



2026:AHC:146878-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 212 of 2025**

Devendra Kumar Agrawal

.....Appellant(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Appellant(s)	: Aalok Singh, Bheem Singh, Sr. Advocate
Counsel for Respondent(s)	: Alok Mishra, C.S.C., Vijay Kumar Ojha

Court No. - 39

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE SWARUPAMA CHATURVEDI, J.**

1. Heard Sri V.K. Singh, learned Senior Advocate assisted by Sri Bheem Singh, learned counsel for the original petitioner-appellant, Sri Girish Chandra Tiwari, learned Standing Counsel for the State-respondents, Sri Vijay Kumar Ojha, learned counsel for the complainant and perused the record.

2. Present intra-court appeal has arisen against the judgment and order of the learned single judge dated 28.02.2025 in Devendra Kumar Agrawal Vs. State of U.P. and 5 others, 2025:AHC:28081. By that order, the learned single judge has disposed of the petition filed by the original petitioner-appellant with the following observations:

“In the aforesaid circumstances, since it is being now settled that degree of Shiksha Alankar was not a valid qualification for the purpose of appointment of Assistant Teacher, therefore, petitioner’s appointment was de hors of rules as such the Court is of opinion that no contrary view could be taken to the view of Dinesh Kumar Singh as confirmed by Division Bench, therefore, without interfering with impugned order, it is observed that since in this case also there is no direction for recovery of salary, therefore, no relief could be granted to petitioner so far as such prayer is concerned, however, this writ petition is disposed of with an observation/direction that in case, any action is taken for recovery of salary, the petitioner will be at liberty to take legally permissible remedy, if so advised. ”

3. Submission is, undeniably the petitioner held the qualification of Bachelor of Arts with additional qualification *Shiksha Alankar*. On a belief that the said additional qualification, *Shiksha Alankar*, was

equivalent to B.Ed. Degree, he had applied for appointment as ad-hoc LT grade teacher, at Sri Gandhi Smarak Inter College, Bajheda Bharatpur, District Aligarh (hereinafter referred to as 'the institution'). He was thus appointed ad-hoc LT grade teacher, at the institution, on 28.07.1992. Having worked for 21 years, continuously, he was regularized in service under Section 33-C of the U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as 'the Act of 1982'). Thereafter, he continued in service for a further period of four years, when on 03.04.2017, he was promoted to Lecturer grade. Four years thereafter, on 24.11.2021, when the petitioner had served continuously at the institution, for 29 years, he was visited with proceedings under Section 16-E(10) of the Intermediate Education Act, 2021 (hereinafter referred to as 'the Act'). That proceeding was initiated on the complaint made by the private respondent No.6-that the petitioner did not hold the essential qualification of B.Ed. at the time of his original engagement, 29 years ago.

4. During those 29 years, the original petitioner-appellant and the State had litigated with respect to the engagement of the original petitioner-appellant. Thus, on salary payment being denied, the original petitioner-appellant had approached this Court by means of Writ Petition No.30125 of 1993. While granting interim order, his working was protected and direction was also issued for payment of salary. Further, his claim for regularization under Section 33-C of the Act was pending. Thus, that writ petition was disposed of on 25.05.2004 with a direction upon the Joint Director of Education, Aligarh, to proceed to deal with that regularization claim of the original petitioner-appellant. Consequently, he was regularized in service, nine years thereafter, on 27.02.2013.

5. In such facts, the learned single judge has relied on an earlier order passed in **Dinesh Kumar Singh vs. State of U.P. and others, 2024 SCC OnLine All 557**, to reason that *Shiksha Alankar* is not equivalent to B.Ed. degree. In that decision, the learned single judge had also referred to and relied on a coordinate bench decision in **Surya Prakash Pandey vs. State of UP and 5 others (Special Appeal No.244 of 2016)** dated 08.08.2018. In that case, on the merit issue, it had been reasoned by a coordinate bench that *Shiksha Alankar* is not equivalent to B.Ed degree. However, on perusal of the order of the coordinate bench, it is further borne out, that no

issue of delay in exercise of power under Section 16-E (10) of the Act, was involved. Also, reference has been made to another order of a learned single judge in **Vinod Kumar Upadhyay vs. State of U.P. through Secretary (Secondary Education), Govt. of U.P., Lucknow and others, 2011 SCC OnLine All 1108**, wherein in individual litigation, without notice to the affected parties sweeping/generic direction was issued on the following terms:

“The Secretary (Secondary Education), U.P. is directed to forward a copy of this order along with the copies of the judgment in the case of Gulam Rasul Warsi (supra) to all the DIOS, Regional Director of Education through out the State of Uttar Pradesh with a specific direction that all teachers appointed in a recognized and aided Intermediate College with a degree of 'Shiksha Alankar' granted by Rashtriya Patrachar Sansthan, Kanpur shall immediately be removed from service and it shall be ensured that no further payment of salary is made to them.”

