

Sameer Sinha Vs. State of U.P. and Others

Sameer Sinha Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/479017

Court : Allahabad

Decided On : Jul-04-2001

Reported in : 2001(3)AWC2414; (2001)3UPLBEC2625

Judge : S.H.A. Raza and R.P. Nigam, JJ.

Acts : Uttar Pradesh Secondary Education Services and Selection Board Act, 1982 - Sections 18; Uttar Pradesh Higher Education Services Commission Act, 1980 - Sections 3, 13, 13(1), 13(5), 13(6), 16, 16(1), 30, 31C, 31C(1) and 31C(2); Uttar Pradesh, Higher Education Services Commission (Amendment) Act, 1992; ;Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1997; ;Uttar Pradesh State Universities Act, 1973 - Sections 31(3); Intermediate Education Act, 1921

Appeal No. : Writ Petition No. 6 of 1999 with 6 other Writ Petitions

Appellant : Sameer Sinha

Respondent : State of U.P. and Others

Advocate for Def. : C.S.C., ;L.P. Mishra and ;D.K. Pathak, Advs.

Advocate for Pet/Ap. : S.K. Kalia, Adv.

Judgement :

S.H.A. Raza, J.

1. Often grant of interim order at the initial stage, when the writ petition is filed not only results into miscarriage of justice, but also results into multiplicity of the proceedings. Besides the above, it creates problems also for the executive authorities to implement the orders particularly, when they are hauled up in contempt proceedings. If, on one post, the Court directs the payment of salary to two persons, in two different writ petitions, the order cannot be implemented, hence it would be necessary that instead of passing orders, on writ petitions, where each of petitioner has conflicting interest, the controversy should be finally set at rest.

2. With this prelude, we advert to point out the facts of each case, of respective parties, in all the writ petitions, which have been clubbed together, and are being decided by a common judgment, as the question of facts and law raised in all the writ petitions, can be decided by a common judgment.

3. Writ Petition bearing No. 2491 (SB) of 1991 was filed by Sri Vinod Kumar Singh on 23.4.1991, praying for issuance of a writ in thenature of mandamus commanding the D.I.O.S., Sultanpur, Committee of Management, Ganpatsahai Postgraduate College, Sultanpur, Principal, G.S.P.G. College, Sultanpur, to release forthwith the entire arrears of salary of the petitioner with effect from 4.2.1991 and to continue to pay him full salary and allowances each and every month as and when the same falls due. On 23.4.1991, Hon'ble S. S. Ahmad. J. (as he then was) passed the following order :

'Issue notice to opposite parties 2 and 3 to show cause why the petition be not admitted. Notice on behalf of the opposite party No. 1 has been accepted by the chief standing counsel. The notice shall be returnable by 12.7.1991.

In the meantime, opposite parties are directed to pay full salary to the petitioner, who, prima facie, appears to have been regularly appointed on the post in question and the Vice Chancellor's approval has also been obtained. Salary shall be paid with effect from 1.5.1991. The arrears of salary from 8.2.1991 shall also be paid to the petitioner subject to further orders of the Court.'

In the said writ petition, the petitioner Vinod Kumar Singh staked a claim that in pursuance of the advertisement dated 17.7.1990 for two vacant posts of Lecturer in Physics, he was selected as a Lecturer by the selection committee on a permanent post. According to the petitioner, the Vice Chancellor granted approval to the appointment of the petitioner on 27.3.1991. but when he was not paid his salary, he represented to the authorities concerned.

4. Writ Petition bearing No. 2698 [SB] of 1991 was filed by Sameer Sinha, on 2.5.1991, praying for issuance of a writ in the nature of mandamus against more or less the same opposite parties, to allow the petitioner to continue in service as Lecturer in Physics till a regularly selected candidate from the U. P. Higher Education Services Commission, (which hereinafter called commission) joins the post and to pay him salary on the post of Lecturer, regularly since February, 1991, and also direct the opposite parties to pay arrears of salary to the petitioner of the said post, since February, 1991. In the said writ petition, Sameer Sinha submitted that although he was earlier appointed on the permanent post of Lecturer Physics earlier on ad hoc basis, by the management committee, but the management committee advertised two posts of Lecturer in Physics, one permanent and another temporary, the petitioner apprehended that against the permanent post, a candidate recommended by the Commission may Join soon, hence he also submitted his application for consideration on the temporary post. The contention of Sameer Sinha was that when the advertisement was issued, he was serving as an ad hoc Lecturer in Physics. His appointment was extended till 30.6.1991, hence he cannot be substituted by the management committee by another ad hoc appointee. His appointment was made by the management committee which was perfectly valid, but as he was not being paid his salary since February, 1991, though he was teaching in the said college. He represented to the authorities concerned but as his request was not heeded to, he filed the writ petition. On 2.5.1991. Hon'ble S, S. Ahmad, J. (as he then was) passed the following order :

'Put up this petition for orders in July, 1991, to enable the standing counsel to obtain the instructions as he has received notice on behalf of the opposite parties 1 and 2. Issue notice to opposite party No. 3.

'In the meantime opposite parties shall allow the petitioner to continue in service till a regularly selected candidate is available from the Higher Education Services Commission. The petitioner shall be paid salary regularly every month.'

5. Writ Petition bearing No. 611 (SS) of 1992 was filed by Vinod Kumar Singh on 27.1.1991, praying for issuance of a writ in the nature of mandamus commanding the opposite parties to send the name of the petitioner to the Screening Committee for being considered for regularization against the post of Lecturer in Physics, and also to regularize him on the post and commanding the opposite parties to enter the petitioner's name in the College Roll and allow him to sign his attendance, as well as to issue mandamus, commanding the Screening Committee, to consider the case of the petitioner for being regularized in accordance with the newly inserted Section 31C of the U. P. Higher Education Services Commission Act, 1980.

