

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT APPEAL No. 1610 of 2024

NARENDRA TRIPATHI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri L. C. Patne, Shri Abhay Pandey, Shri Siddharth Saroha and Shri Akash - Advocates for appellant.

Shri Prashant Singh - Advocate General and Shri Amit Seth - Additional Advocate General assisted by Shri Sahil Sonkusale - Advocate for the Respondent Nos.1, 2 & 3.

Shri Ved Prakash Tiwari - Advocate for the Respondent No.4/E.C., Barkatullah University.

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ORDER

(Reserved on : 24.04.2025)

(Pronounced on : 07.05.2025)

Per: Hon'ble Shri Justice Vivek Jain.

The present intra-court appeal has been filed under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 arising out of the order dated 02.07.2024 passed by learned

Single Judge of this Court in W.P. No.5604/2024, whereby the writ petition filed by the appellant has been dismissed.

2. The writ petition was filed by the present appellant arising out of order dated 21.02.2024 (Annexure P-7) issued by the Registrar, Barkatullah University, Bhopal thereby terminating the services of the appellant/writ petitioner on the ground that the initial appointment of the petitioner in service was illegal in as much as upon perusal of the enquiry report dated 02.08.2023 it has been established that the provisions of University statutes were not followed in the matter of recruitment process and further that the reservation rules were not followed while appointing the petitioner and as a consequence to the said finding, the petitioner's services stand terminated.

3. Learned counsel for the appellant/petitioner has submitted that the impugned termination order has been passed without following the mandatory provisions of Statute No.31 of the respondent – University and therefore, there is procedural violation. It is contended that the petitioner was initially appointed in terms of resolution dated 26.10.1988 passed by the Executive Council of the University against the sanctioned vacant post of Project Officer in the regular pay scale of Rs.5500–9000/- and a consequential order dated 16.12.1998 was issued to that effect and therefore, prior to issuance of the termination order dated 21.02.2024, the petitioner has put in more than 25 years of service and he is over-age for any other employment now. It is further contended that the appellant was confirmed on the post of Project Officer vide order dated 30.05.2012 and therefore, whatever defect, if any, was there in his appointment, got wiped off by such confirmation. He has been given the benefit of revised pay scales as per Sixth and Seventh Pay Commissions w.e.f. 01.01.2006 and 01.01.2016 respectively and also given the benefits of first and second financial

up-gradations as per the instructions issued by the State Government. He was also given permission to prosecute Ph.D. degree in the year 2017.

4. It is further contended that one Bhagwan Das Rajput filed W.P. No.1193/2023 challenging the appointment of the petitioner by seeking a writ of *quo-warranto*, wherein this Court by order dated 10.01.2024 dismissed the writ petition. In the said petition the University took the stand that the appointment of the petitioner was not as per law and therefore, the petition was dismissed on the ground that once the employer itself is of the opinion that the appointment of the employee is illegal, then no directions are required from the Court.

5. It is the case of the appellant/petitioner that by misinterpreting the aforesaid observations of this Court the University has illegally, arbitrarily and malafidely issued the impugned order dated 21.02.2024 (Annexure P-7), whereby the services of the petitioner have been terminated by a stigmatic order without issuing any show cause notice and without affording any opportunity of hearing, which is in gross violation of principles of natural justice and fair play. It is contended that once the petitioner had joined in service and was continuing for last more than 25 years, then he had acquired and indefeasible right to remain in service and in such circumstances his service could not have been dispensed with unceremoniously without any enquiry or show cause notice. Reliance is placed on judgment of the Supreme Court in the case of ***Shrawan Kumar Jha vs. State of Bihar, 1991 Supp (1) SCC 330***. It is further contended that even if the appointment of the petitioner is treated to be irregular, then the confirmation of his services in the year 2012 amounted to regularization of any irregularity that crept in his appointment and such regularization could have been done in terms of the law laid down by the Hon'ble Supreme Court in the case of ***State of Karnataka vs. Uma Devi (3) and others, (2006) 4 SCC 1***. It is further contended that as per Clause 57(3) of Statute 31 of respondent –

University read with Rule 14 of M.P. Civil Services C.C.A. Rule, 1966 a confirmed employee cannot be terminated from his service except after following the due procedure as established by and termination being a major penalty, it could not have been visited the petitioner/appellant without regular enquiry.

