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THE COMMITTEE OF MANAGEMENT,  
VASANTA COLLEGE FOR WOMEN

v.

TRIBHUWAN NATH TRIPATHI AND ORS.

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NOVEMBER 21, 1996

[N.P. SINGH AND SUHAS C. SEN, JJ.]

*Service Law:*

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*Private College—Post of lecturer—Appointment of—Two external experts out of four member Selection Committee absent at interview—Candidate did not possess requisite Ph.D. degree—But assured he would get it shortly—Selection Committee recommended candidate for appointment and mentioned that his research work and publications were equivalent to Ph.D.—However, candidate did not publish such work—In view of absence*

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*of experts from Selection Committee, College appointed candidate only on ad hoc basis and made his further continuance subject to his completion of his Ph.D.—Despite extension of his ad hoc appointment candidate failed to get his Ph.D. degree—Before expiry of said extended period advertisement issued inviting application for said post but candidate did not apply for the same—Later on, he informed College that he submitted his thesis for Ph.D.*

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*but failed to appear for interview in response to interview call letter issued by College Pursuant to information given by him—Candidate challenged said advertisement but as there was no interim order of court another person appointed as lecturer and thereafter candidate obtained his Ph.D. degree—However, sometimes later, the person so appointed resigned—Consequently College by another advertisement invited applications and appointed a person in that post—Held: relief against a person appointed could not be granted unless strong grounds made out—In the circumstances of the case, the candidate could not be treated as Lecturer on permanent basis.*

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*Ad hoc appointment—Expiry of period of—Continuation of service of—Held: Such an appointee did not have any subsisting right for continuation of service.*

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*Ad hoc appointment—Expiry of period of—Continuation of service of—Held: Such an appointee did not have any subsisting right for continuation of service.*

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**The Appellant-College issued an advertisement for the post of lecturer in English. Two external expert members out of the four-member**

Selection Committee were absent at the time of interview. The respondent did not possess the requisite Ph.D. degree and assured that he would get the same shortly. The Selection Committee had selected the respondent for the post of Lecturer in English and mentioned that the respondent's research work and publications were equivalent to Ph.D. However, since no such work of the respondent had been published and in view of the absence of the experts from the Selection Committee, the appellant-College appointed the respondent on an *ad hoc* basis and made his further continuance subject to completion of his Ph.D. Despite an extension of the period of his *ad hoc* appointment, the respondent failed to get his Ph. D. degree. Before the expiry of the said extended period, advertisement was issued inviting applications for permanent Lecturers in English but the respondent did not apply for the same. Later, he informed the appellant-College that he had submitted his thesis for Ph.D. but failed to appear for the interview in response to the interview call letter issued by the appellant-College pursuant to the information given by the respondent.

The respondent filed a writ petition before the High Court challenging the said advertisement but in the absence of any interim order of the court one M was appointed as lecturer in English and thereafter the respondent obtained his Ph.D. Degree. However, sometimes later, M resigned from the post of Lecturer after a period of three years. Consequently, the appellant- College by another advertisement invited applications and appointed a person in the post lecturer in English. In the meantime, the High Court allowed the respondent's petition and directed the appellant-College to appoint the respondent on a permanent basis. Being aggrieved the appellant-College preferred the present appeal.

On behalf of the respondent it was contended that the Selection Committee had considered that he did not have a Ph.D. degree but, considering his published work as equivalent to Ph.D., recommended him for appointment on a permanent basis; that if the appellant-College did not treat the Selection Committee as properly constituted one due to absence of two members thereof, the appellant should not have acted on the basis of the recommendation of that Committee and should have arranged a proper meeting of the Selection Committee; and that in such circumstances, and having obtained his Ph.D degree although with some delay, the appointment of the respondent should be regularised.

