

subsequent developments which have intervened, as are noticed above, we are not persuaded to grant any relief to the appellants. The submission of Sri Khare that a direction be issued to extend EWS Reservation against unadvertised vacancy, also cannot be countenanced. This would be going contrary to the recruitment rules and may affect rights of other eligible candidates and shall not be in spirit of Article 16 of the Constitution of India.

48. In the peculiar facts of the case, where neither details of EWS candidates have been obtained by the respondents, nor such details are available and all vacancies are otherwise filled, no such omnibus direction can be issued for extending reservation to EWS candidates against unadvertised vacancies. Though for different reasons, we ultimately come to the same conclusion as that of learned Single Judge that the writ petitions are required to be dismissed.

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**(2025) 5 ILRA 381**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: LUCKNOW 07.05.2025**

**BEFORE**

**THE HON'BLE BRIJ RAJ SINGH, J.**

Writ A No. 362 of 2005

**Ram Krishna Mishra** ...Petitioner

**Versus**

**State of U.P.** ...Respondents

**Counsel for the Petitioner:**

Pankaj Verma, Abhishek Dwivedi, C.L. Yadav, Chote Lal yadav, Dinesh Kumar Tripathi

**Counsel for the Respondents:**

C.S.C., Ajay Kumar Singh Raj, MA Siddiqui

**A. Service Law – Termination – Charge of misconduct – No regular enquiry was conducted – Effect – Service was terminated on the ground of misconduct, but without holding a regular inquiry or affording opportunity of hearing to him – Permissibility – *Brijesh Kumar's case* relied upon – Held, if any punishment order is stigmatic or based on some allegations, the services of an employee may not be dispensed with without following the due procedure of law, therefore, the impugned punishment orders cannot be sustained in the eyes of law – High Court refused to remand back the matter as the petitioner was retired and there is no Rules empowering the respondent to proceed after retirement. (Para 16, 20 and 21)**

**Writ petition allowed.** (E-1)

**List of Cases cited:**

1. Dr. Vijayakumaran C.P.V. Vs Central University of Kerala & ors., (2020) 12 SCC 426
2. Civil Appeal No. Nil of 2024 (arising out of SLP (C) No. 10546 of 2019), U.P. St. Road Transport Corporation & ors. Vs Brijesh Kumar & anr., decided on 28.08.2024
3. Dipti Prakash Banerjee Vs Satyendra Nath Bose National Centre for Basic Sciences, Calcutta & ors.; (1999) 3 SCC 60;
4. Indra Pal Gupta Vs Managing Committee, Model Inter College, Thora; (1984) 3 SCC 384;
5. D.K. Yadav Vs J.M.A. Industries Ltd.; (1993) 3 SCC 259;
6. S.B.I.& ors. Vs Palak Modi & anr.; (2013) 3 SCC 607;
7. Shasya Singh Vs St. of U.P. & ors.; 2020 SCC OnLine All 106'
8. Writ A No. 31358 of 2021; Dr. Prabhanshu Shrivastava Vs St. of U.P. & ors., decided on 14.11.2024.
9. St. of Uttar Pradesh & anr. Vs Kaushal Kishore Shukla; (1991) 1 SCC 691;
10. Mohd. Nihal Siddiqui Vs St. of U.P. & ors.; (2007) 1 UPLBEC 769

11. St. of Rajasthan & ors. Vs Daya Lal & ors.; (2011) 2 SCC 429;

12. Smt. Aamina Vs Nagar Palika Parishad, Pratapgarh & ors.; 2012 (30) LCD 1671

13. Bhagirathi Jena Vs Board of Directors, O.S.F.C. & ors.; (1999) 3 SCC 666 and Dev Prakash

14. Tewari Vs Uttar Pradesh Cooperative Institutional Service Board, Lucknow & ors.; (2014) 7 SCC 260

(Delivered by Hon'ble Brij Raj Singh, J.)