The relief sought in the writ petition, itself, indicated that Vinod Kumar Singh was not on the College Roll of Lecturers, and wanted a direction from this Court to allow him to sign the attendance register.

6. Writ Petition bearing No. 1359 (MS) of 1992 was filed by Ganpat Sahai Post-graduate College, Sultanpur, on 18.5.1992 challenging the order of single operation of salary account, because of non-payment of salary to Vinod Kumar Singh vide order dated 11.5.1992 passed by District Inspector of Schools. Faizabad, by means of which the management of the college was directed for sending the bills for payment of the salary of two teachers namely M/s. Rajiv Srivastava and Vinod Kumar Singh, failing which the management shall be held responsible. The management of the college also wanted this Court to issue such directions by means of which, the salary of both the Lecturers namely Vinod Kumar Singh and Sameer Sinha, may be ensured in obedience of the interim order issued by this Court.

In the said Writ Petition bearing No. 1359 (MS) of 1992, it has been averred that on a vacancy caused due to going on leave by Sri Om Prakash Srivastava, in the year 1984, who resigned in the year 1987, in the department of Physics, the management had to make ad hoc appointments including of one Sanjay

Srivastava as Lecturer in Physics. Sanjay Srivastava also left the college. The management informed the Higher Education Services Commission to fill up the two vacancies in the department of Physics in the year 1987. The Higher Education Commission published advertisement in the year 1989. The management appointed Sameer Sinha as a Lecturer on ad hoc basis on 23.3.1990, under Section 16 of the U. P. Higher Education Services Commission Act for six months or till regularly selected candidate joins the post.

7. On 17.7.1990, the management published advertisement for filling up two posts of Lecturer in Physics, one post of Lecturer in Chemistry, one post of Lecturer in Electronics and one post of Lecturer in Mathematics but on 26.6.1990, the management of the college received a letter from the Director, Higher Education Services Commission to the effect that all those Lecturers who stood appointed on ad hoc basis should be continued and be permitted to work, as a result of which two vacancies of Lecturer in Physics decreased to one. In pursuance of the said advertisement, the Selection Committee confined the selection to the existing vacancies, in which Sameer Sinha also participated. The Selection Committee forwarded the names of the following persons :

1. Rajiv Kumar Srivastava,

2. Vinod Kumar Srivastava, and

3. Sameer Sinha.

8. As there existed only one vacancy in the department of Physics, which was held by Sameer Sinha, who already stood appointed under Section 16 of the Act and as his continuance was ordered by the Director of Higher Education, U. P., the management appointed Rajiv Kumar Srivastava on the vacant post and for the other, no order of appointment was made at all.

9. It has been further averred in the writ petition that Vinod Kumar Singh, at the relevant time was working as Lecturer in Electronics on ad hoc basis, under the same circumstances. Sameer Sinha was also appointed, in view of the order of the Director, Higher Education. No selection was held for the vacant post of

Lecturer in Chemistry for that reason. Vinod Kumar Singh misled the High Court and has concealed the fact that two Lecturers were already working, as no letter of appointment was ever issued to Vinod Kumar Singh. The assertion of Vinod Kumar Singh that he was functioning from February, 1991, as Lecturer in Physics, was wrong, as he suppressed the fact that his appointment was relating to the department of Electronics, which was later on abolished. In view of the interim order obtained by Vinod Kumar Singh, the District Inspector of Schools, Sultanpur, directed the payment of salary to Vinod Kumar Singh. In view of the aforesaid reason, the management directed payment of salary to Vinod Kumar Singh, and suspended payment of salary with effect from July, 1991 to Sameer Sinha. According to the management, when the attention of the Court was drawn towards that fact, in the writ petition filed by Sameer Sinha, (W.P. No. 2658 (SB) of 1991 Hon'ble S. S. Ahmad, J. (as he then was) on 2.5.1991 directed the management for payment of salary to Sameer Sinha. It was also asserted that the D.I.O.S., Sultanpur has been insisting for the payment of salary to Vinod Kumar Singh and raised objection against the payment of salary to Sameer Sinha.

10. The management asserted that as Vinod Kumar Singh, was never appointed as Lecturer and, therefore, never joined as a Lecturer in the department of Physics, but he used to avail benefits of salary from the institution, but the person Sameer Sinha, who has been functioning as a Lecturer, was not being paid salary by the respondent. Although, the bills were submitted, but due to two interim orders the management had stopped making payment of salary to Sameer Sinha. In the said Writ Petition bearing No. 1359 (MS) of 1992, Hon'ble S. N. Sahai, (as he then was) passed the following order :

'List and connect with Writ Petition Nos. 2454 of 1991 and 2698 of 1991.

Counter-affidavit may be filed in this writ petition within six weeks. Rejoinder-affidavit, if any, within next two weeks.

In the meantime, the operation of the impugned order of the Deputy Director, directing for single operation of the account shall remain suspended subject to the condition payment of salary to Vinod Kumar Singh and Sri Sameer Sinha, subject to the orders passed in the aforementioned writ petition, is ensured by the

petitioner.'

11. Writ Petition No. 4324 (SS) of 1993 has been filed by Sameer Sinha on 17.7.1992 against the State of U. P., Director, Higher Education, U. P., Allahabad. Regularization Committee constituted under Section 31C (2) by the U. P. Government, District Inspector of Schools, Sultanpur. The management committee, Ganpat Sahai Degree College, Sultanpur and Vinod Kumar Singh, for issuance of a writ in the nature of certiorari quashing the order dated 26.6.1992 contained in Annexure-8 to the writ petition, by means of which the petitioner Sameer Sinha was not found fit for the regularization of his services under Section 3 (c) (2) by the Regularization Committee and his services shall be deemed to be terminated with effect from 30.6.1992. The order indicated that in the department of Physics, there is only one substantive post of Lecturer available, but it is not clear as to who is holding that post and the dispute is pending before the High Court. A writ in the nature of mandamus is also prayed for issuing a direction to the respondent to regularize the services of the petitioner Sameer Sinha on the post of Lecturer in Physics in Ganpat Sahai Post-graduate College, Sultanpur, and appoint him in that capacity in accordance with the provisions of Section 31C (1) of the U. P. Higher Education Service Commission Act.

