



2025:AHC:226556-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1224 of 2025

Dr Ghanshyam Das

.....Appellant(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Arpit Malviya, Awadhesh Kumar Malviya
Counsel for Respondent(s)	:	C.S.C.

Court No. - 3

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.**

1. Heard Sri A.K. Malviya, learned counsel for the original petitioner/appellant and Sri A.S. Rajpoot, learned Additional Chief Standing Counsel for the State respondents.

2. Present intra-court appeal arises from the order of the learned Single Judge dated 14.11.2025 in 'Dr. Ghanshyam Das Versus State of U.P. and 2 others' **2025:AHC:202313** whereby the learned Single Judge has disposed of the writ petition by means of following order:-

"2. Admittedly, petitioner is junior to respondent No. 3, who by the impugned order has been directed to act as officiating principal only on the ground that earlier, when the said petitioner was appointed to discharge the duties of officiating principal, the said respondent despite being senior has refused to take the responsibility. This would not be an absolute bar for said respondent to subsequently file an application that he can now discharge duties of the officiating principal. Admittedly he is senior to petitioner, therefore, petitioner has no absolute right to continue on the post of officiating principal.

3. Let the private respondent, admittedly senior to the petitioner may discharge duties of officiating principal. It is observed that the said respondent will consult the petitioner also in case there is any problem in administration, since he has better experience.

4. Under such facts of the case, writ petition is disposed of."

3. Submission is that an error on principle has crept in the order of learned Single Judge to the extent the right of the respondent no.3 has been read in preference over the right of the original petitioner to officiate as the Principal of the Institution in view of earlier refusal offered by the respondent no.3 to officiate as the Principal of the Institution, during continuance of the same vacancy. It is in the teeth of the law laid down by a coordinate bench in 'Sundarshan Kumar Versus State of U.P. & Ors.' **2006:AHC:11650-DB**. For ready reference the facts of that case as were found relevant for determination may be extracted from the said decision are quoted below:-

" Since no selected candidate was recommended, the post was offered to Ram Murti Garg (respondent no.6) who declined to accept the officiating appointment. The post was then offered to the next senior most teacher i.e. Murari Lal. He assumed the charge as Officiating Principal of the institution on 1.7.2003 and he continued to hold the said post as such till his retirement on 30.6.2006. During this period, no selection for regular appointment was made by the Board. The petitioner (appellant)- Sudershan Kumar who was the next senior most teacher working at the institution staked claim for being appointed as Officiating Principal of the institution w.e.f. 1.7.2006. The Authorised Controller who had taken charge from the Committee of Management of the institution vide order dated 29.6.2006 directed the outgoing Officiating Principal- Murari Lal to hand over the charge to the senior most Lecturer working at the institution. It may not be out of context that the senior most teacher at the institution was admittedly Ram Murti Garg (respondent no.6) who had declined to officiate as Principal."

4. The coordinate bench has referred to and followed the earlier decision in **Smt. Sudesh Kakkar Vs. Regional Inspectress of Girls Schools, Ist Region, Meerut and others, Special Appeal No.141 of 1993** and held as below:-

"The facts of the said case are identical and similar to the facts of the present case. In both the cases, the vacancy of the post of Principal was one and the same and had continued. Therefore, applying the reasoning of the above Division Bench, it can be safely held that if the same vacancy

continues and the senior most teacher working at the institution had declined the offer to officiate as the Principal, there is no justification to offer the charge as officiating Principal to the said senior most teacher again during the subsistence of the said same vacancy."

emphasis supplied

5. To the extent it does appear that in the present facts the same vacancy subsists, the recommendation offered by the learned Single Judge to the rights of respondent no.3, who may have earlier refused to officiate as the Principal, may not be sustainable.
6. Since pleadings were not complete, in the writ petition no useful purpose may be served in calling for the counter affidavit. The order of the learned Single Judge is set-aside. The matter is remitted to the board of learned Single Judge to re-hear the matter.
7. Issue notice to respondent no.3 fixing 10th February, 2026.
8. In addition to regular mode, the petitioner may serve the respondent no.3 through speed post. Steps may be taken by 05.01.2026.
9. The respondents may file counter affidavit within four weeks. Two weeks thereafter to the petitioner to file rejoinder affidavit.
10. Let a copy of this order be placed on the order sheet of the writ petition.
11. Accordingly, the appeal is **disposed of**.

(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)

December 16, 2025

S.P.