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SANTOSH KUMAR SINGH

v.

THE STATE OF U.P. & ORS. ETC.

DECEMBER 12, 1995

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[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.]

*Service Law :*

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*University Statute (Gorakhpur university)—Clauses 11, 13 sub clause (a) & (b)—Post of Lecturer—Minimum Qualification—Relaxation of—Power of Selection Committee—Person appointed not holding minimum qualification—Held, the selection committee cannot give relaxation—Appointment of a candidate who did not possess the required qualification though ad-hoc—Held, not justified.*

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*U.P. Higher Education Services Commission Act, 1980—Sections 12 & 16—Ad-hoc appointment—Regularisation —Since the condition precedent for making ad-hoc appointment was not satisfied and the appellant did not possess the minimum qualification for such appointment—The appointment held, invalid and inoperative.*

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*Sections 31-B & 31-C—Regularisation—Initial appointment wholly without jurisdiction—Therefore, the subsequent appointment cannot be regularised as the same was not made on the date specified—Availability of substantive vacancy—Condition not fulfilled—Under the circumstances, held, the question of regularisation does not arise.*

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*Uttar Pradesh State Universities Act, 1973—Section 35(2) and (3)—Termination—Approval by Vice Chancellor required—No such approval was given—Held, even then the termination did not become null and void.*

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*Section 60-A and 60-B—Approval of Government for sanction for the post—Held—Creation of a post and payment of salary are two distinct concepts—State can sanction creation of post though the payment is not made by it.*

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**The Government of Uttar Pradesh granted sanction for M.Sc. (Agronomy) in the Faculty of Science but in the absence of financial resources it was decided that the payment of salary would be made for a**

period of one year by the Management of the College. Therefore, the College issued an advertisement for the post of Lecturer in Agronomy and also declared that the Management has power to grant relaxation in educational qualifications. Pursuant to the aforesaid advertisement the appellant submitted his application for the post. He was selected and appointed as lecturer on 1.1.84 in the post-Graduate Agronomy Department. While continuing as lecturer he passed his final year M.Sc. (Agriculture). In 1985 the College issued a fresh advertisement for filling up the post of Lecturer in Agronomy on ad-hoc basis. After informing the Secretary, Higher Education Service Commission a Selection Committee was constituted by the Vice. Chancellor for selecting the candidate. The Committee again selected the appellant and the Registrar of University approved the appointment of the appellant as an ad-hoc teacher in Agronomy for a period of six months from the date the appellant had been holding the post after his selection. The Director of Higher Education Communicated the approval of the Government for creation of a post of Lecturer in the college in Agronomy. The Manager of the College requested the Service Commission, that the post may be advertised and the appointment may be made under the Service Commission Act but in order to avoid any dislocation in the teaching the appellant may be allowed to continue. The Vice Chancellor approved the *ad-hoc* appointment of the appellant as Lecturer for a further period of six months with a break of one day or till the selected candidate takes charge whichever is earlier.

In the meantime an Ordinance was promulgated which was replaced by an Act and Section 31-B was added to the Service Commission Act 1980. The Director of Higher Education regularised the service of the appellant under the said Act and directed the payment of salary to the appellant. The Principal of the College also passed order that the appellant should be paid salary from the date of the creation of the post i.e. 1.2.1986 and be paid salary, D.A. and the permissible perquisites of the State Government as per the Universities Act. The Director of Higher Education, U.P. then asked the Principal of the College that salary of the appellant should be stopped at once. Another order was passed whereby regularisation of the appellant was cancelled on the ground that the approval was obtained on wrong premises. Thereafter the College terminated the services of the appellant.

The appellant filed a Writ Petition against the order of the director

A stopping the payment of salary as well as challenging the order of termination. In the meantime the Deputy Registrar of University informed the College that the service of the appellant could not be terminated without the prior approval of the Vice-Chancellor and directed that the salary of the appellant should be paid. The Vice-Chancellor set aside the order of termination of the appellant for non-compliance of section 35(2) of the State Universities Act 1960 in as much as no prior approval of Vice-Chancellor had been taken. The Committee of Management of College filed Writ Petition against the order of Vice-Chancellor.

C The appellant filed another Writ Petition for implementation of the order of the Vice-Chancellor. All the three Writ Petitions were disposed of by the High Court by a common judgment.

D The High Court dismissed the Writ Petition filed by the appellant and allowed the writ petition of the Management on the ground that the appellant's appointment itself was illegal and was no appointment in the eye of Law and the Vice-Chancellor was in error in issuing the direction in question. Further the appointment of the appellant was made on *ad-hoc* basis without the vacancy being notified to the commission. It also came to the conclusion that the vacancy occurred only after sanction of the post by the Government on 1.2.86 and therefore, the so called appointment of the appellant was illegal and without jurisdiction.

F In appeals to this Court it was argued on behalf of the appellant that *ad-hoc* appointment was made in relaxation of educational qualifications, which was permissible under the advertisement itself. The appointment was approved by the Vice-Chancellor and the service of the appellant had been regularised by Director under the Service Commission Act and the Director cannot cancel the regularisation of the appellant, and that the order of termination was passed without the approval of the Vice-Chancellor.

G It was contended by the Management that the basic appointment of the appellant even though on *ad-hoc* basis was not permissible as he did not have the requisite qualifications and the Director had erroneously passed an order of regularisation and he had the power to withdraw and cancel the same when it came to the notice that the service of the appellant could not have been regularised under the Act.