12. Writ Petition No. 6 of 1999 has been filed by Sameer Sinha in which State of U. P., Director, Higher Education, District Inspector of Schools, Sultanpur, Committee of Management of the Institution, Principal of the Institution and Vinod Kumar Singh have been arrayed as opposite parties, praying for quashing of the order dated 11.12.1998 passed by Director, Higher Education, Allahabad by means of which an order was passed by the Director, Higher Education, in pursuance of the recommendations of the Regularization Committee, to regularize the services of Vinod Kumar Singh as Lecturer in Physics. On 8.1.1999, a Division Bench of this Court consisting of Hon'ble D. K. Trivedi, J. and Hon. R. P. Nigam. J., passed the following order :

'Put up on 13.1.1999, along with Writ Petition Nos. 2454 of 1991, 2698 of 1991. 611 of 1992. 4324 of 1992 and 1359 of 1992.

Learned standing counsel has accepted notice on behalf of the opposite parties 1 to 3. Sri Lalita Prasad Misra has accepted notice on behalf of opposite party No. 6.

Petitioner undertakes to serve opposite parties No. 4 and 5 outside of the Court within 48 hours. Office is directed to hand over necessary papers in duplicate to him today. Status-quo be maintained till 13.1.1999 only.

The interim order, which was passed, was extended from time to time, and later on the Court ordered that the interim order will remain in force till pronouncement of the judgment.

13. Writ Petition bearing No, 193(SB), 2001 was filed by Sameer Sinha praying for quashing the order dated 15.11.2000 passed by the State Government for payment of salary to Sri Vinod Kumar Singh, and the order dated 30.12.2000 passed by the Joint Director, Higher Education to the same effect and to restrain the respondents from making payment of salary to Sri Vinod Kumar Singh on the post of Lecturer Physics.

14. When all these writ petitions came up for consideration before this Court, on 13.12.2000 the Division Bench passed the following order, which is transcribed in the order sheet of Writ Petition No. 6 of 1999 (SB).

'No objection against the amendment application dated 28.7.1999 has been preferred. The amendment application is accordingly allowed. The private respondent as well as the State, if they so choose, may file a counter-affidavit only to the extent of amended portion of the writ petition within a week. As these cases have a chequered history and six writ petitions are pending since 1991, these cases will not be adjourned for want of filing of the counter-affidavit. List if the same would not be filed by that date. List in the next month in the week commencing 22nd January, 2001. Interim orders which have been passed earlier shall remain in operation till the next date of listing.'

On 16.2.2001, the Division Bench passed the following order :

'We have heard the arguments of S. K. Kalia, learned counsel appearing on behalf of Dr. Sameer Sinha and Dr. L. P. Misra, learned counsel appearing on behalf of

Vinod Kumar Singh as well as the learned standing counsel on the fresh petition as well as other writ petitions which are pending.

Judgment is reserved. Till the pronouncement of the judgment, parties are directed to maintain the status-quo as ordered earlier in one of the writ petitions.'

15. In the counter-affidavit filed by the management in Writ Petition bearing No. 2454 (SB) of 1991, it has been submitted that the advertisement was issued for the appointment of two posts of Lecturer in Physics, one post of Lecturer in Chemistry. Electronics and in Mathematic each in the College. As on one post of Lecturer in Physics. Sameer Sinha was working on ad hoc basis, but at the time of advertisement of the post, the extension was not granted by the Director, U. P. Higher Education, to all the persons who were teaching on ad hoc basis, the advertisement was issued. On 26.6.1990 the Director of Higher Education, through its order dated 26.6.1990, granted extension of ad hoc appointed teachers till 30.6.1991, but the said order was received by the management after the advertisement was made. As per the order of the Director of U. P. Higher Education, the extension of ad hoc Lecturer was granted, thus, only one post in Physics was lying vacant, for which the Selection Committee met on 9.11.1990 and the selection committee prepared a list of three selected candidates, in which the name of Dr. Sameer Sinha finds mention at Serial No. 3. At the time when the Selection Committee met, there was only one post of Lecturer in Physics, which was lying vacant for which Rajiv Kumar Srivastava, whose name was mentioned at Serial No. 1 by the Selection Committee, was appointed. On the other post of Lecturer in Physics. Sameer Sinha was working from 29.3.1990 and as per the order of the Director. U. P. Higher Education, the period of Sameer Sinha was extended till 30.6.1991 and by the subsequent order of the Director, till 30.6.1992. Thus, at the time of selection, only one post of Lecturer in Physics was lying vacant.

16. It has further been averred in the said counter-affidavit that Vinod Kumar Singh was working on the post of Lecturer in Electronics up to 30.6.1990, but subsequently. University Grants Commission abolished the said post on 30.6.1990. Vinod Kumar Singh, thereafter, requested the management to allow

him to teach the students only for getting experience. The management allowed Vinod Kumar Singh to teach the students with effect from 27.2.1991. The management committee of Ganpat Sahai Postgraduate College, Sultanpur by the decision dated 12.5.1991 withdrew the permission with effect from 13.5.1991 to teach the students without pay. It was further averred in the counter-affidavit that no question of payment of salary to Vinod Kumar Singh arises at all with effect from February, 1991, as he was never allowed to teach students and he was allowed to teach the students in Electronics without pay. In view of the interim order passed, it was averred in the counter-affidavit that it has become practically impossible for the management to pay salary to two persons on the same posts.