6. It is further contended that the petitioner/appellant was duly having qualification to be appointed on the post of Project Officer, his educational qualification being M.A. in Sociology, P.G.D.C.A., Bachelor in Physical Education and Masters in Physical Education as also Ph.D., which he obtained in the year 2017 after due permission from the respondent – University. It is further argued that the termination order has been issued based on some enquiry report dated 02.08.2023 submitted by the Enquiry Officer, whereas the same Enquiry Officer vide earlier report dated 08.08.2022 has given clean chit to the appellant/petitioner by holding his appointment to be legal and within the four corners of law, but later on he succumbed to political pressure and gave a opposite finding against the petitioner.

7. It is further argued that the earlier enquiry report was accepted by the competent authority of the University and vide later dated 17.10.2022 (Annexure P-10) the Chancellor of the University, i.e. H.E. the Governor of the State intimated the complainant that his complaint against the appointment of the petitioner has been closed. The Chancellor is father figure in the University and once the complaint against the petitioner had been closed upto the level of Chancellor, then the matter could not have been reopened and given over to the same Enquiry Officer to tender a contrary report to his own earlier report.

8. It is further contended that not only the earlier enquiry report dated 08.08.2022, but even prior enquiry reports have given clean chit to the appointment of the petitioner and now the petitioner has been singled out for

adverse action whereas the Enquiry Officer, Shri Anil Pare was authorized to probe into as many as 163 alleged illegal appointment made in the respondent No.2 – University vide letter dated 06.09.2019 issued by the University, but he preferred to conduct enquiry only against the petitioner and that too, not once but twice and in course of second enquiry, which was adverse to the petitioner, he even chose not to call the petitioner therein. Therefore, the impugned termination order so also the preceding inquiry report are examples of colourable exercise of powers. It is contended that the order of this Court in W.P. No.1193/2023, wherein writ of quo-warranto was sought against the petitioner has been grossly mis-interpreted and misconstrued by the respondent authorities and the same has been taken as an excuse to terminate the services of the appellant. It is argued that all these aspects have skipped the attention of the learned Single Judge, who has upheld the termination of the petitioner.

9. It is further argued that learned Single Judge has wrongly held the appointment of the petitioner to be illegal appointment and not irregular appointment and has held that such appointment could not have been regularized nor defect could be cured. However, the facts of this case do establish that the appointment of the petitioner was not an illegal appointment, but at the most could have been said to be irregular appointment in as much as the petitioner duly had the qualification for the post and there was vacancy for the post and only the recruitment process was not followed.

10. *Per contra*, Shri Prashant Singh – learned Advocate General and Shri Amit Seth – learned Additional Advocate General assisted by Shri Sahil Sonkusale, Advocate appearing for the State, University and the Vice Chancellor, and Shri Ved Prakash Tiwari, learned counsel for the Executive Council of the University have vehemently argued that the appointment of the petitioner/appellant was illegal from the very beginning and therefore, illegality

can always be cured and set right by cancelling the appointment at any point of time. It is argued that in terms of judgment of Division Bench of this Court in the case of *Mansukh Lal Saraf vs. Arun Kumar Tiwari and others reported in (2016) 2 MP LJ 283*, such illegal appointment can always be withdrawn at any point of time and no vested right accrues to the employee for merely being continued for a long period.

