

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHIO.A. No.
T.A. No.

198

DATE OF DECISION February 15, 1989.

OA 574/86
Shri Dhirendra Kumar
OA 404/1987.
Smt. Dakshaben B. Patel
OA 1051/86. Petitioner s
Shri P.K.Rathod

Shri P.P.Rao, Sr. Advocate with Advocate for the Petitioner(s)
S/Shri I.J.Naik, S.S.Tewari and
P.S.Pradhan Versus

Union of India & Ors Respondent s.

Shri D.K. Sinha, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. Ajay Jehri, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? No.
4. Whether it needs to be circulated to other Benches of the Tribunal? No

MGIPRRND-12 CAT/86-3-12-86-15,000

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(Ajay Jehri)
Member(A)

(Amitav Banerji)
Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

O.A. No.574/86.

Date of decision: February 15, 1989.

Shri Dhirendra Kumar ... Applicant.

Vs.

Union of India & Ors ... Respondents.

O.A. 404/87.

Smt. Dakshaben B.Patel ... Applicant.

Vs.

Union of India & 3 Ors. ... Respondents.

O.A. 1051/86.

Shri P.K.Rathod ... Applicant.

Vs.

Shri S.C.Arya & 3 Others ... Respondents.

CORAM:

Hon'ble Mr. Justice Amitav Banerji, Chairman.

Hon'ble Mr. Ajay Johri, Member.

For the applicants Shri P.P.Rao, Sr.Advocate with
S/Shri I.J.Naik, S.S.Tewari and
P.S.Pradhan, counsel.

For the respondents ... Shri D.K.Sinha, counsel.

(Judgment for the Bench pronounced by Hon'ble
Mr. Justice Amitav Banerji, Chairman).

This is an application received under Section
19 of the Administrative Tribunals Act, 1985. The applicant
is a Lecturer in Political Science in the Govt. College at
Daman. He was appointed in 1982 on an adhoc temporary
basis. He did not possess the M.Phil degree which was a
requirement for the post. The applicant continued on the

post for over 4 years and is claiming that he should be treated as a regular staff. Instead the respondents have on 21.12.1985 advertised the post in terms of the 1983 Recruitment Rules. The applicant apprehends that he will be removed from the job because he has no scope even to apply against the advertisement on account of the fact that he does not possess the M.Phil degree. On the ground that he was governed by the 1975 Recruitment Rules, that by his appointment the relaxation from possessing the degree has already been given and the appointment has been continued for 4 years or so, the applicant has prayed for the relief that the advertisement dated 21.12.1985 for the post made by UPSC be quashed and he be continued on the post on regular basis.

2. There are two other applications OA 404/87, Smt. Dakshaben B.Patel Vs. U.O.I & 3 Ors and OA 1051/86 P.K.Rathod Vs. S.C. Arya & 3 Ors. which are of a similar nature. In OA 404/87 the applicant Dakshaben B.Patel is a Lecturer in Economics in the Govt. College Daman. This applicant has also challenged the advertisement for the post issued by UPSC on the ground that she has been working for the last 7 years, after having been appointed in 1979 on a temporary adhoc basis. In this applicant's case she was required to obtain the M.Phil degree within 5 years of her appointment. The grounds for the applicant approaching this Tribunal for quashing of the advertisement for the

post dated 22.3.1986 and for allowing her to continue on a regular basis are the same as in O.A. 574/86.

In the third application i.e. OA 1051/86 the applicant P.K.Rathod is a Lecturer in Commerce in the Govt. College Daman. P.K.Rathod has challenged the advertisement dated 12.4.1986 issued by the UPSC for the post of 'Lecturer in Commerce' and has requested for quashing the same and for continuing him on the post of Lecturer in Commerce on regular basis. The grounds of seeking these reliefs are that at the time of recruitment, the Recruitment Rules of 1975 were applicable which did not require M.Phil qualification, he has worked for nearly 7 years on the post, so he should be deemed to have been regularised.

3. All the applications involve common points of law and their facts are also similar except for the lengths of service and dates of advertisements issued by UPSC. So they are being dealt with together. The orders given in OA 574/86 will also apply to the other two applications.

4. The facts in this case i.e. OA 574/86 which are not under dispute are that the applicant was appointed on an adhoc temporary basis after being interviewed by the college authorities. The applicant was governed by the relevant Rules and Regulations laid down by the Government from time to time. At that time the 'Goa Govt. Arts & Science College Daman Class I Gazetted

posts Recruitment Rules 1975' were prevalent. These Rules required at least a 2nd Class Master's Degree in the concerned subject. There was no requirement of a 'M.Phil' degree. But the respondents had included the M.Phil degree requirement in the advertisement against which the applicant was selected. By his appointment, the applicant took it that this requirement was waived in his favour. The applicant was fixed in the grade of Rs.700-1300 unlike other teachers who were given the U.G.C. scales of pay of Rs.700-1600. The applicant was not given any condition of passing M.Phil degree within a certain period as in the case of the applicant in OA 404/87 Dakshaben B.Patel. The applicant was allowed his annual increments. The regular appointments to the post was to be made by the UPSC. New Recruitment Rules came into existence in February 1983. In these Rules the eligibility criteria came to be changed to possession of a M.Phil degree with high second class or a first class in M.A. By the impugned order, the UPSC advertised for the post in terms of the 1983 Recruitment Rules.