A Allowing the appeal, this Court

HELD : 1. Although, there was considerable laxity on the part of the College authorities in the way they have handled the case, without strong grounds being made out, it would not be right to unseat the person who has now been appointed as Lecturer in English pursuant to the second advertisement. The writ-petitioner was not qualified to be appointed as lecturer when he made his application for the first time. Even then he was appointed on *ad hoc* basis and was given a chance to acquire the requisite qualification within a brief period. His *ad hoc* appointment was extended once and thereafter it was not extended. The petitioner did not have any subsisting right for continuation of service at that point of time. His position has not improved by the acquisition of the Ph.D. degree after he ceased to be a lecturer even on an *ad hoc* basis. He could have applied in response to the advertisements that were issued subsequently. He chose not to do so. There is no reason to treat him as Lecturer even after the period of *ad hoc* appointment was over and M functioned as Lecturer in English for a period of more than three years. [65-G-H; 66-A-C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14737 of 1996.

E From the Judgment and Order dated 23.12.94 of the Allahabad High Court in W.P. No. 17454 of 1990.

A.K. Chitale and Niraj Sharma for the Appellant.

S.K. Gupta and Anil Kumar Jha for the Respondents.

F The Judgment of the Court was delivered by

SEN, J. Leave granted.

G Vasanta College for Women, Rajghat Fort, Varanasi, is an educational institution run by and under the control of Krishnamurthi Foundation India. The post of Lecturer in English fell vacant in the College. An advertisement was issued by the College on 12.8.1989 in a number of newspapers inviting applications for the post. The eligibility requirement for the post, according to the advertisement, was :

H (a) A good academic record and at least a high Second Division

in the Master's Degree in the relevant subject from a recognised University. A

- (b) A Doctorate or M.Phil. Degree or an equivalent published work showing an ability to carry out independent research work. DESIRABLE : A good working knowledge of Hindi and English. B

Tribhuwan Nath Tripathi was one of the candidates for the post. Tripathi had a Master's Degree in English, but did not have any Doctorate or M.Phil. Degree. Tripathi had a claim that he had registered himself for Ph.D. in March, 1986 on the research topic "Neo-Romanticism in Modern British Poetry". He had several publications and books to his credit which were as under :- C

*Publications :*

- (i) *Research Papers* D

- (a) "Romanticism and Neo-Romanticism".  
(Accepted for publication) E
- (b) "Surrealism and the English Neo-Romantics"  
(Accepted for publication) E
- (c) "Treatment of Love in the Poetry of David Gascoyne"  
(Sent for publication) F
- (d) "Nature in the Hands of Dylan Thoman"  
(Under publication) F

- (ii) *Books*

*Learning English*

- Part IV(1987) G  
Part III(1988)  
Part IV (1988)  
Part V(1988)

- (Bharati Pustak Mandir, Calcutta) H

A A Selection Committee was constituted to interview the candidates. The Selection Committee comprised of two external expert members and two representatives of Banaras Hindu University - One was an expert in the subject for which interview was conducted and the other expert was a nominee of the University, who may or may not be an expert in the subject.

B But, when the interview by the Selection Committee was held on 8.11.1989, the two representatives of BHU failed to turn up. The other two members of the Selection Committee, however, proceeded with the interview and selected Tripathi for the post of Lecturer in English. After the Selection Committee had selected Tripathi for the post of lecturer in English, the Manager of the College wrote a letter dated 10.11.1989 to the Deputy Registrar of the BHU, asking him to seek the approval of the Vice-Chancellor to *ad hoc* appointment of Tripathi as Lecturer in English with effect from the date he took over charge. Officer on Special Duty (Acad. & Exams.) of the BHU wrote a letter dated 23rd December, 1989, seeking clarification as to why the appointment letter issued to Tripathi mentioned that he had been offered an *ad hoc* appointment as Lecturer only and further continuation had been made conditional. It was pointed out that the Selection Committee had recommended Tripathi for appointment as a Lecturer. The Selection Committee had also mentioned that Tripathi's research work and publications were assessed equivalent to Ph.D. On January 8, 1990, the Manager of the College replied to the letter dated