1. This writ petition has been filed seeking following reliefs:-

*"I) Issue a writ order or direction in the nature of Certiorari quashing the impugned orders dated 31.03.2005 and 7.9.2001 passed by opposite party no.4, contained as Annexure No.10-A and 10-B to the writ petition.*

*II) Issue a writ order or direction in the nature of Mandamus commanding the opposite parties to allow the petitioner to work on his post and to pay him salary regularly each and every month whenever the same falls due.*

*III) Issue a writ order or direction in the nature of Mandamus commanding the opposite parties to pay or to cause to pay the entire outstanding of arrears of salary to the petitioner."*

2. The facts giving rise to the present petition are that petitioner being eligible has been appointed on the post of Tax Collector in Nagar Panchayat, Dostpur, District Sultanpur vide order dated 14.09.1982 issued by the Sub-Divisional Magistrate, Kadipur, District Sultanpur, who was the appointing authority at the relevant time, after following due procedure. In pursuance thereof, petitioner has been handed over the charge of post of Tax Collector on 15.09.1982. The

petitioner continued to work till 1999. It is said that when opposite party no.6 was elected as Chairman of Nagar Panchayat, Dostpur, he started harassing the petitioner and opposite party no.5 in collusion with opposite party no.6, took over the receipt books and relevant documents from the petitioner and stopped the petitioner to make signature on the attendance register w.e.f. 09.08.1999. Despite the aforesaid act of opposite party no.5, the petitioner was continuously present in office. In September, 1999, all the employees of Nagar Panchayat, Dostpur were sent for election duty and the petitioner was also sent for election duty at Primary School-I, Katsaki Kadipur, District Sultanpur, where he performed his duties from 29.09.1999 to 30.09.1999 and from 02.10.1999 to 30.10.1999 and a certificate to this effect has also been issued by the Presiding Officer of polling station on 30.10.1999. It is further alleged that even after completion of the election duty, neither the petitioner was allowed to work nor he was permitted to make signature on the attendance register though the petitioner vehemently represented his case orally as well as in written before opposite parties no.4 to 6. Petitioner had also approached opposite party no.3, but nothing was done.

3. On 21.12.1999, a show cause notice was issued by opposite party no.5 requiring the petitioner to file his reply within three days, to which he submitted his reply on 10.10.2000. Even thereafter, neither the petitioner was allowed to work nor he was permitted to make signature on the attendance register though he remain present himself in the office on each and every day. When nothing was done, the petitioner filed the present writ petition with the prayer for a direction to the opposite parties to allow the petitioner to

work on his post and to pay him salary regularly each and every month and also for payment of outstanding arrears of salary to the petitioner. This Court vide order dated 19.01.2005 directed the Chairman, Nagar Panchayat, Dostpur to consider and decide the representation of the petitioner by passing a reasoned and speaking order. In pursuance of the order of this Court, opposite party no.6 considered and rejected the representation of the petitioner vide order dated 31.03.2005. It is to be noted that for the first time, opposite parties by filing counter affidavit on 10.01.2006 have brought on record the impugned order dated 07.09.2001, whereby the services of the petitioner were terminated along with the order dated 31.03.2005, whereby representation of the petitioner in pursuance to the order passed by this Court on 19.01.2005 has been rejected. Thereafter, petitioner has moved an amendment application (C.M. Application No.18 of 2023) challenging the orders dated 07.09.2001 and 31.03.2005, which was allowed by this Court vide order dated 19.07.2023.

**Submission on behalf of petitioner's counsel**

4. Sri Abhishek Dwivedi, learned counsel for the petitioner has submitted that petitioner was appointed on the post of Tax Collector in Nagar Panchayat, Dostpur, District Sultanpur vide order dated 14.09.1982 and he was given joining on the said post on 15.09.1982. The petitioner was appointed by the appointing authority after following due procedure. The petitioner was stopped to sign the attendance register on 09.08.1999 though he remained present in the office. The petitioner was issued a notice on 21.12.1999, wherein it is mentioned that he was absent from duty

and also some amount was not deposited by him and he was directed to join the duty. The petitioner had given reply to the said notice dated 21.12.1999 vide reply dated 10.10.2000, which is contained as Annexure CA-7 to the counter affidavit filed on 10.01.2006. The petitioner stated in his reply that he had appeared before the officer and submitted his joining, but he was not being allowed to join his services. He further denied all the charges.