Dismissing the appeals, this court

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**HELD : 1.** The High Court based its conclusion on obvious errors. It was of the opinion that the vacancy for the post of lecturer occurred only when it was sanctioned by the State Government on 1.2.86. This is not factually correct. The Government had conveyed the sanction for M.Sc. (Ag) in the faculty of science in the College but it had been specifically mentioned that on account of financial stringency creation of necessary posts for the purpose of payment of salary by the Director of Education would not be feasible upto one year and therefore, payment of the salary would have to be provided for that time by the Management itself. It is on 1.2.86 by sanctioning the post the Director took the liability of payment of salary from the State Exchequer, Creation of a post and payment of salary are two distinct concepts. Even if the state does not pay for certain post it has the right to sanction creation of post and Management takes upon the burden of making the payment. [582-E-H]

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**2.** The High Court also committed the error that before making the *ad-hoc* appointment it was not notified by the Management to the Service Commission. This may be true in respect of the appointment made on 1.1.84 but cannot be true in respect of the appointment made on 1.10.85 in as much as on 21.5.85 the Manager of the College had requested the Service Commission that a person be selected for the post of lecturer (Agronomy) but even till the appointment made on 1.10.85, the Service Commission had not selected any person nor sent any name. [583-B-C]

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**3.** The High Court also did not consider the relevant documents when it came to the conclusion that the regularisation was made on account of concealment of relevant facts. The appellant even in his application had indicated that he had not passed the M. Sc. Course yet the committee appointed him on *ad-hoc* basis on 1.1.84 and thus it is not correct that there has been any concealment of relevant facts. [583-D-E]

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**4.** Even though the reasoning of the High Court was based on errors of record this court is unable to interfere with the ultimate conclusion of the High Court as that would depend upon appellant's establishing his right to continue in service either by virtue of the regularisation provisions contained in Section 31-B or 31-C of the U.P. Higher Education Services Commission Act or by establishing the fact that his service had been regularised by the said Act. [583-F]

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A 5. Under Section 12 of the Act every appointment as a teacher of any  
 college has to be made by the Management only on the recommendation  
 of the Commission. Section 16 in certain contingencies authorises the  
 Management to made *ad-hoc* appointment for a specified period. Though  
 the Service Commission Act provides the procedure for making appoint-  
 ment to the post of teacher of a College it does not make any provision  
 B with regard to the qualification of such teacher. But the qualification has  
 been prescribed in the Statute of the University. Under Statute 11.13  
 clause (a) person is ineligible to be appointed as a Lecturer unless he  
 possesses the minimum qualification of M. Phil, degree or a recognised  
 degree beyond Master's level or published work indicating the capacity of  
 C the candidate for independent research work. There cannot be any relax-  
 ation in respect of the qualification prescribed in sub-clause (a). Admittedly  
 the appellatant did not have even a Master's degree on the date he was  
 appointed as a teacher, and when he did not have the minimum requisite  
 qualification in accordance with the University Statute the Committee  
 D could not have relaxed the same and appointed him even on *ad-hoc* basis.  
 It is difficult to conceive that for the post of a teacher to teach in post  
 Graduate class, a student who is in second year M. Sc. class could at all  
 be appointed. [586-C-E]

E *Ram Swarup v. State of Haryana*, [1979] 1 SCC 168, distinguished.

F 6. The initial *ad-hoc* appointment of the appellatant as a lecturer on  
 1.1.84 was wholly without jurisdiction and such appointment could not  
 have conferred the right of regularisation on the appellatant by virtue of the  
 Service Commission Act. Then again under Section 16 of the Service  
 Commission Act an *ad- hoc* appointment can be made only when the  
 Management notifies a vacancy to the Commission and the Commission  
 fails to recommend the name of a suitable candidate within three months  
 from the date of such notification. It is not the case of the appellatant nor  
 is there any material on record to establish that prior to 1.1.84 the  
 Management had at all notified the Vacancy to the Commission in accord-  
 G ance with sub-section (2) of Section 12 of the Service Commission Act and  
 the Commission failed to recomend any name within three months. Con-  
 sequently the condition precedent for making *ad-hoc* appointment in terms  
 of section 16 of the Service Commission Act had not been satisfied before  
 making the *ad-hoc* appointment of appellatant on 1.1.84 and on this score  
 H also the appointment must be held to be invalid and inoperative.

7. The second appointment was made on 1.10.85. By this date the appellant no doubt had passed his M. Sc. (Ag.) and the College had requested the Service Commission to select a person for the post of lecturer in Agronomy and the Commission did not send any name for more than three months. Therefore, the Management was competent to make an *ad-hoc* appointment under section 16 of the Service Commission Act. But then the appellant had neither M. Phil degree nor a recognised degree beyond Masters level nor there is any material to indicate that he had published work indicating his capacity for independent research work. Besides an *ad-hoc* appointment made under sub-section (1) of section 16 of the Service Commission Act lapses under Sub-section (2) thereof after expiry of the period stipulated in the Clauses (a) or (b) or (c) of section 16. Since the Commission has not recommended any name, clauses (a) and (b) of sub-section (2) of section 16 will have no application and, therefore, under clause (c) by operation of law the *ad-hoc* appointment of the appellant ceased with effect from 30th June 1986. The so called *ad-hoc* appointment having been made on 1.10.85, such appointment cannot be regularised under section 31-B of the Act. The provision of section 31-B would indicate that appointment made on or before 3rd Jan. 1984 against substantive vacancy in accordance with the provision of U.P. Higher Education Service Commission (Removal of Difficulties) Order 1983 could be regularised under the provision. The initial appointment of appellant as wholly without jurisdiction, the subsequent appointment made on 1.10.85 cannot be regularised under section 31-B, the same not having been made on or before 3rd Jan. 1984. [586-F-H, 587-A-B, 588-F]

