

IQBAL SINGH NARANG & ORS. A

v.

VEERAN NARANG
(CRIMINAL APPEAL NO. 2225 OF 2011)

NOVEMBER 30, 2011 B

[ALTAMAS KABIR AND SURINDER SINGH NIJJAR, JJ.]

Penal Code, 1860 – ss. 193, 420, 120-B – Criminal complaint by respondent against appellants u/ss. 193, 420, 120-B for allegedly making false statements in judicial proceedings before the Rent Controller – Application containing the aforesaid allegation also filed before the Rent Controller in Rent Application filed by appellant No.1 – Rent Controller disposed of the application holding that the complaint filed u/ss. 193, 420, 425 was yet to be decided and there was, therefore, no question of initiation of any action against the appellant on the basis of the said complaint – Issuance of summons against appellants by Judicial Magistrate to face trial u/ss. 193/120-B – Subsequently, the appellants filed application u/s. 482 Cr.P.C. for quashing of the complaint filed by the respondent u/ss. 193/120-B IPC pending before the Judicial Magistrate as also the Summoning Order – Dismissal of, by the High Court on the ground that the Rent Controller is not a Court within the meaning of s. 195(1) Cr.P.C. and that a private complaint would be maintainable in case of false evidence being adduced or recorded before the Rent Controller – Held: Rent Controller, being a creature of Statute, has to act within the four corners of the Statute and could exercise only such powers as had been vested in him by the Statute – Though the Rent Controller discharges quasi-judicial functions, he is not a Court, as understood in the conventional sense and he cannot, therefore, make a complaint u/s. 340 Cr.P.C. – Thus, a complaint could be made by a private party in the

A *proceedings – There is no reason to quash the proceedings in which the appellants were summoned – East Punjab Urban Rent Restriction Act, 1949 – s. 13.*

B *Prakash H. Jain Vs. Marie Fernandes (2003) 8 SCC 431; Om Prakash Vs. Ashwani Kumar Bassi (2010) 9 SCC 183 – relied on.*

Ram Krishan Vs. Santra Devi 1986 (1) P&H (DB) PLR 567; Ishwar Chand Gupta Vs. Chander Shekhar & Anr. (2001) 1 RCR Criminal 171 – referred to.

C **Case Law Reference:**

1986 (1) P&H (DB) PLR 567 **Referred to** **Para 7**

(2001) 1 RCR Criminal 171 **Approved** **Para 10**

D (2003) 8 SCC 431 **Relied on** **Para 12**

(2010) 9 SCC 183 **Relied on** **Para 12**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2225 of 2011.

E From the Judgment & Order dated 23.7.2007 of the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. 32515 of 2006.

Vikas Mehta for the Appellants.

F Ujjal Singh, J.P. Singh, Parvinder Singh, R.C. Kaushik for the Respondent.

The Order of the Court was delivered by

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G **ALTAMAS KABIR, J.** 1. Leave granted.

2. On 3rd August, 1998, the Appellant No.1 filed an Ejectment Application under Section 13 of the East Punjab Urban Rent Restriction Act, 1949, for eviction of the

H Respondent from the premises in question.

3. The said Respondent filed Crl. RBT Complaint No.283/19.8.2003/2.8.2005 against the Appellants before the Ilaqa Magistrate, under Sections 193, 420, 120-B IPC, for allegedly making false statements in judicial proceedings before the Rent Controller, Amritsar. The statement of the Complainant/ Respondent was recorded before the Chief Judicial Magistrate. The Complainant/ Respondent also filed an application under Sections 193/420/425 IPC before the Rent Controller-cum-J.M. First Class, Amritsar, in Rent Application No.111 of 1998, which had been filed by the Appellant No.1, in which allegations had been made that the Appellant No.1 had made false statements therein. By order dated 14th March, 2005, the Rent Controller disposed of the application filed by the Complainant/ Respondent in the rent proceedings upon holding that the complaint filed under Sections 193, 420, 425 IPC was yet to be decided and there was, therefore, no question of initiation of any action against the Appellant on the basis of the complaint filed by the Complainant/Respondent. According to the Appellant, since the Respondent had not challenged the order of the Rent Controller on the Application dated 14th March, 2005, the same had attained finality.

