

of above cut off date rather their claim was taken birth only after Banaras Hindu University adopted the Scheme on 09.04.1988 and they have given option before new cut off date, i.e., 09.07.1988, therefore, the benefit of judgment in **University of Delhi vs. Smt. Shashi Kiran (supra)** would not be applicable to present petitioners. Any other interpretation would render date of adoption and any subsequent cut off date meaningless.

(d) It is not the case of petitioners or Respondent-Banaras Hindu University or even Union of India that Office Memorandum dated 01.05.1987 was automatically applicable to all Central Universities without being its specific adoption by a particular University and further that issue was not before the Supreme Court in the case of **University of Delhi vs. Smt. Shashi Kiran (supra)**.

31. In aforesaid circumstances, this Court is of the view that relief sought by petitioners cannot be granted. Impugned orders, though are not legally sustainable on grounds mentioned therein, since Banaras Hindu University has adopted the Scheme and that **University of Delhi vs. Smt. Shashi Kiran (supra)** is a judgment in rem not *in personam*, still once the Court is of the opinion that benefit of judgment passed by Supreme Court in **University of Delhi vs. Smt. Shashi Kiran (supra)** cannot be granted in given circumstances of present cases, being distinguished on facts and as discussed above, therefore, there is no reason to interfere with orders impugned in present petitions.

32. All Writ Petitions are accordingly dismissed.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 11.03.2025

BEFORE

THE HON'BLE AJAY BHANOT, J.

Writ - A No. 20509 of 2024

Govind Prasad Nishad ...Petitioner
Versus
The State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:
Shreyas Srivastava

Counsel for the Respondents:
K.R. Singh, Ashok Kumar, C.S.C.

A. Service Law – Constitution of India, 1950 – Article 226 – Mandamus – Appointment – Claim made in lieu of acquisition of land – GO dated 21.09.1981, which was, later on, declared invalid, relied upon – Permissibility – Held, no lawful authority has been shown to be vested in the Gorakhpur Development Authority to create an independent policy for grant of employment to land owners beyond the terms of the Government Order dated 21.09.1981 has been shown to the Court – A mandamus cannot be issued to compel St. authorities to act in contravention of law. Judicial discipline and rule of law forbids the Court to do so. (Para 8 and 9)

Writ petition dismissed. (E-1)

List of Cases cited:

1. Ravindra Kumar Vs District Magistrate & ors.; 2005(2)AWC1650

(Delivered by Hon'ble Ajay Bhanot, J.)

Heard Shri Shreyas Srivastava, learned counsel for the petitioner and Shri K. R. Singh, learned counsel assisted by

Shri Triloki Singh, learned counsel for the respondent.

2. The petitioner claims that he is entitled to appointment in lieu of the acquisition of his land by the Gorakhpur Development Authority. The matter is being agitated for more than three decades. This Court deems it appropriate to bring the controversy to a terminus at this stage and decide the issue on merits.

3. The petitioner's claim is made on the footing that a green card was issued on 31.07.1989 by the District Magistrate and Vice Chairman of Gorakhpur Development Authority recording that Smt. Atwari Devi and her family members are entitled for employment in the Gorakhpur Development Authority.

4. The respondent Gorakhpur Development Authority has asserted in the counter affidavit that the petitioner has made a claim for employment in the Gorakhpur Development Authority on the basis of Government Order dated 21.09.1981. By means of the aforesaid Government Order, the State Government had decided to grant employment to land owners whose lands had been acquired for commercial purposes. The affidavit categorically states that there was no independent policy or separate scheme of the Development Authority apart from the Government Order for giving employment to land owners in lieu of acquisition of their lands. The said averments in the counter affidavit have not been specifically refuted by the petitioner. The denial in the rejoinder affidavit is bald and is accordingly rejected.

5. The said Government Order dated 21.09.1981 was declared invalid by the Full

Bench of this Court in **Ravindra Kumar vs District Magistrate And Ors reported at 2005(2)AWC1650** by holding thus:

"20. It is a general rule that appointments in the public services should be made by inviting applications through open advertisement and strictly on merit so that every citizen should get equal opportunity in the matter of appointment. This rule should be adhered to in the matter of any public employment or appointment. Neither the State Government nor its instrumentality nor any public authority can deviate from this common rule of appointment and if any other procedure or mode is adopted, it would be violative of Articles 14 and 16 of the Constitution of India which ensures and guarantees equal opportunity to all citizens in the matter of appointment to any office or of any other employment under the State. However, some exceptions to the general rule for public employment or appointment is also recognized which is commonly known as appointment on compassionate ground which is evolved purely on humanitarian ground and in the interest of justice. This rule was made to meet certain contingencies and to give appointment to a dependant of an employee dying-in-harness to prevent his family from destitution.