8. The appellant contended that he is entitled to be regularised under Section 31-C but in order to get the benefit of section 31-C it is necessary that a teacher must have been appointed on *ad-hoc* basis after 3rd Jan. 1984, but not later than 30th June 1991 on a post as envisaged in clauses (i) or (ii) of the said section. Further the other conditions contained in clauses (b), (c), (d) and (e) of section 31-C are also required to be fulfilled and then, on the date the regularisation provision of section 31-C came into force a substantive vacancy must be available for the services being regularised. Admittedly the appellant was not in service on the date section 31-C came into force and even no substantive vacancy was available; further clause (e) of section 31-C also cannot be said to have been satisfied in as much as no selection committee appointed under sub-section (2) of section 31-C has found the appellant suitable. Admittedly the appellant

A was not in service when section 31-C came into force and therefore, the question of considering the case for regularisation under section 31- C does not arise at all. [590-H, 591-A-B]

9. So far as the effect of non-approval of the order of termination is concerned it is no doubt true that under section 35 (2) of the Universities Act a decision of the Management to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner does not take effect unless it has been approved by the Vice-Chancellor. But Sub-section (3) itself carves out an exception to a case where the termination order was passed on the expiry of the period for which a teacher was appointed. The so called *ad-hoc* appointment of the appellant on 1.10.1985 in the eye of law came to an end on June 30, 1986 under Section 16 of the Service Commission Act. Even though Vice-Chancellor had approved the appointment for a period of six months, that also came to an end on 31st Dec. 1986. There was no further approval to the appointment though Management of the College Permitted the appellant to continue in service. In such a case, when the Director had passed an order of regularisation which he could not have passed and cancelled the same, the consequential order of termination does not become null and void by application of Section 35 (2) and (3) of the State Universities Act. The Vice-Chancellor appears to have passed the order setting aside the order of termination not being fully aware of the facts and circumstances and the said order of the Vice-Chancellor, therefore, has rightly been set aside by the High Court. [591-D-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4645-47 of 1993.

F From the Judgment and Order dated 30.4.93 of the Allahabad High Court in W.P. No. 2137 of 1988.

G G.L. Sanghi, M.L. Bhat, S.K. Mehta, Dhruv Mehta, Fazum Anam, T.N. Singh, R.B. Misra, Ms. Purnima Bhat, and E.C. Agrawala for the appearing Parties.

This Judgment of the Court was delivered by

H PATTANAİK, J. : The appellant in these three appeals had been appointed as a lecturer in the subject of Agronomy while he was continuing as a final year student in M.Sc. (Agriculture) by the Management of Shri

Durgaji Post Graduate College, Chandeshwar, which was an un-aided institute at the relevant point of time. His case in brief is that on July 31, 1982, the Deputy Secretary to Government of Uttar Pradesh intimated the Registrar, University of Gorakhpur that Shri Durgaji Post Graduate College, Chandeshwar, Azamgarh (hereinafter referred to as 'the College') has been granted sanction for M. Sc. (Agronomy) in Faculty of Science with certain conditions mentioned therein. A copy of the said letter was also forwarded to the Manager of the College intimating that it may be kept in view that in the absence of financial resources, creation of necessary post for the purpose of payment of salary by the Director of Education (HE) would not be feasible upto one year after start of the subject and therefore, payment of the salary will have to be approved for that time by the Management itself. On receipt of the aforesaid sanction order from the State Government, the College issued an advertisement for the post of lecturer in Agronomy, on 15.12.1983. It was stipulated in the Advertisement that the Management has the power to grant any relaxation in the educational qualifications. Pursuant to the aforesaid advertisement the appellant submitted an application on 20th December, 1983. In the application in question, the appellant had intimated that he has been a Gold Medalist from the Gorakhpur University in B. Sc. (Agriculture) and he had secured 76.6% marks in the first year M. Sc. (Agriculture) from the Kanpur Agriculture University and was continuing his second year M. Sc. (Agriculture). It was also stated that if he is appointed, he will complete his remaining part of final year examination. The Management of the College informed the appellant by letter dated 1.1.1984 that he has been appointed as a lecturer in the Post Graduate Agronomy Department and he should join the College. On receipt of the said letter the appellant joined the institution immediately and continued as a lecturer. While so continuing he passed the final year M. Sc. examination on 18.1.1985. It is the further case of the appellant that the Manager of the College requested the Secretary Higher Education Services Commission that a person may be selected for the post of lecturer, Agronomy by letter dated 21.5.1985.

As the Service Commission did not send any name, notwithstanding the Management's letter dated 21.5.1985, the College issued a fresh advertisement on 12.8.1985 for filling up the post of lecturer in Agronomy on *ad-hoc* basis. On 17.8.1985 the Manager of the College requested the Vice-Chancellor for appointment of a subject expert in respect of the post of *ad-hoc* lecturer in Agronomy. The appellant was also a candidate in pursuance of

A the said advertisement. The Registrar of Gorakhpur University informed the Manager of the College by letter dated 19.9.1985, that the Vice-Chancellor has nominated Professor N.M. Mishra as an expert for making selection to the post of lecturer in Agronomy. The Selection Committee unanimously selected the appellant for the post of lecturer and the Manager of the College wrote to the Registrar of the University by his letter dated.

B 23.9.1985 informing that the appellant has been unanimously selected and the appointment may be approved. The Registrar of the University intimated the approval of the appointment of the appellant as an *ad-hoc* teacher in Agronomy for a period of six months from the date the appellant has been holding the post after his selection. The aforesaid fact of approval

C of the appellant's appointment on *ad-hoc* basis was intimated to the appellant by the Manager of the College by letter dated 1.10.1985. The appellant's case, however, is that he has been continuing as a lecturer since his original appointment on 1.1.1984. The Director of Education (Higher Education) communicated the approval of the Government for creation of

D a post of lecturer in the College in Agronomy under Section 60(A) and (B) of the Uttar Pradesh State Universities Act, 1973 (hereinafter referred to as the 'University Act'). It was also indicated in the said letter that post in question should be sent to the Higher Education Services Commission U.P. for selection immediately. It was also indicated that the sanction is being