4. Appearing in support of the Appeal, Ms. Indu Malhotra, learned Senior Advocate, contended that it was obvious from the number of applications moved by the Respondent before the Rent Controller that the same was merely a ploy to delay the proceedings and cause prejudice to the Appellant No.1. The facts reveal that the Respondent had delayed the rent proceedings, which are pending since 1998, by filing vexatious and frivolous applications.

5. On 20th April, 2006, the Judicial Magistrate, First Class, Amritsar, after observing that no offence under Section 420 IPC had been made out against the accused, issued summons against them to face trial under Section 193 read with Section 120-B IPC.

6. Ms. Malhotra submitted that the Appellant Nos.1 and 2 appeared before the Judicial Magistrate, First Class, Amritsar,

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- A and were released on bail vide order dated 16th May, 2006. Subsequently, the Appellants filed Crl. Misc. No.32515 of 2006 before the Punjab & Haryana High Court under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the complaint filed by the Respondent under Sections 193/120-B
- B IPC pending before the Judicial Magistrate, First Class, Amritsar, as also the Summoning Order dated 24th April, 2006. By its impugned judgment and order, the High Court dismissed Crl. Misc. No.32515 of 2006 filed by the Appellants on the ground that the Rent Controller is not a Court within the meaning of Section 195(1) Cr.P.C. and held that a private complaint would be maintainable in case of false evidence being adduced or recorded before the Rent Controller. Ms. Malhotra submitted that the High Court had failed to consider the fact that the ejectment proceedings initiated by the Appellant No.1 were still pending before the Rent Controller and a similar application had been dismissed on the ground that the proceedings were still going on and that the Court had not formed any opinion in the matter.

- E 7. Having held that the Rent Controller is not a Court within the meaning of Section 195(1) Cr.P.C., the learned Single Judge also held that private complaints would be maintainable in case of allegations of false evidence before the Rent Controller. The learned Judge observed that the concept of the Rent Controller being a Court was erroneous and hence the decision of the Division Bench of the High Court in *Ram Krishan Vs. Santra Devi* [1986 (1) P&H (DB) PLR 567] was *per incuriam*.

- G 8. On the basis of the aforesaid findings, the High Court chose not to interfere with the order passed by the learned Magistrate taking cognizance of the offence alleged to have been committed by the Appellants under Section 193/120-B IPC and dismissed the Misc. Case No.32515-M of 2006 filed by the Appellants herein.

- H 9. On behalf of the Respondent it was urged that the order of the learned Single Judge, impugned in this appeal, was

based on a judgment of this Court and hence it did not suffer from any irregularity or illegality. It was also urged that since the Rent Controller was not a Court, a complaint under Section 195 Cr.P.C. in respect of false statements made before it, would be maintainable at the instance of a private party, notwithstanding the bar to filing of such complaint, except on a complaint in writing of that Court, by such officer of the Court, as that Court may authorize in writing in such regard. Learned counsel submitted that no interference was called for with the order of the High Court and the appeal was liable to be dismissed.

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10. The question which, therefore, arises for consideration in this appeal is that even if the Rent Controller is held not to be a "Court", whether any private complaint would be maintainable in respect of statements alleged to have been falsely made before it. While disposing of the Revisional Application filed by the Appellants, the learned Single Judge of the Punjab & Haryana High Court took note of a judgment of the said Court in *Ishwar Chand Gupta Vs. Chander Shekhar & Anr.* [(2001) 1 RCR Criminal 171], in which it had been held that the Rent Controller was not a Court and that a complaint would lie under Section 195 Cr.P.C. in respect of statement made before the Rent Controller at the instance of a private party.

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11. The aforesaid question has fallen for consideration in several cases before this Court and the consistent view which has been taken is that the Rent Controller, being a creature of Statute, has to act within the four corners of the Statute and could exercise only such powers as had been vested in him by the Statute.

