



2026:AHC:138638

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 13267 of 2025

A.F.R.

Judgement Reserved on 28.04.2026

Judgement Delivered on 10.07.2026

Abhay Kumar Srivastava

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Petitioner(s) : Adarsh Singh, Digvijay, Navin Kumar Sharma

Counsel for Respondent(s) : C.S.C., Shashi Prakash Singh

In Chamber

HON'BLE PRAKASH PADIA, J.

1. Heard Sri Adarsh Singh, learned counsel for the petitioner, learned Standing Counsel for the respondent nos. 1 and 3 and Sri S.P. Singh, learned counsel for the respondent nos. 2,4,5, and 6.

2. The petitioner has preferred the present petition inter alia with the prayer to quash the order dated 11.08.2025 passed by the respondent No.4/District Basic Education Officer, Azamgarh, copy of which is appended as Annexure No.1 to the writ petition. A further prayer has also been made to direct the respondents to reinstate the petitioner on the post of Senior Clerk in the office of respondent no.6/Block Education Officer Urban Area, Azamgarh and pay him month to month salary as and when it falls due.

3. Facts in brief as contained in the writ petition are that the mother of the petitioner namely Pushpa Srivastava, while working on the post of Assistant Teacher in Kanjay Junior High School, Station Urban Area District Azamgarh died on 05.11.2008 and father of the petitioner namely

late Girish Chandra Srivastava, was working on the post of Accountant in Public Works Department. He retired on 28.02.2009 and later died on 20.03.2024. At the time of the death of the mother of the petitioner, the petitioner was minor and he became a major in the year 2011 and immediately thereafter, he applied for his appointment on compassionate ground vide application dated 30.11.2011. The aforesaid application was submitted by him before respondent No.4/District Basic Education Officer, Azamgarh. After submission of the application, a letter dated 29.03.2012 was written by the respondent No.6/Block Education Officer, Urban Area Azamgarh to the respondent No.4 recommending the name of the petitioner for his appointment on compassionate ground. The aforesaid letter was written after due verification of the papers and documents submitted by the petitioner. In the aforesaid letter, respondent No.6 also communicated to respondent No.4 that father of the petitioner retired as Government Employee, copy of the aforesaid letter is appended as Annexure no.9 to the writ petition. Thereafter, letter of appointment was issued by the respondent No.4 to the petitioner vide letter dated 27.09.2013 by which he was appointed on the post of Junior Clerk in the office of respondent No.6. Pursuant to the aforesaid letter, the petitioner joined his post on 28.09.2013. Subsequently, on 13.12.2019, the petitioner was also promoted as Senior Clerk in the office of respondent No.6. The petitioner was working regularly on the post in question and getting his salary and at no point of time, any departmental proceedings were initiated against the petitioner.

4. One Sri Arun Kumar Singh made a complaint against the petitioner before the respondent No.4 stating therein that the petitioner has got his services by concealment of facts as well as on the basis of fabricated

documents, hence the appointment of the petitioner is illegal. Pursuant to the aforesaid complaint, show cause notice dated 15.07.2022 was issued to the petitioner by the respondent No.6 whereby clarification was sought from the petitioner regarding the complaint made by Arun Kumar Singh. The petitioner submitted his reply on 20.07.2022 before the respondent No.6 whereby he explained that at the time of appointment of the petitioner, neither any fact has been concealed nor any fabricated documents have been submitted by the petitioner and the appointment of the petitioner has been made after due verification of the documents and papers submitted by him. Subsequent to the same, another show cause notice was issued to the petitioner by the respondent No.4 on 07.07.2023 and reply to the same has also been submitted by him on 17.07.2023. In the aforesaid reply, the petitioner again narrated aforesaid facts and denied the allegations levelled against him. Thereafter another show cause notice was served upon the petitioner on 05.10.2023 by the respondent No.4 and reply to the same has also been submitted by the petitioner on 10.10.2023. The order dated 30.12.2022 was passed by the Additional Director of Education (Basic), Azamgarh Region, Azamgarh whereby a direction was given to the respondent No.4 to initiate inquiry regarding appointment of the petitioner.⁵ It is argued by Sri Adarsh Singh, learned counsel for the petitioner as stated in paragraph 23 of the writ petition that no inquiry has been made by respondent No.4 at any point of time regarding appointment of the petitioner despite the letter/order written by the Additional Director of Education (Basic) Azamgarh Region Azamgarh to respondent No.4 on 30.12.2022 which was also served upon the petitioner. It is argued that a reply to the aforesaid letter has also been given by the petitioner to the Additional Director of Education (Basic) Azamgarh Region Azamgarh on 09.01.2023. Subsequent to the aforesaid,