17. The case of the Management of the Institution was further reiterated in para 24 of the supplementary counter-affidavit filed in Writ Petition No. 2454 (SB) of 1991, has been, that there was only one post of Lecturer in Physics which was newly created, was vacant and for which Dr. Rajiv Kumar Srivastava, whose name was shown at Serial No. 1 in the select list prepared by the Selection Committee, was appointed. On the other post of Lecturer in Physics. Dr. Sameer Sinha had been working from 29.3.1990 as per orders of the Director of U. P. Higher Education. The period of Dr. Sameer Sinha was extended till 30.6.1991 and by subsequent order of Director, it was extended till 30.6.1992. At the time of the selection, there was only one post of Lecturer in Physics which was lying vacant. It was thus, evident that Vinod Kumar Singh was never appointed on the post.

18. It has been further stated by the Management of the Institution that the pay bill of the petitioner (Vinod Kumar Singh) was never submitted due to the reason that Dr. Sameer Sinha as well as the petitioner (Vinod Kumar Singh) obtained interim orders from the Court for the payment of salary on the one and the same post of Lecturer Physics. It was further pointed out that Vinod Kumar Singh, the petitioner was never appointed on the post of Lecturer Physics and by manipulation and fraud, the petitioner Vinod Kumar Singh started claiming his right over the post of Lecturer Physics.

19. The U. P, Higher Education Services Commission did not recommend the name of any selected candidate on the vacant post upon which Dr. Sameer Sinha

was working as ad hoc teacher, which fell vacant on the resignation of Om Prakash Srivastava. In the meantime, the Ordinance No. 43 of 1991 was issued by the State Government inserting clause 31C in U. P. Higher Education Services Commission Act. 1980, for the regularization of ad hoc teachers, which provided for the regularization of ad hoc teachers. The said provision provides a cut-off date as well as the criterion for eligibility for regularization, which is reproduced as under :

Clause 31C. Regularisation of other ad hoc appointments.--(1) Any teacher, other than a Principal who :

(a) was appointed on ad hoc basis after January 3, 1984 but not later than November 22, 1991 on a post :

(i) which after its due creation was never filled earlier, or

(ii) which after its due creation was filled earlier and after its falling vacant, permission to fill it was obtained from the Director ; or

(iii) which came into being in pursuance of the terms of new affiliation or recognition granted to the college and has been continuously serving the college from the date of such ad hoc appointment up to the date of commencement of the Uttar Pradesh, Higher Education Services Commission (Amendment) Act, 1992.

(b) was appointed on ad hoc basis under sub-section (1) of Section 16 as it stood before its omission by the Act referred to in clause (a), whether or not the vacancy was notified to the Commission.

(c) Possessed on the date of such commencement, the qualifications required or was given relaxation from such qualifications under the provisions of the relevant statutes in force on the date of such ad hoc appointment.

(d) Omitted by U. P. Act No. 10 of 1997 (w.e.f. 25.5.1997).

(e) Has been found suitable for regular appointment by a Selection Committee constituted under sub-section (2) ;

may be given substantive appointment by the management of the college, if any substantive vacancy of the same cadre and grade in the same department is available on the date of commencement of the Act referred to in clause (a).

(2) The Selection Committee consisting of the following members, namely ;

(i) a member of the Commission nominated by the Government who shall be the Chairman ;

(ii) an officer not below the rank of Special Secretary to be nominated by the Secretary to the Government of Uttar Pradesh in the Higher Education Department ;

(iii) the Director, shall consider the cases of every such ad hoc teacher and on being satisfied about his eligibility In view of the provisions of subsection (1), and his work and conduct on the basis of his record, recommend his name to the management of the college for appointment under sub-section (1).

(3) Where a person recommended by the Commission under Section 13 before the commencement of the Act referred to in sub-section (1) does not get an appointment because of the appointment of another person under subsection (1) in the vacancy for which he was so recommended, the State Government shall make suitable order for his appointment in a suitable vacancy in any college and the provisions of sub-sections (5) and (6) of Section 13 and Section 14 shall mutatis mutandis apply.

(4) A teacher appointed on ad hoc basis referred to in subsection (1) who does not get a substantive appointment under that sub-section and a teacher appointed on ad hoc basis who is not eligible to get a substantive appointment under sub-section (1) shall cease to hold the ad hoc appointment after (June 30, 1992).

(5) Notwithstanding anything to the contrary in sub-section (4), the Selection Committee constituted under sub-section (2), shall in view of the amendments made in clauses (b) to (d) of sub-section (1), of the Uttar Pradesh Higher Education Services Commission (Amendment) Act. 1997, reconsider the case of every teacher who ceased to hold appointment under subsection (4) and if as a

result of reconsideration any such teacher is found suitable for substantive appointment, he may be given substantive appointment as provided in sub-section (1), and shall be deemed never to have ceased to hold appointment.

20. Dr. Sameer Sinha, was appointed on 23.3.1990 as ad hoc Lecturer in Physics. He cleared his High School Examination in First Division obtaining 74.4%. Intermediate Examination in First Division obtaining 63.6%, B.Sc. in First Division obtaining 63.7%. M.Sc. in First Division obtaining 58.7% and was awarded Ph.D. on 26.12.1991. His services were not regularized while the services of Vinod Kumar Singh, who passed Intermediate in IInd Division securing 59%. B.Sc. IInd Division obtaining 58%. M.Sc. 59% and was not awarded Ph.D. or cleared National Eligibility Test, were regularized.

21. Admittedly, Dr. Sameer Sinha was working as ad hoc teacher prior to the cut off date as mentioned in Section 31C of the Ordinance, which was replaced by an Act, and he has been continuing on the post till now.

