regular promotion to the higher

post. This interpretation also fortifies from the fact that under Service Rules (rule 14), selection and appointment is to be done by the commission

whereas, under Rule 15, personal promotion is granted through a Committee constituted under the Rules.

20. In view of the above, persons holding the post under Personal Promotion Scheme (Rule 15), may not equate his status with persons regularly

promoted or appointed in accordance with Service Rules on the higher post.

21. Apex Court in the case in Patna University and Others Vs. Awadh Kishore Pd. Yadav and Others, , held that a time bound promotion scheme

could not be treated at par for promotion from lower post to higher where not only seniority but even merit could be examined. Hon^{ble} Supreme

Court held as under:

7. It is true that personal promotion under the Time-Bound Promotion Scheme cannot be treated at par with promotion from a lower post to a

higher post where not only seniority but even merit has to be examined by a duly constituted Committee or Commission. At the same time, it does

not appear from the relevant statute, that the Committee was required only to examine whether the person concerned is holding a substantive post

of Lecturer and has completed at least ten years of continuous service as a Lecturer in one or more Universities. If that was the requirement, we

fail to understand as to why the C.C. Rolls and in absence thereof the certificate from the Head of the University Department or Principal of the

College concerned alongwith the experience of the persons concerned are to be screened by a Committee consisting of the Vice-Chancellor, the

Dean of the Faculty concerned, the Head of the University Department concerned and "two experts appointed by the Vice-Chancellor from the

panel prepared by the Bihar Inter-University Board". After screening those teachers who fulfil the prescribed conditions and are found fit to be

promoted, their cases have to be referred to the Commission for its recommendation. Only on the basis of the recommendations of the

Commission, promotions under the Time-Bound Promotion Scheme are to be given. The Screening Committee is to be properly constituted and

has to apply its mind to different cases before sending its opinion to the Commission. Thereafter, the Commission is expected to apply its mind for

the purpose of making recommendation. As already said earlier, this exercise by the Screening Committee and the Commission for the purpose of

giving time-bound promotion to the Lecturers concerned, need not be on a par with the process adopted for giving regular promotion on the

principle of seniority-cum-merit. At the same time, it should not be an empty normality.

22. In another case in Dr. Rashmi Srivastava and Dr. B.D. Srivastava Vs. Vikram University and others, , the question cropped up with regard to

rights and seniority of teachers in the regular cadre as well as under merit promotion scheme. The High Court taken the view that where merit

promotion is granted as Readers and Professors, incumbent shall not be entitled to claim seniority over the directly recruited Readers and

Professors. Hon^{ble} Supreme Court upheld the judgment of the High Court and held as under:

unless the University Acts concerned under which the Universities are functioning, by suitable amendments provided for an additional source of

recruitment of Readers and Professors by way of departmental promotions, mere adoption of merit promotion scheme recommended by the

Commission or mere decision of the Coordination Committee or Executive Committee not to discriminate between merit promotees and direct

recruit University teachers and even issuance of ordinances or statutes to that effect would be of no avail and will not have any legal effect nor

would they permit the Universities concerned to fuse the cadre employees with ex cadre employees and to prepare a combined seniority list on

that basis. (Para 37)

23. Thereafter, their lordship further held that (supra) the Professors promoted under the scheme are not entitled to be included in the seniority list

of directly recruited Readers and Professors, to quote:

The very guidelines of the scheme suggest that a merit promoted Reader or Professor will be treated to have a personal promotion. It will not

create any addition to the cadre nor will it create any vacancy in the lower cadre from which he or she was promoted. The workload has to be so

distributed as not to require any additional staff. Dr. Dhavan said that this was only because of the financial crunch. That may be so. But ultimately

the effect thereof would be that once a merit promoted Reader or Professor goes out of service there will be no post which will fall vacant in the

promotional avenue. Consequently, it cannot be said that there was any temporary addition to the cadre strength of Reader or Professor as the

case may be. We entirely concur with the reasoning adopted by the High Court while considering the relevant clauses of the merit promotion

scheme when it took the view that Readers and Professors promoted under the scheme were not entitled to be included in the seniority list of

directly recruited Readers and Professors. (Para 38)