another show cause notice was issued to the petitioner on 06.08.2024 on the same grounds as contained in the earlier show cause notice. Another show cause notice was issued by the respondent No.4 on 04.08.2025 and reply to which was submitted by the petitioner on 05.08.2025. Subsequent to the same, order impugned has been passed by the respondent No.4 on 11.08.2025 terminating the services of the petitioner. It is argued that impugned order passed by the respondent No.4 terminating the services of the petitioner is absolutely arbitrary, unjust and illegal specially in view of the fact that the petitioner was appointed on the post of junior clerk after verification of his documents as well as information provided by him. It is further argued that father of the petitioner was employed in Public Works Department at the time of death of his mother and the same is well within the knowledge of the respondents at the time of his appointment. It is further argued that the petitioner applied for his appointment under ***U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974*** (hereinafter referred as “Rules, 1974”)

in the year 2013 and at that time, father of the petitioner was retired. It is argued that the impugned order has been passed without following the settled provisions as no charge-sheet has been given to the petitioner and no inquiry was ever conducted against the petitioner. It is further argued that no opportunity of hearing was provided to the petitioner before passing the order of termination. It is further argued that the complaint has been filed against the petitioner with malafide intention. It is further argued that in the recommendation letter dated 29.03.2012 issued by the respondent No.6 which duly addressed to the respondent No.4, this fact was duly communicated that father of the petitioner was in Government Service and now retired. In support of his arguments, learned counsel for the petitioner placed reliance upon the following judgements:-

I. Md. Zamil Ahmed Vs. State of Bihar reported in 2016 (12) SCC 342

II. Shiv Kumar Vs. State of U.P. and others reported in 2025 (8) ADJ 11

III. District Basic Education Officer, Hathras Vs. Shiv Kumar and others passed in Special Leave Petition (Civil) Diary No.72666 of 2025

IV. Smt. Sughandha Upadyay Vs. State of U.P. and others (Writ A No.4597 of 2024)

V. Vishwaroop Vs. State of U.P. and others (Writ A No.2058 of 2024) decided on 15.10.2024

6. A counter affidavit has been filed by respondent Nos.4 to 6. It is stated in the counter affidavit that mother of the petitioner died on 05.11.2008. Upon receiving a complaint against the petitioner, it came into light that the petitioner had obtained employment as a deceased dependent in place of his late mother by concealing material facts. It is stated in the counter affidavit that in the complaint filed by Arun Kumar Singh, it is stated that though the petitioner was given compassionate appointment in place of his deceased mother but at the time of her death, the father of the petitioner was in Government Service as Accountant in Public Works Department. Insofar as facts narrated in writ petition that at no point of time, any inquiry was conducted against the petitioner as prescribed in the relevant rules and no charge-sheet has been given before terminating services of the petitioner are concerned, there is no denial in the counter affidavit.

7. In the rejoinder affidavit filed by the petitioner, facts as narrated in the counter affidavit has been denied. In the rejoinder affidavit, counsel for the petitioner placed reliance upon various decisions rendered by this

Court which has been affirmed by the Hon'ble Supreme Court from time to time.

8. Affidavits have already been exchanged between the parties and with the consent of learned counsel for the parties, the writ petition is disposed of at this stage.

9. From the facts as narrated above, it is clear that the petitioner was appointed on the post of clerk under Rules, 1974, in place of his deceased mother namely Late Pushpa Srivastava on 27.09.2013 and thereafter he was promoted on the post of Senior Clerk by order dated 13.12.2019 & during his entire service period, at no point of time, any complaint has been made against him till the time his services were terminated. He received salary and other benefits till the date of passing of order impugned. From perusal of the record, it is clear that neither any inquiry was ever conducted by the respondents at any point of time nor any charge-sheet had been submitted against him as well as no witness was examined by the respondents before passing the order impugned. Apart from the same, the petitioner was appointed under Rules, 1974, in the year 2013 and subsequently, he was promoted in the year 2019. In the letter written by the respondent No.6 to respondent No.4, it is clearly mentioned that father of the petitioner retired from Government Service meaning thereby that the fact that father of the petitioner was in Government Service at the time of death of his mother was well within the knowledge of the respondents at the time of issuance of the letter of appointment. In this view of the matter, the Court is of the opinion that the order is bad in the eyes of law.

