



2026:AHC:179621-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 675 of 2011

Yogendra Singh

.....Appellant(s)

Versus

District Inspector of Schools Muzaffarnagar and others

.....Respondent(s)

Counsel for Appellant(s)	: Anil Bhushan, Rajrshi Gupta, Ravi Kant, Shams Uz Zaman, Upendra Singh, Yanendra Pandey
Counsel for Respondent(s)	: C.S.C., Nipun Singh, Rahul Jain, Suneet Kumar

RESERVED
AFR

Court No. -2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Indrajeet Shukla, J.)

1. Heard Mr. G.K. Singh, learned Senior Advocate assisted by Mr. Upendra Singh, learned Counsel for the appellant-petitioner and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel and Mr. Akhilesh Kumar Tripathi, learned Standing Counsel appearing on behalf of the State.

2. The present Special Appeal assails the validity and correctness of judgment and order dated 21.01.2011 passed by the learned Single Judge

in Writ Petition No. 17212 of 1989, whereby the writ petition came to be dismissed with following observations:

“Nobody is present on behalf of the petitioner even in the revised reading of the cause list.

This writ petition was earlier dismissed under an order dated 27.11.2003 and recall application was filed, which was rejected by means of a reasoned order by the Hon'ble Single Judge on 27.8.2010. The Hon'ble Single Judge also touched the merits of the petition while disposing of the restoration application. Special Appeal No. 1644 of 2010 was filed by petitioner which has been allowed and the writ petition was restored to its original number.

The petition is of the year 1989 and on the strength of the interim order the petitioner has been availing salary from the State exchequer till today.

However, since the salary to the petitioner has been paid because of the intervention of this Court and further since this Court finds that the petitioner was not qualified for the post of Lecturer on the date of appointment qua the subject concerned. It is necessary that the benefit drawn by the petitioner under the interim order must be neutralised. Therefore, it is directed that the entire salary paid to the petitioner, which he has drawn on the strength of the interim order, must be recovered by the authorities at the earliest possible.

Writ petition is dismissed. Interim order, if any, stands vacated.”

3. The factual matrix of the present case, as borne out from the record, is that a substantive vacancy on the post of Lecturer (Biology) arose at Kalyankari Shakubhara Inter College, Kuralsi, Muzaffarnagar, on account of the resignation of one permanent Lecturer, namely, Brij Bir Singh. The appellant-petitioner, Yogendra Singh, having a postgraduate degree, i.e. M.Sc. Agriculture (in Botany discipline), applied for appointment as Lecturer on an *ad-hoc* basis. The *ad-hoc* appointment in favour of the appellant-petitioner is said to have been approved by the District Inspector of Schools (hereinafter referred to as ‘DIOS’), Muzaffarnagar, vide order dated 23.12.1986. For ready reference, the appointment letter dated 21.10.1986 is reproduced hereinbelow:

“पत्रांक 727/86-87

दिनांक 21.10.86

विषय: जीव विज्ञान प्रवक्ता पद पर नियुक्ति के सम्बन्ध में।

महोदय,

आपको सूचित किया जाता है कि आपके साक्षात्कार दिनांक 19. 10.86 के अनुसार जीव विज्ञान प्रवक्ता पद पर आपकी अस्थायी रूप से 20.5.87 तक अथवा इससे पूर्व आराक्षी समूह अध्यापक या आयोग द्वारा

चयनित अभ्यर्थी के कार्यभार ग्रहण करने की तिथि से जो पूर्ववर्ती हो के लिये विभाग द्वारा स्वीकृत वेतन तथा मंहगाई भत्ता देय पर नियुक्ति की जाती है।

यह भी प्रतिबंध है कि आपको नियुक्ति का अनुमोदन जिला विद्यालय निरीक्षक मु० नगर द्वारा वेतन वितरण हेतु अनुमन्य होने पर ही आपके कार्य भार ग्रहण करने की तिथि या दिनांक से वेतन दिया जायेगा। आप पत्र प्राप्ति के 10 दिन के भीतर अपना कार्यभार ग्रहण कर लें।

प्रबन्धक
के०एस० इण्टर कालिज,
कुरालसी (मु०नगर)”

4. The appellant-petitioner filed a supplementary affidavit bringing on record the resolution of the Committee of Management dated 12.10.1986, which indicates that, after taking note of the qualification of the appellant-petitioner it comes out that he did not have Zoology as a subject in B.Sc, even then, on the pretext of interest of the students, the Committee passed the said resolution for his appointment on an *ad hoc* basis.

5. The Committee of Management issued a notice dated 23.06.1989 for termination of the services and, ultimately, vide order dated 31.07.1989, the services of the appellant came to be terminated by the Committee.

6. The appellant-petitioner filed Writ Petition No.17212 of 1989, inter alia, on the ground of absence of prior approval before termination of services of an *ad hoc* Lecturer, as required by Section 21 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 with the following reliefs:-

“(i) A writ order or direction in the nature of certiorari quashing the termination notice dated 31.7.89 issued by the Management.

“(ii) A writ order or direction of a suitable nature commanding the respondents not to interfere in the functioning of the petitioner on the post of Lecturer in Biology in Kalyankari Shakumbhara Inter College, Kuralsi, District Muzaffarnagar.”

7. The learned Single Judge passed an interim order on 20.09.1989 staying the operation of the order of termination, in the following words:

“Until further orders of this Court the operation of the order dated 31.07.1989 is stayed.”

8. Under the protection of the interim order dated 20.09.1989 passed by the learned Single Judge, the petitioner continued in service. The services of the appellant-petitioner were subsequently considered vide order dated 04.09.1995 for regularization by the Deputy Director (Education), Division-I, Meerut. The order of regularization passed on 04.09.1995 is extracted as hereinbelow:

“सेवा में,

उप जिला निदेशक,
प्रथम मण्डल, मेरठ।

सेवा में,

जिला विद्यालय निरीक्षक,
मुजफ्फरनगर।

पत्रांक: माध्यमिक/9859/94-95

दिनांक 4.9.95

विषय: उत्तर प्रदेश अध्यादेश संख्या 28 मई 1991 द्वारा उ०मा०वि० माध्यमिक शिक्षा आयोग और अधिनियम 1982 की धारा 33 के अन्तर्गत तदो नियुक्ति/प्रोन्नति अध्यापकों के विनियमितिकरण।

महोदय,

उत्तर प्रदेश शासन द्वारा निर्गत अध्यादेश संख्या 28 मई 1984 दिनांक 6.4.91 के प्राविधानों के अनुसार उ०प्र० माध्यमिक शिक्षा सेवा आयोग और चयन अधिनियम 1982 की धारा क एवं अवर शिक्षा निदेशक (मा०) इलाहाबाद के अ० पत्रांक / सामान्य (1) / तृतीय /शिविर/3906-4085 / 91-92 दि० 26.4.91 में दिए गये निर्देशानुसार निम्नांकित अध्यापकों को आपके तथा विद्यालय के प्रबन्धतन्त्र छायाप्रति अभिलेखों के आधार पर विनियमितिकरण हेतु अर्ह पाया है:-

क्र०सं०	अध्यापक का नाम	पद	संदर्भ पदोन्नति नियुक्ति तिथि	शैक्षिक योग्यता	विद्यालय का नाम
1	2	3	4	5	6
1.	योगेन्द्र सिंह	प्रवक्ता जीव विज्ञान	01.11.86	एम०एस०सी०	के०एस० इण्टर कालेज कुरालसी (मु०नगर)

विनियमितिकरण की वह संस्तुति अभ्यर्थी, प्राचार्य एवं प्रबन्धक द्वारा प्रस्तुत करें प्रमाणित अभिलेखों के आधार पर की गई है, अतः यदि किसी स्तर पर अभिलेखों में कोई त्रुटि पायी जाती है, अथवा कोई असत्य सिद्ध होती है तो, तो उसका उत्तरदायित्व अभ्यर्थी, प्राचार्य/प्रबन्धक का होगा।

संलग्नक:- 1 प्रति। भवदीय

ह०अपठनीय

उप शिक्षा निदेशक प्रथम मण्डल, मेरठ
पृ० सं०/ 94-95 तददिनांक

प्रतिलिपि प्रबन्धक के०एस० इण्टर कालेज कुरालसी (मु०नगर) को सूचना एवं आवश्यक कार्यवाही हेतु प्रेषित।

ह०अपठनीय

उप शिक्षा निदेशक प्रथम मण्डल, मेरठ।”

9. In the meantime, on 02.02.1999, the petitioner was appointed as Principal, which was challenged by one Jagmal Singh by means of Writ Petition No.5136 of 1999 and the said writ petition was dismissed vide order dated 19.02.1999. The dispute of principalship was, thereafter,

carried by the said Jagmal Singh to the jurisdiction of the Special Appeal of this Court and the Court of Special Appeal disposed of the appeal vide order dated 16.03.1999, directing the Deputy Director of Education to examine the qualification of the petitioner.

10. Pursuant to the direction issued by the Court of Special Appeal, the Deputy Director of Education heard the parties and passed an order to the effect that, since the dispute pertaining to the appointment of the petitioner-appellant was *sub judice*, as such the issue of qualification of the petitioner could not have been gone into at his end. The operative portion of the order dated 15.03.2000 passed by the Deputy Director of Secondary Education, Saharanpur Division, Saharanpur is reproduced hereinbelow: -

“निर्णय

"उपर्युक्त विवेचन से स्पष्ट है कि श्री योगेन्द्र सिंह की प्रवक्ता जीव विज्ञान के पद पर नियुक्ति का प्रकरण माननीय न्यायालय इलाहाबाद में योजित याचिका सं० 17212/89 माननीय न्यायालय के निर्णयाधीन है, ऐसी स्थिति में श्री योगेन्द्र सिंह को प्रधानाचार्य पद पर किये गये चयन अर्ह/अनर्ह के सम्बन्ध में निर्णय किया जाना विधिसंगत न होगा।"

11. It appears that, during the course of an audit objection, the question of the qualification for being appointed on the post of principal came up for consideration and the Finance Controller (Directorate of Education), Uttar Pradesh, vide order dated 05.10.2009, asked the DIOS, Muzaffarnagar, to take action on the audit report. The appellant-petitioner challenged the order dated 05.10.2009 by means of Writ Petition No.64693 of 2009. This Court, in Writ Petition No.64693 of 2009, called for pleadings with further stipulation that *“any further action taken during this period, shall abide by final orders to be passed by this Court”*. But the salary of the petitioner based on audit objection was stopped and being aggrieved thereby, the appellant-petitioner instituted Writ Petition No.18304 of 2010 and this Court dismissed the said writ petition with liberty to file an amendment application in that pending Writ Petition No.64693 of 2009.