5. Learned counsel for the petitioner has drawn the attention of the Court towards the salary bill, which has been annexed as CA-12 to the counter affidavit dated 29.01.2024 filed by opposite parties no.4 and 5 and submitted that salary bill itself indicates that petitioner is at serial no.4 in the pay scale of Rs.325/- i.e. Tax Collector and he was holding the substantive post. The salary bill was passed by the competent authority i.e. Executive Officer, Town Area, Dostpur, District Sultanpur. It is further submitted by the learned counsel for the petitioner that counter affidavit was called in the writ petition and along with the counter affidavit dated 10.01.2006, for the first time the termination order dated 07.09.2001 is annexed as CA-4. The petitioner was never served with any written termination order. The petitioner, therefore, filed an amendment application challenging the termination order dated 07.09.2001 as well as the order dated 31.03.2005 by which the representation of the petitioner was rejected. Submission is that the impugned order dated 31.03.2005 annexed as Annexure-10A clearly indicates that allegation of embezzlement of Rs.10,000/- of fund has been levelled against the petitioner and the record indicates that no departmental proceedings were ever initiated to arrive at a conclusion whether

the petitioner was responsible for such misconduct. He has further submitted that the termination order further indicates that it is a simplicitor order passed behind back of the petitioner and the same has never been communicated to the petitioner nor there is any endorsement that the said termination order was ever served on the petitioner. Further, the termination order does not contain any letter number and it appears that the Chairman, Nagar Panchayat, Dostpur, District Sultanpur has passed the order whimsically without adopting the procedure prescribed and a valuable civil right of the petitioner has been taken away in a most arbitrary and illegal manner.

6. Learned counsel for the petitioner has further submitted that notices dated 26.11.1999 and 21.12.1999 issued by the department indicate that petitioner has been shown to be absent from duty, but at the same time, allegation of financial irregularity has also been levelled against him. He has also submitted that once the opposite parties have come up with a case that petitioner was not only absent from duty, but he was also involved in embezzlement of some amount, it was incumbent upon the opposite parties to proceed departmentally against the petitioner, but no such procedure was adopted. The opposite parties could not have terminated the services of the petitioner without initiating any departmental proceedings against him. Submission is that the impugned order indicates that petitioner has been charged for embezzlement of Rs.10,000/-, therefore, the reason for termination is obviously stigmatic and once there is stigma against the petitioner, then the same should have been enquired by the department by following the procedure prescribed for the

same. Similarly, the termination order dated 07.09.2001 is also a sham document because it does not indicate that the same was addressed to the petitioner or it was received by the petitioner. Further, the impugned termination order does not contain any letter number, therefore, it appears to be a whimsical order.

7. In support of his contention, counsel for petitioner has placed reliance upon the following judgements:-

**1. Dr. Vijayakumaran C.P.V. Vs. Central University of Kerala and others, (2020) 12 SCC 426;**

**2. Civil Appeal No.Nil of 2024 (arising out of SLP (C) No.10546 of 2019), U.P. State Road Transport Corporation and others Vs. Brijesh Kumar and another, decided on 28.08.2024;**

**3. Dipti Prakash Banerjee Vs. Satyendra Nath Bose National Centre for Basic Sciences, Calcutta and others, (1999) 3 SCC 60;**