E accorded till June 1986, and for continuation after June 30, 1986 the college should send details mentioning the actual strength of the students by March 31, 1986. The college was also intimated under the said letter that until and unless the post is made permanent by the Directorate, the holder of the post would not be confirmed and the appointment to the post could be

F made only after obtaining the approval of the Vice-Chancellor under the provisions of the Universities Act. The Manager of the College immediately wrote a letter on 25.2.1986 to the Secretary of the Service Commission requesting him that the post may be advertised and the appointment may be made under the Service Commission Act and to avoid any dislocation in the teaching the Manager also asked the appellant requesting him to

G continue as a lecturer in the College. The Registrar of the Gorakhpur university by his letter dated 8th April, 1986 intimated the Manager of the College that the Vice-Chancellor has approved the *ad-hoc* appointment of the appellant to the post of lecturer in Agronomy till 30.6.1986 or till the selected candidate takes over the charge, whichever is earlier. The Manager of the College on receipt of the aforesaid letter of the Registrar

H wrote back to the Registrar on 6.5.1986 intimating that there is no justifica-

tion for making a fresh advertisement for the post of lecturer and since the appellant is a brilliant student and has been continuously working since January 1, 1984, and the results have been 100% he may be permitted to continue permanently. The Manager then wrote to the appellant that he should continue with effect from 1.7.1986 as a lecturer. The Manager again wrote another letter to the Vice-Chancellor for continuance of the appellant by letter dated 26th June, 1986, and the Registrar by his letter dated 4th July, 1986 informed the Manager of the College that the Vice-Chancellor has approved the *ad-hoc* appointment of the appellant for a further period of six months with a break of one day or till the selected candidate take over the charge whichever is earlier. On 7.1.1987, the Manager of the Collage wrote to the Vice-Chancellor of the University requesting him that the appellant's service be extended so that there would be no break in the studies during mid session since no appointment has been made by the Service Commission nor any candidate has come to join on being selected. In the meantime an Ordinance was promulgated on 22nd June 1985 for regularisation of the *ad-hoc* teachers of the affiliated colleges being Ordinance No. 14 of 1985 which has later been made an Act and Section 31B has been added. The Director of Higher Education, Uttar Pradesh intimated the Manager of the College that the appellant having been appointed after affiliation of the subject of Agronomy at the Post-graduate level, his services are regularised under Ordinance in question. The District Inspector of Schools was also intimated to pay the salary of the appellant like regularised lecturer under the Rule. The Principal of the College also passed order that the appellant should be paid salary from the date of the creation of post i.e. 1.2.1986. The appellant was also intimated by the Manager of the College that his appointment has been made permanent and he will be paid the salary, D.A. and the permissible perquisites of the State Government as per U.P. Universities Act. The Director of Higher Education U.P. then issued a letter dated 4th May, 1987 to the Principal of the College calling upon the Principal to come to the Directorate with the copies of the certificates and the mark sheets of the appellant and it was also stated in the said letter that the salary of the appellant should be stopped at once. The appellant filed a Writ Petition in the Allahabad High Court which was registered as Writ Petition No. 2137 of 1988 against the order of the Director stopping the payment of salary and the appellant prayed that he may be paid his salary. On February 25, 1988 the Director of Higher Education informed the Manager of the College that order of

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- A regularisation of the appellant's services as lecturer in Agronomy stands cancelled since the appointment of the appellant was invalid and the approval had been obtained on a wrong premise. On receipt of the aforesaid letter from the Director the Manager of the College terminated the appellant's services by letter dated 29.2.1988. The appellant, therefore,
- B amended the Writ Petition No. 2137 of 1988 and made additional prayer challenging the order or termination as well as the order of cancellation of regularisation of his services by the Director . In the meantime the Deputy Registrar of the University wrote a letter on 22.4.1989 to the Manager of the College calling upon him to explain as to why the services of the
- C appellant has been terminated without prior approval of the Vice-Chancellor. On July 3, 1989, the Deputy Registrar informed the Manager of the College that the Vice-Chancellor has directed that appellant's salary should be paid. In the Writ Petition filed by the appellant the High Court had also issued interim mandamus directing the authorities to pay the salary of the appellant and in pursuance of the said direction of the University the
- D Director of Higher Education was intimated by the Joint Secretary to the Government of Uttar Pradesh that the salary of the appellant should be paid as lecturer with effect from 12.2.1988 and the arrears should be paid within six weeks. The Vice-Chancellor of the university by his letter dated July 20, 1990 called upon the Manager of the College that appellant should
- E be permitted to work, as the Vice- Chancellor did not approve the termination of the services of the appellant. The Vice-Chancellor then heard the appellant as well as the Management of the College and by reasoned order dated 18th April, 1992 set aside the order of termination of the appellant for non-compliance of Section 35(2) of the State Universities Act inasmuch
- F as no prior approval of the Vice-Chancellor had been taken. The Committee of Management of the College being aggrieved by the said order filed a Writ Petition in the Allahabad High Court which was registered as Writ Petition No. 16576 of 1992. The appellant himself also had filed another application in the High Court for implementation of the Vice-Chancellor's order dated 18.4.1992 which was registered as Writ Petition No. 2070 of
- G 1992. These three Writ Petitions were disposed of by the High Court by the impugned judgment dated 30.4.1993. The Writ Petitions filed by the appellant were dismissed on the ground that the appellant's appointment itself was illegal and was no appointment in the eye of law and the Writ Petition filed by the Management was allowed on the finding that the
- H Vice-Chancellor was in error in issuing the direction in question. The

appellant, therefore, has approached this Court against the aforesaid judgment of the Allahabad High Court. A