11. It is further argued that it is not the case that the petitioner has been singled out for adverse action; because as per additional submissions filed vide document No.6910/2025, it has been brought on record that enquiry is being proposed against other 162 employees also and a three members committee has been constituted on 10.03.2025 to carry out an enquiry into the said matter. It is further argued by them that the case of the petitioner was expedited for such scrutiny only because a writ of *quo-warranto* was sought in the matter of his appointment in W.P. No.1193/2023 and this Court had given some observations that no further orders are required from the Court once the employer itself has concluded that the appointment was illegal, because the University had taken a stand before this Court that the appointment of the petitioner is illegal. After the order was passed by this Court in W.P. No.1193/2023 on 10.01.2024, the case of the petitioner/appellant was singled out for being expedited and there is no malice in the said action of the University, because in other 162 cases no such petition had been filed and those cases were being proceeded in routine course.

12. On the aspect of the Chancellor having earlier closed the complaint in the matter of appointment of the petitioner, it is contended by learned counsel for the respondent that thereafter, the Chancellor had issued another letter dated 02.02.2024, which is placed on record with document No.6910/2025, wherein the Chancellor had directed the Vice Chancellor to examine the case of the

petitioner in terms of order of this Court dated 10.01.2024 passed in W.P. No.1193/2023 and therefore, the ground that the Chancellor, who is the father figure of the University has closed the complaint against the petitioner, no longer survives.

13. Learned counsel for the respondents have heavily relied on the minutes of the executive council, whereby the petitioner was initially appointed in the year 1998 to contend that the petitioner was appointed as Project Officer on “temporary basis till further order” against the sanctioned vacant post of Lecturer. It is contended that one vacancy in the post of Project Officer was there on death of one Smt. Shakuntala Elawadi, but one Dr. Shashank Thakur was already appointed against the said post on fixed pay and therefore, there was no vacancy when the petitioner was appointed and he was appointed against the vacant post of Lecturer. On such ground, it is vehemently argued that the appointment of the petitioner not being on an sanctioned vacant post was illegal from the very inception and not merely irregular.

14. Heard learned counsel for the parties and perused the record.

15. In the present case is not disputed that petitioner was initially appointed in the year 1998 and his services have been terminated vide order dated 21.02.2024 after putting in more than 25 years of service and it is also not in dispute that he is now over-age for any employment being almost 53 years of age at the time of termination. It is also not in dispute that there is no allegation of misconduct against the petitioner and the only ground for termination of his services is that his initial appointment was illegal and has been found to be so in the enquiry conducted by the university, on basis of which the impugned termination order has been issued.

16. There are two enquiry reports in the matter of appointment of the petitioner. The first enquiry report is dated 08.08.2022 which was placed on record as Annexure P-9 before the learned Single Judge. In the said enquiry report it has been taken in consideration by the enquiry officer Dr. Anil Pare (retired District Judge) that the appointment was made as per the decision taken by the Executive Council of the University on 26.10.1998 and thereafter another meeting of Executive Council took place on 31.03.1999 whereby the services of the petitioner were continued till further orders. Therefore, it was held by the enquiry officer that the appointment of the petitioner was not for any fixed term but was till further orders and was duly approved by the Executive Council. The enquiry officer further held that the appointment of the petitioner was against a sanctioned vacant post and categorical finding is given by the enquiry officer in the said report that as per the minutes of the meeting of Executive Council dated 13.01.2017 the appointment of the petitioner was against the sanctioned vacant post. This enquiry report was accepted by the Chancellor by closing the matter vide letter Annexure P-10 dated 17.10.2022. However, another enquiry was thereafter setup in which the petitioner admittedly was not called and the same enquiry officer Dr. Anil Pare conducted the fresh enquiry which is placed on record as (Annexure P-8). Considering the same record, the same enquiry officer held that the appointment of the petitioner was illegal because it was not against any sanctioned vacant post and the prescribed procedure for appointment was not followed.

