ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.02.2012

BEFORE
THE HON'BLE RAJIV SHARMA, J.
THE HON'BLE S.C. CHAURASIA, J.

Writ Petition No. 232 of 2012 (S/B)

Satish Kumar ...Petitioner
Versus
U.P. Jal Vidyut Nigam Limited and others ...Opposite parties

Constitution of India, Article 226
Voluntary Retirement-petitioner working as Asst. Engineer out of sheer frustration-on 14/15.12.2011 send notice seeking voluntary retirement w.e.f. 29.02.2012-in meantime 16.01.2012 changed his mind applied for withdrawal of said notice-rejected on ground without approval it can not be withdrawn-held-illegal-till 29.02.2012 petitioner was in service and during this period can very well withdraw earlier application dated 14/15.12.2011-approval not required.

Held: Para 17

Considering the well settled position of law, we are of the view that though there is discretion with the respondent not to permit the employee to withdraw his notice of voluntary retirement as provided under the Regulation but that discretion needs to be exercised only if there are cogent and valid grounds available with the Department. In absence of any valid and cogent grounds available and without assigning any reasons worth the name, the respondent-Corporation, in the present case, could not have refused permission to the petitioner to withdraw his notice of voluntary retirement.

Case law discussed:
[(1989) 9 SCC 559]; [(1998) 5 SCC 461]; [(1997) 4 SCC 280]

(Delivered by Hon'ble Rajiv Sharma, J.)

1. Heard Sri S.K. Kalia, Senior Advocate, assisted by Sri Vidhu Bushan Kalia, learned Counsel for the petitioner and Sri Nirad Kumar, learned Counsel for the opposite parties.

2. As the pleadings have already been exchanged between the parties, with the consent of learned counsel for the parties, the writ petition is being disposed of at the admission stage itself.

3. Through the instant writ petition under Article 226 of the Constitution of India, the petitioner has questioned the validity and correctness of the order dated 2nd February, 2012 passed by the Chairman-cum-Managing Director, U.P. Jal Vidyut Nigam Limited, contained in Annexure No.1 to the writ petition, retiring the petitioner from service w.e.f. 29.2.2012 on the basis of his application for voluntary retirement.

4. In short, facts of the case are that the petitioner was initially appointed on the post of Assistant Engineer in U.P. State Electricity Board. On account of his satisfactory services, he was promoted in due course as Executive Engineer in January, 2001 while working on a deputation post in U.P. Jal Vidyut Nigam Limited. Vide order dated 11.5.2010, the services of the petitioner were merged in U.P. Jal Vidyut Nigam Limited [hereinafter referred to as ***"Nigam"***]. While working at Hydel Generation Circle, Pipari, District Sonebhadra as In-charge Superintending Engineer, the petitioner moved an application dated 14/15.11.2011, praying therein that he may be voluntarily retired w.e.f. 29.2.2012. On 16.1.2012, the petitioner changed his mind and withdrew

his earlier application dated 14/15.11.2011, seeking voluntary retirement.

5. Counsel for the petitioner has vehemently argued that the Chairman-cum-Managing Director, without considering the application dated 16.1.2012, moved by the petitioner withdrawing his earlier application for voluntary retirement, passed the impugned order dated 2.2.2012, retiring the petitioner w.e.f. 29.2.2012.

6. Inviting our attention towards the U.P. State Electricity Board (Employees Retirement) Regulation, 1975 [hereinafter referred to as **"Regulation"**], Counsel for the petitioner submits that the said Regulation would *mutatis mutandis* apply to the employees of Nigam. As per provisions of Regulation, 1975, as amended in the year 1993, an employee can opt voluntary retirement and as such, the petitioner had submitted an application for voluntary retirement from a future date specified in the notice, but before that date, the petitioner reconsidered his decision and withdrew his request for voluntary retirement, which is legally permissible. The opposite party No.1, while passing the impugned order, has not applied its independent mind as the impugned order does not speak even a single word about the letter dated 16.1.2012 by which the petitioner withdrew the voluntary retirement notice.

7. Lastly, it has been submitted that the notice for voluntary retirement was given out of sheer frustration and mental disturbances but when good sense and mental peace prevailed, the petitioner withdrew the voluntary retirement notice before the date of retirement but the same was not considered and remained pending.

8. Refuting the submissions made by Counsel for the petitioner, Counsel for the Corporation submitted that the request dated 16.1.2012 of the petitioner withdrawing his voluntary retirement dated 14/15.11.2011 was considered simultaneously and the competent/appointing authority, vide Office Memorandum No. 88 dated 2.2.2012, while accepting his voluntary retirement notice granted voluntary retirement w.e.f. 29.2.2012 in accordance with U.P. State Electricity Board (Employees' Retirement) Regulations, 1975 read with U.P. State Electricity Board (Employees, Retirement Second Amendment) Regulations, 1993.

9. While placing reliance upon Rule 2 (c) (ii) of the U.P. State Electricity Board (Employees, Retirement Second Amendments) Regulations, 1993, learned Counsel has submitted that the competent/appointing authority after considering the merits and demerits of the case accepted the voluntary retirement of the petitioner in accordance with the Rule 2 (c) (ii) of the Regulation, 1993. He submits that the competent authority is fully empowered to accept or reject the withdrawal of voluntary retirement of any employee and as such, the voluntary retirement order was issued on 2.2.2012 but the same was made effective on 29.2.2012 (afternoon) as per notice of the petitioner.

10. Voluntary retirement is an option given to a public servant to retire from service on the fulfillment terms and conditions. The three categories rule relating to voluntary retirement are:-

(a) where voluntary retirement automatically comes into force on expiry of notice period.

(b) where retirement comes into force unless an order is passed during the notice period withholding permission to retirement.

(c) Voluntary retirement does not come into force unless permission to this effect is granted by the competent authority.

11. Since the retirement becomes effective from the date mentioned in the notice, an employee is entitled to withdraw the notice before that date. The right of employee to withdraw his request for premature retirement cannot be defeated arbitrarily as in modern era, a certain amount of flexibility is required if such flexibility does not jeopardize government or administration. Therefore, the authorities should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow a government servant to withdraw his letter of retirement.

12. Having considered the submissions advanced by the Counsel for the parties and perusing the relevant regulations, we are of the view that a government servant is at liberty, and entitled independently to withdraw his notice of voluntary retirement. The Corporation is absolutely silent so far as the reason for not permitting the petitioner to withdraw his notice for voluntary retirement is concerned. In the counter affidavit the respondents have made a feign attempt to improve their case by stating that the application for withdrawal of notice was considered but in the impugned order there is not a single word to this effect and as such we are unable to accept the assertion of the respondents' Counsel. To refuse the request of the petitioner, respondent had to have strong reasons and valid grounds. It is not disputed that though it was the discretion of the authorities whether to accept such request or not, such discretion cannot be exercised arbitrarily, as has been held by the Supreme Court in catena of decisions. The germane question was whether there were any grounds to decline the request of the petitioner to withdraw the notice of voluntary retirement. Regulation also specifies that, if the officer wants to withdraw the notice of voluntary retirement, it would be permissible only with the approval of the competent authority.

13. Thus, we are of the view that the stand which has been taken by the respondent-Corporation is not tenable in law. Petitioner had a right to withdraw his notice of voluntary retirement before the actual effective date comes into force. This issue stands squarely covered by the Hon'ble Supreme Court's decision in the matter of *Balram Gupta Vs. Union of India and anr.* reported in AIR 1987 Supreme Court page 2354. In Balram Gupta's case, the appellant-employee offered to retire voluntarily from service w.e.f. 31st March, 1981 and accordingly sent a letter within the notice period. However, he changed his mind and sent a letter on 31.01.1981 seeking to withdraw his notice of voluntary retirement, but the request was disallowed by the concerned authority on the ground that the withdrawal of notice could only be with the specific approval of the authority. The Apex Court held that the dissolution of the contract of employment would be brought about only on the date indicated i.e. 31.03.1981 and upto that date the appellant continued as Government employee. He is at liberty to withdraw his notice of voluntary retirement and for this purpose, prior approval is not required.

14. The decision in **J.N. Srivastava versus Union of India** [(1998) 9 SCC 559]

is also to the same effect. This Court held as follows:-

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta versus Union of India."

15. In **Nand Keshwar Prasad versus Indian Farmers Fertilizers Cooperative Ltd. & Ors.** [(1998) 5 SCC 461], in paragraph 11, the Apex Court reiterated that it is open to the employee concerned to withdraw letter before the date indicated in the notice of voluntary retirement.

16. In **Power Finance Corporation Ltd. versus Pramod Kumar Bhatia** [(1997) 4 SCC 280] the Apex Court went a step further and observed thus:-

"It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."

17. Considering the well settled position of law, we are of the view that though there is discretion with the respondent not to permit the employee to withdraw his notice of voluntary retirement as provided under the Regulation but that discretion needs to be exercised only if there are cogent and valid grounds available with the Department. In absence of any valid and cogent grounds available and without assigning any reasons worth the name, the respondent-Corporation, in the present case, could not have refused permission to the petitioner to withdraw his notice of voluntary retirement.

18. For the reasons aforesaid, the writ petition is allowed, the impugned order dated 2.2.2012 (Annexure-1) passed by the Chairman-Cum-Managing Director is hereby quashed. The petitioner shall be deemed to be in service and shall be allowed to function on the post in question. However, it will be open for the authorities to consider the application for withdrawal of notice sent by the petitioner in light of the observations made hereinabove, if they so desire.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.02.2012

BEFORE
THE HON'BLE DEVENDRA KUMAR ARORA,J.

Service Single No. - 378 of 2012

Mohd. Azam Khan ...Petitioner
Versus
State of U.P.Through Secy. Deptt. of Irrigation Lko. & others ...Respondents

Counsel for the Petitioner:
Sri Abdul Moin
Sri Abhinav N.Trivedi

Counsel for the Respondents:
C.S.C.

Irrigation Department Service Rules 1954-Rule 8(ii)-readwith U.P. Public Services (Removal Age Limit for Promotion) Rules 1975 Rule-2-Promotion on Post of Seench Parvekshak-juniors promoted, but claim of Petitioner rejected as rossed 45 years-while by letters dated 27.03.2010 Superintendent Engineer directed the

candidate should not be more than 45 years-contrary to rules -provisions of Rule 2 of Rule 75 having overriding effect-petitioner-held eligible for promotion-order impugned Quashed-with consequential directions.

Held : Para 13 and 14

On examining the controversy and legal issue in the present writ petition, this Court is of the considered view that in view of the provisions of Uttar Pradesh Public Services (Removal of Age-Limit for Promotion) Rules, 1975, no person, who is otherwise eligible for promotion under State Government, can be deprived from promotion merely on account of any upper age limit, as by means of these rules and all other rules and order imposing any upper age limit for promotion to any service or post have been rescinded.

In the result, the order dated 27.03.2010, passed by the opposite party no.3, contained in Annexure-5 to the petition and the order dated 02.12.2011 passed by the opposite party no.4, contained in Annexure-1 to the writ petition, are hereby quashed. The opposite party no.4 is hereby directed to examine the claim of the petitioner in the light of observations made herein above, within a period of two months from the date of receipt of a certified copy of this order.

Case law discussed:
2010 (1) LBESR, 665

(Delivered by Hon'ble D.K.Arora,J.)

1. By means of present writ petition, the petitioner is seeking a writ of certiorari for quashing the order dated 02.12.2011, passed by the opposite party no.4, contained in Annexure-1 to the writ petition, rejecting the claim of the petitioner for promotion on the post of Seench Paryavekshak on the ground that the petitioner is above 45 years of age on first January, of the selection year as per the provisions of Rule 8 (ii) of Irrigation Department Amin's Service Rules, 1954 (here-in-after referred to as the Rules, 1954), which provides that no person shall be appointed to the service under the provisions of Rule 5 (b) unless he be less than 45 years of age on the first day of January next following year in which the selection is made. The petitioner is also challenging the directions of the Superintending Engineer (opposite party no.3) addressed to the Executive Engineer, Faizabad Division, Sharda Canal, Faizabad for taking steps for promotion on the post of Seench Paryavekshak as per the provisions of Rule 8 (ii) of the Rules, 1954.

2. The facts in brief of the present case are that the petitioner was appointed on the post of Seench Pal in Irrigation department on 12.09.1985. The cadre of Seench Pal is a divisional cadre and the seniority of Seench Pal is determined at divisional level. The Engineer-in-Chief, Irrigation Department by means of letter dated 16.09.1996 directed all the Executive Engineers to make promotion on the post of Seench Paryavekshak/ Amin according to their seniority. Accordingly, the seniority list in Faizabad Canal Division was drawn on 11.08.2006, in which petitioner's name was placed at serial no.19. The promotion on the post of Seench Paryavekshak is to be made in pursuance to Rules, 1954. Rule 5 provides two source of recruitment, namely, (i) directly in accordance with the procedure laid down in part-V of these Rules, (ii) by promotion from amongst permanent Patrols and Tubewell Operators and by transfer of permanent Munshis recruited from Patrols in accordance with the procedure laid down in part-VI of these

Rules. Rules 8 (ii) of the Rules, 1954 prescribed the age and provides that no person shall be appointed to the service under the provisions of Rule 5 (b) unless he be less than 45 years of age on the first day of January next following year in which the selection is made.

3. The submission of learned counsel for the petitioner is that rejection of the claim of the petitioner is contrary to Rule as cited by the opposite party no.4 in the order dated 02.12.2011, which provides that the age of a person shall not below the age of 45 years i.e. should not be less than 45 years of age and, as such, his case has wrongly been rejected for promotion by the opposite party no.4 and on the other hand, S/Sri Gaya Prasad, Ajit Pratap, Dharam Raj and Dinesh Kumar, juniors to the petitioner have been promoted by means of order dated 16.08.2010, whose names find place at serial nos. 20, 21, 26 and 33 in the seniority list dated 11.08.2006. The petitioner feeling aggrieved against his non-consideration for promotion, approached the opposite party no.4 by means of representation dated 03.04.2010 claiming his promotion strictly in accordance with the seniority list dated 11.08.2006. It is also submitted that on enquiry, the petitioner came to know that the opposite party no.4 has not promoted the petitioner on the ground that he is above 45 years of age. On further enquiry, it was revealed that the Superintending Engineer issued a letter dated 27.03.2010 addressed to the Executive Engineer of Faizabad Division indicating that for the purpose of following Rule 8 (ii) of the Rules, 1954, no person should be promoted on the post of Seench Paryavekshak, who is above 45 years of age.

4. Further submission of learned counsel for the petitioner is that prima-facie the letter dated 27.03.2010 is against the Rules, 1954 and more particularly Rule 8 (ii), which provides that the age of person should not be less than 45 years, whereas in the letter dated 27.03.2010, it has been indicated that the person to be promoted as Seench Paryavekshak should not be more than 45 years of age. It is also submitted that in view of the provisions of U.P. Public Service (Removal of Age Limit for Promotion) Rules, 1975 (here-in-after referred to as the Rules, 1975), no person can be precluded from being promoted on account of merely being of upper age limit and the said rules have overriding effect over all the rules prescribing the age limit for the purposes of promotion.

5. It is further submitted that the issue has been considered by this Court in the case of ***Om Prakash and others vs. State of U.P. and others reported in 2010 (1) LBESR, 665,*** in which it has been held that no person who is eligible for promotion in service under the State Government can be precluded from being promoted merely on account of upper age limit. The petitioner feeling aggrieved against in action of the opposite parties approached this Court by means of Writ Petition No.6557 (S/S) of 2010, Mohd. Azam Khan vs. State of U.P. & others and the said writ petition was disposed of by means of judgment and order dated 06.09.2011 with direction to the opposite party no.4 to take decision on the petitioner's representation in light of the judgment of this Court passed in Om Prakash and others vs. State of U.P. & others (supra) within three months after receipt of a certified copy of this order. The opposite party no.4 rejected the

representation of the petitioner by means of order dated 02.12.2011 indicating therein that against the judgment of Om Prakash's case (supra) a special appeal was preferred, in which no interim relief was granted and the promotions were made subject to decision of appeal and the same is still pending. The petitioner feeling aggrieved against the rejection of his claim by means of order dated 02.12.2011 compelled to approach this Court once again by means of present writ petition.

6. I have heard learned counsel for the parties and examine the issue.

7. As the question involved in the present petition is purely legal in nature, therefore, with the consent of learned counsel for the parties, this Court proceeds to consider and decide the writ petition at the admission stage itself.

8. Admittedly, the Irrigation Department Amin's Service Rules, 1954 governs the service conditions and procedure for appointment on the post of Seench Paryavekshak. The Rule 5 (b) of Rules, 1954 provides as under:-

"(a) By direct recruitment in accordance with the procedure laid down in part-V of these Rules.

(b) By promotion from amongst permanent Patrols, Tubewell Operators and by transfer of permanent Munshis recruited from patrols in accordance with the procedure laid down in part-VI of these Rules."

Rule 8 (ii) of Rules, 1954 prescribes the age and since the present controversy is involved with respect to the promotion. The Rule 8 (ii) is relevant for determining the present controversy. Rule 8 (ii) of Rules, 1954 provides as under:-

"8 (ii) no person shall be appointed to the service under the provisions of Rule 5 (b) unless he be less than 45 years of age on the first day of January next following year in which the selection is made."

9. From plain reading of Rule 8 (ii), it is evident that a person claiming promotion on the post of Seench Paryavekshak should be less than 45 years of age on the first day of January next following year in which selection is made. Meaning thereby, the candidate should not be above 45 years of age. In this background, the claim of the petitioner has been rejected being above 45 years of age.

10. Learned counsel for the petitioner stress that the State Government in exercise of powers under proviso to Article 309 of the Constitution, has framed the Uttar Pradesh Public Services (Removal of Age Limit for Promotion) Rules, 1975, which provides that no such person shall be precluded from being promoted on account of merely of any upper age limit and these rules also have overriding effect, as such, the petitioner's claim for promotion cannot be ignored. The U.P. Public Service (Removal of Age Limit for Promotion) Rules, 1975 reads as under:-

*"1. **Short Title and commencement.** (i) These rules may be called the Uttar Pradesh Public Services (Removal of Age-Limit for Promotion) Rules, 1975.*

ii) They shall come into force at once.

2. ***Upper age limit not be preclude promotion-*** *No person otherwise eligible for promotion in substantive, temporary or officiating vacancies for any service is post under the State Government shall be precluded from being so promoted on account merely of any upper age limit.*

3. ***Rescission-*** *The Uttar Pradesh Public Services (Age Limit for Promotion) (Amendment) Rules 1970, and all other Rules and orders imposing any upper age limit for promotion to any service or post referred to in Rule 2 are hereby rescinded."*

11. This issue came for consideration before this Court in Writ Petition No.5593 (S/S) of 2004 and while examining the rules of 1954 Rules, the governing cadre of Seench Paryavekshak, examined the applicability of U.P. Public Services (Removal of Age-Limit for Promotion) Rules, 1975 framed under Article 309 of the Constitution and held that these rules have overriding effect.

12. The similar controversy was considered by this Court in the case of Om Prakash and others vs. State of U.P. & other (supra). The learned Judge while examining the issue framed the question *"whether the petitioners have rightly been denied promotion on the ground that they were over age, being above 45 years of age."* and while examining the Uttar Pradesh Public Services (Removal of Age-Limit for Promotion) Rules, 1975 this Court pleased to observed in paras-14 and 15 as under:-

"14. Despite of full opportunity given to the respondents' counsel they could not show that 1975 Rules are not applicable. There is no doubt that Rule 8 (2) of Rules, 1954 provides upper age limit for promotion to the post of Sinch Paryavekshak as 45 years but the said rule has been rescinded vide Rule 3 of 1975 Rules and by virtue of Rule 2 of 1975 Rules no person who is eligible for promotion in service under the State Government be precluded from being so promoted merely on account of any upper age limit. It confers a right upon the Government Servant to claim promotion on a higher post despite of crossing the upper age limit as provided in Service Rules framed before enforcement of 1975 Rules. If one is otherwise suitable and eligible, he cannot be deprived of his promotion only on the ground of upper age limit since the effect of 1975 Rules would be to rescind the rules or part thereof pertaining to upper age limit as is evident from Rule 3 of 1975 Rules. The effect of rescission is as if sub-rule (2) of Rule 8 of 1954 Rules cease to exist on and after 27.09.1975 since 1975 Rules were published and came into force on the said date. The nature of the provisions as referred under Rule 3 of 1975 Rules stood rescinded and could not have been acted upon after the enforcement of 1975 Rules in any manner.

15. Though the Counsel for the petitioner also referred to the interim order dated 27.09.2004 passed by this Hon'ble Court in Writ Petition No.5593 (S/S) of 2004 and further submits that it appears that by notification dated 16.12.1990 even sub-rule (2) of Rule 8 of 1954 Rules already rescinded as long back as in 1960 and its existence thereafter could stood not be shown by

the respondents before the Court when interim order was passed but since the notification of 1960 has not been placed before this Court for its perusal, I am not taking note of the said notification for the purpose of deciding these tow matters. In my view the selection being subsequent to 1975 Rules and the effect of 1975 Rules is also same i.e. rescission of Rule 8 (2) to the extent it provides for upper age limit in promotion, this Court is deciding the matter accordingly taking into consideration only 1975 rules."

13. On examining the controversy and legal issue in the present writ petition, this Court is of the considered view that in view of the provisions of Uttar Pradesh Public Services (Removal of Age-Limit for Promotion) Rules, 1975, no person, who is otherwise eligible for promotion under State Government, can be deprived from promotion merely on account of any upper age limit, as by means of these rules and all other rules and order imposing any upper age limit for promotion to any service or post have been rescinded.

14. In the result, the order dated 27.03.2010, passed by the opposite party no.3, contained in Annexure-5 to the petition and the order dated 02.12.2011 passed by the opposite party no.4, contained in Annexure-1 to the writ petition, are hereby quashed. The opposite party no.4 is hereby directed to examine the claim of the petitioner in the light of observations made herein above, within a period of two months from the date of receipt of a certified copy of this order.

15. Accordingly, the writ petition is allowed. No order as to costs.

APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.02.2012

BEFORE
THE HON'BLE AMAR SARAN,J.
THE HON'BLE RAMESH SINHA,J.

Government Appeal No. - 445 of 2011

State of U.P. ...Petitioner
Versus
Ram Vriksha and others ...Respondents

Counsel for the Appellants:
Sri Desh Ratan Chaudhary (G.A.)

Counsel for the Respondents:
.....

Criminal Appeal-against acquittal-offence under Section 498-A, 304-B, 201 I.P.C.-acquittal on ground-none of prosecution witnesses-named as inquest witnesses-crimination by police as unknown dead body-accused produced Dr. Ram Sakal Singh who disposed the deceased was suffering from cholera-DW 2 performed last rites in presence of informant as well as accused persons and other relatives-marriage Factum not proved by producing marriage card-consequentially allegation of dowry demand disbelieved-such findings can not be said to be perverse or unreasonable-Application for lese to appeal rejected.

Held: Para 6

Considering the totality of the circumstances of the case, we are satisfied that the grounds for acquittal mentioned by the trial Court cannot be said to be perverse or unreasonable. It is well settled law that evenwhere two views are possible, the view taken by the trial Court should not normally be interfered with if the view taken is not highly improbable or unreasonable. Hence no interference is called for in the

judgment and order of acquittal passed by the trial Court.

(Delivered by Hon'ble Amar Saran,J.)

1. Heard learned AGA and perused the trial Court judgment and record.

2. This application for leave to appeal has been preferred against the judgment and order dated 4.10.2010, passed by the Additional Sessions Judge/Fast Track Court No. 2, Jaunpur acquitting the accused respondents under Sections 498A, 304-B, 201 I.P.C. and Dowry Prohibition Act.

3. In this case, the FIR was registered on the basis of an application filed by the Soolan, father of the deceased on 3.3.2008 under Section 156(3) Cr.P.C. In this case, some allegations of demand of dowry of Rs.20,000/-, Hero Honda Motorcycle, Gold Ring etc. have been levelled against accused respondents. It is alleged that the accused respondents, namely, Ramvriksh, Jaybaran, and Firturam came to the house of the informant on 17.6.2007 for taking away Kiran (deceased) with them, they also demanded for dowry. On the next day i.e. on 18.6.2007, the informant got information that his daughter had been murdered. Thereafter, the body of the deceased was recovered in a sack, which was claimed to have been identified by the claimant to be of his daughter but as no case was registered, hence an application under Section 156(3) Cr.P.C. was given. The informant Soolan was not examined in Court as he had become mad. Only PW1-Vimla and PW-2 Ramvachan, mother and brother of the deceased, have been examined as witnesses of fact.

4. The trial Court has acquitted the accused respondents on the ground that even there was no material to indicate that the so called dead body which was recovered by the police, regarding which an inquest was conducted on 20.6.2007 was that of the deceased. The reasons for this finding was that the inquest was conducted on an unknown body and post-mortem was done on an unknown dead body. The deceased was cremated by the police and not by the informant and other family members. The limbs of the dead body were missing hence the claim of the witnesses that there was a tatoo on her arm facilitating identification appears to be incorrect. The witnesses Vimla and Ramvachan etc. were not shown as witnesses of the inquest. The accused respondents have led evidence by producing DW1 Dr. Ram Shakal Singh, who gave evidence that the deceased was suffering from cholera as a result of which she had died. DW2 Malik Chaudhary who performed the last rites states that the informant and other relations of the deceased were present during the last rites. DW3-Chhotey Lal has deposed that marriage had taken place 10 years earlier, therefore, the trial Court recorded a finding that there was no proof that the death of Kiran had taken place within seven years of the marriage. Also no marriage card had been produced for proving this fact. Even the allegation of dowry demand has been disbelieved by the trial Court as the informant was not produced. There were contradictions in the statements of the witnesses in this regard.

5. Learned AGA on the other hand argued that the dead body of the deceased was hurriedly disposed of after the murder. There was sufficient evidence

against the accused respondents and the trial Court has misread the evidence and acquitted the accused respondents.

6. Considering the totality of the circumstances of the case, we are satisfied that the grounds for acquittal mentioned by the trial Court cannot be said to be perverse or unreasonable. It is well settled law that evenwhere two views are possible, the view taken by the trial Court should not normally be interfered with if the view taken is not highly improbable or unreasonable. Hence no interference is called for in the judgment and order of acquittal passed by the trial Court.

7. Accordingly, the Application for Leave to Appeal is rejected and the Govt. Appeal is also dismissed.

APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 14.02.2012

BEFORE
THE HON'BLE VINOD PRASAD, J.

Criminal Appeal No. 957 of 2009

Manjeet ...Appellant
Versus
State of U.P. ...Respondent

Counsel for the Appellant:
Sri Apul Misra
Sri P.N. Misra
Sri Rakesh Kumar Singh

Counsel for the Respondents:
A.G.A.

Criminal Appeal-conviction of 10 years R.I. With fine of Rs. 10000/-for offence under Section 307 IPC-victim and Appellant both were friends-Appellant while returning from Ram Lila offered Buffalo race-on refusal by victim-verbal triadic altercation took place-incident occurred without any pre-mediation and pre-plan-prosecution unable to point out any circumstances otherwise-in view of law laid down by Apex Court-conviction 10 years R.I. With fine of Rs. 10000/- reduced to 5 years with 40000/-with compensation of Rs. 25000/-payable to victim.

Held: Para 26

Further if the evidence of the doctor is looked into, it is clear that the shot was fired from quite a distance as the dispersal of the pellets is 38 cm x 28 cm. Injured was advised for X-ray but the prosecution has not brought forth the X-ray to know the exact nature of injury sustained by the deceased. It is categorical deposition of the doctor (P.W. 5) that he had not prepared any supplementary report in respect of the victim. He had further deposed that he had not extracted any pellets from the body of the injured. In such a view, looking to the entire facts and circumstances and also looking to the fact that the appellant had no criminal history nor he had got any criminal proclivity and the crime was committed in a heat of passion and loss of self control and the period of a decade gone by during intervening period, I consider it appropriate to reduce the sentence of imprisonment of the appellant from 10 years RI to 5 years RI but at the same time enhance the fine imposed upon him from Rs. 10,000/- to Rs. 40,000/- and award a compensation of Rs. 25,000/- to the victim P.W. 3.

Case law discussed:
AIR 2002 SC 485; AIR 1997 SC 361; AIR 2001 SC 1091

(Delivered by Hon'ble Vinod Prasad, J.)

1. Challenge in this appeal by the sole appellant Manjeet is to his conviction under section 307 IPC and imposed sentence of 10 years R.I. with

Rs.10,000/- fine and in case of default in payment of fine to undergo further one year simple imprisonment recorded by Additional Sessions Judge/F.T.C. court no.21, Bulandshahar vide impugned judgement and order dated 11.2.09 recorded in S.T. No.695 of 2001, State Vs. Manjeet, relating to Police Station Aurangabad, district Bulandshahar.

2. Shorn of eschewable detailes, prosecution allegations against the appellant as are revealed from written FIR, Ext. Ka-1, lodged by the informant Rajendra Singh, (P.W. 1), were that inraged by rejection of an his offer to do buffalo cart racing, that the appellant shot at Devendra (P.W. 3) S/o informant from his DBBL gun on 5.10.2000 at 1 A.M. in night at the crossing of his village Gangahari, P.S. Aurangabad, District Bulandshahr causing gun shot injuries on his chest and neck. Informant Rajendra Singh (P.W. 1) F/o injured dictated incident FIR, Ext. Ka-1, to Prakash Singh, who scribed it, and thereafter (P.W. 1) lodged it at P.S. Augangabad, same day at 2.10 A.M., measuring a distance of seven kilometre. S.I. Indra Pal Singh registered the F.I.R. as crime no.278 of 2000, under Section 307 IPC vide Ext. Ka-2 and prepared the G.D. entry Ext. Ka-3.

3. Investigation into the crime was commenced by S.I. Mohammad Kamar, who had interrogated the witnesses and prepared the site plan Ext Ka-7. After his transfer, further investigation was conducted by S.I. Mahendra Prasad Pandey (P.W.7) from 28.10.2000 onwards, who concluding it had charge-sheeted the appellant vide Ext. Ka-8.

4. Injured was examined by Dr. S. Garg, E.M.O., District Hospital, Saharanpur at 3.15 a.m. same day, who was brought to him by Constable Virendra Singh of P.S. Aurangabad. Following injuries were detected by the doctor on the torso vide injured medical examination report Ext. Ka-5:-

"AMI :- multiple gunshot wound of entry in area 38 cm. x 23 cm. on front right shoulder and upper part of right chest and middle part of left chest and front neck and front chin size measuring 0.4 cm x 0.4 cm, 2.0 cm x 1.5 cm surgical emphysema was present, no blackening tattooing present, blood was oozing from the injury. In the estimation of the doctor injury was grievous in nature and duration was fresh."

5. Charge-sheeting of the appellant resulted in his summoning and finding his case triable by Session's Court, it was committed to the Session's Court for trial, where it was registered as S.T. No. 695 of 2001, State Vs. Manjeet.

6. Additional Session's Judge/F.T.C., court no.21, Bulandshahar charged the appellant for offence under section 307 I.P.C., which charge was denied by the appellant under section 227/228 Cr.P.C. and hence to establish it's case prosecution, during the course of the trial, examined in all seven witnesses out of whom informant Rajendra Singh (P.W.1), Jai Pal Singh (P.W.2), injured victim Devendra (P.W.3) were the fact witnesses. Formal witnesses included S.I. Indra Pal Singh (P.W.4), doctor S. Garg (P.W.5), Bhuwan Ram (P.W.6) and second I.O. S.I. M.P. Pandey (P.W.7).

7. In his statement under Section 313 Cr.P.C., appellant pleaded false implication and denied incriminating circumstances put to him occurring in prosecution evidences.

8. Trial Judge vide impugned judgement of conviction and sentence came to the conclusion that the prosecution had established it's case beyond any shadow of doubt and therefore convicted the appellant for the framed charge under section 307 IPC and sentenced him to ten years R.I. with Rs.10,000/- fine and in default thereof to undergo additional one year simple imprisonment. Consequently, appellant has challenged his conviction and sentence in the instant appeal.

9. In the preceding unfolded background facts, I have heard Sri Raghuraj Kishore, advocate in support of the appeal and learned AGA in opposition.

10. Sri Raghurja Kishore, learned counsel for the appellant did not challenge conviction of the appellant for the charge under section 307 IPC as he fairly conceded that so far as conviction of the appellant is concerned, the same is infallible and cannot be castigated, as there was no reason for the injured to cook up a false story against him, as both of them were friends and prior to the shooting incident, there was no enmity in between them. He further stated that there was no reason for informant (P.W.1) to lodge a false FIR and depose mendacious version without any motive and previous enmity. He further submitted that the medical report and the depositions of doctor (P.W.5) indicate that the injury sustained by the injured was by gun fire and the same was grievous in nature on the vital part of the body and therefore, testimony of the doctor fully corroborates prosecution version. Learned counsel, therefore, did not harp much on the factual aspects and fairly conceded that conviction of the appellant under section 307 I.P.C. is unassailable. Learned counsel however vehemently addressed the Court only on the question of sentence and submitted that the incident had occurred more than a decade ago and appellant had undergone more than three years of incarceration. Adding remissions he had served round about three and a quarter years of imprisonment. The sentence awarded to the appellant is not commensurate with his guilt and therefore, learned counsel submitted that the sentence of the appellant be reduced to the period of imprisonment already undergone with some fine clamped on him and in support of the said contention, he has raised many submissions and pointed out various mitigating circumstances, which are mentioned in succeeding paras.

11. Learned AGA conversely submitted that the sentence should not be reduced, as it is a case of causing of grievous injury by gun fire, which conviction stands unchallenged.

12. I have considered the entire facts and circumstances of the case, from penelogical point of view, as to whether sentence of the appellant should be reduced or not?

13. In above respect, some of the mitigating circumstances, which were argued by learned counsel for the appellant and be taken note of are firstly,

that the incident occurred in the dead hour of night at 1.00 p.m. at a very petty brawl of engaging in a buffalo cart race. On four or five buffalo carts informant and appellant had gone to enjoy the *Ramleela* along with other co-villagers. While returning from there, appellant wanted to have a buffalo cart race as his buffalo cart was moving ahead of rest of them. Appellant's offer was refused and there was verbal dual and tiradic altercation between the appellant and the injured. Incident is said to have occurred because of the aforesaid reason. The wordily exchange had started a kilometre prior from the place of the incident and it seems that it continued till the crossing, place of the incident, as the depositions of the injured is that as soon as the appellant alighted from the buffalo bullock-cart, he accosted the victim (P.W. 3) to stand there and he will teach him a lesson. Thereafter, it is alleged, that the appellant brought the DBBL gun of his brother and fired a single shot. Thus the incident occurred without any pre-meditation and pre-plan.

14. Secondly that the incident occurred in the heat of passion, loosing self control and unable to bear hot exchange of verbal tiradic dual.

15. Thirdly that a single shot was fired by the appellant, causing injuries to the victim. There was no repetition of shot. In such a view, it is very difficult to conclude positively that appellant really intended to cause death of the injured. No doubt appellant had caused grievous injuries to the victim on the vital part of his body but that fact alone is not sufficient to infer requisite mens rea to impose such severe punishment on him. Punishment has to be commensurate looking to the mens rea, which the accused harbingered at the time of the commission of the crime.

16. Fourth mitigating factor is that the appellant had no criminal history. Victim and appellant both were friends and prosecution had not been able to point out any circumstance, which may aggravate the offence, which was committed after loosing self control.

17. Fifth circumstance is that the appellant has an ailing father and small children to foster. It was mentioned in the impugned judgment that he was the sole bread earner of his family.

18. Sixth modifying circumstance is that the present was his first crime without any criminal background and proclivity.

19. Next mitigating circumstance is that appellant during the course of trial had not misused the liberty of bail granted to him nor had endeavoured to tamper with the prosecution evidences and to be an impediment in the entire trial procedure.

20. Another ground is that appellant had not repeated the shots. At the time of the incident, he was 32 years of age and as of now, he must be 42 years. Incident had occurred a decade ago and during intervening period bickering must have subsided.

21. It was appellant's first crime and he had not associated himself with any kind of offence subsequently also.

22. In above view, 10 years imprisonment imposed by the trial Judge,

therefore, does not seems to be commensurate with appellant's guilt. It seems that the appellant had a remorse for the incident, which occurred at the heat of the moment, without any premeditation and intention in the dead hour of the night.

23. Penology is a science. Sentencing requires analyzing facts and circumstances, which are peculiar to each case. Lesser sentence will give an impression of no justice being done to the victim or his family but, conversely also, a disproportionate severe sentence, not commensurate with the guilt of the accused, will also not act as a deterrent but will garner antagonistic feelings pervaded by feeling of vengeance. As exemplars reliance can be placed on the views by the Apex Court in the following decisions:- **Habbalappa Dundappa Katti and others Vs. State of Karnataka: AIR 2002 SC 485,** in paragraph 5, the Apex Court has observed as under:-

"The occurrence took place as early as in 1986. The appellants were acquitted by the trial Court vide order dated 11th September, 1987 and after their conviction for offences under Sections 326/149, 147 and 148, IPC by the High Court on 9th June, 1992, they were directed to be released on bail vide our order dated 28th August, 1992. In our opinion keeping all these factors in view it would serve the ends of justice if the appellants are not now sent back to jail, as indeed nothing has been brought to our notice to show that after their release on bail they have acted in any manner prejudicial to law and order. We, therefore, reduce the substantive sentences of imprisonment of the appellants to the period already undergone by them for the various offences for which they have been convicted but we sentence each one of them to pay fine in addition to the sentence of imprisonment already undergone."

24. In **Union of India and others Vs. Anand Singh Bisht: AIR 1997 SC 361,** in paragraphs 7, 8 and 9, it has been held as follows:-

"Mr. Amrish Kumar, the learned Counsel for the respondent has submitted that although within the scope and ambit of this appeal, the prayer for compensation does not arise but in order to give complete justice in the case, this Court can give direction for giving suitable compensation to the respondent in exercise of the power under Article 142 of the Constitution of India. We have taken into consideration the justification of such claim for compensation. But in the facts and circumstances of the case, it appears to us that the respondent had made an application for taking note of the mitigating circumstances in the matter of awarding suitable punishment against him by indicating the period of detention as under trial accused before Court Martial. He was convicted under Section 307 of the Indian Penal Code and was awarded the sentence of imprisonment for only one year persumably by taking into consideration, the mitigating circumstances. We may indicate here that for an offence under Section 307 of the Indian Penal Code, imprisonment up to a period of ten years can be given. Hence, we are not inclined to give any direction for monetary compensation for long detention as under trial accused.

Mr. Amrish has lastly submitted that the respondent had a brilliant service record as a member of the Border Security Force. He had participated in Indo-China War in 1962 and also in the Indo-Pakistan War in 1971. Mr. Kumar has submitted that the respondent did not cause injury to the cadet Raj Kishore Singh intentionally, but as it has come out in the evidence that both the said Raj Kishore Singh and the respondent Anand Singh Bisht were intoxicated at the time of the incident and not being in his full senses, the respondent had fired one shot from his rifle injuring the leg of the said cadet Raj Kishore Singh with whom he was quarreling for a long time. We have looked into the records relating to the Court Martial proceedings in this case. It appears from the evidence given by the prosecution witnesses in the Court Martial that the respondent Anand Singh Bisht was otherwise quite friendly with Raj Kishore. They on the date of incident started quarreling. Shri Anand shouted to the cadet Raj Kishore Singh to move away from him and he had also given warning that otherwise Raj would be shot. It has also come out in evidence that Raj Kishore Singh did not move away and even when the rifle was raised with finger on the trigger Raj Kishore rather pressed the barrel and then he was shot at the leg. The officer-in-charge of the Camp where the incident had taken place, in his preliminary investigating report sent to the Commandant of the Unit indicated that the Cadet Raj Kishore Singh and the respondent were in best of terms and most likely he did not intend to shot at him but because of the altercation he had fired one shot at the sour of the moment when he must have lost his temper.