21. The Land Acquisition Act is a self-contained Code and provides the procedure to be followed for acquisition as well as for assessment of the valuation and payment of fair and just compensation as per market value of the person whose land is acquired. In addition to that market value of the land interest @ 12% is also given from the date of publication of the Notification vide Section 23(1-A). Besides that, a sum of 30% on such market value is also paid as solatium for distress and for

inconvenience or difficulties caused to the person on account of compulsory acquisition of the land vide Section 23(2) of the Act. Therefore, a person whose land is acquired not only gets adequate compensation as per market value of the land but also gets interest on the amount of compensation (a) 12% from the date of notification under Section 4 of the Act as well as an amount of solatium, which is 30% of the amount of compensation. Neither the Land Acquisition Act nor the regulations provides that in the event of acquisition of the land one of the family members of the landholder shall be given employment in addition to the amount of compensation. Therefore, in the absence of any statutory provision or any promise, the petitioner respondent cannot claim appointment as a matter of right nor can the respondent make such appointment.

22. There is no provision under the Land Acquisition Act under which the Circular dated 28.12.1974 could be issued. Whatever compensation has to be given for acquisition of the land is provided under the Land Acquisition Act itself which is a self-contained Code. Any G.O. providing for any further benefit not mentioned in the Land Acquisition Act would be inconsistent with the intention of Parliament as contained in the Land Acquisition Act. Hence any such GO. would be violative of the Land Acquisition Act and would hence be invalid. Such a G.O. will also violate Article 16 of the Constitution as already mentioned above.

23. That apart, in our opinion, the aforesaid G.O. is wholly unworkable. The record shows that the petitioner had only 12 biswas and ten biswansi land in his share which was acquired. Thus only about half a bigha of the petitioner's land was acquired

in the present case. If the Circular dated 28.12.1974 is given a literal interpretation it would mean that if even one square yard land of a person is acquired one of his family members would have to be given employment. This would be wholly unreasonable and arbitrary.

24. The number of jobs available in this country is very limited and jobs cannot be given in this manner violating Article 16 of the Constitution.

25. In view of the above we answer the questions referred to us as follows :

1. The Government Orders/Circulars providing employment to one member of a family of a person whose land has been acquired (over and above the compensation awarded under the law) are invalid.

2. The acquiring body for whose benefit the land is acquired are not bound by such Government Order/Circular.

3. No writ can be issued directing the acquiring body to consider the claim in accordance with the aforesaid Order/Government Circular."

6. The following facts have been established before this Court after exchange of pleadings.

7. The State Government by order dated 21.09.1981 provided that members of the family whose land had been acquired would be entitled to employment in the concerned department. The land of the petitioner was acquired by the Gorakhpur Development Authority. The Gorakhpur Development Authority issued a green card

to the petitioner assuring him such employment clearly in pursuance of Government Order dated 21.09.1981. There is no separate or independent policy which was being implemented by the Gorakhpur Development Authority for land owners whose land have been acquired. The green card cannot vest rights in the petitioner beyond the Government Order dated 21.09.1981. The Government Order dated 21.09.1981 has been quashed by the learned Full Bench of this Court in **Ravindra Kumar (supra)**.

8. No lawful authority has been shown to be vested in the Gorakhpur Development Authority to create an independent policy for grant of employment to land owners beyond the terms of the Government Order dated 21.09.1981 has been shown to the Court.

9. In this wake the prayer made by the petitioner to mandamus the Respondent no. 2 Gorakhpur Development Authority to grant employment to the petitioner in pursuance of the said Green Card (Annexure No. 2 to the Writ Petition) cannot be granted, inasmuch as, the same would be in the teeth of the judgement of Full Bench in **Ravindra Kumar (supra)**. A mandamus cannot be issued to compel State authorities to act in contravention of law. Judicial discipline and rule of law forbids the Court to do so.

10. In wake of the preceding discussion, the writ petition is liable to be dismissed and is dismissed.

(2025) 3 ILRA 357
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.03.2025

BEFORE

THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Matter Under Article 227 No. 7777 of 2024

Dharm Pal Singh ...Petitioner
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Petitioner:

Dr. Kamlesh Kumar, Rakesh Kumar

Counsel for the Respondents:

G.A.

Criminal Law-The Constitution of India, 1950-Article 227, 20(2)-Doctrine of Double jeopardy-

The plea of Double Jeopardy as relied by learned counsel for the respondent No. 2 has no application, because the respondent was neither convicted nor acquitted in any matter previously having the same set of facts--- learned court below instead of taking cognizance under Sections 279, 304A IPC has taken cognizance under Sections 304, 323, 325 IPC instead of Section 302 IPC which is well in accordance with law and is not barred by the doctrine of Double Jeopardy---Impugned order dated 13.03.2024 passed by learned court below is hereby set aside as it is not barred by Article 20(2)- **(Para 23, 25-27)--Petition partly allowed.** (E-15)

List of Cases cited:

TP Gopalakrishnan Vs St. of Kerala (2022) 14 SCC 323

(Delivered by Hon'ble Ms. Nand Prabha Shukla, J.)

1. Heard Dr. Kamlesh Kumar, learned counsel for the petitioner, Sri Shashi Bhushan Rai, learned counsel for the respondent No. 2, Sri Ratan Singh, learned A.G.A.-I for the State and perused the record.

2. By means of the present petition under Article 227 of the Constitution of India, the petitioner has prayed to set aside