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STATE OF U.P. AND ORS.

v.

SMT. GAYATRI DEVI PANDEY

AUGUST 13, 1996

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[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

*U.P. Regulation of Ad hoc Appointment (on posts) within the purview of Public Service Commission) Rules, 1979 : Rules 4, 5 and 6.*

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*Service Law—Confirmation—Respondent appointed as school psychologist and later selected on regular service by Public Service Commission—On abolition of post she was temporarily appointed as L.T. Grade teacher and was subsequently regularised—Later she was appointed as Assistant Psychologist on ad hoc basis in Bureau of Psychology—Terms of appointment provided that her service can be terminated at any time without*

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*prior notice and can be reverted back to her original post—Within four months respondent was promoted as Vocational Guidance Counsellor on ad hoc basis—Her representation for confirmation as Assistant Psychologist rejected*

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*by authorities—Writ challenging the impugned order—Held on in service candidate who has already been holding a lien in a post but working in another department on ad hoc basis cannot be considered to be a candidate appointed from the open market for the purpose of regularisation required under the Rules—View taken by the competent authority cannot be said to be vitiated by any error of law warranting interference for quashing the regularisation.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11048 of 1996.

From the Judgment and Order dated 23.9.91 of the Allahabad High Court in C.M.W.P. No. 20281 of 1988.

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D.V. Sehgal, Ms. Monika Gosain and R.B. Misra, for the Appellants.

R.D. Upadhyay for the Respondent.

The following Order of the Court was delivered :

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We have heard learned counsel on both sides.

Initially, the special leave petition was filed against an order of the learned Single Judge made on September 23, 1991 in Civil Misc. Writ Petition No. 20281 of 1988 directing the State to promote Gayatri Devi Pandey to the post of Vocational Guidance Counsellor. On August 21, 1995, when the matter was heard for some time, it was suggested to the counsel whether the writ petition itself could be disposed of on merits, instead of remitting the matter to the High Court for decision on merits. In fairness, both the counsel agreed that the writ petition itself could be disposed of by this Court. Accordingly, the writ petition pending in the High Court was withdrawn. We have heard the petition on merits. Consequently, all the relevant material has been placed before us.

Smt. Gayatri Devi was initially appointed as a School Psychologist on December 17, 1962; she joined the post on January 3, 1963 and was selected on regular basis by the Uttar Pradesh Public Service Commission on August 5, 1964. Since those posts came to be abolished, she had consented to her being appointed as a L.T. Grade teacher; consequently, she came to be appointed on March 5, 1966. It is also clear from the record that she was also regularised as L.T. Grade Teacher w.e.f. April 1, 1965. By proceedings dated April 18, 1975, she was appointed on *ad hoc* basis as Assistant Psychologist in the scale of Rs. 400-750 in the Bureau of Psychology subject to the terms that her service will be terminated at any time without prior notice and she would be reverted back to her original post. Later, she came to be promoted further on *ad hoc* basis by proceedings dated August 12, 1975 within four months as Vocational Guidance Counsellor in the scale of Rs. 450-850 as was existing at the time. Her representation for confirmation as Assistant Psychologist came to be rejected by the Department. Resultant Writ Petition No. 3096/83 was disposed of by order dated February 17, 1988 directing the authorities to consider and decide the representation with a speaking order. The authorities by proceedings dated July 13, 1988 rejected the representation. Calling that order in question, the present writ petition came to be filed.

Shri R.D. Upadhyay, learned counsel for Smt. Gayatri Devi Pandey, contended that by operation of U.P. Regulation of Ad hoc Appointment (on posts within the purview of Public Service Commission) Rules, 1979 (for short, the 'Rules') issued by the Governor, in exercise of the power under proviso to Article 309 of the Constitution, procedure is prescribed for regularisation of the *ad hoc* Appointments in accordance with Rule 4

A thereof and appointment to be made under Rule 5 and such an appointment was deemed to be according to the relevant Rules by operation of Rule 6 thereof. Therefore, Smt. Gayatri Devi must be deemed to have been appointed as Assistant Psychologist and thereafter an Vocational Guidance Counsellor in the Psychology Department and a direction in that behalf be given.

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Shri D.V. Sehgal, learned senior counsel for the State, contended that admittedly, Smt. Gayatri Devi was appointed as L.T. Grade Teacher, when the vacancy for the post of Assistant Psychologist in the Manovigyan-shala (Bureau of Psychology) had arisen; pending regular recruitment according to the Rules. Smt. Gayatri Devi and four others were appointed on *ad hoc* basis. Therefore, her service was taken as on deputation to foreign service. She cannot claim any regulation in the post of Assistant Psychologist or promotion as Vocational Guidance Counsellor. According to the learned counsel, these posts are within the purview of the Public Service Commission and appointment should be made of the selected candidates recommended for such appointment by the Public Service Commission. The appointment dated April 18, 1975, therefore, could be only on deputation basis but not on regular basis, though *de hors* the Rules. Consequently, she cannot be regularised in the said post. He also brought to our notice the hierarchy of promotion in the general cadre and also in the psychology cadre. Considered from this perspective, he contends that the relief in the writ petition cannot be granted.