12. In the meantime, Writ Petition No.17212 of 1989, filed challenging the initial termination order, was dismissed in default vide order dated 27.11.2003.

13. The order dismissing in default the Writ Petition No.17212 of 1989 was sought to be recalled by restoration application preferred by the appellant-petitioner but the same was rejected vide order dated 27.08.2010. The relevant portion of the order dated 27.08.2010 is extracted hereinbelow:

“In para 4 of the affidavit filed in support of the restoration application it is stated that the petitioner had Microbiology and Entomology at graduation level, which are equivalent to Zoology. The subjects studied by the petitioner at graduation level as appear from mark sheet of B.Sc (Ag) are as under:-

Part I - (i) Plant Pathology Microbiology (ii) Agricultural Economics (iii) Entomology (iv) Plant protection - (a) disease control (b) insect-pest control (v) Olericulture & Flori culture (vi) Biochemistry including Dairy chemistry (vii) Soil and water conservation and (viii) General course – Basic*

Statistics. Part- II (i) Elements of genetics (ii) Production of Field Crops (iii) Production of Fruit Crops and Fruits (iv) Dairy Cattle production (v) Plant Breeding and crop systematics (vi) Market Milk and Milk production (vii) Extension Education and community development. In M.Sc the petitioner studied the following subjects -

Part-I (i) Mathematics (ii) Principle of Genetics (iii) Cytobrid (iv) Stat. methods & exp. design and Morp. Anat & Emp., (v) Prin. of Bio & Eco. Botany;

Part-II (i) Principle of Plant breeding, (ii) Plant physiology (ii) Biochem. Mol. genetics (iv) Breeding of plant (iv) population biometrics.

In the Appendix A, amended Schedule - III under the U.P. Intermediate Education Act, the essential qualifications for the Zoology Teacher for Intermediate College are given, as follows:-

- 1. M.sc. in Botany or Zoology, or*
- 2. Trained with Agricultural Botany, Zoology in B.Sc, or*
- 3. M.Sc with Agricultural Zoology, Botany in B.Sc, or*
- 4. B.Sc with post-graduate diploma in Zoology conducted by Education Department, U.P., in any University or degree college.*

The petitioner does not possess any of the qualification for being appointed as Lecturer in Zoology. He was informed that he was not qualified for the post of Lecturer Zoology in the year 1989 itself. The petitioner therefore was not eligible to be appointed as Lecturer in 'Zoology'. Where the

petitioner's appointment on the initial stage itself was illegal, he did not have a right to be regularized and considered for appointment as Principal.

The delay condonation application, and restoration application are rejected.”

14. The Appendix ‘A’ referable to Regulation 1, Chapter II, mentions the word ‘trained’ which means postgraduate training qualification of any university or institution; further, the requisite qualification prescribed is graduation in the concerned subject, in addition to be trained one.

15. The petitioner, being aggrieved by the order dated 27.08.2010 passed by the learned Single Judge, instituted Special Appeal No.1644 of 2010, which was disposed of vide order dated 07.10.2010, remanding the matter for fresh consideration on two counts, firstly, if the application for condonation of delay was rejected, the learned Single Judge ought not have entered into the merits of the case and secondly, the writ petitioner had pointed out a regularization order passed in his favour, thus, the Court of Special Appeal required the learned Single Judge to re-examine the matter. The relevant remarks carried in the order of the Division Bench dated 07.10.2010 are extracted hereinbelow:-

“We are of the view that if the application for condonation of delay is dismissed and consequentially the application for restoration, the question for examining the matter on merits would not arise.

Here, in the instant case, there was an order of regularization in favour of the appellant herein. Parties agree that considering the cause shown, the delay be condoned and the petition be restored to file.

In the light of that, impugned order dated 27.08.2010 is set aside. The delay as explained in the filing of the restoration application is accepted. The delay is accordingly condoned. The order dated 27.11.2003 is set aside. The writ petition shall stand restored to its original number. Matter is remanded back to the learned Single Judge for reconsideration according to law.

We make it clear that while deciding the matter on merits, the issues should be considered independently.

Appeal stands disposed of accordingly.”

16. The unfortunate part was that the appellant-petitioner again failed to appear before the learned Single Judge and the learned Single Judge dismissed the writ petition on 21.01.2011, with a mandate for recovery of the salary, on ground that the petitioner was not qualified for the post of lecturer on the date of appointment qua the subject concerned and finally concluded that the benefit drawn by the petitioner under the interim order must be neutralized.

17. It is against the judgement dated 21.01.2011 that the present Special Appeal came to be instituted and was on board for our consideration in which an interim order is operating staying the recovery proceedings.

**SUBMISSION ADVANCED ON BEHALF OF THE APPELLANT-
WRIT PETITIONER**

18. Learned Senior Advocate, impeaching the validity of the order dated 31.07.1989 terminating the services of the appellant-petitioner by the Committee of Management, urged that, there being no prior approval as warranted under Section 21 of the Act, 1982, the order impugned cannot be given effect to.

19. To buttress the submission that where the services of an *ad hoc* teacher are sought to be terminated, prior approval as required under Section 21 would be necessary, learned Senior Counsel placed reliance upon **Pramodini Agrawal (Smt.) Vs. Regional Inspector of Girls School, Bareilly, (1993) 3 UPLBEC 1989**. The relevant observation in the judgment in ***Pramodini Agarwal (supra)***, that bear on the issue, are reproduced hereinbelow:

“7. I have considered the rival submissions made by learned counsel for the parties and in my opinion the submission made on behalf of the respondents that petitioner was not promoted to the post of principal cannot be accepted. There is no dispute that petitioner is senior most teacher of the College and she was entitled to officiate as principal. By resolution dated 5-12-1991 and the order dated 9-12-1991 the committee of management in fact had given effect to this legal position. Even if for the sake of argument, the contention

of learned counsel for respondents is accepted that petitioner was only allowed to take charge and she was not appointed, after 14-7-1992 she became ad-hoc principal of the College in view of the amendment of Section 18 by Amending Act, i.e. U.P. Act No. 24 of 1992. Sub-section (4) of the Amended Section 18 leaves no doubt that a vacancy for the post of principal may be filled by promoting the senior most teacher in lecturer's grade. The facts that petitioner is senior-most teacher and she was working in lecturer grade are not disputed. For the aforesaid facts, it has not been left either for the management or the District Inspector of Schools to do any exercise except to promote the senior-most teacher in the lecturer grade to occupy the post of principal. In view of the aforesaid legal position, the petitioner was working in capacity of ad-hoc principal. The fact that she has not been paid salary for the office of principal could not change the aforesaid legal position as she has already claimed payment of the emoluments which she may be legally entitled. The terminology used in Section 21 of the Act is so wide that it shall cover even the impugned order dated 28-6-1992, Annexure 4 to the writ petition. Any order having effect of reduction in emoluments or in rank could not have effect until it was approved by the competent authority. In my opinion, respondent No. 1 was not justified in taking any decision on the fact being communicated to her by the Committee of management. The communication dated 5-7-1993, Annexure X to the counter affidavit, by the Regional Inspectress of Girls Schools, III Region, Bareilly was wholly misconceived. The respondent No. 1 ought to have taken action on the intimation of the committee of Management with regard to approval. If she could accord approval herself, decision should have been taken by her and papers should have been forwarded to the Commission for necessary approval under Section 21 of the Act. The case relied on by learned counsel for petitioner could not be applied in the present case as it was with regard to the legal position prior to amendment of Section 18 and the promotion which was subject matter of dispute in that case was with regard to lecturer appointed under the orders of principal. The facts of the present case are entirely different. Here the committee of management itself authorised petitioner to assume charge of the office of principal and discharge functions. Petitioner without any objection acted for a year. In these circumstances the position of petitioner with regard to principal could not be doubted."

20. Further, learned counsel for the appellant-petitioner submitted that, the services of the petitioner having been regularized vide order 04.09.1995, under the statutory mandate contained under Section 33-A of the Act, 1982, would have the impact of subsequent ratification of the initial appointment and the irregularity, if any of the want of qualification in the subject for the post would stand cured, particularly in the absence of any challenge to the said regularization.

21. Learned counsel for the appellant-petitioner further submitted that, in pursuance of the fresh advertisement issued by the Board, the appellant-petitioner got selected and appointed as principal. The appointment on the post of principal, being the result of a fresh selection

based on experience which the appellant got while discharging his duties as Lecturer in Biology, cannot be faulted inasmuch as for being appointed on the post of Principal, it is only the experience and not the qualification in the subject prescribed on the initial post is the condition precedent.

22. The appointment of the petitioner on the post of Principal cannot be faulted as his experience as a Biology Lecturer cannot be doubted. The Board had recognized the appointment of the appellant-petitioner on the post of principal vide order dated 09.02.2015, and challenge to the same failed with withdrawal of the writ petition. Therefore, the appointment of the petitioner-appellant as principal remains intact with its natural consequences.