24. In another case in *Jai Narain Vyas University v. U.R. Nahar*, 2002(10) SCC 514 , while reiterating the aforesaid proposition, Hon"ble

Supreme Court held as under:

SC hold that the persons promoted to ex-cadre posts as Readers and Professors cannot get seniority vis-à-vis those who have been

appointed/promoted to the posts of Reader and Professor on regular basis in accordance with the provisions contained in Sections 5 and 6 of the

Act. In this view of the matter, the Supreme Court saw no justification for our interference with the impugned judgment. (Para 3)

25. In another case in *Dr. Km. Suman Agarwal Vs. The Vice-Chancellor and Others*, , Hon"ble Supreme Court interpreted relevant provision

contained in the U.P. State Universities Act, 1973 and held that post under Personal Promotion Scheme is a temporary addition in the cadre of

Reader or Professor as the case may be, to reproduce relevant portion as under:

Clause (11) is relevant in this case which reads as follows:

12. The personal promotion, though does not have any effect on the post held by the direct recruit by operation of clause 11(i), the post held by

the promotees on personal promotion to the cadre of Reader or Professor, as the case may be, will be a temporary addition to the cadre of the

Reader or the Professor, as the case may be, will be a temporary addition to the cadre of the Reader or the Professor, as the case may be. In

other words, the temporary promotions so long as the candidate continues to hold the post as Reader or Professor will be in addition to the

sanctioned strength of the reader or Professor direct recruit. The post held by a promotee is coterminus with the holder of the post ceasing to exit

either on retirement or termination, removal, dismissal etc. In other words, both the direct recruits as well as the temporary promotee on personal

promotion would form part of the cadre as Reader or the Professor, as the case may be. But the promotee is ineligible to get a berth into the quota

of direct recruits. He/she would only be a temporary addition to the sanctioned quota to which direct recruit alone is eligible to hold the post as a

reader or Professor, as the case may be.

26. Thus, the time bound promotion granted under the Personal Promotion Scheme, is temporary addition to the cadre, in the present case, the

cadre of Professor which dies with the retirement of incumbent leaving no sanctioned post or vacancy. Accordingly, no person can claim the

benefit available to regular incumbent under any Rule unless specifically provided.

GOVERNMENT ORDERS

27. Undisputedly, after retirement, the petitioner was appointed in pursuance of the Government order dated 30.7.2008. Clause (iv) of the

Government order deals with the fixed salary of different posts. Clause (v) deals with the related vacancy and clause (iv) deals with the period for

which an incumbent may be appointed. For convenience, clause (iv), (v) and (vi) are reproduced as under:

28. The Government order dated 30.7.2008 is further modified by another Government order dated 7.6.2010. Under para 3 of the said

Government order, salary has been enhanced. It further provides that persons appointed on the post of Professor or Associate Professor, may be

allocated the work of examination controller but not other administrative duties. The contractual obligation shall be for 3 years which may continue

upto the age of 65 years. For convenience, para 3 of the Government order dated 7.6.2010 is reproduced as under:

29. A combined reading of aforesaid Government order reveals that appointment is to be done on fixed salary against sanctioned vacancies of

different posts. No additional or supernumerary vacancy may be created for appointment on contract basis. The Government order further

contains the provisions of different salary for different posts i.e., Rs. 70,000/- for the post of Professor, Rs. 60,000/- for the post of Associate

Professor, Rs. 45,000/- for the post of Assistant Professor and Rs. 40,000/- for the post of Lecturer.

30. Four categories of vacancies relate to respective regular vacancies in different Medical Colleges. It does not include promotion done under the

Personal Promotion Scheme (supra).

FINDING

31. Admittedly, there is only one regular post of Professor in the Medical College, Meerut. Dr. S.K. Bhatia was appointed earlier to petitioner

against said vacancy on 31.12.2010 for a period of three years, on the post of Professor in terms of Government order subject to payment of Rs.