Be it be noted that Uttar Pradesh legislature passed an Act, called U.P. Higher Education Services Commission Act, 1980 (UP Act No. 16 of 1980), (hereinafter referred to as 'the Services Commission Act') for establishing the Service Commission for the selection of teachers for appointment to colleges affiliated to or recognised by a University. By virtue of Section 30 of the said Act, the provisions of the Act has the overriding effect. Under Section 12(1) of the Service Commission Act, every appointment as a teacher of any college has to be made by the Management only on the recommendation of the Commission, Sub-section (5) of section 12 of the said Act provides that every appointment made in contravention of the provisions of the Section shall be void. Section 16 of the said Act, however, authorises the Management to appoint a teacher on purely *ad-hoc* basis from amongst the persons holding qualifications prescribed for the post where the Management has notified the vacancy to the Commission in accordance with Sub-Section (2) of Section 12 but the Commission fails to recommend the names of suitable candidates within three months from the said date, such *ad-hoc* appointment, however, will cease with effect from the date mentioned in Clauses (a), (b) and (c) of sub-section (2) of Section 16. B C D E

After the termination of the service of the appellant one Phool Chand, respondent No. 6 in this appeal was appointed as lecturer in Agronomy by the Management of the College. This appointment was also on *ad-hoc* basis. The Governor of U.P. promulgated another Ordinance for regularising the services of the *ad-hoc* teachers, Ordinance 43 of 1991, and it was later on replaced by an Act, U.P. Act 2 of 1992. Section 31C was added to the Service Commission Act and *ad-hoc* appointment after 3rd January, 1984 but before 30th June, 1991 were sought to be regularised. Phool Chand prayed for regularisation of his service under the aforesaid provisions of the Act but the Director of Education rejected his prayer by order dated 23rd June, 1992 against which order Phool Chand also approached the High Court by filing a Writ Petition No. 33498 of 1982. F G

The stand of the Management in the High Court was that the appellant has never been appointed regularly under the Service Commission Act and even on 1.1.1984 the date on which he was first appointed on H

A *ad hoc* basis he did not possess the requisite qualification. Accordingly it was contended that he was not entitled to be regularised either under Section 31B of the Service Commission Act or under Section 31C thereof. The High Court by the impugned judgment came to the conclusion that the appointment of the appellant Santosh Singh had been made on 1.1.1984 as well as on 30.8.1985 on *ad-hoc* basis without the vacancy being notified by the Management to the Commission. It also came to the conclusion that the vacancy occurred only after sanction of the post by the Government on 1.2.1986 and, therefore, the so called *ad-hoc* appointment to the appellant Santosh Singh was illegal and without jurisdiction. According to the High Court the condition precedent for making *ad-hoc* appointment under Section 16 of the Service Commission Act before making an *ad-hoc* appointment to the post of lecturer did not exist and there was no vacancy available against which the appointment could have been made, the said vacancy having come into existence only after 1.2.1986 and the respondent not having even minimum qualification M. Sc. (Ag) when he was appointed on 1.1.1984, the appointment was illegal and contrary to the mandatory provisions of the Act and such it was not liable to be regularised and Directorate was fully justified in cancelling the earlier order of regularisation dated 19.1.1987 by the Directorate order dated 25.2.1988. The High Court further held that earlier order has been passed under a mistake and on account of concealment of relevant facts. With these conclusions, the Writ Petitions filed by the appellant having been dismissed and Writ Petition filed by the Management having been allowed, the present appeals have been preferred.

F Mr. G.L. Sanghi, learned senior counsel appearing for the appellant raises the following contentions in assailing the order of the High Court :

- (a) The conclusions of the High Court and reasons advanced for the said conclusion were based on obvious errors of record and, therefore the ultimate conclusion is unsustainable in law;
- G (b) The *ad-hoc* appointment of the appellant on 1.1.1984 had been made by the Manager of the College on relaxation of the educational qualification which was permissible under the advertisement itself and such *ad-hoc* appointment had been approved by the Vice Chancellor of the University from time to time and in fact ultimately the service had been regularised
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- by the Director on 19.1.1987 under the provisions of Section 31B of the Service Commission Act. It was therefore, not permissible for the said Director to cancel the regularisation of the appellant who had the right to be regularised under the provisions of Section 31B of the Service Commission Act. A
- (c) Alternatively the appellant is entitled to be regularised under Section 31C of the Service Commission Act; B
- (d) In any view of the matter the order of termination passed by the Manager of the College on 29.2.1988, having been passed without approval of the Vice-Chancellor as required under Section 35(2) of the said Universities Act, the same is null and void and therefore, the Vice-Chancellor had rightly cancelled the same. The High Court committed gross error in not examining the effect of Section 35(2) of the Universities Act and in interfering with the order of Vice-Chancellor. C
- (e) Lastly Mr. Sanghi, learned senior counsel urged that the appellant having served the institution at a time when there was no available hand and the institution having taken the benefit of his service and in the meantime the appellant having acquired the Doctorate degree, it would be wholly inequitable to take away the service of the appellant particularly when he has been over-aged for joining any service. D

The learned counsel appearing for the Management on the other hand, contended that the basic appointment of the appellant on 1.1.1984 even though on *ad-hoc* basis was not permissible as he did not have the minimum qualification of M. Sc. and, therefore, the said *ad-hoc* appointment by no stretch of imagination could have been regularised. He further contended that with effect from the enforcement of U.P. Higher Education Service Commission Act 1980, the provisions of the said Act have overriding, effect as contained in Section 30 thereof and no appointment to the post of a teacher could have been made by the Management without recommendation of the Higher Education Service Commission. The learned counsel urged that even though the appointment of *ad-hoc* teacher is contemplated under Section 16 of the said Act but the condition precedent for making such appointment being not satisfied so far the appointment of the appellant is concerned, the same must be held to be invalid. E

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A and rightly the High Court came to the conclusion that the appointment of the appellant was invalid and inoperative. He further urged that the Director erroneously passed an order of Regularisation under Section 31B of the Act and therefore had the power to withdraw the same and cancel the same when it came to his notice that the service of the appellant could not have been regularised under Section 31B of the Act. So far as the order of the Vice-Chancellor in not approving of the termination of the service of the appellant is concerned, the learned counsel urged that the Vice-Chancellor has no jurisdiction in view of the provisions of the Service Commission Act and the High Court has rightly set aside the same. The counsel appearing for the State of UP reiterated the stand taken by the learned senior advocate appearing for the Management.