23. The only claim that remains is his post retiral dues, which he earned after rendering long years of service. As such, not having qualification for his initial appointment on the post of *ad hoc* lecturer (Biology) would pale into significance.

24. The Further submission is that it is nobody's case that the appellant-petitioner had ever practiced fraud in securing the appointment on the post of Lecturer (Biology). The qualification of M.Sc. in Agriculture was accepted by the Committee of Management with open eyes, in the interest of students, as would appear from the resolution of the Committee of Management.

25. After regularization of the services of the petitioner way back in the year 1995 by the order of Deputy Director of Education in exercise of power under Section 33-A of the Act, 1982, it does not lie in the domain of respondents to question the appellant's initial appointment dubbing it as illegal.

26. From the record it transpires that the petitioner had functioned as Lecturer w.e.f. 21.10.1986 till 01.02.1999, and, thereafter, as Principal from 02.02.1999 till 31.03.2023. Thus, the appellant-petitioner had

almost rendered 37 years of service, may be under the strength of an interim order.

27. In any view of the matter, the hyper-technical approach of absence of the requisite qualification at the initial stage needs to be ignored, keeping in view the long length of 37 years of service stating to the appellant's credit. Reliance has been placed on the following authorities:

-

(i) Dr. M.S. Mudhol and another Vs. Shri S.D. Halegkar and others, J.T. 1993 (4) SC 143

(ii) Rajendra Prasad Srivastava Vs. District Inspector of Schools Gorakhpur, 1994 AJC page 781

(iii) Tridip Kumar Dingal and others Vs. State of West, 2009 (1) SCC page 768

(iv) Vikas Pratap Singh Vs. State of Chattisgarh, 2013 (14) SCC 494

(v) Devendra Kumar Agarwal Vs. State of U.P. in Special Appeal No.212 of 2025

28. No other point has been pressed on behalf of the appellant-petitioner.

SUBMISSION ON BEHALF OF THE RESPONDENT-STATE

29. Learned Counsel for the State, submitted with vehemence that admittedly, the appellant-petitioner did not possess the basic requisite qualification prescribed for appointment as Lecturer (Biology) on the date of his initial appointment in the year 1986. Thus, having failed to establish that the appellant-petitioner had possessed the requisite qualification in the subject of Biology, his further continuance is bad from its inception and such appointment is *void ab initio*.

30. The approval granted by the District Inspector of Schools was only for a short term period under the First Removal of Difficulties Order, which cannot be treated to be a seal to the appointment of the petitioner-appellant when the admitted case of the appellant-petitioner is that he did not possess the qualification in terms of statutory

requirements contained in Appendix 'A' read with Schedule III of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, prescribing the requisite qualification, which read:-

“वनस्पति विज्ञान अथवा जन्तु विज्ञान में एम०एस०सी० (प्रशिक्षित) अथवा कृषि विषयक वनस्पति विज्ञान के साथ एम०एस०सी०, बी०एस०सी० में जन्तु विज्ञान (प्रशिक्षित) अथवा कृषि विषयक जन्तु विज्ञान के साथ एम०एस०सी०, बी०एस०सी० में वनस्पति विज्ञान (प्रशिक्षित) अथवा यू०जी०सी० द्वारा मान्यता प्राप्त विश्वविद्यालय/डिग्री कालेज से एम०एस०सी० (लाइफ साइंस) अथवा किसी विश्वविद्यालय या डिग्री कालेज में शिक्षा विभाग, उत्तर प्रदेश द्वारा आयोजित जीव विज्ञान में स्नातकोत्तर डिप्लोमा के साथ बी०एस०सी०।”

31. Learned Counsel for the State pointed out that the approval granted by the District Inspector of Schools for continuance of the petitioner as an *ad hoc* Lecturer for one academic session cannot be pressed as an estoppel, as there can be no estoppel, against statute and an administrative approval cannot legalize an appointment made contrary to the law.

32. It was further submitted that long continuance in service under an interim order does not create any enforceable right, more so, when an appointment is illegal from its inception. The length of service cannot be treated as a substitute for the basic and essential qualification prescribed by the statute.

33. Learned Counsel for the State lastly submitted that the salary payable to teachers of aided institutions is drawn from the public exchequer. The education authorities are under a statutory obligation to ensure that only duly qualified persons are appointed against sanctioned posts, and, therefore, corrective action upon discovery of the appellant's lack of the requisite basic qualification is expedient. A *fortiori* recovery sought to be effected from the appellant is justified in the peculiar facts of this case.

34. The sheet anchor of the submissions advanced by the learned of State counsel is that the appointment of the appellant- petitioner on *ad hoc* basis is void, as he failed to meet the eligibility criteria fixed by the First Removal of Difficulties Order, 1981 set out in Appendix 'A' to the

Regulations framed under the Act of 1921. The Further submission is that an appointment made in violation of the prescribed statutory qualification cannot be sustained merely because the appointee continued in service for a long tenure. The requisite eligibility must exist on the relevant date, and even subsequent acquisition of the requisite qualification would have no retrospective effect. Reliance has been placed on **Pramod Kumar Vs. U.P. Secondary Education Services Commission**, (2008) 7 SCC 153 and **Rakesh Kumar Sharma Vs. State (NCT of Delhi)**, (2013) 11 SCC 58. We have been taken to relevant observations in **Pramod Kumar** (supra), which read:

“15. Mr. S.R. Singh, the learned senior counsel appearing on behalf of the respondents, on the other hand, submitted :

(a) Appellant having not possessed any valid degree from a University recognised by the University Grants Commission, his appointment was illegal.

(b) Rule 3 of 1993 Rules providing for a degree from a recognised university as a sine quo non for appointment to a post. A subsequent acquisition, therefore, would not come to his rescue.

(c) Appellant having not fulfilled the conditions precedent for regularization of his services in terms of the provisions of the Uttar Pradesh Secondary Education Selection Board Act, 1982, the High Court has rightly rejected the said prayer.”

18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. {See Secretary, State of Karnataka and others Vs. Umadevi and others (2006) 4 SCC 1, National Fertilizers Ltd. And otehrs Vs. Somvir Singh (2006) 5SCC 493 and Post Master General, Koltakata and others Vs. Tutu Das (Dutta) (2007) 5 SCC 317.

21. It is not in dispute that the said institution was not recognized by any University. A degree is recognized only if it is granted by a University constituted in terms of the University Grants Commission Act, 1956 or under any State or Parliamentary Act. No University can be established by a private management without any statutory backing.

22. The management of the school, when it came to learn that the appellant did not possess a degree of B.Ed. from a recognised University, should have terminated his services forthwith. It did not do so for reasons best known to it. It has not been shown to us that the management of the school had any authority to allow the appellant to obtain the requisite degree from any other University during the tenure of his services. Even the Commission in its counter affidavit, although otherwise supports the case of the appellant, did not say so.

23. Our attention has been drawn to a decision of the Punjab and Haryana High Court in *Ram Bhagat Sharma and Others Vs. State of Haryana and Others* [1997 (4) RSJ 134] wherein it was directed :

"With a view to protect the interest of the students community, we direct the Government of Haryana to take steps to prevent future recruitment of persons possessing qualifications awarded by Hindi Sahitya Sammelan, Allahabad, and/or Hindi Sahitya Sammelan, Prayag, Allahabad, and at the same time take appropriate measures to dispense with the services of the unqualified teachers. For this purpose, the Government of Haryana is directed to issue written instructions to all concerned that in future no appointment be given to the persons possessing qualifications by the institutions referred to herein above. We also direct the Government of Haryana to take steps for terminating the services of all such teachers who have secured employment on the basis of degrees/diplomas/certificates issued by Hindi Sahitya Sammelan, Allahabad and/or Hindi Sahitya Sammelan, Prayag, Allahabad. However, those who have completed three years service should be given an opportunity to acquire the requisite qualification within a stipulated time. In case they fail to acquire such qualification, then appropriate order be passed to dispense with the services of such persons."

We, with respect, do not subscribe to the said view. In any event, it is not a case where, this Court is to protect the interest of the students. The question herein is as to whether the services of the appellant can be said to have been illegally terminated or not.

24. *A departmental proceeding against the appellant might have been initiated after the change of management. We will also assume that the said proceeding was initiated after the contempt proceeding was initiated. Appellant, however, has filed a writ application for issuance of or in the nature of a writ of mandamus. He, therefore, must establish existence of a legal right in himself and a corresponding legal duty in the State. If he did not possess the requisite qualification to hold a post, he could not have any legal right to continue. It was, therefore, immaterial as to why and when the said proceeding had been initiated against him.*

25. *Reliance placed by Mr. P.S. Patwalia on Shainda Hasan Vs. State of Uttar Pradesh and others [(1990) 3 SCC 48] is not apposite. Therein a concession was made on behalf of the State that the University had agreed that asking the appellant therein to leave the job after 16 years will be doing injustice to her. Such a view might have been taken by this Court in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India. The question, however, that arose therein was as to whether the Selection Committee could grant relaxation of the educational qualification vis-à-vis the experience required to be obtained. It was held that such a power did not exist in the Selection Committee.*

26. *It was, therefore, a case where relaxation in regard to experience was sought for and granted. It was not a case where the appellant therein lacked basic educational qualification. Herein, we are concerned with a case where the appellant lacked basic educational qualification.*

27. *Reliance has also been placed by Mr. Patwalia on Dr. M.S. Mudhol and Another Vs. S.D. Halegkar and Others [(1993) 3 SCC 591]. Therein a writ of quo warranto was sought for in a case involving the question as to whether a degree granted in favour of the appellant therein was equivalent to another degree or not. It was found that as public interest would not suffer, a writ of*

quo warranto may not be issued. The Court, therefore, did not exercise its discretionary jurisdiction.”