10. In the case of *Shiv Kumar (supra)*, the controversy was before this

Court that Shiv Kumar was appointed on compassionate ground in place of his deceased father though at the relevant time, his mother was in Government Service. After hearing counsel for the parties at length, it was held by a co-ordinate Bench of this Court in paragraph 41 of the judgement that since the petitioner has not suppressed the fact that his mother was working as a government employee at the time of submission of application for appointment on compassionate ground. It was incumbent upon the authorities to undertake due diligence and conduct proper verification regarding the material facts prior to extending the appointment. Since scrutiny was duly carried out before appointment of the petitioner, therefore, the benefit granted to the petitioner cannot be cancelled. Paragraph Nos. 41 & 42 of the aforesaid judgement reads as follows:-

41. It stands established that there was neither any misrepresentation nor concealment on the part of the petitioner with respect to the employment status of his mother. The petitioner did not suppress the fact that his mother was serving in a government post specifically as an Assistant Teacher in the same department at the time he submitted his application for compassionate appointment. It was incumbent upon the respondent authorities to undertake due diligence and conduct a proper verification of such material facts prior to extending the appointment. Since such scrutiny was duly carried out before the petitioner was offered the appointment, the benefit granted cannot be withdrawn or cancelled on account of any lapse attributable to the respondents themselves.

42. This Court further observes that the petitioner was merely 18 and a half years old at the time of submitting the application for compassionate appointment. At such a tender age, he could not have been expected to comprehend the technical requirements relating to the disclosure of the employment status of family members. In circumstances where the family is grappling with emotional distress due to the sudden demise of its sole breadwinner as in the present case, the petitioner's father, the responsibility to verify and scrutinize the family particulars rests squarely upon the respondents.

11. Against the aforesaid judgement Special Appeal No.843 of 2025 was filed by the District Basic Education Officer before this Court which was

also dismissed vide judgement and order dated 22.09.2025. Against the aforesaid judgements, Special Leave Petition (Civil) Diary No.72666 of 2025 was filed which was dismissed by the Hon'ble Apex Court vide its order dated 13.03.2026.

12. In the case of ***Md. Zamil Ahmed vs. State of Bihar and Ors. (supra)***, it is held by Hon'ble Supreme Court that even though, the appointment was contrary to the policy of the State Government, the State by its own conduct had condoned their lapse due to passage of time and it was too late on the part of the State to have raised the said ground for cancelling the appointment and terminating the service of the appointee more so when the appointee himself was not responsible for making any false declaration. It was held by the Supreme Court that the State was not empowered to take advantage of its own mistake and the position would have been different if the appointee had committed some kind of fraud or manipulation or suppression of material fact in securing the appointment. The relevant observations of the Supreme Court in paragraph nos. 15 and 16 of the aforesaid judgment are reproduced below:-

“15. In these circumstances, we are of the view that there was no justification on the part of the State to wake up after the lapse of 15 years and terminate the services of the appellant on such ground. In any case, we are of the view that whether it was a conscious decision of the State to give appointment to the appellant as we have held above or a case of mistake on the part of the State in giving appointment to the appellant which now as per the State was contrary to the policy as held by the learned Single Judge, the State by their own conduct having condoned their lapse due to passage of time of 15 years, it was too late on the part of the State to have raised such ground for cancelling the appellant's appointment and terminating his services. It was more so because the appellant was not responsible for making any false declaration nor he suppressed any material fact for securing the appointment. The State was, therefore, not entitled to take advantage of their own mistake if they felt it to be so. The position would have been different if the appellant had committed some kind of fraud or manipulation or suppression of

material fact for securing the appointment. As mentioned above such was not the case of the State.

16. It is for this reason, we are of the view that action on the part of welfare State in terminating the appellant's service on such ground cannot be countenanced. We, therefore, disapprove the action taken by the State.

