

PETITIONER:
P. P. RASTOGI & ORS.

Vs.

RESPONDENT:
PRAVESH SOTI AND ORS.

DATE OF JUDGMENT: 18/08/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

Leave granted.

These appeals by a Member of the Executive Committee of Management and two Department Heads of Ismail national Girls Post Graduate College, are directed against the judgment and order passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 5869 of 1985 and civil Misc. Review Application NO. NIL of 1996. The High Court allowed the writ petition filed by Dr. Pravesh Soti, Respondent No. 1 herein, and directed the College management and Meerut University to consider her case for regularization and to allow her to resume duties after passing such an order. The High Court further directed them to pay her arrears of salary from 1.3.1985. Aggrieved by the said order passed by the High Court the present appellants had filed a review application before the High Court but it was dismissed on the ground that they did not have locus standi to file such an application.

The facts leading to this litigation are as follows. Appellant No. 4 Smt. Urmila Agrawal was working as a Hindi Lecturer in the said College in the year 1982. She proceeded on leave for a short duration. The College Management, therefore, invited applications for appointment of a Lecturer in her leave vacancy. Out of 7 applicants Dr. Parvesh Soti was selected by the Selection Committee and the College Management by a resolution dated 4.10.1982 resolved to appoint her. In the letter of appointment dated 15.10.1982 it was stated that she was appointed on ad hoc basis for six months only and that the said appointment was purely temporary and against the leave vacancy of Smt. Agrawal. It was also stated that the appointment was liable to be terminated before expiry of said duration in case Smt. Agrawal resumed her duty earlier. Pursuant to this letter of appointment Respondent No. 1 joined the College on 2.11.1982. Mrs. Agrawal was then awarded Teacher Fellowship by the U.G.C. for a period of three years and, therefore on her request she was granted further leave for a period of three years from 2.5.1983. In view of this extension in the leave vacancy appointment of Respondent No. 1 was also

extended upto 1.5.1986 on the same terms and conditions. This extension was approved by the Concerned authorities. Mrs. Agrawal completed her course earlier and, therefore wrote to the College Management that she would resume her duties on 20.2.1985. On receipt of this letter the College Management wrote to Respondent No. 1 that as Mrs. Agrawal was to resume duty on 20.2.1985 her appointment would come to an end automatically on that day and, for that reason, her services would stand terminated with effect from 20.2.1985. On receiving this notice Respondent No. 1 made a representation to the College Management to continue her in service so as to avoid any break in service and to make a proposal to the Vice-Chancellor for regularizing her ad hoc appointment, as one lecturer was required to be appointed for the newly sanctioned M.A. Hindi classes. The College Management did not accept this request and resolved to postpone its consideration. Therefore, Respondent No. 1 again sent a representation on 27.2.1985 to continue her in service and appoint her substantively by resorting to the provision contained in Section 31(3)(b) of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as the Act) with effect from 1.7.1984 as she had already completed by then two years and four months in service. The Collage Management forwarded it with its recommendation to the Vice-Chancellor for his approval. On 29.3.1985 the University wrote to the College to sent a copy of the Resolution of the Management appointing her as a lecturer. As no such resolution was passed the College Management did not take any action. meanwhile on 28.2.1985 services of Respondent No. 1 were discontinued as Mrs. Agrawal resumed on that date. Respondent No. 1, therefore, on 30.4.1985 filed a writ petition in the High Court for issuance of a writ of mandamus directing the respondents to appoint her under Section 31(3)(b) of the Act and also for quashing the order of termination of her service.

The High Court held that as Respondent No. 1 was appointed against the leave vacancy after reference to the Selection Committee and as the newly created post had fallen vacant in the same Department she became entitled to be considered for appointment on that post under Section 31(3)(b) of the Act. Taking this view the High Court allowed in writ petition and gave the directions referred to earlier.

It was submitted by the learned counsel for the appellants that the High court did not correctly interpret Section 31(3)(b) and also failed to appreciate that the appointment of Respondent No. 1 was only in the leave vacancy of Mrs. Agrawal and that no new post was created in the Department till her services were terminated on 28.2.1985. he further submitted that though the post graduate Hindi classes were started some time after 20.9.1984 there was no necessity of creating a new post of a lecturer as the existing staff was quite sufficient as per the norms fixed by the government. Therefore, Respondent No. 1, according to the learned counsel for the appellants, was not entitled to be appointed under Section 31(3)(b) of the Act and the High Court was wrong in giving the directions which are neither proper nor legal. The learned counsel appearing for the College management which is joined as Respondent No. 2 in these appeals, has also supported the appellants on the point that no new post of a lecturer was created or had come in to existence till Respondent No., 1's services were terminated by the College Management. he also supported the appellants on the point that Respondent No. 1 was not appointed at any time by the College Management as a

lecturer on any new or sanctioned post. The learned counsel for the Government also supported the appellants and submitted that as Respondent No. 1 was not appointed on the post which was sanctioned by the Director of Higher Education on 29.8.1986 the Government cannot be saddled with liability to pay her salary. On the other hand, the learned counsel for Respondent No. 1 supported the judgment of the High Court on the ground that it was just and fair.