The relevant remarks in **Rakesh Kumar Sharma** (supra) read:

“11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

12. In U.P. Public Service Commission v. Alpana [(1994) 2 SCC 723 : 1994 SCC (L&S) 742 : (1994) 27 ATC 101], this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on the last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared up to the last date of submission of applications, would not be eligible.

14. In Harpal Kaur Chahal v. Director, Punjab Instructions [1995 Supp (4) SCC 706 : 1996 SCC (L&S) 226 : (1996) 32 ATC 172] this Court held : (SCC p. 707, para 2)

“2. ... It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to the rules.”

(emphasis supplied)

22. It also needs to be noted that like the present appellant there could be large number of candidates who were not eligible as per the requirement of rules/advertisement since they did not possess the required eligibility on the last date of submission of the application forms. Granting any benefit to the appellant would be violative of the doctrine of equality, a backbone of the fundamental rights under our Constitution. A large number of such candidates may not have applied considering themselves to be ineligible adhering to the statutory rules and the terms of the advertisement.”

ANALYSIS/REASONING

35. The question of appointment of the appellant-petitioner on the post of principal is not the subject matter to be examined by this Court, though the same would definitely be affected if initial appointment of the appellant-petitioner as a Lecturer vanishes.

36. Thus, what can safely be concluded is that the question of holding basic qualification qua the initial appointment has not been set at rest, either by this Court or by the authorities, even in pursuance to exercise

undertaken under the mandate of this Court in Special Appeal No.190 of 1999, vide order dated 16.03.1999, on the pretext that such question is to be determined by this Court in Writ Petition No.17212 of 1989.

37. This Court, hearing an intra-Court appeal under Chapter VIII of the Allahabad High Court Rules, 1952, exercises the same jurisdiction, which the learned Single Judge does. Thus, we refrain from remanding the matter, though the petitioner could not be heard before the learned Single Judge. We in the exercise of our co-extensive jurisdiction proceed to adjudge and examine whether the initial appointment of the petitioner was valid or not, which would definitely go to the root of the matter in deciding the correctness of the order of termination of services dated 31.07.1989.

38. Admittedly, the appellant-petitioner attained the age of superannuation after serving on the post of Principal but post-retiral dues payable to the appellant-petitioner have not yet been paid.

39. After the enforcement of the Act, 1982, an *ad hoc* appointment could be made by virtue of The Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, read with Section 18 of the Act, 1982. For the sake of ready reference, Section 18 of the Act, 1982, as it stood prior to its amendment in 1992, is reproduced hereinbelow:

“The legislative journey of section 18 from 1982 till this date is quite interesting. The original section 18 stood as follows :-

"18. (1) Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and-

(a) the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification; or

(b) the post of such teacher has actually remained vacant for more than two months, then, 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.

(2) The provisions of sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on ad hoc basis with the substitution of the expression 'Board' for the expression "Commission".

(3) Every appointment of an ad hoc teacher under sub-section (1) or sub-section (2) shall cease to have effect from the earliest of the following dates, namely-

(a) when the candidate recommended by the Commission or the Board, as the case may be, joins the post;

(b) when the period of one month referred to in sub-section (4) of section 11 expires;

(c) thirtieth day of June following the date of such ad hoc appointment."

40. The Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, was the source and procedure for making *ad hoc* appointments on the day when the appellant-petitioner was inducted in service and paragraph no. 6 deals with the essential qualification laid down in Appendix 'A' referred to in the Regulations framed under the Act, 1921, and if a person fails to meet the requisite qualification as warranted by Appendix 'A' he fails to meet the requisite eligibility condition for an appointment made in contravention and such appointment is *void ab initio*. For ready reference the relevant provisions of the Removal of Difficulties Order, 1981, are reproduced hereinbelow:

"2. Vacancies in which ad hoc appointment can be made: *The management of an institution may appoint by promotion or by direct recruitment, a teacher on purely ad hoc basis in accordance with the provisions of this Order in the following cases, namely,-*

(a) in the case of a substantive vacancy existing on the date of commencement of this Order caused by death, retirement, resignation or otherwise;

(b) in the case of a leave vacancy, where the whole or unexpired portion of the leaves is for a period exceeding two months on the date of such commencement;

(c) where a vacancy of the nature specified in clause (a) or clause (b) comes into existence within a period of two months subsequent to the date of such commencement.

3. Duration of ad hoc appointments: *Every appointment of an ad hoc teacher under paragraph 2 shall cease to have effect from the earliest of the dates, namely,-*

- (a) when the candidate recommended by the Commission or the Board joins the post; or*
- (b) when the period of six months from the date of such ad hoc appointment expires.*

5. Ad hoc appointment by direct recruitment.-

(1) Where any vacancy cannot be filled by promotion under paragraph 4, the same may be filled by direct recruitment in accordance with clauses (2) to (5).

(2) The management shall, as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.

(3) Every application referred to in clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied-

(a) by a crossed postal order worth ten rupees payable to such Inspector;

(b) by a self-addressed envelope bearing postal stamp for purposes of registration.

(4) The District Inspector of Schools shall cause the best candidates selected on the basis of quality points specified in Appendix. The compilation of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such Inspector.

(5) If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and names of the institution shall be arranged in Hindi alphabetical order. The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the institution. This process shall be repeated till both the lists are exhausted.

Explanation. In relation to an institution imparting instruction to women the expression 'District Inspector of Schools' shall mean the 'Regional Inspector of Girls' Schools'.

6. Eligibility for appointment: Every appointment of teacher under paragraph 4 or 5 shall be subject to the following conditions, namely:

(a) The candidate sought to be appointed by promotion or by direct recruitment must fulfil the essential qualifications laid down in Appendix A referred to in the regulation (1) of Chapter II of the regulations made under the Intermediate Education Act, 1921.

(b) The candidate sought to be appointed by direct recruitment under paragraph 5 shall not be related to any member of the Committee of Management in the manner indicated in Schedule II to the Intermediate Education Act, 1921.

(c) The candidate sought to be appointed by promotion under paragraph 4 must have been serving the institution in substantive capacity from before the date of commencement of this Order.”

41. An *ad hoc* appointment does not confer any vested right; rather it was for a limited period and ordinarily continues until a duly selected candidate joins the post. The original Section 18 of the Act, 1982, provided that where the Management had notified a vacancy to the Commission and the Commission failed to recommend the name of a suitable candidate, or where the post of such teacher has actually remained vacant for more than two months, then the Management could appoint, by direct recruitment or promotion, a teacher on a purely *ad hoc* basis from amongst the persons possessing the qualifications prescribed under the Intermediate Education Act, 1921, and the Regulations framed thereunder. Section 18 of the Act, 1982, however, did not lay down the procedure to be followed for appointment of *ad hoc* teacher either by promotion or by direct recruitment. Since the Commission or the Board was not constituted, therefore, difficulties arose in making available teachers in the Institutions, and, as such, the Government vide Notification dated 31.07.1981, 11.09.1981 and 30.06.1982, issued separately, three Removal of Difficulties Orders, known as First, Second and Third Removal of Difficulties Orders. These Removal of Difficulties Orders empowered the Management of an institution to appoint teachers on *ad hoc* basis and further laid down the procedure for such *ad hoc* appointment. In fact, Section 18 of the Act, 1982, as well as First Removal of Difficulties Order operates in the same field and are part of one integrated scheme. Thus, *ad hoc* appointment of a teacher under Section 18 of the Act, 1982, read with the First Removal of Difficulties Order, had to be done in the manner laid down therein, which requires strict compliance/adherence to the requisite eligibility qualification.

42. The resolution of the Committee of Management dated 12.10.1986, has not been brought on record by the appellant, but in any view of the matter the basic requisite qualification needed by the statute contained in Appendix 'A' read with Schedule III of Chapter II of the Regulations framed under the Act, 1921, could not have been given complete go-by on the pretext of the interest of students. This Court is completely at a loss to understand what interest of student could be espoused by appointing a teacher in the subject who lacked the basic qualification provided by statute. Rather, the induction of such a teacher was counterproductive, since the students for a pretty long period were forced to be taught by a teacher who was not an expert of the subject and lacked the qualification in the subject concerned.

43. The authority competent to approve the punishments mentioned under Section 21 of the Act, 1982 is the "Board", which simply means that teachers who have been duly and validly appointed on the recommendation/selection by the Board (U.P. Secondary Education Service Selection Board) cannot be removed etc. from service except with the Board's prior approval. For ready reference Section 21 of the Act, 1982 is extracted hereinbelow:

"21. Restriction on dismissal etc. of teachers. The management shall not, except with the prior approval of the Board, dismiss any teacher or remove him from service, or serve on him any notice of removal from service, or reduce him in rank or reduce his emoluments or withhold his increment for any period (whether temporarily or permanently) and any such thing done without such prior approval shall be void."

44. The learned Counsel for the appellant-petitioner endeavoured to rely upon Section 21 of the Act, 1982 as a sword in place of a shield, by urging that the impugned termination order passed by the Committee of Management could not have been passed in absence of prior approval of the District Inspector of Schools. The argument advanced, *ex facie*, appears to be palpably flawed, as the protection enumerated in the aforesaid Act is not for *ad hoc* teachers. Rather, prior approval of the Board is required for dismissal, removal, reduction in rank, reduction in

emoluments, or withholding of increments for any period as contemplated under the said provision applies to teachers regularly appointed as distinguished from *ad hoc* ones who are a separate class having been appointed due to sheer exigencies in the exercise of power under the First Removal of Difficulties Order.