5. The applicant's case is that he should be governed by the 1975 Rules. In his case he was appointed prior to the date when 1983 Rules became effective and though the requirement of M.Phil degree was mentioned in the advertisement the fact that he was selected for appointment without possessing M.Phil degree would, according to him,

go to show that this requirement was not considered necessary. Further since under the 'UPSC (Exemption from Consultation) Regulations 1958' for certain appointments the power of appointment vested with the Government in appointments made for short periods but if they exceed 6 months, a fresh estimate is to be made of their continuance and a report made to UPSC regarding filling of the post. Since he has been continued for nearly 4 years continuously, he presumes that UPSC has been consulted. He was not asked to obtain M.Phil degree and now it was not fair to impose this requirement on him. In case the respondents did not consult the UPSC regarding him, and continued him for such a long time continuously, they cannot make him suffer for their own lapses. The respondents did not particularly also refer his case to the UPSC and appear to have failed to point out to the UPSC that the appointment has continued adhoc beyond 1 year. His claim is that such appointments should be considered as having become regular after 1 year.

6. In their reply the respondents have said that the applicant's appointment was purely adhoc and did not bestow on him any claim for regular appointment or promotion to higher post and seniority. In the advertisement made to fill up this vacancy on adhoc basis M.Phil degree was the required qualification. Government of India had in 1975 by their letter F 1-1/75-U.O dated 20.2.1975 prescribed the

minimum qualifications for College lecturers. M.Phil degree or a recognised degree beyond Master's level or published work indicating the capacity of a candidate for independent research work was required to be a necessary qualification. In case a candidate with these qualifications was not available, the college, on the recommendation of the Selection Committee, could appoint a person possessing consistently good academic record on the condition that he will obtain an M.Phil degree or a recognised degree beyond Master's level within five years of his appointment ^{32/} ²² filing which he will not be able to earn future increments till ^{31/} ^{he} he acquired the requisite qualification. The UGC scales also laid down a condition that all appointments were to be made on merit on the basis of All India advertisement. On the basis of these instructions revised rules were formulated in 1979 and they were finally published in 1983. The UPSC advertisement is based on these rules. These cannot be challenged now by this application made on 16.10.1986. Since the applicant did not possess M.Phil qualification, he was not given the UGC scales of pay. In his case relaxation was done for adhoc appointment only. The period for acquiring this qualification has now been extended to 8 years by the 'UGC regulations 1982' which was received by the respondents in 1984. The respondents have denied that the applicant does not know this requirement. According to the respondents the earlier recruitment

rules of 1975 do not have any application now. The applicant is misinterpreting the generosity of the Government. The College always encourages teachers to acquire higher qualifications. Moreover, when the applicant was selected, the prescribed qualifications were these only. The respondents have challenged the applicant's claim that his adhoc appointment has become regular because he has worked for four years. Regular selections are made through the UPSC. His name was duly forwarded to the UPSC so no details were outside the knowledge of the UPSC.

7. In his rejoinder, the applicant has said that after receiving the UGC Regulation 1982 in July, 1984, the impugned advertisement was published on 21.12.1985 wherein it was stipulated that a candidate who was not fulfilling the minimum educational requirements is also eligible on the condition that he shall obtain the M.Phil degree or equivalent within 5 years of his appointment. It has further been said that the UGC scale of pay were to be given where the minimum qualifications shall be as may be determined by the UGC. The minimum qualifications according to UGC recommendations are "C in the seven point scale". But the impugned advertisement has been made for qualifications "B + in the seventh point scale" and not "C in the seven point scale" as prescribed. Therefore, the impugned advertisement is not sustainable.

The applicant has further claimed that he should have been confirmed on completion of two years service and, therefore, it was not open to the respondents to have advertised the post and to hold a fresh selection. The applicant has strongly opposed the contention that adhoc appointments can be for more than one year. He has relied on Allahabad High Court judgment in NARENDRA BAHADUR SRIVASTAVA's case wherein it has been observed that an appointment can be said to be on adhoc basis only when it is known at the time of the appointment that it is for a 'specified period', 'on a temporary post' being created for a specified period or made in a leave vacancy or in a vacancy caused by an officer going on deputation. He has, therefore, emphasised that his appointment was not adhoc and he was governed by 1975 Recruitment Rules. The appointment was also made after considerations of the claims of all those who had applied. He has also said that he was never given any letter to obtain the M.Phil degree. While in the case of his other colleagues, a specific letter was issued to them to acquire the qualifications within the stipulated period. He supported his contention by the fact that he was given only pay scale of Rs.700-1300 unlike some of his colleagues who were fixed in the scale of Rs.700-1600 and who were

