



2026:AHC:171818-DB

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 2 of 2026

Neha Rao

.....Appellant(s)

Versus

State Of Uttar Pradesh And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Siddharth Khare
Counsel for Respondent(s)	:	C.S.C., Siddharth Singhal

Court No. - 39

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

1. Heard Sri Siddharth Khare, learned counsel for the applicant/original petitioner; Sri Siddharth Singhal, learned counsel for the respondent-Commission and Sri Tej Bhanu Pandey, learned Standing Counsel for the State respondents.

2. Present intra-court appeal arises against the order of the learned Single Judge, dated 26.11.2025 in Neha Rao v. State of UP & ors; 2025:AHC:211735. By that order, the Writ Court has dismissed the writ petition filed by the appellant/petitioner, seeking following relief:-

"(a) a writ, order or direction in the nature of mandamus commanding the respondent authorities to appoint the petitioner on the post of Instructor in Trade of Cosmetology pursuance to Advertisement/ Notification No. 2-Examination/2022 issued by the UP, Subordinate Services Selection Commission, Lucknow within a period to be specified by this Hon'ble Court.

(b) a writ, order or direction in the nature of mandamus commanding the respondent authorities to accept the experience certificate dated 10.01.2022 for appointing the petitioner on the post of Instructor in Trade of Cosmetology pursuance to Advertisement/ Notification No. 2-Examination/2022;"

3. Thus, the petitioner had only sought a writ of mandamus for appointment on the post of Instructor in the Trade, Cosmetology, under Advertisement/Notification No.2-Examination/2022, dated 06.01.2022, issued by UP Subordinate Services Selection Commission (hereinafter referred to as, "the Commission"), on the strength of Experience Certificate dated 10.01.2022. The petitioner chose not to challenge the stipulation contained in the later Notice No.20/02/Advertisement Section(11)/2022-2023/02-Examination/2022, dated 03.02.2023.

4. By way of facts, it may be noted that the original Advertisement No.2/Examination/2022, dated 06.01.2022 contained the following clause with respect to applications required to be made:

"2.2 आवेदन (Application):-

1. इस भाग में लॉगिन करने के उपरान्त अभ्यर्थी को प्रारम्भिक अर्हता परीक्षा-2021 में दर्ज की गयी अपनी व्यक्तिगत सूचनाएं जैसे- नाम, पिता/पति का नाम, माता का नाम, उत्तर प्रदेश का मूल निवासी, श्रेणी, EWS, क्षेत्रीय आरक्षण से संबंधित विवरण, जन्मतिथि, लिंग, वैवाहिक स्थिति, सम्पर्क हेतु मोबाइल नंबर, ईमेल आदि विवरण स्वतः प्रदर्शित होंगी।

II. इस भाग में अभ्यर्थी को विज्ञापन में प्रकाशित अनिवार्य अर्हता (शैक्षिक) से सम्बन्धित विवरण भरना होगा। अभ्यर्थी शैक्षिक योग्यता धारण करने के संबंध में Yes/No विकल्प का चयन करेगा, तदुपरान्त बोर्ड/संस्था/विश्वविद्यालय का नाम, उत्तीर्ण करने का वर्ष, सर्टिफिकेट / रोल नं0, अर्हता सम्बन्धी प्रमाणपत्र जारी करने की तिथि तथा प्राप्तिक संबंधी विवरण आदि अंकित करेगा।

III. अभ्यर्थी सावधानीपूर्वक विज्ञापन में प्रकाशित अनिवार्य अर्हता (शैक्षिक) पढ़ लें तथा योग्यता धारित करने की स्थिति में ही आवेदन करें।

IV. वेब पेज पर नीचे की ओर "Enter Verification Code" में दिखाये गये वेरिफिकेशन कोड को प्रविष्ट करने के पश्चात "सबमिट" बटन पर क्लिक करें। फार्म सबमिट होते ही "अभ्यर्थी का आवेदन पत्र" प्रदर्शित होगा, जिसमें 11 अंको का रजिस्ट्रेशन नम्बर सहित अन्य विवरण होगा।"

5. Under that advertisement, applications could be submitted through Online mode from 18.01.2022 onwards, up to 08.02.2022. The last date to amend the applications, was 15.02.2022.

