

would be required in the event the petitioner is found guilty again, on an inquiry held, in accordance with law.

36. In the result, this petition succeeds and is **allowed**. The impugned order dated 16.04.2024 and the amended order dated 30.04.2024, both passed by the Sub-Divisional Officer, Koraon, Prayagraj are hereby **quashed**. It will be open to the respondents, if they so elect, to hold a departmental inquiry *de novo* from the stage of the charge-sheet, taking into account the petitioner's reply to the charge-sheet dated 02.06.2015. The inquiry, if held, would be undertaken strictly bearing in mind the remarks carried in this judgment about the procedure to be followed in the inquiry. In the event the petitioner is found guilty, the respondents will proceed in accordance with Article 351-A of the CSR, submitting the matter for the Governor's orders, but will not pass any order of punishment themselves. In the event a *de novo* inquiry is not elected to be undertaken, the petitioner would be entitled to all consequential benefits, including emoluments for the period he has remained out of employment.

37. There shall be no order as to costs.

38. Let a copy of this order be communicated to the Chief Secretary, Government of U.P., Lucknow by the Registrar (Compliance) with a direction to ensure adherence with the settled law, in all departments of the State Government, regarding the salutary procedure relating to conduct of departmental inquiries in matters involving the imposition of major penalties.

ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 04.03.2025

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 26967 of 2008
With other connected cases

Ram Narain Ram & Ors. ...Petitioners
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioners:
Arvind Upadhyay, Ashok Kumar Singh, I.
Raj Singh, Suresh Chandra Varma

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

A. Service Law – Payment of salary – Long term appointment – Principle of equity – Application – Appointment made against 14 sanctioned post out of 25 claimed posts – One set of petitioners were found to be working and there is also interim order in their favour – Long term appointment made against sanctioned posts, how far liable to be protected – Held, considering that these writ petitions are pending for last more than 17 years and first set of petitioners, i.e., Ram Narain Ram & ors., have served and now must have attained age of superannuation, therefore, taking note of principle of equity, their services if now disturbed, it would be an inhuman approach of this Court and that should be avoided – Such long appointment even if irregular be protected – *Radhey Shyam Yadav's case relied upon. (Para 17 and 19)*

One set of writ petitions allowed & anr.set of writ petitions dismissed. (E-1)

List of Cases cited:

1. Radhey Shyam Yadav & ors. Vs St. of U.P. & ors.; 2024 INSC 7

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. This is a bunch of six writ petitions. Facts of each case would be necessary to refer hereinafter for proper adjudication of all petitions.

(A) WRIT - A No. - 26967 of 2008

2. This writ petition was filed by 13 petitioners that they were appointed as Teachers/ Employees of Respondent-Institution, namely, Anjuman Islamia Higher Secondary School, Dauna Safipur, Azamgarh, which was later on upgraded from Junior High School to Higher Secondary School.

3. Petitioners have claimed that Deputy Director of Education 7th Region, Gorakhpur has passed an order dated 01.04.1995 and sanction in all 25 posts and petitioners were thereafter appointed in pursuance of a selection process vide appointment letters issued on different dates between 2001 to 2005.

4. In 2004 Committee of Management of Respondent-Institution has filed a writ petition for taking the Institution under grant-in-aid, which was allowed vide order dated 30.09.2004 and a Special Appeal thereof filed by the State was rejected vide order dated 12.07.2005 and accordingly Respondent-Institution was brought under grant-in-aid.

5. Thereafter, in order to give financial approval, papers of petitioners were submitted. District Inspector of Schools, Azamgarh vide order dated

29.12.2007 found that there were only 14 sanctioned posts on which some of the present petitioners were considered to be legally appointed. Thereafter District Inspector of Schools on basis of material available passed a detailed order whereby petitioners, Ram Narain Ram and others, were found to be in service, whereas petitioners in connected writ petitions, i.e., Palakdhari Ram and others were not found to be in service. It is further case of petitioners that within a very short period, aforesaid order was reviewed and a fresh order dated 08.05.2008 was issued wherein appointment of none of the petitioners were considered to be legal and appointment of other 13 persons (Palakdhari Ram and others) were considered to be valid and accordingly their approval was granted. This order is under challenged in present writ petition.