E 23rd December, 1989 :-

F "You will recall that the Managing Committee of our College had requested the Banaras Hindu University to permit them to invite one expert from outside for selection of Lecturers. This was approved by the Executive Council of the BHU and made applicable to all the affiliated colleges. Accordingly we have been inviting external experts out of the panel of names supplied to us by the BHU for this purpose. Our Managing Committee has resolved as a policy matter that permanent appointments should be made only when both experts are present in the selection. Temporary or *ad hoc* appointments can be made even when one of the experts is absent. In this case we had invited two external experts for the Selection Committee but both were unable to turn up on account of certain disturbances in the city in spite of having conveyed their acceptance. Therefore, the selection was held only

H with the University nominee and one subject expert in the com-

mittee. The candidate selected did not have a Ph.D. and had stated in the interview that he has started writing his thesis and will be completing his Ph.D. shortly. In view of the above facts, we have decided to offer Shri T.N. Tripathi an *ad hoc appointment and this has also been approved by the University.*"

It may be mentioned that Tripathi had been offered an *ad hoc* appointment by the Manager by a letter dated 18.11.89 which was accepted by Tripathi by a letter dated 27.11.89 in which he pointed out that he was not a candidate for *ad hoc* appointment and there must have been some mistake which should be clarified. It was stated by Tripathi that he was the only candidate with published work in English Grammar and had appeared before the Selection Committee. He was an aspirant for the permanent post. He requested the College to allow him to wait for the result of the interview for the permanent post.

On 29.11.89 the Manager of the College informed Tripathi in writing that the post against which he had been appointed was a permanent post, but temporary appointment was offered as he had not completed his M.Phil./Ph.D. Degree. He further wrote:-

"You had mentioned in the interview that you are writing your Ph.D. thesis and will be submitting it shortly. You will be considered for a permanent appointment after successful completion of your Ph.D."

Tripathi was asked to join duty latest by December 15, 1990 failing which it would be presumed that he was not interested in accepting the offer. On 8th December, 1989, the Deputy Registrar of BHU informed the Manager of the College that *ad hoc* appointment of Tripathi had been sanctioned. On 12th December, 1989, Tripathi joined as Lecturer in English on *ad hoc* basis. On 23rd December, 1989, O.P. Tandon, an Officer on Special Duty at BHU pointed out to the Manager of the College that Tripathi had been recommended by the Selection Committee for appointment as Lecturer in English. The appointment letter issued to Tripathi mentioned that he had been offered *ad hoc* appointment as Lecturer until 30th April, 1990 and further continuation had been made conditional. The proceedings of the Selection Committee also mentioned that "his research work and publications are assessed equivalent to Ph.D". In view of what had been stated above, it was not clear why Tripathi was not appointed an

A probation and instead given an *ad hoc* appointment. On 4th January, 1990, management of the College passed a resolution for permanent appointment of Anita Singh and for *ad hoc* appointment of respondent although only one expert was present at the meeting. On 8th January, 1990, it was pointed out on behalf of the College in reply to the University's letter dated 23rd December, 1989 that due to the absence of one expert, permanent appointment could not be given to Tripathi. On 27th March, 1990, Tripathi sought permanent appointment and explained that delay in getting the Ph.D. was due to an accident suffered by the Supervisor of the Ph.D. thesis paper.

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C On 1st May, 1990, the period of *ad hoc* appointment of Tripathi was extended upto 31st October, 1990 or permanent appointment whichever was earlier. On 20th April, 1990, the University had issued a certificate that pre-submission seminar of Tripathi's Ph.D. thesis had been held. A copy of the certificate had been forwarded to the management. On 16th July, 1990, Tripathi filed a writ petition in the Allahabad High Court seeking a writ of Mandamus for permanent appointment and also an order against termination of his service. On behalf of the appellant-College, an advertisement was given in Employment News dated 25-31, August, 1990 inviting applications for permanent Lecturers in English, Geography and History. The required qualification was, at least a high second class M.Phil./Ph.D. or equivalent published work indicating the candidate's capacity in independent research work. It was stated in the advertisement that if no suitable candidate with M.Phil./Ph.D. was available, a candidate with good academic record with at least two years' research/practical experience may be appointed on the condition that he/she will have to complete the Ph.D. within eight years of appointment.