Considering the aforesaid mitigating facts and also considering the fact that Sri Anand had suffered long detention as under trial accused and has also suffered imprisonment at the Behrampur Central Jail in execution of the sentence for about six months, we feel that justice will be met if his sentence is reduced to the period already undergone. We order accordingly."

25. Another exemplar decision can be had from paragraph 9 of **R. Seetharam and others Vs. State of Karnataka: AIR 2001 SC 1091,** wherein it has been noted by the Apex Court as a mitigating ground to reduce sentence:-

"However, it has been pointed out to us that Appellant No. 3 has already expired, Appellants 2 and 4 have already served out their sentence. Reliance has been placed upon medical Certificate from St. Martha's Hospital, Bangalore, which shows that Appellant No. 1 is suffering from Prolapsed Disc and has a degenerated and fragmented fibro-cartilagenous material which has resulted in 60% disability in both lower limbs. Appellant No. 1 is also a Diabetic and suffering from acute Bronchitis attacks. The Certificate show that he is unable to attend to his normal physiological activities. We have also seen that his wife has deserted him and he has two small children with an aged mother."

26. Further if the evidence of the doctor is looked into, it is clear that the shot was fired from quite a distance as the dispersal of the pellets is 38 cm x 28 cm. Injured was advised for X-ray but the prosecution has not brought forth the

X-ray to know the exact nature of injury sustained by the deceased. It is categorical deposition of the doctor (P.W. 5) that he had not prepared any supplementary report in respect of the victim. He had further deposed that he had not extracted any pellets from the body of the injured. In such a view, looking to the entire facts and circumstances and also looking to the fact that the appellant had no criminal history nor he had got any criminal proclivity and the crime was committed in a heat of passion and loss of self control and the period of a decade gone by during intervening period, I consider it appropriate to reduce the sentence of imprisonment of the appellant from 10 years RI to 5 years RI but at the same time enhance the fine imposed upon him from Rs. 10,000/- to Rs. 40,000/- and award a compensation of Rs. 25,000/- to the victim P.W. 3.

27. In view of above, the appeal succeed and is **allowed** in part. While conviction of the appellant under Section 307 I.P.C. is hereby maintained, his sentence is altered from 10 years RI and Rs. 10,000/- fine to 5 years RI with Rs. 40,000/- fine with compensation of Rs. 25,000/- to the victim P.W. 3 Devendra Kumar out of it. In default of depositing the fine, appellant shall undergo further one year simple imprisonment. Appellant is stated to be in jail, he shall remain in jail to serve out remaining part of his sentence, which has been awarded to him by this judgment.

28. Let a copy of the judgment be transmitted to the trial Judge for its intimation.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.01.2012

BEFORE
THE HON'BLE ASHOK BHUSHAN,J.
THE HON'BLE MRS. SUNITA AGARWAL,J.

Civil Misc. Writ Petition No. 1043 of 2012

Naval Singh and another ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri M.D. Singh 'Shekhar'
Sri R.D.Tiwari

Counsel for the Respondents:
Sri Ramendra Pratap Singh
C.S.C.

Constitution of India, Article 226- Provisions of Naveen Okhla Audyogik Vikas Pradhikaran Awasiya bhukhand Yojna 2011-Clause (5)-being discriminated-be declared ultra vires-provisions of allotment of flats to one claimant-where recorded co-tenure holders are more than one-allotment to any one shall be made by draw of lots-can not be in any manner arbitrary on discriminatory-petition dismissed.

Held: Para 9

The petitioners were also permitted to participate in draw, they can not complaint of any arbitrariness or discrimination. Petitioners had equal chance for allotment in draw and mere fact that draw went in favour of respondent no..4 cannot be said that petitioner s have been deprived of their right. Thus the submission of the petitioner that clause -4 of the scheme is arbitrary cannot be accepted.

(Delivered by Hon'ble Ashok Bhushan,J.)

1. Heard Shri M.D. Singh 'Shekhar' learned Senior Advocate assisted by Shri R.D. Tiwari, learned counsel for the petitioners, Shri Ramendra Pratap Singh, learned counsel for the respondents no. 2 and 3 and learned Standing Counsel.

By means of this petition, petitioners have prayed for following relief:-

"(i) Issue a writ, order or direction in the nature of mandamus directing the opposite parties no. 1 to 3 not allot the residential plot under the Scheme-2011(Naveen Okhla Audhoygik Vikas Pradhikaran Awasiya Bhukhand Yojna-2011(01) in favour of the opposite party no. 4 without creating the right and interest of the petitioners in the said residential plot;

(ii) Issue a writ, order or direction in the nature of mandamus directing the opposite parties nos. 1 to 3 to act in accordance with law and not to deprive the petitioners by allotting the residential plot under the Scheme-2011(Naveen Okhla Audhyogik Vikas Pradhikaran Awasiya Bhukhand Yojna-2011 (01)) in favour of the opposite party no.4 by depriving the petitioners from their right and interest in the said residential plot; and

(iii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper according to the facts and circumstances of the case."

2. Petitioners' case is that petitioners as well as respondent no.4 are sons of the late Dhanni Singh, who was original tenure holder of certain plots mentioned in paragraph-2 of the writ petition. The land of late Dhanni Singh was acquired by the respondents. The compensation was paid to the tenure holder in the year 1996. The Noida Authority had floated a scheme, namely, Naveen Okhla Audhyogik Vikas Pradhikaran Awasiya Bhukhand Yojna-2011 (01) for the allotment of the residential plots to the villagers, whose land had been acquired by the Noida Authority. Petitioners' case is that under the scheme - 2011(01) in case of death of original tenure holder one of the legal heirs of the agriculturist can be allotted residential plot. Under the Scheme-2011(01) if there are many co-tenure holders the land would be allotted to one of the co-tenure holder and the selection of the said tenure holder would be made through process of draw among the co-tenure holders. The draw was drawn in which respondent no.4 was allotted residential plot.

3. Learned counsel for the petitioners submits that there is no dispute with regard to the scheme in which only one of the legal heirs of the agriculturist whose land has been acquired should be allotted residential plot. He further submits that petitioners have no objection that under the Scheme-2011(01) if the plot is allotted to one of the legal heir but in the said allotment the rights and interest of other heirs should also be created, but as per Scheme-2011 (01) once the plot has been allotted to one of the legal heir then automatically the other legal heirs of original tenure holder would be deprived of any right and interest in the said residential plot. He submits that non-allotment of the residential plot to the petitioners violates the provision of Article 14 of the Constitution.

4. Shri Ramendra Pratap Singh, learned counsel appearing for respondents no. 2 and 3, refuting the submissions of learned counsel for the petitioners, contends

that Scheme-2011(01) contemplated allotment of residential plot to one of the legal heirs and in case more than one heir moved application for allotment of residential plot the name is to be decided by draw among the co-tenure holders. He further submits that a Division Bench in ***Writ petition no.55845 of 2009, Mr. Puran Singh & Another v. State of U.P. and another*** decided on 19.12.2011 has held that in the residential Scheme floated by the respondents only one legal heir is entitled for allotment of residential plot.

5. We have considered the submissions made by the learned counsel for the parties and perused the record.

6. Petitioners and respondent no.4 both are sons of late Dhanni Singh who was original tenure holder. Under the Scheme 2011 (01) Clause 4 and 5 are as below:-

"4. 1382 फसली में दर्ज खातेदार के मृतक हो जाने की स्थिति में तथा उसकी भूमि अर्जित होने के समय यदि उसके एक से अधिक उत्तराधिकारी राजस्व अभिलेखो में अंकित थे तो उनमें से केवल एक उत्तराधिकारी ही भूखण्ड प्राप्त करने हेतु अर्ह होंगा।

5. ग्रामीण श्रेणी के खाते के समस्त खातेदार जिन्हे पूर्व में भूखण्ड/भवन आवंटन नही हुआ है, आवेदन हेतु अर्ह होंगे। एक खाते के सापेक्ष एक से अधिक सहखातेदारों द्वारा आवेदन करने की स्थिति में प्राधिकरण स्तर पर सह खातेदारों के बीच ड्रा के माध्यम से भूखण्ड आवंटन हेतु एक खातेदार का चयन किया जायेगा।"

7. The tenure holder, whose land has been acquired, is entitled for compensation. In case the original tenure holder died before receiving the compensation all the legal heirs are entitled for compensation. The allotment of residential plot under the scheme floated by the Noida Authority gives an additional benefit to the agriculturist, whose land has been acquired, and in case of death of original tenure holder one of the legal heirs of the agriculturist can be allotted residential plot. Under the Scheme-2011(01) if there are many co-tenure holders the land would be allotted to one of the co-tenure holder and the selection of the said tenure holder would be made through process of draw among the co-tenure holders. The Scheme floated by the Noida Authority to allot the land to one of the tenure holder only came for consideration in case of ***Mr. Puran Singh and another*** (Supra) and received approval by the Division Bench, which held that :-

"The question for consideration is as to whether the allotment of residential plot is permissible to more than one heir of deceased tenure holder and the restriction is only confined to a particular scheme or allotment made in any earlier scheme is also a disqualification to apply in any subsequent scheme. The relevant clauses of 2004(1) Scheme, which have already been quoted above, clearly provided that in case where original tenure holder whose land had been acquired, has expired only one heir of such person shall be eligible to apply and seek allotment of a residential plot in this scheme. The sub-clauses (v) and (ix) of Clause (D) of 2004(1) Scheme, as quoted above, clearly contemplated that only one of the legal heirs of deceased tenure holder is entitled for allotment. There cannot be any dispute that if a tenure holder whose land has been acquired, has already been allotted a plot then his heirs shall have no entitlement to apply under the villager category. The question is that if a tenure holder has more than one heir, whether they can apply in each successive scheme with rider that only one of the heirs will be allotted plot under one scheme. The purpose and object for allotting a residential plot is to benefit the tenure holder whose land has been acquired. Land of large number of

tenure holders have been acquired under various land acquisition proceedings. There is a clear provision that if there are more than one co-tenure holder against one Khata or plot only one of the co-tenure holder shall be eligible for allotment. The purpose is to benefit more and more tenure holders whose land has been acquired. In case interpretation is made that each heir shall be entitled to apply in different schemes disregarding the factum of allotment to any of heirs earlier, there shall be reservation for a category i.e. category of heirs of the deceased tenure holder who shall be permanent body claiming benefit in all subsequent schemes. Further the fact that one tenure holder has more than one heir, the factum that a tenure holder has one heir or several heirs shall have effect on the schemes floated by the Authority. Taking example that a tenure holder has ten heirs, his each heir shall have chance in ten future schemes even if in each scheme only one is entitled for allotment affecting the chances of other tenure holders whose land has been acquired, in future scheme. The interpretation which is put by the NOIDA and the policy which is being pursued from 2004 onwards is in consonance with the equity and cannot be said to be arbitrary or unreasonable."

8. The submission of the learned counsel for the petitioners is that clause-4 of the scheme which provides for allotment of only one of the legal heirs is arbitrary and denies right of other heirs. It is submitted that in event allotment is made in favour of one of the heir of agriculturist rights in said allotted plots be given to all the heirs. The submission of the learned counsel for the petitioners is that non-giving of rights to other heirs violates Article 14 of the Constitution.

9. A perusal of the clause-4 of the scheme indicates that in case there are more than one heirs recoded in revenue records of deceased tenure holder only one of the heirs of the tenure holder shall be entitled for allotment. Clause -5 further provides that all the co-tenure holders shall be entitled to make application and in event more than one co-tenure holders have made application selection of only one co-tenure holder shall be made by the draw drawn by the authorities. The above clause clearly gives right to all the co-tenure holder/heirs to apply for allotment. In the present case petitioners as well as respondent no.4 have applied for allotment under the Scheme-2011. In a draw every applicant who participated in the draw has equal chance of success. The petitioners were also permitted to participate in draw, they can not complaint of any arbitrariness or discrimination. Petitioners had equal chance for allotment in draw and mere fact that draw went in favour of respondent no..4 cannot be said that petitioner s have been deprived of their right. Thus the submission of the petitioner that clause -4 of the scheme is arbitrary cannot be accepted.

10. Learned counsel for the petitioners lastly contended that selection by a draw may be permissible amongst the strangers who are not related to each other but selection by draw amongst the co-tenure holders who have equal rights is not permissible. The draw of lot for allotment of residential plot is an accepted mode for allotment adopted by different local authorities including the respondent authorities. The same policy and procedure is pursued by the respondent authorities in making allotment of residential plots amongst co-tenure holders, no foundation has been laid in the petition as to why

selection of one of legal heirs of deceased by draw of lots is impermissible.

11. We do not find any infirmity in the policy and scheme which is uniformly applied by the authorities in selecting one of the co-tenure holders or one of the legal heirs of the deceased for allotment of residential plots.

12. None of the submission raised by the learned counsel for the petitioners has any substance. Petitioner is not entitled for any relief in writ petition.

13. The petition is accordingly dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.01.2012

BEFORE
THE HON'BLE AMAR SARAN,J
THE HON'BLE RAMESH SINHA,J

Criminal Misc. Writ(P.I.L) Petition No. 1124 of 2011

Syed Arman ...**Petitioner**

Versus

State of U.P. ...**Respondent**

Counsel for the Petitioner:
.....

Counsel for the Respondent:
Sri Vimlendu Tripathi (A.G.A.)

Constitution of India-Art. 226 readwith Code of Criminal Procedure-Section 437-A-Public Interest Litigation Petition-seeking direction to introduce provision of newly added Section 437-A in all Court of U.P. Including High Court-filling of band in shape of Form 45 can be meant applicable before Trail Court for conviction upto 3 years only and not beyond that-considering 15th report of Law Commission if such practice adopted speedy disposal of Criminal appeal-shall be badly affected by granting adjournment in compliance of Section 437-A and further in case of default of appearance inspite of NBW in taking action under Section 446 Cr.P.C-before issuing direction to the State Government for necessary amendment-Additional Solicitor General, Advocate General and other concern authorities to address the Court forming final opinion.

Held Para 18

The State and Central legislatures should also consider amending or utilizing sections 441(3) or Explanation to section 446(1), Form 45 (2nd Schedule) or by introducing a new provision which could provide that the bail bonds which the accused and his sureties fill up after the accused is released on bail on the filing of the appeal against conviction or acquittal, that same bond could be made to operate for a period of one year or six months after the delivery of the judgment by the High Court, till such time as fresh bonds are got executed by the Supreme Court. That would obviate the need for the High Court getting fresh bonds executed by the accused and his sureties at the time of final hearing of the matter as has been provided under section 437 A., and in the event that an accused does not turn up in response to the Supreme Court's summons on leave to appeal being granted, the bonds of the accused and his sureties could be forfeited under section 446 Cr.P.C. and appropriate penalty or punishment realized from the accused or his sureties for the default.

(Delivered by Hon'ble Amar Saran,J)

1. Heard Shri Vimlendu Tripathi, learned Additional Government Advocate and recorded the submissions advanced by him.

2. An application was given by Syed Arman, convict in Barrack No.10, District Jail, Moradabad dated 31.8.2010 to the Registrar of the Supreme Court, New Delhi, which mentioned that Section 437A Cr.P.C. may be made applicable in all the Courts of Uttar Pradesh. This letter was forwarded by the Ministry of Law & Justice, Government of India, New Delhi to the High Court, Allahabad. On the orders of the Chief Justice this petition has been placed before this bench hearing criminal PILs.

3. The letter mentioned that a new provision Section 437A Cr.P.C. has been introduced , which requires that prior to six months' of the judgment by the trial Court, the Court shall release the accused on their furnishing bail bonds. This provision according to the convict's letter has been introduced in order to facilitate, the accused persons for doing pairvi of their cases and to save them from the harassment by lawyers.

4. The letter further mentioned that only one Court at Kanpur started this practice, but the other Courts in UP are not following the same and that a direction be issued by the Supreme Court to all Courts in UP to follow this practice.

5. Prima-facie, we find no substance in the interpretation of Section 437-A Cr.P.C. suggested by the convict that all the convicted persons, irrespective of the period of sentence awarded to them, be released on bail on their executing bail bonds, whose trials are likely to be concluded within six months prior to the disposal of the trial or appeal, in order to facilitate pairvi by the prisoners. Section 437A Cr.P.C. is being quoted below :

"437A- Bail to require accused to appear before next appellate Court. - (1) Before conclusion of the trial and before disposal of the appeal, the Court trying thee offence or the Appellate Court, as the case may be, shall require the accused to execute bail bonds with sureties, to appear before the higher Court as and when such Court issues notice in respect of any appeal or petition filed against the judgement of the respective Court and such bail bonds shall be in force for six months.

If such accused fails to appear, the bond stand forfeited and the procedure under section 446 shall apply."

6. Section 437-A Cr.P.C. only requires that before conclusion of the trial or appeal, the Court trying the offence or the appellate Court shall require the accused to execute bail bonds with sureties to appear before the higher Court, if and when such Court issues notice in respect of any appeal or petition filed against the judgement of the respective Court and such bail bonds shall remain in force for six months. If the accused fails to appear, the bond shall stand forfeited and the procedure under Section 446 shall apply. Section 437 A it may be noted, nowhere speaks of releasing the accused on bail, and in this respect it is quite different from sections 389, . 436, 437 and 439 of the Code of Criminal Procedure.

7. The purpose of this Section can be elicited from a perusal of the 154th Report of the Law Commission, 1996, which mentions that in many cases where appeals against acquittals have been filed or in cases where appeals for enhancement of sentences are filed in the higher Courts, after the appellate Court admits the appeal they are not in a position to secure the presence of acquitted accused, even though non-bailable warrants are issued to the

police agency and very often they are unable to serve notices as well as non-bailable warrants on the accused for long periods of time. Some times warrants are returned saying that the police have no information whatsoever regarding the whereabouts of the respondents. A large number of such appeals after admissions are pending in various appellate Courts (including the Supreme Court) without being disposed of since the service could not be effected or where the presence of acquitted accused could not be secured in spite of issuance of non-bailable warrants.

8. This Report further recommended that Form 45 in Schedule II of the Code be amended suitably. Hence by the said Report introduction of section 437-A was recommended for binding the accused before the conclusion of the trial or disposal of the appeal to ensure his appearance before the higher Court. The Commission suggested that such a bond remain in force for a period of 12 months from the date of judgement. It is therefore clear that section 437-A Cr.P.C. was not introduced to allow the accused to be released prior to the judgment in order to enable the accused to do pairavi for filing an appeal before the High Court, but in order to secure his presence before the appellate Court by threatening forfeiture of the bonds of the accused and his sureties and penalty and punishment under section 446 Cr.P.C. under section 446 Cr.P.C. on account of non-appearance of the accused to the notice or summons sent for appearance before the superior Court which admits the appeal. If the contention by the convict was accepted in the event of conviction by the trial Court, it would become extremely difficult to secure his presence and and that would be totally counter-productive to the objective as explained in the Law Commission report. If the interpretation suggested by the convict is accepted then a long winding procedure for securing the presence of the accused would be required not only in the cases of acquittal of accused, but also in cases of convicted accused who presently prefer appeals from jail.

9. This interpretation would also run counter to section 389 Cr.P.C which deals with suspension of sentences, releasing accused on bail after filing of their appeals. Except in cases punsihable with offences up to 3 years, or where the offence in which the accused has been convicted is bailable and the accused satisfies the convicting Court that he intends to prefer an appeal, when he may be allowed bail to give him sufficient time to prefer an appeal. This benefit of interim bail pending the filing of the criminal appeal is not available to a prisoner who has been awarded over 3 years imprisonment by the trial Court.

10. A Division Bench of the Lucknow Bench of this Court has passed an order on 24.8.2011 in Criminal Appeal No. 74 of 2001 (State of UP Vs. Gauri Shankar), wherein it has interpreted section 437-A Cr.P.C. and pointed out that the amendment came into force from 21.12.2009. It has directed that the Courts subordinate to the High Court conducting trials should strictly adhere to the provisions of section 437-A of the Code at the time of conclusion of the trial and get fresh bonds executed by the accused and his sureties, so that in case an order of acquittal is passed by the trial Court, the case ends in acquittal and an appeal against acquittal is admitted by the High Court, the presence of the accused can easily be secured as he and his sureties have bound themselves to appear before the appellate Court, i.e the High Court.

11. However, the registry has raised the following eight points in its report for treating this matter as a PIL:

"1. Whether the provisions of section 437A will apply in the High Court while deciding criminal appeals against conviction, acquittal and for enhancement of sentence awarded by the trial Court ?

2. The appropriate stage of the trial or appeal, where the direction to execute bail bonds with sureties is required under this section ?

3. Whether the direction to execute bail bonds with sureties will be in the cases where accused is in judicial custody during trial or pending appeal or where the accused is on bail or in both conditions ?

4. Whether the execution of the bail bonds with sureties must be required in all the matters or in some specific or particular matters ?

5. When appeal is pending in the Hon'ble High Court, the bail bonds will be executed/filed in the High Court or in the trial Court with the directions of the High Court ?

6. Whether the provisions of this section contemplate for the release of accused who is in judicial custody or is merely for executing bail bonds only without any release from judicial custody ?

7. The purpose and scope of the execution of bail bonds with sureties under this section ?

8. Such other and further directions/guidelines which the Hon'ble Court may deem appropriate in the interest of justice ?"

12. We are of the view that the matter needs to be examined at greater length. Our prima facie view that we take tentatively is that so far as the first point as to whether the provisions of section 437-A will apply to the High Court while deciding criminal appeals against convictions, acquittals and for enhancement of sentences awarded by the trial Court, the said provisions may be kept in abeyance as in the High Court there is no system for appearance of the accused at the time of regular hearing of the appeal or during the course of pendency of the appeals and the appeals are finally disposed of with the aid of counsel. Also, there is huge pendency of cases in the High Court and there is a great difficulty in disposing of the appeals with the aid of the counsel for long periods of time. If the disposal of the appeal were further stayed on the ground that the presence of the accused and sureties was needed at the time of final disposal of the appeal in the High Court for executing fresh bonds, the delay in disposal of the appeal would be further compounded. This would defeat the objective of introducing section 437-A IPC as spelt out by the Law Commission in its 154th Report, which was to save time in disposal of the appeal, by devising a straightforward procedure for ensuring the presence of the accused and thus shortening the time for disposal of the admitted appeal.

13. Also this cumbersome procedure requiring the accused to again appear along with his sureties at the time of hearing of the appeal would cast an undue cost burden on the accused who would need to travel the long distance to the High Court to furnish the fresh bail bonds. There would be the further problem as to the procedure by

which the High Court Judges or the registry would have to get the bail bonds filled up. Further, local sureties would have to be arranged and no infrastructure exists in the High Court to verify the solvency of the sureties.

14. Furthermore, a very low percentage of cases decided by the High Court either finally recording convictions or acquittals or enhancement of sentences are entertained in appeals before the Supreme Court.

15. We, therefore, think that for that small percentage of cases further delay in disposal of the cases by the High Court for the purpose of getting the bail bonds executed afresh at the time of final hearing would ultimately prove counter-productive. Both the State and Central Legislature may, therefore, consider excluding the High Court from the requirement of getting fresh bail bonds executed by the accused and his sureties at the time of final hearing as presently required under section 437-A Cr.P.C.

16. We also feel that necessary amendment needs to be made in Form 45 in Schedule II, because in spite of the recommendation of the Law Commission, the said form for getting bail bonds filled up have been made applicable only during the process of investigation or trial, but the word during 'appeal' has not been included therein.

17. We also think that the period of one year suggested by the Law Commission after the date of judgement for which the fresh bail bonds be executed before the trial and appellate Courts should be considered to be the appropriate period for which these bail bonds should subsist, and that it has inadvisably been reduced to six months under section 437 A.

18. The State and Central legislatures should also consider amending or utilizing sections 441(3) or Explanation to section 446(1), Form 45 (2nd Schedule) or by introducing a new provision which could provide that the bail bonds which the accused and his sureties fill up after the accused is released on bail on the filing of the appeal against conviction or acquittal, that same bond could be made to operate for a period of one year or six months after the delivery of the judgment by the High Court, till such time as fresh bonds are got executed by the Supreme Court. That would obviate the need for the High Court getting fresh bonds executed by the accused and his sureties at the time of final hearing of the matter as has been provided under section 437 A., and in the event that an accused does not turn up in response to the Supreme Court's summons on leave to appeal being granted, the bonds of the accused and his sureties could be forfeited under section 446 Cr.P.C. and appropriate penalty or punishment realized from the accused or his sureties for the default.

19. However as pointed out earlier, these are only our tentative suggestions, and this Court would like to hear the Advocate General, UP, the Additional Solicitor General, Union of India, Principal Secretary Law/ Legal Rembrancer, U.P., Secretary Law, Union of India, or an officer not below the rank of Under Secretary in the department who is properly briefed in the matter and who should be present on the next listing to provide feedback to the Court on its suggestions, so that this Court may form a final opinion on the matter

20. List this case on 13.3.2012.

21. Registry is directed to communicate this order to the Additional Solicitor General of India, and Secretary Law, Union of India, Advocate General, U.P., Principal Secretary (Law), U.P. within a week.

22. A copy of this order may also be given to the learned AGA within a week for compliance and for onward communication to the learned Advocate General, UP and Principal Secretary, Law, U.P.

APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.02.2012

BEFORE
THE HON'BLE RAKESH TIWARI,J.
THE HON'BLE DINESH GUPTA,J.

Special Appeal No. - 1180 of 2008

Manoj Kumar Sahu ...Petitioner
Versus
Union of India and others ...Respondents

Counsel for the Petitioner:
Sri Pranav Ojha

Counsel for the Respondents:
A.S.G.I.
Sri K.L. Grover
Sri Raj Kumari Devi
Sri I.S. Tomar
Sri Ramesh Singh

Industrial Dispute Act 1947-Section 2(5), 10-Refusal of reference by Central Govt. on ground of delay-held not proper-industrial dispute a welfare legislation for settlement of disputes between employees and employer-only the Labor Court or Industrial tribunal Court can consider this aspect-Central Govt. can not be allowed to stepped into the shoes of Labor Court or Tribunal-order not sustainable-consequential direction given.

Held: Para 10

As regards question of limitation is concerned, it is for the Labour Court to grant relief or not to grant relief taking into consideration the question of delay. The Industrial Disputes Act is a welfare legislation for settlement of industrial dispute between an employer and the employee. Even an apprehended dispute can be referred what to say of an existing dispute. In our considered opinion, suffice it to say that as the Central Government has refused to refer the dispute by adjudicating upon the matter itself it has stepped into the shoes of the Labour Court, or the Industrial Tribunal or the appropriate Board, we quash the impugned order dated 18.6.2002 as well as the judgment and order dated 25.7.2008 passed by the learned Single Judge in Civil Misc. Writ Petition No. 32844 of 2003, Manoj Kumar Sahu versus Union of India and others.

Case law discussed:
AIR 1970 SC-1205; AIR 1959 SC-1217

(Delivered by Hon'ble Rakesh Tiwari,J.)

1. Heard Sri Pranav Ojha, learned counsel for the appellant, Sri I.S. Tomar, Advocate holding brief of Smt. Raj Kumari Devi, learned counsel appearing for the Union of India, respondent nos. 1 and 2, Sri K.L. Grover, Advocate assisted by Sri Ramesh Singh, learned counsel for respondent nos. 3 and 4, learned Standing counsel on behalf of respondent nos. 5 and 6 and perused the record.

2. This special appeal is preferred against the judgment and order dated 25.7.2008 passed by the learned Single Judge in Civil Misc. Writ Petition No. 32844 of 2003, Manoj Kumar Sahu versus Union of India and others whereby the aforesaid writ petition had been dismissed.

3. The judgment and order impugned is assailed on the ground that the learned Single Judge has misdirected himself in construing Section 2(s) of the Industrial Disputes Act, 1947 and that Section 10 of the Industrial Disputes Act, 1947 does not prescribe any time limit for making a reference.

4. It is lastly urged that the learned Single Judge has wrongly relied upon the judgment rendered in **M/s Western India Watch Company Limited versus Western India Watch Company Workers Union,** AIR 1970 SC-1205, wherein the Apex Court has held that the dispute could even be referred at any time. The judgment rendered in **M/s Shalimar Works Limited versus Their Workmen,** AIR 1959 SC-1217 has also been relied upon.

5. Relying upon the aforesaid judgments, learned Single Judge has held that-

"There has to be a reasonable period when a dispute could be referred for adjudication. The provisions of Section 10 of the Industrial Dispute Act means that an industrial dispute could be referred at any time or at any stage provided such industrial dispute exists. The words "exists" or "is apprehended" in Section 10 has to be read along with the words "at any time". If the dispute does not exist nor is apprehended, the question of referring a dispute would not arise.

In the present case, the Central Government has given a categorical finding that no valid explanation has been given for condoning the delay. It is necessarily means that there existed no industrial dispute and that the Central Government was satisfied that on account of long lapse of time, no industrial dispute existed and therefore, declined to refer the dispute. The Court is of the opinion that the order of the Central Government declining to refer the dispute does not suffer from any error of law.

The writ petition is dismissed."

6. We have perused the order dated 18.6.2002 passed by the Under Secretary, Union of India, Ministry of Labour, New Delhi by which he has refused to refer the dispute as according to him Industrial dispute did exist as the disputant failed to establish existence of a valid dispute to the effect that he was engaged by the bank during the period from 18.4.1993 to 19.11.1994 on continuous basis and that his services were terminated/discontinued thereafter and further that the dispute has been raised belatedly without giving any reasonable explanation for the delay. The order refusing to refer the dispute reads thus:-

" The disputant failed to establish existence of a valid dispute to the effect that he was engaged by the bank during the period from 18.4.1993 to 19.11.1994 on continuous basis and that his services were terminated/discontinued thereafter, further, the present dispute has been raised belatedly without giving any reasonable explanation for the delay."

7. From perusal of the order passed by the under Secretary, Union of India, Ministry of Labour, New Delhi, it is apparent that the Central Government was of the opinion that the workman had failed to establish existence of a valid dispute to the effect that he was engaged

by the bank during the period w.e.f. 18.4.1993 to 19.11.1994.

8. Section 10 of the Industrial Disputes Act, 1947 pertains to reference of disputes to Boards, Courts or Tribunals and provides that where the appropriate Government is of the opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute to the appropriate Board, Court or Labour Court or Industrial Tribunal.

9. It is settled law that the Central Government is not empowered to adjudicate upon the matter for the purpose of referring the dispute. It is for the workman to establish that he was employed by the bank during the period w.e.f. 18.4.1993 to 19.11.1994 and that a valid dispute existed or was apprehended. It is also apparent that the Central Government did not refer the dispute considering as to whether any dispute was apprehended or existed. The validity of dispute cannot be determined by him as it is a matter of adjudication.

10. As regards question of limitation is concerned, it is for the Labour Court to grant relief or not to grant relief taking into consideration the question of delay. The Industrial Disputes Act is a welfare legislation for settlement of industrial dispute between an employer and the employee. Even an apprehended dispute can be referred what to say of an existing dispute. In our considered opinion, suffice it to say that as the Central Government has refused to refer the dispute by adjudicating upon the matter itself it has stepped into the shoes of the Labour Court, or the Industrial Tribunal or the appropriate Board, we quash the impugned order dated 18.6.2002 as well as the judgment and order dated 25.7.2008 passed by the learned Single Judge in Civil Misc. Writ Petition No. 32844 of 2003, Manoj Kumar Sahu versus Union of India and others.

11. Since the matter has been lingering on since 1994 before the Regional Conciliation Officer and before the Court in writ petition as well as in special appeal, we deem it expedient in the interest of justice to direct the authority concerned to refer the dispute to the appropriate Labour Court or the Industrial Tribunal-cum-Central Government within a period of one month from today.

12. For the reasons stated above, the writ petition is allowed. No order as to costs.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.01.2012

BEFORE
THE HON'BLE S.C. AGARWAL,J

Criminal Misc. Bail Application No. 1359 of 2012

Ashok Kumar ....Applicant
Versus.
State of U.P. ...Opposite Party

Counsel for the Petitioner:
Sri V.P.Srivastava
Sri J.P. Singh.

Counsel for the Respondent:
A.G.A.

Code of Criminal Procedure-Section 439-Bail Application-offence under section 302 IPC-deceased developed love affairs with daughter of applicant-with sole purpose to entice away the daughter altercation took place-deceased shoot dead the son of applicant-wife of

applicant also got injured-inself defence the applicant also fired upon deceased-a clear of private defence-entitled for bail.

Held:Para 4

The incident took place at the house of the applicant. The deceased Dinkar wanted to entice away the daughter of the applicant. In the altercation that ensued, son of the applicant was shot dead and wife of the applicant was seriously injured by Dinkar (the deceased). A prima facie case of right to private defense is made out and applicant is entitled to bail.

(Delivered by Hon'ble S.C. Agarwal,J.)

1. Heard Sri V.P. Srivastava, senior advocate assisted by Sri J.P. Singh, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. Learned counsel for the applicant submitted that this case is a glaring example of exercise of right of private defense. On 14.10.2011, the deceased Dinkar @ Bharat Bhushan, accompanied by two other persons, came to the house of the applicant and shot Sugam, the son of the applicant, dead. The wife of the applicant caught hold of Dinkar. She was also fired at and got injured. FIR was lodged by the applicant against Dinkar same day at 7:45 P.M. at P.S. Sidhpura, District Kanshi Ram Nagar, which was registered at crime no.403 of 2011 under sections 302, 307 IPC. Subsequently, Dinkar died and father of Dinkar, the present first informant - Urti, lodged instant FIR after 6 days on 20.10.2011 virtually admitting all the facts in the same. As per the FIR, Dinkar had love affair with the daughter of the applicant. He went to the house of the applicant to bring daughter of the applicant with him. There was an altercation. Dinkar fired causing gunshot injury to the son of the applicant. The applicant also fired causing injuries to Dinkar. Dinkar also fired at the wife of the applicant causing injuries.

3. Learned A.G.A. opposed the prayer for bail.

4. The incident took place at the house of the applicant. The deceased Dinkar wanted to entice away the daughter of the applicant. In the altercation that ensued, son of the applicant was shot dead and wife of the applicant was seriously injured by Dinkar (the deceased). A prima facie case of right to private defense is made out and applicant is entitled to bail.

5. In view of the above and without expressing any opinion on the merits of the case, let applicant **Ashok Kumar**, involved in case crime no.403-A of 2011 under Section 302 I.P.C. pertaining to Police Station Sidhpura, District Kanshiram Nagar, be released on bail on his executing a personal bond and furnishing two sureties each in the like amount to the satisfaction of the Chief Judicial Magistrate concerned and also subject to the following conditions :

(a) The applicant shall attend the court according to the conditions of the bond executed by him ; and

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.02.2012

BEFORE
THE HON'BLE SUDHIR KUMAR SAXENA,J.

Criminal Appeal No. - 1608 of 2002

Prakash Saran Sinha ...Petitioner
Versus
State of U.P. ...Respondents

Counsel for the Petitioner:
Sri Manish Kumar
Sri Manju Khare

Counsel for the Respondents:
Govt. Advocate

Criminal Appeal-Quantum of punishment-conviction of 2 years simple imprisonment with fine of Rs. 25,000/- u/s 5 (I) (E) and 5 (2) of Prevention of corruption Act-at present age of Appellant 83 years-already lost his reputation and credit-further incarceration not justified-held-considering growing age conviction order modified to already undergone by enhancing Quantum of fine from 25,000 to 1 Lakh.

Held: Para 11

I have perused the papers from which it is apparent that age of appellant in the year, 1986 was 60 years. In character certificate, date of birth of the appellant is 09.02.1929, as such age of appellant at present is nearly 83 years and no useful purpose would be served by sending the appellant to jail at this stage. Learned counsel for appellant agrees that raise in fine would not amount to enhancement.

Case law discussed:
[AIR, 2011, Supreme Court, 3845]

(Delivered by Hon'ble Sudhir Kumar Saxena,J.)

1. Heard Sri Manish Kumar assisted by Sri Manju Khare, learned counsel for the appellant and learned A.G.A.

2. This appeal is directed against the judgment and order dated 30.10.2002 passed by Sri K.P. Singh, Special Judge, P.C. Act, Lucknow in Misc. Case No. 1/86 (State Vs. P.S. Sinha) whereby appellant (Prakash Saran Sinha) has been convicted under Section 5(2) read with Section 5(1)(E) of the Prevention of Corruption Act and sentenced for a period of two years simple imprisonment, apart from fine of Rs. 25,000/-. In default, six months simple imprisonment was awarded.

3. At the outset, learned counsel for the appellant submits that on merits judgment of trial court is unassailable, however, he has addressed the Court on the quantum. Learned counsel for the appellant submits that appellant was working as Assistant Excise Commissioner, a promoted post from where he retired long back. Presently, he is nearly 83 years old. No useful purpose would be served by sending him jail at the fag end of life.

4. Learned counsel for the appellant further submits that he has already remained in jail for sometime. He has lost his reputation and credit and further incarceration would be not at all justifiable.

5. Learned A.G.A. submits that fine and minimum sentence cannot be reduced and in support of his case he relied upon the judgment of Hon'ble Apex Court given in the case of **A.B. Bhaskara Rao**

Vs. Inspector of Police CBI, Visakhapatnam [AIR, 2011, Supreme Court, 3845].

6. After carefully going through the judgment, I find that the provisions of Prevention of Corruption Act, 1988 have been interpreted which provide for minimum sentence and not old Act (Act no. 2 of 47).

7. It is useful to refer to Para 9 of the judgment given in the case of **A.B. Bhaskara Rao (supra)** which is as under :-

"It is useful to refer that in the Prevention of Corruption Act 1947 the same "criminal misconduct" which is available in Section 13 of the 1988 Act had been dealt with in Section 5 of the 1947 Act. Section 5(2) of the 1947 Act mandates that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine. However, proviso to sub-section (2) of Section 5 gives power to the court that for any special reasons to be recorded in writing, impose a sentence of imprisonment of less than one year. Such relaxation in the form of a proviso has been done away with in the 1988 Act. To put it clear, in the 1988 Act, if an offence under Section 7 is proved, the same is punishable with imprisonment which shall be not less than six months and in the case of Section 13, it shall not be less than one year. No other interpretation is permissible. Other circumstances pleaded for reduction of sentence:"

8. Section 5(2) of the old Act is being reproduced below :-

"Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

Provided that the court may for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year."

9. From the above, it is apparent that provisions of Section 5(2) of the Act enables the Court to pass the sentence less than one year if there are special reasons, as such the judgment given in the case of **Bhaskara Rao Vs. Inspector of Police CBI, Visakhapatnam [AIR, 2011, Supreme Court, 3845]** is of no use to A.G.A.

10. It can be safely concluded that if offence has been committed under the old Act, sentence of imprisonment of less than/minimum can be passed for the special reasons recorded in writing but if impugned act is an offence under the Prevention of Corruption Act, 1988 (49 of 1988), Courts have been deprived of the power to reduce the minimum sentence prescribed by the statute for any reason whatsoever.

11. I have perused the papers from which it is apparent that age of appellant in the year, 1986 was 60 years. In character certificate, date of birth of the appellant is 09.02.1929, as such age of appellant at present is nearly 83 years and no useful purpose would be served by sending the appellant to jail at this stage.

Learned counsel for appellant agrees that raise in fine would not amount to enhancement.