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required to obtain the M.Phil degree within the stipulated period failing which they were not to get any further increments after the expiry of 5 years (this period has now been changed to 8 years). The applicant has further pointed out that the UPSC's letter of 25.4.1981 does not say to discontinue their appointments. It only says that the higher grade should not be given and since he has been given the lower grade, he feels that his services cannot be dispensed with on the ground that he does not possess the M.Phil degree. The applicant has also challenged the averments made by respondent No.4 in various paras of his reply terming them as 'perjury' and an attempt to misguide this Tribunal. The applicant has also clarified that he cannot be concerned with the qualifications advertised in ^{accordance with} the UGC Regulation of 1982 because these were not in force when he was recruited, he was governed by the qualifications prescribed in the 1975 Rules and not in ^{which} the 1983 Rules ^{superseded} the 1975 Rules. Therefore, till the 1983 Rules came into existence, the 1975 Rules were the current Rules. The applicant has also cited the case of one Ramesh Chand Aggarwal who has been selected by the UPSC in spite of the fact that he did not possess the M.Phil degree.

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8. In application No.404/87- Smt. Dakshaben B.Patel Vs. U.O.I., a third party respondent was impleaded and he

was asked to file the counter in that application. In the other two applications, no third party respondent is involved. The third party respondent in OA 404/87 is one Dr. Narayan Prasad of Delhi who had applied in response to the advertisement dated 22.3.1986 issued by the UPSC inviting applications for the post of Lecturer in Economics for this College. The third party respondent was selected for this post and was offered a temporary post of Lecturer on 18.11.1986. He was asked to convey his acceptance or otherwise on or before 29.11.1986 and after medical examination, he was directed to join on 1.2.1987. Before this, on 8.1.1987, he was also informed of the application filed by Smt. Dakshaben B. Patel, the applicant in OA 404/87 and he was informed not to join the post until further communication. His claim was that he has undergone through the process of selection successfully and the interim orders passed by this Tribunal were prejudicial to him and, therefore, he had prayed that he should be allowed to join that post by vacation of the ex parte stay granted by the Tribunal.

9. We have heard the ld. counsel for the parties ^{/in all these connected cases} On behalf of the applicants, the contentions raised before us were that since the applicants have worked for periods ranging from 4 to 7 years, their appointments though made on adhoc basis should be considered as having become regular. That in view

of the fact that in spite of the advertisement indicating the educational qualification of M.Phil degree, their appointment on adhoc basis when they did not possess the same should be construed to mean that necessary relaxation has been granted to them in the matter of this qualification. That the 1983 Rules cannot be applied retrospectively and, therefore, they should be governed by the Recruitment Rules of 1975. The ld. counsel for the applicants further contended that in any case, in view of the catena of judgments of the Hon'ble Supreme Court on the subject of regularisation of adhoc employees viz. G.S. LAMBA's Case (1985 SC 1019 = 1985 (2)SCC 604), NARENDER CHADHA's case (1986 SC 638) and A.K.JAIN's case (1987 (4)SC 445), the applicants adhoc appointment has to become regular. Moreover, there is no provision for termination of the applicant's service. Therefore, the advertisement is a misconception. The ld. counsel also referred to the 'UPSC (Exemption from Consultation) Regulations 1958' and laid emphasis on the fact that if no specific time limit is mentioned in an adhoc appointment and only word 'adhoc' is mentioned and if the appointment is allowed to continue for a long time, it is liable to be treated as regular appointment. Further, the crossing of efficiency bar is also an important point and since the applicant has been allowed to continue, equitable estoppel comes into play and the services cannot be terminated. On behalf of the respondents, the application has been opposed on

the grounds that M.Phil degree was one of the essential qualification and that is why Smt. Dakshaben B. Patel, applicant in OA 404/87 had been issued a specific letter to attain this qualification within five years. That the University Grants Commission Act came into being in 1956 and the standards for education and qualification for teachers are laid down by the U.G.C. and since they have laid down particular qualifications, the teachers have to have this qualification for being regularised. It was with this view that the UGC revised the pay scales for future recruitment and since the applicant was appointed only on adhoc basis and had not been regularised till the new Rules came into being, he has to be governed by the new Rules. According to the ld. counsel, the UGC's interest is in seeing that the efficiency of the colleges is maintained and the standard of education imparted is better. It is the public interest at large which should prevail and not the individual interest and since the applicant does not possess M.Phil degree, the ^{only} question that could be considered would be whether he can be continued on compassionate grounds or not. It was further submitted by the ld. counsel for the respondents that the Government has no power to ignore the advice of the UPSC. That all the three applicants had applied for regular appointment but they were not selected and now when regularly selected candidates have come to join, they

are challenging the advertisement on the basis of which they had appeared before the UPSC. Further, Shri Dhirendra Kumar, the applicant in this application has ^{not} been recommended by the UPSC while the applicant Shri P.K.Rathod in OA 1051/86 has already got a job elsewhere and only the applicant in OA 404/87 is left because she has not got any placement as yet. According to him, there are three basic features., firstly the UPSC candidates should get priority, secondly ad-hoc candidates if they are not found fit to hold the post have to give way to the UPSC candidates, and thirdly if they are found fit to hold the post, they could be considered fit for regularisation. In reply to these submission, the ld. counsel for the applicant in OA 404/87 submitted that if adhoc appointment had to be continued for more than a year and the statute expressly provided for consultation with the UPSC, the same should have been done. Therefore, now the work of the applicant should be evaluated and the department should see whether she can be accommodated or not. During the course of arguments, a contention was also raised that mere selection of a person by the UPSC does not give him a right for employment. It is only a recommendation and the employer has to decide whether the employment has to be offered or not.