6. This Court vide order dated 04.06.2008 passed an interim order whereby impugned order dated 08.05.2008 was directed to be remain stayed. It appears that petitioners have worked continuously under the strength of same interim order as it remains in currency. For reference interim order dated 04.06.2008 is reproduced hereinafter:

“Learned Standing Counsel representing the respondent nos. 1 to 4 may file counter affidavit within a month. Learned counsel for the petitioner will have two weeks thereafter to file rejoinder affidavit.

Let notice be issued to respondent nos. 5 and 6. Steps may be taken within a week. Upon steps being taken office shall fix a date in the week commencing 18.8.2008 and the writ petition may be listed on the date mentioned in the notice.

Till the next date of listing the effect and operation of the impugned order dated 8.5.2008 (Annexure-6 to the writ petition) passed by respondent no. 4 shall remain stayed.”

(B) WRIT - A No. - 34523 of 2008

7. During pendency of aforesaid writ petition, three other employees have filed this writ petition challenging impugned order dated 08.05.2008 since their appointments were also considered to be illegal. This Court has granted similar interim relief to said petitioners also by way of interim order dated 18.07.2008. These petitioners also appears to continue under said interim order, which is reproduced hereinafter:

“Learned Standing Counsel appears on behalf of respondent nos. 1 to 4 prays for and is granted four weeks time to file counter affidavit. Rejoinder affidavit may be filed within two week thereafter.

Issue notice to the respondent nos. 5 and 6 to file counter affidavit within the aforesaid period.

List immediately thereafter alongwith Writ Petition No. 26967 of 2008, Ram Narain Ram and others vs. State of U.P. and others.

Till the next date of listing, the effect and operation of the impugned order dated 08.5.2008, annexure-15 to the writ petition passed by respondent no. 4, District Inspector of Schools, Azamgarh shall remain stayed.”

(C) WRIT - A No. - 51401 of 2013

8. During exchange of pleadings in above two writ petitions, it was brought into notice that other set of group of employees (i.e. Palakdhari Ram and others)

were already terminated by different orders passed in the year 2004, which was not noted when impugned order dated 08.05.2008 in above two writ petitions was passed in their favour, therefore, present writ petition was filed by five petitioners challenging their termination orders, which were passed on ground of their long absence. However, no interim order was passed in this writ petition probably on ground that there was an interim order in favour of other set of petitioners in above referred two writ petitions, i.e., Writ-A Nos. 26967 of 2008 and 34523 of 2008.

(D) WRIT - A No. - 45035 of 2016

9. This writ petition was filed by other set of petitioners (i.e., Palakdhari Ram and others) challenging orders dated 20.06.2016, 13.07.2016 and 09.08.2016, whereby on inquiry it was found that other set of petitioners, i.e., Ram Narain and others, were real appointees and appointments of these writ petitioners were forged. In the present writ petition also no interim order was passed.

(E) WRIT - A No. - 39263 of 2017

10. Above referred impugned orders dated 20.06.2016, 13.07.2016 and 09.08.2016 were also impugned by six petitioners of other set in this writ petition and no interim order was passed.

(F) WRIT - A No. - 16753 of 2024

11. This is the last petition filed by nine petitioners (Ram Narain and others) challenging orders dated 25.09.2024 and 27.09.2024 passed by Additional Director of Education (Secondary), U.P., Prayagraj whereby salary of the petitioners was stopped at belated stage, despite above

referred writ petitions were pending and interim orders were also in currency.