12. Consequently, in the interest of justice, impugned order is modified.

13. Appeal is partly allowed. Conviction under Section 5(2) read with Section 5(1)(E) is maintained, however, sentence is modified to the extent of period undergone in addition to fine of Rs.100,000/- (one lac) which will be deposited by the appellant within three months from today. If appellant does not deposit the abovesaid amount within the said period, he will have to undergo one year simple imprisonment.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 14.02.2012

BEFORE
THE HON'BLE RAJIV SHARMA,J.
THE HON'BLE S.C. CHAURASIA,J.

Writ Petition No. 1734 (SB) of 2001

Shyam Kumar Dwivedi ...Petitioner
Versus
State of U.P. and others ...Respondents

Constitution of India-Article 226-interest on delayed payment-post retiral benefits-petitioner retired on 30.02.2001-no explanation about delay more than 18 years-Rs. 50,000 of lump sum amount given.

Held: Para 14,15 and 16

Thus the aforesaid decisions makes it clear that the claim of interest on delayed payment of retiral dues flows from the fundamental rights guaranteed under the Constitution. Claim for interest cannot be held to be a stale claim as right to claim interest on delayed payment of retiral dues accrues due to continuing wrong committed by the State respondents for withholding the payment of the petitioner's retiral dues causing continuous injury to the petitioner until such payment is made.

The attitude of indifference cannot be forgiven. In the present case, the delay in payment of retiral dues is about 18 long years, which is entirely unjustified and cannot be treated to be reasonable by any stretch of imagination. The Department itself is responsible for bringing down such a situation, for which adequate compensation should be paid to the petitioner.

In the facts and circumstances, we find that award of a lump sump amount as interest would secure the ends of justice and compensate the loss caused to the petitioner on account of interest which he could have earned, if he had deposited the amount in bank or in post office coupled with mental harassment with which he had undergone during these long years.

Case law discussed:
AIR 1984 SC 1905; (1981) 1 SCC 449; (2003) 3 SCC 40; (2009) 16 SCC; (2001) 6 SCC 591; 2008 (3) SCC 44

(Delivered by Hon'ble Rajiv Sharma,J.)

1. Heard Sri Farooq Ahmad, learned counsel for the petitioner, Sri Sanjay Bhasin, learned Standing Counsel and Sri D. K. Seth, learned counsel for the opposite party No.4.

2. There can be no better example than this case, which is a classical illustration of sorry state of affairs, whimsical attitude of State authorities and how the functionaries of the State Government are functioning, resulting in mental agony, all sorts of harassment and injury to a Government Servant, which is difficult to be compensated.

3. Petitioner, while working on the post of Block Development Officer attained the age of superannuation on 30.6.1983. Prior to retirement, petitioner was subjected to disciplinary proceedings and was served with a charge sheet on 30.8.1982. Ultimately, the Agricultural Production Commissioner passed the punishment order dated 19.4.1983. Thereafter, the District Magistrate, Sitapur passed an order of recovery. Being aggrieved, the petitioner filed a claim petition before the State Public Services Tribunal, which was dismissed. Thereafter he assailed the order of punishment as well as the order of Tribunal before this Court by filing a writ petition No. 1345 (SB) of 1991. This Court while entertaining the writ petition stayed the order of recovery dated 22.6.1983. Ultimately, this writ petition was allowed by this Court and the recovery order for a sum of Rs. 75,066.15 was set aside.

4. In the instant writ petition, we are not concerned with the aforesaid litigation as the main relief sought in the writ petition is for payment of interest at the rate of 18% on the delayed payment of post retiral dues.

5. It appears that during pendency of the aforesaid litigation, the petitioner worked on the post of Block Development Officer, Mahauli, District Sitapur and ultimately retired from the said post. The opposite parties without any rhyme and reason did not pay the post-retiral dues. Vide order dated 4.8.1984, the Agricultural Production Commissioner passed an order granting provisional pension of Rs. 460/- w.e.f. 1.7.1983. It is not in dispute that on 24.8.1998, the State Government issued an order for revising pension of the petitioner, who had been retired prior to 1.1.1986 and in view of the Government Order dated 24.8.1998, the District Development Officer, Sitapur passed an order for revising pension of the petitioner. Petitioner made his sincere efforts and devoted a lot of time of retired life in getting his post-retiral dues but all his efforts went in vain. In the counter affidavit, it has been admitted that there is delay in payment of post-retiral dues, but for it, the petitioner himself is liable. It has also been stated that the Treasury Officer, Lucknow, after adjusting a sum of Rs.75,066.15/- which was to be recovered from the petitioner, paid a sum of Rs.2,82,796 to the petitioner vide Cheque No. 796508 dated 14.8.2001.

6. The fact remains that the petitioner had retired in the year 1983. It shows total indifference on the part of the respondents towards suffering of the petitioner, who had served them during the best part of his life. This Court does not approve such attitude towards employees by the respondent. The inordinate delay in payment of post-retiral dues is substantiated by the facts mentioned in the counter affidavit filed on behalf of Accountant General, Allahabad, who has also been arrayed as opposite party no.4 in the writ petition. There is no dispute in the fact that the petitioner attained the age of superannuation on 30.6.1983. The Accountant General in his counter affidavit has stated in paragraph 6 of the counter affidavit that the petitioner's pension papers were sent to his office vide letter dated 19.11.1999 for the first time alongwith a letter of recovery dated 27.12.1999. His pension papers were returned vide letter dated 29.3.2000 to the concerned department as complete papers of service book were not sent. It has further been stated that pension papers were received back from the department through letter dated 22.2.2001 i.e. about 11 months after the letter dated 29.3.2000. It was also indicated in the said letter dated 22.2.2001

that for providing the copy of service book, it will take some more time. The petitioner also wrote a letter for humanitarian consideration and for payment of his pensionary dues. Vide letter dated 20.6.2001, the authority for payment was issued. Lastly, it has been clarified by the opposite party no.4 that there is no delay on the part of the respondent no.4. As regard payment of interest on delayed payment of pension and gratuity, as per G.O. No. Sa-3-664/Das-971/80 dated 29.4.1983 and No. Sa-3-1519/Das 1997 dated 15.7.1997, the action is required to be taken by the concerned department, not by the respondent no.4. Thus, from the aforesaid facts, one thing is crystal clear that there is an inordinate delay in processing the pension papers and payment of post-retiral dues on the part of the Officers of the Department concerned. Needless to observe that even the provisions of the U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995 were violated

7. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired Government Servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the Rules/Instructions apart from other relevant factors applicable to each case. The retirement benefits were payable to the petitioner after the date of retirement ie. 30.6.1983, but it took of about 16 years by the Department in sending the complete papers to the Accountant General, which shows the callous attitude of the Officers of the Department. Owing to lethargic attitude of the Officers of the Department in sending the complete papers to the Accountant General, the petitioner was put to serious distress. Because of non completion of necessary formalities and sending complete papers, the Accountant General could issue the authority only on 20.6.2001, when the necessary papers were made available by the Department.

8. Right to receive pension is a fundamental right which can be curtailed only in the manner provided in the Constitution. In ***Salabuddin Mohd. Yunus vs. State of Andhra Pradesh, AIR 1984 SC 1905,*** it was held that pension is property within the meaning of Article 31(1) of the Constitution and it is also a right under Article 19 (1) (f) which could not be restricted even as provided under clause (5) of Article 19 and that clause has no application to the right to receive pension.

9. In ***Som Prakash Rekhi v. Union of India, (1981) 1 SCC 449,*** the Apex Court observed that the pension and other retiral benefits cannot be withheld or adjusted or appropriated for the satisfaction of any other dues outstanding against the retired employee. The aforesaid principle was reiterated in R. Kapur vs. Director of Inspection (Painting and Publication) Income Tax; (1994) 6 SCC 589.

10. In ***H. Gangahanume Gowda vs. Karnataka Agro Industries Corporation (2003) 3 SCC 40,*** the Apex Court observed that employees on retirement have valuable rights to get gratuity and any culpable delay in payment of gratuity must be visited with the penalty of payment of interest.

11. In ***Kerala State Cashew Development Corporation Limited and another vs. N. Asokan (2009) 16 SCC,*** when eight years' delay was found in

payment of gratuity, the Apex Court directed for payment of interest on the delayed payment of gratuity in compliance with Section 7(3-A) of the Payment of Gratuity Act, 1972.

12. In ***Gorakhpur University vs. Dr Shitla Prasad Nagendra (2001) 6 SCC 591*** and in series of other judgments, the Apex Court has reiterated that pension and gratuity are no longer matters of any bounty to be distributed by the government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest.

13. The Hon'ble Supreme Court in ***S.K.Dua vs. State of Hariyana and another reported in 2008(3) SCC 44*** has held that interest of delayed payment of retirement benefits legally sustainable in view of Articles 14, 19 and 21 of the Constitution, which reads as follows:-

"In the circumstances, prima-facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution."

14. Thus the aforesaid decisions makes it clear that the claim of interest on delayed payment of retiral dues flows from the fundamental rights guaranteed under the Constitution. Claim for interest cannot be held to be a stale claim as right to claim interest on delayed payment of retiral dues accrues due to continuing wrong committed by the State respondents for withholding the payment of the petitioner's retiral dues causing continuous injury to the petitioner until such payment is made.

15. The attitude of indifference cannot be forgiven. In the present case, the delay in payment of retiral dues is about 18 long years, which is entirely unjustified and cannot be treated to be reasonable by any stretch of imagination. The Department itself is responsible for bringing down such a situation, for which adequate compensation should be paid to the petitioner.

16. In the facts and circumstances, we find that award of a lump sump amount as interest would secure the ends of justice and compensate the loss caused to the petitioner on account of interest which he could have earned, if he had deposited the amount in bank or in post office coupled with mental harassment with which he had undergone during these long years.

17. Taking into consideration the holistic view of the matter and considering the very peculiar facts and circumstances of the case, we quantify Rs.5,00,000/- (Rupees five lacs) as interest on the delayed payment of post-retiral dues and direct the opposite parties to pay the same within a maximum period of three months from the date of filing of a certified copy of this order with the Commissioner, Rural Development, Jawahar Bhawan, Lucknow. However, if

the department feels that any particular officer is responsible for these laches and indifference, in that event, after fixing the responsibility, it would be open for the department to recover such amount of compensation from the said responsible officer, even if he has retired in the meantime.

18. The writ petition stands allowed in above terms.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.02.2012

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Service Single No. - 2725 of 1993

Ashok Kumar Varma ...Petitioner
Versus
State of U.P. ...Respondents

Counsel for the Petitioner:
Sri H.G.S. Parihar

Counsel for the Respondents:
C.S.C.

Constitution of India, Article 226- Compassionate Appointment-petitioner challenge the order-of his appointment on class IV post-claiming appointment as class III employees-itself goes to show not facing penury condition-in garb of compassionate appointment-claim status by short circuit-without facing selection for promotion-can not be accepted-petition dismissed.

Held: Para 14

In such circumstances, if the petitioner is not inclined to accept the aforesaid appointment he cannot claim that he should be appointed on compassionate to the better status which shows that the petitioner is not actually facing the condition of penury and appointment on compassionate basis is not being claimed on account of financial scarcity but to claim an office of the status by short circuit way ignoring the process of regular selection which is contrary to the very concept of compassionate appointment.

Case law discussed:
1997 (11) SCC 390; 1999 (I) LLJ 539; AIR 1998 SC 2230; AIR 2000 SC 2782; AIR 2004 SC 4155; AIR 1998 SC 2612; AIR 2005 SC 106; 2009 (6) SCC 481; 2011 (4) SCALE 308; 2011 (3) ADJ 91; Nagesh Chandra Vs. Chief Engineer, Vivasthan Ga Warg & Ors. decided on 7th January, 2011 in Special Appeal No.36 of 2011

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. Sri H.G.S.Parihar, learned counsel for the petitioner states that he has no instructions in the matter. No other counsel has appeared. However, I have perused the record.

2. The petitioner has sought compassionate appointment and by means of the order dated 24.3.1993 he was appointed as Class IV employee. The aforesaid order is under challenge and the petitioner has sought a mandamus commanding the respondents to appoint him on Class III post on compassionate basis.

3. Repeatedly, it has been held that the purpose and object of compassionate appointment is to enable the members of family of the deceased employee in penury, due to sudden demise of the sole breadwinner, get support and succour to sustain themselves and not to face hardship for their bare sustenance.

4. In **Managing Director, MMTC Ltd., New Delhi and Anr. Vs. Pramoda**

Dei Alias Nayak 1997 (11) SCC 390 the Court said:

"As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tied over the sudden financial crises and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment."

5. In **S. Mohan Vs. Government of Tamil Nadu and Anr. 1999 (I) LLJ 539** the Supreme Court said:

"The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

6. In **Director of Education (Secondary) & Anr. Vs. Pushpendra Kumar & Ors. AIR 1998 SC 2230** the Court said:

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood."

7. In **Sanjay Kumar Vs. The State of Bihar & Ors. AIR 2000 SC 2782** it was held:

"compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood"

8. In **Punjab Nation Bank & Ors. Vs. Ashwini Kumar Taneja AIR 2004 SC 4155,** the court said:

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

9. In **State of U.P. & Ors. Vs. Paras Nath AIR 1998 SC 2612,** the Court said:

"The purpose of providing employment to a dependent of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case."

10. In **National Hydroelectric Power Corporation & Anr. Vs. Nanak**

Chand & Anr. AIR 2005 SC 106, the Court said:

"It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises."

11. In **Santosh Kumar Dubey Vs. State of U.P. & Ors. 2009 (6) SCC 481** the Apex Court had the occasion to consider Rule 5 of U.P. Recruitment of Dependents of Government Servants Dying in harness Rules, 1974 (hereinafter referred to as "1974 Rules") and said:

"The very concept of giving a compassionate appointment is to tide over the financial difficulties that is faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service."

12. The importance of penury and indigence of the family of the deceased employee and need to provide immediate assistance for compassionate appointment has been considered by the Apex Court in **Union of India (UOI) & Anr. Vs. B. Kishore 2011(4) SCALE 308.** This is relevant to make the provisions for compassionate appointment valid and constitutional else the same would be violative of Articles 14 and 16 of the Constitution of India. The Court said:

"If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution."

13. It is thus clear that rule of compassionate appointment has an object to give relief against destitution. It is not a provision to provide alternate employment or an appointment commensurate with the post held by the deceased employee. It is not by way of giving similarly placed life to the dependents of the deceased. While considering the provision pertaining to relaxation under 1974 Rules, the very object of compassionate appointment cannot be ignored. This is what has been reiterated by a Division Bench of this Court in **Smt. Madhulika Pathak Vs. State of U.P. & ors. 2011 (3) ADJ 91. The decision in Vivek Yadav (supra)** has been considered later on by another

Division Bench in **Nagesh Chandra Vs. Chief Engineer, Vivasthan Ga Warg & Ors.** decided on **7th January, 2011** in **Special Appeal No.36 of 2011** and Court said:

"Though in the judgment it has been held that when the rules are prevailing for relaxation for making the application, a member of the family, on attaining majority, can file an application for due consideration but in the judgment itself it has been held that the law relating to compassionate appointment is no longer res integra. The right of compassionate appointment does not confer a right but it does give rise to the legitimate expectation in a person covered by the rules that his application should be considered, if otherwise he meets with the requirement."

14. In such circumstances, if the petitioner is not inclined to accept the aforesaid appointment he cannot claim that he should be appointed on compassionate to the better status which shows that the petitioner is not actually facing the condition of penury and appointment on compassionate basis is not being claimed on account of financial scarcity but to claim an office of the status by short circuit way ignoring the process of regular selection which is contrary to the very concept of compassionate appointment.

15. Dismissed.

16. Interim order, if any, stands vacated.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 21.02.2012

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Service Single No. - 3185 of 1991

S.J.H.Rizvi ...Petitioner
Versus
U.P.Avas Evam Vikas Parishad and others ...Respondent

Counsel for the Petitioner:
Dr.L.P.Misra

Counsel for the Respondents:
Sri Prahlad
Dr.Ashok Nigam
Sri Nakul Dubey
Sri Umesh Chandra Pandey

Constitution of India, Article 226- Regularization-working as camp clerk-continuously w.e.f. 01.10.1983 to July 1987-subsequent working in pursuance of interim order-appointment de horse the rules can not claim regularization as matter of right-by subsequent order dated 22.04.191 appointment on class 4th post as temporary work charge employee-entire functioning of petitioner shall be treated working on class 4th Post-entitled for every consequential benefits from 22.04.1991-No recovery of excess amount (if already paid treating as camp clerk) shall be made.

Held: Para 21

In the peculiar facts and circumstances of this case, in my view, ends of justice would meet and to this Dr. L.P. Mishra, learned counsel for the petitioner and Sri A.P.Singh learned counsel for the respondents also agree that petitioner shall be treated to have continued to work as a Class IV employee pursuant to office order dated 22.4.1991 with effect

from the date of said order and shall be entitled for all consequential benefits accordingly. The work discharged by the petitioner vis a vis Class III post, if any, shall be treated as has been performed pursuant to the appointment letter dated 22.4.1991. It is also made clear that in case and as a matter of fact if salary, already paid to the petitioner during the pendency of this writ petition is found in excess to what emoluments he would otherwise been entitled pursuant to the order dated 22.4.1991, such excess amount shall not be recovered from him.

Case law discussed:

Special Appeal No.351 of 2006 (Nand Kishore Shukla Vs. State of U.P. and others) decided on 15.12.2009 ; JT 2011 (2) SC 164; 2007 (2) ESC 987; AIR 1975 Allahabad 280; 1986 (4) LCD 196; AIR 1994 Allahabad 273; JT 2009 (2) SC 520

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. Sri A.P.Singh, learned counsel appearing for the respondents stated that supplementary counter affidavit filed on 08.12.2011 be ignored and is not placing reliance thereon. The Court thus proceeded by ignoring the said supplementary counter affidavit.

2. Heard Dr. L.P.Mishra, learned counsel for the petitioner and Sri A.P.Singh learned counsel for the respondents.

3. The writ petition is directed against the order dated 22.4.1991 (Annexure 7 to the writ petition) and also decision dated 25.3.1989 taken by U.P. Avas Evam Vikas Parishad, Lucknow (hereinafter referred to as "Parishad") referred to in the order dated 22.4.1991. The petitioner has also sought a mandamus commanding the respondents to treat the petitioner as a regular Class-III employee in the establishment of Parishad and to pay salary admissible to a Clerk i.e. in the Scale of 950-1500 w.e.f. 1.1.1986 and 360-550 w.e.f. 1.10.1983 and also as revised from time to time and not to appoint any person in the establishment of Parishad either in the Circle or Division or Sub-Division before regularizing the petitioner as Clerk.

4. Admittedly, petitioner was not engaged initially by any written order of appointment. He appears to have been engaged on daily wage basis without following the procedure prescribed in law. The petitioner claimed in para 1 of the writ petition that he was engaged as a Muster roll employee which fact has been admitted by the respondents in the counter affidavit, as is evident from para 7 of the counter affidavit. The respondent, however, further says that the petitioner was employed according to the availability of work and need.

5. The case set up by the petitioner is that there is one post of Camp Clerk in each Sub-Division of the Parishad. The then Assistant Engineer-II, Basti wrote a letter on 3.12.1984 to respondent No.5 intimating that there was no Camp Clerk in the said Sub-Division and therefore one Camp Clerk may be made available. The Superintendent of Works, Faizabad vide letter dated 11.4.1983 directed that one Vinod Kuamr Srivastava, who was Store Keeper working in Sub-Division be deployed to perform duties of Camp Clerk. However, Sri Vinod Kumar Srivastava did not join to perform the duties of Camp Clerk and thereafter the petitioner was posted as Camp Clerk under Assistant Enginer-II, Basti w.e.f. 1.10.1983. He functioned as such till July, 1987 without any break. In support of the aforesaid averments, reference has been made to the then Assistant Engineer's letter dated 21.5.1986 (Annexure 2 to the writ petition) wherein it has been mentioned that

in absence of any other employee, work of Office Clerk was taken from the petitioner and therefore, he is recommended for appointment as Assistant Grade III. Besides, in the office order dated 30.8.1990 issued by Sub Divisional Officer Basti, petitioner's duties were shown as Pairokar in Court cases. He also refers to a letter dated 7.6.1984 (Annexure 5 to the writ petition) whereby Assistant Engineer II, Katra Yojna Basti has given details of petitioner as Clerk working w.e.f. 1.10.1983 on daily wage basis. The petitioner requested the Superintendent Engineer to appoint him on routine grade clerk since has performed duties of Clerk on daily wage basis and the said application was duly recommended by the then Assistant Engineer-II. However, ignoring the claim of the petitioner for appointment on a Class III post, by means of the impugned order dated 22.4.1991, petitioner has been appointed as non regular work charged employee in the scale of 305-390, which is a scale applicable to Class IV employee and the petitioner has been transferred and posted from Gorakhpur to Agra.

6. Dr. L.P. Mishra, learned counsel contended that since petitioner has been performing duties of a Class III employee, he was entitled to be regularized as a Class III employee and not a Class IV employee and therefore, the impugned order to the extent it appoint the petitioner as a Class IV employee is illegal and liable to be set aside.

7. During the course of argument it is not disputed by learned counsel for the petitioner that neither petitioner was appointed as a Class III employee by any written order nor that Assistant Engineer was competent to make appointment on a Class III post. He admits that competent authority to make appointment on a Class III post in Parishad was Superintendent of Works and no order of appointment was ever issued by the aforesaid authority.

8. The respondents, in the counter affidavit, have clearly said that there is no sanctioned post of Camp Clerk in the Parishad and therefore, petitioner's contention that he has ever worked as Camp Clerk is incorrect. He was a muster roll employee to work as Chaukidar and was engaged according to availability of work and need on daily wage basis. He had no right to hold the post having not been recruited in accordance with law and rules applicable for appointment on a Class III post. The petitioner was a muster roll daily wage employee, has been shown favour by the respondents by giving him appointment in regular pay scale, may be applicable to a Class IV employee but he has no right at all to claim his absorption, appointment or regularization as a Class III employee. In absence of any legal right of the petitioner, the relief sought in the writ petition ought not be granted.

9. Considering the fact that petitioner was never appointed by the competent authority to perform duties of a Class III employee, the petitioner, in my view, cannot have any right to claim appointment on Class III post particularly when he has never faced process of selection and recruitment consistent with Article 16 of the Constitution for appointment on Class III post. In absence of any order of appointment passed by competent authority, no right can be claimed by any incumbent for salary to such post as held by Division Bench of this Court in **Special Appeal No.351 of 2006 (Nand Kishore Shukla Vs. State of U.P. and others)** decided on 15.12.2009 in which this court observed as under:

"The plea that the appellant since was ordered to look after the work of a higher post in addition to his own duties, therefore, he was entitled for salary in the given pay scale, does not have any merit in the instant case. The appellant is a substantively appointed Cane Supervisor and he was never given any charge of higher post or officiating promotion on the post of Cane Development Inspector by the competent authority, namely, the Cane Commissioner. May be that the Cane Development Inspector had entrusted the work of a higher post to the appellant in addition to his own duties, but it has not been brought to our notice that the Cane Development Inspector was competent to issue such orders. If the charge of the higher post was entrusted to the appellant under the orders passed by the Cane Development Inspector, who was not competent to do so, this would not give any right to the appellant to claim salary of the higher post."

"Since no order of promotion or entrusting the work of the higher post was passed by the Cane Commissioner, no rights can be said to be conferred upon the appellant to claim salary of the higher post."

10. The aforesaid observations are squarely applicable to the facts of this case disentitling the petitioner to claim any right with regard to a Class III post.

11. Moreover, mere discharge of duties of a particular nature without having any right to hold the post under a valid order issued by competent authority would not entitle any person to claim any right to continue on a particular post since principle of holding over is not applicable in service jurisprudence. The Apex Court in **State of Orissa Vs. Mamata Mohanti, JT 2011(2) SC 164** has clearly said that right in law exists only and only when it has a lawful origin. The concept of adverse possession of lien on post or holding over is not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed or never lawfully appointed on a post shall not create any right in his favour.

12. At this stage, Dr. L.P.Mishra, learned counsel for the petitioner submitted that pursuant to an interim order passed by this Court in writ petition the petitioner is continuing to discharge his duties as Pairokar of Court cases and therefore he may not be dislodged therefrom.

13. It is well established that no cause of action would found its basis on an interim order passed by the Court when ultimately final relief sought in the writ petition is not to be granted and the writ petition has to be dismissed. The interim order passed on 12th June, 1991 reads as under:

"....in case the petitioner has been working continuously on a Class III post as alleged since 1.10.1983 till date, he shall not be required to join on Class IV post and shall be allowed to continue on the post on which he working."

14. However, the aforesaid order was clarified on 18.3.1997 and the relevant extract thereof reads as under:

"Petitioner shall therefore be entitled to continuance of the pay scale for Class III employees with effect from 1.3.1997. This order shall remain subject to result of the writ petition."

15. Therefore, petitioner's continuance and his salary on Class III post if paid, was

clearly subject to result of the writ petition and that too pursuant to an interim order.

16. Since the petitioner has no right, as already discussed above, mere continuance on the basis of an interim order would not confer any benefit upon him. This issue has been considered by a Division Bench of this Court (in which I was also a member) in **Smt. Vijay Rani Vs. Regional Inspectress of Girls Schools, Region-1, Meerut and others, 2007(2) ESC 987** and the Court held as under:

"An interim order passed by the Court merges with the final order and, therefore, the result brought by dismissal of the writ petition is that the interim order becomes non est. A Division Bench of this court in ***Shyam Lal Vs. State of U.P. AIR 1968 Allahabad 139,*** *while considering the effect of dismissal of writ petition on interim order passed by the court has laid down as under:*

"It is well settled that an interim order merges in the final order and does not exist by itself. So the result brought about by an interim order would be non est in the eye of law if the final order grants no relief. The grant of interim relief when the petition was ultimately dismissed could not have the effect to postponing implementation of the order of compulsory retirement. It must in the circumstances take effect as if there was no interim order."

17. The same principal has been reiterated in the following cases:

(A) AIR 1975 Allahabad 280 Sri Ram Charan Das V. Pyare Lal.

"In Shyam Lal Vs. State of U.P., AIR 1968 All 139 a Bench of this Court has held that orders of stay of injunction are interim orders that merge in final orders passed in the proceedings. The result brought about by the interim order becomes non est in the eye of law in final order grants no relief. In this view of the matter it seems to us that the interim stay became non est and lost all the efficacy, the commissioner having upheld the permission which became effective from the date it was passed."

(B) 1986 (4) LCD 196 Shyam Manohar Shukla V. State of U.P.

"It is settled law that an interim order passed in a case which is ultimately dismissed is to be treated as not having been passed at all (see Shyam Lal V. State of Uttar Pradesh) Lucknow, AIR 1968 Allahabad 139 and Sri Ram Charan Das v. Pyare Lal, AIR 1975 Allahabad 280 (DB)."

(C) AIR 1994 Allahabad 273 Kanoria Chemicals & Industries Ltd. v. U.P. State Electricity Board.

"After the dismissal of the writ petitions wherein notification dated 21.4.1990 was stayed, the result brought about by th-e interim orders staying the notification, became non est in the eye of law and lost all its efficacy and the notification became effective from the beginning."*

18. Recently also in **Raghvendra Rao etc. Vs. State of Karnataka and others, JT 2009 (2) SC 520** the Apex Court has observed:

"It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service. ....."

19. Now, the present state of appair is that admittedly petitioner has been appointed on a Class IV post by order dated 22.4.1991 and the respondents have no objection in keeping the petitioner as a Class IV employee in the pay scale applicable to non regularized work charge Class IV employee, pursuant to the order dated 22.4.1991.

20. Sri A.P. Singh, learned counsel appearing for the respondents submit that petitioner did not submit his joining pursuant to the office order dated 22.4.1991 but a fact respondents could not controvert that petitioner is continuously functioning with the respondents thereafter i.e. pursuant to interim order of this Court, performing duties meant for a Class III employee.

21. In the peculiar facts and circumstances of this case, in my view, ends of justice would meet and to this Dr. L.P. Mishra, learned counsel for the petitioner and Sri A.P.Singh learned counsel for the respondents also agree that petitioner shall be treated to have continued to work as a Class IV employee pursuant to office order dated 22.4.1991 with effect from the date of said order and shall be entitled for all consequential benefits accordingly. The work discharged by the petitioner vis a vis Class III post, if any, shall be treated as has been performed pursuant to the appointment letter dated 22.4.1991. It is also made clear that in case and as a matter of fact if salary, already paid to the petitioner during the pendency of this writ petition is found in excess to what emoluments he would otherwise been entitled pursuant to the order dated 22.4.1991, such excess amount shall not be recovered from him.

22. At the pain of repetition it is stated that pursuant to the aforesaid directions, petitioner shall be entitled for the benefits flowing from the order dated 22.4.1991 as applicable to other Class IV employees working in work charge establishment.

23. The writ petition is disposed of with the aforesaid directions, observations and discussion.

24. No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.02.2012

BEFORE
THE HON'BLE UMA NATH SINGH,J.
THE HON'BLE RITU RAJ AWASTHI,J.

Misc. Bench No. - 3277 of 2001

Dr. Manish and others ...Petitioners
Versus
State of U.P. Through Secretary,Medical Education & Training ...Respondents

Counsel foe the Petitioner:
Sri A.R. Masoodi

Counsel for the Respondents:
C.S.C.
Sri Sandeep Dixit
Sri Umesh Chandra

Constitution of India, Article 226-payment of stipend-petitioner perusing M.D.M.S course-on basis of first counseling-on merit of 45%-due to non availability of reserve category transferred to general category-in furtherance of final judgment third counseling-petitioner change their choice undertaking about no claim of stipend-held-without adjusting the earlier amount-entitled for full stipend during period-perusing P.G. course-undertaking will not come in way.

Held: Para 5

We are also informed that the said judgment has been implemented, and thus, the petitioners would also be entitled to get the same benefits irrespective of undertakings, if any, obtained from them that they would not claim payment of stipends during the pursuance of present P.G. Courses allotted in subsequent counsellings in order of merit. It appears that the undertakings have been given under some compulsion which otherwise ought not to have been asked for.

(Delivered by Hon'ble Uma Nath Singh,J.)

Order (Oral)

1. We have heard learned counsel for parties and perused the pleadings of writ petition.

2. It appears that petitioners-Doctors were declared successful in Post Graduate Medical Entrance Examination, 1998. At that time, the minimum qualifying mark for general category candidates was 45% and for reserved category, it was not specified. However, due to non availability of candidates belonging to reserved category, their vacancies stood surrendered to general category and were thus filled by general category candidates.

3. Post Graduate Medical Entrance Examination, 1998, was conducted by the then King George Medical College, Lucknow (now Chhatrapati Shahuji Maharaj Medical University) and as per brochure brought out, the minimum qualifying mark was set out as 45%. First counselling of successful candidates was held on 15, 16 and 17.04.1998 and criterion of 45% marks for general category candidates remained intact. However, in the first counselling, it was made 35% for reserved category candidates. On the basis of first counselling, the petitioners were allotted various P.G. Courses. However, these admissions were given provisionally, being subject to the decision in pending litigation, if any.

4. It also appears that the first counselling itself was conducted under an interim order passed by this Court in Writ Petition No. 868 (MS) of 1998. The Court also clarified that candidates of reserved category who had obtained less than 35% marks would not be permitted to appear in the counselling, and thus, if already permitted to participate in counselling, were not to be given admission. The courses started in the first week of May, 1998 for general category seats. But during the pendency of writ petition, the U.P. Government came with Ordinance No. 15 of 1998 which later became the Act No. 14 of 1997 and made applicable to U.P. Post Graduate Medical Entrance Examination, 1998 also. Subsequently, U.P. Ordinance No. 15 of 1998 was also promulgated by another Act, namely, the Act no. 9 of 1998 whereby the earlier Act no. 14 of 1997 was made applicable also to Post Graduate Medical Entrance Examination, 1999 and the minimum qualifying mark prescribed for reserved category was reduced to 20%. Thereafter, the second counselling started with 45% mark for general category and 20% mark for reserved category. That arrangement under the Act was however made provisional, subject to the outcome of writ petition. Later, a third counselling was also conducted on 23.08.1999 under an interim order of this Court, passed in

a bunch of writ petitions, wherein the Court reiterated the criteria determined by the Medical Council of India that the minimum qualifying mark for general category candidates would be 50% and for reserved category candidates, 40%. It was also clarified that the students who were pursuing other courses would also be made entitled to claim better option on the basis of their merit and, thus, would be entitled to participate in the third counselling. Finally, the bunch of writ petitions vide a judgment dated 30.11.1999 in the lead Writ Petition No. 3801(MB) of 1998, was disposed of, and the Court reiterated the criteria as laid down by the Medical Council of India which were to be adopted in the third counselling. In the event of seats remaining unfilled, the criteria of 45% minimum qualifying mark for general category candidates and 35% mark for reserved category candidates had to be adopted. The bar imposed upon the candidates admitted earlier, was lifted because of the faulty implementation of reservation policy. Besides, the residual seats were also permitted to be filled on the basis of subsequent counselling and thus, the candidates were again permitted to participate in the counselling in the order of their merit. As per final judgment, the petitioners were thus allotted fresh courses which were to continue for a period of three years so far as the degree courses were concerned, and two years in the case of diploma courses. It appears that petitioner nos. 1 to 6 were admitted to degree courses and petitioner no.7 to diploma course. The students pursuing post graduate courses and also working as Junior Residents were held entitled to receive stipend for the entire period of residency. There was also a restriction on private practice like the one applicable to the scheme of State Government. However, that stipend, which the petitioners were made entitled to get, was stopped with effect from May, 2001, on the ground that the payments made earlier during pursuing of other courses were to be adjusted by deduction during the continuance of present courses, which the petitioners were pursuing. In this background, Shri A. R. Masoodi, learned counsel for petitioners, submitted that the petitioners were illegitimately denied the stipend, which, later, in the case of similarly situated other candidates, was paid in terms of a Division Bench Judgment of this Court dated 08.04.1997 passed in Writ Petition No. 4 (SB) of 1997 and a bunch of similar other writ petitions. The operative portion of judgment, on reproduction, would read as:

"In view of the discussions held above, all the above noted writ petitions are allowed and the opposite parties are directed to pay the stipend to the petitioners as Junior Residents during the period of three years of course of study of M.D.M.S. reckoning it from the date they have been allotted the correct subjects of courses of study without adjusting the period of course they had undergone in different subjects wrongly allocated due to wrong implementation of reservation policy. So far petitioners in writ petition no. 84 of 1997 (SB), writ petition no. 202 of 1997 (SB) and writ petition no. 132 (SB) of 1997 are concerned whose course of study has come to an end and examinations have been held. If necessary, they would be allowed to complete the period of three years as Junior Resident but would not be entitled for any stipend if the courses are over and the examinations were held.

It is further provided that the opposite parties shall clear off the arrears of amount of stipend which may not have been paid to the petitioners or may have been stopped being paid during the currency of the Post Graduate Courses, within a period of two months from today. Writ Petition No. 326 (SB) of 1997 (Dr. Manoj Rajani and Another) and writ petition no. 329 (SB) of 1997 (Dr. Pramod Kumar Jain) which have been filed fresh and have come before us today out of which writ petition no. 326 (SB) of 1997 relates to Kanpur Medical College and writ petition no. 329 (SB) of 1997 which relates to Agra Medical College they also stand finally disposed of in the same manner as indicated above".

5. We are also informed that the said judgment has been implemented, and thus, the petitioners would also be entitled to get the same benefits irrespective of undertakings, if any, obtained from them that they would not claim payment of stipends during the pursuance of present P.G. Courses allotted in subsequent counsellings in order of merit. It appears that the undertakings have been given under some compulsion which otherwise ought not to have been asked for.

6. There is no dispute from the State over the assertion made by learned counsel for petitioners.

7. Thus, we dispose of the writ petition in terms of the aforesaid operative portion of the judgment.

APPELATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.01.2012

BEFORE
THE HON'BLE SIBGHAT ULLAH KHAN, J

First Appeal From Order No. - 4317 of 2011

M/S Kesarwani Zarda Bhandar
...Opposite Party-Appellant
Versus
Subhash Chandra Kesarwani
...Petitioner Respondent

Counsel for the Appelants:
Umesh Chandra Kesarwani

Counsel for the Respondents:
.....

Code of Civil Procedure: Section 151-Restoration Application order passed on merit-in absence of appellant-refusing appearance of Advocate-unless Bar Council authorise to appear before Board-and further rejecting recall/restoration Application-having no power of review-held-in view of law developed in Grindlays Bank-case when every tribunal has power to dismiss a case in-default-power to restore also there-approach of Bank not only hiper technical but shocking-order Quashed-direction to decide restoration on merit after issuing notice to both parties-given.

Held: Para-3

Through the impugned order dated 5.4.2011 restoration application seeking recall of order dated 30.09.2010 dismissing the main matter in default has been rejected on the ground that Board has got no power to review. The order passed by the Copy Right Board is patently erroneous in law. It is correct that a judgment passed on merit can not be reviewed by any court or authority unless power of review is either

specifically conferred or the authority which has decided the matter is a Court having plenary powers like High Court while hearing writ petitions. However, every tribunal has got inherent power to dismiss a case in default in the absence of applicant and to restore the same afterwards if sufficient cause for absence is made out .

Case Law discussed:

A.I.R. 1981 S.C. 606

(Delivered by Hon'ble Sibghat Ullah Khan,J.)

1. Heard learned counsel for the appellant. As the restoration application of the appellant has been rejected as not maintainable by Copy Right Board through impugned order dated 5.4.2011 without even issuing notice to the opposite party hence this appeal is being finally decided without issuing notice to the respondent in this appeal.

2. The main matter was dismissed in default by the Bench of Copy Right Board on 30.9.2010 for the absence on 28.6.2010. It is very strange that three members signed on three different dates i.e. on 13.9.2010, 14,9.2010 and 20.9.2010 and thereafter date 30.9.2010 was written at the bottom of the order. Certified copy of the order is on pages 16 and 17 of compilation.

3. Through the impugned order dated 5.4.2011 restoration application seeking recall of order dated 30.09.2010 dismissing the main matter in default has been rejected on the ground that Board has got no power to review. The order passed by the Copy Right Board is patently erroneous in law. It is correct that a judgment passed on merit can not be reviewed by any court or authority unless power of review is either specifically conferred or the authority which has decided the matter is a Court having plenary powers like High Court while hearing writ petitions. However, every tribunal has got inherent power to dismiss a case in default in the absence of applicant and to restore the same afterwards if sufficient cause for absence is made out vide **A.I.R. 1981 S.C.606 Grindlays Bank Ltd., Vs. The Central Government Industrial Tribunal and others.**

4. Accordingly, impugned order dated 5.4.2011 is set aside. Copy Right Board is directed to decide the restoration application on merit after issuing notice to the other side.

5. Incidently the observation of the Copy Right Board in its order dated 30.09.2010 that regarding eligibility of a counsel to appear before the Board clarification from Bar council of India was not produced does not commend it self to this Court. Unless there is specific bar, any advocate can address Court, Tribunal or a Board where advocates are permitted. The observation of the Copy Right Board to the effect that through earlier order it "directed the counsel on both the sides to move the Bar Council of India for seeking true import of the rule." is quite strange. If the rule required interpretation, the Copy Right Board should have interpreted it. It had absolutely no jurisdiction or authority to refer the matter of interpretation to the Bar Council.