22. It is pertinent to mention here that one Dr. Vinod Kumar Singh (another person) was also appointed on the ad hoc basis as Lecturer Chemistry in the like manner in which Dr. Sameer Sinha was appointed. The services of Dr. Vinod Kumar Singh (another person) who was appointed as Lecturer in Chemistry, has been regularized but the petitioner's services were not regularized as Vinod Kumar Singh Staked his claim for the same post. The appointment of Dr. Sameer Sinha as Lecturer in Physics and Dr. Vinod Kumar Singh as Lecturer in Chemistry in the said Institution was made under Section 16 (1) of the U. P. Higher Education Services Commission Act, 1980, which was omitted by U. P. Act No. 2 of 1992 with effect from 22.11.1991.

23- Section 16 (1) provides for appointment of ad hoc teachers, where the vacancy has been notified by the management committee, but the Commission has failed to recommend the name of suitable candidate, within three months from the date of such notification.

24. It was vehemently submitted by Dr. L. P. Mishra, appearing on behalf of the Vinod Kumar Singh that the ad hoc appointment of Dr. Sameer Sinha on

29.3.1990, by the management was non est, inasmuch as, no expert was nominated by the Vice Chancellor which is mandatory requirement for the appointment of ad hoc appointment under the provisions of U. P. Higher Education Services Commission (Removal of Difficulties) Order, 1993 and the appointment of Dr, Sameer Sinha was never approved by the Vice Chancellor.

25. A perusal of Section 16 of the U. P, Higher Education Services Act. 1980, as it existed on 22.11.1991 which was amended by U. P. Act No. 2 of 1992 at the relevant time when the ad hoc appointment of Dr. Sameer Sinha was made as Lecturer in Physics, did not require the appointment of the expert by the Vice Chancellor and approval of the appointment made by the Selection Committee by the Vice Chancellor. Such a requirement is only under the U. P. Higher Education Services Commission (Removal of Difficulties) Order, 1983.

26. In *Km. Madhu Chauhan v. District Inspector of Schools, Lucknow and others*. LCD 1988 (6) 324, after referring to the provisions of Section 16 (1) of the Act, it was observed by the Division Bench that in the said provision there was no mention of the Vice Chancellor or any other authority mentioned in the U. P. State Universities Act or the Statute framed thereunder. The power under Section 16 (1) has been given only to the management. Section 30 of the Act provides that the provisions of the Act shall have effect notwithstanding anything to the contrary contained in the U. P. State Universities Act. 1973 or the Statutes or Ordinances made thereunder. In view of this provision, it appears that the Vice Chancellor does not have any say in the matter of ad hoc appointment covered by Section 16 (1).

27. After referring the said provision contained in Section 31 (3) (a) of the U. P. State Universities Act, the Division Bench observed that ;

'This provision is applicable in a very limited situation, the same being grant of leave to an incumbent for a period not exceeding ten months. As already pointed out, the vacancy against which the impugned selection was held was not a leave vacancy but was a permanent vacancy which was caused by the death of the permanent incumbent. In the circumstances reliance placed upon Section 31 (3) (a) is misconceived. Our attention has not been drawn to any other provision

which may justify interference by the Vice Chancellor in an ad hoc appointment made under Section 16 (1) of the Act.'

It was further held :

'We have held hereinabove that the Vice Chancellor has no role to play in an ad hoc appointment under Section 16 (1). In this view of the matter the Vice Chancellor's order dated 24th December, 1986, as already stated, will have to be quashed.'

28. In the case of Madhu Chauhan v. District Inspector of Schools, Lucknow (supra), the ad hoc appointment was made before the notification of vacancy to the Higher Education Services Commission, but even then the Division Bench observed that the appointment letter was issued on 4.12.1986, therefore, it appeared that the period of three months referred to in Section 16 (1) had not expired when Km. Madhu Chauhan was appointed Lecturer in Sociology. However, on that ground, the Bench did not propose to deprive her of salary as it appeared that till date, no name had been recommended by the Commission. Her petition also, therefore, was allowed.

29. Assuming that the initial appointment of Dr. Sameer Sinha on 23.3.1990 suffered from any defect which was never objected to either by the Management or by other educational authorities and he continued to work as an ad hoc teacher, the defect, if any, stood removed because of his long continuance as Lecturer particularly when he possessed on the date of the appointment, the qualification required under the provisions of the relevant statutes, in force on the date of ad hoc appointment.

30. In S. N. Pandey v. State of U. P. and others, 1989 (1) UPLBEC 398, a Division Bench of this Court dealing with Section 16 of the U. P. Higher Education Services Commission Act, 1980, the then existing Section 18 of the U. P. Secondary Education Services and Selection Board Act, 1982, observed :

'It is an admitted position that no letter of appointment was ever issued to the petitioner by the management. It is the petitioner's own case that he had been

appointed as an ad hoc Lecturer in accordance with Section 18 of the U. P. Secondary Education Services Commission and Selection Board Act, 1982 (hereinafter referred to as the Act). This provision, in so far as material, inter alia, provides that the management may appoint, by direct recruitment or promotion, a teacher on purely ad hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921, or the Regulations made thereunder. So far as the appointment of an ad hoc teacher is concerned there is no express provision either in the Act or in the Rules framed thereunder providing for the issue of a letter of appointment, yet the question is : Whether the petitioner was appointed as a Lecturer by the Management. Our answer is no.'

It was further observed :

'We have already indicated that in the Act and the Rules framed thereunder, there is no provision at all for the issue of a letter of appointment in the case of an ad hoc appointment. Therefore, we have to find out as to whether there is any provision either in the Intermediate Education Act or the Regulations framed thereunder. We get an immediate answer when we turn to Regulation 6 framed under Chapter III. This regulation provides that all appointments shall be made under formal orders of letter of appointment with the sanction of the appointing authority.

It is thus abundantly clear that the issue of a letter of appointment in the case of the petitioner was a must. It follows that in the absence of a master or servant between the petitioner and the management of the institution came into existence at any stage.'