70,000/- per month. In absence of any additional vacancy of Professor, the appointment of the petitioner by the order dated 14.7.2011, seems to

be an incident of non-application of mind and without jurisdiction. The petitioner could not have been appointed on the post of Professor under

Rule (supra). The argument that after retirement of a person under category "A", the vacancy of Lecturer shall arise, does not come to rescue to

the petitioner. Merely because a provision has been made that after retirement, the vacancy of Lecturer shall arise, under category "A", shall not

make out a case to treat different categories of posts under category "A" read with Rule 15 (supra) at par with each other. The different categories

of posts bear different responsibility with different salary and perks.

32. It is well-settled proposition of law that in case an order is passed de hors the Rules or without any authority or incumbent does not qualify for

the said post, then in such a situation, said person will have no right to continue on the said post and as such, appointment may be cancelled at later

stage. No statutory or fundamental right is violated in case service of such person is dispensed with.

33. While affirming a Division Bench judgment of this Court of which one of us (Hon"ble Mr. Justice Devi Prasad Singh) was a member, in Afsar

Sahin v. Basic Shiksha Parishad and others, 2004(22) LCD 1164, their lordships of Hon"ble Supreme Court in a case in Mohd. Sartaj and

Another Vs. State of U.P. and Others, , held that in case an appointment is done against rules, in the present case, the Government order, then

such appointment may be cancelled and in that event, principle of natural justice shall not be attracted. The Constitution Bench in the case in

Secretary, State of Karnataka and Others Vs. Umadevi and Others, , had held that no Court can regularise services in absence of regular vacancy

or in absence of any Rules or statutory provisions.

34. In another case in Mahesh Kumar Vs. State of U.P. and Deputy Excise Commissioner (Karmik/Adhithan), , where, the appointment was

found illegal and not in accordance with Rules setting aside of order even after 15 years of continuous service, was held to be lawful. In the present

case, the petitioner was appointed against non-existing vacancies in violation of Government order hence termination of service by the impugned

order, does not seem to suffer from any impropriety or illegality. The petitioner seems to be entitled for the salary for the period during which he

had worked.

35. While parting with the judgment, we wish to add that appointments against regular vacancies on contract basis for long period, seems to be not

justified. The Government must take suitable steps and vacancies should be filled up by qualified persons in accordance with Rules. It may not be

ruled out that appointment of persons after retirement for petty long period, may directly or adversely affect the academic atmosphere of Medical

Colleges. The person appointed on contract basis, continues with their private practice in contravention of Government orders and devote more

time in their private clinic than what is required for Medical Colleges. The Government should not oversight the human nature that after fag end of

life, the appointment of teachers after age of superannuation in the Medical Colleges, may lower down standard of education of Medical Colleges

of State of U.P. The Medical Council of India must look into it and period of contractual obligation may be reduced to the minimum to enable the

Commission to fill up the vacancies.

36. It is argued that qualified doctors are not available to fill up the vacancy. In case it is so, the Government should step into and provide more

facilities, perks and service benefit to the teachers of State Medical Colleges so that State Medical Colleges may attract the Indian brains who are

serving worldwide with magnificent record after having been disappointed by the Indian Red Tapism.

37. Since standard of education falls in the domain of Medical Council of India and the Dental Council of India, we expect that both shall provide

necessary guidelines and the minimum period for contractual appointment and tone up the administration of Medical Colleges. It shall be

appropriate for the Medical Council of India and Dental Council of India to find out the practical difficulties and affect of contractual appointment

in the Medical Colleges and the working standard of contractual appointees in the Medical Colleges and take a remedial measure.

38. In view of the above, we do not find any merit in the writ petition. The impugned order does not suffer from any impropriety or illegality.

39. Subject to observation made hereinabove, we dismiss the writ petition to the extent the impugned order is concerned. We direct the State

Government as well as the Medical Council of India and the Dental Medical Council of India to look into the matter keeping in view the

observations made in the body of the judgment, and take appropriate action expeditiously. A copy of the present judgment shall be sent to the

Chief Secretary of the State of U.P., Secretary of Medical Council of India and Secretary, Dental Council of India by the Registrar of this Court

within two weeks.

No orders as to costs.