6. Appeal is accordingly, allowed as above. Copy Right Board is directed to decide restoration application very expeditiously.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 28.02.2012

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Service Single No. - 5135 of 2001

Dileep Singh Chhabra ...Petitioner
Versus
State of U.P. Through Chief Secy.and 2 others ...Respondents

Counsel for the Petitioner:
Sri O.P.Srivastava

Counsel for the Respondents:
C.S.C.
Sri V.K. Singh

Constitution of India, Article 226- Appointment on deputation-petitioners were initially working with U.P.S.M.D.C.-on regular basis but subsequently declared surplus employees in the year 1986-petitioner were offered appointment on post of project officer appointment on deputation purely temporarily basis till regular candidates available and the incumbents be repatriated to their permanent DEPARTMENT if lost utility-on contractual basis-engagement of one year extended from time time lastly without further extension-can not claim continuance as matter of right-being appointee on deputation does not confer any right to claim absorption-even appointment on deputation without interruption of State Govt.-SUDA is not society but within meaning of State under Article 12 of Constitution-concept of adverse possession or lean over post not available in service jurisprudence-continuation of wrongly appointed petitioners- not create any right-Petition dismissed.

Held: Para 54

That be so, at the best it is a wholly stop gap arrangement which could have been ceased at any point of time since such kind of arrangement does not confer any right upon the incumbent to hold a post wherein recruitment/appointment is subject to Article 14 of Constitution and other recruitment rules. It cannot be disputed that SUDA is a society formed by State Government but since entire funding and control by State Government, it satisfy requirement of Article 12 of the Constitution being an "other authority" and therefore recruitment and appointment therein could have been made only consistent with Article 16 of Constitution and other relevant provisions. There is no concept of holding over applicable in service matters. The Apex Court in State of Orissa Vs. Mamata Mohanti, JT 2011(2) SC 164 has said that right in law exists only and only when it has a lawful origin. The concept of adverse possession or lien on post or holding over is not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed or never lawfully appointed on a post shall not create any right in his favour.

Case law discussed:
AIR 1986 SC 1571; AIR 1984 SC 636; Writ Petition No.338 (S/B) of 1997 (Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti & Others Vs. State of U.P. & others); 2000 (5) SCC 362; 2005 (8) SCC 394; 1990 (Supp) SCC 243; 2007 (2) SCALE 486; Ashok Kumar Pandey Vs. State of U.P. and Others, writ petition no 52527 of 2005 decided on 3rd August 2005; 2004,3 UPLBC 2318; 2005 (1) AWL 426; 2003 (1) AWL 520; 2007 (2) SCC 138; the decision in Central Inland Water Transport Corporation Ltd. (supra) and Anoop Jaiswal (supra); JT 2006 (4) SC 420; 2008 (10) ADJ 283; AIR 1958 SC 36; JT 2011 (2) SC 164

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. These two writ petitions are connected having been filed by the same person namely Dileep Singh Chhabra.

Though in Writ Petition No.5135 of 2001 there are nine petitioners including Dileep Singh Chhabra, but since issues are common and therefore both these matters have been heard together and are being decided by this common judgment.

2. Heard Sri O.P.Srivastava, Advocate for the petitioner, learned Standing Counsel, Sri Vivek Rai Singh and Sri Sarvesh Kumar, Advocates, for the respondents and perused the record.

3. The factual matrix in brief, relevant for matter in dispute for proper adjudication may be stated as under:

4. First I take up the facts as are involved in Writ Petition No.5135(S/S) of 2001 (hereinafter referred to as "first petition"). Here there are nine petitioners before this Court seeking a writ of certiorari quashing option proforma/contract bond of an agreement (Annexure 1 to 8-A to the writ petition). They have also sought a mandamus commanding respondents to continue petitioners in service with usual pay and salary in like pay scale attached with other existing posts with all attending benefits treating them regularly appointed employees of State Urban Development Agency (hereinafter referred to as "SUDA").

5. The petitioners were initially employed and engaged in U.P. State Mineral Development Corporation (hereinafter referred to as "UPSMDC"). The petitioners No.1 to 3 namely Sri Dileep Singh Chhabra, Sudha Kant Mishra and Vijai Kumar were appointed as Assistant Manager (Marketing); petitioner No.4 Sri Rajesh Kumar Pandey was appointed as Superintendent (Marketing); petitioner No.5 Sri Shashi Dayal Rai was Assistant Manager (Geology); petitioners No.6, 7, 8 and 9 were appointed as Deputy Manager (Mining), Assistant Manager (Accounts), Assistant Manager (Inventory) and Statistical Officer respectively. It is said that these appointments in UPSMDC were on regular basis and were made between 1979 to 1986. The business of UPSMDC shrinked with passage of time resulting in heavy losses compelling the management to go for retrenchment of the employees due to substantial reduction in work load. All these petitioners were declared "surplus" and efforts were made to provide them alternative appointment.

6. In the year 1991, SUDA came into existence as a Society registered under Societies Registration Act, 1860 constituted by State of U.P. Its funds are supplied by State Government as well as Central Government. The main objective and purpose of its constitution was to provide developmental activities to ameliorate/improve poor in slum areas of urban cities in the State.

7. By Government Order dated 15.11.1997, 677 posts were created in SUDA which included 69 posts of Project Officer. The petitioners were offered employment on transfer and deputation on temporary basis in SUDA as Project Officer in the scale of 2000-3200. On expressing willingness by the petitioners, and no objection granted by UPSMDC, petitioners were issued transfer/deputation letters posting them as Project Officer in SUDA. These letters were issued on 25.5.1998. Besides others, it was clearly mentioned in the aforesaid letters that aforesaid transfer/deputation is on purely temporarily basis and may continue till the candidates by direct recruitment are available or until further orders. It also said that in case any

adverse information is received in respect to any person or their service is not found useful for SUDA, the incumbents may be repatriated to the parent departments. The terms and conditions of deputation/service transfer was to be informed later on. Copies of the aforesaid letters are on record as Annexure 10 to 14 to the first petition.

8. The petitioners, pursuant to the aforesaid letters, joined service in SUDA. While the petitioners were serving in SUDA, UPSMDC came to be closed and most of its employees were adjusted/absorbed in other departments/undertakings of State of U.P.

9. One Indra Pal Kanaujia, employee of Nagar Nigam Kanpur is said to have been absorbed as Project Officer in SUDA by order dated 1.10.1997 (Annexure 17 to the writ petition). Similarly three employees of UPSMDC were absorbed in U.P. State Industrial Development Corporation. Another employee, Som Dutta Jalwan, a retrenched employee of Auto Tractors Ltd. was absorbed in SUDA by order dated 22.1.2001. Copy of the order is Annexure 19 to the first petition which shows that pursuant to a judgment dated 18.1.2000 in Writ Petition No.1600 (S/B) of 1998, order for absorption of Sri Som Dutt Jalwan, retrenched employee of Auto Tractors Ltd. was passed by State Government on 22.1.2001.

10. However, ignoring the above benefit/absorption extended to other employees, respondent SUDA required petitioners to execute contract bond for engagement of their service for a period of one year on a consolidated salary, else, the petitioner's service shall be deemed to be terminated on 30.9.2001.The terms and conditions contained in the contract includes tenure of appointment i.e. one year, liable for renewal on satisfactory work and performance assessed by the employer, and also, that after completion of tenure of service, they shall stand terminated automatically. It also provides that the contract is liable to be terminated at any point of time without any notice.

11. Learned counsel for the petitioners submitted that the petitioners being retrenched employee of UPSMDC, like other employees, were liable to be adjusted/absorbed in any other department of Government and therefore SUDA was not justified in requiring them to execute a contract bond of employment containing totally oppressive conditions of service particularly when it has the effect of changing the very nature of appointment of petitioners i.e. from regular to contractual and tenure appointment. He submitted that approach of respondents was wholly illegal, arbitrary, discriminatory and also amounts to taking benefit of uneven bargaining power of petitioners qua the respondents and hence violative of Section 23 of Indian Contract Act. He placed reliance on Apex Court's decisions in **Central Inland Water Transport Corporation Ltd. Vs. Brojo Nath Ganguly, AIR 1986 SC 1571** and **Anoop Jaiswal Vs. Government of India AIR 1984 SC 636.** He also placed reliance on a decision of this Court in **Writ Petition No.338 (S/B) of 1997 (Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti & Others Vs. State of U.P. & others)** wherein this Court (Lucknow Bench) held that since State Government itself has given statement that retrenched employees shall be absorbed elsewhere, it may do so in phased manner within a specified time. In order dated 13.7.2001, this Court gave following directions:

"In view of the aforesaid reason, the request is accepted and the State Government is directed to absorb such employees in a phased manner within a period of six months. The employees will be absorbed in accordance with seniority in the particular cadre; meaning thereby, that the senior most in the cadre will be first absorbed and thereafter, that process will continue till the absorption process will come to an end within six months.

With the aforesaid directions, the review petition is disposed of."

12. Though at the first flush the argument advanced appears to be quite attractive but on a deeper scrutiny I do not find any substance therein. The petitioners filed this writ petition while serving in SUDA. It is not their case in the entire writ petition that SUDA at any point of time made any representation that petitioners shall be absorbed in SUDA. From the own letter of posting in SUDA, placed on record by the petitioners, it is evident that they were transferred on deputation to SUDA with a clear stipulation that said transfer is temporary and incumbent may be repatriated to parent department. It is well settled that an appointment on deputation does not confer any right to claim absorption in the department in which the incumbent has gone to join on deputation. He is liable to be repatriated to his parent department at any point of time.

13. The right of an employee to continue on deputation has been considered in a catena of cases earlier also. In **Kunal Nanda Vs. Union of India, 2000(5) SCC 362,** the Court held:

"....The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation..." (para 6)

14. In the matter of **Union of India and another Vs. V. Ramakrishnan and others : 2005(8) SCC 394**, the same view has been reiterated and in para 32 of the judgment, the Court said:

"Ordinarily, a deputationist has no legal right to continue in the post. A deputationist indisputably has no right to be absorbed in the post to which he is deputed. However, there is no bar thereto as well. It may be true that when deputation does not result in absorption in the service to which an officer is deputed, no recruitment in its true import and significance takes place as he is continued to be a member of the parent service. When the tenure of deputation is specified, despite a deputationist not having an indefeasible right to hold the said post, ordinarily the term of deputation should not be curtailed except on such just grounds as for example, unsuitability or unsatisfactory performance. But, even where the tenure is not specified, an order of reversion can be question when the same is malafide. An action taken in post haste manner also indicates malice."

15. In **Ratilal B. Soni and others Vs. State of Gujrat and others 1990 (Supp) SCC 243,** the Court held:

"5. The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post ....."

16. All the petitioners are working on deputation in SUDA. Their parent department faced closure. The petitioners become surplus. They also lost option of repatriation due to vanishing of parent employer i.e. UPSMDC employee, it was always open to the petitioners to approach State Government, the respondent No.1, with a request for their absorption elsewhere as was done in respect to other employees. There is nothing on record to show that petitioners made any such attempt. It appears that UPSMDC informed SUDA that as a result of closure of UPSMDC all the employees have rendered surplus and they have been terminated w.e.f. 31.1.2000. Taking a considerate and lenient view in the matter, SUDA, who otherwise could have simply terminated the petitioners as soon as their service in parent department had already been terminated, gave an opportunity to them (the petitioners) to continue in SUDA on contract basis for a period of one year, liable to be renewed on the assessment of performance as the case may be. The petitioners at no point of time had any right on any post in SUDA. Their letter of transfer/posting in SUDA clearly contemplate a condition as is evident from Annexure 13 to the first petition that in case of closure of their department, the incumbent shall have no lien in SUDA. The aforesaid arrangement by transfer or deputation also was to continue only till a direct recruitment in accordance with rules is made or until further orders. By no stretch of imagination the aforesaid arrangement can be said to be a regular arrangement or regular appointment of the petitioners in SUDA and this assumption pleaded in the writ petition and argued by Sri Srivastava is wholly unfounded and baseless.

17. It is well settled that a transfer on deputation can be brought to an end at any stage by repatriating the deputationist at any post of time and he has no right to continue in borrowing department. He can be repatriated without assigning any reason by the borrowing department. The rights of deputationist are very fortitious and he can be directed to go back to parent department at any point of time without assigning any reason and where he ceased to be an employee of parent department, it would naturally result in cession in the parent department also unless borrowing department on its own takes a different step for retaining such an employee over which the deputationist employee however has no right to enforce so as to continue thereat. Nature of deputationist's right has been considered in catena of decisions, some of which have already been referred hereinabove and some are as under:

18. The Apex Court in **Prasar Bharti and others Vs. Amarjeet Singh and others 2007 (2) SCALE 486** held that a person sent in a cadre outside his substantive cadre has no right to continue in foreign cadre and can be repatriated to his parent cadre at any point of time without assigning any reason.

19. This court in **Ashok Kumar Pandey Vs. State of U.P. and Others, writ petition no 52527 of 2005 decided on 3rd August 2005,** has held as under:

".....It is well settled that a deputationist has no right to remain on deputation and he can be sent back to his Parent Department at any time....."

20. In the case of **Devi Kumar Vs. Rajya Krishi Utpadan Mandi Parishad 2004, 3 UPLBC 2318**, this court observed :

".....The period of deputation originally fixed can be cut short, if considering necessary, a deputationist has no right to continue in the deputation post....."

21. A Division Bench of this court in the **Gauri Shanker Vs. State of U.P. and Others 2005 (1) AWL 426** held as under:

"....A deputationist has no right to remain on deputation and he can be sent back to his Parent Department at any time....."

22. The same view has been followed by another Division Bench of this court in the case of **Dr. Seema Kundra Vs. State of U.P. 2003 (1) AWL520.**

23. In **Uttar Pradesh Gram Panchyat Adhikari Sangh and others Vs. Days Ram Saroj and others, 2007(2) SCC 138** the Court has reiterated the same principles as has been laid down in the case of **Kunal Nanda (supra)** as quoted above.

24. In my view, the decision in **Central Inland Water Transport Corporation Ltd. (supra)** and **Anoop Jaiswal (supra)** have no application in the present case at all since petitioners were called on deputation with their consent and without any representation by SUDA respondents No.2 and 3 that they shall be absorbed in SUDA at any point of time. Hence question of offering any conditions of service against public policy does not arise on the part of SUDA since there was no representation otherwise by them. Moreover, engagement on contract basis with a prescribed tenure by itself cannot be said to be a condition of service which is against public policy or arbitrary. A Constitution bench of Apex Court has considered such kind of appointment in **Secretary, State of Karnataka and others Vs. Uma Devi and others JT 2006 (4) SC 420,** and in para 34 of the judgment observed as under:-

"If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued."

25. The Constitution Bench has also overruled all other earlier judgments of the Apex Court taking a view contrary to the judgment of the Constitution Bench.

26. Now the question comes about the right of the petitioners for absorption in any other employment of State Government.

27. With respect to retrenched employees of the State Government the issue may be examined from two angles, firstly in the context of provisions if any made by the State Government in the rules framed under proviso to Article 309 which are applicable for recruitment on civil posts under the State Government and secondly; in the context of U.P. Absorption of Retrenched Employees in Public Corporations Rules, 1991 which are applicable to such corporations which are notified under rule 3 thereof.

28. Learned counsel for the petitioners has not shown to this Court any statutory provision in respect to civil post which are governed by the rules framed under proviso to Article 309 wherein a blanket right of absorption has been conferred upon the employees of a company or corporation owned by State Government. Admittedly these employees cannot be said to be holder

of civil posts and therefore their initial appointment is not on civil posts governed by provisions of Article 309, 310 and 311 of Constitution. Such employees, therefore, unless there is some statute to provide otherwise, cannot, as a matter of right, claim their appointment or absorption against a civil post, recruitment and appointment wherein is governed by statutory rules framed under proviso to Article 309 of constitution. However, in respect to the "retrenched employees" from the service of State Government, which satisfy requirement of civil posts, certain provisions for giving some weightage in selection have been made which may be referred in brief hereinafter as under:

29. The U.P. Retrenched Employees Rules, 1967 (for short the 1967 Rules) was promulgated, which defined "Retrenched Employee" under Rule-2(b) as under:

"(b) "retrenched employee" with the grammatical variation and cognate expressions, means a person who was employed in any service or on any post under the rule-making control of the Governor, whether in a substantive, officiating or temporary capacity, and had served continuously for a period of not less than one year, and whose services are, whether before or after the commencement of these rules, terminated, or are certified as liable to termination but does not include a person who was appointed on an ad hoc basis."

30. The definition of "retrenched employee" contained in 1967 Rules clearly refers to a person, who was employed in any service on the post under the rule-making control of the Governor and whose services were terminated, or are certified, as liable to termination after working for a period of not less than one year in substantive, officiating or temporary capacity except on ad hoc basis. The rule making authority also explained ad hoc appointment and explanation 1 to Rule 2(b) of 1967 Rules provides that a person not appointed in accordance with the procedure prescribed in the recruitment rules or orders applicable to the service or post concerned shall be deemed to have been appointed on ad hoc basis. Rule-3 of 1967 Rules, however, provides that the said rules shall remain in force for a period of three years and thereafter for such period as notified by the Governor in consultation with the Commission. The said rules were applicable to all services and posts under the rule making control of the Governor, which were to be filled in wholly, or partly by direct recruitment.

31. The aforesaid rules continued to remain in force upto October, 1971. In 1975, for recruitment in Ministerial Cadre in the Subordinate Offices, statutory rules under proviso to Article 309 of the Constitution of India were framed, namely, "The Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1975" (hereinafter referred to as "1975 Rules") published in the Gazette dated 29.7.1975. The rule-making authority declares that the said rules are being enacted in supersession of all existing rules and orders on the subject and for recruitment of ministerial staff in the subordinate Government offices in the State. The preface of 1975 Rules reads as under:

"In exercise of powers conferred by the proviso to Article 309 of the Constitution, and in supersession of all existing rules and orders on the subject, the Governor is pleased to make the following rules for recruitment of ministerial staff in the

subordinate Government offices in the State."

32. Rule 3 of 1975 Rules, which give it overriding effect, reads as under:

"3. Effect of inconsistency with other rules.- In the event of any inconsistency between these rules and any specific service rules:

(1) the provisions contained in these rules prevail to the extent of the inconsistency in case the specific rules were made prior to the commencement of these rules; and

(2) the provisions contained in the specific rules shall prevail in case they are made after the commencement of these rules."

33. Rule 4(gg) of 1975 Rules provides the definition of "Retrenched Employee" and reads as under:

"(gg) "Retrenched Employee" means a person who was employed on a post under this rule making power of the Governor-

(i) in permanent, temporary or officiating capacity;

(ii) for a total minimum period of one year, out which at least 3 months service must have been continuous service.

(iii) whose services were or may be dispensed with due to reduction in or winding up of the establishment; and

(iv) in respect of whom a certificate of being a retrenched employee has been issued by the Appointing Authority but does not include a person employed on ad hoc basis only."

34. 1975 Rules initially, as enacted, did not specifically contain any provision giving any relaxation to "Retrenched Employee" but Rule 13-A was inserted by Notification dated 6.7.1977 for a period of three years from the date of its commencement and it reads as under:

"13 A. Relaxation for retrenched employees.-(1) A retrenched employee shall be given exemption from the upper age-limit to the extent of the period of service rendered by him to the State Government together with the period spent without a Government job as a result of the retrenchment.

(2) A retrenched employee, who on the date of his first appointment in the service of the State Government possessed the academic qualifications prescribed on such date for the post now being applied for, shall be deemed to satisfy the requirement of academic qualifications for such post.

(3) For the purposes of this rule, the expression "retrenched employee" means a person who was employed in any service or on any post under the rule-making control of the Governor whether in a substantive, officiating or temporary capacity, and had served continuously for a period of not less than one year, and whose services are, whether before or after the commencement of these rules, terminated or liable to termination, on account of reduction of establishment, and in respect of whom a certificate of being a retrenched employee has been issued by the appointing authority concerned, but does not include a person who was appointed on an ad hoc basis.

Explanation- A person appointed in accordance with the procedure prescribed in the recruitment rules or orders applicable to the service or post concerned shall be deemed to have been appointed on an ad hoc basis."

35. Consistent with 1975 Rules a Government Order No. 27/2/1974- Karmik-2 dated 6.7.1977 was published containing definition of "retrenched employee" and on the same date, another Government Order No. 41/2/1967- Karmik-2 dated 6.7.1977 was published for giving effect to the provisions of 1975 Rules and for guidance and clarification of the concerned officials. The aforesaid Government Order relevant for the present purpose is reproduced as under:

''शा० सं०–41/2/67–कार्मिक–2,

दिनांक जुलाई 6, 1977

विषयः राज्याधीन सेवाओं में वर्ग–3 व 4 के छंटनीशुदा कर्मचारियों को खपाने की व्यवस्था।

राज्याधीन कार्यालयों के छंटनीशुदा कर्मचारियों को भावी रिक्तियों में खपाने के लिए वर्ष 1967 में एक नियमावली बनाई गई थी, जो अक्टुबर, 1971 तक प्रभावी रही। उसके पश्चात मितव्ययिता के आधार पर अधिष्ठानों में कमी किये जाने अथवा अन्य प्रशासनिक कारणों से राज्य के विभिन्न कार्यालयों में वर्ग 3 तथा 4 के कर्मचारियों की छंटनी करना अनिवार्य हो गया तथा छंटनीशुदा कर्मचारियों को खपाने का प्रश्न शासन के समक्ष पुनः उपस्थित हो गया।

2. इस सम्बन्ध में मुझे यह कीने का निर्देश हुआ है कि इस समस्या पर सम्यक् विचार करने के उपरान्त छंटनीशुदा कर्मचारियों को राज्याधीन कार्यालयों (अप्राविधिक तथा लोक सेवा आयोग की परिधि के बाहर के पदों) में होने वाली रिक्तियों मे खपाने के लिए शासन ने अब निम्नलिखित निर्णय लिये हैः

(क) आयु सीमा के छूट–

ऐसे कर्मचारियों ने जितने वर्ष की सेवा अपनी छंटनी के पूर्व की हो तथा जितनी अवधि के लिए वह छअनी के कारण सेवा से बाहर रहे हों उतने वर्ष की आयु सीमा से उन्हें छूट प्रदान कर दी जाय।

(ख) शैक्षिक योग्यता के छूट–

यदि ऐसे कर्मचारी अपनी पूर्व नियुक्ति के समय, जिस पद के लिए वह अब अभ्यर्थी हैं उस समय उस पद की निर्धारित शैक्षिक अर्हता पूरी करते हैं।

(ग) सुविधाओं की अवधि–

उपर्युक्त सुविधायें इस शासनादेश के जारी होने के दिनांक से 3 वर्ष के लिए ही मान्य रहेंगी।

(घ) छटनीशुदा कर्मचारियों की परिभाषा–

छटनीशुदा कर्मचारी की परिभाषा वही होगी जो कार्मिक अनुभाग–2 की अधिसूचना संख्या 27/2/1974 –कार्मिक (2) दिनांक 6 जुलाई, 1977 में दी हुई है और जो सुलभ सदर्भ हेतु नीचे उद्धृत की जाती है।

''छटनी किया गया कर्मचारी'' का तात्पर्य उस व्यक्ति से है जो राज्यपाल के नियम बनाने के नियन्त्रण में किसी सेवा में या किसी पद पर मौलिक स्थानापन्न, या अस्थायी रूप से नियोजित था और जिसने कम से कम एक वर्ष की अवधि तक लगातार सेवा की हो और जिसकी सेवायें इस नियमावली के प्रारम्भ होने के पूर्व या पश्चात अधिष्ठान में कमी किये जाने के कारण समाप्त की जा सके और जिनके सम्बन्ध में सम्बद्ध नियुक्ति प्राधिकारी द्वारा छटनी किया गया कर्मचारी होने का प्रमाण–पत्र जारी किया गया हो, किन्तु इसमें ऐसा व्यक्ति सम्मिलित नहीं है जिसे तदर्थ आधार पर नियुक्त किया गया हो।

स्पष्टीकरण– सम्बद्ध सेवा या पर पर प्रयोग भर्ती नियमावली या आदेशों में विहित प्रक्रिया के अनुसार नियुक्त व्यक्ति को तदर्थ आधार पर नियुक्त किया गया नहीं समझा जायेगा।

3. ऐसे छटनीशुदा कर्मचारी जो वर्ग 3 (समूह ग) के लिपिक वर्गीय पदों, जिनका न्यूनतम वेतनमान 200–320 रूपये हैं तथा चतुर्थ वर्ग (अब समूह घ) के वे पद जिनका वेतनमान 165–215 रूपये हैं और जिस पर भर्ती जिला स्तरीय चयन समितियों के माध्यम से की जाती है, में भर्ती के इच्छुक हों उनको उपर्युक्त सुविधा के अन्तर्गत केवल नियमित चयनों में अर्हता देने के लिए छूट दी जायेगी परन्तु उन्हें चयन में कोई प्राथमिकता प्रदान नहीं होगी। शासनादेश संख्या 8/कार्मिक–1975 दिनांक 22 नवम्बर, 1975 में जारी किये गये आरक्षण

सम्बन्धी आदेशों पर कोई प्रभाव नहीं पड़ेगा और पूर्व की भांति ही उनको कार्यान्वित किया जायेगा। तद्नुसार ''अधीनस्थ कार्यालय लिपिक वर्ग (सीधी भर्ती) नियमावली, 1975'' तथा ''चतुर्थ वर्ग कर्मचारी सेवा नियमावली, 1975'' में आवश्यक संशोधन कर दिये गये हैं।''

36. Rule 13-A expired after three years and so the Government Order dated 6.7.1977. In order to continue with the relaxation in age, educational qualification another GO No. 41/2/67-Karmik-2 dated 23.5.1981 was issued for a period of three years wherein the definition of "retrenched employee" as notified on 6.7.1977 and modified on 18.10.1979 was reiterated. For ready reference, it is re-produced as under:

''शा.सं. 41/2/67–कार्मिक–2,

दिनांक 23 मई, 1981

विषयः राज्याधीन सेवाओं में वर्ग 3 व 4 के छंटनीशुदा कर्मचारियों को खपाने की व्यवस्था।

उपर्युक्त विषयक समसंख्यक शासनादेश दिनांक 6 जुलाई, 1977 में प्रदत्त सुविधाओं की मान्य अवधि 5 जुलाई, 1980 को समाप्त हो गई है। शासन की जानकारी में यह बात आई है कि छटनी शुदा कर्मचारियों की समस्या का निदान पूर्ण रूप से नहीं हो सका है अतः इस विषय पर पुनः विचार किया गया।

. मुझे यह कहने का निर्देश हुआ है कि इस समस्या पर समुचित विचारोपरान्त छंटनीशुदा कर्मचारियों को राज्याधीन कार्यालयों में होने वाली भावी रिक्तियों (अप्राविधिक तथा लोक सेवा आयोग की परिधि से बाहर के पदों) में खपाने के लिये शासन ने निम्नलिखित निर्णय लिये हैः

(क) अधिकतम आयु सीमा से छूटः

ऐसे कर्मचारियों ने जितने वर्ष अपनी छंटनी से पूर्व की हो तथा जितनी अवधि के लिये वह छंटनी के कारण सेवा से बाहर रहे हों उतने वर्ष की अधिकतम आयु सीमा से उन्हें छूट प्रदान कर दी जाय परन्तु प्रतिबन्ध यह है कि यह अवधि किसी भी दशा में 10 वर्ष से अधिक नहीं होगी।

(ख) शैक्षिक योग्यता से छूटः

यदि ऐसे कर्मचारी अपनी पूर्व नियुक्ति के समय, जिस पद के लिये वह अब अभ्यर्थी हैं, उस पद की निर्धारित शैक्षिक अर्हता रखते थे, तो यह समझा जायेगा कि वे वर्तमान पद के लिये निर्धारित शैक्षिक अर्हता पूरी करते हैं।

(ग) सुविधाओं की अवधिः

उपर्युक्त सुविधाये इस शासनादेश के जारी होने की तिथि से तीन वर्ष के लिये मान्य रहेगी।

(घ) परिभाषाः

छटनीशुदा कर्मचारी की वही परिभाषा होगी जो शासनादेश संख्या 41/2/67–कार्मिक–2 दिनांक 6 जुलाई, 1977 में दी हुई है और समसंख्यक शासनादेश दिनांक 18 अक्टूबर, 1979 द्वारा यथा संशोधित है और जो सुलभ सन्दर्भ हेतु नीचे उद्धृत की जाती हैः

''छंटनी किया गया कर्मचारी'' का तात्पर्य उस व्यक्ति से है जो राज्यपाल के नियम बनाने के नियंत्रण में किसी सेवा में या पद पर मौलिक, सीनापन्न अथवा अस्थायी रूप से नियोजित था और जिसने कम से कम 3 मास की निरन्तर सेवा की हो परन्तु कुल मिलाकर यह फुटकर खण्डित सेवा भी एक वर्ष की पूरी हो गई हो और जिसकी सेवायें अधीनस्थ कार्यालय लिपिक वर्ग (सीधी भर्ती) (चतुर्थ संशोधन) नियमावली, 1979 तथा चतुर्थ वर्ग कर्मचारी सेवा (तृतीय संशोधन) नियमावली 1979 के प्रभावी होने के पूर्व या पश्चात अधिष्ठान में कमी के कारण समाप्त कर दी गई हो या समाप्त कर दी जाये और जिसके सम्बन्ध में सम्बद्ध नियुक्ति प्राधिकारी द्वारा छटनी किया गया कर्मचारी होने का प्रमाण–पत्र जारी किया गया हो किन्तु उसमें ऐसा व्यक्ति सम्मिलित नहीं होगा जिसे तदर्थ आधार पर नियुक्त किया गया हो।

स्पष्टीकरण – सम्बद्ध सेवा या पद पर प्रयोज्य भर्ती नियमावली या आदेशों में विहित प्रक्रिया के अनुसार नियुक्त व्यक्ति को तदर्थ आधार पर नियुक्त किया गया नहीं समझा जायेगा।

3. ऐसे छटनीशुदा कर्मचारियों को उपर्युक्त सुविधा के अन्तर्गत केवल नियमित चयनों में अर्हता देने के लिये छूट दी जायेगी परन्तु उन्हें चयन में कोई प्राथमिकता प्रदान नहीं होगी।

सचिव''

37. The aforesaid government order was extended for a further period of three

years vide Government Order No. 41/2/1967-Karmik-2 dated 12.4.1983, which reads as under:

''शा० संख्या42/2/1967–कार्मिक–2,

दिनांक 12 अप्रैल, 1983

विषयः– जनगणना विभाग के छटनी किये जाने वाले कर्मचारियों को राज्याधीन सेवाओं /पदों में नियुक्ति हेतु रियायत।

उपर्युक्त विषयक समसंख्यक शासनादेश दिनांक 12 फरवरी, 1982 के क्रम में मुझे यह स्पष्ट करने का निदेश हुआ है कि उपरोक्त शासनादेश में दी गई सुविधाये राज्य सरकार के अधीन केवल उन सेवाओं/पदों पर नियुक्ति हेतु अनुमन्य होंगी जिन पर सीधी भर्ती लोक सेवा के माध्यम से नहीं होती है।

उप सचिव।''

38. Vide Notification dated 16.3.1985 the Governor promulgated a new set of Rules, namely, The U.P. Subordinate Offices Ministerial Staff (Direct Recruitment) Rules, 1985 (in short '1985 Rules'), in supersession of existing rules and orders on the subject as is apparent from the following:

"In pursuance of the provisions of Clause (3) of Article 348 of the Constitution, the U.P. Governor is pleased to order the publication of the following English translation of Notification No. 20/3-82-Personnel-2-85, dated March 16, 1985.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution, and in supersession of all existing rules and orders on the subject, the Governor is pleased to make the following rules regulating recruitment of ministerial staff in the Subordinate Government Offices in the State."

39. Rule-3 of 1985 Rules also gives it overriding effect over any inconsistent existing rule and Rule-4(i) defines "retrenched employee" which reads as under:

"Retrenched employee" means a person-

(i) who was employed on a post under the rule making power of the Governor, in permanent, temporary or officiating capacity for a total minimum period of one year, out of which at least three months' service must have been continuous service;

(ii)whose services were or may be dispensed with due to reduction in or winding up of the establishment; and

(iii) in respect of whom a certificate of being retrenched employee has been issued by the appointing authority;

but does not include a person employed on ad hoc basis only."

40. In 1991, "The Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporation in Government Service Rules, 1991" (for short the '1991 Rules') were framed and published in the Gazette dated 19th August, 1991. The aforesaid rule provides for absorption of 'Retrenched Employee" of Government or Public Corporation. Rule-2-(b) defines Public Corporation, Rule 2-(c) defines "Retrenched Employee" and Rule-3 is a charging provision, which are reproduced as under:

"2(b) "Public Corporation" means a body corporate established or constituted by or under any Uttar Pradesh Act except a University of Local Authority constituted for

the purpose of Local Self Government and includes a Government Company within the meaning of Section 617 of the Companies Act, 1956 in which the State Government has prepondering interest;

(c) "retrenched employee" means a person who was appointed on a post under the Government or a public corporation on or before October 1, 1986 in accordance with the procedure laid down for recruitment to the post and was continuously working in any post under the Government or such corporation upto the date of his retrenchment due to reduction in, or winding up of, any establishment of the Government or the public corporation, as the case may be and in respect of whom a certificate of being a retrenched employee has been issued by his appointing authority."

(3) Notwithstanding anything to the contrary contained in any other service rules for the time being in force, the State Government may by notified order require the absorption of the retrenched employee in any post or service under the government and may prescribed the procedure for such absorption including relaxation in various terms and conditions of recruitment in respect of such retrenched employees."

41. Thereafter 1998 Rules were promulgated on 9.6.1998. It would be appropriate to refer the declaration made under the aforesaid rules which was not in the same terms as it was in 1975 Rules and 1985 Rules that the same are being enacted in supersession of all the existing provisions and on the contrary 1998 Rules only makes a declaration of making of the rules by the Hon'ble Governor and reads as under:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the Governor is pleased to make the following rules:"

42. Rule-2 of 1998 Rules declares to override inconsistent existing rules. Rule 5(3)(c) provides weightage which is admissible to a "retrenched employee" for recruitment in 1998 Rules. Admittedly, 1998 Rules did not contain any definition of "retrenched employee". The Hon'ble Governor further promulgated another set of rules in 2001, namely, The Uttar Pradesh Procedure for Direct Recruitment for Group "C" posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2001 (in short the "2001 Rules"). The aforesaid rules have been framed in supersession of all the existing rules and orders on the subject as is apparent from the following declaration made under the Rules:

"In exercise of the powers conferred by the proviso to Article 309 of the Constitution and in suppression existing rules and other on the subject, the Governor is pleased to make the following rules."

43. 2001 Rules, admittedly does not contain any definition of 'retrenched employee' but provides certain concessions in recruitment to a 'retrenched employee' vide Rule 6(6)(b) etc.

44. Coming to the second angle of the matter, i.e. 1991 Rules, These rules are applicable to only such category of undertakings which are notified under Rule 3 thereof. Referring to these rules some judgments were delivered by this Court of Allahabad and Lucknow both but without considering the above rules with threadbare analysis, which resulted in issuance of some

directions for absorption of the employees of undertakings and corporations of State Government without realizing whether they were notified under the said rules or not. In some of the matters even appeals in Apex Court were dismissed in limine rendering the judgments final. However, later on these rules were rescinded by the State Government vide Rescission Rule 2003. Both these rules and their implications and interpretation in detail came to be considered by a Division Bench of this Court in **State of U.P. and others Vs. Sunil Kumar Verma and others, 2010(10) ADJ 125** and this Court in paras 40, 46, 62, 63, 75, 76 and 90 clearly held as under:

"40. Reference of Government order dated 11th November, 1993 issued by the State Government has also been made, which was issued in reference to closure of Regional Development Corporations. The Government order dated 11th November, 1993 provided that names of Class "C' and Class "D' employees whose services have come to and end, shall be registered in the respective employment offices in accordance with the seniority and their names be forwarded after requisition is received from the employers. It is the case of the State that absorption of the retrenched employees was having negative impact on the efficiency in the government departments and was proving counter productive to the aims and object for which aforesaid orders were issued, the State Government had come up with Government order dated 27th May, 1993 stating that there is no justification in future to absorb the employees of the Corporation in the government service since the retrenched employees of the Government companies and Corporation falling within the purview of labour legislation are entitled to certain benefits and certain clarifications were issued thereafter. The Bhadohi Woollen Mills Limited was closed whose employees filed Writ Petition No.17195 of 1998 (Bageshwari Prasad Srivastava and others vs. State of U.P. and others), which was decided on 27th April, 1999 directing the State Government to absorb the employees of Bhadohi Woollen Mills as per the 1991 Rules. The Government order dated 11th November, 2002 was issued providing for procedure for consideration of absorption of the employees of Bhadohi Woollen Mills (Annexure-11 to Writ Petition No.45102 of 2008. Clause 8 of the said Government order provided that those employees, who were working in Group-C and Group-D post and whose services have come to an end, shall be registered in employment office in separate pool and on requisition from employers their names shall be forwarded accordingly. It was also provided that upper age limit shall not be applicable for such employees for government service. Certain other conditions were also mentioned in the Government order dated 11th November, 2002. Thereafter came the Rescission Rule 2003 with effect from 8th April, 2003 rescinding the 1991 Rules. . . ."

"46. By virtue of sub-rule (ii) of Rule 3(1) of the Rescission Rules 2003 the orders of the Government issued from time to time prescribing the norms for absorption of retrenched employees of a particular Government department or Public Corporation in Government Service and granting of consequential benefits including pay protection shall stand abrogated from the date of commencement of the Rescission Rules, 2003. However, Rule 3(2) of the Rescission Rules 2003 provides that notwithstanding such rescission the benefit of pay protection granted to an absorbed retrenched employee prior to the date of

commencement of the Rescission Rules 2003 shall not be withdrawn. Rule 3(2)(ii) further provides that a retrenched employee covered by the 1991 Rules prior to the date of the commencement of the Rescission Rules 2003, but who has not been absorbed till such date, shall be entitled to get relaxation in upper age limit for direct recruitment to such Group 'C' and Group 'D' posts which are outside the purview of the Public Service Commission to the extent he has rendered his continuous service in substantive capacity in the concerned Government Department or Public Corporation in completed years. . . ."

"62. In view of Rule 3 of the Rescission Rules 2003 and Section 3 of the 2009 Act making express provisions for terminating the right of consideration of retrenched employees accrued under the 1991 Rules, there is no enforceable right in the retrenched employees to seek mandamus directing the State Government to consider their case for absorption.

63. In view of the foregoing discussions, we are of the considered opinion that after the Rescission Rules 2003 with effect from 8th April, 2003, the right of retrenched employees for absorption acquired under the 1991 rules stands terminated with effect from 8th April, 2003 and no such right could have been enforced by retrenched employees after expressly terminating their above right with effect from 8th April, 2003. The Rescission Rules 2003 has no retrospective operation but it terminated the right of consideration for absorption acquired under the 1991 Rules with effect from 8th April, 2003, the date of enforcement of the Rescission Rules, 2003. Those retrenched employees, who were absorbed between the period 9th May, 1991 to 8th April, 2003 were clearly saved."

"75. In view of the principles laid down by the Apex Court in the aforesaid cases, we are of the view that the word "may" used in Rule 3 of the 1991 Rules cannot be read as word "shall" but we hasten to add that Rule 3 which gave enabling power to the State to consider for absorption also intended a corresponding right in the employee that his case for consideration for absorption be considered by the State till the 1991 Rules were in force.

76. Now comes the submissions of learned counsel for the writ petitioners that judgments of this Court in Shailendra Kumar Pandey's case (supra) and Bageshwari Prasad Srivastava's case (supra) are holding the field and against both the above judgments rendered by the learned Single Judges the special appeals before the Division Bench of this Court and special leave petition before the Apex Court having been dismissed, the State is bound to follow the ratio of the aforesaid judgments and it is not open for the State to contend in these appeals that writ petitioners are not entitled for any direction for absorption in the Government department. . . ."