31. In *Shiva Chandra Misra and others v. District Inspector of Schools, Allahabad and another*, 1986 UPLBEC 248, while considering the provision of Section 18 of the U. P. Education and Selection Board Act, 1982, which are *pari materia* of Section 16 of the U. P. Higher Education Services Commission Act, this Court has taken the view that a person appointed on ad hoc basis under Section 18 shall continue till a proper selection is made by the selection. The position, therefore, is that the petitioner's appointment on ad hoc basis in the aforementioned college,

will continue to subsist till a selection is made by the Commission and the person so selected joins the college.

32. In *Pankaj Krishna v. Vice Chancellor, Kanpur University, Kanpur and others*, 1988 UPLBEC 484, a Division Bench of this Court laid down the following principles :

'In view of the decisions of this Court while interpreting the provisions of Section 18 of the Secondary Education Service Commission Act, the provisions whereof are analogous to those contained in Section 16 of the U. P. Higher Education Service Commission Act, 1980, the following position has emerged :

(1) The petitioner is entitled to be treated as a Lecturer in Chemistry in the institution concerned and to be paid on that post till some one else is recommended for appointment on the post held by the petitioner by the U. P. Higher Education Services Commission and the recommendation of the Commission had joined the post held by the petitioner.

(2) The service of the petitioner has not been terminated in accordance with law.'

That apart, it is not open to the management to replace one ad hoc or temporary teacher by another ad hoc or temporary teacher. An ad hoc or temporary teacher can be replaced only by a candidate selected by the Commission. Reference, in this connection, may be made to *State of Haryana v. Piara Singh*, AIR 1992 SC 2130, relevant extract from which is reproduced below :

'Secondly, an ad hoc or temporary employee should not be replaced by another ad hoc or temporary employee : he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.'

33. The principles, which have been laid down in the aforesaid two cases were also relied upon by a Division Bench of this Court in the case of *Kumari Maya Goel v. Vice Chancellor, Bundelkhand University*, 1995 AWC 1920.

34. Vinod Kumar Singh could not produce any appointment order to show that he was ever appointed by the management as ad hoc Lecturer in Physics. He has only taken advantage of the fact that two posts of Lecturer in Physics were advertised by the management.

35. But it is evident that there was one permanent post and another was a newly created post. The permanent post was earlier held by Om Prakash Srivastava, who had proceeded on leave in the year 1984 and had resigned in the year 1987.

36. It is admitted fact that on a permanent vacancy, on the post of Lecturer in Physics, which fell vacant, after the resignation of Om Prakash Srivastava, Dr. Sameer Sinha was appointed by the management committee of Ganpat Sahai Post-graduate College, Sultanpur, on ad hoc basis under Section 16 of the U. P. Higher Education Services Commission Act and has been continuing as such. His initial appointment was meant for six months or till regularly selected person by the Higher Education Commission joins the post. According to the management of the said college, the vacancy was notified to the Commission, but as the Commission failed to recommend suitable name of a candidate, then the Management appointed Dr. Sameer Sinha. The Director. U. P. Higher Education approved the selection of Dr. Sameer Sinha. The minutes of the proceedings of the management committee dated 1.7.1990, which has been annexed as C-1 to the counter-affidavit filed in Writ Petition No. 2698 of 1991, indicated that Dr. Sameer Sinha and Subodh Kumar were appointed as ad hoc teachers in Physics, Vinod Kumar Singh as Lecturer in Electronics and another person Dr. Vinod Kumar Singh was appointed as Lecturer in Chemistry.

37. On 25.3.1991, by means of Annexure C-2 filed along with counter-affidavit of the management in W.P. No. 2698 (SB) of 1991, the appointment made by the management on the post of Lecturer (Physics) on the vacancy caused (on the resignation of Om Prakash Singh), the appointment made, was approved by Dr. Jata Shanker Misra, Deputy Director Education. Allahabad.

38. Although the management advertised two posts for appointment of Lecturer in Physics, including the post on which ad hoc appointment of Dr. Sameer Sinha was made, due to the reason that till that date the order of Deputy Director of the

Higher Education was not communicated to the management, by means of which the Director Higher Education directed the management to continue with the ad hoc appointment, till the regular selection was held. As two posts were advertised. Dr. Sameer Sinha also submitted his application and was called for interview along with Rajiv Kumar Srivastava and Vinod Kumar Singh. The selection was made only for one post and the names were sent to the Vice Chancellor for approval. The Vice Chancellor first sent the approval of Rajiv Kumar Srivastava, and thereafter the Vice Chancellor sent the approval of Vinod Kumar Singh. On receiving approval of the Vice Chancellor, the appointment of Rajiv Kumar Srivastava was made, as Dr. Sameer Sinha was working as Lecturer on a permanent post, so the appointment of Vinod Kumar Singh could not be made.

39. It is thus evident that there were two posts of Lecturer in subject Physics, one post each in Mathematics, Chemistry and Electronics, Out of two posts of Lecturer in Physics, one permanent post of Lecturer in Physics fell vacant due to resignation of Om Prakash Srivastava and the other was newly created. On 5.12.1989, the management advertised the aforesaid posts. The Selection Committee recommended Dr. Sameer Sinha for appointment on the post of Lecturer Physics, which was lying vacant on the resignation of Om Prakash Srivastava. Subodh Kumar Srivastava was recommended for appointment against the newly created post of Lecturer in Physics. Vinod Kumar Singh was recommended for appointment on the post of Lecturer in Electronics. The management committee appointed Sameer Sinha, as Lecturer in Physics till 30.6.1990 vide order dated 23.3.1990. Vinod Kumar Singh was appointed as Lecturer in Electronics on 23.3.1990 and another person Dr. Vinod Kumar Singh was appointed on the post of Lecturer in Chemistry on 23.3.1990. All those appointments were only up to 30.6.1990, i.e., till the end of Session.