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12. In the decision rendered by this Court in *Prakash H. Jain Vs. Marie Fernandes* [(2003) 8 SCC 431], this Court held that the Competent Authority under the Maharashtra Rent Control Act, 1999, is at best a statutory authority created for a definite purpose and to exercise powers in a quasi-judicial manner, but its powers were strictly circumscribed by the very

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- A statutory provisions which conferred upon it those powers and the same could be exercised in the manner provided therefor and subject to such conditions and limitations stipulated by the very provisions of law under which the Competent Authority itself was created. The aforesaid observations were made by this
- B Court in the context of the powers conferred on the Competent Authority appointed under the Maharashtra Rent Control Act, 1999, which included powers to condone the delay in the filing of the proceedings. It is in such circumstances that it was observed by this Court that the High Court had rejected the
- C submissions made on behalf of the Appellant therein that since it had all the trappings of a Court, the Competent Authority was a Court in the eye of law and consequently possessed inherent powers to condone the delay. The High Court also rejected the said prayer upon observing that statutory authorities have to act
- D within the powers conferred on them by Statute.

- 13. The same views were also expressed by this Court in *Om Prakash Vs. Ashwani Kumar Bassi* [(2010) 9 SCC 183], wherein it was held that in the absence of a specific power being vested in the Rent Controller, it being a creature of
- E statute, it could only act in terms of the powers vested in it by the Statute and could not, therefore, entertain an application under Section 5 of the Limitation Act for condonation of delay, since the Statute did not vest him with such power.

- 14. The aforesaid decisions of this Court establish that
- F though the Rent Controller discharges quasi-judicial functions, he is not a Court, as understood in the conventional sense and he cannot, therefore, make a complaint under Section 340 Cr.P.C. Consequently, as held by the High Court, a complaint could be made by a private party in the proceedings.

- G 15. In addition to the above, we also see no reason to quash the proceedings in which the Appellants herein had been summoned under Section 193/420/120-B IPC. The Appeal is, accordingly, dismissed. The interim orders passed earlier are vacated.

H N.J.

Appeal dismissed.

STATE OF MADHYA PRADESH & ORS. A

v.

SATYAVRATA TARAN

(Civil Appeal No. 10554 of 2011)

DECEMBER 01, 2011 B

[H.L. DATTU AND CHANDRAMAULI KR. PRASAD, JJ.]

Service Law – *Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967* – r.13(5) – Pay scale – Senior scale/selection grade – Grant of – Whether Assistant Professors appointed through different means, modes and sources including emergency appointees in terms of r.13(5), were entitled to claim benefit of the services rendered prior to their regularization for grant of senior/selection grade pay scales – Held: Voluminous materials produced by both the parties in support of their submissions in the form of schemes, Govt. orders and circulars were not by way of affidavit and the opposite party had no knowledge thereof – Matter therefore remanded to High Court for consideration afresh with liberty to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors – Chief Justice of the High Court to assign all the matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law.

The respondent was appointed on the post of Assistant Professor on emergency basis under Rule 13(5) of the *Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967* with an express condition of immediate termination of his emergency appointment, without notice, on the

- A availability of Public Service Commission's panel of selected candidates. Subsequently, the respondent cleared Public Service Commission Examination and consequently, as per the condition of his appointment order, his services were regularized under M.P.
- B Educational Service (Collegiate branch) Recruitment Rules, 1990. In the meantime, the State Government issued a Circular dated 12.02.1992 for addition of period of service rendered by teachers, prior to their service in the present College or University as Assistant Professor
- C for conferring the benefit of senior/ selection grade pay scale but subject to certain conditions. The respondent, being aggrieved by non counting of his period of service rendered as an emergency appointee on the post of Assistant Professor by the State Government for the purpose of granting higher pay scale, filed a Writ Petition before the High Court. The same was allowed. Aggrieved by the same, the State Government preferred Writ Appeal before the High Court. The High Court dismissed the Writ Appeal and directed the State Government to count the period of service rendered by the respondent on emergency appointment for granting the benefit of the senior/selection grade pay scales.

In the instant appeal filed by the State Government, the question which arose for consideration was: Whether

- F the Assistant Professors appointed through different means, modes and sources including emergency appointees in terms of Rule 13(5) of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 were entitled to claim the benefit of the services rendered by them prior to their regularization for grant of senior/selection grade pay scales.