"90. We also endorse the above view of the learned Single Judge. We having found that the right of consideration for absorption under the 1991 Rules having come to an end after the Rescission Rules 2003, no mandamus can be issued for enforcing the said right. . . . ."

45. Thus except to the extent what has been held by Division Bench of this Court in **Sunil Kumar Verms (supra)** there cannot be any right to claim absorption/adjustment in any other service, without undergoing process of

recruitment or selection on the said post in accordance with the rules applicable thereto and consistent with the requirement of Article 16 of the Constitution. The petitioners, in any case, never had any right to enforce their claim for absorption vis a vis SUDA respondents no.2 and 3 since it was never represented by them and State Government had also not directed for any such absorption. At least no such order with respect to petitioners has been shown to this Court. The petitioners, therefore, had no right to claim any benefit even if their matter could have been governed by 1991 Rules contrary to what has been said by the Division Bench of this Court in **Sunil Kumar Verma (supra)** overruling the judgments taking a different view.

46. In view of the above the first petition deserves to be dismissed being devoid of any merit.

47. The writ petition No.5423 (S/S) of 2009 (hereinafter referred to as "second petition") has been filed by sole petitioner Dileep Singh Chhabra during pendency of first petition challenging order dated 24.8.2009 whereby he has been discharged from service of SUDA.

48. It appears that an interim order was passed on 31.10.2001 in first petition recording statement of counsel for SUDA that last date of filling up form/objections shall be extended. However this interim order did not and could not have resulted in continuance of petitioner in service since his employment in parent department had already been come to an end on 31.1.2000. Hence SUDA also did not pay salary to the petitioner. The petitioner therefore signed the contract bond, as stated in paras 15 and 17 of the second petition. Initially it was for one year whereafter it was further extended. The last extension was made upto 14.7.2004 whereafter there is no extension at all. The petitioner, however, continued to function in SUDA without there being any extension of contract of service. One of such extension order dated 4.8.2003 is on record as Annexure CA-4 to the counter affidavit filed on behalf of the respondents No.2 and 3 in second writ petition. The Director SUDA passed an order dated 30.7.2009 terminating the petitioner. The aforesaid order was challenged in writ petition No.4746 (S/S) of 2009 which was allowed on 13.8.2009. While setting aside the aforesaid order of termination, this Court granted liberty to respondents to pass a fresh order in accordance with law under the terms of contract, and, till a fresh order is passed, it was stated therein that, petitioner shall not be dispensed with and shall be allowed to continue under the terms of contract. Consequently, impugned order dated 24.8.2009 has now been passed terminating petitioner's service and discharging him.

49. Learned counsel for the petitioner contended that once it was held by this Court that the petitioner could not have been terminated merely on attaining the age of 58 years, by means of the impugned order, his services could not have been terminated by observing that the same is no longer required since petitioner is entitled to continue in service till he attains the age of 60 years which is the age of retirement of other Government employees. He further submitted that impugned termination is wholly arbitrary and discriminatory, inasmuch as, other persons taken from UPSMDC have been allowed to continue.

50. In my view, none of the submissions advanced have any force. The impugned order of termination is a termination simplicitor. The contract, which the petitioner has executed with SUDA clearly provides that the same is liable to be terminated at any point of time without any notice. The petitioner has been terminated in terms of his conditions of contract. An order of termination simplicitor is not to be interfered by the Court. When such an order may be interfered has been considered and certain aspects have been enumerated by a Division Bench in **Paras Nath Pandey Vs. Director, North Central Zone, Cultural Centre, 2008 (10) ADJ 283.** After considering various authorities of Apex Court commencing from **Parshotam Lal Dhingra Vs. Union of India, AIR 1958 SC 36** till those decided up to the judgment the Court has laid down certain guidelines to find out when order of termination simplicitor is liable to be interfered and says:

"(a) The termination of services of a temporary servant or probationer under the rules of his employment or in exercise of contractual right is neither per se dismissal nor removal and does not attract the provisions of Article 311 of the Constitution

(b) An order of termination simplicitor prima facie is not a punishment and carries no evil consequences.

(c) Where termination simplicitor is challenged on the ground of casting stigma or penal in nature, the Court initially would glance the order itself to find out whether it cast any stigma and can be said to be penal or not. If it does not, no further enquiry shall be held unless there is some material to show certain circumstances, preceding or attending, shadowing the simplicitorness of the said order.

(d) The Court is not precluded from going beyond the order to find out as to whether circumstances, preceding or attending, makes it punitive or not. If the circumstances, preceding or attending, show only the motive of the employer to terminate, it being immaterial would not vitiate the order unless it is found that order is founded on such act or omission constituting misconduct.

(e) If the order visits the public servant with evil consequences or casts aspersions against his character or integrity, it would be an order by way of punishment irrespective of whether the employee was a mere probationer or temporary.

(f) "Motive" and "foundation" are distinct, though the distinction is either very thin or overlapping. "Motive" is the moving power, which impels action for a definite result, or to put it differently. "Motive" is that which incites or stimulates a person to do an act. "Foundation", however, is the basis, i.e., the conduct of the employee, When his acts and omissions treated to be misconduct, proved or founded, it becomes a case of foundation.

(g) If an order has a punitive flavour in cause or consequence, it is dismissal, but if it falls short of it, it would not.

(h) Where the employer is satisfied of the misconduct and the consequent

desirability of termination, it is dismissal even though the order is worded innocuously. However, where there is mere suspicion of misconduct and the employer does not wish to bother about it, and, instead of going into the correctness of guilt, feel like not to keep the employee and thus terminate him, it is simpliciter termination and not punitive.

(I) Where the termination simplicitor is preceded by an enquiry, preliminary or regular, the Court would see the purpose, object of such enquiry as also the stage at which, the order of termination has been passed.

(j) Every enquiry preceding the order of termination/discharge, would not make it punitive. Where an enquiry contemplated in the rules before terminating an probationer or temporary employee is held, it would not make the order punitive.

(k) If the enquiry is to find out whether the employee is fit to be confirmed or retained in service or to continue, such an enquiry would not render termination punitive.

(l) Where the employer hold a formal enquiry to find out the correctness of the alleged misconduct of the employee and proceed on the finding thereof, such an order would be punitive, and, cannot be passed without giving an opportunity to the concerned employee.

(m) If some formal departmental enquiry commenced but not pursued to the end. Instead a simple order of termination is passed, the motive operating in the mind of the authority would be immaterial and such an order would be non punitive.

(n) When an order of termination is assailed on the ground of mala fide or arbitrariness, while defending the plea of mala fide, if the authority has referred certain facts justifying the order of discharge relating to misconduct, negligence or inefficiency of the employee in the appeal or in the affidavit filed before the Court, that would not make the order founded on any misconduct.

(o) Sometimes when some reason is mentioned in the order, that by itself would not make the order punitive or stigmatic. The following words mentioned in the order have not been held to be punitive.

i. "want of application",

ii. "lack of potential",

iii. "found not dependable",

iv. "under suspension",

v. "work is unsatisfactory",

vi. "unlikely to prove an efficient officer".

(p) Description of background facts also have not been held to be stigmatic.

(q) However, the words "undesirable to be retained in Government service", have been held stigmatic.

(r) If there is (i) a full scale formal enquiry, (ii) in the allegations involving moral turpitude or misconduct, (iii) which culminated in a finding of guilt; where all

these three factors are present, the order of termination would be punitive irrespective of the form. However, if any one of three factors is missing, then it would not be punitive."

51. None of the above apply in this case. In view of what has been said in **Paras Nath Pandey (supra)** the termination of service by an order of termination in accordance with the terms of contract is not to be interfered.

52. Learned counsel for the petitioner at this stage submitted that since the respondents themselves have admitted that contract was not extended after 14.7.2004 therefore terms and conditions of the said contract are not attracted hence the said contract would not justify his termination and the petitioner's termination without holding any enquiry or till he attain the age of superannuation is bad and illegal.

53. The submission is self destructive, contradictory and demolishes the case of petitioner on its own. Either it can be said that in absence of any formal order of extension of contract the last contract continue and the petitioner continued to function on the terms and conditions that are contained in the last extended contract or there is no valid letter of appointment on the basis whereof the petitioner could have functioned. If the contract itself is treated to have ceased and inoperative after 14.7.2004, as suggested by learned counsel for the petitioner, that would result as if there is no letter of appointment in respect to petitioner's continuance in service and he is/was working without any authority i.e. a right flowing from a written order.

54. That be so, at the best it is a wholly stop gap arrangement which could have been ceased at any point of time since such kind of arrangement does not confer any right upon the incumbent to hold a post wherein recruitment/appointment is subject to Article 14 of Constitution and other recruitment rules. It cannot be disputed that SUDA is a society formed by State Government but since entire funding and control by State Government, it satisfy requirement of Article 12 of the Constitution being an "other authority" and therefore recruitment and appointment therein could have been made only consistent with Article 16 of Constitution and other relevant provisions. There is no concept of holding over applicable in service matters. The Apex Court in State of Orissa Vs. Mamata Mohanti, JT 2011(2) SC 164 has said that right in law exists only and only when it has a lawful origin. The concept of adverse possession or lien on post or holding over is not applicable in service jurisprudence. Therefore, continuation of a person wrongly appointed or never lawfully appointed on a post shall not create any right in his favour.

55. The petitioner therefore apparently has no right to hold the post from any angle of the matter as discussed. It not his case and has not been substantiated at all that termination in question is penal in nature, hence this issue needs no further examination.

56. No other argument has been advanced.

57. In totality of the discussion as made above, I find no substance in both these writ petitions.

58. Dismiss.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.02..012

BEFORE
THE HON'BLE AMRESHWAR PRATAP SAHI,J.

Civil Misc. Writ Petition No. 6000 of 2012

Santosh Kumar ...Petitioner
Versus
D.D.C. and Others ...Respondents

Counsel for the Petitioner:
Sri Manoj Kumar Srivastava
Sri R.K. Pandey

Counsel for the Respondents:
Sri J.N. Singh
Sri Arimardan Singh
C.S.C.
Sri Rajendra Prasad

U.P. Consolidation of Holding Act-Section 48-revision-against the order of S.O.C. By which without condoning 44 years delay-restored the Appeal-fixed for ex-parte order-petitioner filed revision in which date 30-12-2011 fixes-in between on medical ground of respondent on 28.12.2011 not only dismissed the revision behind the back of petitioner but allowed the Appeal itself-held-against canons of Law-not sustainable-quashed

Held: Para 8

On a perusal of the documents on record and the order-sheet, it is more than transparent that the Deputy Director of Consolidation has committed a serious error and also as what can be termed as judicial impropriety by preponing the date immediately before retirement on the application moved by the respondents who are also respondents in the revision. Not only this, even assuming for the sake of argument that the Deputy Director of Consolidation could have proceeded to decide the matter, at the best if there was anything adverse against the petitioner, their revision could have been dismissed and nothing beyond that. The Deputy Director of Consolidation has accommodated a double benefit to the respondents by virtually allowing the pending appeal on merits as well. The order is, therefore, absolutely unsustainable being against the settled canons of law inasmuch as, justice should not only be done, but should also seem to have been done.

(Delivered by Hon'ble A. P. Sahi,J.)

1. Heard Sri R.K. Pandey along with Sri Manoj Kumar Srivastava, learned counsel for the petitioner, Sri Rajendra Prasad Singh and Sri Arimardan Singh for contesting respondent Nos.4 to 11 and the learned Standing Counsel for respondent Nos. 1 and 2.

2. This is a peculiar case where the allegation against the Deputy Director of Consolidation is that he has stepped out of the crease of his jurisdiction and has flogged the ball of justice outside the boundaries defined in law. The submission is that the Deputy Director of Consolidation has definitely passed this order for extraneous considerations when he was about to retire on 31.12.2011.

3. An order came to be passed by the Consolidation Officer in favour of the petitioner on 23.8.1966. The respondents filed a heavily time barred appeal against the said order after 44 years on 16.2.2010. The delay was not condoned and the appeal remained pending when it came to be dismissed in default on 7.10.2010. The respondents

on the very next day filed a restoration application without intimation to the petitioner and the said restoration was allowed on the same day.

4. The contention of Sri Pandey is that the petitioner had no notice or knowledge of the alleged proceeding of restoration and the appeal, after being restored, was fixed for hearing on 21.4.2011. On that date, the appeal came to fixed for delivery of orders on 29.4.2011. At this stage, the petitioner, on coming to know of these ex-parte proceedings, filed a revision where the date was fixed for 30.12.2011.

5. It is thereafter that the story takes the peculiar turn giving rise to the present petition. The respondents moved an application for preponing the date of revision on the ground that the respondent in the revision had to proceed for his medical treatment. The Deputy Director of Consolidation preponed the date for 28.12.2011 and by the impugned order dated 28.12.2011 has not only dismissed the revision filed by the petitioners but has also allowed the appeal on merits filed by the respondents.

6. Sri Pandey submits that this strange procedure clearly smacks of mala fides and is an order without jurisdiction.

7. Learned counsel for the respondents submits that they do not propose to file any counter-affidavit at this stage and the matter be disposed of finally on the basis of material already on record.

8. On a perusal of the documents on record and the order-sheet, it is more than transparent that the Deputy Director of Consolidation has committed a serious error and also as what can be termed as judicial impropriety by preponing the date immediately before retirement on the application moved by the respondents who are also respondents in the revision. Not only this, even assuming for the sake of argument that the Deputy Director of Consolidation could have proceeded to decide the matter, at the best if there was anything adverse against the petitioner, their revision could have been dismissed and nothing beyond that. The Deputy Director of Consolidation has accommodated a double benefit to the respondents by virtually allowing the pending appeal on merits as well. The order is, therefore, absolutely unsustainable being against the settled canons of law inasmuch as, justice should not only be done, but should also seem to have been done.

9. The writ petition is allowed and the order dated 28.12.2011 is quashed. The Deputy Director of Consolidation shall now decide the revision afresh within 2 months from the date of production of a certified copy of this order before him.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 10.02.2012

BEFORE
THE HON'BLE DEVI PRASAD SINGH,J.

Misc. Single No. - 6179 of 2011

Ayodhya Prasad ...Petitioner
Versus
Commissioner Lucknow Division Lucknow and another ...Respondents

Counsel for the Petitioner:
Sri Alok Kumar Shukla
Sri V.S. Trivedi

Counsel for the Respondents:
C.S.C.

Arms Act-Section 13-Refusal of license-non disclosure of name of anti social element-virtually inviting trouble and direct conflict with those anti social elements-in absence of guaranteed social security as well as of life and liberty-rejection on flimsy ground-ignoring favorable reports by Tehsil authorities as well as Police-order suffers from serious perversity-appellant authority also-based on mechanical consideration-held-orders impugned quashed-direction for fresh consideration given.

Held: Para 4

Arm licence is granted not only in the event of threat perception from certain person but it may be granted with the possible threat perception. In case a person's status, nature of job, movement and social life is such that he can be assaulted by some one or he may suffer untoward incident from anti-sicial elements, then in such a situation, he or she shall be entitled for grant of arm licence. It is not necessary that while moving application, the citizen should indicate the name of the person from whom he/she may suffer injury. Indication of such fact or the name of the person from whom, the citizen may suffer injury shall amount to invite trouble and direct conflict with anti-social elements. We may take judicial notice of the fact that the crime in the society is rising day to day and the police has been failed to provide reasonable protection to citizens. It is not necessary that life and liberty of every citizen may be secured by the police. Accordingly, in absence of guaranteed social security or security of life and liberty of the citizen, the citizen may move application for grant of arm licence. Statutory right conferred by the Arms Act cannot be taken away on flimsy ground or on presumption . Unless a citizen has got some bad antecedent or there is possibility with regard to involvement in crime or abuse of weapon, the arm licence should not be refused more so when the government is not in a position to provide security to the citizens on individual basis. Thus, the reason assigned by the District Magistrate refusing the grant of licence does not seem to be sustainable and suffers from vice of arbitrariness. The appellate authority has decided the appeal mechanically by reiterating the finding recorded by the District Magistrate and has not applied his mind with regard to justifiability of the order passed by the Collector rejecting the petitioner's application.

(Delivered by Hon'ble Devi Prasad Singh,J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel. With the consent of the parties' counsel, the writ petition is being finally disposed of at admission stage.

2. The petitioner has applied for grant of arm licence which has been rejected by the District Magistrate, Lucknow by the impugned order dated

26.11.2010. The appeal preferred by the petitioner against the impugned order was also dismissed by the appellate authority, i.e. the Commissioner, Lucknow Division, Lucknow.

3. While assailing the impugned order, it has been submitted by the petitioner's counsel that while moving application for grant of arm licence in the column relating to special reason, the petitioner had not pointed out with regard to the person from whom he is suffering from threat perception.

4. Arm licence is granted not only in the event of threat perception from certain person but it may be granted with the possible threat perception. In case a person's status, nature of job, movement and social life is such that he can be assaulted by some one or he may suffer untoward incident from anti-sicial elements, then in such a situation, he or she shall be entitled for grant of arm licence. It is not necessary that while moving application, the citizen should indicate the name of the person from whom he/she may suffer injury. Indication of such fact or the name of the person from whom, the citizen may suffer injury shall amount to invite trouble and direct conflict with anti-social elements. We may take judicial notice of the fact that the crime in the society is rising day to day and the police has been failed to provide reasonable protection to citizens. It is not necessary that life and liberty of every citizen may be secured by the police. Accordingly, in absence of guaranteed social security or security of life and liberty of the citizen, the citizen may move application for grant of arm licence. Statutory right conferred by the Arms Act cannot be taken away on flimsy ground or on presumption . Unless a citizen has got some bad antecedent or there is possibility with regard to involvement in crime or abuse of weapon, the arm licence should not be refused more so when the government is not in a position to provide security to the citizens on individual basis. Thus, the reason assigned by the District Magistrate refusing the grant of licence does not seem to be sustainable and suffers from vice of arbitrariness. The appellate authority has decided the appeal mechanically by reiterating the finding recorded by the District Magistrate and has not applied his mind with regard to justifiability of the order passed by the Collector rejecting the petitioner's application.

5. During the course of argument, it has been submitted by the petitioner's counsel that the police as well as the tehsil authorities have submitted a report in the petitioner's favour. In case it is so, then the impugned order suffers from serious perversity. In the event of dissenting view, it was incumbent on the District Magistrate to record reasons or point out the difference of opinion with the report submitted by the police and tehsil authorities. It appears that it has not been done in the present case. Hence, on this ground also, the decision suffers from vice of arbitrariness.

6. In view of above, the writ petition deserves to be and is hereby allowed. A writ in the nature of certiorari is issued quashing the impugned orders dated 8.6.2011 and 26.11.2010 (Annexures 1 and 2) with consequential benefits. The District Magistrate/Collector, Lucknow is directed to re-consider the petitioner's case for grant of arm licence and if

necessary after inviting fresh report from the police authorities. Let necessary exercise be done within a period of four months from the date of service of certified copy of the present order.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.02.2012

BEFORE
THE HON'BLE ANIL KUMAR,J.

Service Single No. - 6204 of 1991

Ram Pal Singh ...Petitioner
Versus
Director of Agriculture U.P.and others ...Respondent

Counsel for the Petitioner:
Sri R.C. Bajpai
Sri R.B. Lal

Counsel for the Respondents:
C.S.C.

Constitution of India, Article 226- punishment of dismissal-without discussion of charges and evidence-even during course of enquiry-copy of certain documents not given-disciplinary authority on basis of proposed punishment as suggested by enquiry officer-imposed major punishment-Appellate Authority also not addressed on merit in absence reasons-held-enquiry officer-no jurisdiction to recommend punishment-considering long period of mental suffering and growing age of 71 year-instead of remanding for fresh consideration on principle of "No Work No Pay"-petitioner will not get any amount of salary during period of non working but entitled for every consequential post retrial benefits.

Held: Para 19

For the foregoing reasons, the impugned orders are set aside. However, keeping in view the principle of no work no pay, the petitioner is not entitled for any salary for the intervening period but this period shall not be treated as break in service but the same shall be treated as continuation of service for other consequential and post retiral benefits.

Case law discussed:
(2008) 8 SCC 236; (1009) 1 SCC (L&S) 806; 1971 (1) AIIER 1148; 1974 (4) IRC 120 (NIRC); (2001) 29 LCD 2265

(Delivered by Hon'ble Anil Kumar,J.)

1. Heard Sri Manish Mishra, learned counsel for petitioner and Sri V.S. Tripathi, learned State counsel and perused the record.

2. Facts in brief of the present case are that petitioner was initially appointed in the Agriculture Department of the State of Uttar Pradesh on Grade III post by order dated 15.06.1964 passed by Director of Agriculture and posted as Assistant Agriculture Inspector at Government Agriculture Seed Store, Manglaur, Saharanpur.

3. By an order dated 31.01.1978 (Anneuxre No. 4), he was placed under suspension. On 19.05.1978 (Anneuxre No. 5) a chargesheet has been issued to the petitioner, after receiving same , as per the version of the petitioner, he demanded certain documents but the same has not been supplied to him, as such being no other alternative left before him, submitted his reply on 05.09.1978 (Anneuxre No. 6) inter alia denying charges leveled against him and in his reply he stated that Sri Suresh Chand Sharma was responsible for the embezzlement of DAP fertilizer who had received the fertilizer stock in question thereafter inquiry was conducted by Inquiry Officer who submitted the inquiry

report to the punishing authority/Director of Agriculture/O.P. No. 1.

4. On 03.11.1980 (Annexure No. 2) the punishing authority/O.P. No. 1 passed the impugned punishment order thereby dismissing the petitioner's services and three other charges were also leveled against him including the recovery of a sum of Rs. 40,017.24 from the petitioner.

5. Aggrieved by the impugned order of punishment the petitioner preferred an appeal before the appellate authority. Lastly by a letter/order dated 16th March, 1991 (Anneuxre No. 1), it was informed that the appellate authority has rejected the petitioner's appeal after due consideration. Hence, present writ petition has been filed challenging the impugned orders dated 16.03.1991 (Anneuxre No.1) and 03.11.1980 (Anneuxre No. 2).

6. Sri Manish Mishra, learned counsel for petitioner in brief has assailed the impugned orders firstly on the ground that in the present case the inquiry officer after conducting the inquiry proceedings, in his inquiry report proposed the punishment which is to be awarded to the petitioner. The said action on his part is contrary to law as he has got no authority whatsoever to propose punishment to be given to the petitioner. In support of his argument, he placed reliance on the judgment of Hon'ble the Apex Court given in the case of **State of Uttaranchal and others Vs. Kharak Singh (2008) 8 SCC 236.**

7. Sri Manish Mishra, learned counsel for petitioner further submits that the impugned order dated 03.11.1980 (Anneuxre No. 2) passed by O.P. No. 1 is a non-speaking order and no reason whatsoever has been assigned in the said order as after refering the charges in impugned order, the punishing authority in the operative portion stated that he agreed with the inquiry report submitted by the Inquiry Officer and accordingly the punishment as suggested therein has been awarded. Hence, the said impugned order is a non-speaking order, violative of Article 14 of the Constitution of India as well as principles of natural justice.

8. Lastly it is argued by Sri Manish Mishra, learned counsel for petitioner that aggrieved by the order dated 03.11.1980 (Anneuxre No. 2) passed by O.P. No. 1, the petitioner filed an appeal on 20.02.1981 and after lapse of more than 10 years, it was communicated to him by an order dated 16.03.1991 ((Annexure No. 1) that the appellate authority after considering his case, has rejected the appeal. However, no order of rejection of the appeal has been given to him. The said action on the part of appellate authority is contrary to law as well as principles of natural justice. In support of his argument he has placed reliance on the judgment of the Apex Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others (1009) 1 SCC (L&S) 806.**

9. Accordingly, Sri Manish Mishra, learned counsel for petitioner submits that the impugned orders dated 16.03.1991 and 03.11.1980 are liable to be set aside and writ petition may be allowed.

10. Sri V.S. Tripathi, learned Additional Chief Standing Counsel on the basis of pleadings on record submits that in the present case taking into consideration the irregularities committed

by the petitioner he has been placed under suspension and thereafter a chargesheet has been served on him, 16 charges were leveled and after providing due opportunity to him the Inquiry Officer has conducted inquiry proceedings in accordance with law and submitted the inquiry report to the punishing authority who after considering the same had passed the punishment order dated 03.11.1980 awarding the order of thereby dismissal from service against which the petitioner's appeal has been rejected.

11. It is further submitted by Sri V.S. Tripathi, learned State counsel that at the relevant point of time there is no bar on the part of the inquiry officer to recommend the punishment to be awarded to a delinquent employee, as such the action on the part of inquiry Officer thereby recommending the proposed punishment to be awarded to the petitioner after conducting the inquiry proceedings is neither illegality nor infirmity on his part which renders the impugned order of dismissal dated 03.11.1980, illegal, hence present writ petition filed by the petitioner lacks merit and liable to be dismissed.

12. I have heard learned counsel for parties and perused the record.

13. In view of the factual matrix of the present case, the first point which is to be adjudicated is whether the action on the part of Inquiry Officer to recommend the punishment after holding the inquiry proceedings is a valid action on his part or not. The answer to this question finds place in the judgment rendered by Hon'ble Apex Court in the case of **State of Uttaranchal and others Vs. Kharak Singh (2008) 8 SCC 236,** held as under:-

"In regard to the question whether an enquiry officer can indicate the proposed punishment in his report, this Court, in a series of decisions has pointed out that it is for the punishing/disciplinary authority to impose appropriate punishment and enquiry officer has no role in awarding punishment. It is useful to refer to the decision of this Court in A.N.D'Silva vs. Union of India, AIR 1962 SC 130wherein it was held: (AIR 1134 para 6)

"In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise after enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the enquiring authority."

14. Further from the perusal of the impugned order dated 03.11.1980 (Anneuxre No. 2) passed by Director of Agriculture/O.P. NO. 2 it is not disputed that rather admitted by the learned State counsel that the same is non-speaking order and no reason whatsoever has been assigned by the O.P. No. 1 while passing the said order.

15. It is well settled law that an order passed by an authority should be a reasoned one and the objection taken by a person should be dealt with because reasons are like a live wire which connects the mind of the decision making authority and the decision given by him and if this wire/link is broken i.e. to say no reasons are given in the impugned order then it will not be possible to know

as what was going in the mind of the decision making authority on the basis of which he has come to the conclusion and passed the impugned order.

16. In **Breen Vs. Amalgamated Engg. Union, reported in 1971(1) AIIER 1148,** it was held that the giving of reasons is one of the fundamentals of good administration. In **Alexander Machinery (Dudley) Ltd.Vs. Crabtress, reported in 1974(4) IRC 120 (NIRC)** it was observed that "failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at".

17. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can be its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the later before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made. In other worlds, a speaking out. The inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance." So, the impugned orders dated 03.11.1980 (Anneuxre No. 2) is contrary to law, liable to be set aside.

18. In the present case the petitioner being aggrieved by the impugned order dated 03.11.1980 (Anneuxre No. 2) filed a statutory appeal before the appellate authority on 20.02.1981 and after lapse of more than a decade only it was informed to him by order dated 16.03.1991 (Anneuxre No. 1) that the appellate authority has rejected the petitioner's appeal after due consideration. In view of the said fact, I am of the considered opinion that the said action on the part of the appellate authority thereby not giving the reasons on which basis the appeal filed by the petitioner has been rejected is an action which is arbitrary in nature, thus, violative of Article 14 of the Constitution of India because every person/employee has a right under law to know reason on the basis which his case has been rejected,Hon'ble the Apex Court in the case of **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others (1009) 1 SCC (L&S) 806,**

In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in Prabhu Dayal Grover's case(supra) has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority. The

view we are taking was also taken by this Court in Divisional Forest Officer vs. Madhusudan Rao, JT 2008 (2) SC 253 (vide para 19), and in Madhya Pradesh Industries Ltd. vs. Union of India, AIR 1966 SC 671, siemens Engineering & Manufacturing Co. Ltd. vs. Union of India, AIR 1976 SC 1785 (vide para 6), etc. Thus, the impugned order dated 03.11.1980 (Annexure No. 2) as well as the appellate order by which the petitioner's appeal has been rejected being contrary to principles of natural justice are liable to be set aside. Accordingly, the question arises for consideration before this Court is to the effect that if the order in questions are set aside, on technical ground fact stated hereinabove whether the matter is to be remanded back to the competent authority to take a fresh decision or not. In this regard, after considering the peculiar facts and circumstances of the present case and taking into consideration that the petitioner is a 71 years old person and he has suffered great mental agony during the intervening period due to impugned orders which have been passed against him which are against the principles of natural justice, so keeping in view the law as laid down by this Court in the case of **Man Mohan Singh Jaggi Vs. Food Corporation of India and others (2001) 29 LCD 2265,** in the interest of justice I do not feel appropriate to remand the matter again to the competent authority for reconsideration.

19. For the foregoing reasons, the impugned orders are set aside. However, keeping in view the principle of no work no pay, the petitioner is not entitled for any salary for the intervening period but this period shall not be treated as break in service but the same shall be treated as continuation of service for other consequential and post retiral benefits.

20. With the above observations, the writ petition is allowed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.02.2012

BEFORE
THE HON'BLE PANKAJ MITHAL,J.

Civil Misc. Writ Petition No. 6635 of 2012

Chandra Bali ...Petitioner
Versus
Addl. Commissioner and others ...Respondents

Counsel for the Petitioner:
Sri K.M. Tripathi

Counsel for the Respondents:
C.S.C.

Constitution of India , Article 226/227- Direction for speedy Trail and quick disposal of Appeal-every day court facing similar grievance-speedy Trails means-reasonable expeditious Trail-court issued general Mandamus to all Revenue Court to follow the Time Table-and to decide the case accordingly.

Held: Para 12 and 13

It may be noted that non disposal of the cases within a time bound period is unnecessarily burdening this Court with writ petitions seeking directions as above. Such writ petitions, can be avoided and much time of this Court can be saved, if the revenue courts adhere to a particular time schedule for disposal of all cases.

In view of the above, I am of the opinion that not only land acquisition cases or other cases for which time period for disposal has been prescribed, all cases

including revenue cases and cases arising under the U.P. Z.A. and LR Act should also be decided within a time specified.

Case law discussed:

AIR 1979 S.C. 1360; Bal Krishna Vidur Vs. State of U.P.; (1997) 3 UPLBEC 1767; AIR 1991 SC 1080; 2011 (112) RD 291: 2011 (8) ADJ 874

(Delivered by Hon'ble Pankaj Mithal,J.)

1. Heard learned counsel for the petitioner.

2. Petitioner has invoked the writ jurisdiction of this court for seeking a direction upon respondent no. 1 Additional Commissioner, Varanasi Division, Varanasi to decide appeal no. 35 of 2004 (Chandra Bali and Others Vs. Raja Ram and Others) filed under Section 331 of the U.P. Z.A. and LR Act within a stipulated period of time with further prayer that respondents no. 2 to 4 be restrained from interfering in his peaceful possession over gata no. 35 situate at Mauja-Pura Gambhir, Tehsil-Badlapur, District Jaunpur till the decision of the appeal.

3. Respondents no. 2 to 5 instituted suit no. 184/224 under Section 229-B of the Act. It was decreed on 26.5.2004. The said judgment, order and decree has been challenged by the petitioner in the above-referred appeal before the Additional Commissioner Varanasi Division, Varanasi. The appeal was filed on 13.7.2004.

4. The submission of the learned counsel for the petitioner is that the appeal is pending for the last 8 years and is not being decided.

5. The Court has experienced that every day about 5 to 10 writ petitions are coming on the land revenue side and under the U.P. Z.A. and LR Act with similar prayer to get the case/suit, appeal or revision or applications pending therein be decided within a time bound period. It has also been noticed that in almost all such cases apart from delay being caused by the contesting private parties, the delay in disposal appears to be on account of the fact that either the officer is not posted or available or is busy in some administrative work; and for the reason that adjournment prayed for has been granted casually.

6. It is settled that speedy justice is part of a Fundamental Right under Article 21 of the Constitution of India. Therefore, all litigation must come to an end at the earliest.

7. The Apex Court in ***Hussainara Khatoon and others vs. State of Bihar AIR 1979 S.C. 1360*** held that any procedure which does not ensure a reasonable quick trial cannot be regarded as fair and just and it would fall foul of Article 21 of the Constitution of India. Therefore, speedy trial which mean reasonable expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.

8. A three Judges Bench of the Supreme Court in ***Bal Krishna Vidur Vs. State of U.P.*** held that delay in framing of charges is negation of principles of speedy trial and courts should not be casual in dealing with such cases and keep them pending for long periods.

9. A Division Bench of this Court in ***Manoj Kumar and others vs. Civil Judge (Junior Division) Deoria (1997) 3 UPLBEC 1767*** and others while dealing with the delay in disposal of execution was shocked to note that the execution was being adjourned for the last 7 years and thus expressing displeasure directed for its disposal within two months from the date of presentation of the order before the court concerned. The Court observed that the judiciary exists for the people and not for lawyers and Judges.

10. In ***Mangat Ram Tanwar and another Vs. Union of India AIR 1991 SC 1080*** the Supreme Court while dealing with a similar kind of problem relating to delay in disposal of the land acquisition cases directed the State Government to decide all land references under Section 18 within a time bound period of three months with the outer limit of six months.

11. In ***Suresh Pal Vs. Civil Judge, Hapur 2011 (112) RD 291: 2011 (8) ADJ 874*** I have myself held that the delay in executing the decree amounts to denying the decree holder the benefit of it which is antithesis to the concept of justice.

12. It may be noted that non disposal of the cases within a time bound period is unnecessarily burdening this Court with writ petitions seeking directions as above. Such writ petitions, can be avoided and much time of this Court can be saved, if the revenue courts adhere to a particular time schedule for disposal of all cases.

13. In view of the above, I am of the opinion that not only land acquisition cases or other cases for which time period for disposal has been prescribed, all cases including revenue cases and cases arising under the U.P. Z.A. and LR Act should also be decided within a time specified.

14. Time management for disposal of cases is necessary to tackle the problem of arrears and pendency.

15. Accordingly, I issue a general mandamus that atleast in revenue cases and cases arising under the U.P. Z.A. and LR Act, the courts/authorities must follow a set time table for disposal of cases as provided herein below:-

1. All suits/original proceedings under UP Z.A. and LR Act be decided within a period of one year from their institution with the outer limit of one year six months;

2. All appeals arising thereto be decided within a period of four months and within the maximum period of six months from the filing;

3. All revisions be decided within three months and within the maximum period of four months from the filing; and

4. All miscellaneous applications, if pressed, which do not require disposal along with cases/suit, appeal or revision be decided within six weeks of their filing with the outer limit of three months.

16. In view of the aforesaid facts and circumstances of the case, I dispose of this writ petition with the direction upon respondent no. 1 to decide the above appeal in accordance with law as expeditiously as possible as per the time schedule laid down above.

17. Let a copy of this judgment and order be sent by the Registry of this Court

to the Chief Secretary, Revenue State of U.P, and the Chairman, Board of Revenue at Lucknow and Allahabad for circulation to all revenue courts and authorities for necessary compliance.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2012

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Civil Misc. Writ Petition No. 8878 of 2012

Jai Prakash Dubey ...Petitioner
Versus
State of U.P. & others ...Respondents

Counsel for the Petitioner:
Sri R.N. Yadav

Counsel for the Respondents:
C.S.C.

U.P. Recognized Basic Schools (Recruitment and conditions of Service of teachers and other condition Rules, 1975-Rules 9-Dismissal order-passed by social welfare Officer-on ground the appointment as Assistant Teacher in primary school itself a forged and fictitious document-appointment order and joining before manger without disclosing the selection list prepared under Rule 9 itself illegal in absence of approval by Basic Education Officer-Petition Dismissed-cost of Rs. 25000-with direction to lodge F.I.R. Against erring officer including petitioner-Investigating Officer to submit progress report before the Court.

Held: Para 11 and 12

This Court as long back as in Hari Lal and others Vs. Director, Samaj Kalyan, U.P. and others, 2002(2) UPLBEC 1407 has held that when appointment of a teacher has not been made in accordance with procedure prescribed in Rule 9 of 1975 Rules, the person cannot be said to be a legally appointed teacher in the school and, therefore, has no right to hold the post or to claim salary.

The Director has found that in administering petitioner's appointment to be valid, the officials of Social Welfare Department have also played important role but he has stopped thereat instead of recommending an appropriate criminal proceedings against such persons who have committed such kind of forgery and fraud.

Case law discussed:
2002(2) UPLBEC 1407

(Delivered by Hon'ble Sudhir Agarwal,J.)

1. Heard Sri R.N. Yadav, learned counsel for the petitioner at length and perused the record.

2. This writ petition is directed against the order dated 21.10.2011 passed by Director, Social Welfare Department, Government of U.P. observing that appointment of petitioner is founded on forged and fictitious documents and, therefore, his appointment is void and illegal.

3. Learned counsel for the petitioner submitted that by letter of appointment dated 11.06.1984 the Manager of Harijan Primary Pathshala Bhedkul, Sultanpur, District Mau *(hereinafter referred to as the "School")* appointed petitioner as Assistant Teacher w.e.f. 11.06.1984 and pursuant thereto petitioner joined on 12.06.1984. An inquiry was also conducted whereafter petitioner's appointment was not found

forged and fictitious, hence entire finding recorded against petitioner is incorrect.

4. The question of validity of petitioner's appointment has been examined by Director, Social Welfare Department and in the impugned order it has been discussed and observed that his name never find mention in the list of staffs approved while sanctioning grant-in-aid and information in this regard was given by Manager of the School through Headmaster, Sri Dev Chandra Prasad but he concealed relevant documents and instead submitted forged and fictitious documents in collusion with Social Welfare Supervisor, Sri Ram and the then Social Welfare Officer, Sri Mukteshwar Chaubey. The Director has held that petitioner's alleged appointment illegal based on forged and fictitious documents.

5. I do not find any substantial reason to interfere with the aforesaid findings of Director since it is not shown to be perverse or contrary to record.

6. There are certain other aspect which shows apparent forgery in the matter relating to alleged appointment of petitioner. Petitioner claims to have passed High School in 1980 and Intermediate in 1982 from G.M.A.M. Inter College Benthera Road, Ballia. The School in question is a Junior Primary School recognised by Board of Basic Education under the provisions of U.P. Basic Education Act, 1972 and the Rules framed thereunder. The School being a privately managed School, for the purpose of terms and conditions of recruitment etc. of its teaching staffs, it was governed by provisions of U.P. Recognised Basic Schools (Recruitment & Conditions of Service of Teachers & Other Conditions) Rules, 1975 *(hereinafter referred to as the "1975 Rules")*. Rule 9 thereof relates to procedure etc. of appointment of Teachers in Junior Primary School and reads as under:

"9. No person shall be appointed as teacher or other employee in any recognised school ***unless he possesses such qualifications as are specified in this behalf by the Board*** *and for whose appointment* ***the previous approval of the Basic Shiksha Adhikari has been obtained in writing.*** *In case of vacancy the applications for appointment shall be invited by the concerned management through* ***advertisement in at least two newspapers*** *(one of them will be daily newspaper),* ***giving at least thirty days time*** *for submitting application. The date of interview may be given in the advertisement or the candidates be informed of the date fixed for interview by registered post, giving them at least 15 days time from the date of issue of the letter. The* ***management shall not select any untrained teacher*** *and if the selected candidate is a trained one, he will be approved by the Basic Shiksha Adhikari." (emphasis added)*

7. It talks of advertisement of vacancy in atleast two newspapers giving atleast 30 days time for submitting applications. It also restrain the management from selecting any untrained teacher and required previous approval of District Basic Education Officer in writing before making appointment. In the present case it it nowhere the case of petitioner that the aforesaid procedure was followed.