17. The learned Single Judge while dismissing the writ petition of the appellant has also given the finding that there was no sanctioned vacant post and that the process was not followed prior to appointment of petitioner/appellant. Therefore, the appointment of the petitioner /appellant was illegal appointment and not mere irregular appointment. Hence, it could not be regularised. On this ground, the learned Single Judge came to conclusion that

the confirmation order (Annexure P-4) dated 30.05.2012 though it is issued by the competent authority of the University, but does not vest any right in the petitioner/appellant as his initial appointment was illegal and not mere irregular and therefore, subsequent confirmation would not create any right and that confirmation itself was not proper. It is not in dispute that on 30.05.2012 vide (Annexure P-4) the petitioner was confirmed in the service of university on the post of Project Officer with effect from 16.12.2000 and the said order is in respect of as many as 49 employees wherein name of appellant is at S.No.23. Nothing has been brought on record that what action has been taken against other 48 employees rather it is duly placed on record that the complaint which was received by the university was against total 163 employees on which in the year 2019 itself vide letter dated 06.01.2019 (Annexure P-18) Shri Anil Pare, Retd. District and Sessions Judge, was appointed as enquiry officer by the university. However, despite lapse of almost 6 years till date, it is an admitted fact that enquiry has been concluded in the matter of petitioner only, that too not once but twice by the same enquiry officer who has given contradictory reports in the matter of legality of appointment of the petitioner. The said enquiry officer has not conducted enquiry in respect to even a single other employee out of questioned 163 employees and even by additional submissions brought on record by the respondents vide Document No.6910/2025, it is contended that now the University has appointed a fresh three member committee to carryout scrutiny of 163 employees. This seems to be just an eyewash to get over the argument of the appellant that he has been singled out for the adverse action by the University.

18. It was also not disputed by learned counsel for the respondents during the course of arguments, that out of 163 employees whose appointments are being questioned, many have been allowed to retire after completing their entire service and are now even getting pension. Therefore, if the University was

serious in enquiring about the legality or otherwise of appointment of 163 employees, then by now the University must have carried out enquiry into their appointments at least before their retirement. However, the University on one hand has been allowing the other employees out of 163 questioned employees to complete their tenure of service and retire and get pension and gratuity, but on the other hand, the petitioner is being singled out for adverse action which seems to be an act of vendetta against the petitioner /appellant and nothing else.

19. The argument which was placed by learned counsel for the appellant was that his appointment even if was without following due process of law for appointment, was not illegal and could at the most be said to be an irregular appointment which could always be regularized by the competent authority of the University which it did vide order (AnnexureP-4) dated 30.05.2012. Therefore the question now arises is that whether the appointment of the petitioner-appellant was illegal or irregular. Admittedly the appointment was made without following the recruitment process, hence, the learned counsel for the Appellant had argued that the appointment was not illegal, but merely irregular.

20. In the case of Uma Devi (supra), the Constitution Bench considered the earlier judgements in case of *Ashwani Kumar v. State of Bihar (1997) 2 SCC 1* and *A. Umarani vs. Registrar, Coop. Societies (2004) 7 SCC 112*, in the following manner :-

31. In *Ashwani Kumar v. State of Bihar [(1997) 2 SCC 1 : 1997 SCC (L&S) 465 : 1996 Supp (10) SCR 120]* this Court was considering the validity of confirmation of the irregularly employed. It was stated : (SCC p. 17, para 13)

“13. So far as the question of confirmation of these employees whose entry itself was illegal and void, is concerned, it is to be noted that question of confirmation or regularisation of an irregularly appointed candidate would arise if the candidate concerned is appointed in an irregular manner or on ad hoc basis against an available vacancy

which is already sanctioned. But if the initial entry itself is unauthorised and is not against any sanctioned vacancy, question of regularising the incumbent on such a non-existing vacancy would never survive for consideration and even if such purported regularisation or confirmation is given it would be an exercise in futility.”