Allowing the appeals, the Court

HELD: 1.1. Voluminous materials were produced in

- H the form of schemes, Govt. orders and circulars produced

by both the counsel appearing for the parties. The A documents were not even produced by way of affidavit and since the counsel on the opposite side had no knowledge of those documents, it is fit to remand these matters back to the High Court for fresh disposal in accordance with law. [Para 11] [483-D-E] B

1.2. The orders passed by the High Court in all these matters are set aside and the matter is remanded back to the High Court for its fresh consideration in accordance with law. Liberty is given to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors. [Para 13] [483-H; 484-A-B] C

1.3. The Chief Justice of the Madhya Pradesh High Court is requested to assign all these matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law. [Para 14] [484-C] D E

Union of India v. K.B. Rajoria (2000) 3 SCC 562: 2000 (2) SCR 613; Union of India v. Mathivanan (2006) 6 SCC 57: 2006 (3) Suppl. SCR 30; Dwijen Chandra Sarkar and Anr. v. Union of India (1999) 2 SCC 119: 1998 (3) Suppl. SCR 576; S. Summyan and Ors. v. Limi Niri and Ors. (2010) 6 SCC 791: 2010 (4) SCR 829 – cited. F

Case Law Reference:

2000 (2) SCR 613	Cited	Para 8	G
2006 (3) Suppl. SCR 30	Cited	Para 8	
1998 (3) Suppl. SCR 576	Cited	Para 8	
2010 (4) SCR 829	Cited	Para 8	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10554 of 2011.

From the Judgment and Order dated 11.2.2010 of the High Court of M.P. at Jabalpur in W.A. No.995 of 2009.

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Civil Appeal Nos. 10555, 10556, 10557, 10558, 10559 10560, 10561 , 10562, 10563, 10564, 10565, 10566, 10567, 10568, 10569, 10570, 10571, 10572, 10573, 10574, 10575, 10576, C 10577, 10578, 10579, 10580, 10581, 10582, 10583, 10584, 10585, 10586, 10587, 10588, 10589, 10590, 10591, 10592, 10593, 10594, 10595, 10596, 10597, 10600, 10601, 10602, 10603, 10604, 10605, 10606, 10607, 10608, 10609, 10610, 10611, 10613, 10614, 16515, 10616, 10617, 10618, 10621, D 10622, 10623, 10624, 10625, 10626, 10627, 10629, 10630, 10631, 10632, 10633, 10634, 10635, 10636, 10637, 10638, 10639, 10640, 10641, 10642, 10643, 10644, 10645, 10646, 10647, 10648, 10649, 10650, 10651, 10652, 10653, 10654, 10655, 10656, 10657, 10658, 10659, 10660 10661, 10662, E 10663, 10664 of 2011.

F Vivek. K. Tankha, ASG, P.S. Patwalia, B.S. Banthia, Anil Pandey, Vibha Datta Makhija, K. Vijay Kumar, K.K. Tyagi, P. Narasimhan, Romy Chacko, Arpit Gupta, L.C. Patney, Anupam Lal Das, Bharat Sangal, Vernika Tomar, Srijana Lama, Amit F Sharma, Shahid Anwar, Dr. Kailash Chand, Rajendra Mishra, Raza Syed Khadim, Rajesh Singh, Ravindra S. Garia for the appearing parties.

The Judgment of the Court was delivered by

G H.L. DATTU, J.

Delay condoned. Leave granted.

1. The present batch of appeals, by way of special leave,

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SATYAVRATA TARAN [H.L. DATTU, J.]

arises out of a common Order dated 11.02.2010 passed by A the Madhya Pradesh High Court and raises an identical question of law and facts for our consideration and decision. They are, therefore, being heard together and disposed of by this common Judgment and Order.

2. The common issue before us, in these appeals, can be summarized thus: Whether the Assistant Professors appointed through different means, modes and sources including emergency appointees in terms of Rule 13(5) of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 are entitled to claim the benefit of the services rendered by them prior to their regularization for grant of senior/selection grade pay scales. B

3. All these appeals are directed against the common Order dated 11.02.2010 of the High Court of Madhya Pradesh in Writ Appeal No. 599 of 2008 and other connected matters, whereby the writ appeals, filed by the appellants challenging the grant of senior scale/selection grade benefit to the respondents, by counting their period of service rendered as emergency appointees, were dismissed. C D

4. All the matters pertain to grant of senior/selection grade pay scales and for the sake of convenience, we may note such facts as emerging from record of the Special Leave Petition (C) No.16906 of 2010. E F

