



1. Prem Singh Vs St. of U.P. & ors.; (2019) 10 SCC 516

2. Uday Pratap Thakur & anr. Vs St. of Bihar & ors.; 2023 (0) Supreme (SC 429)

(Delivered by Hon'ble Ashwani Kumar  
Mishra, J.  
&  
Hon'ble Praveen Kumar Giri, J.)

1. These appeals arise out of judgments delivered by the learned Single Judge in a batch of writ petitions holding the respondents/writ petitioners entitled to retiral benefits under the Uttar Pradesh Palika (Centralised) Service Retirement Benefits Rules of 1981 by counting their past services rendered before their regularization also for the purpose of fixing their pension. For coming to such conclusion, the learned Single Judge has placed reliance upon the judgment in **Prem Singh vs. State of U.P. and others, (2019) 10 SCC 516** as well as the decision in **Uday Pratap Thakur and another vs. State of Bihar and others, 2023 (0) Supreme (SC 429)**.

2. Controversy raised in all the matters are more or less similar. We have accordingly taken the case of Shri Chandra Mohan Yadav as a leading case. Shri Yadav was appointed as Junior Engineer (Civil) in Nagar Nigam on contract basis in the year 1987. He was subsequently given ad hoc appointment pursuant to a Government Order dated 7.3.1995. His services came to be regularised on 26.2.2008. He, thereafter, retired from service on 31.7.2022. Pensionary benefits, however, were not extended to the Shri Yadav, on account of which he approached this Court by filing Writ A No. 6344 of 2023 which has been allowed by the

learned Single Judge vide judgment and order dated 30.5.2023.

3. Nagar Nigam is a statutory body created under the provisions of Uttar Pradesh Municipalities Act, 1916. Service conditions of the persons appointed in such local body are governed by the U.P. Palika (Centralized) Services Rules, 1966 (hereinafter referred to as 'Rules of 1966'). Rule 21 of Rules, 1966, provides for appointment on the occurrence of substantive vacancies from the list prepared under Rule 19 and, by promotion, in accordance with Rule 20. Rule 19 regulates direct recruitment whereas Rule 20 relates to promotion. Rule 31 of Rules, 1966, contemplates ad hoc and temporary officiating appointments which reads as under :

*“31. Ad hoc and temporary officiating appointments-Notwithstanding anything contained in Rule 21 the State Government may also make ad hoc appointments or temporary officiating arrangements for the posts falling vacant substantively or temporarily.”*

4. A provision for regularisation of ad hoc appointments was introduced in Rules, 1966 by way of notification dated 10.04.2003, namely, Rule 21-A. Rule 21-A(1) is relevant for the present purposes and is reproduced hereinafter :

*“21-A. Regularisation of Ad-hoc appointments-(1) Any person who-(i) was directly appointed on ad-hoc basis before June 30, 1998 and is continuing in service as such on date of commencement of these rules:*

*(ii) possessed requisite qualifications prescribed under Rule 12 for*

*regular appointment at the time of such ad-hoc appointment, and*

*(iii) has completed or as the case may be, after he has completed three years continuous service, shall be considered for appointment in permanent or temporary vacancy as may be available on the basis of his service record and suitability before any regular appointment is made in such vacancy in accordance with the provisions contained in these rules."*

5. In the case of Shri Yadav as well as in all other matters, the writ petitioners were initially appointed on temporary basis. Having worked as such for several years, they were granted ad hoc appointment in the year 1995. The ad hoc appointment was offered to all the writ petitioners pursuant to a Government Order issued by the State on 7.3.1995. The condition for issuing ad hoc appointment was that all persons had worked three or more years for 240 days prior to 1.10.1994 and were in service on 7.3.1995. Such persons otherwise were required to possess requisite qualifications for the post. Rules, 1966, were amended on 10.4.2003 providing for regularisation of ad hoc appointments. The condition for regularisation was that such person was required to have been appointed on ad hoc basis on or before 30.06.1998 and was continuing in service on the date of commencement of these Rules; possess requisite qualifications prescribed for regular appointment at the time of ad hoc appointment; and has completed three years of continuous service. The services of such ad hoc appointees were required to be considered for regularisation before any regular appointment could be made in accordance with the provisions contained in these Rules.

6. It is admitted that all the respondents were entitled to be regularised in service on the date when the provision itself was introduced i.e. on 10.4.2003.

7. We may also note that some of the persons, who had completed more than three years of service prior to 1994 and were entitled to be appointed on ad hoc basis, have been offered ad hoc appointments subsequently with effect from 7.3.1995. It is, therefore, clear that all the writ petitioners were entitled to be regularised under Rule 21-A(1) on 10.4.2003.