**4. Indra Pal Gupta Vs. Managing Committee, Model Inter College, Thora, (1984) 3 SCC 384;**

**5. D.K. Yadav Vs. J.M.A. Industries Ltd., (1993) 3 SCC 259;**

**6. State Bank of India and others Vs Palak Modi and another, (2013) 3 SCC 607;**

**7. Shasya Singh Vs. State of U.P. and others, 2020 SCC OnLine All 106'**

**8. Writ-A No.31358 of 2021, Dr. Prabhanshu Shrivastava Vs. State of U.P. and others, decided on 14.11.2024.**

**Submission on behalf of counsel for opposite parties no.4 and 5**

8. On the other hand, Sri Ajay Kumar Singh Raj, learned counsel appearing for opposite parties no.4 and 5

has taken a stand in paragraphs 4 and 5 of the counter affidavit filed on 29.01.2024 that only one post of Clerk/Tax Collector, 4 posts of Watchman-cum-Peon and 5 posts of Sweeper are sanctioned by the State Government. One Mohiuddin Ansari was appointed on the post of Clerk in the year 1974, who is working regularly and he attained the age of superannuation on the post of Clerk on 30.04.2014. It has further been mentioned that the post of Clerk/Tax Collector was not vacant. The Deputy Collector, Tehsil Kadipur has appointed the petitioner temporarily and he was absent from duty for many times during his past services. The petitioner was absent from duty since 09.08.1999 and he was issued a notice on 24.10.1999 and 26.11.1999, but he did not turn up. Thereafter, notice was again issued to the petitioner on 21.12.1999. However, the petitioner submitted his belated reply on 10.10.2000 and did not join the duty. He also did not deposit the amount of Rs.10,000/-. The notice was published in daily newspaper "Aaj" on 12.08.2001 and fifteen days time was provided to the petitioner to join the office, but he did not join the duties. After considering the material on record, the Chairman, Nagar Panchayat, Dostpur, District Sultanpur passed the impugned order on 07.09.2001, by which the services of the petitioner were terminated. It has further been submitted that since the petitioner was absent from 09.08.1999, therefore, final decision was taken by terminating his services vide order dated 07.09.2001 by the competent authority after following due procedure, therefore, there is no illegality or infirmity in the same.

9. In support of his contention, counsel for opposite parties no.4 and 5 has placed reliance upon the following judgements:-

**1. State of Uttar Pradesh and another Vs. Kaushal Kishore Shukla,** (1991) 1 SCC 691;

**2. Mohd. Nihal Siddiqui Vs. State of U.P. and others,** (2007) 1 UPLBEC 769

**3. State of Rajasthan and others Vs. Daya Lal and others,** (2011) 2 SCC 429;

10. In rejoinder, the petitioner has taken a stand in paragraph-6 of the rejoinder affidavit filed on 14.02.2025 that petitioner has been appointed on 14.09.1982 on the post of Tax Collector in the pay scale of Rs.117-224/- in Town Area, Dostpur. After appointment, the approval was sought from the office of the District Magistrate and then the petitioner was appointed. One Mohiuddin Ansari was appointed on the post of Clerk in the year 1974 and he was not the Tax Collector. Counsel for the petitioner has further invited the attention of the Court towards the salary bill annexed as CA-12 to the counter affidavit filed on 29.01.2024, which indicates that at serial no.3 Mohiuddin Ansari is holding the post of Clerk in the pay scale of Rs.381/-, whereas the petitioner is holding the post of Tax Collector in the pay scale of Rs.325/- which is a different pay scale. He has further submitted that petitioner continued on the post of Tax Collector from 1982 till 09.08.1999 and was paid all the allowances admissible to the Tax Collector with consequential service benefits. He has, therefore, submitted that submission of counsel for opposite parties no.4 and 5 is contrary to the record as after looking into the salary bill of the petitioner, it is evident that the post of Tax Collector was not filled up by Mohiuddin Ansari rather he was a Clerk and the petitioner was holding a permanent post of Tax Collector.

**Submission on behalf of learned  
Standing Counsel**

11. Sri Sudhir Singh, learned Standing Counsel has adopted the arguments advanced by the counsel for opposite parties no.4 and 5 and has submitted that since the impugned orders have been passed after following the due procedure and considering the entire material available on record, no interference is required by this Court.

12. Heard Sri Abhishek Dwivedi, learned counsel for the petitioner, Sri Sudhir Singh, learned Standing Counsel for the State-opposite parties and Sri Ajay Kumar Singh Raj, learned counsel for opposite parties no.4 and 5.