6. Learned Senior Advocate for the original petitioner-appellant would submit, though the original petitioner-appellant may not successfully agitate, that *Shiksha Alankar* was equivalent to B.Ed degree and that issue has been squarely decided by a coordinate bench in **Surya Prakash Pandey (supra)**, the original petitioner-appellant may not have been thrown out of service and deprived of all benefits of hard labour and service rendered, over almost three decades. In absence of any allegation of fraud, concealment or collusion, coupled with the conscious State action to not only grant financial approval to payment of salary, but to regularize the original petitioner-appellant in service, as also grant of promotion in Lecturer grade, that too when the parties had once litigated earlier, there survives no reason or occasion or circumstance to allow the State authorities such belated opportunity to cancel the appointment, at the fag end of service tenure of the original petitioner-appellant. He has placed reliance on a full-bench decision of this Court in **Dr. Asha Saxena vs. Smt. S. K. Chaudhari and others, 1990 SCC OnLine All 602**. In that case, the writ petition itself was decided by the full-bench. In paragraph No.20 of the report, it was specifically reasoned that delay of 17 years would dissuade the Court to allow for cancellation of appointment. For ready reference, the observation of the full bench in that regard are quoted below:

“20. Learned counsel appearing for Dr. Asha Saxena has also urged before us that the Regional Inspectress of Girls Schools has found the

appointment of the three teachers invalid as on the date of appointment none of them had the requisite qualifications for being promoted to the post of lecturer in the College. It has been urged that the Full Bench on an earlier occasion relying on the decision of the Supreme Court in the case of *Ram Swaroop v. State of Haryana* (1979) 1 SCC 168:A.I.R. 1978 S.C. 1536 has held that the three teachers should be deemed to have been appointed from the date on which they would acquire qualifications for being promoted to the post of lecturers. At the very outset it may be mentioned that the earlier writ petition of Dr. Asha Saxena had been allowed inasmuch as complete material had not come before the Full Bench regarding the fact that Dr. Asha Saxena had filed objections immediately after her promotion which had been rejected and had become final. It has also not been brought to the notice of the Full bench that seniority list grade-wise was prepared every year after the incorporation of Chapter III in the year 1976. It may also be noted that Dr. Asha Saxena has not challenged the validity of the appointment and had only made a challenge to the seniority list. One fails to understand that after a lapse of nearly 17 years the Regional Inspectress of Girls Schools referred the matter to the Director of Education for adjudicating the question as to whether the appointments were valid or not. In our opinion, the exercise of power by the Regional Inspectress of Girls Schools on the facts and circumstances of the case is wholly arbitrary as that power could not be exercised after lapse of 17 years. The objections filed by Dr. Asha Saxena in the year 1986 which are contained in Annexure "3" to the writ petition are liable to be rejected inasmuch as the ground that she did not know the provision of Clause 3(1)(bb) in Chapter II was of no avail to her. The seniority lists were being prepared year after year after 1975-76 and the objection filed by Dr. Asha Saxena after the lapse of nearly 11 years was not liable to be entertained as has been held by the Supreme Court in the case of *Malcom Lawrence Cecil D'Sousa* (1975 L.I.C. 816) (supra). In any view of the matter, the appointments which were existing for the last 17 years could not be set aside after a lapse of such a long period. Even the earlier Full Bench had quashed the order of the Regional Inspectress of Girls Schools referring the matter under Section 16-E(10) of the Act we are also of the opinion that the aforesaid order is liable to be quashed. It is true that there is power under Section 16-E(10) of the Act to cancel the appointments but the power has to be exercised within a reasonable time. The appointments had been made in the year 1973 and by no stretch of imagination it can be said that the exercise of that power after the /apse of 17 year by the Director of Education under Section 16-E(10), on the facts and circumstances of the case can be said to be exercise of a power within a reasonable time. In our opinion, the order of the Regional Inspectress of Girls Schools referring the matter to the Director of Education under Section 16-E(10) is thus liable to be quashed. ”

(emphasis supplied)

7. He has also relied on another decision of the Supreme Court in **Radhey Shyam Yadav and another vs. State of U.P. and others, (2024) 11 SCC 770**, wherein the Supreme Court took note of the delay aspect in such matters. There, the appellant had worked continuously since 1999 to

2021, i.e., for only six years.

8. On the other hand, learned Standing Counsel would contend that there is absolutely no doubt that *Shiksha Alankar* is not a qualification equivalent to B.Ed. course. That issue was squarely dealt with by a learned single judge bench in **Vinod Kumar Upadhyay (supra)**. That view was confirmed by a coordinate bench in **Surya Prakash Pandey (supra)**. Therefore, it is too late in the day to contend that the original petitioner-appellant could ever claim entitlement for appointment as Assistant Teacher L.T. Grade, on the strength of such qualification.