8. It is undisputed that the writ petitioners have however been regularised on different dates after 1.4.2005. No reasonable explanation has been put forth by the State as to why their claim for regularisation has not been considered under Rule 21-A (1) either on 10.4.2003 or soon thereafter.

9. The language employed in Rule 21-A(1)(iii) clearly mandates that such consideration for regularisation must take place before any regular appointment is made against such vacancy. Though there are no specific pleadings in that regard, yet we are informed that regular appointments have been made in 2004-05 etc.

10. Sri M.C. Chaturvedi, learned Additional Advocate General, along with Sri Rama Nand Pandey, learned Addl. Chief Standing Counsel and Sri Ankit Gaur, learned Standing Counsel, has challenged the judgment of learned Single Judge primarily on the ground that since they (writ petitioners) were regularised in service after 1.4.2005, by when New Pension Scheme was introduced, as such

the grant of benefit of the Old Pension Scheme is impermissible.

11. It is also argued that the previous services rendered on ad hoc basis ought not to have been counted for extending the Old Pension Scheme, inasmuch as the date of entry into the service would be the date of substantive appointment or on the date when the services of the writ petitioners were regularised.

12. Sri Bhagwan Dutt Pandey and Sri Ram Kumar Sinha, learned counsel for the respondents/writ petitioners argue that the State acted arbitrarily in not considering the claim of writ petitioners for regularisation under Rules 21-A(1) with effect from 10.4.2003 and merely for any delay occasioned on the part of the State in not considering the writ petitioners for regularisation could not be victimised. Their right to be paid pension could not have been denied for any act of laches attributed to the State.

13. We have heard learned counsel for the parties and carefully perused the materials on record. The fact as have been noticed above are not in dispute. Rules of 1966 defines 'Member of Services' under Rule 2(xi) in following terms:

*“Member of the services means a person absorbed against or appointed to a post in the cadre of the Centralized Service under the rules”*

14. Rule 2(xvii) defines 'Substantive Appointment' in following terms :

*“Substantive Appointment means an appointment, not being an ad hoc*

*appointment, made after selection in accordance with these rules.”*

15. A conjoint reading of the above provisions clearly indicate that substantive appointment of an employee would be treated to have been granted to him on the date of his entry into the service. Rule 21-A(1) provides for regularisation and once a person is regularised thereunder, he becomes a Member of Services. In such circumstances, we find substance in the argument of Sri M.C. Chaturvedi that date of entry into service for the purposes of payment of pension to the writ petitioners would be the date of their regularisation.

16. There is, however, another aspect which may not be lost sight of. All the writ petitioners were appointed initially on temporary basis in late 1980s and they were offered ad hoc appointments with effect from 7.3.1995. They possessed requisite qualification for appointment to the post. By virtue of Rule 21-A(1), their services were liable to be considered for regularisation soon after the introduction of Rule 21-A(1) in the Rules, 1966. Merely because the State did not consider their services for regularisation for sufficiently long would not be a valid ground to allow the State to contend now that since their entry into service is after 1.4.2005, therefore, they would not be entitled to the benefit under the Old Pension Scheme.

17. In somewhat similar facts and circumstances, one Badri Narayan Agnihotri alongwith two others approached this Court by filing Writ A No. 11333 of 2021. Their writ petition was allowed. The State preferred Special Appeal No. 375 of 2022, wherein a coordinate Bench of this Court took a similar view and, for the purposes of entitlement of pension, traced

the date of appointment to the date when entitlement was acquired for regularisation by the writ petitioner.

18. Observation made by the Division Bench in this regard reads as under :

*“However, we find that the writ petitioner / respondent was directly appointed on ad-hoc basis on 25.8.1989 i.e. on a date anterior to June 30, 1998 mentioned under Rule 21-A (i) and has been continuing in service as such on the date of commencement of the Rules, 2003 and possessed the requisite qualifications prescribed under Rule 12 for regular appointment and has also completed three years continuous service was liable to be considered for appointment in permanent or temporary vacancy and as such, absorbed as "Member of the Service" since July, 2001 and in such view of the matter, he would stand entitled to the Old Pension Scheme. The State Government has proceeded to regularize the services of the writ petitioner / respondent only in the year 2008 even though he stood entitled to the same in the year 2001 itself. In our opinion, the writ petitioner / respondent could not be deprived of his absorption as a member of the services merely on account of the lackadaisical attitude of the Government.”*

19. The aforesaid judgment of the Division Bench was challenged by the State by filing Special Leave Petition (Civil) Diary No. 29048 of 2022 which was dismissed by Hon’ble the Supreme Court vide following order dated 21.11.2022 :

*“Delay condoned.*

*Respondent No.1 - employee joined service on ad-hoc basis as Revenue Inspector in Municipal Corporation,*