10. The facts of the case which are not under dispute are that the applicant ^{in this O.A.} was appointed adhoc, that he continued to work for a period of nearly 4 years, that at the time of his recruitment, possession of M.Phil degree was included in

the advertisement though it was not a requirement of the 1975 Recruitment Rules. We will take these issues one by one. A number of decisions of High Courts and the Hon'ble Supreme Court have been cited by the ld. counsel for the parties to support their cases. In respect of adhoc appointment, the contention of the applicant is that though the appointment was adhoc, the fact that it continued for a long time takes away adhocism and relegates the appointment to one of a regular category. The appointment letter issued to the applicant on 20.10.1982 (Exhibit 'A') clearly mentions that the appointment is purely on adhoc basis and will not bestow on the appointee any claim for regular appointment, promotion to higher post and seniority and will be liable to be terminated by one month's notice or with the payment of one month's salary in lieu of such notice. The applicant was selected in terms of the 1975 Recruitment Rules with the added educational qualification M.Phil. Though in the 1975 Rules, the educational qualification was only Second Class Master's Degree in the concerned subject with three years experience of teaching. The qualifications were relaxable at Commission's discretion in case of candidates otherwise well qualified. Adhoc service before substantive appointment in derogation of the Rules cannot be counted for seniority etc. and as observed by the Hon'ble Supreme Court in ASHOK GULATI Vs. B.S. JAIN (1987 (1) SLJ 169 SC) that it is nowhere laid down that the length of continuous officiation must be the sole guiding factor and the only criteria in determining the seniority. Similarly,

in SMT. N. NIRMALA Vs. STATE OF ANDHRA PRADESH (1987 (1) SLJ 99 SC), it was held by the Supreme Court that a stop-gap appointee who is eligible to appear and who does not appear in a selection but gets regularised subsequently cannot be treated as senior to the Service Commission candidate appointed prior to his regularisation. At the same time in GURU PRASAD Vs. U.O.I. (1988 Vol.VI ATC 47) it has been held that the adhoc appointment should not extend beyond a limited period and if it so exceeds, it has to be treated as temporary and that the form of appointment order is not conclusive. What has to be seen is the surrounding circumstances. Further, the UGC scales of pay which were introduced after the recommendations made in 1979 which resulted in the new recruitment Rules which came into force in 1983 laid down the essential requirement of M.Phil or equivalent for appointment as a Lecturer in the University. Though the 1975 Rules had given the power to the College authorities to appoint Lecturers and the appointments were governed by the 'UPSC (Exemption from Consultation) Regulations 1958', the very fact that the respondents had taken care to introduce the revised educational qualifications in the advertisement and made the appointment adhoc as the appointment order clearly shows will go to indicate that the respondents had not given any regular appointment to the applicant. If this was not so, the applicant would not have applied for regular selection in response to the advertisement by the UPSC. What he has done

is that when he was not selected, he has challenged even the advertisement under which he had sent his application to the UPSC for regularisation. Once the applicant had consented to appear in the selection and had appeared, on his failure, he cannot now turn around and challenge the very basis of the selection. Thus on both counts, firstly, that the appointment was not a regular appointment though it continued for a long time and secondly, that the applicant on his own free will and full knowledge of the facts had applied for the post against the UPSC advertisement and failed in the selection, he is stopped from challenging not only his appointment but also the ³⁸ application of the 1983 Recruitment Rules under which he appeared for the selection. The respondents have, however, in their reply indicated that in the selections held by the UPSC, one Dr. Narayan Prasad was selected in place of the applicant in OA 404/87 and selected candidates in place of the applicant in this application and the third application are waiting for appointment. It has also been advised by the respondents that the applicant in this case has got a regular appointment of Lecturer in the National Defence Academy at Kharakvasla while the applicant in OA 1051/86 has got appointment as Lecturer in the Post Graduate Department of Saurashtra University and is already working there. The judgments of the Hon'ble Supreme Court which have been cited by the applicants (A. Janardhan Vs. U.O.I. (AIR 1983 (SC) 769), G.S. Lamba Vs. U.O.I. (AIR 2985 SC 1019) and Narender Chaddha Vs. U.O.I (AIR 1986 SC 638) do not ³⁹ help ~~hold~~ the applicant's case

and are easily distinguishable. These judgments relate mostly to the rota and quota system and to inter se seniority between the direct recruits and promotees. In Dr. Jain's case the Hon'ble Supreme Court had held that the UPSC selected candidates are to be accommodated in any case and the adhoc appointees should be regularised as far as practicable by consulting the UPSC if they are fit for the post and if there is a vacancy and if they apply for direct selection. Thus, there is no ambiguity in the facts that the UPSC selected candidates must be accommodated and will have a first priority. But at the same time, the Hon'ble Supreme Court has not lost sight of the adhoc service rendered by the applicants in Dr. Jain's case and that is why the observation in regard to regularisation of the adhoc appointees if there are extra vacancies available. We also draw support in our view that the applicant cannot challenge the advertisement or the selection once he conceded to appear at the same