The undisputed facts are that Respondent No. 1 was appointed in the leave vacancy of Mrs. Agrawal and her services were terminated on 20.2.1985 when Mrs. Agrawal resumed duty. Till October 1984 the College was offering graduate course in Hindi. Some time before July 1983 the College decided to offer post graduate course in Hindi and, therefore, sought affiliation for that purpose. Final affiliation was granted on 19.9.1984. One of the conditions for affiliation was that the College shall appoint one lecturer in the 1st year and one lecturer in the 2nd year for the M.A. Hindi classes. It is also not in dispute that Respondent No. 1 was, along with other lecturers, taking M.A. classes in Hindi. The College Management, however, had not appointed any new lecturer as the requirement regarding number of lecturers according to the fixed norms was satisfied with the existing staff. No one out of the existing staff was appointed by the College Management as a lecturer for taking post graduate 1st year classes in Hindi.

What was submitted by the learned counsel for Respondent No. 1 was that it being a condition for affiliation the college Management ought to have created one more post of a lecturer in October 1984, before starting the post graduate Hindi classes and, therefore, even though it did not resolve to create one more post the court should proceed on the basis that one more post of a lecturer did come into existence. He further submitted that in view of this new post having come into existence before her services were discontinued and because she was taking post graduate Hindi classes she acquired a right to be considered for appointment on that post and there was a corresponding obligation on the part of the College Management to do so under Section 31(3)(b). The learned counsel, however, fairly conceded that if this Court comes to the conclusion that no new post had come into existence before her service were terminated on 20.2.1985 then she did not have a right under Section 31(3)(b) to get that post.

When the University informed the College that one of the conditions for affiliation was that there should be one lecturer in the 1st year, what was indicated and insisted upon was that the college should have the required staff for starting post graduate classes in Hindi. The said condition did not mean that the College should create a new and separate post. No statutory provision or any order having force of law or of binding nature was pointed out which required creation of a new and a separate post for the post graduate classes. As the existing staff of the College was sufficient for the purpose of taking graduate classes and also post graduate classes in Hindi in 1984-85 it was not necessary for the College Management to create a new post of a lecturer. Neither the University nor the Government had taken any objection to the College conducting post graduate classes in that manner. Thus no new post having been created by the College Management or having come into existence before services of Respondent No.1 had come to an end, Section 31(3)(b) was not attracted in this case. The High Court has completely overlooked this aspect and, therefore, fell into an error of allowing the writ petition of

Respondent No. 1 and giving directions which have given rise to these appeals.

It is, however, a fact that even though Respondent No. 1 was appointed in the leave vacancy she continued to work in the College for a period of about 2 years and 4 months with approval of all the authorities concerned. Even though she was appointed in a leave vacancy her appointment was made on the basis of selection made by the Selection Committee, that is, in the same manner in which regular appointment is made. She possessed Ph. D. degree and was qualified for a regular appointment. It also appears that the Management was willing to continue her as the College was granted permission to start post graduate classes in Hindi. It was only because of some difference amongst members of the Executive Committee that no proposal for regularizing her appointment could be made before her services were terminated. Later, the College Management has made a strong recommendation to the University to appoint her as a Lecturer in their college. In 1983 the Director of Education also granted sanction to the creation of a new post but because of this litigation the College management did not appoint any one of the post. In compliance with the order passed by the High Court the College of Management appointed Respondent No. 1 as a Lecturer. The University and the Government had also directed the College Management to Comply with the order of the High Court. Neither the Government nor the University nor the College Management has thought it fit to challenge the order passed by the High Court. That would indicate that they are willing to treat her appointment as regular from 1.10.96. Though we are inclined to take the view that the judgment and order passed by the High Court deserves to be set aside, in view of the facts and circumstances of the case, we do not think it necessary and proper to disturb her appointment made on 1.10.96. We only modify the order passed by the High Court and hold that she would become entitled to salary only from the day she has started or starts discharging her duties. In case of any dispute on this point, decision of the Director of Education shall be treated as final by all the parties. With these modifications and direction these appeals are disposed of No order as to costs.