We would now examine the correctness of the rival stand of the parties and in that connection would examine the contentions of Mr. Sanghi, the learned senior counsel in *seriatim*.

D So far as the first submission of the learned counsel Mr. Sanghi is concerned, we undoubtedly find sufficient force in the same inasmuch as the High Court based its conclusion on obvious errors of record to be mentioned hereinafter :

E (i) The High Court is of the opinion that the vacancy for the post of lecturer occurred only when it was sanctioned by the State Government on 1.2.1986. This is not factually correct. As has been stated earlier on 31.7.1982 the Deputy Secretary to the Government of U.P. had conveyed the Government's sanction for M. Sc.(Ag) in Faculty of Science in Shri Durgaji Post Graduate College, Chandeshwar, Azamgarh and it had been specifically mentioned therein that on account of financial stringency creation of necessary posts for the purpose of payment of salary by the Director of Education would not be feasible upto one year after start of the subject and therefore, payment of the salary will have to be provided for that time by the Management itself. It is no 1.2.1986 by sanctioning the post, the Director took the liability of payment of salary from the State Exchequer. Creation of a post and payment of salary of the incumbent of the post are two distinct concept. Even if the State does not pay for certain post but it has the right

to sanction creation of post and Management takes upon the burden of making the payment. In this view of matter the High Court was totally in error to hold that the post in question was created only on 1.2.1986. A

- (ii) The High Court also committed the error that before making the *ad-hoc* appointment it was not notified by the Management to the Service Commission. This may be true in respect of the appointment made on 1.1.1984 but cannot be true in respect of the appointment made on 1.10.1985 inasmuch as on 21.5.1985 the Manager of the College had written to the Secretary Higher Education Service Commission requesting the Commission that a person be selected for the purpose of lecturer (Agronomy) but even till the appointment made on 1.10.1985 the Service Commission had not selected any person nor sent any name. B C

- (iii) The High Court also did not consider the relevant document when it came to the conclusion that the regularisation was made on account of concealment of relevant facts. It may be noted that the appellant even in his application had indicated that he had not passed the M. Sc. and is continuing the second year M. Sc. course and yet the Managing Committee appointed him on *ad-hoc* basis on 1.1.1984 and thus it is not correct that there has been any concealment of relevant facts. D E

Even though we agree with the submissions of Mr. Sanghi, learned senior counsel that the reasonings of the High Court in dismissing the appellant's Writ Petitions were based on errors of record but we are unable to interfere with the ultimate conclusion of the High Court as that would depend upon appellant's establishing his right to continue in his service either by virtue of the regularisation provisions contained in Section 31B or 31C of the Act or he establishes the fact that his service had been regularised by the Service Commission Act. It is in this context we would examine the correctness of the other submissions of Mr. Sanghi the learned senior counsel appearing for the appellant. F G

It may be noticed at this stage that with effect from the enforcement of the Service Commission Act 1980 the appointment to the post of teacher of any college which is an affiliated or associated college to which the H

A privileges of affiliation or recognition has been granted by a University has to be made in accordance with the provisions contained in the Service Commission Act. Prior to the aforesaid Act came into force every college had its own Selection Committee with certain nominees of the Vice-Chancellor therein in accordance with the State Universities Act 1973. Lot of

B complaints of favouratism in the selection of candidates were made from time to time. To overcome the aforesaid short-comings the legislature passed the Service Commission Act and Section 30 thereof has overriding effect. Under Section 12 of the Act every appointment as a teacher of any college has to be made by the Management only on the recommendation of the Commission. Section 16 in certain contingencies authorises the

C Management to make *ad-hoc* appointment for specified period. Though Service Commission Act provides the procedure for making appointment to the post of teacher of a college affiliated to the University but it does not make any provision with regard to the qualification of such teacher. But the qualification has been prescribed in the statute of the University.

D Under Statute 11.13, in case of any college affiliated with the University minimum qualification for the post of lecturer in the Faculty of Arts (Except the department of Fine Arts and Music) and the Faculties of Commerce and Science are :

- E (a) An M. Phil degree or a recognised degree beyond Masters level or published work indicating the capacity of a candidate for independent research work; and
- (b) Consistently good academic record with atleast first or high second class Master's degree or an equivalent degree of a foreign University, in a relevant subject.

F Clause 5 of said statute 11.13 confers the power of relaxation on the Selection Committee which is extracted hereinbelow in extenso :

- G (5) If the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of a very high standard, it may relax any of the qualifications prescribed in sub-clause (b) of clause (1), or sub-clause (b) of clause (2), as the case may be.