8. The Court finds his alleged letter of appointment dated 11.06.1984 on record at page 37 of the writ petition. It is said to have been issued by Manager and reads as under:

नियुक्ति आदेश

प्रेषक,

प्रबन्धक,
हरिजन विद्यालय भेण्डाकुल–सुल्तानपुर
पोस्ट गजियापुर जनपद–आजमगढ़।

पत्रांकः

दिनांक 11.6.84

सेवा में,

नाम–श्री जय प्रकाश दूबे
पुत्र श्री मुखराम दुबे
ग्राम–तूर्तीपार
पोस्ट–तूर्तीपार
जनपद–बलिया।

आपके आवेदन पत्र पर प्रबन्ध समिति भेडकुल सुल्तानपुर पोस्ट गजियापुर जनपद आजमगढ़ सहायक अध्यापक के पद पर नियुक्ति हेतु विचार–विमर्श किया और सर्वसम्मिति से नियुक्ति सुनिश्चित की गई। तदनुसार आपकी नियुक्ति दिनांक 11.6.84 से स्थायी सहायक अध्यापक के पद पर की जाती है।

अतः आप सहायक अध्यापक भेडकुल सुल्तानपुर पोस्ट गजियापुर जनपद–आजमगढ़ के सम्मुख उपस्थिति होकर समस्त प्रमाणपत्र अवलोकन कराकर कार्यभार ग्रहण करें।

प्रबन्धक
हरिजन विद्यालय भेडकुल सुल्तानपुर
पोस्ट–गजियापुर
जनपद–आजमगढ़।
ह0 भगेलू प्रसाद कनौजिया
11.6.84
सील–प्रबन्धक

9. It shows that an application was received from petitioner and thereupon immediately thereafter appointment letter was issued. Interestingly the petitioner was required to submit his joining by showing all testimonials to an Assistant Teacher of the School. From the very language used in appointment letter it is evident that same is a fictitious document. Moreover, it shows petitioner's address at Village Tutipar, District Ballia but interestingly enough petitioner claims to have submitted joining on the very next date, i.e., 12.06.1984 to the Manager himself. It is not the case of petitioner that there was no Headmaster in the School and, therefore, why joining was not given to Headmaster is not known. Thereafter an experience certificate claims to have been issued by Manager on 01.12.1996, i.e., after 12 years.

10. Petitioner admittedly did not possess any training qualification. His appointment was not made in accordance with procedure prescribed in Rule 9 of 1975 Rules. It was thus evidently illegal void ab initio.

11. This Court as long back as in Hari Lal and others Vs. Director, Samaj Kalyan, U.P. and others, 2002(2) UPLBEC 1407 has held that when appointment of a teacher has not been made in accordance with procedure prescribed in Rule 9 of 1975 Rules, the person cannot be said to be a legally appointed teacher in the school and, therefore, has no right to hold the post or to claim salary.

12. The Director has found that in administering petitioner's appointment to be valid, the officials of Social Welfare Department have also played important role but he has stopped thereat instead of recommending an appropriate criminal proceedings against such persons who have committed such kind of forgery and fraud.

13. I, therefore, direct the respondent no. 2 to lodge a first information report

against all concerned persons including petitioner as well as the officials of department whom he has found to have acted in collusion to help the petitioner to get his appointment validated by playing fraud and misrepresentation and also committing forgery in the documents. The report shall be lodged by respondent no. 2 within 10 days from today. Thereafter the concerned police authorities shall make appropriate investigation in accordance with law and submit progress report before this Court after one month thereafter. Only for this purpose this matter shall be listed before this Court on 03.04.2012.

14. Subject to above directions, this writ petition is dismissed with costs, which I quantify to Rs. 25,000/-.

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 15.02.2012

BEFORE
THE HON'BLE IMTIYAZ MURTAZA,J.
THE HON'BLE D. K. UPADHYAYA,J.

Misc. Bench No. 11510 of 2011

Sabhajeet Singh [P.I.L.] Criminal ...Petitioner

Versus

State of U.P., Thru. Prin. Secy., Home & others ...Respondents

Counsel for the Petitioner:
Sri Surya Kant

Counsel for the Respondents:
G.A.
Sri Lalit Shukla
Sri O.P. Srivastava
Sri Manish Mathur

Constitution of India, Article 226-Public Interest Litigation-without disclosing credentials without description of public cause going to expose-without fulfillment of-provision of Allahabad High Court (Amendment) Rules 2010, Chapter XXII Rule 1 (3-A)-held-in absence of credible locus-petition filed not in larger Public Interest-needs dismissal.

Held: Para 14 and 15

In the light of aforesaid observations made by the Hon'ble Supreme Court in the cases of Balwant Singh Chaufal and others (supra) and M/s Holicow Pictures Pvt Ltd (supra), the Court opines that fulfillment of the requirement of the amendment inserted in the High Court Rules vide notification dated 01.05.2010 should not be taken lightly. Rules have been framed for being adhered to. Any person filing Public Interest Litigation has to satisfy the Court that he has a credible locus and also that he has filed the writ petition in larger public interest. In the instant case, the writ petition does not disclose even a single word about the credentials of the petitioner and his antecedents.

In view of above observations, the Court comes to the irresistible conclusion that for want of fulfillment of the requirement of Allahabad High Court (Amendment) Rules, 2010, the writ petition needs to be dismissed.

Case law discussed:
2010 AIR SCW 1029; AIR 2008 Supreme Court 913

(Delivered by Hon'ble D.K.Upadhyaya,J.)

1. The instant writ petition styled as Public Interest Litigation has been filed with the following reliefs:-

"1. to issue a suitable order or direction or writ in the nature of mandamus commanding the opposite parties no. 1 to 6 to punish the opposite party no.7 and 8 and initiate the criminal proceeding against him in the light of the averments made in this writ petition.

2. to issue a suitable order or direction or writ which this Hon'ble Court may deem fit, just and proper direct the opposite party no. 1 to 6 to recover the emoluments and other facilities drawn by the opposite party no.8 as Minister and Member of the Legislative Council which the opposite party no.8 has caused to the State Exchequer.

3. to issue a suitable order or direction or writ directing the opposite parties no. 1 to 6 to act positively and quickly in the matter and sent the cheater/opposite party no.8 behind the bars and refer the matter to the CBI or any other agency which this Hon'ble Court may deem fit and proper.

4. any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case and for protecting the interest of the petitioner may also be awarded to the petitioner and against the opposite parties."

2. A perusal of the aforequoted prayers made in the writ petition reveal that the petitionr has sought relief for issuance of a writ in the nature of mandamus to punish the opposite party nos. 7 & 8 and to initiate criminal proceedings against them in the light of averments made in the writ petition. The petitioner has also prayed that the emoluments and other facilities drawn from the State Exchequer by the opposite party no.8 as Minister in the State Government and also as Member of Legislative Council of Uttar Pradesh be also ordered to be recovered. The petitioner has further prayed that the matter be referred to CBI or any other agency for inquiry.

3. The allegations made in the writ petition are to the effect that opposite party no.7, Ram Charan Kushwaha, son of Late Bhagwat Prasad Kushwaha and opposite party no.8, Babu Singh Kushwaha, son of Late Bhagwat Prasad Kushwaha are one and the same person. That opposite party no.7, Ram Charan Kushwaha contested the election of U.P. Legislative Council using false name of Babu Singh Kushwaha and after getting elected as member of Legislative Council he got a berth in the Cabinet of the State Government. That the aforesaid act of opposite party no.7 contesting the election bearing false name is a fraud and hence, authorities be directed to recover the emoluments and other facilities drawn by opposite party no.7 as Minister in the State and also as Member of Legislative Council.

4. It has further been averred by the petitioner that the opposite party no.7 by contesting the election in the name of Babu Singh Kushwaha has defrauded the Election Commission and the State of U.P., which is an offence, for which opposite party nos. 7 and 8 be punished.

5. Heard Sri Surya Kant, learned counsel for the petitioner, learned Government Advocate for opposite party no.1, Sri Lalit Shukla, learned counsel for the opposite party no.3 and Sri Manish Mathur, learned counsel for the opposite party no.4.

6. We have also perused the documents available on record.

7. While dealing with the issue raised by the petitioner in the instant writ petition, the Court confronted the learned counsel for the petitioner, Sri Surya Kant with a query as to whether while filing the instant writ petition, the affidavit as required to be filed by a person intending to file Public Interest Litigation under the newly inserted sub-rule

3 A in Rule 1 of Chapter XXII of the Allahabad High Court Rules 1952 has been filed? On the said query made by the Court, the learned counsel appearing for the petitioner could not furnish any satisfactory reply. As a matter of fact, in the entire writ petition, no averments regarding the credentials of the petitioner have been made, neither has it been stated by him that the writ petition has been filed to espouse some public cause and further that he does not have any personal or private interest in the matter.

8. While noticing the development of Public Interest Litigation and historically analysing the same and elaborating the duty and the authority enjoined on the Superior Courts, Hon'ble Supreme Court in the case of ***State of Uttranchal vs Balwant Singh Chaufal and others, reported in 2010 AIR SCW 1029,*** requested the High Courts to frame rules for dealing with Public Interest Litigations. Hon'ble Supreme Court while noticing the need of encouraging genuine and bonafide PILs also emphasized that PILs for extraneous considerations and with oblique motives should be discouraged and curbed. Their Lordships of the Hon'ble Supreme Court in the said judgment have also observed that before entertaining a PIL, the courts should prima facie verify the credentials of the petitioner and also that the court should be satisfied regarding the correctness of the contents of the petition. The said directions by the Hon'ble Supreme Court in the case of *State of Uttranchal vs Balwant Singh Chaufal and others (supra)* have been given in para 198 of the judgment which is being reproduced hereinbelow:-

"198. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:-

(1) The courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the Rules prepared by the High Court is sent to the Secretary General of this court immediately thereafter.

(3) The courts should prima facie verify the credentials of the petitioner before entertaining a P.I.L.

(4) The court should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The court should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The court should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public

injury. The court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The court should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations."

9. In view of the aforesaid directions of the Hon'ble Supreme Court, Rule 3 A in Rule 1 of Chapter XXII of the Rules of the Court has been inserted by notifying the Allahabad High Court (Amendment) Rules, 2010. The aforesaid newly inserted rule has been framed by this Court to achieve the objective of framing of Rules as directed by Hon'ble Supreme Court in the case of *State of Uttranchal vs Balwant Singh Chaufal and others (supra).*

10. The notification dated 01.05.2010 whereby Allahabad High Court (Amendment) Rules 2010 was notified is being reproduced hereinbelow:-

HIGH COURT OF JUDICATURE AT ALLAHABAD
AMENDMENT SECTION

NOTIFICATION
No.105/VIIIc-2 Dated May 1, 2010

Correction Slip No.241

In exercising of the powers conferred by Article 225 of the Constitution of India and all other powers enabling it in this behalf, the High Court of Judicature at Allahabad is pleased to make the following amendment in Chapter XXII of the Allahabad High Court Rules, 1952 Volume I with effect from the date of it's Publication in the Official Gazette;

THE ALLAHABAD HIGH COURT (AMENDMENT) RULES, 2010

In the Allahabad High Court Rules, 1952 the following sub rule (3A) in Rule 1 of Chapter XXII shall be inserted :-

" (3 A) In addition to satisfying the requirements of the other rules in this Chapter, the petitioner seeking to file a Public Interest Litigation, should precisely and specifically state, in the affidavit to be sworn by him giving his credentials, the public cause he is seeking to espouse; that he has no personal or private interest in the matter; that there is no authoritative pronouncement by the Supreme Court or High Court on the question raised; and that the result of the Litigation will not lead to any undue gain to himself or anyone associated with him, or any undue loss to any person, body of persons or the State."

EXPLANATORY NOTE

This is not a part of the sub-rule (3A) but is intended to indicate its general purport)

The Hon'ble Supreme Court of India in its judgment in CA No. 1134-1135/02 State of Uttaranchal Versus Balwant Singh Chaufal and others reported in 2010 AIR, SCW, 1029 has observed that in the process of Court is frequently abused in the name of

Public Interest Litigation and has directed all the High Court to frame rules or prevent the same. The aforesaid amendment is intended to achieve the said object.

By order of the Court.
Sd. Dinesh Gupta
Registrar General

11. The first question which needs to be examined by the Court in the instant writ petition is as to whether in the light of requirement of Allahabad High Court (Amendment) Rules 2010, if a person approaching the Court in a Public Interest Litigation does not disclose his credentials and also does not disclose as to what public cause is he seeking to espouse, the writ petition should be entertained in the light of the directions given by the Hon'ble Supreme Court in the case of *State of Uttranchal vs Balwant Singh Chaufal and others (supra).*

12. A perusal of the entire averments made in the writ petition unambiguously disclose that the petitioner has not even murmured a whisper about his credentials. He has not stated as to which public cause is he seeking to espouse and further that result of the litigation will not lead to any undue gain to himself or anyone associated with him. In absence of any averment made by the petitioner regarding his credentials, it is abundantly clear that the petitioner has not fulfilled the requirement of Allahabad High Court (Amendment) Rules 2010. The Court may emphasize here that the Allahabad High Court Rules 1952 were amended by means of notification dated 01.05.2010 not as a mere formality but requirement of observance envisaged by the newly inserted sub-rule 3 A in Rule 1 of Chapter XXII of the Allahabad High Court Rules, 1952 has an object sought to be achieved as directed by the Hon'ble Supreme Court. The said object which is sought to be achieved by the Allahabad High Court (Amendment) Rules 2010 is to ensure that frivolous PILs and the PILs being filed for extraneous considerations and with oblique motive are discouraged and tendency of flooding the courts with such PILs by persons without disclosure of their credentials be curbed.

13. The directions issued by the Hon'ble Court in the case of *State of Uttranchal vs Balwant Singh Chaufal and others (supra)* are to be followed with the objective of maintaining the purity of the stream of justice. The Public Interest Litigation is an instrument to be used by the Courts to achieve genuine public interest. It should not be permitted to be used as a weapon to farther any private, malicious or vested interest. Thus, it has to be used with great care and circumspection. Another factor which needs to be taken into account is the time of the Court which is lost in dealing with such proceedings which are frivolous in nature and not aimed at achieving any genuine cause having wider public interest. In this regard, reference can be made to the observations made by the Hon'ble Supreme Court in the case of ***M/s Holicow Pictures Pvt Ltd. vs Prem Chandra Mishra and others, reported in AIR 2008 Supreme Court 913*** wherein Hon'ble Supreme Court putting a word of caution has observed as under:-

"16. In subsequent paras of the said judgment, it was observed as follows:

"It is thus clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will alone have as locus standing and can approach the Court to wipe out the tears of the poor and needy, suffering from violation of

their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly a vexatious petition under the colour of PIL, brought before the Court for vindicating any personal grievance, deserves rejection at the threshold".

17. It is depressing to note that on account of such trumpery proceedings initiated before the Courts, innumerable days are wasted, the time which otherwise could have been spent for disposal of cases of the genuine litigants. Though we spare no efforts in fostering and developing the laudable concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy, whose fundamental rights are infringed and violated and whose grievances go unnoticed, un-represented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from undue delay in service matters-government or private, persons awaiting the disposal of cases wherein huge amounts of public revenue or unauthorized collection of tax amounts are locked up, detenu expecting their released from the detention orders etc. etc. are all standing in a long serpentine queue for years with the fond hope of getting into the Courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either of themselves or as a proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffing their faces by wearing the mask of public interest litigation and get into the Courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the Courts and as a result of which the queue standing outside the doors of the Courts never moves, which piquant situation creates frustration in the minds of the genuine litigants and resultantly they loose faith in the administration of our judicial system.

18. Public interest litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. As indicated above, Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique considerations. The Court must not allow its process to be abused for oblique considerations by masked phantoms who monitor at times from behind. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives, and try to bargain for a good deal as well to enrich

themselves. Often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busy bodies deserves to be thrown out by rejection at the threshold, and in appropriate cases with exemplary costs.

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20.The Court has to be satisfied about (a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busybodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect."

14. In the light of aforesaid observations made by the Hon'ble Supreme Court in the cases of *Balwant Singh Chaufal and others (supra)* and *M/s Holicow Pictures Pvt Ltd (supra),* the Court opines that fulfillment of the requirement of the amendment inserted in the High Court Rules vide notification dated 01.05.2010 should not be taken lightly. Rules have been framed for being adhered to. Any person filing Public Interest Litigation has to satisfy the Court that he has a credible locus and also that he has filed the writ petition in larger public interest. In the instant case, the writ petition does not disclose even a single word about the credentials of the petitioner and his antecedents.

` 15. In view of above observations, the Court comes to the irresistible conclusion that for want of fulfillment of the requirement of Allahabad High Court (Amendment) Rules, 2010, the writ petition needs to be dismissed.

16. However, the Court during the course of hearing proceeded to examine the averments made in the writ petition. On being asked as to what offence, which can be said to be constituted even as per averments made in the writ petition, has been committed by the private respondent, for which he can be punished or in respect of which criminal proceedings against him can be initiated, learned counsel for the petitioner could not satisfy the Court. Even otherwise, the allegations made in the writ petition are only to the effect that the private Respondent while contesting the election of U.P. State Legislative Council in the year 2006 used the name of Babu Singh Kushwaha. It is not a case of impersonation which can be said to have resulted into some kind of illegal benefit to the private Respondent.

17. In compliance of the order of this Court dated 18.11.2011, the Principal Secretary, Legislative Council, has held an

inquiry and submitted his report dated 16.12.2011 to this Court which has been taken on record. The report so submitted by the Principal Secretary, Legislative Council says that the private Respondent had contested the election of Legislative Council using name of Babu Singh Kushwaha and he used the said name in all the papers furnished at the time of his nomination.

18. The report so submitted by the Principal Secretary, Legislative Council needs to be examined against the backdrop of the allegations made in the writ petition. The petitioner in the instant writ petition has stated that on the death of his father, opposite party no. 7 inherited certain agricultural land and in the mutation proceedings, name of the private Respondent was recorded in the revenue records as Ram Charan alias Babu Singh Kushwaha, son of Bhagwat Prasad. The said order of mutation in favour of the private respondent in the style as aforesaid, was passed by the competent authority on 24.08.2003. Thus, from the averments made by the petitioner himself, it is clear that the private Respondent has been using Babu Singh as his alias since the year 2003 itself. On a query being made to learned counsel for the petitioner as to how using of an alias name constituted an offence, no satisfactory reply could be given by him.

19. It is also not a case where some person has withdrawn the emoluments and other facilities from the State Exchequer impersonating himself to be some one else. Thus, the Court finds that the prayer for recovery of emoluments and other facilities drawn by the private respondent, in the facts mentioned in the writ petition, is misconceived. The petitioner himself has stated that in fact opposite party nos.7 and 8 are the same person. For these reasons, prayer made by the petitioner for getting some inquiry conducted into the allegations made in the writ petition is also not tenable.

20. In the light of foregoing discussions, this Court comes to the definite conclusion that the instant writ petition does not raise any question of larger public cause so as to call for any interference by this Court. Accordingly, the writ petition is dismissed, however, with no order as to cost.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.02.2012

BEFORE
THE HON'BLE SUDHIR AGARWAL, J

Civil Misc. Writ Petition No. 17789 of 1991

Komal Prasad Yadav ...Petitioner
Versus
Regional Manager, U.P.S.R.T.C and others ...Opposite Parties

Counsel for the Petitioner:
Sri R.K.Jain, Sri Rahul Jain

Counsel for the Respondents:
Sri S.K.Sharma, Sri Sameer Sharma
Sri S.K.Sharma, S.C.

U.P. Disciplinary Proceedings(Administrative Tribunal)Rule 1947: Rule-4-on reference of Govt. the State Tribunal by impugned order imposed punishment of - compulsory retirement without payment of gratuity and forfeiture of remaining dues for period of suspension-without holding enquiry-admittedly the petitioner being employee of Corporation-not holding civil post-held-adjudication by Tribunal under 1947 Rules-without jurisdiction-order passed

by Tribunal including impugned order quashed.

(Delivered by Hon'ble Sudhir Agarwal,J)

1. Heard Sri Rahul Jain, learned counsel for the petitioner. Learned Standing Counsel appearing on behalf of State of U.P. do not propose to file any separate counter affidavit but adopts the stand taken by respondents No.1, 2 and 3 hence as jointly agree I proceed to decide the matter under the rules of the Court at this stage.

2. A short question up for consideration in this case as to whether the order impugned in this writ petition has been passed by competent authority or not.

3. The writ petition is directed against the order dated 30.5.1991 (Annexure 7 to the writ petition) whereby Regional Manager, U.P. State Road Transport Corporation Ltd., Azamgarh by means of impugned order dated 30.5.1991 has imposed punishment of compulsory retirement without payment of gratuity and forfeiture of remaining dues for the period of suspension. The petitioner has been held to be guilty of certain allegations constituting misconduct which is said to have been proved in a departmental enquiry.

4. The submission on behalf of the petitioner is that an employee/staff of Uttar Pradesh State Road Transport Corporation (hereinafter referred to as "UPSRTC") could not have been proceeded at the instance of State Government by conducting an enquiry by officers of State Government under U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 and disciplinary authority in UPSRTC cannot act as a rubber stamp to simply pass an order of punishment passed on the enquiry conducted by officers of State Government. It is contended that petitioner was absorbed in UPSRTC and therefore ceased to be governed by provision applicable to the employees of U.P. Government holding 'civil post'.

5. Brief facts to support the above submissions which are not disputed may be referred to as under.

6. The petitioner was appointed as Assistant Booking Clerk in erstwhile U.P. State Government Roadways in the year 1956 and promoted as Booking Clerk in the year 1965. In 1972, UPSRTC was incorporated and established. All the employees working in U.P. State Government Roadways were transferred to UPSRTC. Initial transfer was on deputation till the employees are absorbed in UPSRTC. U.P. State Road Transport Corporation Employees (Other than Officers) Service Regulation, 1981 (hereinafter referred to as "Regulation 1981") came into force on 19.6.1981. Simultaneously U.P. State Roadways Organisation (Abolition of Posts and Absorption of Employees) Rules, 1982 (hereinafter referred to as "1982 Rules") was published on 28.4.1982 for absorption of employees of U.P. State Government Roadways came on deputation to UPSRTC. The aforesaid 1982 Rules came into force on 28.7.1982.

7. The petitioner thus became employee of UPSRTC on 28.7.1982. However, State Government by order dated 25.3.1983 referred departmental enquiry against petitioner to be conducted by Administrative Tribunal-II, U.P. under

Rule 4 of U.P. Disciplinary Proceedings (Administrative Tribunal) Rules, 1947 (hereinafter referred to as "1947 Rules"). The Tribunal issued a charge sheet to the petitioner on 24.5.1983 which was replied by petitioner on 4.7.1983 denying the charges. After holding enquiry, Tribunal vide order dated 8.5.1986 held charges proved and recommended for compulsory retirement, forfeiture of gratuity and salary restricted to the amount of subsistence allowance paid during suspension.

8. It may be noted at this stage during pendency of enquiry before Tribunal, Regional Manager, UPSRTC suspended the petitioner on 31.01.1985. At the initial stage of suspension, petitioner was paid 50% of salary but vide order dated 8.11.1985, salary was enhanced to 3/4th of the pay and later on suspension itself was revoked on 30.8.1986.

9. After receiving Tribunal's order dated 8.5.1986, the Regional Manager, UPSRTC issued show cause notice to the petitioner on 8.5.1986 annexing copy of Tribunal dated 08.5.1986 proposing punishment of compulsorily retirement and other punishments. The petitioner submitted his reply and thereafter the impugned order has been passed.

10. Sri Rahul Jain, learned counsel for the petitioner submitted that petitioner ceased to be a Government servant on 28.7.1982 and became an employee of UPSRTC. Thereafter, the Governor had no authority to interfere in the service matter of petitioner and enquiry could not have been referred to the Tribunal under the provisions of 1947 Rules since the aforesaid Rules are not applicable to the employees of Corporation or Company but are confined to the employees of State Government holding a civil post. It is contended that 1947 Rules are applicable only to those employees who are governed by Rules framing power under proviso to Article 309 of Constitution and not to others. Employees of UPSRTC are not holder of civil post and therefore aforesaid Rules are not applicable hence entire enquiry conducted against petitioner is without jurisdiction rendering entire enquiry and impugned order founded thereon illegal. He also contended that since no departmental enquiry has been held against the petitioner by UPSRTC under the rules applicable to its own employees, therefore, impugned order founded on an enquiry held by an authority who had no jurisdiction in the matter, is vitiated in law and void ab initio.

11. Sri Sameer Sharma, learned counsel appearing for UPSRTC did not dispute that erstwhile UP State Roadways ceased when its assets liabilities and employees etc. stood transferred to UPSRTC created under Section 3 of Road Transport Corporation Act, 1950 w.e.f. 1.6.1972. He has also not disputed that petitioner ceased to be a Government employee on 28.7.1982 and became employee of UPSRTC from then. These averments contained in para 5 of the writ petition have been admitted in para 5 of the counter affidavit.

12. In the circumstances the only question need be adjudicated by this Court, whether Tribunal under 1947 Rules had any jurisdiction to hold enquiry against petitioner.

13. Here in this regard I would prefer to refer Rule 3 and 4 of 1982 Rules which came into force on 28.4.1982 and reads as under:

*"3. **Applicability and overriding effect.**-(1) These rules shall apply to the U.P. State Roadways Organisation employees working on deputation with the U.P. State Road Transport Corporation.*

(2)They shall have effect notwithstanding anything to the contrary contained in any rules, regulations or order.

*4. **Option to employees and absorption in Corporation service.**-(1) An employee of the U.P. State Roadways Organisation, who was placed on deputation with the Corporation and who does not wish to be absorbed in the service of the Corporation, shall, within 3 months from the notification of these rules in the Gazette, intimate the Secretary to Government in the Transport Department that he does not wish to be so absorbed.*

(2) Every other employee who does not give an intimation, in accordance with sub-rule (1), shall be deemed to have exercised his option for absorption in the service of the Corporation.

(3) An employee, who is deemed to have opted for absorption in the service of the Corporation, in accordance with sub-rule (2), shall stand so absorbed with effect from the date of expiry of three months from the date of notification of these rules and his service under the State Government shall, with effect from the same date cease."

14. The consequence of absorption in Rule 4 has been provided in Rule 5 that the relevant posts in U.P. State Roadways organization shall stand abolished. Now the question would be as to whom 1947 Rules are applicable. Sub rule 3 of Rule 1 of 1947 Rules itself read as under:

"They shall apply to all Government servants under the rule-making control of the Governor, and will be applicable to any acts, omissions or conduct arising before the date of commencement of these rules as they are applicable to those arising after that date."

15. Rule 4 of 1947 Rules, which confer power upon Government to refer the matter to the Tribunal also provides that such a reference shall be made in respect to an individual government servant or class of government servant. Admittedly, the petitioner having already ceased to be a government servant w.e.f. 28.7.1982, as admitted by respondents also, ceased to be governed by 1947 Rules and his matter could not have been referred to Tribunal under Rule 4 thereof

16. That being so, the enquiry conducted against petitioner by Tribunal on a reference made by Government was ex facie illegal and without jurisdiction. It is admitted that no enquiry has been conducted against petitioner by UPSRTC under the rules applicable to the employees of UPSRTC. The impugned order is an order of punishment. It is not disputed that under the rules applicable to employees of Corporation, an order imposing punishment could have been passed only i.e. after holding departmental enquiry after giving opportunity of hearing to the concerned employees in accordance with procedure

of enquiry provided in the rules applicable to such employees of UPSRTC and not otherwise.

17. In view of above, the impugned order cannot sustain. The writ petition is allowed. The impugned order dated 30.05.1991 (Annexure 7 to the writ petition) is hereby quashed.

18. However this order shall not preclude the respondents from passing a fresh order in accordance with law after making such enquiry as prescribed in law.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.02.2012

BEFORE
THE HON'BLE RAKESH TIWARI,J.
THE HON'BLE DINESH GUPTA,J.

Civil Misc. Writ Petition No. 22510 of 2002

Man Mohan Swaroop ...Petitioner
Versus
State Of U.P. Thru' Secy. Appointment Deptt. & Ors. ...Respondents

Counsel for the Petitioner:
Sri Anupam Kulshreshtha

Counsel for the Respondents:
C.S.C

Constitution of India, Article 226- Deduction of pension-petitioner while working as Special Land Acquisition Officer-send proposal for compensation by placing reliance on sale deed-on objection by Board of Revenue-amended proposal send-which was enhanced by reference proceeding-disciplinary proceeding the conclusion drawn by authority-held-wholly misconceived-once the initial amount as proposed by petitioner-stood confirmed by District Judge-order of deduction of 10 % pension by disciplinary Authority on probability and assumption not sustainable-direction to give entire withheld amount with 8 % interest given.

Held: Para 7

From the facts stated above, it is clear that initially a proposal was sent by the petitioner to the Board of Revenue and after advice of the Board of Revenue another exemplar was applied and a revised award was sent as per direction of the Board of Revenue. It is also important to mention here that the said award was challenged subsequently by the claimants before the District Judge and the District Judge in reference under section 18 of the Land Acquisition Act, enhanced the award to Rs.5/- per square yard which was initially submitted by the petitioner. Thus, in fact there was no loss to the government. It is only hypothetical observation of the enquiry officer that if the proposal of the petitioner was accepted by the Board of Revenue there would be a loss to the government. While, in fact the award as proposed by the petitioner was approved by the District Judge u/s. 18 of the Land Acquisition Act. Therefore, the whole enquiry and the order of the disciplinary authority was based merely on probability and imagination and the deduction of 10% pension was illegal and not sustainable in law.

(Delivered by Hon'ble Rakesh Tiwari,J.)

1. We have heard learned counsel for the parties.

2. This writ petition has been filed by the petitioner seeking a writ of mandamus directing respondent no.3 to decide the review/representation of the petitioner dated 16.08.1996 as also to issue writ of certiorari quashing the

orders dated 25.9.1986 and 30.6.1992 passed by the respondents.

3. The brief facts of the case are that the petitioner was appointed as Naib Tehsildar on 11.03.1950; that the petitioner was promoted as Tehsildar in the year 1956 and was subsequently confirmed on the said post in the year 1961; that the petitioner was given charge of Deputy Collector and was confirmed on the said post in the year 1974; that on 5.6.1984 a charge sheet was served on the petitioner levelling the only charge that when he was posted as Special Land Acquisition Officer, Agra in the year 1975-78 some land was a acquired for 220 KV sub station and for staff quarters and while preparing the award in case No.268, 270 and 279 the sale deed dated 5.8.1974 was taken as exemplar and submitted the proposal of award to the Board of Revenue for a sum of Rs.11,93,699.25 paise; that on objection by the Board of Revenue subsequently another proposal was made by the petitioner as directed by the Board of Revenue and sent the same for approval for an amount of Rs.6,30,550.37 paise; that on 17.06.1984 the Regional Food Commissioner, Agra was appointed Enquiry Officer who called explanation of the petitioner; that on 25.06.1984 the petitioner demanded the relevant documents relating to the case, which were not given to him ; that on 27.08.1984 an interim explanation was submitted by the petitioner to the Enquiry Officer annexing therewith the photostat copies of the judgment of L.A.Case No.70 of 1978 decided by Vith A.D.J., Agra on 9.3.1984 and L.A.Case No.48 of 1978 decided by Vth A.D.J. Agra on 7.10.1983; that on 25.9.1986 respondent no.2 passed an order of reduction of pension of the petitioner by 10% against which the petitioner preferred an appeal which was rejected on 30.6.1992. The petitioner filed a review application but no decision has been taken on the same.

4. The petitioner's contention is that the punishment has been made merely on probability; the award proposed was subject to approval of the Board of Revenue as per government order; on the objection of the Board of Revenue the petitioner revised the award as per directions and as such there was no mis-conduct on his part; that the impugned order is arbitrary and illegal; that the enquiry conducted against the petitioner was against the provisions of Article 21 of the Constitution as no reasonable opportunity was given and that the punishment given to the petitioner deducting 10% of pension is illegal as the District Judge in reference u/s. 18 of the Land Acquisition Act made award @ Rs.5/- per sq. yard which was initially proposed by the petitioner to the Board of Revenue for approval and the said order has become final as no appeal was filed by the State.

5. The respondents have denied the allegations and submitted that no ground was made out by the petitioner and the enquiry was conducted after giving full opportunity to the petitioner and thereafter the impugned order of punishment was passed. The appeal filed by the petitioner being treated as representation (as no appeal was maintainable) was also rejected by a reasoned order.

6. We are unable to accept the contention raised by learned counsel for the respondents.

7. From the facts stated above, it is clear that initially a proposal was sent by the petitioner to the Board of Revenue and after advice of the Board of Revenue another exemplar was applied and a revised award was sent as per direction of the Board of Revenue. It is also important to mention here that the said award was challenged subsequently by the claimants before the District Judge and the District Judge in reference under section 18 of the Land Acquisition Act, enhanced the award to Rs.5/- per square yard which was initially submitted by the petitioner. Thus, in fact there was no loss to the government. It is only hypothetical observation of the enquiry officer that if the proposal of the petitioner was accepted by the Board of Revenue there would be a loss to the government. While, in fact the award as proposed by the petitioner was approved by the District Judge u/s. 18 of the Land Acquisition Act. Therefore, the whole enquiry and the order of the disciplinary authority was based merely on probability and imagination and the deduction of 10% pension was illegal and not sustainable in law.

8. In view of the above discussions, the writ petition succeeds and is allowed. The orders dated 25.09.1986 and 30.6.1992 passed by respondent no.1 are hereby quashed. The respondents are directed not to deduct 10% of the pension. The respondents are further directed to refund 10% deducted amount of pension to the petitioner along with simple interest at the rate of 8% per annum.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.02.2012

BEFORE
THE HON'BLE P.K.SINGH BAGHEL,J.

Civil Misc. Writ Petition No. 23256 of 2008

Lalit Prasad Shukla ...Petitioner
Versus
State of U.P. Thru' Principal Secy. & others ...Respondents

Counsel for the Petitioner:
Sri Chandan Sharma
Sri Shrikrishna Shukla
Sri U.N. Sharma
Sri Ram Mohan Shukla

Counsel for the Respondents:
C.S.C

U.P. Govt. Servants (Discipline and Appeal) Rules 1999-Disciplinary proceeding-without giving the copy of enquiry report without following procedure given in Rule-Held-complete goby of Natural Justice-not sustainable-order impugned quashed with liberty to initiate conduct disciplinary proceeding in accordance with Rules.

Held: Para 12 and 13

A perusal of the enquiry report would indicate that the Enquiry Officer has relied only on the documentary evidence. No witness was called to prove those documents neither any oral evidence was adduced by the Department as stated above. Rule 7 of the 1999 Rules gives the detailed procedure for imposing major penalties.

Once an Enquiry Officer was appointed and full fledged enquiry was held it was obligatory on the part of the disciplinary authority to follow procedure laid down under Rule 7 of 1999 Rules. As initially the enquiry was initiated for imposing

minor penalty but later on a regular enquiry was held and as such irrespective of the punishment imposed on the petitioner, the procedure laid down for regular enquiry for major punishment should have been followed.

Case law discussed:

1991 Supp. (1) SCC 504; (2010) 10 SCC 539; MANU UP/0782/2011; 2008 (1) AWC 623 (in para 8); 2000 (1) UPLBEC 541; AIR 1998 SC 853; JT 1990 (4) SC 70; J.T. 2000 (9) SC 457

(Delivered by Hon'ble P.K.S.Baghel,J.)

1. The petitioner is a Junior Engineer. He has filed this writ petition aggrieved by the order of the Director/Chief Engineer, Rural Engineering Services, dated 8.1.2008 whereby punishment of the recovery of an amount of Rs.56,526.87 , withholding of two annual increments and making two censured entries have been made. His appeal has also been rejected by the Principal Secretary. Both the orders impugned have been annexed as Annexure-1 and 2 respectively.

2. The short facts leading to the present writ petition are the petitioner was initially appointed as Junior Engineer in Rural Engineering Services, in November 1987. While he was posted as Junior Engineer at Siddartha Nagar in the year 2003 he was subjected to disciplinary proceedings . The disciplinary proceedings were initiated in terms of the U.P. Government Servants (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 1999 Rules). A charge sheet was issued to him on 14.7.2004 (A copy of which is annexed as Annexure-3 to the writ petitin) wherein one of the charge was that on 10.12.2002 the petitioner deposited 80 drums Bitumen on the main road adjoining the Central Stores, Siddartha Nagar without any information to the Store Junior Engineer. Out of 80 drums of Bitumen 25 drums were stolen on 17.1.2003. Thus the petitioner was charged for the negligence. The petitioner submitted his reply to the charge sheet where he denied the charges made against him. The Enquiry Officer found him guilty and a show cause notice was issued to him on 3rd September, 2007 (a copy of which is annexed as Annexure-6 to the writ petition). The petitioner submitted his reply to the show cause notice. However, the Disciplinary Authority was not satisfied and the punishment mentioned herein above was imposed on him.

3. Aggrieved by the said order the petitioner had filed a writ petition in this Court. However, the writ petition was dismissed by means of order dated 5.2.2008 on the ground of alternative remedy. Thereafter the petitioner filed an Appeal before the State Government in terms of the U.P. Government Servants (Discipline and Appeal) Rules,1999. (A copy of ground of Appeal is annexed as Annexure-10 to the writ petition). The said Appeal was also rejected by the State Government.

4. I have heard learned counsel for the petitioner Sri U.N.Sharma assisted by Sri Shrikrishana Shukla and learned Standing Counsel.

5. Learned counsel for the petitioner Sri Sharma has submitted that the entire disciplinary proceeding is vitiated on the ground of violation of principles of natural justice as the enquiry report on which the disciplinary authority has placed reliance was obtained behind the back of the petitioner ex-parte without any notice or knowledge of the petitioner. He has further pointed out that in the earlier enquiries petitioner was not found guilty. However, the Director/Chief Engineer by means of

letter dated 10.5.2007 had asked to ignore the earlier report and a fresh report was called for. Sri Sharma further submitted that no date was fixed for the enquiry and the entire enquiry has been conducted without any intimation of the date and place of the enquiry. Sri Sharma has relied on the judgment of the Apex Court passed in **Kulwinder Singh Gill v. State of Punjab 1991 Supp. (1) SCC 504; Jagdamba Prasad Shukla v. State of U.P and others (2000) 7 SCC 90 ; Molhd. Younus Khan v. State of U.P. and others (2010) 10 SCC 539** and a Judgement of learned Single Judge passed by this Court in **Ashok Kumar Sagar v. High Court of Judiciature at Allahabad (MANU?UP/0782/2011) decided on 20.4.2011.**

6. Learned Standing Counsel has submitted that the petitioner has been given full opportunity as a charge sheet was issued to him and under Rule 9 of the U.P. Government Servants (Discipline and Appeal) Rules,1999 the Disciplinary Authority has power to order a fresh enquiry. In the present case the Disciplinary Authority has exercised his power under Rule 9 and he asked for a fresh enquiry report.

7. I have considered the rival submissions of the learned counsel for the petitioner and learned standing counsel. The order of the Disciplinary Authority is cryptic and no reason has been given in the order only conclusion has been mentioned. Aggrieved by the order of the disciplinary authority the petitioner filed an appeal wherein he has specifically raised the issue that the enquiry was ex-parte, unilaterally and without giving any opportunity. The ground no.8, 9 and 12 of his Ground of Appeal,so far material for the present controversy is set out below:-

"That the said enquiry report is wholly illegal, arbitrary and in violation of principle of natural justice in so far as the enquiry report has been prepared ex-parte unilaterally without giving the appellant any opportunity of appearing in the enquiry proceedings and without issuing any charge sheet to the appellant and without calling upon the appellant to submit his written statement to the charge sheet or to express his desire for cross examining the witnesses or to produce evidence in defence. The appellant was also not given any copy of enquiry report dated 11.3.2007 and the order dated 22.3.2007 passed by the Executive Engineer Siddhartha Nagar or the final report submitted by the police in the matter or the letter of the Executive Engineer dated 20.6.2007 and the document accompanying with the said letter which have been relied upon by the Inquiry Officer and thus the enquiry has been conducted in violation of Rule 7 of the Rules.