40. The aforesaid appointments were made under Section 16 of the U. P. Higher Education Commission Act. The management committee had extended the term of the ad hoc appointment till 30.9.1990. On 30.9.1990, itself, the management terminated the services of Subodh Kumar Srivastava and in view of the termination of the services of Subodh Kumar Srivastava, one post of Lecturer in Physics which was newly created fell vacant.

41. Undoubtedly, two posts of Lecturer in Physics, one post of Lecturer in Chemistry, one post of Lecturer in Mathematics, one post of Lecturer in Electronics, were advertised for ad hoc appointment by the management on 17.7.1990. But, since the management received letter/order dated 26.6.1990 passed by the Director, Higher Education, the management extended the tenure of the appointment of Dr. Sameer Sinha, till 30.6.1991. The term of appointment of Vinod Kumar Singh, Lecturer in Chemistry was also extended till 30.6.1991 as ordered by Director, Higher Education. Thus, only one post of Lecturer in Physics remained to be filled up and only selection for one post was held for the Lecturer in Physics. No selection was held for the post of Lecturer in Chemistry, as well as for the other post of Lecturer in Physics as Dr. Sameer Sinha was continuing. Dr. Sameer Sinha appeared in the interview for the other post of Lecturer in Physics, which had fallen vacant due to the termination of the services of Subodh Kumar Srivastava. The management did not hold the selection for the post of Lecturer in Chemistry as term of ad hoc appointment was extended by the management, in view of the order passed by the Director, High Education, till 30.6.1991.

42. In Annexure RA-5, which has been filed by Dr. Sameer Sinha, along with his rejoinder-affidavit, in his Writ Petition No. 6 (SB) of 1999, it has been indicated that he had applied for his selection on the newly created post of Lecturer in Physics. In his application, Dr. Sameer Sinha indicated that on the permanent post of Lecturer in Physics, which fell vacant after the resignation of Om Prakash Srivastava, he has been working as ad hoc Lecturer since 29.3.1990, which has been extended by the management till 30.6.1991, upon which he was working, has already been advertised by the Higher Education Commission. On that post duly selected candidate by the Commission may join at any time and keeping in view of that situation, he may be permitted to appear in the interview on the newly created post of Lecturer in Physics.

43. If the selection would have been made for the two posts of Lecturer in Physics, two separate panel would have to be made by the Selection Committee, but the Selection Committee, keeping in view, that there was only one post, which was newly created, prepared a panel of three persons, in which Rajiv Kumar Srivastava was placed at Serial No. 1, Vinod Kumar Singh was placed at Serial

No. 2 and Dr. Sameer Sinha was placed at Serial No. 3. The management committee accepted the recommendation of the Selection Committee and appointed Rajiv Kumar Srivastava on the post of Lecturer in Physics on 6.3.1991 in the same manner, the management appointed Jais Nath Misra as Lecturer in Mathematics. After the appointment of Rajiv Kumar Srivastava, nobody was required to be appointed and the selection held for the newly created post of Lecturer in Physics exhausted. The management did not appoint Vinod Kumar Singh, as the selection was held only for one post of Lecturer in Physics.

44. It appears that Vinod Kumar Singh misled the Vice Chancellor by obtaining the approval of his selection and appointment, which was never made by the management committee and obtained the interim order by filing Writ Petition No. 2454 (SS) of 1991 and due to that interim order. Dr. Sameer Sinha was not paid his salary for the month of February, 1991. He filed Writ Petition No. 2698 (SS) of 1991 and an interim order was passed on 2.5.1991 for the payment of salary to him regularly till the regularly selected candidate joins the post.

45. The contention of Dr. L. P. Mishra that as Dr. Sameer Sinha voluntarily appeared before the Selection Committee, hence he cannot challenge the selection, is totally misconceived, because Dr. Sameer Sinha did not apply for a selection on the newly created post which is evident from his application which is submitted to the Principal under the apprehension that he may be ousted from the post in view of the selection already made by the U. P. Higher Education Services Commission. In view of the fact that Dr. Vinod Kumar Singh was never appointed on the post of Lecturer Physics when the Ordinance No. 43 of 1991 came into force Dr. Sameer Sinha was working as ad hoc Lecturer as he was appointed on 23.3.1990 before the cut off date, i.e., 30.6.1991.

46. The management recommended the candidature of Dr. Sameer Sinha for regularization by means of the letter dated 6.12.1991 in the prescribed proforma which has been annexed as Annexure-7 to the Writ Petition No. 6 (S/B) of 1999. Although the management never recommended the case of Vinod Kumar Singh for regularization, he pursued his case before the Regularisation Committee. The Regularisation Committee on 26.6.1992 did not take any decision on the question

of regularization because it was not clear as to whether Dr. Sameer Sinha or Dr. Vinod Kumar Singh were working on the post of Lecturer Physics.

47. On May 26, 1997, the U. P. Higher Education Services Commission (Amendment) Act, 1997, came into force by means of which the Section 31C of the Principal Act was amended as follows :

(a) in sub-section (1) :

(i) in clause (a), for the word and figures 'June 30, 1991' the word and figures 'November 22, 1999', shall be substituted.

(ii) For clause (b), the following clause shall be substituted.

'(b) was appointed on ad hoc basis under sub-section (1) of Section 16 as it stood before its omission by the Act referred to in clause (a), whether or not the vacancy was notified to the Commission.'

(iii) in clause (c), after the words 'for regular appointment to the post,' the words 'or was given relaxation from such qualifications' shall be inserted ;

(iv) clause (d) shall be omitted ;

(a) after sub-section (4), the following sub-section shall be inserted, namely :

'(5) Notwithstanding anything to the contrary in sub-section (4), the Selection Committee constituted under sub-section (2), shall in view of the amendments made in clauses (b) to (d) of sub-section (1), by the U. P. Higher Education Services Commission (Amendment) Act, 1997, reconsider the case of every teacher who ceased to hold appointment under subsection (4) and if as a result of reconsideration, any such teacher is found suitable for substantive appointment, he may be given substantive appointment as provided in sub-section (1), and shall be deemed never to have ceased to hold appointment.'