45. The term ‘teacher’ itself has been defined under Section 2(k) of the Act, 1982, which reads:

“teacher means a person employed for imparting instructions in an Institution and includes a Principal or a Headmaster”

46. The protection of a prior approval from the Board can be extended to a teacher appointed under the aegis of Act, 1982 or at least regularized by following due procedure of law. The only provision under Section 33 of Act, 1982 was enforced in the year 1985, and the alleged regularization is claimed to be of 04.09.1995. Hence, the appellant-petitioner could not be termed to be teacher having either been appointed or regularized under the Act, 1982, prior to his termination effective since 31.07.1989. In view of the aforesaid facts no procedural safeguard of Section 21 of Act, 1982 is available to appellant-petitioner, whose appointment is *ex facie* void *ab initio*. More so, any indulgence by this Court may revive an illegal order of appointment for which no writ of certiorari can be issued.

47. The expression *void ab initio* has not been defined either in the First Removal of Difficulties Order or in the Act of 1921 or the Act of 1982. Thus, this Court feels appropriate to refer to the *Black’s Law Dictionary*, which defines the expression *void ab initio* as follows :-

“Void ab initio (ab i-nish-ee-oh). (17C) Null from the beginning, as from the first moment when a contract is entered into. A contract is void ab initio if it seriously offends law or public policy, in contrast to a contract that is merely voidable at the election of one party to the contract.”

48. In service jurisprudence, the letter of appointment itself sets out a formal contract. Thus, the appellant-petitioner’s appointment seriously

offends the law governing appointment as it then was i.e. the First Removal of Difficulties Order, 1981, which required that the incumbent must possess the essential qualifications in terms of Appendix 'A' referable to Regulation 1 of Chapter II framed under Act, 1921. Since the appellant-petitioner lacked the essential qualification as required by the prevalent law, there is not an iota of doubt that his appointment in the year 1986 was *ab initio void*.

49. It is trite law that an appointment made in contravention of statutory provisions is *void ab initio*. The Supreme Court, in **State of Odisha and others Vs. Sulekh Chandra Pradhan and others**, (2022) 7 SCC 482, relying upon the decision rendered in **Official liquidator Vs. Dayanand and others**, (2008) 10 SCC 1, has held that appointments made in contravention of statutory provisions are *void ab initio*. The relevant observations are extracted hereinbelow:

“34. It is not in dispute that the appointment of all the applicants/respondents/teachers have been made directly by the respective Management without following the procedure as prescribed under the Rules/statute. It is a trite law that the appointments made in contravention of the statutory provisions are void ab initio. Reference in this respect could be made to the judgments of this Court in Ayurvedya Prasarak Mandal v. Geeta Bhaskar Pendse [Ayurvedya Prasarak Mandal v. Geeta Bhaskar Pendse, (1991) 3 SCC 246 : 1991 SCC (L&S) 900] , J&K Public Service Commission v. Narinder Mohan [J&K Public Service Commission v. Narinder Mohan, (1994) 2 SCC 630 : 1994 SCC (L&S) 723] , Official Liquidator v. Dayanand [Official Liquidator v. Dayanand, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] and Union of India v. Raghuwar Pal Singh [Union of India v. Raghuwar Pal Singh, (2018) 15 SCC 463 : (2018) 2 SCC (L&S) 823].

35. We are unable to accept the contention raised by Shri Gaurav Agrawal and Shri R. Balasubramanian that since the applicants/teachers were appointed on posts which were not on grant-in-aid basis, the said Rules are not applicable. The said Rules would clearly show that they are applicable to aided educational institution. Undisputedly, the institutions in which the applicants/teachers were appointed, were recognised as aided M.E. Schools vide G.O. dated 12-9-1980. It is also not in dispute that the appointments so made were subsequent to the schools being recognised as aided schools. As such, the contention in that regard deserves to be rejected.

(emphasis added)

50. It would be apposite to refer to the judgment of the Supreme Court in **J & K Public Service Commission v. Narinder Mohan**, (1994) 2 SCC 630, wherein the Court considered the legality of ad hoc appointments made *dehors* the statutory recruitment rules. The relevant remarks from the report are reproduced hereinbelow:

“7. Existence of statutory rules is not a condition precedent to appoint an eligible and fit person to a post. The executive power is co-extensive with legislative power of the State and under Article 162, the State can create civil posts and fill them up according to executive instructions consistent with Articles 14 and 16 of the Constitution. It is settled law that once statutory rules have been made, the appointment shall be only in accordance with the rules. The executive power could be exercised only to fill in the gaps but the instructions cannot and should not supplant the law, but only supplement the law. The Governor exercising the power under proviso to Section 125 (Article 309 of the Constitution of India) made the rules which do not expressly give the power to the State Government to make ad hoc appointments. No such rule has been brought to our notice. No express power was conferred and in fact cannot be conferred to relax the rules of recruitment. Having made the rules the executive cannot fall back upon its general power under Article 162 to regularise the ad hoc appointments under the Rules. Rule 9(3) empowers only to relax the qualification of age in particular exigencies which cannot be called in aid to relax the rules of recruitment. To tide over unforeseen exigencies, power to make ad hoc appointments, may be visualised as envisaged by Explanation (b) to Rule 4 but it expressly states that by virtue of such appointment, the ad hoc appointee does not become member of the service. The Rules prescribe direct recruitment/promotion by selection as the mode of recruitment which would be done only by PSC or promotion committee duly constituted and by no other body. Therefore, ad hoc employee should be replaced as expeditiously as possible by direct recruits. A little leeway to make ad hoc appointment due to emergent exigencies, does not clothe the executive Government with power to relax the recruitment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door ad hoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The later are the product of order and regularity. Every eligible person need not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments. In view of the Explanation (b) to Rule 4, the ad hoc appointments to any post in any of the three wings of the services under the Rules are therefore de hors the Rules. Appointments of Respondents 1 to 6 cannot be held to be in accordance with the Rules.”

51. In **Pawan Kumar Tiwary and Other vs. Jharkhand State Electricity Board (Now Jharkhand Urja Vikas Nigam Limited) and Others**, 2025 SCC OnLine SC 1751, the Supreme Court, while considering the

legality of appointments and the effect of procedural irregularities, made the following observations that are reproduced hereinbelow:

“31. The jurisprudence around irregular v. illegal appointments must not be blurred. An irregular appointment is one where procedure is not strictly followed but the appointee is otherwise qualified and the post is sanctioned. An illegal appointment, on the other hand, is void ab initio, such as where the appointee is ineligible or the post does not exist. When appointments are questioned on grounds of irregularity, the inquiry must not end with detecting the infirmity but must proceed further to distinguish those whose appointments are unimpeachable. Justice demands separation, not erasure.

35. It must be underscored that the jurisprudential divide between irregular and illegal appointments is neither artificial nor academic. An appointment may be irregular if it deviates from established procedure, but it crosses into the realm of illegality only where it violates statutory mandates, is made without the existence of a sanctioned post, or is tainted by fraud. Conflating the two categories leads to manifest injustice, particularly when individuals, who have no role in the procedural defect, are visited with the severest consequence of termination.

(emphasis added)

52. The distinction drawn by the Supreme Court between an irregular and an illegal appointment assumes significance in the present case. This is not a case where an otherwise eligible candidate was appointed through a defective procedure; rather, the appellant admittedly lacked the requisite qualification prescribed by statute for a post in the subject/discipline against which he was appointed.

53. The reliance placed by the appellant on ***Pramodini Agrawal (Smt.) (supra)*** does not advance his case, as in the said case the incumbents were legally appointed and the question was whether an order having the effect of removal, reduction in rank or emoluments could be given effect to without the statutory approval contemplated under Section 21 of the Act, 1982. The present case stands on an entirely different footing, as the appellant's initial appointment itself was contrary to the mandatory qualification prescribed by the statutory scheme and was, therefore, void *ab initio*.

54. The reliance placed by learned Senior Counsel on authoritative pronouncements viz., (i) Dr. M.S. Mudhol (*supra*), (ii) Rajendra Prasad

Srivastava (*supra*), (iii) Tridip Kumar Dingal (*supra*), (iv) Vikas Pratap Singh (*supra*) and (v) Devendra Kumar Agarwal (*supra*) where the appointments were saved, do not address the inherent lack of basic statutory qualification rendering the appointments void. Rather, the inquiry in aforesaid cases is limited to the procedural defects where the appointments were in their very initial nature found to be irregular. Thus, the aforesaid precedents do not lay binding principle so far as the present controversy is concerned, that is to say, one involving an appointment void from its inception.

55. The emphasis laid by Learned Counsel for the appellant on the fact that prior approval of the DIOS had been granted to the *ad hoc* appointment of the appellant-petitioner is misplaced, as no such prior approval has been laid down as a requirement either under the Removal of Difficulties Order or under Section 18 of the Act, 1982. Moreover, the Full Bench of this Court, in **Kumari Radha Raizada and others Vs. Committee of Management Vidyawati Darwari Girls Inter College, 1994 SCC OnLine All 839**, has held that there is no requirement of approval or prior approval of the DIOS in cases of *ad hoc* promotion or direct recruitment of teachers. The Full Bench, has taken note of entire scheme of the Act, 1982, as well as the Removal of Difficulties Order and considered the issue in its entirety. The relevant observations are reproduced hereinbelow :

“67. The Act lays down an elaborate procedure for making appointment on the post of a teacher. Section 10 provides that the Management of the institution has to notify the vacancy to the Commission and Section 11 provides that the Commission after holding interview shall prepare a panel. After receipt of panel, name of the candidate selected shall be intimated to the Management which shall issue an appointment letter to him. Under Section 2(k) teacher means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster and under Rule 2(hh) of U.P. Secondary Education Services Commission Rules (hereinafter referred to as the Rules) vacancy means a vacancy arising out as a result of death, retirement, resignation, termination, dismissal, creation of new post or appointment/promotion of the incumbent to any higher post in a substantive capacity. Since under Section 10 a vacancy has to be notified to the Commission, it follows as a corollary that the Commission has to make selection of teacher, Headmaster or Principal, as the case may be, only for a substantive vacancy as defined in rule 2(hh) and not for a short term

ivacancy. Sub-section (1) of Section 16 lays down that subject to provisions of Sections 18, 21B, 21C, 21D and 33 and 33A every appointment of a teacher specified in the Schedule shall be made by the Management only on the recommendation of the Commission. Sub-section (2) of Section 16 lays down that every appointment of a teacher, in contravention of the provisions of sub-section (1), shall be void. So the appointment is to be made only on the recommendation of the Commission otherwise it would be void. The only exception is Section 18, where the Management has been given the right to make ad hoc appointment of teacher, if the conditions enumerated therein are satisfied. Therefore, Section 18 is the repository of power of the Management to make ad hoc appointment of a teacher on a substantive vacancy. In absence of such a provision the Management will have no authority to make even an ad hoc appointment on a substantive vacancy.