The respondent was appointed on the post of Assistant Professor on emergency basis vide Appointment Order dated 14.12.1987 under Rule 13(5) of Recruitment Rules, 1967 with an express condition of immediate termination of his emergency appointment, without notice, on the availability of Public Service Commission's panel of selected candidates. Subsequently, the respondent had cleared Public Service Commission Examination and consequently, as per the condition of his appointment order, his services were regularized vide Order dated 02.09.1993 under M.P. G H

- A Educational Service (Collegiate branch) Recruitment Rules, 1990 (hereinafter referred to as "Recruitment Rules, 1990"). In the meantime, the State Government had issued a Circular dated 12.02.1992 for addition of period of service rendered by teachers, prior to their service in the present College or
- B University as Assistant Professor for conferring the benefit of senior/selection grade pay scale but subject to certain conditions. The respondent had made several representations to the State Government for counting his period of service as emergency appointee for determination of benefit of the senior/selection grade pay scale, but the same were not replied.
- C Subsequently, the State Government issued another Circular dated 11.10.1999 for revision of the pay scale which provides for the grant of benefit of senior grade pay scale after rendering minimum 6 years of service period and further 5 years of
- D service period in senior grade as essential requirement for placement in selection grade pay scale as per clause 8 (a) of the said Circular. The respondent, being aggrieved by not counting of his period of service rendered as an emergency appointee on the post of Assistant Professor by the State
- E Government for the purpose of granting higher pay scale, had filed a Writ Petition before the High Court of Madhya Pradesh, inter-alia seeking an appropriate Writ and other consequential reliefs. The same came to be allowed *vide* Judgment and Order dated 15.01.2009. Aggrieved by the same, the State Government preferred a Writ Appeal before the High Court.
- F The High Court, *vide* its impugned common Order dated 11.02.2010, dismissed the Writ Appeal and directed the State Government to count the period of service rendered by the respondent on emergency appointment for granting the benefit of the senior/selection grade pay scales. Being aggrieved, the
- G State Government is before us in this appeal.

- H 5. The learned single Judge of the High Court, *vide* its Order dated 15.01.2009, observed that in view of series of decisions of the High Court, the service rendered by the Assistant Professor, appointed on the emergency basis,

requires to be counted for the purpose of granting benefit of higher pay scale. The High Court has specifically followed the Order dated 13.07.2007 of Single Judge in *Smt. Sandhya Prasad v. State of M.P.* in W.P. No. 807/2007(S) which, in turn, has followed the Division Bench decision in *State of M.P. & another v. Dr.(Smt.) Seema Raizada & another* in W.A. No. 4863/2001 decided on 10.08.2005. The learned Single Judge also clarified that the period of such service will only be counted for the purpose of granting the benefit of senior pay scale and selection grade and not for seniority in the cadre of Assistant Professor.

6. The Division Bench of the High Court in Writ Appeal No. 599/2008 and other connected matters, vide its impugned common Order, has discussed its earlier decision in *State of M.P. & another v. Dr.(Smt.) Seema Raizada & another* (Supra). That was the Writ Petition, filed by the State Government against the Order of the State Administrative Tribunal challenging the direction issued to take into consideration the period of service of the emergency appointee for determining the benefit of higher pay scale, which had been dismissed by the High Court. The High Court further observed that this decision was consistently followed by it in several other Division Bench and Single Bench decisions. The State Government, being aggrieved by these decisions in Dr. (Smt.) Seema Raizada (Supra) and other connected matters, preferred a Special Leave Petition before this Court. This Court, vide its Order dated 03.12.2007, dismissed Special Leave Petition on the ground of delay and hence, left the question of law open. The State Government also preferred a Review Petition, which was dismissed by this Court vide its Order dated 12.03.2008. Thereafter, the State Government, in identical matters, preferred a Writ Appeal before the Division Bench of the High Court in view of the dismissal of the SLP on the ground of delay but question of law was left open. The High Court, in its impugned judgment, has also discussed the judgment and order dated 07.05.2009 in Writ Appeal No. 528/2008 in *State of M.P. v. Dr.*