from OM PRAKASH SHUKLA Vs. AKHILESH KUMAR SHUKLA & ORS (AIR 1986 SC 1043) where the Hon'ble Supreme Court had held that the petitioner appearing for examination without protest-petition filed on realisation that he would not succeed ~~and~~ relief ought not to be granted to the petitioner and in STATE OF RAJASTHAN Vs. SHRI RAJENDER KUMAR RAWAT & OTHERS (JUDGMENT TODAY 1987 (4) SC 601) where the judgment in Om Prakash Shukla Vs. Akhilesh Kumar Shukla & Ors in the case cited above has been followed.

In respect of the challenge made to the adhoc appointment, we also feel that the applicant had accepted the

appointment as offered to him and he never challenged the same. He has challenged it now through this application when he found that he has not been able to succeed in his attempt to get regularisation on the post. We do not think that the judgments given by the Delhi High Court in C.B. DUBEY's case (1975 (1) SLR 580), in Dr. G.P. Sarabhai's case (1983 LAB.IC 910) can help the applicant in any case. As a matter of fact, he has already acquiesced to the terms and conditions of his appointment order and he cannot challenge the same at this stage. In spite of the fact that appointment continued to be adhoc for such long period.

11. The respondents had laid a condition that the adhoc appointment could be regularised in case the applicants attain the M.Phil degree during a period of five years which was later extended to eight years. It cannot thus be said that the applicant was not aware of such a condition and that because he was not specifically told about the same, he should consider that this essential requirement has been waived in his case and he can be regularised without attaining the same. The Rules made by the authorities in respect of appointment of Lecturers apply equally to all those who come within the ambit of these Rules. On his own showing, the applicant has indicated that even in the advertisement against which he was selected in 1982, the requirement of M.Phil degree was a condition and that he did not possess the same, he cannot, therefore, now take a plea that since he was given an adhoc

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appointment, he should also be regularised without attaining this essential qualification which had been introduced as a result of the UGC recommendations. The respondents in our view had taken adequate precaution to include this qualification even when the Recruitment Rules had not been finalised and were under review. Thus it is not a question of the applicant having been regularly selected under the old Rules. The fact of the matter is that he was only given adhoc appointment and if he was keen, he should have made efforts to attain the basic essential qualification.

12. In terms of the appointment order, we do not find anything wrong in the order of termination of service of the applicant. The respondents were fully authorised to terminate the appointment by giving one month's notice. Passage of time does not result in modification of the conditions of appointment. In 1981 (Exhibit AR 5) when the applicant in OA 404/87 was given an appointment on adhoc basis, the UPSC had advised the respondents that they did not approve of the adhoc appointment of the applicant in that case and they advised the Government of Goa that in the absence of Recruitment Rules, they should resort to direct recruitment through UPSC, and that no unqualified candidate should be given the benefit of the higher grade. It is not under dispute that the applicant was not given the higher grade but this action cannot condone

the fact that the appointment was ad hoc and that the essential requirement was ^{by the} ~~in~~ possession of a M.Phil degree. As a matter of fact, it appears to be only in this background that the applicant was offered ad hoc appointment and given only the lower scales of pay. We reject the contention of the applicant that since he was not required ^{by} to pass M.Phil degree, because he was not given any letter as in the case of others, his appointment should be considered as having been made after waiving of that essential qualification and that it should be a regular appointment in the lower scales of pay.

13. As far as the 1983 Rules relating to recruitments to Group 'A' Gazetted posts of Principal and Lecturers in the Government College is concerned, there is no doubt that Rule 6 of these rules gives the power to relax. This rule reads that where the Government is of opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing and in consultation with the Union Public Service Commission relax any of the provisions of these rules with respect to any class or category of persons. However, it is clear that this power can become operative only when it is exercised and definite orders are issued in pursuance of the same. The respondents have, in this connection averred that they did give the relaxation but it was only in connection with the ad hoc appointment of the applicant. This relaxation cannot be considered as relaxation for regular appointment. We, therefore, do not find that there was anything wrong in the respondents appointing the applicant on ad hoc basis by exercising this power for a limited purpose.