*Kanpur on 25.08.1989. Rule 21-A of The Uttar Pradesh Palika (Centralized) Services (Twenty First Amendment) Rules, 2003 indicates that such of the ad- 2 hoc employees who have completed 3 years of continuous service, a right is conferred upon them to be considered for appointment, in permanent or temporary vacancy as may be available on the basis of his services record and suitability before any regular appointment is made in accordance with the provisions contained in these Rules.*

*The learned counsel for the respondent contends that as he was appointed on ad-hoc basis as Revenue Officer on 25.08.1989 and on completing 3 years of services in the month of August 1992, he became eligible to be considered for appointment in permanent/temporary vacancy as available and his suitability was to be considered on the basis of his service record.*

***Much before the new Pension Scheme came into force with effect from 01.04.2005, the rights were confirmed in favour of the employee seeking regular employment in terms of Rule 21-A (iii). It was never the case of the petitioner that there was no vacancy, permanent or temporary, available against which his candidature would have been considered for regular appointment prior to his order of regular appointment passed by the authorities on 05.02.2008.***

*Having heard the learned counsel appearing for the parties for quite some time, we find no reason to interfere with the impugned order(s) passed by the High Court. The Special Leave Petitions are, accordingly, dismissed. Pending interlocutory application, if any, stands disposed of.” (emphasis supplied by us)*

20. A review petition filed by the State in the aforesaid matter has also been

dismissed by Hon'ble the Supreme Court on 22.11.2023 vide following order :

*“Prayer for oral hearing of the review petitions is rejected.*

*There is a delay of 223 days in filing the present review petitions, which has not been satisfactorily explained. Even otherwise, having gone through the review petitions and also the documents enclosed, we do not find any good ground and reason to review the order dated 21.11.2022.*

*Accordingly, the review petitions are dismissed on the ground of delay, as well as, on merits.*

*Pending application(s), if any, shall stand disposed of.”*

21. Reasoning similar to the above has been adopted by another coordinate Bench of this Court in Special Appeal No. 21 of 2022. The Division Bench was of the view that once regularisation Rules were notified in the year 2001 and the writ petitioner was entitled to be regularised as per it, any delay in passing the order of regularisation would not be detrimental to the employee concerned for the purpose of payment of pension. Paragraph 43 to 47 of the aforesaid judgment read as under :

*“43. The notification dated 20.12.2001 was expected to be given effect to with immediate effect and the consideration of claim for regularization of respondent/petitioner ought not to have been deferred for so long particularly in view of the express provision contained in the rule itself. Rule 2(iii) of the amended rules notified on 20.12.2001 also indicates the specific intent by the rule framing authority for such consideration to be made before any regular appointment is made in accordance with the service rules. The language employed in rule 2(iii) is relevant and is reproduced hereinafter:-*

*“2(iii). Any person who - has completed or, as the case may be, after he has completed three years continuous service shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability **before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.**”*

*44. The fact that the above rule requires consideration for regularization against permanent or temporary vacancy, before any regular appointment is made in accordance with relevant service rule is of importance and cannot be ignored. The rule making authority was conscious that non consideration of claim for regularization notwithstanding the existence of rule for such purpose may adversely affect the adhoc employee, in the matter of determination of seniority etc. and, therefore, made a specific provision for such regularization under the rules to be considered prior to any regular appointment made in such vacancy in accordance with the relevant service rules. Denial of timely consideration in accordance with the rules for regularization may otherwise deny service and retiral benefits to adhoc employees only because of administrative lethargy on part of the department concerned in processing such claim.*

*45. No valid reasons have otherwise been disclosed for non consideration of claim of respondent/petitioner for regularization after 20.12.2001, particularly when the order dated 21.2.1997 already existed of this Court for regularizing his services. The only plea taken in the counter affidavit to justify belated consideration for regularization is that the State Government directed such claim to be considered only*

*vide order 7.9.2018. This plea of the appellant to explain the delay in consideration of claim for regularization is noticed only to be rejected.*

46. *The regularization rules notified on 20.12.2001 were applicable in respect of all adhoc appointments made prior to 30.6.1998 on posts falling within the purview of the Public Service Commission which included the department of minor irrigation as well and there existed no specific need of any further Administrative/Government order to be issued for the rules of regularization to be given effect to. The post of Junior Engineer in the Department of Minor Irrigation was clearly a post covered by the notification dated 20.12.2001 and issuance of the direction contained in the government order dated 7.9.2018 was not essential and at best reminded the authorities to act as per the notification dated 20.12.2001. Services of various other persons such as Prabhu Nath Singh, Shailendra Pratap Singh, etc. were otherwise regularized much prior to 7.9.2018. The argument that this was done in compliance of the court's order does not inspire confidence as the direction of court existed in favour of respondent/petitioner to be considered for regularization from 1997 itself. The authorities cannot be permitted to pick and choose in the matter of consideration of case for regularization under the orders of court. The authorities of the State, therefore, are not justified in denying consideration to the case of respondent appellant for regularization soon after issuance of notification dated 20.12.2001 and in any view before making any regular appointment in accordance with the relevant service rules by virtue of amended rule 2 (iii).*