6. The petitioner applied in time, through Online mode. Unfortunately, the selection examination could not be held immediately. Later, on 03.02.2023, a notice was issued pursuant to original Advertisement dated

06.01.2022. Under that notice, all applicants were required to upload their documents by 28.02.2023. Relevant to the present, Clause 7 and the narration below Clause 11 of that Notice reads as under:

"7. अभ्यर्थियों को उनके द्वारा पूर्व में सबमिट किये गये आवेदन के सापेक्ष सुसंगत क्षेत्र में प्राप्त अनुभव प्रमाण पत्र (एक या एक से अधिक) एक साथ Merge कर उसकी पी०डी०एफ० अपलोड करनी होगी।

11.

अभ्यर्थियों को सूचित किया जाता है कि उनके द्वारा अपलोड किये गये अभिलेखों के आधार पर ही पात्र पाये जाने की दशा में अनुदेशक मुख्य परीक्षा (प्रा0अ0प0-2021)/03 हेतु शार्टलिस्टिंग उत्तर प्रदेश राजकीय औद्योगिक प्रशिक्षण संस्थान (अनुदेशक और फोरमैन अनुदेशक) सेवानियमावली-2021 के अनुसार की जाएगी।

अतः समस्त अभ्यर्थियों से उनके आवेदन पत्र में उपर्युक्तानुसार शैक्षिक / अनुभव सम्बन्धी अर्हता के सापेक्ष आवश्यक अभिलेख अनिवार्य रूप से दिनांक 28-02-2023 की मध्य रात्रि तक अपलोड किये जाने अपेक्षित हैं। निर्धारित तिथि तक अभ्यर्थियों द्वारा अपने आवेदन पत्र में वांछित बिबरण अंकित न करने एवं अभिलेख अपलोड न करने की स्थिति में मुख्य परीक्षा की शार्टलिस्टिंग हेतु पात्र नहीं समझा जाएगा। अभ्यर्थियों को निर्धारित तिथि के उपरान्त अन्य कोई अवसर प्रदान नहीं किया जाएगा। आयोग की वेबसाइट upsssc.gov.in पर ऑनलाइन अभिलेख अपलोड करने के अतिरिक्त अन्य किसी माध्यम से प्रेषित किये गये अभिलेखों के सम्बन्ध में कोई विचार नहीं किया जाएगा।"

(emphasis supplied)

7. The petitioner did upload the documents within time. However, she only included her first Experience Certificate dated 19.09.2017 issued by Red Rose Mahila Vikas Sansthan, Varanasi for the period 01.09.2014 to 31.08.2017. No other/later Experience Certificate was uploaded by her.

8. It may be recorded here itself, besides the Written Examination, by way of mandatory eligibility qualification, candidates were required to furnish a three-year experience certificate in Basic Cosmetology. By way of a mandatory condition, that experience could arise only after completion of the course of study in Basic Cosmetology, and not earlier. That condition is also not under challenge.

9. Here, the petitioner earned her educational qualification on 08.01.2015.

Therefore, the Experience Certificate dated 19.09.2017 uploaded by her established experience of only two years and seven months. It was short of the mandatory requirement, by five months. No correction was made at the relevant time, i.e. up to the date permitted by the Commission.

10. In such facts, the petitioner appeared at the Written Examination held by the Commission and was shortlisted for selection. During document verification, no defect was noticed. Consequently, the petitioner was provisionally selected. Later, the deficiency of experience by five months (as noted above) came to light. Consequently, the Commission called upon the petitioner to explain the correct facts. At that stage, she presented another Experience Certificate dated 10.01.2022, also issued by Red Rose Mahila Vikas Sansthan, certifying her experience from 01.03.2019 to 05.01.2022.

10. The Commission did not accept the second Experience Certificate dated 10.01.2022, as the same had not been uploaded along with the Experience Certificate dated 19.09.2017, relied upon by the original petitioner/applicant. At that stage, the writ petition was filed. It has been dismissed on the reasoning that the conditions prescribed in the Advertisement were not fulfilled.

11. Present proceedings have witnessed an inspired and interesting debate between the petitioner and the Commission, championed in equal measure by the two learned counsel, for the respective parties.

12. Sri Khare, learned counsel for the original petitioner/applicant would submit- there is absolutely no doubt with the Commission as to the existence of eligibility of the original petitioner/applicant. At no stage, either the first Experience Certificate or the second Experience Certificate were doubted. Citing inadvertent error in not uploading the second Experience Certificate, along with the first Experience Certificate dated 19.09.2017, he would further contend that the Advertisement did not prescribe that requirement. Due to inadvertence, the original petitioner did not make strict compliance of Clause 6 of the Advertisement dated 06.01.2022. For ready reference, that Clause reads as below:

"अनुभव-सेवा में अनुदेशक के पद पर सीधी भर्ती हेतु अभ्यर्थी, के पास परिशिष्टि (संलग्नक-

02) के स्तम्भ-04 में यथाविहित कार्य करने का अनुभव होना आवश्यक है। कोई औद्योगिक अनुभव होने की स्थिति में उद्योग के लिए सरकारी नियमों के अनुसार रजिस्ट्रीकृत होना और विधि मान्य टी.आई.एन./टी.ए.एन. संख्या होना आवश्यक है। संस्थाओं से अनुभव होने की स्थिति में, अभ्यर्थी के पास अंतिम परिणाम घोषित हो जाने और तकनीकी अर्हता की अंतिम परीक्षा उत्तीर्ण कर लेने के पश्चात् किसी ख्याति प्राप्त संस्था/महाविद्यालय से सुसंगत क्षेत्र में अध्यापक/प्रशिक्षक के रूप में कार्य करने का अनुभव आवश्यक है। अनुभव प्रमाण पत्र में कार्य की प्रकृति, कार्य की अवधि और अभ्यर्थी के लिए संदत वेतन अंतर्विष्ट होना आवश्यक है।"

(emphasis supplied)

13. However, that did not create any ineligibility in the original petitioner/applicant inasmuch as the second Experience Certificate dated 10.01.2022 was also of a date prior to the last date of submission of application under the original advertisement. That inadvertent error had been cured by the applicant, at the first opportunity granted by the Commission.

14. Relying on **Charles K. Skaria and others vs. Dr. C. Mathew and others, (1980) 2 SCC 752; Dolly Chhanda vs. Chairman, JEE, (2005) 9 SCC 779; FCI vs. Rimjhim, (2019) 5 SCC 793; Aarav Jain vs. Bihar Public Service Commission and others, (2022) 14 SCC 35** and another decision of a coordinate bench of this Court in **U.P. Public Service Commission vs. Renu and others, 2024 (1) HCC (All) 460**, it has been submitted- existence of eligibility and proof of eligibility are two different things. In absence of any doubt with the respondent Commission that the original petitioner/applicant possessed the necessary experience/eligibility, on the date of submission of her application, she may never be non-suited for reason of inadvertence. To the extent the petitioner was declared selected by the Commission after document verification, she has been arbitrarily denied appointment.

15. On the other hand, Sri Singhal, learned counsel for the Commission, would contest the position in law and on facts. He would submit- a clear line of distinction is to be maintained between cases where it may be permissible in law (under the terms of the original advertisement or the statutory rules or both), to adduce proof of eligibility at a later stage, that is, after submission of the application, and cases where either the rules or

the advertisement or both contain a negative covenant, negating the possibility of curing any deficiency in the application form.

16. First, to the extent the Experience Certificate was required to be filed along with the application and further, under the notice dated 03.02.2023, all documents including the Experience Certificate were required to be uploaded, no exception may be made to that prescription of law. Second, referring to the negative covenant contained in the notice dated 03.02.2023, clearly indicating that the right to be shortlisted would be lost if necessary documents were not uploaded and that no further opportunity would be granted for that purpose, the petitioner lost her right to be shortlisted and appointed, consequent to her provisional selection at the written examination.

17. Thus, reliance has been placed on **Divya v. Union of India & ors, (2024) 1 SCC 448**, wherein, after considering **Charles K. Skaria (supra)**, an exception has been carved out to the general principle laid down in **Charles K. Skaria (supra)**. Thus, in view of the negative covenant contained in the notice dated 03.02.2023, the original petitioner/applicant cannot be permitted a second opportunity to upload any other document or any further document, to claim or establish eligibility. Referring to **Renu (supra)**, it has been submitted, no other view has been taken by the coordinate bench. In any case, in view of the binding precedent laid down by the Supreme Court, no other view is permissible.

18. Having heard learned counsel for the parties and having perused the record, on facts there is no dispute. As to the law that may be applicable, in the first place, though the original Advertisement dated 06.01.2022 may not have contained a negative covenant disabling the original petitioner/appellant from later filing any other document, yet Clause 7 of the Notice dated 03.02.2023 clearly stipulated- if the applicants were to rely on more than one Experience Certificate, the same must be merged, and uploaded as one document.

19. Further, a negative covenant also exists in the Notice dated 03.02.2023. Therein, it is clearly stipulated- all documents must be uploaded by the last date, that is, midnight of 28.02.2023. By way of

consequence of non-compliance of that condition, it is further stipulated, any candidate who may not have complied with that condition would lose his or her right to be shortlisted, and no other or further opportunity would be provided.

20. Thus, as to the existence of a negative covenant, there is no doubt. As to its validity, we may only note, no challenge has been laid by the original petitioner/appellant to that negative covenant contained in the Notice dated 03.02.2023. Therefore, for the purposes of adjudication of this case, it has to be accepted that the Notice dated 03.02.2023 is part of the original Advertisement dated 06.01.2022, and both have to be read together, in absence of any contrary Rule shown to exist and in absence of it being shown that the negative covenant was unenforceable on its own. We proceed accordingly.

21. As a fact, it is admitted to the original petitioner/appellant, that she had not uploaded the second Experience Certificate dated 10.01.2022, either on its own or after merging it with the first Experience Certificate dated 19.09.2017, up to the cut-off date 28.02.2023.

22. As to the law relied upon by learned counsel for the original petitioner/appellant, in **Charles K. Skaria (*supra*)**, the dispute arose with respect to an Eligibility Certificate in the shape of a diploma. It was produced subsequent to the date of submission of the application form. The Supreme Court, speaking through the eloquence of Justice V.R. Krishna Iyer, clearly laid down a distinction between the existence of eligibility and proof of that eligibility. It was reasoned- eligibility must be earned before the last date of submission of the application form. However, proof of that eligibility could arise later, in varying facts. To that extent, it was recognized- otherwise deadlines make no sense.

23. To that extent, in **Charles K. Skaria (*supra*)**, the petitioners had not only appeared in the diploma examination but had also earned the same before the last date of submission of the application form, and that fact was brought to the knowledge of the Selection Committee before completion of the selection, the Supreme Court ruled in favour of the candidates that upon fulfillment of those three tests, there was no fault on

the part of the candidates, in adducing proof of that eligibility, later. In doing so, it was also recognized that many times candidates are not at fault. Therefore, they cannot be held accountable for the delays or consumption of time in issuance of certificates by the authorities or institutions where they completed their studies and earned their experiences.

24. In **Dolly Chhanda (supra)**, the Eligibility Certificate claimed by the candidate was issued by the Zila Sainik Board. Originally, in Column No.3 pertaining to "Disabled/killed in war/hostilities", the issuing authority mentioned the words "not eligible". That error on part of the issuing authority, was later corrected. Recognizing that to be beyond the control of the applicant and relying on **Charles K. Skaria (supra)**, the Supreme Court again found Dolly Chhanda eligible, on the date of her application.

25. In **FCI (supra)**, the Experience Certificate of one year's experience as translator from English to Hindi and vice versa was not produced, initially. Later, that certificate was produced and was acted upon. The Supreme Court reasoned that there was no condition in the Advertisement, requiring production of that Experience Certificate, along with the application.

26. Insofar as the coordinate bench decision of this Court in the case of **Renu (supra)** is concerned, the law in **Charles K. Skaria (supra)** as also **Dolly Chhanda (supra)** and the decision of the Supreme Court in **Divya (supra)** have been considered. Yet, it remains clear that in **Renu (supra)** the main issue was whether the petitioners (Renu and others) had been wrongly denied the benefit of experience as "Staff Nurse" for the reason that the Experience Certificate issued by the Chief Medical Officer described the experience gained as "Nurse Mentor". It was corrected later.

27. The decision of the Supreme Court in **Divya (supra)** has elaborately dealt with the precedential law laid down by the Supreme Court. After considering **Charles K. Skaria (supra)**, it has clearly laid down the law. In that case there existed a negative covenant. Recognizing that negative covenant, preventing the submission of the EWS certificate, subsequently,

the Supreme Court has reasoned, in the face of that negative covenant, there is no room (in law), to allow subsequent submission of an Eligibility Certificate. To the extent the negative covenant makes the provision (relating to submission of documents), mandatory, relief may never be granted by treating such clause to be directory. Paragraph 86 of **Divya (supra)** reads as below:

"78. The rules clearly mandate and as has been held in the case of Gaurav Singh (supra), any mistake/omission/ negligence cannot be condoned so as to extend the deadline for production of the documents. Neither the Office Memorandum nor the rules in question can be construed as directory. They prescribe clearly the eligibility criterion and the date before which the certificate should be possessed and the date before which the certificate should be submitted. They also prescribe the consequence for the omission. As the old ditty goes for a want of a horseshoe nail, kingdoms have been lost. Here we are dealing with crucial documents determining eligibility. The petitioners who did not possess the valid documentation determining their eligibility, before the prescribed cut-off date, cannot complain, if their claim for categorization as EWS was rejected. "

(emphasis supplied)

28. Thus, the distinction in law clearly exists on two counts. First, between cases where a negative covenant exists, with pre-stipulated consequences-making it mandatory to submit eligibility document/s, before the cut-off date, and other cases where, in absence of such negative covenant, it may remain open to candidates to submit eligibility documents subsequently, i.e., after the date of submission of the application form but certainly before completion of the selection. Second, another distinction exists between cases where the authority issuing an Eligibility Certificate may itself have committed some mistake while issuing the certificate and cases where there is no defect in the Eligibility Certificate, as issued. Where the defect or deficiency arises owing to the conduct of a third party or the authority issuing the eligibility documents, it appears to us that the Courts have ruled on the strength of equities and granted discretionary relief, whether in **Dolly Chhanda (supra)** or in **Renu (supra)**.

29. In the present set of facts- we clearly recognize the first point of distinction arises in law. It has to be applied by us. Since where a negative covenant exists, time extension or relaxation of time is impermissible. Therefore, the requirement to submit the Experience Certificate (to establish three years experience), after completing the course in Basic Cosmetology, by 28.02.2023, was mandatory. By not submitting the second Experience Certificate dated 10.01.2022, the original petitioner/appellant lost her right to be shortlisted/selected.

30. The submission of learned counsel for the original petitioner/appellant that the objection to the Experience Certificate has been raised belatedly, does not persuade us to pass any different order. First, the selection was provisional. Second, once eligibility does not exist, no room survives to exercise equitable jurisdiction. Third, here, the Writ Court has refused to exercise discretionary jurisdiction to interfere in writ jurisdiction. There is no error on principle, on that count, either.

31. Faced with that, no room or occasion to exercise discretionary jurisdiction exists. In face of law as discussed above, only where some deficiency may exist, in the Eligibility Certificate -occasioned by mistake of a third party issuing such certificate, room may exist to exercise discretionary jurisdiction, in the facts of each case, irrespective of the result on the first test of negative covenant. Leaving that issue open, we find that there is no error in the conclusion drawn by the learned Single Judge.

32. For the reasons noted above, the appeal fails and is, accordingly, **dismissed**. No order as to cost.

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

August 14, 2026

Prachi