9. Second, as to the right of the original petitioner-appellant to be retained in service, that issue was also squarely dealt with by a learned single judge bench in **Vinod Kumar Upadhyay (supra)**, as extracted above, specific direction had been issued to the Secretary (Secondary Education), U.P. to dispense with the services of all such unqualified teachers, who may have obtained selection and appointment on the strength of *Shiksha Alankar* qualification claimed by them. That order attained finality. Therefore, the original petitioner-appellant had no right to continue in service. Third, as to the delay aspect, reliance has been placed on the decision of the coordinate bench of this Court in **Dinesh Kumar Singh (supra)**. Therein as well, the services of the original petitioner were dispensed after 30 years. On the strength of reasoning that the said original petitioner was never entitled to appointment, the dispensation of his services, as confirmed by the learned single judge, was affirmed. He has also relied on **Jomon K.K. vs. Shajimon P. and others, 2025 INSC 425** and **Pramod Kumar vs. U.P. Secondary Education Services Commission and others, (2008) 7 SCC 153**.

10. Having heard learned counsel for the parties and having perused the record, in the first place, the submissions advanced by learned Standing Counsel are attractive. The coordinate bench in **Dinesh Kumar Singh (supra)** had considered a similar controversy with respect to qualification *Shiksha Alankar* and found that the same was not equivalent to B.Ed. and, therefore, that petitioner could not be entitled to continue in service even after rendering 30 years of service (in that case). If that were the only law, we may be bound by the same. At most, if we were to take a different

view (in that event), the only recourse that may have been open is to refer the matter to a larger bench. However, that course does not commend to us in view of the reasons to follow.

11. Thus, in the first place, in **Dinesh Kumar Singh (supra)**, the power exercised by the State authorities was not referable to Section 16-E(10) of the Act. Yet, by way of fact appraisal, that petitioner had worked for 30 years as against 29 years of working offered by the present petitioner.

12. Again, by way of fact appraisal, it may be noted that against original appointment on 28.07.1992, the original petitioner-appellant in the present case was regularized in service under Section 33-C of the Act, 1982, on 27.02.2013. Therefore, in the present facts, the State Authorities were not only aware but are expected to have applied their mind to the qualifications of the original petitioner-appellant, at that time. To the extent, no objection appears to have been raised, at that stage, as to the eligibility qualification possessed by the original petitioner-appellant who was regularized in service, by a positive order, it remains to be examined if such issue may be permitted to be raised eight years, thereafter.

13. Then, we are equally mindful that on 03.04.2017, the original petitioner-appellant was promoted to Lecturer grade. Even, at that stage as well, no objection was raised to the eligibility qualification of the original petitioner-appellant, at the time of his initial appointment. The original petitioner-appellant continued to work for four more years. Thereafter. It is, therefore, further doubtful if the State Authorities may be permitted to revoke their powers under Section 16E(10) of the Act, at that belated stage, in such facts.

14. In that context, the impact of the decision of the full bench of this Court in **Dr. Asha Saxena (supra)** may be examined. Notably, in that case, on a difference of opinion that may have been observed by a coordinate bench, no specific question was referred to that larger bench. Rather, the writ petition itself was referred for decision to that larger bench. That larger bench of three Judges dealt with the issues on which difference of opinion may have been noted and other were raised before it, as well. Though, the main controversy involved, in that case, was different, however, in paragraph No.20 of the report (as extracted above),

the issue of delay was categorically raised and examined by the full bench. In that, it has been noted that the power under Section 16E(10) of the Act may not be exercised at a belated stage after lapse of nearly 17 years (in that case). Being a decision of a larger bench deciding the writ petition itself, it binds us.

15. We are unimpressed by the submission advanced by learned Standing Counsel that the issue referred to the larger bench was different from the one dealt with in paragraph No.20 of the report (as extracted above). It is so because that objection may have survived for consideration if only a question of law on a perceived difference of opinion, may have been referred to the larger bench and the writ petition and other issues arising therein, left open. Paragraph Nos.6 and 21, leave no doubt, in that regard. Therein, it was observed as below:

"6. We have heard the two writ petitions afresh on merits after providing full opportunity to all the parties who are represented by their counsel before us.

21. For the reasons stated above the writ petition of Dr. Asha Saxena is dismissed and the writ petition of Smt. S.K. Chaudhari is allowed to the extent indicated above. The stay order granted in the case of Dr. Asha Saxena is vacated. However, looking to the facts and circumstances of the case the parties shall bear their own costs. "

16. Once the writ petition itself has been decided by the larger bench, the ratio contained therein is the binding law declared by this Court. That being so, the contrary view that may have been taken by a coordinate bench in **Dinesh Kumar Singh (supra)** that too in ignorance of the binding decisions of co-ordinate benches may not bind us.