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G On 5th October, 1990, Tripathi informed the management of the College that he had completed the research work and his thesis had been submitted on 4th October, 1990 and a certificate of University was enclosed. Thereupon, the management of the College sent him an interview call letter. But, Tripathi did not apply for the post pursuant to the advertisement nor did he turn up for the interview. But, he filed a second writ petition No. 32900/90 challenging the advertisement dated 31st August, 1990. This was followed by a letter to the management not to hold any selection in view of the pendency of the writ petition. No interim order was passed by the Court. On 29th December, 1990, Madhu Kapoor was ap-

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pointed Lecturer in English as a probationer. On 2nd January, 1992, her appointment was confirmed. On 8th October, 1993, Madhu Kapoor gave a three months' notice of resignation. On 9th October, 1993, management directed that Madhu Kapoor be relieved with effect from 8th January, 1994 and fresh advertisement was issued in Employment News dated 6-12 November, 1993 inviting applications to the post of Lecturer in English. On 11th January, 1994, the High Court on the application of Tripathi passed an interim order that any selection or appointment shall be subject to the writ petitions filed by Tripathi. Tripathi claimed that in January, 1991, he had obtained a Ph.D. degree from BHU. The title of his thesis was "Neo-Romanticism in Modern British Poetry".

When the writ petition filed by him was taken up for hearing, the High Court held that there was no reason why Tripathi should not have been appointed to the post of Lecturer in English and the management was directed to appoint Tripathi. The Court also directed that Tripathi's appointment pursuant to the advertisement dated 12th August, 1989 "shall be deemed to have been made on permanent basis and shall entail the consequences in accordance with law".

The Committee of Management of the College has come up in appeal and has contended that when appointment of Madhu Kapoor was made, Tripathi had not challenged the appointment. Madhu Kapoor functioned as Lecturer for more than three years and there is no reason why Tripathi should be reinstated. The writ-petitioner would not have had any case if Madhu Kapoor continued to work as a Lecturer in the College.

The basic point is that Tripathi did not have the requisite qualifications for appointment as Lecturer. He did not have a Ph.D. Degree when he appeared for interview. That is why an *ad hoc* appointment was given to him. This was done on the basis of representation made by Tripathi before the Selection Committee that he would get his Ph.D. Degree shortly. But he failed to get the same even within the extended time of appointment and, therefore, the management had no alternative but to issue fresh advertisement for the post of Lecturer. The *ad hoc* appointment was extended once and had not been extended thereafter. A fresh appointment was made. Madhu Kapoor functioned as Lecturer in English till she voluntarily resigned after three years.

The contention of Tripathi is that the writ petition was filed long

A before Madhu Kapoor was appointed. His case is that the Selection Committee had recommended him for appointment on permanent basis. The Committee had taken into consideration the fact that he did not have a Ph.D. degree, but considered his published work as equivalent to Ph.D. It was for the Selection Committee to assess the merit of the candidate.

B It was not the case of the management that the Selection Committee had erred in its assessment. The case of the management was that the two nominees of BHU, one of whom was an expert in the subject had failed to attend the Selection Committee meeting. If that be so, it was for the management to arrange a proper meeting of the Selection Committee. The management did not call for another meeting of the Selection Committee

C but implemented its decision in its own way. The Selection Committee recommended Tripathi to be appointed on permanent basis. The management appointed Tripathi on *ad hoc* basis on the plea that the two experts from BHU had failed to attend the meeting. If the meeting was not held properly, then the College authorities should not have acted on the basis

D of the recommendation of the Selection Committee at all. In fact, no attempt was made by the College authorities to convene another meeting of the Committee to assess the merit of the candidates. In other words, the management accepted the decision of the Selection Committee and Tripathi was allowed to function as Lecturer in English on *ad hoc* basis from 12th December, 1989 to 31st October, 1990. Tripathi had duly completed his Ph.D. thesis. There was some delay in obtaining the degree because of a fracture suffered by his Supervisor, but ultimately, he obtained his Ph.D. Degree. His prayer is to regularise his appointment.