H The aforesaid provision makes it clear that the relaxation is possible in respect of the qualification prescribed in sub-clause (b) and there cannot

be any relaxation in respect of the qualification prescribed in sub-clause (a). Consequently a person is ineligible to be appointed as a lecturer unless he possesses the minimum qualification of M. Phil degree or a recognised degree beyond Masters level or published work indicating the capacity of the candidate for independent research work. Admittedly the appellant had not held even a Master's degree on the date he was appointed as a teacher on 1.1.1984, what to speak of a degree beyond Master's level. It is no doubt true that in his application he had clearly indicated that he was pursuing his Master's degree course and was in second year M. Sc. and, therefore, there was no concealment on his part and yet the Management of the College appointed him on *ad-hoc* basis. But when the appellant did not have the minimum requisite qualification, as discussed earlier, in accordance with the University Statute the Committee of Management could not have relaxed the same and appointed him even on *ad-hoc* basis. We also find it difficult to conceive that for the post of a lecturer to teach in Post-Graduate class a student who is in second year M. Sc. class could at all be appointed. Mr. Sanghi, learned senior counsel, however, placed strong reliance on the decision of this Court in *Ram Sarup v. State of Haryana and Others*, [1979] 1 SCC 168, where an appointment had been made to the post of Labour-cum-Conciliation officer in breach of Rule 4 Clause (1) of the Rules and this Court had observed that such breach did not have the effect of rendering the appointment void but it merely made the appointment irregular and when the appointee acquired the necessary qualification, the appointment become regular from that date. In our considered opinion the ratio of the aforesaid case does not in any way help the appellant. In that case, Clause (1) of Rule 4 which was under consideration before the Court, provided that the person concerned must have 5 years experience. The appointment had been made even though the appointee did not have the minimum experience of 5 years but undoubtedly he had the minimum educational qualification for the post and, therefore, this Court had observed that the appointment would be valid from the date when the appointee acquires the minimum period of experience. But in the case in hand the University Statute prescribes the minimum qualification for appointment to the post of a teacher as a M. Phil degree or a recognised degree beyond Masters level, in clause (a) of Statute 11.13 and further provides that the candidates should have consistently good academic record with at least first or high second class Masters degree or an equivalent degree of a foreign University, in a relevant subject and

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A Clause 5 of Statute 11.13 empowers relaxation only of the conditions mentioned in clause (b). It is difficult for us to hold by applying the ratio of Ram Sarup (Supra) on which Mr. Sanghi relies that even the basic qualification can be relaxed. In our considered opinion the aforesaid decision of this Court is of no assistance to the appellant in the matter of relaxation of his qualification for appointment. In this view of the matter B we unhesitatingly come to the conclusion that the initial *ad-hoc* appointment of the appellant as a lecturer on 1.1.1984 was wholly without jurisdiction and such appointment could not have conferred the right of regularisation on the appellant by virtue of the Regularisation Ordinance which was later on replaced by an Act and Section 31B was inserted into C the Service Commission Act. Then again under Section 16 of the Service Commission Act an *ad-hoc* appointment can be made only when the Management notifies a vacancy to the Commission and Commission fails to recommend the name of a suitable candidate within 3 months from the date of such notification. It is not the case of the appellant nor is there any D material on record to establish that prior to 1.1.1984 the Management had at all notified the vacancy to the Commission in accordance with sub-section (2) of Section 12 of the Service Commission Act and the Commission failed to recommend the name within 3 months. Consequently the condition precedent for making *ad-hoc* appointment in terms of Section 16 of the Service Commission Act had not been satisfied before making the E *ad-hoc* appointment of appellant on 1.1.1984 and on this score also the appointment must be held to be invalid and inoperative.

Let us now examine the validity of the second appointment that was made on 1.10.1985. By this date the appellant, no doubt, had passed his M. F Sc.(Ag) examination and the Management of the college had requested the Higher Education Service Commission on 21.5.1985 to select a person for the post of lecturer of Agronomy in the College and the Commission did not send any name for more than three months. Therefore, the Management could be competent to make an *ad-hoc* appointment under Section G 16 of the Service Commission Act. But then the appellant had neither a M. Phil degree nor a recognised degree beyond Master's level nor there is any material to indicate that he had published work indicating his capacity for independent research work. Besides an *ad-hoc* appointment made under sub-section (1) of Section 16 of the Service Commission Act lapses H under sub-section (2) thereof after expiry of the period stipulated in the

Clauses (a) or (b) or (c) of Section 16. Since the Commission has not recommended any name Clauses (a) and (b) of sub-section (2) of Section 16 will have no application and, therefore, under Clause (c) by operation of law the *ad-hoc* appointment of the appellant ceased with effect from 30th June, 1986, the so called *ad-hoc* appointment having been made on 1.10.1985. Can such an appointment be regularised under Section 31B of the Service Commission Act as contended by Mr. Sanghi is the point in issue. Section 31B is quoted hereinbelow in extenso :

"31B. Regularisation of certain *ad-hoc* appointments - (1) Every teacher, other than a Principal, directly appointed on or before January 3, 1984 on *ad-hoc* basis against a substantive vacancy in accordance with the provisions of the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1982 or the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1983, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Concerned Statutes, shall with effect from the date of commencement of the Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1985, be deemed to have been appointed in a substantive capacity provided that such teacher has been continuously serving the College from the date of such *ad-hoc* appointment up to the date of such commencement.

(2) Every teacher deemed to have been appointed in substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such commencement.

(2-a) A teacher other than a Principle directly appointed on or before January 3, 1984 on *ad-hoc* basis in a vacancy referred to in clause (iv) or clause (v) of sub-para (1) of paragraph 2 of the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1982 or in Clause (iv) or clause (v) of sub-para (1) of paragraph 2 of the Uttar Pradesh Higher Education Services Commission (Removal of Difficulties) Order, 1983, in accordance with the provisions of such Orders and continuously serving the college from the date of such *ad- hoc* appointment till September 2, 1989, who possesses the qualifications prescribed under, or is

A exempted from such qualifications in accordance with, the provision of the concerned Statute, may be given substantive appointment by the Management of the College, if :

(a) any substantive vacancy of the same cadre and grade in the same department is available on September 2, 1989; and

B (b) the work and conduct of the teacher is found satisfactory.

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

C (a) on the date of such commencement, such post had already been filled, or selection for such post had already been made, in accordance with the provisions of this Act, or

D (b) such teacher was related to any member of the Management, or the Principal of the College concerned.

*Explanation* - For the purpose of this sub-section a person shall be deemed to be related to another if they are related in the manner mentioned in the Explanation to Section 20 of the Uttar Pradesh State Universities Act, 1973."