12. As referred above, there are two set of petitioners. First set of petitioners are Ram Narain Ram and others, i.e., petitioners in Writ Petitions No. 26967 of 2008, 34523 of 2008 and 16753 of 2024, who are still working under the strength of interim order passed by this Court but in the year 2024, their salary was stopped and second set of petitioners are Palakdhari Ram and others, i.e., petitioners in Writ Petitions No. 51401 of 2013, 45035 of 2016 and 39263 of 2017, who are under termination and there was no interim order in their favour. According to records, age of all petitioners appears to be more than 60 years.

13. Sri Ashok Khare, learned Senior Advocate assisted by Sri J.P. Singh, learned counsel for first set of petitioners submitted that way back by an order dated 01.04.1995 passed by Deputy Director of Education 7th Region, Gorakhpur it was categorically held that there were 25 sanctioned posts in Respondent-Institution and thereafter District Inspector of Schools on basis of material available passed a detailed order dated 29.12.2007 whereby first set of petitioners, i.e., Ram Narain Ram and others, were found to be in service, whereas second set of petitioners, i.e., Palakdhari Ram and others were not found to be in service. However, within a very few days only on basis of a telephonic instruction given by Director of Education (Secondary) a contrary order dated 08.05.2008 was passed that Ram Narain Ram and others were wrongly appointed and their appointments got wrongly approved by playing fraud. No reason was assigned why such contrary order was passed, i.e., details of instruction given on

telephone by a higher officer as well why an order for lodging FIR was also passed.

14. Learned Senior Advocate also submitted that even if the impugned order considered to be true, it would only means that there were 14 sanctioned posts and that the second set of petitioners have already been terminated, therefore, appointment of first set of petitioners are liable to be protected. He further refers the judgment in the case of **Radhey Shyam Yadav and others vs. State of U.P. and others, 2024 INSC 7** that a very long period of service as in the present case (more than two decades) be protected since it was not the case that due procedure was not followed. Only case against first set of petitioners is that the post was not sanctioned but as referred above today they are working against the original sanctioned posts, i.e., 14 in number. As allegation of fraud must be based on substantial material but no such material was disclosed either in impugned order dated 08.05.2008 or brought on record during exchange of pleadings in present bunch of writ petitions.

15. Per contra, Sri Prabhakar Awasthi, learned counsel appearing for second set of petitioners, i.e., Palakdhari Ram and others, submitted that they were the original appointees against 14 vacant posts. First set of petitioners were appointed on non sanctioned posts and by impugned order dated 08.05.2008 District Inspector of Schools has rightly informed about the actual position by the Director of Education and, therefore, by impugned order second set of petitioners were found in service. All necessary details were part of the impugned order. Learned counsel also submitted that without any inquiry petitioners were terminated and, therefore, principle of natural justice were violated. It

is their case that they were regularly appeared in Collage, however, Management has not allowed or permitted them to make signatures, therefore, ground for termination, i.e., their long absence was incorrect.

16. Heard learned counsel for parties and perused the material available on record.

17. Facts, as referred above, are very disturbing since exact number of posts was differently placed before respondent-authorities by Committee of Management which creates the present litigations. Still, considering that these writ petitions are pending for last more than 17 years and first set of petitioners, i.e., Ram Narain Ram and others, have served and now must have attained age of superannuation, therefore, taking note of principle of equity, their services if now disturbed, it would be an inhuman approach of this Court and that should be avoided.

18. The District Inspector of Schools, Azamgarh vide order dated 29.12.2007 found that there were only 14 sanctioned posts against claimed 25 posts, whereon petitioners of first set, i.e., Ram Narain Ram and others, found to be in service on inspection and accordingly a direction was passed that their salary be paid from State Exchequer. However, within a very few months, i.e., about five months, on 08.05.2008 said order was reviewed and second set of petitioners, i.e., Palakdhari Ram and others, were found to be in service without taking note that they were terminated way back in the year 2004. Therefore, there was no reason to review the earlier order and this Court has rightly stayed operation of impugned order dated 08.05.2008 and under the strength of interim order petitioners of

first set, i.e., Ram Narain Ram and others, were allowed to work. It is also very strange that only on telephonic instruction given by a higher officer, the earlier order was reviewed without disclosing any reason whatsoever. No reason was assigned why inspection report was not followed. Even said petitioners were not put on prior notice.

