

**(2009) 03 SC CK 0170**

**Supreme Court of India**

**Case No:** Civil Appeal No. 1875 of 2009 (Arising out of Special Leave Petition (C) No. 3480 of 2007) and Civil Appeal No. 1877 of 2009 (Arising out of Special Leave Petition (C) No. 3684 of 2007)

Radhey Shyam Upadhyaya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** March 25, 2009

**Acts Referred:**

- Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962 - Section 22F

**Citation:** (2009) 3 AWC 2297 Supp : (2009) 5 SCALE 324 : (2009) 5 SCC 295 : (2009) 2 SCC(L&S) 8

**Hon'ble Judges:** V. S. Sirpurkar, J; Tarun Chatterjee, J

**Bench:** Division Bench

**Advocate:** R.G. Padia, Alka Sinha, Sanjay Pandey and M.P. Shorawala, for the Appellant; S.R. Singh S.C. Patel, Shrish Kumar Misra, Prashant Chaudhary, Vandana Mishra, Pushkin, Arachana Singh, D.M. Dubey and Abhisht Kumar, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Special Leave Petition (C) No. 3480/2007:

1. Leave granted.

2. This is an appeal by special leave from a judgment and order passed by the Division Bench of the High Court of Judicature at Allahabad in Writ Petition No. 24409 of 1996, by which the High Court had dismissed the writ petition filed by the appellant seeking relief that he should be declared as a permanent teacher with effect from the date of his initial appointment and correction of entries in the service record be also made accordingly.

3. After hearing learned Counsel for the parties and after going through the materials on record including the impugned order of the High Court, we are of the view that the relevant questions of fact which need to be considered by the High Court while deciding the aforesaid writ petition, were not at all adhered to by the High Court. That being the position, we are of the view that this impugned order should be set aside and the matter may be remitted back to the High Court for fresh decision in accordance with law. We keep open the question whether appointment of the appellant was in consonance with the statutory requirement and whether the services of the appellant should be deemed to have been approved in the post as, per provisions of Section 22-F of the Uttar Pradesh Pravidhik Shiksha Adhiniyam, 1962. All these questions are left open and to be decided by the High Court in accordance with law.

4. The impugned order of the High Court is thus set aside and the matter is remitted back to the High Court for fresh decision in accordance with law and in the light of the observations made herewith. We request the High Court to decide the aforesaid writ petition within a period of six months from the date of supply of a copy of this order to it. The appeal is accordingly allowed to the extent indicated above with no order as to costs. Interim order, if any, stands vacated.

Special Leave Petition (C) No. 3684/2007:

5. Leave granted.

6. This is an appeal by special leave from a judgment and order passed by the Division Bench of the High Court of Judicature at Allahabad in Writ Petition No. 55045 of 2004, by which the High Court had dismissed the writ petition also in view of its order passed in aforesaid writ Petition No. 24409 of 1996. which we have already set aside above and has sent it back to the High Court for fresh decision. Accordingly this impugned order of the High Court is also set aside and the matter is remitted back to the High Court for fresh decision in accordance with law within a period of six months from the day of supply of a copy of this order to it. The appeal is accordingly allowed to the extent indicated hereinabove with no order as to costs. Interim order, if any, stands vacated.