68. Though Section 18 empowers the Management it makes ad hoc appointment on a substantive vacancy, the procedure to make such appointment has, however, not been given therein. A short term vacancy may arise on account of grant of leave or suspension of a teacher and such a vacancy cannot be filled through the Commission nor the procedure for filling up such a vacancy has been given in the Act or Rules. As the procedure for making ad hoc appointment on substantive or short term vacancy had not been given there was difficulty and necessary condition for exercise of power under Section 33 came into existence.

69. The Government of U.P. has issued three Removal of Difficulties Orders on July 31, 1981; September 11, 1981; and January 30, 1982 (hereinafter referred to as the First Order, Second Order and Third Order respectively) under sub-section (1) of Section 33 of the Act. The First Order governs the case of a substantive vacancy as will be evident from para 2 thereof. Para 4 of this Order gives the procedure for filling in the vacancy by promotion and para 5 gives the procedure for filling in the vacancy by direct recruitment. During the course of argument much emphasis has been laid on the word 'may' occurring in para 4. It has been urged that use of word 'may' shows that the provision is directory and not mandatory. But reading it together with para 5 would show that first the vacancy has to be filled in by promotion and only where it is not possible to do so that the Management can take recourse to direct recruitment. It is a well known principle of interpretation that every clause of a statute is to be construed with reference to context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute. Construction is to be made of all the parts together and not of one part only by itself. Individual words are not considered in isolation but may have their meaning determined by other words in the section in which they occur (see Maxwell on Interpretation of Statutes 12th Edn. pages 47 and 58). In Societe De Traction v. Kamani Engineering, AIR 1964 SC 558, it has been held as under (para 9):

"The use of the expression 'may' is not decisive. Having regard to the context the expression 'may' used in a Statute has varying significance. In some context it is purely permissive, in other, it may confer a power and make it obligatory upon the person invested with the power to exercise it as laid down."

81. Under the Scheme of the Act the Management has no power of selection and it is bound to appoint a person as a teacher : whose name has been forwarded in the panel prepared by the selection Commission after holding a process of Selection. Since under Section 18 a power to make ad hoc appointment is conferred on the management its provision must be strictly followed. It was Held in Taylor v. Taylor, (1875) 1 Ch. D 426 that where a power is given to do a certain thing in a certain way, the thing must be done

in that way or not at all and that other methods of performance are necessarily forbidden. This was reiterated by Privy Council in Nazir Ahmad v. Emperor, AIR 1936 PC 253 (2) and by Supreme Court in Ram Chandra v. Govind, (1975) 1 SCC 559: AIR 1975 SC 915, Hukam Chand v. Union of India, (1976) 2 SCC 128: AIR 1976 SC 789 and in several other cases.

82. The opening part of Section 18 of the Principal Act uses the expression — where the Management has notified a vacancy to the Commission in accordance with the provision of the Act. Sub-section (1) of Section 10 says that management shall notify the vacancy to the Commission in such manner and through such officer or authority as may be prescribed. Rule 4 provides that management shall determine and, intimate to the Commission the vacancies existing or likely to fall vacant in proforma given in Appendix 'A', which is a Requisition Form. The Management has to furnish all the details like number of students, number of teachers, subjects and sections etc. as mentioned in Appendix 'A'. Only after the notification had been done by sending the Requisition Form (Appendix A) and the period mentioned in sub-clause (a) or (b) of sub-section (1)-of Section 18 had elapsed that the management became entitled to proceed in accordance with the First order in the period prior to July 14, 1992. The notification of the vacancy has to be done in the same manner even after enforcement of U.P. Act 24 of 1992. The provisions of Removal of Difficulties Orders, whichever and wherever applicable should be strictly followed, failing which the ad hoc appointment so made would be invalid. This view finds support from the observation made by a Division Bench in Santosh Kumar Singh v. State of U.P., 1993 (2) ESC 158, which while considering the provisions of Section 16 of U.P. Higher Education Services Commission Act which is somewhat similar to Section 18 of the Act, held that ad hoc appointment made without notifying the vacancy would be illegal.

56. Having examined the claimed shield of the appellant-petitioner *qua* Section 21 of the Act, 1982, which requires prior approval of the Board before the termination or dismissal of a teacher, it comes out that the impugned termination order passed in the year 1989 by the Management did not require any approval, as the appellant was not a teacher selected by the Board; more so, the appointment itself being void due to ineligibility of not having the requisite qualification does not confer any right. If on a hyper-technical ground the impugned termination order is quashed for want of approval by the Board it would lead to revival of an illegality, which is impermissible under the law, particularly in the writ jurisdiction of this Court. The Supreme Court has unequivocally settled that the learned Single Judge should not interfere or set aside an order if doing so resurrects another pernicious wrong or

illegal order. (See: **Employees State Insurance Corporation and another vs Jardine Henderson Staff Association & others**, 2006 (6) SCC 581).

57. Since the appellant-petitioner admittedly lacked the requisite qualification for being appointed on the post of a Lecturer in Biology, his appointment is *ab initio void*. Quashing the order impugned on the ground of absence of prior approval, though the said shield is not available to appellant-petitioner, would amount to restoration of an illegality and we cannot permit an illegality to be perpetuated by issuing a writ of *certiorari*.

58. It is trite law that a writ of *certiorari* is issued to correct a manifest error of law or jurisdictional error, but, it is withheld if granting it perpetuates a different legal wrong or chaos on the record. The jurisdiction under Article 226 of the Constitution of India is discretionary and equitable. The Court may, therefore, refuse to exercise such jurisdiction, if the net consequence is return to an illegality.

59. In **M.C. Mehta Vs Union of India**, (1999) 6 SCC 237, the Supreme Court has held that relief may be denied where quashing an order resurrects an illegality, even in a case involving an alleged violation of the principles of natural justice. Similarly, the Supreme Court in **M/s AL-Can Export Pvt. Ltd Vs. Prestige H.M. Polycontainers Ltd. and another**, (2024) 9 SCC 94, has held:

74. It is well settled principle in law that issuance of a writ or quashing/setting aside of an order if revives another pernicious or wrong or illegal order then in that eventuality the writ court should not interfere in the matter and should refuse to exercise its discretionary power conferred upon it under Article 226 of the Constitution of India. The writ court should not quash the order if it revives a wrong or illegal order. Vide : Gadde Venkateswara Rao v. Government of Andhra Pradesh, AIR 1966 SC 828; Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar, (1999) 8 SCC 16; AIR 1999 SC 3609; 1999 AIR SCW 3623; M.C. Mehta v. Union of India, (1999) 6 SCC 237; AIR 1999 SC 2583; Mallikarjuna Mudhagal Nagappa v. State of Karnataka, (2000) 7 SCC 238; AIR 2000 SC 2976; 2000 AIR SCW 3289; and Chandra Singh v. State of Rajasthan, (2003) 6 SCC 545; AIR 2003 SC 2889; 2003 AIR SCW 3518 and Raj Kumar Soni v. State of U.P., (2007) 10 SCC 635.

60. At this juncture, this Court takes note of the regularization order dated 04.09.1995, though there is no challenge to it by either side, for the very limited purpose of examining whether the statutory requirement contemplated under Section 33-A of the U.P. Secondary Education (Service Selection Board) Act, 1982, has been undertaken in its letter and spirit, since said order is claimed by appellant-petitioner to be an act of ratification of the initial appointment.

61. For such examination, it is apposite and profitable to take note of Section 33-A of the Act, 1982, which is reproduced verbatim hereinbelow: -

“Section 33A – Regularisation of Certain Appointments

(1) Every teacher directly appointed, before the commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Ordinance, 1985, on ad hoc basis against a substantive vacancy in accordance with Paragraph 2 of the Uttar Pradesh Secondary Education Service Commission (Removal of Difficulties) Order, 1981, as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921, shall, with effect from the date of such commencement, be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such appointment up to the date of such commencement.

(emphasis added)

(1-A) Every teacher appointed by promotion, on ad hoc basis against a substantive vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of, the Intermediate Education Act, 1921 shall, with effect from the date of commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1991, be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such ad hoc appointment to the date of such commencement.

(1-B) Every teacher directly appointed after June 12, 1985 and before May 13, 1989 on ad hoc basis against a substantive vacancy in the Certificate of Teaching grade, in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of

Difficulties) Order, 1981, as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of, the Intermediate Education Act, 1921 shall, with effect from the commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1991, be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such ad hoc appointment to the date of such commencement.

(1-C) Every teacher appointed by promotion or by direct recruitment before July 31, 1988 on ad hoc basis against a substantive vacancy in accordance with Section 18, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of the Intermediate Education Act, 1921 shall, with effect from the date of commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1991 be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such ad hoc appointment to the date of such commencement.

(2) Every teacher deemed to have been appointed in a substantive capacity under sub-section (1) or (1-A) or (1-B) or (1-C), shall be deemed to be on probation from the date of commencement referred to in sub-section (1) or (1-A) or (1-B) or (1-C) as the case may be.