At the point of time when Madhu Kapoor was appointed as Lecturer

F in English, Tripathi's *ad hoc* appointment stood terminated. Tripathi had accepted the *ad hoc* appointment after making some protests but actually worked on *ad hoc* basis and even got an extension of the appointment on *ad hoc* basis. It was clearly explained to Tripathi at the time of his appointment that if he obtained his Ph.D. within a short time, his appointment will be made permanent. It has been stated on behalf of the appellant

G that the appointment was given on the basis of an assurance given by Tripathi to the Selection Committee. Unfortunately, Tripathi could not get his Ph.D. Degree within a reasonable time after his appointment. The management of the College, thereafter, decided not to grant any further extension to the *ad hoc* appointment of Tripathi and proceeded to advertise the post once again and appointed Madhu Kapoor as Lecturer. It is

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true that Tripathi had filed writ petitions challenging the advertisement and termination of his service. Tripathi could not get any interim orders as a result of which Madhu Kapoor's appointment was made unconditionally on permanent basis. A

What happened thereafter was a fortuitous event. Madhu Kapoor after only three years' service resigned. The post was readvertised. During the three years' tenure of Madhu Kapoor, the respondent did not question the validity of Madhu Kapoor's appointment at all nor did he stake any claim to the post occupied by her. The resignation of Madhu Kapoor could not give rise to any right to the respondent. It is true that in the meantime, he had obtained Ph.D. It is also true that the conditions of recruitment had been relaxed to enable an otherwise qualified person to obtain a Ph.D. Degree within a period of eight years from the date of appointment. But the case of the respondent has to be seen on the basis of the rules in force at the time of his appointment. B C

The respondent's contention that he had published works equivalent to Ph.D. at the time of appointment cannot be accepted. He stated that he had submitted four papers. But the papers were not published on the date of his appointment. He had not given any particulars about the journals or persons to whom he had submitted his papers for publication. The only concrete thing he stated was that he had written four books on English Grammar for school children. But these were elementary works which could not be treated as equivalent to Ph.D. in English. D E

The respondent contended that the Selection Committee was satisfied as to the quality and standard of the work done by him. The College management has pointed out that the experts from BHU failed to attend the Selection Committee meeting. The other expert who was in the Committee was the Supervisor of the respondent himself. In any event, the appellant-College being the appointing authority was entitled to appoint the respondent on *ad hoc* basis giving a chance to him to obtain his Ph.D. Degree within a reasonable time. F G

We are of the view that the contention of the appellant-College must be upheld. Although, there was considerable laxity on the part of the College authorities in the way they have handled the case, we are of the view that without strong grounds being made out, it would not be right to unseat the person who has now been appointed as Lecturer in English H

- A pursuant to the second advertisement. The writ-petitioner was not qualified to be appointed as Lecturer when he made his application pursuant to the advertisement dated 12th August, 1989. Even then he was appointed on *ad hoc* basis and was given a chance to acquire the requisite qualification within a brief period. His *ad hoc* appointment was extended once and thereafter it was not extended. The petitioner did not have any subsisting right for continuation of service at that point of time. His position has not improved by the acquisition of the Ph.D. Degree in January, 1991 after he ceased to be a lecturer even on an *ad hoc* basis. He could have applied in response to the advertisements that were issued subsequently. He chose not to do so. We do not find any merit in the writ petition. There is no reason to treat him as Lecturer even after the period of *ad hoc* appointment was over and Madhu Kapoor functioned as Lecturer in English for a period of more than three years.

- D In that view of the matter, this appeal is allowed. The order of the High Court dated 23.12.1994 is set aside. There will be no order as to costs.
- V.S.S. Appeal allowed.