



2026:AHC:91358-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 660 of 2025

State Of Up And Another

.....Appellant(s)

Versus

Ram Kewal And 8 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Abhishek Srivastava, S.C.
Counsel for Respondent(s)	:	Sankalp Narain

Court No. - 3

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

(Civil Misc. Delay Condonation Application No. 01 of 2025)

1. Heard learned Standing Counsel for the State, Shri G.K. Singh, learned Senior Advocate assisted by Shri Rishabh Narayan Singh, learned counsel for the original petitioner/ respondent.
2. Cause shown is sufficient.
3. Delay in filing the present intra-Court appeal is condoned.
4. Delay Condonation Application is allowed.

(Order on Appeal)

5. The present intra-Court appeal has arisen against the order of the learned single judge dated 22.05.2025 in Ram Kewal and 8 others vs. State of U.P. and 2 others, 2025:AHC:86311.
6. Submission is, the order of learned single judge suffers from an error on principle, inasmuch as there exist no document evidencing creation of post in 1986 and further there is no evidence on record with respect to publication of advertisement dated 17.01.1996 and conduct of selection on the post of Assistant Teacher at Bargahpur Lehra, in accordance with law. To the extent, the entire selection is described to be contrary to the law, it has been submitted that no relief has been granted by the writ court.
7. Further submission has been advanced that the finding recorded in the order dated 21.06.2019 passed by the District Basic Education Officer,

Mahrajganj, looking at the correct facts, the writ court has erred in granting the discretionary relief to the original petitioner-respondent.

8. On the other side, learned Senior Counsel for the original petitioner-respondent would submit, the issues being raised by the District Basic Education Officer, were raised in the earlier writ petition no. 52280 of 2000 which was disposed of on 11.12.2000. That has attained finality.

9. Reliance has been placed on the order dated 20.11.2018 in Writ-A No. 74452 of 2002, Krishna Kumar Tripathi and others vs. District Jila Basic Siksha Adhikari and others, 2018:AHC:185478. Thus, it has been stressed the issue being now raised had been raised in that petition as well. It was negated. No challenge was raised thereto. Therefore, it does not survive for any further consideration if the sanctioned post existed or if there was any invalidity in the advertisement or the selection process.

10. Having heard learned counsel for the parties and perused the record.

11. The case has a checkered history. First, by order dated 24.10.2000 the salary payment of the original petitioners were stopped on a doubt about the genuineness/ existence of the order creating posts. At that stage, the petitioners had approached the writ Court by means of Civil Misc. Writ Petition No.52280 of 2000. Vide order dated 11.12.2000 the said writ petition was disposed of with the following directions :

"This petition is finally disposed of with a direction to the District Basic Shiksha Adhikari, Mahrajganj that he may hold an enquiry in pursuance of the order dated 24.10.2000 passed by the Additional Director of Education (Basic), VIIth Region, Gorakhpur after giving an opportunity of hearing to the petitioners and the Committee of Management of the institution. He shall hand over a copy of the enquiry report to the petitioners and thereafter he can stop payment of salary to the petitioner. He shall pass a speaking order, in accordance with law after the enquiry and he shall serve a copy of the order to the petitioners. The enquiry shall be concluded by the District Basic Education Officer within a period of three months from the date a certified copy of this order is produced before him. "

12. While giving effect to that order, vide his order dated 5.11.2001, the Basic Shiksha Adhikari, reached a conclusion that the order dated 27.09.1990 (wrongly described as 27.08.1998) was bogus.

13. Petitioners filed the second set of writ petitions being Writ A No.7445 of 2002 (by Krishna Kumar Tripathi & Others), Writ A No.34571 of 2002 (by Ram Kewal & Another) and Writ A No.39167 of 2001 (by Shailesh Prasad Mishra & Others). Those writ petitions came to be decided primarily by order dated 20.11.2018 passed in Writ A No.7445 of 2002, Krishna Kumar

Tripathi & Others v. Zila Basic Shiksha Adhikari & Others. Relevant to the present it was observed as below :

"4. It is in pursuance of the aforesaid direction that the impugned order came to be passed. By that order the Basic Shiksha Adhikari has found that the approval order dated 27.09.1990 (wrongly mentioned as 27.08.1998) was a forged document. Other than that no other reason has been mentioned.