14. The essential qualifications under these recruitment rules are also relaxable to the required extent if research work of a candidate, as evident from his Thesis or published work, is in the opinion of the Commission of a very high standard. This is as laid down in the 1983 recruitment rules. At the time when the applicant was recruited the essential requirements were second class Master

Degree in the subject concerned and three years' teaching experience. These qualifications were relaxable at the Commission's discretion in case of candidates otherwise well qualified. The 1975 Rules, in respect of the Method of Recruitment, also lay down that the post of Lecturers in the various disciplines were to be filled by promotion failing which by direct recruitment. The promotion was to be made from Assistant Lecturers in the concerned subject. The 1983 Rules, however, laid down the Method of Recruitment as by direct recruitment and the selection is to be made in consultation with UPSC. It is thus obvious that the 1975 Rules did contemplate that if suitable Assistant Lecturers were not available direct recruitment could be resorted to, but in the case of direct recruitment under the 1975 Rules, UPSC Exemption from Consultation Regulations 1958 were applicable and it was not mandatory to consult UPSC as in the 1983 Rules. ^{or at the time of first appointment} The applicant has contended that UGC recommendations of 1978 covered by the respondents' orders of March, 1979 had ^{or placed} ~~to be~~ a condition, while introducing these scales, that for future requirements the minimum qualification shall be as determined by UGC from time to time and this minimum requirement is 'C' in the 7th point scale. In spite of this specific mention, contends the applicant, the respondents prescribed in the impugned advertisement 'B' plus in the 7th point scale. The 1983 Rules clearly lay down the essential requirements for Lecturers in the various disciplines and 'B' plus ^{or} in the 7th point scale ~~as~~ the Master Degree is the essential minimum requirement. We are, therefore, not able to appreciate in what way the advertisement given by the respondents in 1985 in terms of the 1983 Recruitment Rules was ^{or} ~~being~~ beyond the rules themselves. We also do not find any force in the applicant's statement made in his rejoinder affidavit that on completion of his service of 24 months he was entitled to be considered for confirmation. Another contention raised by the applicant is that he could not be kept on an ad hoc basis for more than one year. He has relied on the case of Som Nath & another v. Union of

India & others (1973 (1) SLR 737). In this case the Delhi High Court, while considering the promotions which were made on ad hoc measure and were subject to subsequent re-organisation which was necessary when the proposed rules were introduced, had observed that when consultation with UPSC was necessary for filling a post, the Government is given a power to make ad hoc appointment for a fixed period beyond which it cannot last without consultation with UPSC. UPSC Exemption from Consultation Regulations, 1958 lay down that where the person appointed is not likely to hold the post for a period of more than one year and it is necessary to make an appointment immediately ^{3/} and ^{3/} a reference to Commission will cause undue delay, ^{3/} and it shall not be necessary to consult the Commission and it will suffice if such appointments are reported to the Commission. ^{3/} ~~and~~ If they are continued beyond a period of six months a fresh estimate is to be made and reported to the Commission and if the appointment is likely to extend beyond one year, the Commission shall be consulted in regard ^{3/} to filling of the post. This consultation, ^{3/} ~~therefore~~ ^{3/} to our mind, ^{3/} is in regard to the regular filling of the post, evidently, meaning thereby that UPSC will advertise the post and arrange to fill it in a regular manner rather than allow an ad hoc appointee to continue beyond one year. It cannot be construed to mean that this consultation will in any case be ^{3/} only ^{3/} with a view to regularise the ad hoc appointee. The ratio of the observations made in this case, therefore, ^{3/} does not help the applicant. ^{3/} ~~in any case.~~

15. The applicant has also relied on the case of State of Uttar Pradesh v. Singhara Singh & others (AIR 1964 S.C. 358) wherein in para 7 of the judgment it has been said that where a power is given to ^{3/} do ^{3/} a certain thing in a certain way the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. As already explained above, UPSC Exemption from Consultation Regulations, 1958 cannot be interpreted to say that a consultation was necessary because the

ad hoc appointment continued beyond one year to regularise the applicant. This consultation was necessary only to make regular appointments to the post. We failed^{3/} to see how the applicant can claim benefit of this ratio to support his claim that since he has continued on ad hoc basis for a period beyond one year and^{3/} the respondents did not consult UPSC, the appointment automatically becomes regular.

16. In Narendra Bahadur Srivastava v. Public Service Commission, U.P. & others (1971 SLR 414) the Allahabad High Court had defined the ad hoc appointments. The High Court has said that an appointment can be said to be on ad hoc basis only when it is known at the time of appointment that the appointment is for a specified period, on a temporary post being created for a specified period or an officiating or temporary appointment being made in a leave vacancy or an officer going on deputation or for some similar reasons. The High Court^W has further observed that where a person appointed to a post has the expectation to remain in service for an unspecified period, his appointment cannot be said to be on ad hoc basis. The appointment order of the applicant has clearly spelt out that the appointment is on ad hoc temporary basis and will not bestow on the appointee any claim for regular appointment. The period of appointment was not indicated in the appointment order. We are^{3/ not} ^{ed} ^{3/} impressed by the arguments put forward by the applicant that in the ratio of the Allahabad High Court's judgment in Narendra Bahadur Srivastava's case his appointment cannot be termed as 'ad hoc'. If there was any such understanding on the part of the applicant, he should have agitated the matter immediately after he got appointed and should have asked the respondents to spell out the duration of the appointment, etc. The respondents^{3/} had made it clear that the appointment was made on ad hoc basis pending regular selection by UPSC for which the recruitment rules which were framed on the basis of UGC recommendations and drafted in 1979 got finalised only in 1983. Thus^{3/} there was nothing wrong

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in the respondents appointing the applicant on an ad hoc basis pending finalisation of the rules and regular selection by UPSC in terms of the 1983 Rules. At the time the rules were not finalised and the guidelines for making ad hoc recruitment were the 1975 Rules, but it cannot be said that this appointment was in any way regular appointment.