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- A Brijesh Kumar. That Writ Appeal was filed by the State Government against the Single Judge Order wherein the benefit of higher pay scale was conferred on account of period of service rendered as emergency appointee. In that Writ Appeal, the High Court, after placing reliance on various earlier decisions, observed that there is a conceptual difference between the conferral of seniority and counting of the services for the purpose of grant of senior pay scale and the selection grade. The benefit of higher pay scale has to be given by counting the service from the date of initial appointment as the appointment was, as per the rules and has been, later regularized. The High Court, in the impugned judgment, has also observed that the High Court has consistently taken a view that emergency appointees, under Rule 13(5) of the Recruitment Rules, 1967, are entitled for the benefit of higher pay scale by counting the services rendered as emergency appointees. The High Court has also observed that the State Government has failed to grant the benefit of higher pay scale to the emergency appointees vide its Circular dated 11.12.1999. It further held that the emergency appointments were made after following due process of advertisement and selection in the pay scale and such appointees continued, till their regularization, without any break. Hence, such appointments were not on purely ad hoc basis. The High Court further observed that the emergency appointees satisfy all the five essential conditions envisaged in the Circular dated 12.02.1992 issued by the State Government in order to take into account the period of prior service rendered for determining the grant of higher pay scale and selection grade. The relevant portion of the impugned Order of the High Court is extracted below:
- G "7. It is not in dispute that advertisement was issued, selection committee was formed which has considered the cases of the employees, they were duly qualified for being appointed, their appointments have continued till their regularisation and they were holding the similar pay scale in which they were regularised. Appointment was made in
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the pay scale not on fixed pay and there was no brake, they were not appointed as against any leave vacancy, the appointment was not on purely ad hoc basis without following the procedure, the appointment was made under the aforesaid rule 12(5). A

8. In the light of the aforesaid undisputed facts when we consider circular dated 12.2.93 issued by the State Government which has been relied upon by the Tribunal while rendering decision in case of Seema Raizada and Padma Shrivastava, a close reading of the circular dated 12.2.92 indicates that prior service rendered has to be countered for the purpose of grant of higher pay scale and selection grade pay scale on following conditions: B

(i) that the post held must be equivalent and carrying the same pay scale; C

(ii) the qualifications of the post held should not be less than then prescribed qualification by the UGC for the post of lecturer; D

(iii) at the time of appointment on the earlier post of which service is to be counted an incumbent must possess the minimum qualification prescribed by the UGC; E

(iv) appointment on the post must have been made by the prescribed selection procedure by the State Government; F and

(v) the appointment should not be purely ad hoc or as against leave vacancy for less than one year. G

When we apply the aforesaid five conditions in the instant case, one by one, it is not disputed that appointment of the employees was on the same post and in the same pay scale. Thus, the first condition stands satisfied. When we come to the second condition as to the qualifications prescribed for the post, the post held was the same post H

- A and the qualifications possessed by incumbents were not less than that prescribed by the UGC, it is not the case of State that qualifications prescribed in advertisement were less. Thus, second condition also stands fulfilled. When we come to IIIrd condition, the incumbent was holding the minimum qualification prescribed by UGC at the time of appointment on emergency basis, they were holding the qualifications has also not been disputed. When we come to fourth condition it is admitted that selection was made as prescribed under Rule 12(5) (sic.) of the Rules of 1967,
- B since the appointment was made under Rule 12(5), the aforesaid IVth condition also stands satisfied. When we examine fifth and last condition it is apparent that appointment was made on emergency basis not on purely ad hoc basis, it was not against any leave vacancy. For the purpose of appointment, prescribed procedure under Rule 12(5) (sic.) was followed, appointment was made under the rule. Rules provide for emergency appointment and prescribed the procedure for that which was followed and ultimately the services were regularised. The State Government has taken the decision vide circular dated 12.2.92 for counting of such services for the purpose of higher pay scale and for selection pay scale, the benefit of which could not have been denied to the employees, thus relief has to be given on then basis of the aforesaid circular dated 12.2.92. Though it is not necessary to go into the DO of the MP PSC in view of circular dated 12.2.92, but MP PSC has clearly mentioned in its DO dated 25.12.98 thus:-
- G "The Commission after seeking legal opinion on clause 1(e) has declined to include service rendered in ad hoc capacity for counting of past service for placement in senior scale/selection grade, provided that the following three condition are fulfilled:-
- H "(a) The ad hoc service was of more than one year duration;

(b) the incumbent was appointed on the recommendation of duly constituted Selection Committee, and

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(c) The incumbent was selected to the permanent post in continuation to the ad hoc service, without any brake."