That in view of the matter the appellant has not been intimated any date time or place of enquiry and even the appointment of the Inquiry Officer have not been intimated or informed to the appellant and the enquiry proceedings have been conducted unilaterally ex-parte and behind the back of the appellant.

That it is noteworthy that the appellant has not been given any notice or opportunity of hearing of any other enquiry and all the reports referred to in the enquiry report are unilateral ex-parte and prepared behind the back of the appellant without participation of the appellant at any stage."

8. A perusal of the order of the State Government Annexure-1 to the writ petition would go to show that the appellate authority had not adverted to the issue raised by the petitioner. In the writ petition also the petitioner has stated in paragraph 16 and 17 that the enquiry was ex-parte and behind the back of the petitioner without his knowledge. The reply to the said paragraphs have been given in the counter affidavit 11 clubbing paragraph 15,16, 17 and 18 together vague and evasive reply has been given. In paragraph 28 and 29 of the writ petition petitioner has again reiterated this fact and in reply to it in the counter affidavit in paragraph 14 again evasive reply has been given. From the pleadings of the case and perusal of the grounds of appeal it is manifestly clear that the petitioner was not given proper opportunity in the enquiry.

9. The order of the Disciplinary Authority, as stated above, it totally cryptic and non speaking. Appellate Authority has also not considered the various grounds taken by the petitioner in his appeal. The Appellate Authority has only affirmed the order of the Disciplinary Authority without adverting the issues raised by the petitioner.

10. Apart from the aforesaid fact, from perusal of the enquiry report, the order of the Disciplinary Authority and the Appellate Authority it is manifestly clear that no oral evidence was adduced by the Department in the disciplinary proceedings and the Inquiry Officer had only referred some letters and communications of the officials as an evidence to hold the petitioner guilty. The Department has not examined any witness in support of the charge. It was the duty of the Department to prove the charges. From perusal of the aforesaid orders it also transpires that no date and place has been fixed by the Inquiry officer. This Court has held that in the case of ex-parte enquiry it is the duty of the Department/Employer to prove charges mentioned in the charge sheet.

11. In the present case the respondents have issued a show cause notice dated 14.7.2004 purported to be under Rule 10. The said Rule deals with the procedure for imposing minor penalties. However, later on, on 14.7.2007 and Enquiry Officer was appointed and a regular enquiry has been conducted. This fact is also evident from a show cause notice dated 3rd September, 2007 (Annexure-6 to the writ petitin) wherein enquiry report has been sent to the petitioner and his reply was sought within 14 days. The show cause notice has been issued in terms of Rule 9 Sub. clause 4. However, after considering the reply the disciplinary authority inflicted minor punishment in terms of the Rule 3 of the 1999 Rules.

12. A perusal of the enquiry report would indicate that the Enquiry Officer has relied only on the documentary evidence. No witness was called to prove those documents neither any oral evidence was adduced by the Department as stated above. Rule 7 of the 1999 Rules gives the detailed procedure for imposing major penalties.

13. Once an Enquiry Officer was appointed and full fledged enquiry was held it was obligatory on the part of the disciplinary authority to follow procedure laid down under Rule 7 of 1999 Rules. As initially the enquiry was initiated for imposing minor penalty but later on a regular enquiry was held and as such irrespective of the punishment imposed on the petitioner, the procedure laid down for regular enquiry for major punishment should have been followed.

14. A Division bench of this Court in case of **Surya Bhan Singh v. U.P.Lok Sewa Adhikaran and others, 2008 (1) AWC 623 (in para 8)** has held as follows:-

"Even in a case where only documentary evidence is to be relied upon for proving the charges, it cannot be said that such documents need not be proved at all, may be that rigour of proof, as is required in the criminal trial are not needed but some sort of proof is necessary to attach authenticity to such document. While doing so, it cannot be lost sight of that the delinquent has every right to appear before the Enquiry Officer and to bring to his notice that the documentary evidence which is being made the basis of the charges cannot be relied upon for very many reasons ; for example, the said record/ documentary evidence is not admissible in law or for any other reason, such documentary evidence could not have been looked into and if such a documentary evidence is shown to the petitioner, he may adduce some evidence to rebut such documentary evidence and prove that the documentary evidence adduced by the department is not worthy of any reliance. Merely because the department was of the view that the charges are based on documentary evidence and, therefore, there was no necessity to either prove those documents/record or to give any opportunity to the petitioner in the enquiry proceedings cannot be said to be correct approach, according to law."

15. The same law has been laid down in **Subhash Chandra Sharma v. Managing Director and another reported 2000(1) UPLBEC 541.** The relevant part of the judgment is quoted hereunder below :-

"The Court also held that in the enquiry witnesses have to be examined in support of the allegations, and opportunity has to be given to the delinquent to cross-examine these witnesses and to lead evidence in his defence. In Punjab National Bank v. AIPNBE Federation. AIR 1960 SC 160 (vide para 66), the Supreme Court held that in such enquiries evidence must be recorded in the presence of the charge-sheeted employee and he must be given an opportunity to rebut the said evidence. The same view was taken in A.C.C. Ltd. v. Their Workmen, 1963 II LLJ 396, and in Tata Oil Mills Co. Ltd. v. Their Workmen. 1963 II LLJ 78 SC. Even if the employee refuses to participate in the enquiry, the employer cannot straightaway dismiss him, but he must hold an ex parte enquiry where evidence must be led vide Imperial Tobacco Co, Ltd. v. its workmen. AIR 1962 SC 1348, Uma Shanker v. Registrar. 1992 (651 FLR 674 All."

16. The Supreme Court in the case of **Ministry of Finance and another v. S.B.Ramesh reported in AIR 1998 SC 853** has emphasized that in case of disciplinary proceedings if Enquiry Officer relies on the documents then those documents should be proved in accordance with law and any inference drawn from the documents which were not proved in accordance with law would be illegal and opposed to law.

17. The Apex Court in **Kulwant Singh Gill v. State of Punjab reported in JT 1990 (4) SC 70** has held :-

"Obviously, the disciplinary authority felt that the enquiry into minor penalty is not necessary and adhering to the principles of natural justice issued the show cause notice and on receipt of the reply

from the delinquent officer passed the impugned order imposing penalty thinking it to be a minor penalty. If it is considered, as stated earlier, that it would be only a minor penalty, the procedure followed certainly meets the test of the principles of natural justice and it would be a sufficient compliance with the procedure. In view of the finding that the impugned order is a major penalty certainly then a regular enquiry has got to be conducted and so the impugned order is clearly illegal. The Trial Court rightly granted the decree. The judgment and the decree of the High Court is vitiated by manifest illegality. At this distance of time it is not expedient to direct an enquiry under rules 8 and 9 of the Rules. The appeal is accordingly allowed and the judgment and decree of the High Court is set aside and that of the trial court is restored but in the circumstances without costs."

18. The same view has been taken by the Supreme Court in the case of **Jagdamba Prasad Shukla v. State of U.P. and others reported in J.T. 2000 (9) SC 457.**

19. In the background of the aforesaid facts I am of the considered view that the disciplinary proceedings has vitiated, as the procedure laid down in 1999 Rules has not been followed and the petitioner has not been given appropriate opportunity of hearing.

20. Orders dated 17.4.2008 (Annexure-1 to the writ petition) passed by the respondent no.1 and the order dated 8.1.2008 (Annexure-2 to the writ petition) passed by the respondent no.2 are hereby set aside.

21. Respondent no.2 is directed to hold a fresh enquiry after giving fullest opportunity of hearing to the petitioner in the light of procedure laid down under the U.P. Government Servants (Discipline and Appeal) Rules, 1999.

22. With the above observations and order, the writ petition is finally disposed of .

ORIGINAL JURISDICTION
CIVIL SIDE
DATED:ALLAHABAD 06.01.2012

BEFORE
THE HON'BLE S.K.SINGH,J
THE HON'BLE PANKAJ NAQVI,J

Civil Misc. Writ Petition No. 23342 of 2009

Dr. Sunil Vikram Singh ....Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Vimlendu Tripathi
Sri Intekhab Alam Khan
Sri Seemant Singh

Counsel for the Respondents:
Sri Anil Tiwari
C.S.C.

Constitution of India , Article 226-Carrier Advance Scheme under G.O. 13.03.2001-as well as statute No. 1710 of Purvanchal University-provides to count the previous working on substantial capacity in another University or recognized Degree College on Post-Graduate College duly affiliated to University-Petitioner while working on substantive capacity and confirmed as post of Lecturer in University situated in State of Bihar from 15.11.1996 to 09.05.2000-to be counted for purpose of higher pay scale and other purpose-as nothing whisper regarding word 'outside'

University-law laid down by Apex Court in "Shardhendu Bhushan"-equally binding-order quashed-consequential directions issued.

Held: Para 15

Since the basic fact that the petitioner was in substantive employment as a lecturer in Tilakmanjhi Bhagalpur University, Bhagalpur, State of Bihar from 15.11.1996 to 9.5.2000 have not been disputed or controverted and therefore, the petitioner is fully entitled to claim the benefits of said service rendered in State of Bihar i.e. from 15.11.1996 to 9.5.2000 to be included in his service rendered with respondents.

(Delivered by Hon'ble Pankaj Naqvi,J.)

1. Essentially the sole dispute involved in both the aforesaid connected writ petitions is as to whether the services rendered as a lecturer in a degree college outside the State of U.P. can be considered for the grant of senior scale/selection grade as Lecturers in State of U.P. or not. Accordingly both the petitions are being disposed off by a common judgment.

2. Civil Misc. Writ Petition No. 23342 of 2009 has been filed by Dr. Sunil Vikram Singh seeking a writ of certiorari to quash the order dated 4.2.1999 passed by the Director (Higher Education) U.P., whereby the representation filed by the petitioner has been rejected and also a writ of mandamus commanding the respondents to grant the pay protection and the senior scale/selection grade to the petitioner with effect from the date it became due after counting the services of the petitioner rendered in Tilakmanjhi Bhagalpur University, Bhagalpur, State of Bihar for the period 15.11.1996 to 9.5.2000 along with arrears regularly.

3. Similarly Civil Misc. Writ Petition No. 13118 of 2007 has been filed by Dr. Vikas Sharma for seeking a writ in the nature of certiorari for quashing an order dated 4.12.2006 whereby the representation filed by the petitioner has been rejected by Director (Higher Education) and also a writ of mandamus commanding the respondents to count the past service rendered by the petitioner in the seniority list for the purposes of preservation of senior pay scale/selection grade.

4. As common issues of law are involved in both the petitions, hence facts of the first writ petition i.e. C.M.W.P. No. 23342 of 2009 are taken up as a leading case and are enumerated hereunder:-

5. The petitioner claims to have been selected by the Bihar State University Service Commission and was appointed on the post of lecturer in Tilakmanjhi Bhagalpur University, Bhagapur, State of Bihar on 7.11.1996 and had joined the said post on 15.11.1996. His services came to be confirmed vide a notification dated 7.11.2003 with effect from 15.11.1996. Subsequently, petitioner was selected as a lecturer by U.P. Higher Education Commission, Allahabad in pursuance of the select list which was approved and published on 3.3.2000 and accordingly an appointment letter was issued to the petitioner on 15.4.2000 by the Committee of Management of Tilakdhari Post Graduate College, Jaunpur. On 8.5.2000 an order was issued by the Registrar, Tilakmanjhi Bhagapur University, Bhagalpur, State of Bihar whereby the petitioner was relieved from his place of posting i.e. Hari Singh Mahavidyalay, Haveli Kharagpur, Munger, State of Bihar and the requisite permission was granted to the petitioner to join the post of lecturer at Tilakdhari Post Graduate

College, Jaunpur affiliated to Respondent No. 3. After relieving from the institution on 9.5.2000 the petitioner joined on the post of lecturer on 11.5.2000 in Tilakdhari Post Graduate College, Jaunpur and since then he has been performing his regular duties.

6. As per the guidelines issued by the University Grant Commission and the Government Order dated 13.3.2001 issued by the State of U.P., with regard to the Career Advancement Scheme (CAS), the petitioner is entitled for pay protection and seniority for the pay scale of the post of lecturer (senior scale) and thereafter lecturer (selection grade) by including his earlier service rendered by him as Lecturer in Tilakmanjhi Bhagalpur University, Bhagalpur, State of Bihar, in the college where the petitioner is presently working which is affiliated with Veer Bahadur Singh Purvanchal University, Jaunpur. Statute 17.10 (e) of the First Statutes of the Veer Bahadur Singh Purvanchal University read as under:-

SENIORITY OF PRINCIPALS AND TEACHERS OF AFFILIATED COLLEGES

17.10. The following rules shall be followed in determining the seniority of Principals and other teachers of affiliated colleges : [Section 49 (0)].

(a) -
(b) -
(c) -
(d) -

(e) service in a substantive capacity in another University or another degree or post-graduate college whether affiliated to or associated with the University or another University established by law shall be added to his length of service.

7. Accordingly the petitioner through the Manager of Committee of Management of Tilakdhari Post Graudate College, Jaunpur submitted a representation dated 14.10.2007 before respondent no. 2 wherein it was indicated that presently the petitioner is working as lecturer in Tilakdhari Post Graduate College, Jaunpur with effect from 11.5.2000 and that prior to the said period he was in service at Tilakmanjhi Bhagalpur University, Bhagalpur, State of Bihar from 15.11.1996 to 9.5.2000 and therefore, in terms of the UGC norms and the First statutes of the University the said substantive period of service rendered as Lecturer in State of Bihar is liable to be included in the present service of the petitioner and thereafter senior scale and selection grade be offered to him. However, the Director (Higher Education) U.P. has rejected the claim of the petitioner vide impugned order dated 4.2.2009, on the strength of the Government Order dated 26.12.1988, hence this writ petition.

8. A counter affidavit has been filed on behalf of the State Authorities wherein it is contended that the Government Orders dated 16.5.1995 and 26.11.1988 deals with the matter of counting of services rendered in other institutions of Higher Education, within the State of U.P. and therefore, the said Government Orders would not apply in the case of petitioners. It is further contended in the said counter affidavit that the issue as to whether such services of teachers which are rendered outside the State of U.P. are to be included with the State of U.P. or not has been referred to a larger bench in the case of Dr. A.P. Paliwal, which is presently pending and therefore, no relief can be granted to the petitioners. A rejoinder affidavit was filed by the petitioners to the aforesaid affidavit wherein once again it was relied that the aforesaid

Government Orders would not be applicable in the case of petitioners and it was also stated that in the aforesaid full bench decision of Dr. A.P. Paliwal Vs. State of U.P. and others, reported in (2010) 3 U.P.L.B.E.C. 2365, it has been held that computation of the services rendered outside the State of U.P. shall not be counted towards the services rendered by an employee in the State of U.P. for the grant of pension and the issue of inclusion of outside services, in the State of U.P. for the purposes of grant of senior scale/selection grade to the petitioners was not an issue in the said full bench decision. A counter affidavit has also been filed on behalf of the University and from the contents therein it appears that the University is supporting the case of the petitioners.

9. Heard S/Sri Vimlendu Tripathi, Intekhab Alam Khan, N.K. Mishra, Sudhir Dixit, learned counsel for the petitioners, S/Sri Anurag Khanna, V.K. Upadhyay, Anil Tiwari, learned counsel for the respondents and learned Chief Standing Counsel for the State-respondents, in both the connected petitions.

10. The submission of the learned counsel for the petitioners is that the impugned orders rejecting the representations of the petitioners is based on a Government Order dated 26.12.1988, a copy whereof has been filed as Annexure-21 to the writ petition and in fact the subject matter of the said Government Order is such that the same will not applicable on the facts of the present case. A perusal of the Government Order dated 26.12.1088 would reveal that the subject dealt with the transfer of teachers from one affiliated/associated/private aided P.G. College to another college and with regard to pay protection on such transfers. Thus the said Government Order will not apply in the case of the petitioner as the petitioner is seeking the inclusion of that period of service as a Lecturer which has been rendered outside the State of U.P. This court is in complete agreement with the submissions of the learned counsel for the petitioners that the respondents have wrongly non suited the petitioner on the strength of the aforesaid Government Order. Accordingly the impugned order dated 26.12.1988 (Annexure-21 to the writ petition) becomes vulnerable in law and is liable to be set aside.

11. The next submission of the learned counsel for the petitioners is that service benefits on the post of lecturer (senior scale) and lecturer (selection grade) require 4 years and 5 years length of service respectively and that there is neither any requirement either in the U.P. State University's Act 1973 or in the First Statute of the University or in the Government Order dated 13.3.2001 for Career Advancement Scheme that the earlier substantive service should be only from the Universities and the Colleges situate within the State of U.P.

12. Learned counsel for the petitioners have substantiated their arguments with a decision of the Apex Court reported in AIR 1988 SC 335 Shardhendu Bhushan Vs. Nagpur University wherein the Hon'ble Apex Court has held that in terms of the criteria laid down by the University Grant Commission itself, a teacher is entitled to the benefits of higher grade if he has the teaching experience of not less than 5 years. The emphasis is on the experience gained by a teacher while in the employment of a University or any other institution irrespective of its geographical location and not on the continuity of service. Even the

U.G.C. scheme or the first statutes of the University do not refer to any continuity in service.

13. A Division Bench of this Court in Civil Misc. Writ Petition No. 30104 of 2006, Dr. Pradeep Kumar Singh Purush Vs. State of U.P. and others reported in 2009(5) E.S.C. 3469 and Civil Misc. Writ Petition No. 45957 of 2006 Harish Kumar Sharma Vs. Director of Education decided on 24.2.2006, have also taken a similar view, relying upon the law laid down in the case of Shardhendu Bhushan.

14. Thus in view of the aforesaid decisions of the Hon'ble Apex Court and that of this Court, this Court has no option but to follow the dicta of the Hon'ble Apex Court, and that of this Court.

15. Since the basic fact that the petitioner was in substantive employment as a lecturer in Tilakmanjhi Bhagalpur University, Bhagalpur, State of Bihar from 15.11.1996 to 9.5.2000 have not been disputed or controverted and therefore, the petitioner is fully entitled to claim the benefits of said service rendered in State of Bihar i.e. from 15.11.1996 to 9.5.2000 to be included in his service rendered with respondents.

16. Writ Petition No. 23342 of 2009 succeeds and is allowed. The order dated 4.2.2009 (Annexure-18 to the writ petition) is quashed and a mandamus is issued to the respondents to include the services of the petitioner as Lecturer outside State of U.P. from 15.11.1996 to 9.5.2000 and to grant senior scale/selection grade on the post of Lecturer.

17. Similarly for the facts and reasons stated in W.P. No. 23342 of 2009, Writ Petition No. 13118 of 2007 also stands allowed and accordingly the impugned order dated 4.12.2006 (Annexure-9 to the writ petition) is quashed and a mandamus is issued to the respondents to include the past services of the petitioner as Lecturer outside State of U.P. for the grant of Lecturer senior scale/selection grade.

18. No order as to costs.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.02.2012

BEFORE
THE HON'BLE VINEET SARAN, J
THE HON'BLE RAN VIJAI SINGH, J

Civil Misc. Writ Petition No. 25548 of 2008

Malik Zafar Lari ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri A.B. Singh

Counsel for the Respondents:
C.S.C.

Civil Services Regulations-Regulation 351-A-withholding post retiral benefits-in garb of disciplinary proceeding-chargesheets much after retirement-without sanction of Governor under regulation 351-A-admittedly no disciplinary proceeding was pending prior to retirement-pension gratuity and other amounts be paid within 3 month.

Held: Para 6

In our considered opinion, the retiral dues of the petitioner ought to have been paid to him immediately after his retirement and the same has wrongly been withheld by the respondent-authorities under the garb of an enquiry being contemplated against the

petitioner. As per Explanation to Regulation 351-A "Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are served to him or, if the officer has been placed under suspension from an earlier date, on such date". Since neither charge-sheet was issued to the petitioner prior to his retirement nor was he ever placed under suspension during his service period, therefore it cannot be said that departmental proceedings had been initiated against the petitioner while he was in service.

Case law discussed:

(2008) 1 UPLBEC 840; 2012 (1) ESC 57; AIR 1971 SC 1409; AIR 1976 SC 667; (1983) 1 SCC 305; 2005 (5) SCC 245

(Delivered by Hon'ble Vineet Saran, J)

1. The petitioner was in the service of the State Government. He retired from service on 31.1.2007 from the post of Sub Division Agriculture Extension Officer. The grievance of the petitioner is that he has not been paid his post retiral benefits despite he having approached the respondent authorities time and again. This writ petition has thus been filed with the prayer for a writ in the nature of mandamus commanding the respondents to provide post retial benefit to the petitioner within such period as may be fixed by this Court.

2. We have heard Sri A.B.Singh, learned counsel for the petitioner as well as learned Standing Counsel appearing on behalf of the respondents and have perused the record.

3. Although no order withholding the post retiral benefits of the petitioner has been passed but in the counter affidavit the reason given for withholding the same is that by a Government Order dated 28.3.2005 disciplinary proceedings were initiated against the petitioner for having committed certain financial irregularities while he was posted as Soil Conservation Officer, Mirzapur in the year 1998-99 and 1999-2000, in which, it is alleged that certain excess payments were paid to the labourers. Admittedly no charge sheet was ever issued to the petitioner during his service period. Specific averment to this effect has been made in paragraph 11 of the writ petition wherein it is stated that the charge sheet was served on the petitioner in June, 2007. The same has not been denied in the counter affidavit. It is contended by the learned counsel for the petitioner that the order dated 28.3.2005 was a sanction to initiate disciplinary proceeding against the petitioner. In the said letter itself, it was mentioned that the enquiry officer shall prepare the charge sheet and place the same before the Government for necessary sanction. It is the specific case of the petitioner, which has not been denied by the respondents, that the petitioner was neither given a charge sheet during his service period nor was ever placed under suspension. It is thus contended that disciplinary proceedings, in the form of issuance of charge sheet, after the retirement of the petitioner could not be initiated without the sanction of the Governor as provided under Regulation 351-A of the Civil Services Regulations.

4. A Division Bench of this Court in the case of ***Ram Rakhan Singh vs. State of U.P.*** (2008) 1 UPLBEC 840 has held that where the charge sheet is served subsequent to the retirement of the employee without there being any order of the Governor permitting the initiation of the departmental proceeding against

the employee, the same would be barred under Regulation 351-A of the Civil Services Regulations. Another Division Bench in the case of ***Lal Sharan vs. State of U.P.*** 2012 (1) ESC 57 has held that mere intention to obtain sanction for initiating disciplinary enquiry could not be made basis for withholding post retiral benefits unless sanction is granted and the disciplinary proceeding starts. It has further been held that the authorities cannot withhold pension and other retiral dues of a retired employee merely on the ground that there was a possibility of an enquiry being initiated against a retired employee. The provision of seeking sanction from the Governor in the case of a retired employee has been made to safeguard the interest of the retired employees who could be harassed after retirement.

5. In the present case, what we find is that prior to the retirement of the petitioner mere permission to hold an enquiry was accorded but the charge sheet was served in June, 2007 which was much after the retirement of the petitioner.

6. In our considered opinion, the retiral dues of the petitioner ought to have been paid to him immediately after his retirement and the same has wrongly been withheld by the respondent-authorities under the garb of an enquiry being contemplated against the petitioner. As per *Explanation* to Regulation 351-A "Departmental proceeding shall be deemed to have been instituted when the charges framed against the pensioner are served to him or, if the officer has been placed under suspension from an earlier date, on such date". Since neither charge-sheet was issued to the petitioner prior to his retirement nor was he ever placed under suspension during his service period, therefore it cannot be said that departmental proceedings had been initiated against the petitioner while he was in service. Further after retirement, departmental proceedings could be initiated only after sanction was accorded by the Governor in terms of Regulations 351-A of the Civil Services Regulations, which has not been done in the present case. As such withholding of the pension and other retiral dues of the petitioner in the facts of the present case are wholly unjustified in view of the law laid down by the Apex Court in the case of **Deoki Nandan Shah vs. State of U.P.** AIR 1971 SC 1409 whereby the Apex Court ruled that the pension is a right and payment of it does not depend upon the discretion of the Government but is governed by the Rules and the Government Servant coming within those rules is entitled to claim pension and grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount, having regard to service and other allied matters, that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was further affirmed by the Apex Court in the case of ***State of Punjab vs. Iqbal Singh*** AIR 1976 SC 667.

7. In the case of ***D.S.Nakara vs. Union of India*** (1983) 1 SCC 305 the Apex Court has observed as under:

"From the discussion three things emerge: (i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to

1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and clause (5) of Article 148 of the Constitution; (ii) that the pension is not an ex gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch....."

8. The ratio laid down in these cases had been subsequently followed by the Apex Court in series of its decisions including the case of ***Secretary, O.N.G.C. Limited vs. V.U.Warrier*** 2005 (5) SCC 245.

9. The State Government has also issued a Government Order No.3-1713/Dus/983/89 on 28th July, 1989 in which, with a view to avoid the delay in payment of pension, it is provided that the service book is to be completed two years prior to the date of retirement.

10. Regulation 912 (E) of the Civil Service Regulations also provide that the retirement of a Government employee shall be published in the Gazette within a week from the date of his retirement. There is a complete mechanism for grant of post retiral dues at the earliest and in case there is any technical problem in payment of final pension, then there is a provision for provisional pension till the payment of final pension.

11. Accordingly, this writ petition succeeds and is allowed. The respondent authorities are directed to pay the entire retiral dues of the petitioner including up-to-date pension within three months from the date a certified copy of this order is produced before the competent authority and also pay the future pension to the petitioner in accordance with law, month by month.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.02.2012

BEFORE
THE HON'BLE RAN VIJAI SINGH,J.

Civil Misc. Writ Petition No. 35463 of 2008

Somnath ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Siddharth Khare
Sri Adarsh Bhushan
Sri Suresh Singh

Counsel for the Respondents:
C.S.C.

U.P. Govt. Servant (Discipline and Appeal) Rules 1999-Rule-7-Termination of Temporary Govt. Servant-by putting stigm of misconduct-without holding enquiry as per procedure contained in Rule 7-Termination order not sustainable-Quashed with 50 % back wages with liberty to initiate disciplinary proceeding by following procedure prescribed under Rule 1999.

Held: Para 13

In view of the foregoing discussions, I am of the view that the major penalty of termination imposed by the respondents is faulty for the reason that; for the misconduct, the services of the government servant cannot be terminated under the Rules of 1975 and if the termination is based upon the misconduct, then the procedure

contained in Rule 7 of 1999 Rules, which are mandatory in nature, ought to have been followed.

Case law discussed:

Union of India (UOI) and Ors Vs Mahaveer C. Singhvi in Special Leave Petition (Civil) No. 277702 of 2008 decided on 29.07.2010; 1997 (1) LLJ 831; 2000 (1) U.P.L.B.E.C. 541; 2008 (3) ESC 1667; 2001 (2) U.P.L.B.E.C. 1475; Laturi Singh Vs. U.P. Public Service Tribunal and others (Writ Petition No. 12939 of 2001 decided on 6.5.2005); 2011 (8) ADJ 397; (1970) 2 SCC 871; AIR 1974 SC 2192; AIR 1980 SC 1896; 1984 2 SCC 369; AIR (2010) 3 SCC 3492; 2008 Vol. (10) ADJ 283

(Delivered by Hon'ble Ran Vijai Singh,J.)

1. This writ petition has been filed for issuing a writ of certiorari quashing the order dated 30.06.2008 passed by the Executive Engineer, Irrigation Construction Division, Agra by which the petitioner's service has been terminated under the U.P. Temporary Government Servants (Termination of Service) Rules, 1975 (hereinafter called as Rules of 1975). It appears, the petitioner was appointed as Runner after following the procedure as contained in **Group 'D' Employees Service Rules 1985 First Amendment Rules 1986** after advertising the vacancy in "Dainik Jagran Newspaper". The petitioner's appointment letter dated 07.11.2007 shows that the petitioner's appointment was made while fulfilling the back log quota, on temporary basis, with the rider that the service of the petitioner can be terminated at any time after one month notice or in lieu of notice, one month salary. It appears that for certain conduct which were contrary to the Government Servant Conduct Rules, the petitioner's service was terminated by the respondent no.3 vide order dated 30.06.2008, served on 02.07.2008.

2. Sri Adarsh Bhushan, learned counsel appearing for the petitioner submitted that although it is settled law that temporary Government Servants have no right to the post and their services can be terminated at any time, but simultaneously it is also equally settled that if the service is terminated on account of misconduct of an employee then without taking recourse to prove misconduct as contemplated under the relevant rules governing the field namely U.P. government Servant (Discipline and Appeal) Rules, 1999, the punishment for misconduct cannot be inflicted, that too major penalty of termination from service. In his submissions the order has been passed under Rules of 1975, therefore the same cannot be sustained in the eye of law. In support of his contention he has placed reliance upon the judgement of the Apex Court in ***Union of India (UOI) and Ors Vs Mahaveer C. Singhvi*** in Special Leave Petition (Civil) No. 277702 of 2008 decided on 29.07.2010, wherein it has been held that if a discharge is based upon misconduct or if there is a live connection between the allegations of misconduct and discharge, then the same, even if couched in language which is not stigmatic, would amount to a punishment for which a departmental enquiry was imperative.

3. On the other hand learned Standing Counsel appearing for the State respondents has vehemently contended that the temporary government servants have no right to the post and their service can be terminated at any time without any notice. In his submissions the impugned order is not stigmatic, therefore, no infirmity can be attached with the impugned order of termination.

4. I have heard Sri Adarsh Bhusan, learned counsel for the petitioner and learned Standing Counsel for the respondents and perused the record.

5. The case of the petitioner is that the petitioner's service has been terminated for certain charges i.e., giving wrong information deliberately to the superior officers, telling lie, exertion of undue pressure in the Government work, Political pressure and making wrong complaints, which according to the learned counsel for the petitioner is baseless and mentioning of that in the impugned termination order is not only stigmatic but it amounts to punishment.

6. For testing this argument of learned counsel for the petitioner, it would be necessary to narrate few lines of termination order dated 30.06.2008 and the stand of the respondents in para 11 of the counter affidavit, which is reproduced herein under:

Relevant portion of order of termination

1. श्री सोमनाथ, रनर द्वारा अपने उच्चाधिकारियों को गलत सूचना देना और जानबूझ कर झूठ बोलने के कारण राजकीय कार्यो में व्यवधान उत्पन्न करना तथा राजकीय कार्यो को न करना एवं राजनैतिक दबाव डलवाना, कर्मचारी/अधिकारियों के प्रति झूठी शिकायत करना, पद के अनुरूप कार्य नहीं करना।

Relevant extract from para 11 of the counter affidavit filed by the State - respondents.

2. ''.....यह कि रिट याचिका के प्रस्तर 20 व 21 एवं याचिका के समर्थन में वर्णित किये गये आधार जिस प्रकार से कहे गये हैं, नितान्त असत्य, भ्रामक व निराधार होने के कारण उपरोक्त वर्णित तथ्यों के परिप्रेक्ष्य में स्वीकार योग्य नहीं हैं। जैसा कि उपरोक्त प्रस्तरों में स्पष्ट किया जा चुका है कि उ0प्र0 अस्थाई कर्मचारी (सेवा समाप्ति) नियमावली–1975 में निहित व्यवस्था के अन्तर्गत याची श्री सोमनाथ, अस्थाई कर्मचारी के पूर्व कार्यवृत्त एवं अल्प सेवा अवधि के दौरान कर्मचारी आचरण नियमावली का उल्लंघन एवं जानबूझ कर अनुशासनहीनता एवं कदाचार के फलस्वरूप उसके दोष उजागर होने पर याची के विरूद्ध सेवा समाप्ति आदेश सेवा शर्तों के अनुसार ही पारित किया गया है।''

7. From the perusal of the order of termination as well as the stand taken by the State in paragraph no. 11 of the counter affidavit, it transpires that the petitioner's services have been terminated for his conduct against the Government Servant Conduct Rules, अनुशासनहीनता (Indiscipline) and dnkpkj ('Misconduct' as defined in 'Advanced Learner's Hindi English Dictionary' by Dr. Hardev Bahri and in website ***'www.shabdkosh.com'***) and that has been reduced in writing in the impugned termination order. It is well settled law that if a government servant is terminated or is removed or dismissed from the service for his misconduct, then the misconduct has to be proved in accordance with the rules governing the field, i.e., the Rules of 1999, so far as it relates to the petitioner. The penalty of termination of service is a major penalty in view of the Rule 3 of the 1999 Rules and for imposing the major penalty, the procedure has been prescribed under Rule 7 of the Rules, which requires the proper charge sheet and coupled with oral inquiry. For appreciation, the procedure contained in 1999 Rules is reproduced hereunder:

''7-Procedure for imposing major penalties- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner :

(i)The Disciplinary Authority may himself inquiry into the charges or appoint

an Authority Subordinate to him as Inquiry Officer to inquire into the charges.

(ii)The Facts constituting the misconduct on which it is proposed to take action shall be reduced in the from of definite charge or charges to be called charge -sheet. The charge-sheet shall be approved by the Disciplinary Authority.

Provided that where the Appointing Authority is Governor, the charge -sheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii)The charge farmed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of the witnesses proposed to prove the same along with oral evidence, if any, shall be mentioned in the charge-sheet.

(iv)The charge Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to state whether he desires to cross-examine any witness mentioned in the charge-sheet and whether desires to give or produce evidence in his defence . He shall also be informed that in case he does not appear or file written statement on the specified date, it will be presumed that he has none to furnish and inquiry officer shall proceed to complete the inquiry ex-parte.

(v) The charge-sheet, along with the copy of the documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the charge-sheet could not be served in aforesaid manner, the charge- sheet shall be served by publication in a daily newspaper having wide circulation :

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with charge-sheet, the charge Government servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charge the Inquiry Officer shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charge Government Servant who shall be given opportunity to cross-examine such witnesses. After recording the aforesaid evidences, the Inquiry officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in h is defence :

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The inquiry officer may summon any witnesses to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental inquiries (Enforcement of

Attendance of witnesses and production of documents) Act 1976.

(ix) The Inquiry Officer may ask any question he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the date the Inquiry Officer shall proceed with the inquiry exparte. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the charge-sheet in absence of the charged Government Servant.

(xi)The disciplinary Authority, if it considers if necessary to do so, may by an order appoint a Government Servant or a legal practitioner to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii)The Government servant may take the assistance of any other Government Servant to present the case on this behalf but not engage a legal practitioner for the purpose unless the presenting office appointed by the Disciplinary Authority is a legal practitioner of the disciplinary Authority having regard to the circumstance of the case so permits.

Provided that the rule shall not apply in following cases :

(i)Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge.

or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or

(iii) Where the Governor satisfied that, in the interest of the security of the state, it is not expedient to hold an inquiry in the manner provided in these rules."

8. From the perusal of Rule 7, it transpires that for imposing major penalty, a complete mechanism has been provided under the Rules and there are various pronouncements, namely, ***State of U.P. and another*** Vs. ***T.P. Lal Srivastava,*** 1997 (1) LLJ 831, ***Subash Chandra Sharma*** Vs. ***Managing Director and another,*** 2000 (1) U.P.L.B.E.C. 541, ***Salahuddin Ansari*** Vs. ***State of U.P. and others,*** 2008 (3) ESC 1667, ***Subash Chandra Sharma*** Vs. ***U.P. Cooperative Spinning Mills and others,*** 2001 (2) U.P.L.B.E.C. 1475, ***Laturi Singh*** Vs. ***U.P. Public Service Tribunal and others*** (Writ Petition No. 12939 of 2001 decided on 6.5.2005) and ***Dr. Subhash Chandra Gupta*** Vs. ***State of U.P.***, 2011 (8) ADJ 397, wherein it has held that the major penalty cannot be imposed without taking recourse to the provisions contained under the Rules for imposing major penalty.

9. Learned Standing Counsel appearing for the State - respondent has submitted that here, in the present case, the indisciplined behaviour, exertion of political pressure and the misconduct was the motive for terminating services of the

petitioner and it was not the foundation, therefore, in view of the settled proposition of law, where the indisciplined act is a motive and not foundation, which led to termination of service, the inquiry is not necessary and the service could be terminated under the Rules of 1975.

10. I have considered the rival submissions and perused the order of termination and the stand taken by the respondent in the counter affidavit. From the perusal of which, I am of the definite opinion that the petitioner's behaviour, his conduct against the Government Servant Rules and his misconduct as alleged in the counter affidavit is the foundation and not the motive. Had it been a motive, there would have been an order simplicitor terminating the services, without mentioning all these things.

11. The apex Court in the case of S***tate of Bihar and others*** Vs. ***Shiva Bhikshuk Mishra*** (1970) 2 SCC 871, ***Shamsher Singh*** Vs. ***State of Punjab and another,*** AIR 1974 SC 2192, ***Gujrat Steel Tubes Ltd.*** Vs. ***Gujarat Steel Tubes Mazdoor Sabha,*** AIR 1980 SC 1896, ***Anoop Jaiswal*** Vs. ***Government of India and another*** 1984 2 SCC 369, ***Nehru Yuva Kendra Sangathan*** Vs. ***Mehbub Alam Laskar*** (2008) 2 SCC 479 has held that if a discharge is based upon misconduct or if there is a live connection between the allegations of misconduct and discharge, then the same, even if couched in language which is not stigmatic, would amount to a punishment for which a departmental enquiry was imperative. This decision has been followed in the case of ***Union of India and others*** Vs**. *Mahaveer C. Sindhia,*** reported in AIR (2010) 3 SCC 3492.

12. A Division Bench of this Court in the case of ***Paras Nath Pandey*** Vs. ***Director, North Central Zone, Cultural Centre, Allahabad,*** reported in 2008 Vol. (10) ADJ 283, after considering various pronouncements of the Hon'ble Supreme Court has observed as under:

"..... once it is evident that the termination simplicitor is founded on the alleged act of misconduct said to be proved by the authorities concerned, an inquiry giving due opportunity to the employee is must and in the absence of such an inquiry, a punitive termination cannot be sustained. It is not the case whether the authorities acted fairly or unfairly but the question is whether inquiry conducted by the authorities was in accordance with law or not and whether before recording a finding against an employee in respect to the alleged misconduct the employee was given adequate opportunity of defence."

13. In view of the foregoing discussions, I am of the view that the major penalty of termination imposed by the respondents is faulty for the reason that; for the misconduct, the services of the government servant cannot be terminated under the Rules of 1975 and if the termination is based upon the misconduct, then the procedure contained in Rule 7 of 1999 Rules, which are mandatory in nature, ought to have been followed.

14. In the result, the writ petition succeeds and is allowed. The impugned order dated 30.6.2008 passed by the Executive Engineer, Irrigation Construction Division, Agra is hereby quashed. The respondents are directed to reinstate the petitioner with 50% back wages within two months from the date of

receipt of certified copy of the order of this Court. It may be observed that in case the respondents decide to hold disciplinary proceeding against the petitioner, they are at liberty to do so in accordance with law.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.02.2012

BEFORE
THE HON'BLE ARUN TANDON, J.