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Having regard to the respective contentions, the question that arises for consideration is : whether the impugned order of the authorities dated July 13, 1988 in the writ petition is vitiated by any manifest error of law requiring to quash it and direction for regularisation in the respective posts require to be granted. The admitted position is that initially Smt. Gayatri Devi Pandey was recruited as a School Psychologist and appointed on temporary basis. Later, though she was selected by the U.P. Public Service Commission, the post to which she was appointed came to be abolished; consequently, as a result of the action taken by the authorities, her services as a School Assistant Psychologist came to be an end on February 25, 1966. Later, she was absorbed as a School L.T. grade Assistant temporarily on March 1, 1966. Subsequently, she was selected by the Public Service Commission and was regularised as a L.T. Grade Teacher w.e.f. April 1, 1966. It is not in dispute that in the hierarchy of promotion of the teachers,

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L.T. Grade is the lowest cadre. Thereafter, promotion would be in State Subordinate Education Service. Promotion would be as Lecturer-II and thereafter as a Gazetted teacher and then to the U.P. Education Service Class-II cadre and then to the U.P. Education General Cadre Service. This is the hierarchy of the promotional avenues available to the L.T. grade teachers appointed in the general cadre service. As regards the posts in the Psychologist service cadre, initially recruitment would be Assistant Psychologist through the Public Service Commission. Thereafter, promotion would be as Vocational Guidance Counsellor or to the equivalent post in proportion of 50% to the in-service candidates and 50% by direct recruitment. The next higher promotional post is Assistant Psychologist/Regional Psychologist. It could thus be seen that though initially Smt. Gayatri Devi Pandey came to be appointed temporarily as School psychologist but on its abolition, her right to the post came to be terminated w.e.f. February 25, 1966 on which date she was appointed by the Public Service Commission and then got her services regularised as L.T. Grade teacher w.e.f. April 1, 1965. It would, therefore, be clear that she had her lien in the post of L.t. Grade teacher. When the vacancy of Assistant Psychologist in the Bureau of Psychology had arisen along with four others she came to be sent to those posts on temporary basis. It is true, as rightly contended by Shri R.D. Upadhyay, that a reading of the letter of appointment does indicate that it would be by way of direct *ad hoc* on temporary basis appointment but it was specifically stated therein that in the event of reversion, she would be reverted to the original post. In other words her lien on the post as L.T. Grade Teacher was preserved. She would, therefore, be treated only on deputation basis but not an appointee Assistant Psychologist since the appointment to the post of Assistant Psychologist would be only through Public Service Commission. It would be obvious that pending recruitment through the Public Service Commission, with a view to carry on the work, *ad hoc* appointments came to be made till the regular incumbent took charge of the posts subject to reversion to parent post. Consequently, she cannot claim that she was appointed to the post of Assistant Psychologist on April 18, 1975.

Rule 6 contemplates that where the appointment is made, notwithstanding anything to the *contrary* contained in any other rule or orders, the PSC was entitled to appoint the candidates but as regards any person who was directly appointed on *ad hoc* basis before January 1, 1977, *de hors* the Rules and is continuing in service, as such, on the date of commence-

- A ment of the Rules, namely, May 14, 1979, he is required to be regularised in accordance with the procedure prescribed in Rule 4 and appointment made under Rule 5 will be deemed to have been regular appointment according to Rule 6. It would thereby, be clear that any ad hoc appointment made from the open market otherwise than according to the Rules, is intended to be regulated under the rules. An in-service candidate who has already been holding a lien in a post but working in another department on *ad hoc*, basis cannot be considered to be a candidate appointed from the open market for the purpose of regularisation required under the Rules. Therefore, the contention of Shri Upadhyay that she must be deemed to be regularly appointment on *ad hoc* basis is not tenable in law.
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- C In would be seen that after a short period of four months, she was also promoted as Vocational Guidance Counsellor. If it really is an appointment according to Rules, it would be hardly necessary to emphasise that within four months thereafter would it be feasible to promote her on regular basis as Vocational Guidance Counsellor. It is already seen that the procedure for appointments and promotions in the Bureau of Psychology is different and distinct from procedure of appointment and promotion in the general cadre. Smt. Gayatri Devi Pandey having come from L.T. Grade, to discharge the duty as Assistant Psychologist on *ad hoc* basis, cannot claim her status to be of regularly appointed, though on *ad hoc* basis, in the Psychology Department claiming the benefit under the Rules.
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Thus considered, we find that the view taken by the competent authority, on the direction of the Division Bench, cannot be said to be vitiated by any error of law warranting interference for quashing the regularisation. It is needless to mention and it was admitted before us that she was promoted as SSES Lecturer and, therefore, since she was discharging the duties in foreign services, necessarily proforma promotion would be given. We direct the appellant to consider her case according to Rules in the general cadre to which she would be entitled in her own turn had she remained in service in the general cadre.

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G The writ petition is accordingly disposed of. No costs.

In terms of the above order, leave is granted in this special leave petition and the appeal is allowed. No costs.

T.N.A.

Petition and appeal allowed.