The Commission has taken the above decision.

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The aforesaid three requirements also stand satisfied in the instant case. The instant case stand on better footing as the service rendered was not purely ad hoc, but it was under the rules as an emergency appointee, even ad hoc appointee in case ahs continued for more than one year duration and was selected by duly constituted selection committee and was later on selected to the permanent post in continuation to the ad hoc service without any brake, his services has to be counted fro placement in Senior Scale/Selection Grade as per aforesaid decision of PSC. In the instant case, the case of employees is much better. Thus, they could not have been denied the benefits of counting of their services rendered as emergency appointee and their past services ought to have been counted for the placement in Senior Scale/ Selection Grade, we find that decision rendred by the Single Bench to be in accordance with law and we do not find any ground to differ from the view taken by different Divison Benches of this Court in several matters dismissing the writ appeals assailing the order passed by the single Bench or the writ petition preferred against the order passed by State Administrative Tribunal."

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The High Court further observed the respondents' stand on the better footing in terms of both the Circulars dated 12.02.1992 as well as Order dated 25.12.1998 of the M.P. Public Service Commission as their services are not purely ad hoc but, under the rules, as an emergency employee. The High Court, while dismissing the Writ Appeals, concluded that the respondents are bound to count the services rendered by the

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- A appellants as emergency appointees for their placement in senior scale/selection grade.
- 7. Shri. B.S. Banthia, learned counsel for the appellant, submits that the Recruitment Rules, 1967 provides two modes of recruitment viz. by direct recruitment made by the PSC under Rule 7(1), and emergency appointments under Rule 13(5), when the PSC list is not available, on a temporary basis. The service of such emergency appointees, the learned counsel would contend, could be terminated as soon as PSC list, in accordance with Rule 7(1), was available. He would then state that only those appointees, who were appointed by the method of direct recruitment, as provided under Rule 7(1), were eligible to get the senior and selection grade pay scales and not those who were appointed in accordance with Rule 13(5). Though, not backdoor appointments, the learned counsel would contend that these were not conforming to the rigors of the selection procedure followed by the PSC and hence, could not be equated to those appointments made by the PSC. He would further submit that his argument is strengthened by the fact that the respondents could be terminated without notice in case of availability of the PSC list and that it was essential for the respondents to clear the requirements of PSC to get their appointments regularized. The learned counsel also relies upon voluminous other documents such as various schemes issued by UGC from time to time and adopted by the State of Madhya Pradesh either in toto or partially, and also the Government Orders and Circulars issued from time to time indicating the entitlement or otherwise of the emergency appointee for Senior Scale/Selection Grade and submits that these voluminous documents could not be produced before the High Court, since the appeals were disposed of at the stage of admission itself.
- 8. Shri. P.S. Patwalia, learned senior counsel, led the arguments for the respondents in the batch of appeals. He submits that the respondents are entitled for higher pay scale by counting their service rendered as emergency appointees

in view of the Circular dated 11.10.1999 read with the Circular dated 12.02.1992 issued by the State Government. He would contend that the appointment of the respondents were made after following a due selection procedure and hence, such appointments are not in the nature of temporary or ad hoc appointments but emergency appointments in accordance with the Rules. Therefore, the respondents are entitled to receive higher pay scale from the date of their initial appointment as emergency employees. He would then argue that not only the appointments were made as per the mode prescribed under the Recruitment Rules of 1967, but also their characteristics were not akin to those of ad hoc or fortuitous appointments as nation-wide advertisements were published and selections were made on the basis of merit. It is further submitted that the respondents were qualified for appointment to the post and they are also getting annual increments for continuous service from the date of initial appointment. He would argue that it was an admitted position that the appointments were not ad hoc appointments in view of the affidavit filed by the appellants before this Court. He further submits that the Govt. Order dated 25.08.1998, issued by Madhya Pradesh Public Service Commission, which has also been relied upon by the High Court in its impugned Judgment, contemplates the grant of higher pay scale on the basis of ad hoc service rendered for more than one year. He submits, by placing reliance on the said Govt. Order, that the case of respondents stands on the better footing as their services are not purely ad hoc. Shri. Patwalia would defend the reasoning of the High Court in the impugned judgment and submit that the respondents, as emergency appointees, fulfill all the five conditions envisaged in the Circular dated 12.02.1992. The learned senior counsel submits that the respondents were regularly working without any artificial breaks and that they are paid UGC pay scale with regular annual increments and are also eligible for pensionary benefits. He would contend that there are three characteristics of an ad hoc appointment, viz., they are made de hors the rules, they are employed for a specified duration and they are in a fixed pay