This Court further stated : (SCC pp. 18-19, para 14)

“14. In this connection it is pertinent to note that question of regularisation in any service including any government service may arise in two contingencies. Firstly, if on any available clear vacancies which are of a long duration appointments are made on ad hoc basis or daily-wage basis by a competent authority and are continued from time to time and if it is found that the incumbents concerned have continued to be employed for a long period of time with or without any artificial breaks, and their services are otherwise required by the institution which employs them, a time may come in the service career of such employees who are continued on ad hoc basis for a given substantial length of time to regularise them so that the employees concerned can give their best by being assured security of tenure. But this would require one precondition that the initial entry of such an employee must be made against an available sanctioned vacancy by following the rules and regulations governing such entry. The second type of situation in which the question of regularisation may arise would be when the initial entry of the employee against an available vacancy is found to have suffered from some flaw in the procedural exercise though the person appointing is competent to effect such initial recruitment and has otherwise followed due procedure for such recruitment. A need may then arise in the light of the exigency of administrative requirement for waiving such irregularity in the initial appointment by a competent authority and the irregular initial appointment may be regularised and security of tenure may be made available to the incumbent concerned. But even in such a case the initial entry must not be found to be totally illegal or in blatant disregard of all the established rules and regulations governing such recruitment.”

34. *In A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] a three-Judge Bench made a survey of the authorities and held*

that when appointments were made in contravention of mandatory provisions of the Act and statutory rules framed thereunder and by ignoring essential qualifications, the appointments would be illegal and cannot be regularised by the State. The State could not invoke its power under Article 162 of the Constitution to regularise such appointments. This Court also held that regularisation is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution or any body or authority governed by a statutory Act or the rules framed thereunder. Regularisation furthermore cannot give permanence to an employee whose services are ad hoc in nature. It was also held that the fact that some persons had been working for a long time would not mean that they had acquired a right for regularisation.

Upon considering the entire law relating to regularization of irregular appointees, in para-53, it was held as under :-

53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that

regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.

21. After the judgment in the case of *Uma Devi (supra)* the State Government of M.P. with a circular dated 08.02.2008 clarifying and prescribing the requisite parameters for scrutinizing the case of employees, whether they are irregularly appointed or illegally appointed. In the said circular to a query that whether those daily rated and temporary employees whose appointments were made without calling names from employment exchange and without following recruitment process are to be deemed as illegal or irregular appointment, the clarification has been given by General Administration Department that those appointments are deemed to be irregular if they are against sanctioned post but recruitment process has not been followed. However, if post was not available then those appointments will be illegal. Further in point No.5 of the same circular it has been mentioned that if there was some temporary post in the department and it has been continued for more than 10 years then on those posts also regularization can be carried out but the employee will not be declared as permanent. In the matter of reservation, it is clarified that if roster was not followed at the time of irregular appointment, then also the appointment would be irregular and not illegal for the purpose of regularization which is in point No.8 of the said circular.

22. In the present case it was vehemently argued that the appointment of petitioner-appellant is illegal because there was no sanctioned vacant post and his appointment was against the post of Lecturer, therefore, nothing more is required to be indicated that there was no availability of sanctioned vacant post.

23. It is not in dispute that two posts of Project Officer were sanctioned in the university vide letter dated 23.06.1986 issued by the Higher Education Department. The said two posts were occupied by Smt. Shakuntala Edlawadi and Dr. Kalika Yadav. It is also not in dispute that one of them i.e. Smt. Shakuntala Edlawadi expired on 12.02.1997 and therefore, one post fell vacant. It is the said one post which is the bone of contention and is being stated to be vacant by the petitioner-appellant and on the contrary, it is being stated by the respondents to be already filled up and the said issue has to be considered by this Court.

24. It is the case of respondents that one Shashank Shekhar Thakur was appointed on the post that fell vacant by death of Smt. Shakuntala Edlawadi and this appointment of Shashank Shekhar Thakur was made on 03.03.1998 while the petitioner-appellant was appointed on 16.12.1998, therefore as per respondents, the post was not vacant and for this reason appointment of the petitioner was against the post of Lecturer. The appointment order of Shri Shashank Shekhar Thakur (Annexure R-2/6) reads as under:-

“श्री शशांक शेखर ठाकुर को अंशकालीन परियोजना अधिकारी के पद पर दिनांक 03.03.98 से 89 दिवस हेतु नियुक्ति प्रदान की जाती है। उक्त कार्य हेतु इन्हे रुपये 1000=00/- प्रतिमाह की दर से भूगतान किया जावेगा। अनुपस्थिति की दशा में रुपये 75/- प्रतिदिवस के मान से कटौती किया जायेगा।