48. In pursuance of the aforesaid provisions. Dr. Sameer Sinha again submitted his application in accordance with prescribed proforma which was duly forwarded by the management committee and Principal of the College which is evident from

Annexures-10 and 11 to the Writ Petition No. 6 (S/B) of 1999 which was duly sent before the Regularisation Committee by the Management of the institution. Again the candidature of Dr. Vinod Kumar Singh was never forwarded by the management committee of the institution because according to the management. Dr. Vinod Kumar Singh was never appointed on the post of Lecturer in Physics. He pursued his matter in person. The Director, Higher Education, U. P., Allahabad, by means of the order dated 11.12.1998 regularised the services of Dr. Vinod Kumar Singh as Lecturer in Physics on the post which was earlier held by Sri Om Prakash Srivastava. The order of the Director, Higher Education, U. P., Allahabad, indicates that the order of regularization of Dr. Vinod Kumar Singh shall be subject to the final decision in the writ petitions which are pending before the Court.

49. It is really strange that Vinod Kumar Singh whose services were regularized on the post of Lecturer in Physics earlier held by Sri Om Prakash Srivastava, was never appointed and instead, on the said post. Dr. Sameer Sinha was appointed and he continued as such on the date of commencement of the regularization.

50. There is another aspect of the matter, which requires consideration.

Ganpat Sahai Post-graduate College is affiliated to Ram Manohar Lohia Oudh University, Faizabad. According to the Statute 10.15 (6) of the Statutes framed by the said University, only those Lecturers would be eligible for appointment who besides fulfilling the minimum qualification, have cleared the National Eligibility Test or cleared the Examination conducted by the University Grants Commission or Scientific and Industrial Research Institute or Junior Research Fellowship or obtained Ph.D. Degree prior to 31st December, 1993 or submitted the thesis for obtaining the Ph.D. Degree prior to 31st December, 1993 or obtained the M.Phil. Prior to December, 1992, etc.

51. Admittedly, Vinod Kumar Singh neither has cleared the National Eligibility Test conducted by the University Grants Commission nor has passed any examination conducted by the University Grants Commission or Scientific and Industrial Research Institute nor passed Junior Fellowship from the University. He has also not obtained Ph.D. Degree prior to 31st December, 1993 or submitted his thesis for obtaining a Ph.D. Degree prior to 31st December, 1993 or obtained any Degree

of M. Phill prior to 31st December, 1992. Thus, he lacked the minimum qualification for regularization, meaning thereby ; that under Section 31C, he did not possess, on the date of commencement of the U. P. Higher Education Services Commission Act, 1980, the qualification as required. He could not have been given relaxation from the said qualification, under the provisions of the relevant statutes in force, on the date of such ad hoc appointment, as he was never appointed on the ad hoc basis as Lecturer in Physics.

52. Dr. Sameer Sinha fulfils the conditions of regularization and he satisfied all the ingredients of the conditions of the regularization as provided under the Ordinance. The regularisation committee as well as the Director of U. P. Higher Education, Allahabad, failed to exercise the statutory discretion in favour of Dr. Sameer Sinha and committed a manifest error of law in regularizing the services of Vinod Kumar Singh. Writ Petitions bearing No. 2454 (SS) of 1991 and 611 (SS) of 1992 filed by Vinod Kumar Singh are, therefore, dismissed.

53. Writ Petition bearing No. 2698 (SS) of 1991 filed by Sameer Sinha is allowed to the extent that the opposite parties will allow Dr. Sameer Sinha to work as Lecturer in the subject of Physics and pay him salary.

54. Writ Petition bearing No. 4324 (SS) 1992 filed by Sameer Sinha is allowed. A writ in the nature of certiorari is issued quashing the order dated 26.6.1992 passed by regularization committee, contained in Annexure-8 to the writ petition. A writ in the nature of mandamus is issued directing the regularization committee as well as the Director, Higher Education. U. P., Allahabad, to consider the case of Dr. Sameer Sinha for regularization of his services under Section 31 (c) of the U. P. Higher Education Services Commission Act, and pass-appropriate orders within a period of six weeks from the date of production of a certified copy of this order.

55. Writ Petition bearing No. 6 (SB) of 1999 filed by Dr. Sameer Sinha is allowed. A writ in the nature of certiorari is issued quashing the orders dated 11.12.1998 passed by Director, Higher Education. U. P., Allahabad, contained in Annexure-1 to the writ petition by means of which he has recommended Vinod Kumar Singh for substantive appointment, and the order contained in Annexure-15 to the writ petition whereby the Regularization Committee has rejected the case of the

petitioner Dr. Sameer Sinha for his regularization. As far as relief No. 3 sought in the writ petition, is concerned, no order is required as we have already ordered in Writ Petition bearing No. 4324 (SS) of 1992 to consider and pass appropriate orders for regularization of the services of Dr. Sameer Sinha.

56. Writ Petition bearing No. 193 (SB) of 2001 filed by Dr. Sameer Sinha is allowed. A writ in the nature of certiorari is issued quashing the order dated 15.11.2000 passed by the State Government contained in Annexure-12 to the writ petition as well as the order dated 30.12.2000 issued by the Joint Director, Higher Education, U. P., Allahabad. A writ in the nature of mandamus is issued commanding the opposite parties not to pay salary to Vinod Kumar Singh treating him as a Lecturer in Physics in Ganpat Sahai Post-graduate College, Sultanpur.

57. Writ Petition bearing No. 1359 (MS) of 1992 filed by Ganpat Sahai Post-graduate College, Sultanpur, is allowed. A writ in the nature of certiorari is issued to the extent of quashing of the order of District Inspector of Schools, Sultanpur, to pay salary to Vinod Kumar Singh as Lecturer in Physics.