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- A scale. He further submits that the grant of senior/selection grade pay scale, by taking into account the past period of service rendered, is a 'stagnation removal device' and there is no reason for the denial of the same to the respondents in the present cases. He argues that though the emergency
- B appointments were made in view of non-availability of selected panel candidates of Public Service Commission, but it is a matter of fact that the respondents continued in the service till their regularization. He further submits that Circular dated 11.10.1999, while conferring benefit of higher pay scale on the
- C Assistant Professors, uses the word "service" instead of "regular service" for computing the past services rendered. He contends that the 1999 Circular confers benefit to all kinds of services without any distinction whether regular, ad hoc, temporary or emergency service. He submits that the
- D respondents have satisfied all the conditions referred to in Clause 8(a) of the 1999 Circular to qualify for higher pay scale. He argues that Rule 7(4) also contemplates a method of appointment other than through Public Service Commission, which when read with Rule 13(5), would give the respondents a status of being appointed to service under the Recruitment
- E Rules, 1967. He would then submit that emergency appointments are prescribed under the rules and cannot be termed as ad hoc. He further argues that the ad hoc appointments are always de hors the service rules and in some cases, rules provided for the temporary appointment, for a limited period, cannot be considered as ad hoc. He submits that the State Government had granted the benefit of higher pay scale under the said Circulars only to the five emergency appointees but the same has been denied to those emergency appointees, who were appointed and regularized between the
- F years 1987 and 2003 and thus, this amounts to discrimination and denial of equal treatment to similarly placed emergency appointees. In support of his submissions, Shri. Patwalia has referred to several precedents of this Court in the case of *Union of India v. K.B. Rajoria*, (2000) 3 SCC 562, *Union of India v. Mathivanan*, (2006) 6 SCC 57, *Dwijen Chandra Sarkar and*

Another v. Union of India, (1999) 2 SCC 119 and *S. Sumnyan and Ors. v. Limi Niri and Ors.*, (2010) 6 SCC 791. The learned senior counsel does not dispute the fact that the appeals were disposed of at the stage of admission itself.

9. Shri. Romy Chacko, learned counsel appearing for some of the respondents, adopted the submissions as made by Shri. Patwalia, and would state that there is a distinction drawn between ad hoc appointees and emergency appointees by the State itself.

10. All other learned counsel, appearing for respondents in connected civil appeals, would adopt the submissions as made by learned senior counsel Shri. Patwalia.

11. We tried to wade through voluminous materials in the form of schemes, Govt. orders and circulars produced by both the learned counsel appearing for the parties. More we tried to dwindle into the matter, more and more murkier facts, which we call normally 'Pandoras Box', started emerging. Going through these documents could have been done by us, but since those documents were not even produced by way of affidavit and since the learned counsel on the opposite side had no knowledge of those documents, we have thought it fit to remand these matters back to the High Court for fresh disposal in accordance with law, by granting liberty to both the parties to produce all these documents which they tried to rely upon before us.

12. We are also informed by both the learned counsel that it would be in the interest of all the parties that these petitions be heard before one Bench so that possibility of divergent opinion/s from the High Court could be possibly avoided. The expression of desire appears to be reasonable and, therefore, we accept the same.

13. In that view of the matter, we allow the appeals, set aside the orders passed by the High Court in all these matters

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A and remand the matter back to the High Court for its fresh consideration in accordance with law. We also give liberty to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors.

C 14. We also request the learned Chief Justice of the Madhya Pradesh High Court to assign all these matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law.

D 15. Since the matters were pending for some time, we request the learned Chief Justice to either take up the matters by himself or assign it to an appropriate Bench and request that Bench to dispose of the appeals at the earliest. We clarify that we have not expressed any opinion on the merits of the case. Ordered accordingly.

B.B.B.

Appeals allowed.