यह नियुक्ति पूर्णतः अस्थायी है एवं बिना किसी सूचना के किसी भी समय समाप्त की जा सकती है।”

25. Upon going through document Annexure R-2/6 filed by the respondents before the learned Single Judge, it is the appointment order of Shashank Shekhar Thakur on the post of Project Officer by which it is being projected before us that the post was not vacant. The said appointment order is

an appointment order of Shashank Shekhar Thakur on the part time post of Project Officer for 89 days from 11.03.1998 on Rs.1000/- per month salary. Undoubtedly no post of part time Project Officer was available in the university and the only post available vide sanction letter dated 23.06.1986 was the full time post of Project Officer. It is difficult to understand that how a person appointed on fixed pay of Rs.1000/- per month on part time post of Project Officer can be said to have filled up the regular full time post of Project Officer which was duly sanctioned in the university. On the other hand, the appointment order of the petitioner is in the regular pay scale of Rs.5500-175-9000 on the post of Project Officer and only his salary was to be drawn against the vacant post of Lecturer. This order is in following terms (Annexure P-3):-

“ / / आदेश / /

कार्यपरिषद की बैठक 26.10.1998 में लिये गये निर्णयानुसार श्री नरेन्द्र त्रिपाठी को वेतनमान रुपये 5500—175—9000 में प्रौढ़ शिक्षा में “परियोजना अधिकारी” के पद पर नियुक्त किया जाता है।

यह नियुक्ति दिनांक 01.12.1998 से प्रभावशील होगी “इस संबंध में होने वाला व्यय, शैक्षणिक विभागों में “रिक्त व्याख्याता के पद के विरुद्ध” 1—स्थापना से विकलनीय होगा।

आदेशानुसार
कुलसचिव"

26. The aforesaid two orders when seen in juxtaposition to each other duly establish that the post of project Officer was vacant and available and only because one person had been appointed on part time basis on fixed pay of Rs.1000/- in March, 1998, therefore, the university authorities in their own wisdom deemed as if the post is not vacant and salary has to be drawn against the vacant post of Lecturer. Nothing has been placed on record that whether the petitioner was not having requisite qualification for the post of Project Officer

which could have justified his appointment to be illegal and not irregular. Even when the Executive Council minutes dated 26.10.1998 are scrutinized minutely it can be seen that the Executive Council has come to a conclusion that the requirement of work for project officer is such that even three persons can work as Project Officer. The relevant consideration made by the Executive Council is as under :-

“ पद क. 7

विश्वविद्यालय के प्रौढ़ शिक्षा विभाग में निर्देशक डॉ. नीरज शर्मा द्वारा प्रौढ़ शिक्षा के विकास हेतु विभिन्न योजनाये तैयार की गयी है। विभाग में शैक्षणिक पाठ्यक्रम भी चलाये जा रहे है। प्रौढ़ शिक्षा के कार्य संपादन हेतु सहा० निर्देशक का एक पद जो निर्देशक के पद में उनयन हो चुका है एवं परियोजना अधिकारी के दो पद है, श्रीमति एलदावादी के निधन के उपरांत परियोजना अधिकारी का एक पद रिक्त है जिसके विरुद्ध डा. शशांक ठाकुर निर्धारित वेतन पर कार्यरत है बड़े हुए कार्य को देखते हुये एक परियोजना अधिकारी की ओर आवश्यकता है किंतु पदाभाव में वहां कोई व्यवस्था संभव नहीं है अतः ऐसी स्थिति में विश्वविद्यालय में व्याख्याता के रिक्त पद के विरुद्ध वहां व्याख्याता से कम के वेतनमान में अर्थात् तृतीय श्रेणी के वेतनमान में एक परियोजना अधिकारी की नियुक्ति प्रस्तावित है इस हेतु श्री नरेन्द्र त्रिपाठी ने अपना आवेदन पत्र प्रस्तुत किया है कि वेतनमान 1640—2900 में जिसका परिवर्तित वेतनमान 5500—175—9000 है में श्री नरेन्द्र त्रिपाठी का परियोजना अधिकारी के रूप में नियुक्त किया जाये यह नियुक्ति अस्थायी रूप से अग्रिम आदेश तक की जाना है प्रकरण कार्यपरिषद के आदेशार्थ एवं विचारार्थ प्रस्तुत।”