47. *Viewed from such intendment in the rules of regularization notified on*

*20.12.2001 the action of appellant authorities in not considering petitioner's claim for regularization within a reasonable period despite an order of the competent court cannot be approved."*

22. The above judgment of the Division Bench has also been assailed by the State by preferring Special Leave Petition which has been dismissed. Review Petition has also been rejected.

23. In the facts and circumstances of the present case, we are, therefore, of the considered view that claim of all the writ petitioners for regularisation was required to be considered pursuant to Rule 21-A(1) introduced on 10.04.2003. Any delay occasioned by the State in consideration of their claim for regularisation cannot be a ground to deny benefit of pension to the writ petitioners. On 10.04.2003, Old Pension Scheme was applicable. Entitlement of respondents/writ petitioners for regularisation is also undisputed. Following the reasoning adopted by the coordinate Division Benches in the aforesaid two matters which have attained finality with dismissal of Special Leave Petitions and Review Petitions, we are inclined to hold that all the writ petitioners would be entitled to the benefit of the Old Pension Scheme treating their date of entry into service as 10.4.2003. The appellant-State shall calculate the pension of the respondents/writ petitioners treating their substantive appointment to have been made on 10.4.2003.

24. The direction issued by the learned Single Judge for granting pension from 1995, however, cannot be sustained and stands modified accordingly. The pensionary benefits in terms of above determination would be extended to all the

writ petitioners within a period of three months from the date of presentation of a copy of this order. Some of the persons who are already getting pensions would be entitled to re-determination of their pension in terms of the above direction. However, no recovery would be made from them.

25. In view of the above, these appeals are disposed of.

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**(2025) 5 ILRA 396**  
**APPELLATE JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 07.05.2025**

**BEFORE**

**THE HON'BLE ASHWANI KUMAR MISHRA, J.**  
**THE HON'BLE PRAVEEN KUMAR GIRI, J.**

Special Appeal No. 727 of 2024  
 With  
 Special Appeal No. 726 of 2024

**Mayashankar** **...Appellant**  
**Versus**  
**State of U.P. & Ors.** **...Respondents**

**Counsel for the Appellant:**  
 Kailash Singh Kushwaha

**Counsel for the Respondents:**  
 Ashutosh Mani Tripathi, C.S.C., Rohit Singh, Vijay Kumar Ojha

**A. Service Law – UP Secondary Education (Service Selection Boards) Act, 1982 – Rules framed under Act of 1982 – Rule 11 – Post of Principal – Power of appointment by way of transfer, extent of – Requisition was sent after vacancy was arisen – However, appointment by way of transfer was made – Permissibility – Held, once the requisition for direct recruitment was sent to the Inspector, by the Management, in terms of rules 11 of the rules framed under the Act of 1982, the transfer of a teacher against such vacancy**

**was impermissible – Prashant Kumar Katiyar' case relied upon. (Para 16)**

**B. Service Law – UP Education Service Selection Commission Act, 2023 – Section 31(2) – Post of Principal – Appointment – Requisition was already sent for appointment – How far, such requisition is saved under Act of 2023 – Held, the determination of vacancies and its intimation to the commission virtually commences the process of recruitment in these institutions. Sending of the requisition to the board would, therefore, continue to be saved under the Act of 2023 and the only change would be that now the appointment will have to be made by the commission in place of the board. (Para 34)**

**Special Appeal allowed. (E-1)**

**List of Cases cited:**

1. Prashant Kumar Katiyar Vs St. of U.P. & ors. 2013 (1) ADJ 523
2. Hari Pal Singh Vs St. of U.P. (2016) 6 All LJ 203

(Delivered by Hon'ble Ashwani Kumar Mishra, J.)

1. These appeals arise out of the judgment and order of learned Single Judge dated 13.8.2024, whereby two writ petitions filed by the appellant are decided. Learned Single Judge has dismissed both the writ petitions and vacated the interim order granted earlier.

2. The controversy leading to filing of the present appeal lies in a limited factual scenario. The appellant herein was appointed as lecturer in Bharat Sewak Samaj Inter College, Hathiyar, Varanasi (hereinafter referred to as the 'institution'). He was appointed as officiating principal of the institution on 30.3.2018. His signatures were also attested by the District Inspector