(3) Nothing in this section shall be construed to entitle any teacher to substantive appointment-

(a) if on the date of commencement referred to in sub-section (1) or (1-A) or (1-B) or (1-C) as the case may be, such post had already been filled or selection for such post had already been made in accordance with this Act, or

(b) if such teacher was related to any member of the Committee of Management or the Principal or Head Master of the institution concerned.

Explanation- For the purposes of this sub-section a person shall be deemed to be related to another, if-

(i) they are members of a Hindu undivided family; or

(ii) they are husband and wife; or

(iii) the one is related to the other in the manner indicated in the Second Schedule to the Intermediate Education Act, 1921.

62. The *sine qua non* for consideration of regularization in terms of Section 33-A of the Act, 1982 is, that the incumbent must possess the qualification prescribed on the date of his initial appointment, which

simply means that absence of basic qualification is a non-negotiable clause and would bring the candidate into a zone of ineligibility and, consequently, render regularization illegal, and non-est and void.

63. The regularization order dated 04.09.1995, in the column of educational qualification indicates M.Sc., but does not indicate the subject or discipline. The non-mentioning of the subject or discipline does not appear to be an inadvertent omission, particularly when the order of termination of the appellant-petitioner was engaging the attention of this Court in its writ jurisdiction. The continuance of the petitioner-appellant being under interim order the omission as indicated aforesaid *ex facie* appears to be nothing but mischief.

64. The regularization order, in its fabric, appears to be dicey, as it indicates that, if any error in the record or information is found, the responsibility would lie upon the Manager/Principal. The regularization order dated 04.09.1995 cannot be termed to be ratification of the initial appointment, as the column of qualification does not indicate the subject/discipline, particularly in the backdrop when this Court was seized of the issue of termination on account of absence of the basic qualification.

65. For examining the applicability of the ***doctrine of ratification***, this Court is privileged to go through the judgement of the Supreme Court in **Delhi Technological University Vs. B.S. Rawat, 2026 SCC OnLine SC 1482**. The relevant remarks in the said authority are reproduced hereinbelow:-

“18. Ratification, in its ordinary legal signification, denotes the confirmation or adoption, by a person or body possessing the requisite authority, of an act earlier done on its behalf without such authority, or done irregularly, so that the act is treated as valid from its inception. Black’s Law Dictionary describes ratification as “the confirmation of a previous act done either by the party himself or by another”. The doctrine finds its origin in the maxim *ratihabitio mandato aequiparatur*, a subsequent ratification is equivalent to a prior command, refined further by the maxim *omnis ratihabitio retrotrahitur et mandato priori aequiparatur*, which imports the principle of relation- back: a ratified act is

deemed valid from the date of the original, unauthorised act, and not merely from the date of ratification.

19. This Court has, on more than one occasion, applied the doctrine in the above sense. From these decisions, following legal principles about doctrine of ratification can be culled out:

(i) Ratification means making a previously invalid act valid. It is the subsequent approval of an act that was initially done without authority.

(ii) A subsequent ratification is equivalent to prior authority.

Once the competent authority ratifies an act, the law treats it as though the authority had existed from the beginning. This is based on the maxim *ratihabito mandato aequiparatur*.

(iii) Ratification operates retrospectively. It relates back to the date on which the original act was performed and cures the defect arising from the absence of prior authority.

(iv) Only the competent authority can ratify an invalid act. The authority which is legally empowered to perform the act must itself approve or adopt the earlier unauthorised action.

Sri Parmeshwari Prasad Gupta v. Union of India, (1973) 2 SCC 543; *High Court of Judicature for Rajasthan v. P.P. Singh & Anr.*, (2003) 4 SCC 239; *Maharashtra State Minin Corpn. v. Sunil S/o Pundikarao Pathak*, (2006) 5 SCC 96, *National Institute of Technology & Anr. v. Pannalal Choudhury & Anr.*, (2015) 11 SCC 669 and *Municipal Commissioner, Jamnagar Municipal Corporation (supra)*

(v) Express approval of the earlier action is sufficient. It is not necessary for the competent authority to pass a fresh order. A resolution or decision approving the earlier unauthorised act amounts to valid ratification.

(vi) Ratification cures defects of authority, not acts that are inherently illegal. The doctrine applies where the act could have been validly performed by the competent authority in the first place. It cannot validate an act that is void because it is prohibited by law or beyond the power of the authority.

(emphasis added)

20. Another principle which arises for consideration in these appeals may be stated. A resignation, even where accepted in the first instance by one not clothed with authority to accept it, may nonetheless become a consummated and irrevocable transaction where both sides have, by their conduct, treated it as final and altered their positions upon that footing. In such a case, an employee is precluded, not by any doctrine of curative ratification, but by the ordinary principle against approbation and reprobation, from later impugning the very transaction he brought about and from which he has already taken the entire benefit.

21. This principle finds support in a decision of the House of Lords⁴ which is noted in a decision of this Court⁵. There, a resignation tendered on the footing that formal acceptance would follow at a later date was held incapable of unilateral withdrawal, the resigner having, in Lord Halsbury's words, already "consummated" the arrangement by his own conduct before he purported to revoke. Lord Watson likewise held that a resigner who has

done all that lay in his power to complete a transaction cannot later be permitted to upset it merely because formal acceptance was still awaited.”

66. The regularization done in the case in hand, would not cure the defect, as the lack of requisite qualification has not been considered while passing the order of regularization. Rather, in the column of qualification the omission of the subject/discipline is apparent. The initial appointment, being illegal and *void ab initio*, cannot be ratified by applying the doctrine of ratification, as held in the case of ***Delhi Technological University (supra)***, wherein it has been unequivocally held that an act which is void or prohibited by law cannot be validated.

67. Much emphasis and thrust have been laid on the fact that the petitioner-appellant has been regularized vide order dated 04.09.1995 passed by the Deputy Director (Education), Meerut Division, Meerut, in exercise of the power conferred under Section 33-A (1) of the Act, 1982. A bare glimpse of the regularization order dated 04.09.1995 indicates that, in the column of educational qualification, only ‘M.Sc.’ is indicated and the subject/discipline is not mentioned. At this stage, having examined the statutory prescription contained in Section 33-A (1) of the Act, 1982, we find that the law unequivocally requires that the incumbent must possess the qualification prescribed or be exempted from such qualification in accordance with the provisions of the Act, 1921. The said requirement is completely non-negotiable. It is the admitted case of the appellant-petitioner that he did not possess the prescribed qualification for being appointed as a Lecturer Biology (*ad hoc*) when he was appointed. Appendix ‘A’ to the Regulations framed under the Act, 1921, referable to Regulation 1 of Chapter II, which states “the minimum qualification for appointment as Head of Institution and teachers in any recognized Institution, whether by direct recruitment or otherwise, shall be as given in Appendix ‘A’”. Entry number 29 in Appendix ‘A’ describes the qualification of Lecturer Zoology in its third column.

29. Zoology Teacher for intermediate (classes 11-12)	1. M.Sc. In Botany or Zoology	Trained
	or	
	2. M.Sc. with Agricultural Botany, Zoology in B.Sc.	Trained
	or	
	3. M.Sc.with Agricultural Zoology, Botany in B.Sc.	Trained
	or	
	4. M.Sc. in University/Degree College recognised by U.G.C.	
	5. B.Sc. with post-graduate diploma in Zoology conducted by Education Department, U.P. in any University or degree college.	

For High School B.Sc. with Biology Zoology and Botany.
(Classes 9-10)

68. In entire Appendix there is no subject described as Biology and the parties are of the understanding that it is Zoology (Jeev Vigyan) which is referred 'Jeev Vigyan' in the Hindi version. Thus what has been prescribed as qualification for subject Zoology to be treated as qualification for the post against which appellant-writ petitioner was appointed namely lecturer in "Jeev Vigyan" (Biology), therefore, has to be understood with reference to the statutory entry relating to Zoology in Appendix A.

69. Even if no separate challenge has been laid against order of regularization dated 04.09.1995, the same cannot be used as a sword in place of shield to protect his initial appointment inherently lacking qualification, particularly when there is a deliberate omission of consideration of the statutory qualifications in order dated 04.09.1995.

70. Regularization can cure procedural defect of appointment but certainly cannot be a substitute for supplementing the statutorily mandated essential qualifications. Thus, the argument that the regularization order acts as shield to protect the initial order of appointment which does not pass muster of the qualifying eligibility criteria is hereby repelled.

71. An employee continuing under the interim order has been termed as a 'litigious employee' by the Constitution Bench of the Supreme Court in **Secretary, State of Karnataka Vs. Uma Devi (2006) 4 SCC 1**.

The relevant paragraph of the report is reproduced hereinbelow: -

“Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

(emphasis added)

72. The Full Bench of this Court in **Jahaj Pal Vs. District Inspector of Schools, 2019 SCC OnLine All 6998**, considered the detailed purport and interplay of the First, Second and Third Removal of Difficulties

Orders in the context of statutory prescription contained under Section 16 and 18 of the Act, 1982, including the rights, which an *ad hoc* teacher can claim on the strength of long continuance in service, particularly when an interim order is operating in his favour. The Full Bench held :

“173. The argument in fact ask to ignore a blatant breach of law that the beneficiaries of such breach should be given benefit. The mere fact of continuing in service ignoring statutory provision is of no legal consequence. None can claim a benefit arising from an illegality which continued to be flouted by them. In the cases where continuance was on account of interim orders passed by Court, argument suggests that the principle of Actus Curiae Neminem Gravabit should be ignored and an interim order of Court should be read as if it has conferred different right upon the beneficiary though ultimately his continuance was found erroneous and illegal and contrary to statutory provision contained in Para 3 of Second Order. We have no hesitation in rejecting this submission.

175. Even otherwise, no interpretation of statutory provision can be made, which may encourage blatant breach of statute. When a person is bound to cease to continue as ad-hoc appointee, if any condition under Para 3 of Second Order is attracted, he could not have validly continued thereafter, at all. His legal termination comes into effect by operation of law. A declaration has been made in statutory provision about cessation and that has to be given effect to if rule of law has to prevail.