17. Another case on which the applicant has placed reliance is the judgment by the Himachal Pradesh High Court in Dr. Chaman Lal Malhotra v. The State of H.P. & others (1975 (2) SLR 806). In this case the petitioner joined the Himachal Pradesh Service as a Doctor on ad hoc basis. He was appointed on regular basis subsequently and after re-organisation of the service under the amended rules was inducted in the service under the new category the petitioner had appeared before UPSC as a candidate for direct recruitment in connection with certain posts of GDOs Grade I and he was selected for the post. Subsequently, he applied for direct recruitment to the post of Specialist and was appointed in the Specialists Grade. The petitioner was aggrieved because though he was a member of the Specialist's grade and was entitled to be appointed against the post of CMO ~~when~~³⁴ he was ignored for the same. In this case the Himachal Pradesh High Court had observed that one of the respondents had been appointed as CMO in the year 1972 and continued to work as CMO, ~~therefore~~³⁵, his appointment which was being termed as 'ad hoc' and which lasted for over two years could not be said to ~~be~~³⁶ 'ad hoc' because an ad hoc appointment cannot last for such long period. In our opinion this observation is purely limited to the circumstances of that case and cannot be used to generalise the fact that an ad hoc appointment is limited by a period of one or two years. We note that in the judgments cited above, in one case the High Court's views were that ad hoc appointment cannot be more than one year while in this case the views are that it could not be for over two years. The ratio of this case also ~~do~~³⁷ ~~can~~^{do} not, in our opinion, come to the assistance of

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the applicant.

18. In C.B. Dubey & others v. Union of India & others (1975 (1) SLR 580) the Delhi High Court had said that the expression 'ad hoc' in its true meaning would mean 'stop-gap', that is to say, without considering all the persons eligible for promotion. ^{3/}Such appointments are subject to be affected by the rights of those persons who were not considered, though they were eligible to be considered. The Delhi High Court had further observed that even if the appointments were ad hoc if they were made after consideration of the claims of all except a ^{3/}few and in accordance with the basis of the selection provided by the rules then those persons who were rejected on merits cannot challenge these appointments by pointing out that certain other persons had not been ^{ab}considered. In our opinion, even this ratio does not apply to the applicant's case. Here it is not a question of any rights being affected of those who were not considered though they were eligible to be considered. The appointment of the applicant was 'stop-gap' in the sense that in terms of the 1983 Rules which were under formulation, the appointment had not been made through selections made by UPSC and, therefore, was not covered under the rules. The applicant's contention that his appointment was not 'stop-gap' and he was not appointed without considering all the eligible persons because the post had been advertised and the candidates were called for interview and selection was made by a committee under the 1975 Recruitment Rules cannot come to his assistance because the fact remains that pending finalisation of the recruitment rules some arrangement had to be made to continue the classes in the college for which ad hoc arrangements had ^{3/}to be made and the appointments were limited for this purpose.

19. The applicant's plea that the respondents have to allow him to continue as the principle of Equitable Estoppel applies to his case is also one of the contention raised in the application and during the arguments. Equitable Estoppel is not strictly; estoppel;

it is a rule evolved by equity for doing justice. All the inhibitions relating to estoppels need not circumscribe such a doctrine. Equitable estoppel means the effect of voluntary conduct of a party whereby he is precluded from asserting right against another who has justifiably relied upon such conduct and changed his position so that he will suffer injury if the former is allowed to repudiate the conduct. ^{In this connection 3✓} Reliance has been placed on Lila Dhar Sharma v. Union of India & others (1986 ATC. 382) and Sangeeta Srivastava v. Prof. U.N. Singh (AIR 1980 Del. 27). In Sangeeta Srivastava's case the Delhi High Court had allowed the petitioner to be admitted to Post-Graduate Course even though she did not possess the minimum qualifications. The back-ground of this case was that the petitioner had been admitted during the Session and she had regularly paid fees for about a year, but she was not allowed to appear in the examination. In this case the respondents were barred by the rule of Equitable Estoppel to discontinue her studies long after she had been admitted to M.A. course. In Lila Dhar Sharma's case the petitioner, who was appointed as a Translator in the Official Language Department, was issued notice for termination of ^{3✓} ~~her~~ his service as he did not possess 2nd Division in his M.A. examination. In this case the Principal Bench of this Tribunal had quashed the termination order on the ~~an~~alogy of Sangeeta Srivastava's case on the grounds of equity. In this case it was a question of the petitioner being deprived of his livelihood after having served for nearly four years. The Principal Bench had observed that since the respondents continued to retain him without any reservation for more than four years they were now barred from discharging him on the basis of technical short-fall in his qualification. We cannot understand how a parallel can be drawn between the case of the applicant and that of Lila Dhar Sharma or Sangeeta Srivastava. In the applicant's case there was apparently no error in giving him ad hoc appointment. We have already discussed this issue in paras ^{30✓} supra.