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7. In the supplementary rejoinder affidavit filed to the aforesaid supplementary counter affidavit it has been disclosed that with respect to another institution similar controversy had arisen on account of the same two pages of the dispatch register being missing. In that case Writ-A No.6581 of 2015 Chakravarti Prasad & 2 Ors. Vs. State of U.P. & 5 Ors decided on 03.12.2015 had been disposed of requiring the District Basic Education Officer, Maharajganj to take a final decision in the matter. It is further stated that in compliance of the aforesaid direction the Basic Education Officer, Maharajganj has by his order dated 07.04.2016 decided the controversy in favour of that petitioner after taking note of the missing pages of the dispatch register.

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9. Learned Additional Advocate General on the other hand submits that in the first place the order dated 27.09.1990 was a forged document and, therefore, no rights would arise there from. Then it has been submitted, no proper or valid exercise had been carried out by the Committee of Management while making the appointments of the petitioners in the year 1996. It has thus been submitted, even otherwise the appointment of the petitioners were wholly illegal. Third, it has been submitted relying on Section 9(2) of the U.P. Junior High School Act, 1972 even if any approval may have been granted in the year 1986, in view of the fact that the petitioners were first appointed ten years thereafter in 1996 their appointment would remain illegal since the approval granted on 24.05.1986 lapsed on 23.08.1986, by operation of law.

.....

11. Having considered the arguments so advanced by the learned counsel for the petitioners that in the first place the petitioners having given up their faith in the order dated 27.09.1990, the objection of the State passed on that order plainly does not arise. As to the second objection of lapse of advertisement, it is too late in the day for the State to raise that controversy inasmuch as the appointments are claimed to have been made in the year 1996 and State did not raise any objection upto the stage of filing of the earlier writ petition which was disposed of by an order dated 11.12.2000. In the first place the controversy had arisen only as to whether there existed sanctioned post. Upon a complaint made to the Additional Director of Education the salary payment of the petitioners had been stopped. Therefore, the very nature of the objection was precise as to lack of

sanctioned post and not of any other infirmity. Then, even in the proceedings conducted in pursuance of the earlier order of this Court dated 11.12.2000, no objection whatsoever arose as to lack of advertisement. That being the case, merely because the petitioner had not accepted the order dated 05.11.2001 and had chosen to challenge the same in the present proceedings, the State cannot be allowed to take new stand only to defeat the relief being sought by the petitioners.

.....

13. As to the third aspect pertaining to existence of sanctioned posts, it is an admitted case between the parties that the Basic Shiksha Adhikari has yet not recorded a finding to that effect with reference to the order dated 24.05.1986. The facts with regard to issuance of the order dated 24.05.1986 would remain a matter to be considered by the Basic Shiksha Adhikari keeping in mind all relevant facts including the fact that he had already conducted a similar inquiry in another case pursuant to the case of Chakravarti Prasad & 2 Ors pursuant to the directions issued in Writ-A No.6581 of 2015 decided on 03.12.2015. However, that is not to say, that the claim so made must necessarily be accepted but that the decision may be made upon due application of mind taking all relevant facts and circumstances of the case into account.

14. Accordingly, the impugned order dated 05.11.2001 is set aside and the matter is remitted to the Basic Shiksha Adhikari, Maharajganj to pass a proper order in accordance with law with the following directions:-

(i) Petitioners shall file a fresh representation before the District Basic Shiksha Adhikari, Maharajganj within a period of three weeks from today alongwith the certified copy of this order.

(ii) Upon receipt of such representation the District Basic Shiksha Adhikari, Maharajganj may proceed to consider the same.

(iii) In the event he is inclined to dismiss the representation, prior notice to the petitioners as also the Committee of Management of the institution, be issued within further period of two months from such representation being filed, indicating the reasons on which such representation is proposed to be rejected.

(iv) Upon receipt of notice, if any, from the District Basic Shiksha Adhikari, Maharajganj one opportunity be granted to the petitioner to submit their final reply within a period of two weeks from the date of receipt of the reply.

(v) Upon receipt of such reply, if any, the District Basic Shiksha Adhikari, Maharajganj shall proceed to decide the representation made by the petitioners by a reasoned and speaking order as expeditiously as possible in accordance with law within five months from date of filing of the representation."

(emphasis supplied)

14. On specific query, it has been informed that the said order has attained finality. No challenge was ever raised by the State to that order.