E A plain reading of the aforesaid provision would indicate that *ad-hoc* appointments made on or before 3rd January, 1984 against substantive vacancy in accordance with the provisions of U.P. Higher Education Service Commission (Removal of Difficulties) Order 1982 or U.P. Higher Education Service Commission (Removal of Difficulties) Order 1983 could be regularised under the provision. The initial appointment of the appellant having been held by us to be wholly without jurisdiction, the subsequent appointment made on 1.10.1985 cannot be regularised under Section 31B, the same not having been made on or before 3rd January, 1984. The contention of Mr. Sanghi on this score, therefore, fails and is accordingly rejected.

H Coming to the third submission of Mr. sanghi, Section 31C was brought into the Statute book in 1991. It will be appropriate for us to extract said provision in extenso for better appreciation of the point in issue.

"31-C. Regularisation of other *ad-hoc* appointments -

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(1) Any teacher, other than a principal who -

(a) was appointed on *ad-hoc* basis after January 3, 1984 but not later than June 30, 1991 on a post -

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

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

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

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(b) was so appointed after three months of the notification to the Commission under sub-section (1) of Section 16 as it stood before its omission by the Act referred to in clause (a), or if appointed within such period, no recommendation was made by the Commission within such period;

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(c) possessed on the date of such commencement, the qualifications required for regular appointment to the post under the provisions of the relevant statutes in force on the date of such *ad-hoc* appointment;

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(d) is not related to any member of the management or the principal, of the college concerned in the manner mentioned in the explanation to Section 20 of the Uttar Pradesh State Universities Act, 1973;

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

may be given substantive appointment by the management of the college, if any substantive vacancy of the same cadre and grade in

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A the same department is available on the date of commencement of the Act referred to in clause (a).

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

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

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

C (iii) the Director;

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

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

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

G In order to get the benefit of the aforesaid provision it is necessary that a teacher must have been appointed on *ad-hoc* basis after 3rd January, 1984, but not later than 30th June, 1991 on a post as envisaged in clauses (i) or (ii) or (iii). Further the other conditions contained in Clause (b), (c), (d) and (e) of Section 31C are also required to be fulfilled and then on the

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date the regularisation provision of Section 31C came into force, a substantive vacancy must be available for the services being regularised. Admittedly the appellant was not in service on the date Section 31C came into force and even no substantive vacancy was available as the same had been filled up by Phool Chand. Further Clause (e) of Section 31C (1) also cannot be said to have been satisfied inasmuch as no Selection Committee appointed under sub-section (2) of Section 31C has found the appellant suitable. Admittedly the appellant was not in service when Section 31C came into force and, therefore, the question of considering his case for regularisation under Section 31C does not arise at all. In fact the so called regularisation made by the Director was under Section 31B which we have already held that it could not have been so regularised. Therefore, the contention of Mr. Sanghi that the appellant was entitled to be regularised under Section 31C cannot be sustained.

So far as the effect of non-approval of the order of termination is concerned it is no doubt true that under Section 35(2) of the Universities Act a decision of the Management to dismiss or remove a teacher or to reduce him in rank or to punish him in any other manner does not take effect unless it has been approved by the Vice-Chancellor. Under sub-section (3) of Section 35 any decision to terminate the services of a teacher, whether by way of punishment or otherwise, sub-section (2) of Section 35 applies *proprio vigore* and thus such decision does not become affective unless approved by the Vice-Chancellor. But Sub-Section (3) itself carves out an exception to a case where the termination order was passed on the expiry of period for which a teacher was appointed. The so-called *ad-hoc* appointment of the appellant on 1.10.1985 in the eye of law came to an end on 30th June, 1986 under Section 16 of the Service Commission Act. Even though Vice-Chancellor had approved the appointment for a period of six months which was communicated by the registrar by letter dated 4.7.1986 with effect from 30th June, 1986, that also came to an end on 31st December, 1986. There was no further approval to the appointment thought Management of the College permitted the appellant to continue in service. In such a case, when the Director had passed an order of regularisation which he could not have passed and cancelled the same, the consequential order of termination does not become null and void by application of Section 35(2) and (3) of the State Universities Act. The Vice-Chancellor appears to have passed the order setting aside the order of termination not being fully aware of the facts and circumstances and the

A said order of the Vice-Chancellor, therefore, has rightly been set aside by the High Court. The contention of Mr. Sanghi, the learned senior counsel on this score accordingly cannot be sustained.

B So far as the last submission of Mr. Sanghi is concerned, the same is based more on an humanitarian consideration than on establishing the right of the appellant. It is true that by now the appellant has become over-age and it is true that the appellant served the institution from 1984 till 1988 and during his tenure the institution had cent percent results. But in view of our conclusion that the appellant's initial *ad-hoc* appointment was not in accordance with the provision of the Service Commission Act and as such it did not confer any right of regularisation under the Regularisation Ordinance of 1985 and even the subsequent *ad-hoc* appointment of 1985 did not confer a right of regularisation under the provisions of Section 31C of the Service Commission Act, as discussed earlier, it would not be possible for us to issue any direction in favour of the appellant. But since the appellant has got the Ph. D. degree now as stated by Mr. Sanghi, appearing for the appellant and is otherwise eligible for being considered for the post of lecturer in Agronomy but for his over age, we would observe that in case he makes an application to the Director for being considered for a fresh appointment and there exists any vacancy in the post of lecturer of Agronomy either in the College in question or anywhere in the State, then Director may sympathetically consider the case of the appellant and Service Commission also may consider the case of the appellant in relaxation of the age limit and after such consideration, if he is found suitable than he may be appointed as a lecturer in Agronomy.

F Subject to the aforesaid observation the appeals fail and are dismissed. There will be, however, no order as to costs.

P.C.

Appeals dismissed.