17. Then, in **Radhey Shyam Yadav (supra)**, the Supreme Court itself appears to have taken a view to which the view of the full bench, is consistent. There, summary dispensation of service after seven years, was looked down upon. In paragraph No.21 of that decision, it was noticed as below:

"21. In this background, the question that really falls for consideration is, was the State justified in abruptly and without anything more, stopping the salary? We are constrained to answer the question in negative. "

18. The facts that may have led to that reasoning have been recorded together with the conduct of the party, in paragraph No.22 of the said decision. That reads as below:

"22. Assuming the case of the State to be true and taking it at its highest, the factual position would come to this, namely, that while the State sanctioned two vacancies, the school went ahead and recruited three. The State has no proof of commission of any malpractice by the appellants. The State approved their appointments, and the approval order till date has not been cancelled. The appointments have not been terminated. No action has been taken against the school and the school continues to receive the aid. "

19. In that circumstance, the Supreme Court has further observed as below:

"34. We feel that the appellants were not at fault and the State could not have abruptly stopped their salaries. Accordingly, we set aside the judgments of the High Court dated 15.09.2021 in Special Appeal Nos. 1435/2013 and 1445/2013 and direct that the State shall pay the salaries of the appellants for the period from 25.06.1999 till January, 2002 in full. We also direct that insofar as the period from October, 2005 till today is concerned, the State shall pay the appellants 50% of the backwages. Since the appointment order and the approval order are still in force, we declare that the appellants have always been and are deemed to be in service. Apart from 50% backwages, as ordered above, we direct that all consequential benefits, including seniority, notional promotion, if any, and fitment of salary and other service benefits due, be granted to the appellants. We direct the State to comply with these directions within four weeks from today. We also direct that the appellants be allowed to commence work within the said period of four weeks. "

20. The decision in **Jomon K.K. (supra)** may remain distinguishable on facts. There, the vacancies were advertised on 17.10.2012. Objections were raised. The letter indicating selection was issued on 17.05.2017. While the selected candidate was waiting appointment, a challenge arose before the Administrative Tribunal. In that, the issue of the ineligibility of

certain selected candidates was involved. The Tribunal ruled against the ineligible selected candidates. In that circumstance, their selections were cancelled. Thus, there was no issue involved in the facts of that case, of working over a long duration. The only question considered and decided, as has been noted in paragraph No.12 of the said decision. It reads as follow:

"12. The central question of law arising for decision on this appeal is, whether the appellant who did not hold a current Lascar's licence but was the holder of a Syrang's licence could have been considered qualified to participate in the recruitment process as well as appointed."

21. In **Pramod Kumar (supra)**, the appointment letter had been issued on 29.11.1988, whereas the salary payment was first stopped, services were terminated on 12.02.1997, that is after about nine years. Even then, it was further noticed that the opportunity had been granted to the original petitioner-appellant to obtain a proper degree, which he did not avail and that during that period also, disciplinary proceedings were pending. Here, contrary facts exist, inasmuch as, besides absence of any inquiry during 29 years of service rendered by the original petitioner-appellant, he was found eligible to regularization after about 17 years of service and further, to promotion after 21 years of service. Therefore, that decision is also distinguishable on facts.

22. While taking this view, it appears to us that in a single human life that exists in a linear time dimension, one cannot turn back the clock. Certainly, not by decades. Selections are made and appointments are granted by institutions and organizations, including State agencies. However, from the perspective of the individual applicant, he only seeks a source of livelihood and a way to contribute to the society and the community while earning means to live his life and afford its costs. To the extent, a citizen may not have misled or may not have practiced fraud or deception while seeking such engagement to earn his means of livelihood, necessary to continue with his journey in life, we may not allow the employers, especially State agencies, to turn a blind eye to that essential facet of life. By seeking to offer legally correct solutions in such cases, though we may hope to become consistent to the law, but we may become

distanced (eventually), by light years, from justice. That we cannot do.

23. Accordingly, we find merit in the present appeal. The impugned order dated 28.02.2025 of the learned single judge is found erroneous on principle, being contrary to the law laid down by the full bench of this Court in **Dr. Abha Saxena (supra)**. Consequently, the impugned order dated 28.02.2025 is quashed. Thus, the present appeal stands **allowed**. To the extent, the original petitioner-appellant was not completely at fault, he may remain entitled to all consequential benefits, which may be computed and paid out within the next three months.

24. No order as to costs.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

July 17, 2026

Anurag/-