20. In Bechan Singh & another v. Union of India & others (1972 SLR 397), which is also one of the cases relied on, the appointments to class I service by interview were made by the Government in consultation with UPSC and the selection was made by UPSC, the appointments by competitive examination had proved fruitless. Therefore, the only alternative of appointment and selection by interview was the possible course. The Government had relaxed the rules and ultimately when the rules were amended and they became statutory in character the recruitment by interview and also the relaxation were regularised ^{3/ and} such appointments were held as valid. No parallel can be drawn ^{3/ from between} on this case and the applicant's case because of the different circumstances of the case. If regular appointment had been made in the case of the applicant prior to coming of the new rules he could have a claim but such was not the case. He was only selected for ad hoc temporary appointment ^{3/ which for one reason or another} ~~which~~ continued for a long period and as alleged by him he was not even asked to qualify in the M.Phil examination. But this cannot result in the appointment being converted from ad hoc to regular automatically. Similarly, in Shri Om Datt Sanger & others v. Union of India & others (ATR 1987(1) CAT 649) where the post of AD(I)s were not filled in a systematic manner in accordance with the quota fixed and no meetings were held for 13 long years the applicants were aggrieved by being deprived of their legitimate share in the post of AD(I)s and they are being kept on ad hoc basis for long years, the Principal Bench of this Tribunal had held that the circumstances of the petitioners are on all ^{3/ four} ~~four~~ with the case of Narender Chadha (AIR 1986 SC 638) and relying on that they directed that the petitioners should be deemed to have been regularly appointed to the service with effect from the dates on which they commenced officiation even on ad hoc basis. How the facts ~~are~~ of Sanger's case are similar to the applicant's case cannot be appreciated. We reject the contention that this ratio is applicable to the applicant's case as well.

21. The applicant's case is not that of extension of his probation beyond any stipulated period or that he has been allowed to continue on a post without any express order of confirmation and so he should be considered as confirmed (State of Punjab v. Dharam Singh, AIR 1968 S.C. 1210). It also does not draw any parallel from the case of Smt. Savitri Devi v. Municipal Corporation of Delhi & others (1979(2) SLR 540) in which case ad hoc appointment was not contemplated in the policy decision and the petitioner was appointed indicating the appointment as ad hoc and was not confirmed and recruited whereas others who were similarly recruited were confirmed. It is also noteworthy that the applicant had appeared before UPSC in response to the advertisement and ^{34/ he} ~~they~~ failed to qualify and thereafter ^{34/ he is} ~~they~~ ^{are} challenging the advertisement as well as the selection and seeking for regularisation of their ^{34/} service. We have already said that once a person appears in a selection, he cannot challenge the same because he found himself unsuccessful in the final result on the grounds that the selection should not have been held. We have also considered the fact that after UGC recommendations the new recruitment rules were made in consultation with UPSC and they superseded the 1975 Rules and the eligibility criteria was made in keeping with the requirements spelt out by UGC.

22. On the above considerations, we find no force in the contentions raised by the applicants in all the Original Applications that they should be considered as having been regularised because they have continued for a long time. In any case, the applicant in this application as well as in OA No. 1051/86 have already got appointment elsewhere. So the case before us remains of the applicant in OA No. 404/87 who has not been selected and in whose place Dr. Narayan Prasad, the third respondent has been appointed and as we understand now, he has also joined the post. We feel that the applicant in OA No. 404/87 should have been given further chance to qualify in the M.Phil degree examination or to attain equivalent qualifications and in the meantime, she ^{34/ should have been} ~~may be~~ continued

on ad hoc basis. The impleaded respondent, who has been appointed through selection made by UPSC, need not be disturbed in this process.

23. We agree with the submission made by the learned counsel for the respondents that in the matter of education where the future of our youth is involved, the teacher has to be of the right calibre. It cannot be said that possession of a M.Phil degree is a mere formality and has no relevance with the task that has to be performed by the applicants. It is an essential attribute and attainment of higher educational qualification imparts the required confidence and professionalism and perspective to the person who attains it. We cannot permit mediocrity in such matters. They are vital for the progress of the youth and the country.

24. We note that the applicant in OA No. 404/87 has not yet been able to get any other appointment. So if she obtains the M.Phil degree or equivalent qualification within two chances from the date of issue of this order or three years whichever is earlier her case will need to be considered for regularisation against a suitable post under the respondents in consultation with UPSC. She may be continued till then against any other suitable post in an ad hoc measure.

25. As far as the applicants^{3/} in this OA and in OA No. 1051/86^{3/} are concerned, we are informed that they have already got regular appointment elsewhere with their existing qualifications. They may now not be willing to give up that regular appointment for an ad hoc appointment under the respondents which can only be regularised later after they attain M.Phil qualification in consultations with UPSC. In this background we are not giving any directions in their respect.

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26. In conclusion, with the directions in para supra in respect of the applicant in OA No. 404/87 and the observations in respect of the applicants in the other Original Applications, we dismiss these applications with costs on parties.

अजय गोहिल

MEMBER (A).

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CHAIRMAN (J).

Dated: February 15, 1989.

SK Sharma/PG.