177. The question, whether an interim order can confer a new right, which is not otherwise ultimately found in favour of such beneficiary and the case found liable for dismissal, has been considered time and again and issue has been answered against such beneficiaries. We do not propose to burden this judgment with all such authorities and we refer to a judgment of Apex Court dealing with this issue directly. In Raghvendra Rao etc. Vs. State of Karnataka and others, JT 2009 (2) SC 520 Court has observed: "It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service."

(emphasis added)

73. Although **Jahaj Pal** (*supra*) was concerned with the provisions of Second Removal of Difficulties Order, the principle relied upon by this Court is not dependent upon the particular Removal of Difficulties Order involved; it rests on the broader proposition that continuance under an interim order cannot create a substantive right contrary to the governing statutory scheme. That principle applies with equal force where the initial appointment itself is claimed under the First Removal of Difficulties Order.

74. In a country like ours there is a large-scale unemployment but some unscrupulous persons succeed in usurping a post that is part of public employment though inherently ineligible. Such appointments are hit by the constitutional mandate contained under Article 14 and 16 of Constitution of India, read together. This proposition of law is fortified by the settled legal principle that invalidity of an appointment may arise not only for want of qualification as per required eligibility but also from the violation of such legal conditions or procedure for appointment as mandatorily required and as a result of which, the appointment becomes void. [See: Constitution Bench judgments in *M. Pantiah and Ors. v. Muddala Veeramallappa and Ors.*, AIR 1961 SC 1107 ; *University of Mysore v. C.D. Govinda Rao and Anr.*, AIR 1965 SC 491 ; and *P.L. Lakhanpal v. Ajit Nath Ray*, AIR 1975 Del. 66].

75. The distinction between an irregular appointment and an illegal appointment assumes significance in the present case. The defect in the appellant's appointment is not confined to the manner or procedure of selection; it goes to the very eligibility of the appointee. The statutory scheme made with respect to satisfying eligibility criteria of possessing statutory qualification is a condition precedent to appointment. An appointment made in the absence of such essential qualification cannot, therefore, be treated as a mere irregularity capable of subsequent cure. The subsequent continuance of the appellant, even for a considerable period, cannot alter the legal character of appointment as it stood on the date on which it was made.

76. The Supreme Court, in **Shesh Mani Shukla Vs District Inspector of Schools, Deoria**, (2009) 15 SCC 436, while dealing with the claim of a person whose appointment was not made in accordance with the provisions of the First Removal of Difficulties Order, 1981, made the following observations:

"19. It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. (See Food Corpn. of India v. Ashish Kumar Ganguly, (2009) 7 SCC 734. Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus. (See State of M.P. v. Sanjay Kumar Pathak, (2008) 1 SCC 456)."

77. A similar view has been adopted by the Supreme Court in **Pramod Kumar Vs. U.P. Secondary Education Services Commission, (2008) 7 SCC 153**, wherein the Court held:

"18. ...An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. [See Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, National Fertilizers Ltd. v. Somvir Singh (2006) 5 SCC 493 and Post Master General, Kolkata v. Tutu Das (Dutta), (2007) 5 SCC 317.]"

78. The Supreme Court, in very recent decision of **Hemant Kumar and others Vs. State of Haryana and others, 2026 INSC 878**, held that an illegality committed at the inception of an appointment cannot be cured or converted into legality merely by lapse of time or by taking a sympathetic view on account of long continuance in service. The Supreme Court further drew a clear distinction between illegality and irregularity and held that where the appointment itself is in infraction of the statutory rules, such illegality cannot be regularized by resorting to a subsequent mode of absorption. The aforesaid principle, in our considered opinion, applies with full vigor and force to the present case, where the appellant admittedly lacked the essential statutory qualification for his initial appointment as Lecturer. Therefore, the subsequent length of service or regularization cannot cure the foundational defect in his appointment. The relevant paragraph of the Supreme Court's judgement in **Hemant Kumar (supra)**:

“115. We are afraid the High Court fell in grave error in allowing the aforesaid four officers to continue their services in the PW(B&R) Department even after declaring their deputation and absorption as illegal and bad in law. Illegality means something which is contrary to law; something which is wrong right from the inception. It is void ab initio. Illegality cannot be cured and made legal and valid by lapse of time. Illegality, which is distinct and different from irregularity, cannot be regularized by taking a sympathetic view on the ground of long continuance in service. This position has been explained by a Constitution Bench of this Court in Uma Devi. If the appointment itself is in infraction of the rules, in this case the 1965 Rules, it is an illegality. Such an illegality cannot be cured by resorting to the novel method of absorption which has been explained as appointment by transfer.”

79. In the present case, the defect is not one of mere irregularity or procedural lapse; rather, the appellant-petitioner lacked the basic qualification which was a condition precedent for his very induction into service. The appointment, therefore, suffers from illegality at its inception, and the subsequent continuance of the appellant for a considerable length of time cannot alter the legal character of the initial appointment. The principle that an illegality cannot be cured by lapse of time or by subsequent absorption/regularization, as reiterated by the Supreme Court time over again and recently in **Hemant Kumar** (supra), squarely governs the controversy before us.

80. It is beyond any doubt that, except for a small fraction, the entire salary is paid by the State out of its exchequer to teachers. Thus, a substandard teacher lacking the basic qualifications is not an asset but, rather, a liability. The right to receive salary from an aided institution out of public funds is subject to the appointment being sanctioned by law and having been made in accordance with the prescribed statutory procedure. Therefore, an appointment made *de hors* the statutory rules or without fulfilment of the prescribed eligibility conditions cannot be treated as a source of any enforceable right to draw monetary benefits from the public exchequer.

81. We cannot put our seal of approval upon the conduct of an unscrupulous Management which appointed the appellant despite not

having the basic qualification prescribed by statute, on the sham pretext of interest of the students which this Court is completely at a loss to comprehend.

82. The order impugned dated 21.01.2011 passed by the learned Single Judge qua recovery of salary and emoluments, appears to be flawed on the count that the learned Single Judge is not the primary adjudicating authority to direct recovery of salary and emoluments even if the appellant-petitioner did not possess the requisite qualification for being appointed. Such directions best lie in the realm and domain of administrative authorities being guardian of public funds and accountable for the statutory appointments of teachers.

83. The impugned judgement of the learned Single Judge, insofar as it directs recovery of the benefits drawn by the petitioner under the interim order needs to be neutralized being one in the teeth of **Article 23 of Constitution of India** as appellant-petitioner has worked, may be under an interim order of this Court, and that interim order *ipso facto* would not entitle the appellant to claim permanence on the basis of the long length of service, but nevertheless, an employee who has actually discharged his duties, even in absence of basic qualification qua the subject for the post in question, cannot be subjected to oppression of recovery and that too in the writ jurisdiction of this Court. The direction for recovery, as ordered by the learned Single Judge in the background that the appellant-petitioner actually discharged his duties for the entire period of his continuance under the umbrella of an interim order passed by this Court cannot be equated with fraud, misrepresentation or concealment. The question of recovery, therefore, cannot be treated as an automatic consequence of the finding that the initial appointment was invalid. In the peculiar facts of the present case, directing recovery of the entire salary already paid, after decades of actual service rendered under the protection of Court's orders, would operate harshly and

disproportionately. We do not subscribe to the view taken by the learned Single Judge, so far recovery is concerned; otherwise it may attract the prohibition against forced labour. Hence, the order impugned relating to recovery of benefits received by the appellant-petitioner under the interim order merits to be set-aside.

84. The order of appointment, being *void ab initio* for the reason of ineligibility of the appellant- petitioner to be appointed on the post of an *ad hoc* teacher is to be read before examining the impugned order of termination of his services. Thus, it is found that the initial ineligibility cannot be cured or regularized or ratified even by the subsequent order of regularization. It is of no consequence to save the initial order of appointment, particularly having not considered the basic qualification, which is the *sine qua non* for a consideration of regularization in exercise of the statutory prescription under Section 33-A of the Act, 1982. Any interference in impugned termination order would lead to revival of the initial appointment, which was void and an illegality cannot be revived through a writ of *certiorari*. Thus, the impugned judgement dismissing the writ petition is hereby affirmed. However, the direction contained in the impugned order dated 21.01.2011, passed by the learned Single Judge *qua* the recovery of salary and emoluments already received by the appellant-petitioner, is hereby set aside. The instant Special Appeal is, accordingly, **partly allowed** in the aforesaid terms.

85. No order as to costs.

86. Before parting with the case, a very disturbing and sorry state of affairs is noticed, that a teacher continued to remain in service for a considerable period, imparting education in a Science Subject (Biology/Zoology) despite not possessing the minimum qualification prescribed by statute, at the cost of the public exchequer. The situation becomes more grim when the ultimate sufferers were none other than the students. The salary drawn by the appellant-petitioner for a pretty

long term by itself is a bonus as the appointment being void ought not to have been permitted for the fraction of a second. The continuance of such a teacher, who later on became Principal of the institution without having requisite qualification in the subject/discipline, which the students, *en masse*, were forced to be taught, raises doubts and points a finger at the functioning of the education system as a whole. The Director of Secondary Education may be made aware of the situation as the instant one may not be the first in the State.

87. The case, the Court places on record its appreciation for the diligent efforts and valuable assistance rendered by Ms. Shreya Shukla, Research Associate. Her contribution has meaningfully aided the adjudication of the present matter and deserves due acknowledgment.

88. The Registrar (Compliance) is directed to communicate this order to the District Inspector of Schools, Muzaffarnagar and Director (Secondary Education), U.P., Lucknow through the Chief Judicial Magistrates, Muzaffarnagar and Lucknow respectively **forthwith**.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

August, 25, 2026
S.P.