13. In the case of ***Sugandha Upadhyay (supra)***, it has been again held by a co-ordinate Bench of this Court that when the petitioner was appointed merely 18 years of age, the petitioner, at that age, cannot be expected to have read the Rules, 1974. The petitioner submitted a simple application which was not on any prescribed proforma stating his relationship with the deceased, his occupational skills and educational qualifications and sought compassionate appointment. The operative portion of the aforesaid order reads as follows:-

“In the present case, the petitioner was appointed ten years back and had been confirmed in service. Considering the length of service of the petitioner, it is too late for the respondents to cancel the appointment of the petitioner on the ground of the prohibition incorporated in Rule 5 and the employment status of her mother.

For the aforesaid reasons, the orders dated 20.07.2022 and 16.01.2024 passed by the Deputy Labour Commissioner and the Labour Commissioner cancelling the appointment of the petitioner and also rejecting her appeal are contrary to law and are liable to be quashed.

The orders dated 20.07.2022 and 16.01.2024 passed by the Deputy Labour Commissioner and the Labour Commissioner, respectively are, hereby, quashed.

The petition is allowed.”

14. Against the aforesaid judgement Special Appeal No.5 of 2025 (State of U.P. and others Vs. Smt. Sugandha Upadhyay) has been filed by the State of U.P. which was also dismissed by this Court vide its judgement and order dated 24.01.2025. Against the aforesaid judgment Special Leave to Appeal (C) No.6320 of 2025 was filed by the State of U.P. which was also dismissed by the Hon'ble Supreme Court vide its judgement and order dated 28.03.2025, copy of the same is appended at

Page 50 to the rejoinder affidavit.

15. In the case of **Vishwaroop (supra)**, Lucknow Bench of this Court has held that there was no justification on the part of the State to have woken up after a lapse of 12 years and found infirmity in the appointment of the petitioner and quashed the same. Further there was no allegations that the petitioner had concealed any material fact or some fact was found out by the State after a substantial length of time necessitating termination of his services. Once a finding has been recorded that the petitioner was not responsible for suppression of any material fact in securing his appointment then the onus lay upon the State to have examined the entire facts prior to giving him appointment on compassionate grounds. The paragraph Nos.13 & 14 reads as follows:-

“13. It is in the aforesaid circumstances, this Court is also of the considered view that there was no justification on the part of the State to have woken up after a lapse of 12 years and found infirmity in the appointment of the petitioner and quashed the same. Further there is no allegations that the petitioner had concealed any material fact or some fact was found out by the State after a substantial length of time necessitating termination of his services. Once a finding has been recorded that the petitioner was not responsible for suppression of any material fact in securing his appointment then the onus lay upon the State to have examined the entire facts prior to giving him appointment on compassionate grounds. For the lapse if any of the State the services of the petitioner cannot be terminated after a lapse of 12 years.

14. In light of the above, the writ petition is allowed. The impugned order dated 23.02.2024 is quashed. The respondents are directed to reinstate the petitioner in service with all consequential benefits from the date of his termination till the date of his reinstatement.”

16. Against the aforesaid judgement Special Appeal Defective No.93 of 2025 (State of U.P. and others Vs. Vishwaroop) has been filed by the State of U.P. which was also dismissed by this Court vide its judgement and order dated 04.03.2025. Against the aforesaid judgment Special

Leave Petition (Civil) Diary No.17889 of 2025 was filed by the State of U.P. was also dismissed by Hon'ble Supreme Court vide its judgement and order dated 11.08.2025, copy of the same is appended at Page 55 to the rejoinder affidavit.

17. In view of the above discussions, the Court is more than satisfied that the order dated 11.08.2025 passed by the respondent No.4/District Basic Education Officer, Azamgarh is per se illegal and the same is liable to be quashed and is hereby quashed.

18. The writ petition is allowed.

19. A mandamus is issued to the respondent No.4/District Basic Education Officer, Azamgarh & respondent no.6/Block Education Officer Urban Area, Azamgarh to reinstate the petitioner on the post of Senior Clerk in the office of respondent No.6 and pay salary month by month as and when it falls due. Since the services of the petitioner was wholly illegally terminated, the petitioner is also entitled for back wages and other service benefits and the aforesaid benefits would be provided to the petitioner within two months from the date of production of a certified copy of this order. No order as to costs.

(Prakash Padia,J.)

July 10, 2026
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