Civil Misc. Writ Petition No. 44055 of 2011

Ramanand Gaur ...Petitioner
Versus
Ram Sanehi and others ...Respondents

Counsel for the Petitioner:
Sri Siddhartha Varma
Sri SAntosh Kumar MIshra

Counsel for the Respondents:
Sri Arvind Kumar Singh-II
Sri P.R. Maurya
Sri Uma Kant
Sri Rishu Mishra
C.S.C.

U.P. Panchayat Raj Act, 1947-Section 12-C-readwith-Rule 3 of U.P. Panchayat Raj (Settlement of Education Dispute) Act 1994-Election Petition-non joinder of elected or failure candidate-so far relief declaring election is concern-non impleadment-not fatal-but second part of relief declaring petitioner a selected candidate-order rejecting election petition-proper-petition allowed partly.

Held: Para 19 and 20

Under Rule 3 of 1994 Rules, an election petition, where only relief for declaring the election of the elected candidate as invalid is prayed for, it is not necessary to implead all other unsuccessful candidates as a party. This Court would, therefore, in the facts of the case segregate two reliefs, which have been prayed for by the election petitioner and would hold that so far as the first relief qua the election of the present petitioner being declared invalid is concerned, the petition is maintainable and does not suffer from the vice of non-impleadment of necessary parties.

So far as the second relief prayed for in the election petition qua election petitioner being declared as elected after setting aside the election of the elected candidate is concerned, the petition suffers from vice of non-impleadment of other unsuccessful candidate and therefore to that extent the election petition stands dismissed.

Case law discussed:
(2001) 3 SCC page 594 (Para-121); AIR 2000 SC 2502; (2009) 10 SCC 541 (Para -20); AIR 1954 SC 210; (2001) 3 SCC 594

(Delivered by Hon'ble Arun Tandon, J.)

1. Petitioner before this Court was elected as Pradhan of the village Chutka Gaon as per the results of the elections declared on 28.10.2010. Respondent no. 1 Ram Sanehi, who was the defeated candidate, filed an election petition under Section 12-C of the U.P. Panchayat Raj Act, which was registered as Election Petition No. 1 of 2010.

2. The reliefs prayed for in the election petition are as follows:

१. यह कि उपरोक्त परिस्थितियों में प्रतिपक्षी संख्या–1 का चुनाव अवैध घोषित करते हुए रद्द घोषित करते हुए उनके स्थान पर याची को चुनाव में विजयी घोषित किया जावे।

2. यह कि अलावा या बजाय दादरसी मजकूर वाला के वादी जिस किसी भी दीगर दादरसी का मुश्तहक व नजर अदालत करार पाया जाय तो उसकी भी डिक्री बहक वादी खिलाफ प्रतिवादीगण सादिर फरमायी जाय।

3. यह कि वाद व्यय तथा शुल्क अधिवक्ता वादी को प्रतिवादीगण से दिलवा दिया जाय।

3. The petitioner on service of the notice filed application dated 17th June, 2011 stating therein that the election petition suffers from the vice of non-joinder of necessary party, inasmuch as three other persons, who were candidates in the said election, have not been made a party as required by Rule 3 of the U.P. Panchayat Raj (Settlement of Election Disputes) Rules, 1994. It was, therefore, contended that in absence of necessary parties, the election petition itself was liable to be dismissed.

4. Objections were filed to the application by the election petitioner stating therein that the petitioner has impleaded the elected candidate and it was not necessary to implead other persons.

5. The Election Tribunal by means of the order dated 12.07.2011 held that the election petition did not suffer from the vice of non-joinder of the necessary parties. It has been held that the elected candidate had been made party and that the objection taken by the elected Pradhan had no substance.

6. Not being satisfied the petitioner filed a revision under Section 12-C(6) of the Act, which has been dismissed as not maintainable. It is against these two orders that the present writ petition has been filed.

7. So far as the order passed by the revisional authority is concerned, this Court may record that a right to file revision has been provided under Section 12-C(6) of the U.P. Panchayat Raj Act only against the final order passed in the election petition. Against the order of the Election Tribunal dated 23.07.2011 in the facts of the case revision was not maintainable and it has rightly been dismissed as such.

8. However, since the legality of the order dated 23.07.2011 has also been challenged in the present petition, this Court will now proceed to examine the merits of the order dated 23.07.2011.

9. The contention raised on behalf of the parties revolves around the Rule 3(2) of 1994 Rules, which reads as follows:

"3. Election Petition.-(1).....

(2) The person whose election is questioned and where the petition claims that the petitioner or any other candidates shall be declared elected in place of such person, every unsuccessful candidate shall be made a respondent to the application."

10. According to the petitioner since in the facts of the case both the reliefs have been prayed for i. e. declaring the election of the petitioner as invalid and thereafter to declare the election petitioner as elected, every unsuccessful candidate had to be made a party. Counsel for the petitioner Sri S.K. Verma submits that non-impeadment of necessary party is fatal to the election petition. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in the cases of ***Patangrao Kadam vs. Prithviraj Sayajirao Yadav Deshmukh and others; (2001) 3 SCC page 594 (Para-12), Gadnis Bhawani***

Shankar V. vs. Faleiro Eduardo Martinho; AIR 2000 SC 2502 and Ram Sukh vs. Dinesh Aggarwal; (2009)10 SCC 541 (Para-20). He further explains that unsuccessful candidates will mean every candidate who had filed his nomination in the process of election and had not withdrawn the same up to the last date for withdrawal of the nomination.

11. There can be no quarrel with the proposition so canvassed by Sri Verma, insofar as impleadment of unsuccessful candidates in the election petition, wherein the relief of declaring the election petitioner as elected is concerned.

12. In the opinion of the Court, from a simple reading of Rule 3, quoted above, it is apparently clear that every unsuccessful candidate along with successful candidate has to be made a respondent in the election petition, if a declaration qua the election petitioner being elected is prayed for.

13. It is settled law that election petition proceedings are technical and special proceedings. The Supreme Court of India has explained the legal position in that regard in para-8 of its judgment in the case of Ram Sukh (supra), which reads as follows:

"8. *Before examining the merits of the issues raised on behalf of the election petitioner with reference to the relevant statutory provisions, it would be appropriate to bear in mind the observations of this Court in Jagan Nath v. Jaswant Singh. Speaking for the Constitution Bench, Mehr Chand Mahajan, C.J., had said that the statutory requirement of election law must be strictly observed and that the election contest is not an action at law or a suit in equity, but is purely a statutory proceeding unknown to the common law and that the Court possesses no common law power. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the courts must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act."*

14. The issue for consideration before this Court is as to whether the entire petition, as filed by the petitioner, is liable to be rejected on the ground of non-impleadment of unsuccessful candidates or only to the extent the relief of the election petitioner being declared elected is prayed.

15. In the opinion of the Court Rule 3 is in two parts. First part deals with the petition where the relief of declaring the election of the elected candidate as invalid and the other where the second relief of declaring the election petitioner as elected is also prayed. Non-impleadment of unsuccessful candidates is fatal so far as relief second is concerned. In absence of such unsuccessful candidates being impleaded the second relief of declaring the election petitioner as elected cannot be granted. To that extent the contention

raised by Sri Verma is upheld and the relief prayed in the election petition to that extent had to be declared as non-maintainable.

16. Reference may also be had to the judgment of the Hon'ble Supreme Court, relied upon by the counsel for the respondent, in the case of ***Jagan Nath v. Jaswant Singh and others; AIR 1954 SC 210,*** wherein it has been held that merely because consequences have not been provided because of non-impleadment of unsuccessful candidates under the rules, the same may not be fatal and the Tribunal is entitled to deal with the matter under proviso to Order IX Rule 10 and 13 of the Code of Civil Procedure.

17. Suffice is to refer to the judgment of the Hon'ble Supreme Court reported in ***(2001) 3 SCC 594*** wherein it has been explained that non-impleadment of the parties, as required under the statutory provision, would be fatal and having regard to Section 82 of the Representation of Peoples Act, 1951 it has further been explained that no subsequent impleadment can be permitted, as it would negate the statutory provision. It has been finally laid down as follows:

"Unambiguous language and clear terms contained in Section 82(b) read with Section 79(b) is mandatory. Section 86(1) does not leave any option to High Court but to dismiss an election petition for non-compliance with Sections 81, 82 and 117.

18. This takes the Court to the second issue as to whether in absence of unsuccessful candidates being impleaded in the election petition, the relief of declaring the election of the elected candidate as null and void can be granted or not.

19. Under Rule 3 of 1994 Rules, an election petition, where only relief for declaring the election of the elected candidate as invalid is prayed for, it is not necessary to implead all other unsuccessful candidates as a party. This Court would, therefore, in the facts of the case segregate two reliefs, which have been prayed for by the election petitioner and would hold that so far as the first relief qua the election of the present petitioner being declared invalid is concerned, the petition is maintainable and does not suffer from the vice of non-impleadment of necessary parties.

20. So far as the second relief prayed for in the election petition qua election petitioner being declared as elected after setting aside the election of the elected candidate is concerned, the petition suffers from vice of non-impleadment of other unsuccessful candidate and therefore to that extent the election petition stands dismissed.

21. Writ petition is partly allowed. Interim order is discharged.

22. The Tribunal is directed to proceed with the matter in accordance with law without granting any unnecessary adjournment to either of the parties.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.01.2012

BEFORE
THE HON'BLE S. K. SINGH, J.
THE HON'BLE PANKAJ NAQVI, J.

Civil Misc. Writ Petition No. 56885 of 2003

R. B. Saxena ...Petitioner
Versus
Union of India and others ...Respondents

Counsel fo the Petitioner:
Sri B.P. Singh
Sri V.K. Singh
Sri V.K. Goel

Counsel for the Respondents;
Sri A.K. Gaur
Sri Govind Saran
C.S.C.

Constitution of India-Article 226-Judicial Property-recording reasons-even Quasi Judicial/Administrative Authorities are bound to give reasons-in support of their conclusions-neither disciplinary authority nor appellate authority nor the Tribunal-Followed this principle-Writ Court can not adjudicate the question of fact-matter remitted back before Central Administrative Tribunal for fresh decision.

Held: Para 19

In view of the aforesaid, it is clear that decision taken by the departmental authority being non speaking even the tribunal has not taken pains of noticing the facts, report and the submission that all other charged employees were exonerated and although the petitioner has not been found to be signatory of the appointment letters and it is said that only two fake appointment letters were supplied by him, extreme penalty of removal from service has been given.

Case law discussed:
AIR 1986 SC 1173; AIR 1966 SC 671; AIR 1976 SC 1785; (2005) 2 SC 235; (2008) 3 SCC 469

(Delivered by Hon'ble S. K. Singh, J.)

1. Heard Sri B. P. Singh, learned Sr. Advocate assisted by his colleague Sri V. K. Singh and Sri A. K. Gaur, learned Advocate who appeared for the respondents.

2. By means of this writ petition prayer has been made for quashing the judgment of the Central Administrative Tribunal, Allahabad dated 9.9.2003 passed in Original Application No. 964 of 1997 (annexure no. 15 to the writ petition) and the orders dated 9.5.1996, 30.7.1996 and 25.4.1997 (annexure no. 11, 12 and 13 respectively to the writ petition).

3. For disposal of the writ petition facts in brief will suffice.

4. Petitioner was initially appointed in the year 1965 as Electrical Khalasi i.e. Group D post at Allahabad under Assistant Shop Superintendent (TR-D). Thereafter he was promoted as Judicial Clerk and in the year 1992 when he was working as Senior Clerk in the office of Divisional Electrical Engineer, Aligarh he was served with a major penalty charge sheet dated 1.10.1992. Finally the disciplinary authority without considering the reply and the details given by the petitioner by order dated 9.5.1996 removed the petitioner from service, upon which petitioner filed appeal and revision but both were dismissed vide orders dated 30.7.1996 and 25.4.1997 and Original Application filed before the Tribunal was also dismissed on 9.8.2003 and thus all the four orders are under challenge.

5. Submission of the learned counsel for the petitioner is that petitioner was not afforded reasonable opportunity in the departmental proceedings to defend himself and he was compelled to have defence helper without even allowing time to prepare the case and the witness called by the petitioner was not examined. It is further submitted that in all six persons were proceeded for the charge of preparation/issuance of the fake appointment letters but all others have been exonerated and only petitioner has been singled out and punished with extreme penalty.

6. Submission is that so far the petitioner is concerned the charge is that he gave fake appointment letters to two employees and it is not a case that he got the forged appointment letter prepared and signed rather the then A.P.O. Ram Khelawan and other employees got prepared those letters and this fact has been accepted by the Enquiry Officer but the disciplinary authority has only said that it does not matter as to who was the signatory of the appointment letter.

7. Besides the aforesaid aspects submission is that a detailed representation/objection was submitted by the petitioner against enquiry report but nothing has been considered and in a most mechanical manner without applying the mind to the facts the disciplinary authority passed an order of removal from service. Appellate authority and the revisional authority both concurred without adverting to the facts and details in the same fashion.

8. Submission is that the Tribunal which was expected to judge the things in a judicial manner in the light of the materials on record and the grounds so taken by the petitioner arguments so advanced but in a very surprising manner the Tribunal in one paragraph by a non speaking order has just said that no infirmity has been found in the decision and no interference is required.

9. Submission is that authorities were required to consider the facts and details and the arguments so advanced and were required to answer the same, may be in brief manner but non assigning of any reason whatsoever either by the departmental authority or by the Tribunal has vitiated the entire process.

10. Sri Gaur, learned Advocate who appeared for the respondents submits that although from the orders of the disciplinary authority as well as of the appellate or revisional authority it is not clear that they have assigned reasons to meet the factors so pointed out by the petitioner and the Tribunal has also not recorded the facts and arguments in detail and dismissed the Original Application in summary manner but the facts remains that entire record will be presumed to have been perused and opinion has been formed in the light of the available material and, therefore, no interference is required.

11. At this stage, we are to just notice certain decisions of the Apex Court and of this Court wherein it has been ruled that assigning of the reasons while forming an opinion and while deciding the matter is quite necessary and that indicates the mind of the authority and the court that how it has proceeded to accept/reject the submissions.

12. Sri Gaur, learned Advocate fairly submits that the aforesaid decision of the Apex Court and of this Court are certainty on this point.

13. To impress upon the need of giving reasons while deciding a matter is very simple. Unless narration of facts, argument/objection to a decision and discussion part, even in brief is there, here a litigant is to judge and is to be satisfied that he received meaningful consideration of his case, the conclusion of which might not favour him. It is commonly said that dispensation of justice has to appear which can only be confirmed by looking into your wisdom and comparative thought to the issue which can only be viewed only when it is expressed. Expression can only be in writing. No body is going to read and infact may not be capable to reach by going into your inner feel unless that is reduced in writing.

14. The need of giving reasons to a conclusion has been expressed time and again by the Apex Court.

15. In an old decision given by the Apex Court in the case of **Ram Chandra Vs. Union of India reported in AIR 1986 SC 1173** placing reliance on another decision of the Apex Court in **Madhya Pradesh Industries Ltd. Vs. Union of India AIR 1966 SC 671,** the following observations were made :

"Ordinarily, the appellate or revisional. authority shall give its own reasons succinctly; but in a case of affirmance where the original tribunal gives adequate reasons, the Appellate Tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons."

9. These authorities proceed upon the principle that in the absence of a requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where the order is one of affirmance. Here, R. 22(2) of the Railway Servants Rules in express terms requires the Railway Board to record its findings on the three aspects stated therein. Similar are the requirements under R. 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. R. 22(2) provides that in the case of an appeal against an order imposing any of the penalties specified in R. 6 or enhancing any penalty imposed under the said rule, the appellate authority shall 'consider' as to the matters indicated therein. The word 'consider' has different shades of meaning and must in R. 22(2), in the context in which it appears, mean an objective consideration by the Railway Board after due application of mind which implies the giving of reasons for its decision."

16. In another decision given by the Apex Court in the case of **The Siemens Engineering and Manufacturing Consolidation Officer. Of India Ltd. Vs. The Union of India and another reported in AIR 1976 SC 1785,** the following observations were made :

"Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N. M. Desai v. Testeels Ltd., C. A. No. 245 of 1970 decided on 17-12-1975 (SC). But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated 8th December, 1961 which were repeated in the subsequent representation dated 4th

June, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a court of law. But the order of the Collector could have been little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application."

17. We can refer another recent decision of the Apex Court given in the case of **MMRDA Officers Association Kedarnath Rao Ghorpade Vs. Mumbai Metropolitan Regional Development Authority and another reported in (2005) 2 SCC 235** which is to the following effect :

"4. We find that the writ petition involved disputed issues regarding eligibility. The manner in which the High Court has disposed of the writ petition shows that the basic requirement of indicating reasons was not kept in view and is a classic case of non-application of mind. This Court in several cases has indicated the necessity for recording reasons."Disclaimer: The text is computer generated. The user must verify the authenticity of the extracted portion with the original.

"5. Even in respect of administrative orders Lord Denning, M.R. in Breen v.Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: (All ER p. 1154h) "The giving of reasons is one of the fundamentals of good administration." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed:

"Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at."

Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial

review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance (Chairman and Managing Director, United Commercial Bank v. P.C. Kakkar."

18. To sum up the aforesaid aspect another recent decision of the Apex Court given in the case of **Divisional Forest Officer, Kothagudem and others Vs. Madhusudhan Rao, reported in (2008) 3 SCC 469** can be referred and the observations as made in para 19 and 20 will be useful to be quoted here :

"19. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least some reasons for rejecting the appeal preferred by the respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State.

Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khammam wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

"20. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum."

19. In view of the aforesaid, it is clear that decision taken by the departmental authority being non speaking even the tribunal has not taken pains of noticing the facts, report and the submission that all other charged employees were exonerated and although the petitioner has not been found to be signatory of the appointment letters and it is said that only two fake appointment letters were supplied by him, extreme penalty of removal from service has been given.

20. On these facts, we are of the considered view that we are not to undertake the exercise of examining the records to form a final opinion either way like the departmental authorities and at the same like the Tribunal and thus the claim of the petitioner in the light of the facts and grounds has to be attended afresh by the

Central Administrative Tribunal and a decision in accordance with law will have to be taken.

21. As the matter is quite old the Central Administrative Tribunal is expected to decide the matter with all expedition preferably within a period of three months from the date of receipt of certified copy of this order from either of the sides.

22. For the reasons given above, this writ petition succeeds and is allowed. The impugned order passed by the Central Administrative Tribunal dated 9.9.2003 (annexure no. 15) is hereby quashed and the matter is relegated for being heard and decided as indicated above.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.12.2011

BEFORE
THE HON'BLE SUDHIR AGARWAL,J.

Civil Misc. Writ Petition no. 62458 of 2011

Sewa Ram Pathak Abhay and others
...Petitioners
Versus
The State of U.P. and others
...Respondents

Counsel for the Petitioners:
Sri Krishan Ji Khare
Sri Mritunjay Khare

Counsel for the Respondents:
Sri J.N. Maurya
C.S.C.

Constitution of India, Article 226-benefit of pension-petitioners working as Assistant Teacher-retired on 30.06.2009-seeking direction to accept the management contribution with interest-claiming benefits of period of working prior to grant in aid for computation of qualifying period of pension-in view of G.O. Dated 26.07.2001-while cut of date given in G.O. Already quashed in Smt. Shanti Solanki case-followed in several decisions-if petitioner deposit entire amount of contribution of management with interest within six weeks-respondents to extend for pension purpose.

Held: Para 8

In the facts and circumstances of the case and considering the aforesaid decisions as also the fact that petitioners are ready to pay the entire amount of Management's contribution along with interest, this writ petition is allowed in the same terms and conditions as contained in judgment dated 06.09.2006, Smt. Shanti Solanki (supra). If the petitioners deposit Management's contribution together with interest within a period of six weeks from today, the respondents shall proceed to extend benefit of Government Order dated 26.07.2001 to the petitioners as well. The aforesaid exercise will be completed within three months from the date of such deposit and production of a certified copy of this order. No order as to cost.

(Delivered by Hon'ble Sudhir Agarwal,J.

1. Heard Sri Krishna Ji Khare, learned counsel for the petitioners and Sri J.N. Maurya for the respondents 2 to 5.

2. The only relief sought by the petitioners is that the respondents should get amount of Management's contribution deposited with interest from the petitioners and compute the services rendered by them prior to the institution concerned brought in grant-in-aid for the

purpose of retiral benefit like pension etc.

3. The petitioners 1, 2 and 3 while working as Assistant Teacher or Headmaster as the case may be have retired on 30.6.2009, 30.6.2008 and 30.6.2009 respectively while the petitioners 4, 5 and 6 will retire in future.

4. The State Government issued a Government Order dated 26.7.2001 extending period of deposit of Management's contribution along with interest in Government Treasury upto 30.3.2002. On such deposit the period of service rendered in the institution prior to its brining on grant-in-aid would count for pensionary benefit.

5. It is said that management of the institution in which petitioners working did not deposit the said amount. The petitioners however are ready to deposit the said amount from their own but the same is not being permitted by the respondents. Attention is also drawn to this Court's order dated 6.9.2006 in ***Writ Petition No.75746 of 2006 "Smt. Shanti Solanki Vs. State of U.P. and others",*** whereby the cut of date provided in the Government order dated 26.7.2001 has already been quashed and this Court allowed deposit of the amount subsequently. The said decision has been followed later on also in several cases including ***Writ Petition No.42467 of 2007 "Vidhya Ratan Maheshwari Vs. State of U.P. and others" decided on 11.5.2010 and Writ Petition No.74896 of 2010 "Ram Babu Pachauri Vs. State of U.P. and another" decided on 23.12.2010.***

6. On behalf of respondents a counter affidavit has been filed, it is stated that the petitioners 1, 2 and 3 have already been paid their retiral benefit including General Provident Fund (G.P.F.). The petitioners 1 and 3 are also getting pension but petitioner 2 has not been granted pension benefit since he has not put 10 years required service from the date of grant-in-aid i.e. on 1.12.1998. It is further stated that from 1.4.2009 a new pension scheme has been made operative and, therefore, the earlier Government Order cannot be pressed into service.

7. A perusal of the Government Order dated 8.4.2009 makes it clear that it would be applicable to only those institutions which have been brought in grant-in-aid after 1.4.2005. It is not the case of respondents that the institution in question namely Rashtriya Vidya Mandir, Purva Madhyamik Vidyalaya, Khawajphool, Rama Bai Nagar (Kanpur Dehat) was taken on grant-in-aid in 2005 i.e. after 1.4.2005. On the contrary it is admitted in paragraph 7 of the counter affidavit that the said institution was taking in grant-in-aid on 1.12.1998. In the circumstances, the Government Order dated 8.4.2009 has no application to the institution in question. A faint attempt was made by referring to U.P. Provisions of General Provident Fund U.P. Rules 1985 but nothing could be shown as to how that would be relevant to form a different opinion then what has already been expressed by this Court in several cases like Vidhya Ratan Maheshwari (supra) and Smt. Shanti Solanki (supra) etc.

8. In the facts and circumstances of the case and considering the aforesaid

decisions as also the fact that petitioners are ready to pay the entire amount of Management's contribution along with interest, this writ petition is allowed in the same terms and conditions as contained in judgment dated 06.09.2006, Smt. Shanti Solanki (supra). If the petitioners deposit Management's contribution together with interest within a period of six weeks from today, the respondents shall proceed to extend benefit of Government Order dated 26.07.2001 to the petitioners as well. The aforesaid exercise will be completed within three months from the date of such deposit and production of a certified copy of this order. No order as to cost.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.02.2012

BEFORE
THE HON'BLE PANKAJ MITHAL,J.

Civil Misc. Writ Petition No. 75527 of 2011

Dayanand Sury Englo Sanskrat Higher Secondary School ...Petitioner
Versus
State Of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri P.N. Saxena
Sri Sanjeev Kumar Pandey

Counsel for the Respondents:
Sri D.D. Chauhan
Sri Rajesh Kumar (S.C.)

U.P. Bhudan Yagna Act, 1952-Section 15 A-Cancellation of Patta-granted to a recognized institution Intermediate College-on complaint collector canceled the Patta for area of 24.30 acre-argument regarding legal definition of person includes 'Company' a juristic person also-held-scheme of Bhudan Act postulates distribution of land only to natural person lower caste downtrodden neighbors by the land owner- "person" be interpreted in narrower sense and not in broader or legal sense-order impugned perfectly justified-warrants no interference by Writ Court.

Held: Para 30

In view of above, I am of the opinion that the meaning of the word 'person' used in Section 14 of the Act has to be construed in a narrower sense in the context of the Bhoodan scheme which envisaged for giving land to the tillers of the soil excluding all juristic persons from its ambit.

Case law discussed:
1986 ALJ 645; 2003 (95) RD 278; 2003 (95) RD 320; 2002 (93) RD 13; 1988 RD 363 (SC)

(Delivered by Hon'ble Pankaj Mithal,J.)

1. In this writ petition the question which surfaces for consideration is whether the petitioner was eligible for allotment of land under the scheme of the Bhoodan Yagna and the provisions of Section 14 of the U.P. Bhoodan Yagna Act, 1952 (hereinafter referred as Act) and if not whether allotment made in favour of the petitioner was liable to be cancelled in exercise of powers under Section 15-A of the Act.

2. Admitted facts are that the petitioner is an institution recognized under the U.P. Intermediate Education Act, 1921 and is imparting education including the subject of agriculture. Petitioner by the very nature of its activity is not an agriculturist and is not earning livelihood through agriculture. Nonetheless, petitioner was allotted various plots of land, 16 in number

having a total area of 24.30 acre situate in village Bhadua, Pargana Bharthana, Tehsil and District Etah, under Section 14 of the Act.

3. On a complaint made by one Rookampal Singh, that the land was illegally allotted to the petitioner under the Act, the Up Zila Adhikari submitted a report dated 3.7.06. On the report Case No. 7 of 2007 under Section 15-A of the Act was registered on 29.11.2006 against the petitioner for the cancellation of the allotment of the aforesaid plots.

4. After notice was issued to the petitioner and an objection was filed by it and on inquiry in respect whereof report was submitted by the Up Zila Adhikar on 1.8.08, the Collector vide impugned order dated 21.10.11 cancelled the allotment made in favour of the petitioner inter alia on the ground that the petitioner was not entitle to allotment of any land under the Bhoodan Scheme and the provisions of the Act. The petitioner is not a landless agricultural labourer and that it had about 10 hectares of land in its name at the relevant time.

5. I have heard Sri P.N. Saxena, Senior Advocate, assisted by Sri Sanjeev Kumar Pandey, learned counsel for the petitioner and Sri Rajesh, learned Standing Counsel appearing for the respondents.

6. Sri Saxena has advanced two arguments in order to assail the impugned order passed by the Collector. First the petitioner is a 'person' and is therefore, eligible for allotment. Secondly, the provision of Section 15-A of the Act which was introduced by U.P. Bhoodan Yagna (Amendment) Act, 1975 cannot be applied retrospectively in respect of allotments made prior to it so as to cancel the allotment.

7. It is true that initially there was no provision under the Act authorizing any authority or the Collector to cancel any grant made under the Act. However, later on it came to the notice of the government that certain undeserving persons have obtained grant of lands under the Act either by misrepresentation or playing fraud or otherwise. Therefore, it was felt desirable to invest the Collector with the power to cancel the grants obtained/received by misrepresentation or fraud or where it is found that the grant has been made to ineligible persons. Thus, Section 15-A of the Act was introduced by U.P. Act 10 of 1975 w.e.f. 21.1.75.

15-A. Cancellation of certain grants-*(1) The Collector may of his own motion and shall on the report of the committee or on the application of any person aggrieved by the grant of any land made under Section 14, whether before or after the commencement of the Uttar Pradesh Bhoodan Yagna (Amendment) Act, 1975, inquire into such grant, and if he is satisfied that the grant was irregular or was obtained by the grantee by misrepresentation or fraud, he may-*

(i) cancel the grant, and on such cancellation, notwithstanding anything contained in Section 14 or in any other law for the time being in force, the rights, title and interest of the grantee or any person claiming through him in

such land shall cease, and the land shall revert to the committee; and

(ii) direct delivery of possession of such land to the committee after ejectment of every person holding or retaining possession thereof, and may for that purpose use or cause to be used such force as may be necessary.

(2) Notice of every proceeding under sub-section (1) shall be given to the committee, and any representation made by the committee in relation thereto shall be taken into consideration by the Collector.

(3) No order shall be passed under sub-section (1) except after giving an opportunity of being heard to the grantee or any person known to the Collector to be claiming under him.

(4) The order of the Collector passed under sub-section (1) shall be final and conclusive.

8. A plain reading of the aforesaid provision establishes that it is applicable to grant of land made under Section 14 of the Act whether before or after the commencement of U. P. Bhoodan Yagna (Amendment) Act, 1975. In view of the clear and unambiguous language of the aforesaid provision, Collector has been authorized to cancel the grant whether made earlier to the introduction of Section 15-A of the Act or subsequent to it.

9. Accordingly, Section 15-A of the Act is applicable even to the grants made prior to the enforcement of U.P. Bhoodan Yagna (Amendment) Act, 1975. In view of the aforesaid, I am of the opinion that Collector is vested with the power to cancel any grant made under Section 14 of the Act irrespective of the time when it was made.

10. Section 14 of the Act empowers the Bhoodan Yagna Committee for Uttar Pradesh, a body corporate having a perpetual succession (hereinafter referred as Committee) established and constituted under Sections 3 and 4 of the Act to grant lands vested in it to the "landless persons" now replaced by word "landless agricultural labourers" vide U.P. Act No.10 of 1975 with the approval of the State Government.

11. In **Matoley Vs. State of U.P. and another 1986 ALJ 645** a Division Bench of this Court held that "in order to find whether a particular grant made in favour of a person under the provisions of Bhoodan Yagna Act is regular or not, the provisions of the Act as they stood at the time of making of the grant have to be looked into." The grant made to a person fulfilling conditions required at the relevant time, cannot be cancelled on account of introduction of new conditions in the Act subsequently.

12. The aforesaid decision has been followed by this court in the Case of **Bhagwati Prasad and others Vs. Additional Collector 2003 (95) RD 278** and **Ram Swarup Vs. Collector, Fatehpur and others 2003 (95) RD 320.**

13. At the relevant time, committee was authorized to make grants in favour of "landless persons."

14. The primary question which falls for consideration therefore, is whether the petitioner as an Institution was a 'person' eligible for allotment of land under the Act.

15. Sri P.N. Saxena, learned counsel for the petitioner on the strength of the definition of the person contained in the General Clauses Act/ U.P. General Clauses Act and on the basis of illustrations of the U.P. Imposition of Land Holdings Act, 1953 and the U.P. Z.A. & L.R. Act, 1950 contended that the meaning of the 'person' has to be construed in a wider sense so as to include a juristic person and as such petitioner was entitle to receive grant under the Act.

16. The illustrations cited by the counsel for the petitioner to support his argument that the word 'person' in the Act refers to a legal person or that it include within its fold even a juristic person cannot be accepted as under different Acts different meanings have been assigned to the word 'person'. As for example The Citizenship Act, 1955 in Section 2(f) defines the 'person' so as not to include any company or association or body of individuals. Similarly according to Section 2(g) of the Representation of People Act, 1950 person does not include a body of persons. Therefore, the definition of a 'person' in one Act cannot be straight away applied to another Acts as it may carry a different meaning. Accordingly, the definition or the meaning assigned to the word 'person' either under the U.P. Imposition of Holdings Act, 1953 or under the U.P.Z.A. & L.R. Act, 1950 cannot be imported and applied in context with the present Act.

17. The word 'person' has not been defined in the Act.

In general usage, a human being is a person which usually refers to a natural person.

According to Chambers 12th Century Discretionary person is an individual; a living soul; a human being.

Concise Oxford English Dictionary (Indian Edition) defines 'person' as a human being regarded as an individual.

Usually, the word 'person' canotes a natural person, a human being who has the capacity for rights and duties.

This is a narrower and a simple dictionary meaning of the word 'person.'

18. Legally the word 'person' includes both a natural person and an artificial person that is an individual who is a citizen of India, a company, or a body of individuals and includes even the government departments, organizations established or constituted by government, local authority, cooperative societies or any other society under the Societies Registrations Act, a firm, a Hindu Undivided Family and every artificial judicial person.

19. Section 3(42) of the General Clauses Act, 1897 defines the 'person' in a wider legal sense and provides that person shall include any company or artificial, or body of individuals, whether incorporated or not.

20. A similar and identical definition of a person exists under

Section 4(33) of the U.P. General Clauses Act, 1994.

21. Section 4-A(1) of the General Clauses Act provides that definitions given in Section 3 of the said Act shall apply to all Indian Laws unless there is anything repugnant in the subject or context. In other words, the definitions contained in the General Clauses Act, 1897 are applicable generally unless a contrary intention or a different meaning in context thereto is provided in a particular enactment.

22. Similarly Section 4-A of the U.P. General Clauses Act provides that the definitions given in the said Act shall apply unless the context otherwise require.

23. In view of above provisions of the General Clauses Act, 1897 and U.P. General Clauses Act, 1994 though ordinarily the definitions contained in the aforesaid Acts would be applicable but where the Act which necessitates the interpretation provides a different meaning either specifically or impliedly the meaning so assigned in the Act shall be followed.

24. This court in the case of **Yog Sansthan Vs. Collector, Moradabad and others 2002 (93) RD 13** in considering the meaning of the word 'person' for the purposes of allotment of land for housing sites under Section 122-C of the U.P.Z.A. & L.R., Act 1950 concluded that the definition of the 'person' given in U.P. General Clauses Act, 1904 cannot be applied as the word 'person' used in context refers only to a natural person.

25. Now before applying the definition of the 'person' contained in the above two Acts it is relevant and important to examine the context in which the word 'person' has been used in Section 14 of the Act.

26. Section 15 of the Act lays down that all grants shall be made as far as may be in accordance with the Bhoodan Yagna Scheme. Further Section 14 of the Act vest the committee with the power of making grants in accordance with the Bhoodan Yagna Scheme to landless person (now landless agricultural labourers). Thus grants/allotments of land under the Act are to be made only in accordance with Bhoodan Yagna Scheme to landless persons.

27. Bhoodan movement or the land donation movement is a voluntary land reform movement which was started by Acharya Vinoba Bhave in 1951. The movement was started in Pochampally village in Andhra Pradesh where Vedre Ramachandra Reddy was the first person to donate part of his land. The mission of the movement was to persuade wealthy land owners to voluntary give part of their land to lower caste persons. Acharya Vinoba Bhave walked across India on foot, to persuade landowners to give up a piece of their land. Later the emphasis was to persuade land owners/landlords to give some land to their poor and downtrodden neighbours. The movement was a part of a comprehensive bigger movement 'Sarvodaya' that is rise of all socio economic and political order. It was in the nature of a experiment towards social, economic and justice. So from

the nature of the scheme of the Bhoodan Movement the emphasis was to get land in donation from rich landlords and to distribute it amongst the poor and downtrodden landless persons in order to establish a socio economic order.

28. In **U.P. Bhoodan Yagna Samiti Vs. Braj Kishore 1988 RD 363 (SC)** a similar controversy whether the grant made by the committee in favour of the respondents was in accordance with law had arisen before the Supreme Court. Their lordships of the Supreme Court by applying the principle that in interpreting the intention of the legislature the entire writing/document be read from beginning to end in drawing conclusion considered the entire Bhoodan Yagna scheme and came to the conclusion that the fundamental principal of the Bhoodan movement is that all children of the soil have an equal right over the mother earth, in the same way as those born of a mother have over her. The Apex Court quoting from 'Vinoba And His Mission, a book by Suresh Ram went on to say that the object of the Bhoodan Movement is to distribute land received in donation to those landless louberers who are versed in agriculture, want to take it, and have no other means of subsistence."

29. In short, the scheme of Bhoodan and the Act postulates distribution of land only to natural persons or human beings and not to any institution society or any other juristic person. The meaning to the word 'person' used therein has to be assigned as per the above purpose only. In the context the word 'person' has been used in the Act, makes the definition of the person given in the General Clauses Act impliedly in applicable. The word 'person' in the Act has been used in a narrower sense and not in its broader or legal sense. The use of the word 'person' in the legal sense would actually frustrate/the laudable object of the Act and would deprive the actual tillers from receiving land. Thus, by necessary implication in reference to the context of the Act the word 'person' is differently used and the definition as contained in the two General Clauses Act would not be applicable.

30. In view of above, I am of the opinion that the meaning of the word 'person' used in Section 14 of the Act has to be construed in a narrower sense in the context of the Bhoodan scheme which envisaged for giving land to the tillers of the soil excluding all juristic persons from its ambit.

31. Petitioner is not a natural 'person' and is not the tiller of the land versed in agriculture or dependent upon it.

32. In view of above, order of Collector dated 21.10.2011 apart from other grounds, rightly cancels the grant made to the petitioner in exercise of powers under Section 15 of the Act.

33. The writ petition as such lacks merit and is dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.01.2012

BEFORE
THE HON'BLE PANKAJ MITHAL,J.

Civil Misc. Writ Petition No. 76692 of 2011

Vinod Kumar Rajbhar ...Petitioner
Versus
State of U.P. and others ...Respondents

Counsel for the Petitioner:
Sri Subhash Singh Yadav

Counsel for the Respondents:
Sri Mahesh Narain Singh
C.S.C.

Constitution of India, Article 226-Writ Petition-arises out from mutation proceeding-held-not maintainable as no right on title are decided-petition dismissed with liberty to get the title decided in regular Suit.

Held: Para 8

In view of the above, as no substantive rights of the parties have been decided or are likely to be decided in the pending proceedings, no case for exercise of extra-ordinary writ jurisdiction under Article 226 of the Constitution of India is made out.

(Delivered by Hon'ble Pankaj Mithal,J.)

1. Heard learned counsel for petitioner.

2. It appears that on an application filed under Section 33/39 of the U.P. Land Revenue Act, an order was passed by the Up Ziladhikari on 25.2.1997 directing for deleting the name of Bal Roop son of Dharm Dev against Khata No.151 plot No.1 area 3-3-6 and for recording the names of Shiv Lochan and Shiv Govind both sons of Sarjoo.

3. Petitioner on 17.1.2008 applied for recall of the above order on the ground that he has acquired rights in the land in dispute on the basis of a registered Will alleged to have been executed and left behind by Bal Roop. The said application has been rejected and the petitioner's revision has also been dismissed.

4. In sum and substance, the writ petition arises out of mutation proceedings/correction of revenue entries.

5. The law is well-settled that:

(i) mutation proceedings are summary in nature wherein title of the parties over the land involved is not decided;

(ii) mutation order or revenue entries are only for the fiscal purposes to enable the State to collect revenue from the person recorded;

(iii) they neither extinguish nor create title;

(iv) the order of mutation does not in any way effect the title of the parties over the land in dispute; and

(v) such orders or entries are not documents of title and are subject to decision of the competent court.

6. It is equally settled that the orders for mutation are passed on the basis of the possession of the parties and since no substantive rights of the parties

are decided in mutation proceedings, ordinarily a writ petition is not maintainable in respect of orders passed in mutation proceedings unless found to be totally without jurisdiction or contrary to the title already decided by the competent court. The parties are always free to get their rights in respect of the disputed land adjudicated by competent court.

7. The present case does not fall in any of the above exceptions.

8. In view of the above, as no substantive rights of the parties have been decided or are likely to be decided in the pending proceedings, no case for exercise of extra-ordinary writ jurisdiction under Article 226 of the Constitution of India is made out.

9. Accordingly, I dispose of the writ petition with liberty to the parties to get their rights over the land in dispute, if necessary, adjudicated or declared by the competent court of jurisdiction. The order passed in the mutation proceedings would abide by the decision of the competent court, if any, and the said court would not, in any manner, be influenced by any finding or observation made in the mutation orders or during mutation proceedings.