19. In aforesaid circumstances, the judgment placed by learned Senior Advocate appearing for first set of petitioners, i.e., Ram Narain Ram and others, in **Radhey Shyam Yadav and others (supra)** would be relevant that such long appointment even if irregular be protected, though facts do not very specifically disclose that their appointments were irregular and otherwise also they worked against the sanctioned post only (14 in number).

20. Accordingly, **Writ-A Nos. 26967 of 2008, 34523 of 2008 and 16753 of 2024 filed by first set of petitioners, i.e., Ram Narain Ram and others, are allowed**, subject to factual verification by District Inspector of Schools, Azamgarh about their regular working in Respondent-College since these writ petitions are pending for last more than 17-18 years. The said writ petitioners have worked under interim orders and during pendency of these writ petitions, there was no reason to State-Respondents to pass orders dated 25.09.2024 and 27.09.2024 to stop their salary, therefore, orders impugned in above writ petitions, i.e., dated 08.05.2008, 25.09.2024 and 27.09.2024 are hereby set aside. However, this order will not be construed as a precedent since it is passed in peculiar facts and circumstances of present case.

21. So far as second set of petitioners, i.e., Palakdhari Ram and others, are concerned, they were terminated in the

year 2004 by different orders on ground of their long absence. No material was produced either in pleadings or during hearing that the said ground was factually incorrect. Rather, it appears that in order to adjust them, number of sanctioned seats were increased from 14 to 25 without any legal basis. Therefore, in absence of any substantial material which could contradict the ground for termination, no interference is called for.

22. Accordingly, Writ-A Nos. 51401 of 2013, 45035 of 2016 and 39263 of 2017 filed by second set of petitioners, i.e., Palakdhari Ram and others, are hereby dismissed.

(2025) 3 ILRA 211
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.03.2025

BEFORE

**THE HON'BLE SAURABH SHYAM
 SHAMSHERY, J.**

Writ A No. 63857 of 2007

With

Writ A No. 52910 of 2011

Sanjay Kumar Sengar ...Petitioner
Versus
State Of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

H.N. Malhotra, Ajay Bhanot, Gaurav Singh, Kripa Shanker Singh, L.S. Yadav, Pankaj Kumar, Ravindra Mishra

Counsel for the Respondents:

C.S.C., Akhilesh Kumar Singh, G.K. Singh, Hritudhwaj Pratap Sahi, R.K. Ojha, Sankalp Narain, V.K. Singh

A. Service Law – Termination – Principle of natural justice – Appointment on

probation – Allegation of not discharging the duty diligently was made – Chargesheet was submitted to the petitioner, and the same was not denied – Submissions as made earlier on a notice was reiterated – Effect – Held, at this stage principles of natural justice were substantially complied with. (Para 22)

B. Service Law – Termination – Allegation of not discharging the duties as Assistant Teacher, *Vyayam* diligently and of disturbing the normal working of college was made – The allegation has not been specifically denied on the basis of relevant material and St.ments of witnesses recorded during inquiry – Effect – Held, it is well settled that termination of services of a probationer under the Rules of the Employment or in exercise of Contractual Right is neither *per se* dismissal nor removal – However, if the order visits the employee 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 – If he was terminated without giving a reasonable opportunity of showing cause against his termination and even in such matters if the principles of natural justice were followed and there was no deficiency of the procedure, the writ Court would not inclined to interfere. (Para 24 and 25)

One writ petition dismissed and another writ petition allowed. (E-1)

List of Cases cited:

1. Shamsher Singh Vs St. of Pun. (1974) 2 SCC 831
2. Swati Priyadarshini Vs the St. of M.P. & ors., 2024 INSC 620).

(Delivered by Hon'ble Saurabh Shyam
 Shamshery, J.)

1. Heard Sri Sanjeev Singh, learned counsel for petitioner; Sri V.K. Singh,