15. Thus, it appears that in the first place a limited dispute survived for consideration by the District Basic Shiksha Adhikari- upon decision of the second set of writ petitions vide orders dated 20.11.2018 passed by this Court. That dispute was confined to creation/ sanction of posts. Even in that regard, the exercise of jurisdiction was limited inasmuch as the District Basic Shiksha Adhikari was required to consider to examine the claim of the petitioner in light of the order passed by the said authority dated 07.04.2016 passed by the District Basic Shiksha Adhikari in the case of Chakrawarti Prasad And 2 Others. Examination of that order clearly reveals that occasioned by the fact that two pages of relevant Dispatch Register (recording dispatch against entry numbers 693 to 779), lost, the District Basic Shiksha Adhikari recorded a finding in favour of Chakrawarti Prasad and others- recognizing as genuine, the order sanctioning their posts. It is also undenied that the dispatch number of the order dated 24.05.1986 claimed by the original petitioners/appellants, in this case, was 749. Thus, it cannot be denied that the facts found by the District Basic Shiksha Adhikari in case of Chakrawarti Prasad And 2 Others, had a material bearing and that order was relevant to the case of the present original petitioners/respondents, as well.

16. Without recording any reason and in absence of any other or further evidence having come to the hands of District Basic Shiksha Adhikari, a conflicted conclusion has been drawn, in the identical facts of the present original petitioner/respondents. Thus, for reason of absence of two pages of the Dispatch Register, and without any other evidence, the order dated 24.05.1986 has been found to be not genuine.

17. Though, the order of the District Basic Shiksha Adhikari passed in case of Chakrawarti Prasad And 2 Others may not lay down any precedent in law, at the same time, as a fact finding authority, it may not have taken another view of the same facts and evidence without any distinguishing feature or evidence existing on record. If such conflicted orders passed by the *quasi* judicial authorities are sustained, it may itself amount to arbitrary action on the part of the State authorities.

18. In the first place, all actions of the State authorities especially, with respect to *quasi* judicial functioning may remain informed with reason. Also, once a reason stand is taken and it attains finality, consistency of that reasoning may be allowed to be maintained- to bring more transparency and credibility in their functioning. Unless facts or evidence show otherwise,

conflicted conclusions may not be allowed to stand, as may give rise to allegations to pick and choose.

19. Here, suffice to note that it is not the case of the State respondents that the order passed in case of Chakrawarti Prasad And 2 Others has been modified or altered or revoked. Seen in that context, the conflicted order passed in the present case, may not allowed to stand.

20. As to the further alternative objection raised by the State that the post may not have survived beyond three months from the date of its creation, that issue may not be open to be raised in view of the order of limited remand made by the writ Court in the second set of the petitions filed by the original petitioner, which was decided by the order dated 20.11.2018 (extracted above).

21. In any case, we have perused the post sanction order. It reads as below:-

"निम्नांकित विवरण के अनुसार अस्थाई/स्थायी असहायिक/सहायिक पूर्व माध्यमिक विद्यालयों में उनके नाम के सम्मुख अंकित शिक्षण/शिक्षणेत्तर कर्मचारियों के पद/पदों के सृजन की स्वीकृति पद सृजन के आदेश को तिथि या नियमानुसार नियुक्ति तिथि या पदोन्नति की तिथि जो भी बाद का हो प्रदान की जाती है।"

(emphasis supplied)

22. Once the doubt being expressed about the genuineness of the aforesaid order had been laid to rest, the objection raised that the order had lapsed after three months by virtue of Rule 9(2) of the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978 may not survive for further consideration, at this belated stage. While the State may be permitted to raise that issue in appropriate facts where such question may arise at the relevant time *i.e.* in the first challenge proceedings, here that issue may not be raised belatedly as originally, financial approval (to the appointment of the original petitioners/appellants) was granted, salary payments were made for almost four years. Upon being interrupted, those were resumed under the orders of the Court. Almost three decades passed. At that stage, the order of limited remand was made to consider the similarity of facts of Chakrawarti Prasad And 2 Others, on the issue of genuineness of the order dated 24.05.1986 creating/sanctioning the post.

23. To the extent, issue has remained festering a wound suffered for almost three decades, it is expected that the consequential orders and payments would be made within a period of three months, failing which, due amount shall carry interest @ 6% from the date of same being becoming due till the date of actual payment.

24. The appeal lacks merit and is accordingly **dismissed** in the peculiar facts

noticed above. As to the legal issue based on the strength of section 9(2) of the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, that issue is left open to be dealt with in appropriate case.

April 23, 2026

Bhanu/ Shiv/

#Vikram/-

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