27. In view of the aforesaid minutes, it is evident that apart from one part timer i.e. Shashank Shekhar Thakur no other regular employee was working as Project Officer and merely because one part timer was working it could not be said that there was no vacant post of Project Officer available in the university. Even if it is so deemed, then the circular of the State Government dated 08.02.2008 in para-5 thereof duly mentions that if there is a temporary post then regularization can be made even on temporary post if the said post is being continued for more than 10 years continuously. In the present case, the

Executive Council has considered that indeed the requirement of work is sufficient for three posts and therefore, even if sanctioned post was not vacant, this resolution would have had the effect of setting up of a temporary post.

28. In the present case, the petitioner was confirmed in service in the year 2012 till which date he had put in 14 years of service and therefore, from any angle the order of confirmation of services of the petitioner does seem to be illegal and the order of termination of services of petitioner by declaring the petitioner to be illegally appointed 25 years after his appointment seems to be an wrongful action taken against the petitioner because we could not find any ingredients of illegal appointment in the matter of petitioner.

29. The learned counsel for the appellant has relied on the judgments of the Supreme Court in the cases of *Dr. M.S. Mudholand Another v. S.D. Halegkar and Others* (1993) 3 SCC 591, *K.Amir Khan & Another v. A. Gangadharan and Others* (2001) 9SCC 84, *Vikas Pratap Singh & Others v. State of Chhattisgarh & Other* (2013) 14 SCC 494, *Anmol Kumar Tiwari and Other v. State of Jharkhand & Others* (2021) 5 SCC 424, *Vivek Kaisth & Another v. State of Himachal Pradesh & Others* (2024) 2 SCC269, *Sivanandan C.T. and Others v. High Court of Kerala & Others* (2024) 3 SCC 99, *Radhey Shyam Yadav and Another v. State of U.P. & Others* 2024 SCC OnLine SC 10 and *State of Karnataka v. M.L. Kesari & Others* (2010) 9 SCC 247. He argued that once an incumbent continues in service from 3 to 12 years despite irregularities in his initial appointment which is not attributable to him then the employee is entitled to be continued in service.

30. In our opinion, since we have already held that the appointment of petitioner-appellant was not illegal and was merely irregular which could always be regularised by the employer in terms of para-53 of the judgment in the case of *Uma Devi (supra)*, the appointing authority could always have

confirmed and regularize such irregular appointment which it did in the year 2012 and said action could not have been reopened 12 years after it stood closed. Therefore, we are not required to consider the argument of long continuation put forth by learned counsel for the petitioner/appellant.

31. Apart from that once the petitioner was a confirmed employee his services could only be terminated on allegation of misconduct and once having joined in service and continued for 25 years, he has got indefeasible right to remain in employment which could be curtailed only after conducting an enquiry as laid down in the Rules applicable to the respondent-University, that it did not choose to do. Not even any charge sheet or enquiry, but not even a show cause notice was issued to the petitioner who was a employee having put in 25 years of service and short-circuiting the procedure, his services were terminated unceremoniously which cannot be given stamp of approval.

32. Consequently, we are of the opinion that the appeal deserves to be allowed and the termination order (Annexure P-7) challenged in the writ petition, deserves to be set aside. Consequently, the appeal is **allowed**. The impugned order passed by the learned Single Judge is set aside and the termination order (Annexure P-7) is also quashed. The appellant would be entitled to 50% back wages from the date of dismissal of writ petition till the date of this order and thereafter he shall be entitled to full wages. The appeal is **allowed** and disposed of in above terms.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE