



2025:AHC:173282

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Reserved – 23/09/2025

Delivered – 26/09/2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 65134 of 2005

Girish Kumar

.....Petitioner(s)

Versus

U.P.S.R.T.C. Thru G.M. and
others

.....Respondent(s)

Counsel for Petitioner(s) : Bidhan Chandra Rai,
P.N. Tripathi

Counsel for Respondent(s) : Mukesh Kumar Singh, P.N.
Tripathi, S.C., Shyam Kumar

Court No. - 5

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Heard Sri Bidhan Chandra Rai, learned counsel for petitioner and Sri S.K. Mishra, learned counsel for respondent-U.P.S.R.T.C.

2. Present writ petition was filed in the year 2005 and during pendency of present writ, multiple pleadings were exchanged such as Counter Affidavit dated 25.06.2017, Rejoinder Affidavit dated 30.10.2018, Supplementary Affidavits filed by petitioner dated 19.11.2018 and 15.03.2019, Supplementary Counter Affidavit dated 29.03.2019, Supplementary Rejoinder Affidavit

dated 19.04.2019, Supplementary Counter Affidavit dated 11.09.2019, Second Supplementary Counter Affidavit dated 26.02.2020, Compliance Affidavit dated 13.09.2025 and Compliance Affidavit dated 23.09.2025 as well as photocopy of original records are also placed on record, therefore, in order to have clarity of the facts of the present case, following details are necessary to refer in a format of dates and events and observations :-

Sl. No.	Dates	Events
1	28.10.2004	Respondent U.P.S.R.T.C. invites application for appointment on the posts of Driver vide advertisement of the date.
2		Petitioner has appeared in the test, interview as well as physical test and was declared selected along with other candidates
3	07.04.2005 (FIRST MEDICAL REPORT OF COLOUR BLINDNESS)	In pursuance of second medical examination (Eye test) of petitioner and other selected candidates, petitioner was found suffering with Partial Colour Blindness (PCB).
4	08.04.2005	Petitioner and other selected candidates who were found with PCB were directed to appear before Chief Medical Officer, Lucknow on 15.04.2005 for their retest.
5	(OBSERVATION OF THE COURT)	The petitioner has declared in the writ petition at para-5 that he has appeared before C.M.O., Lucknow on 15.04.2005 where his eye test was done and he was declared medically fit, however, no supportive document was filed by petitioner in the writ petition.
6	07.05.2005	Directorate of Transport, Lucknow has addressed a communication to all

		Regional Manager of U.P.S.R.T.C. whereby details of candidates who were found unsuitable in their respective medical tests in pursuance of test conducted by C.M.O., Lucknow was communicated. Admittedly, name of petitioner was not mentioned in said list.
7		In above communication, from Kanpur Region, only one name was mentioned, however, said communication does not indicate name of candidates who have failed to appear before C.M.O., Lucknow or during test they were found fit.
8	19.05.2005	It appears that vide said letter, name of petitioner was also approved for appointment. Copy of order of even date (though its letter number is 2850 is placed on record wherein petitioner's name was not referred as a selected candidate). At this stage, it would be evident that petitioner's appointment was made after second test conducted at Kanpur, though said report was not taken on record and report of test conducted subsequently at Lucknow was also not taken on record or considered.
9	24.05.2005	Assistant Regional Manager, U.P.S.R.T.C., Kanpur communicated the C.M.O. Kanpur to provide medical report of petitioner.
10	27.05.2005	In aforesaid circumstances and without taking note of outcome of medical tests wherein petitioner was directed to appear before C.M.O., Lucknow, an appointment letter was issued whereby petitioner was offered temporary appointment on probation for one year with a condition that in case of any

		misinformation, his service could be terminated.
11	31.05.2005	Regional Manager, Kanpur has communicated Assistant Regional Manager, UPSRTC, Kanpur that petitioner was found unfit in medical test (eye test) being colour blind and that in case petitioner is granted appointment, no further proceedings be undertaken.
12	02.06.2005	In pursuance of aforesaid order dated 31.05.2005, petitioner's services were terminated since he was suffering with Colour Blindness. (see test report dated 07.04.2005)
13	18.08.2005	Before filing of present writ, petitioner and others were again granted opportunity to appear before State Medical Board, Lucknow and 25.08.2005 was fixed and petitioner was sent a letter to this effect on 23.08.2005. There is a noting on said letter that address given by petitioner was not found, therefore, this notice could not be served upon petitioner.
14	03.10.2005	Petitioner has filed present writ petition.
15	05.10.2005	This Court has passed following interim order :- <i>"Sri Shamir Sharma, counsel for the respondents prays for and is granted a month's time to filed counter affidavit. The petitioner shall have two weeks thereafter to file the rejoinder affidavit. List thereafter.</i> <i>It is the case of the petitioner that in response to an advertisement dated 29.10.2004 for appointment to the post of Drivers in the U.P.</i>

		State Road Transport Corporation, the petitioner had applied. After being duly selected and after having undergone written test which included eye test, he was appointed as Driver on 27.5.2005, Thereafter, by the impugned order, the appointment of the petitioner has been cancelled on the ground that in the second medical test, the petitioner was found unfit as it was found that he was colour blind. The contention of counsel for the petitioner is that on 24.5.2005 when he had undergone medical eye test, report was submitted by the Eye Surgeon and Eye Specilist and he was found medically fit. It is submitted that once after the petitioner had been given appointment, certain rights have vested which could not have been taken away without following the principles of natural justice and without giving the opportunity of hearing to the petitioner which has not been done in the present case. Considering the aforesaid facts and circumstances of the case, it is directed that the operation of the impugned order dated 2.6.2005 shall remain stayed."
16	(OBSERVATION	Aforesaid interim order was passed on basis of averments made by learned counsel for petitioner that on 24.05.2005, petitioner had

	OF THE COURT)	undergone a medical eye test at Kanpur wherein he was found fit whereas annexure annexed with this writ petition was a communication from Assistant Regional Manager, UPSRTC, Kanpur to Chief Medical Officer, Kanpur to provide medical report whereas on 07.04.2005 (at Sl. No.3), petitioner was already declared suffering with colour blindness, however, same was not informed by the petitioner. No medical test was conducted on 24.05.2005 as declared by respondents.
17	28.10.2005	In pursuance of interim order of this Court, petitioner was reinstated in service, subject to outcome of present writ petition.
18	10.10.2006	It was directed that petitioner shall not be given duties of driver and he will be assigned other duties.
19	19.12.2006	Petitioner was informed that he may appear for fresh medical examination before C.M.O., Lucknow on 28.12.2006.
20	28.12.2006 (SECOND MEDICAL REPORT OF COLOUR BLINDNESS)	Petitioner has appeared on said date for examination and after his eye test, a report dated 28.12.2006 was submitted wherein he found suffering with colour blindness (Red Green Colour Defect) and he was declared unfit to undertake duties of driver.
21	(OBSERVATION OF THE COURT)	Aforesaid document was never produced by petitioner despite a fact that he has taken benefit of an interim order passed by this Court.
22	13.05.2016 and 23.05.2016 (THIRD	During pendency of this writ petition, a fresh eye test of petitioner was undertaken and again it was found that petitioner was suffering with colour vision defect.

	MEDICAL REPORT OF COLOUR BLINDNESS)	Said document was also never placed on record by petitioner.
23	20.09.2025 (FOURTH MEDICAL REPORT OF COLOUR BLINDNESS)	In pursuance of order of this Court, petitioner was again medically examined and again he was found suffering with colour vision defect in both eyes by a Medical report dated 20.09.2025.

3. In aforesaid circumstances, without any hesitation, it could be held that by medical reports dated 31.05.2005, 28.12.2006, 13.05.2016/23.05.2016 and 20.09.2025, petitioner was found unfit for appointment on the post of Driver being suffering with colour blindness, when he was appointed and he is still suffering from same ailment. All above referred reports are part of record of present writ petition.

4. Learned counsel for petitioner has argued at length that when petitioner was appointed on the post of Driver, he was medically examined and was found fit, however, aforesaid submission is absolutely contrary to above referred details and that petitioner was examined on four occasions i.e. in the year 2005, 2006, 2016 and 2025 and in every medical test, petitioner was found suffering with colour blindness.

5. In aforesaid circumstances, petitioner has not come up with clean hands before this Court and has put his case as he was found fit, even in second medical test conducted on 24.05.2005 (conducted on 07.04.2005), whereas as already referred at serial nos. 5, 9 and 11 of the Chart, the petitioner was found unfit being suffering with colour blindness, therefore, basis of interim order was incorrect.

6. Undisputedly, a person suffering with colour blindness cannot be appointed on the post of Driver, therefore, even petitioner was given appointment but it always up to subject to medical examination and within a very few months, when it was found that petitioner was suffering with colour blindness, the offer of appointment was cancelled and despite above legal impediment, petitioner on the basis of an interim order has served with respondents since 2005 till date i.e. for 20 years despite he was not eligible for appointment on the post of Driver.

7. The judgment passed by Supreme Court in **Ch. Joseph vs. Telangana State Road Transport Corporation and others, 2025 SCC Online SC 1592** would not be helpful to petitioner since Court has found that petitioner is not a bonafide litigant. Therefore, in aforesaid circumstances, Court is of the view that impugned order has no legal infirmity. Accordingly, impugned order is upheld.

8. Now question before this Court is that what would be the effect that petitioner has worked for 20 years under interim order without being eligible for appointment on post of Driver.

9. In normal circumstances, Court does not pass orders of recovery since admittedly, petitioner has served for last 20 years with respondents, however, in the given set of circumstances, since Court is of the view that petitioner has not come up with clean hands before this Court and during pendency of this writ petition, petitioner has not filed any adverse medical report, therefore, it is a case that not only petitioner has not come up before this Court with clean hands but has tried to mislead also, therefore, petitioner lacks bonafide.

10. Accordingly, this writ petition is **dismissed** with a cost of Rs. 50,000/- to be paid by petitioner in High Court Bar Association, Allahabad. Interim order is vacated.

11. The petitioner is also directed to return half of salary paid for period between 2005 and 2025. The respondents will determine the said amount within four weeks and will communicate to the petitioner. Thereafter, petitioner will pay said amount within 4 weeks.

12. In case of default, respondents may initiate process to recover said amount in accordance with law.

Dt./- September 26, 2025

N. Sinha

[SAURABH SHYAM SHAMSHERY, J.]