**Analysis**

13. After going through the record and the two impugned orders, it is apparent on the face of record that the impugned order dated 31.03.2005 is stigmatic in nature. Details have been mentioned in the order dated 31.03.2005 that petitioner embezzled Rs.10,000/- and did not deposit the same, however, the opposite parties have not issued any charge sheet to the petitioner. Even the petitioner was absent from duty, it is settled law that if a delinquent employee does not appear in the office, then ex-parte proceedings can be conducted (*Smt. Aamina Vs. Nagar Palika Parishad, Pratapgarh and others, 2012 (30) LCD 1671*), but in the present case, no such proceedings have been done and the simplicitor termination order dated 07.09.2001 has been passed behind back of the petitioner. Apparently, two charges were mentioned against the petitioner; firstly he has been held to be responsible for embezzlement of Rs.10,000/- and the

other charge is that he was absent from duty since 09.08.1999. There is no doubt that the appointing authority was influenced by the misconduct of the petitioner and that is why he terminated the services of the petitioner. Once any misconduct is committed by the petitioner, certainly it was required to be enquired by the opposite parties by following the due procedure, but in the present case, no such procedure was adopted which is evident after looking into the impugned orders dated 07.09.2001 and 31.03.2005.

14. Submission of counsel for opposite parties no.4 and 5 that petitioner was not holding a permanent post, is also not sustainable as the salary bill annexed as CA-12 to the counter affidavit dated 29.01.2024 itself indicates that petitioner is at serial no.4 in the pay scale of Rs.325/- i.e. Tax Collector and he was holding the substantive post. The salary was passed by the competent authority i.e. Executive Officer, Town Area, Dostpur, District Sultanpur, whereas one Mohiuddin Ansari was holding the post of Clerk in the pay scale of Rs.381/-, thus, the stand taken by the counsel for opposite parties no.4 and 5 is not tenable on the face of record. The appointment letter issued by the competent authority, which is annexed along with the counter affidavit, is also indicative of the fact that petitioner was appointed on the post of Tax Collector. The petitioner continued his service from 1982 to 09.08.1999 i.e. more than seventeen years and was getting all consequential benefits as a regular employee. The impugned termination order dated 07.09.2001 further recites that post of the petitioner will be filled up by inviting applications through advertisement, thus it is admission by opposite parties no.4 and 5 that there is a post of Tax Collector in their office.

15. It is also to be noted here that petitioner had replied to the notice dated 21.12.1999 on 10.10.2000, which is admitted by the opposite parties. In the reply, the petitioner had stated that he was present in the office on many dates to join his duties, but he was not allowed to join the duties. The said letter was also received in the office of the Nagar Panchayat, Dostpur, but the Nagar Panchayat was silent on it. It was incumbent upon the opposite parties to take a decision in respect of the said reply dated 10.10.2000 immediately and they could have proceeded against the petitioner in case there was any embezzlement or he was absent from duty, but the impugned order has been passed on 07.09.2001 by way of a simplicitor order, which indicates that the appointing authority was influenced by the misconduct of the petitioner on two grounds; firstly absence from duty and secondly of embezzlement of Rs.10,000/-. The misconduct regarding embezzlement is a serious charge which was certainly to be enquired by the department, for which charge sheet was to be issued, but admittedly without following due procedure for imposing a penalty, a simplicitor termination order has been passed against the petitioner, who was working on the post for the last more than seventeen years. If it is found that the basis of termination of services is stigmatic, then certainly the Court will unveil the same. In the present case, after looking into the reply of the petitioner dated 10.10.2000, it is evident that the Nagar Panchayat, Dostpur was sleeping over the matter and termination order dated 07.09.2001 was also passed behind the back of the petitioner without adopting the due procedure for awarding the punishment. Impugned order dated 31.03.2005 indicates the charge of embezzlement of Rs.10,000/-

against the petitioner coupled with the charge of absence from duty, but the Nagar Panchayat, Dostpur acted in an illegal manner while terminating the services of the petitioner by passing a simplicitor order without following the due procedure.

16. In the case of **Brijesh Kumar and others (supra)**, Hon'ble Supreme Court while dealing with the similar issue, has held that if the termination of services of an employee is on the ground of misconduct, the same has to be done only after holding a regular inquiry or affording opportunity of hearing to him, without which it amounts to stigmatic in nature. The relevant paragraph is extracted herein below:-

*“19. The services of the respondent have been determined solely on the ground of misconduct as alleged but without holding any regular inquiry or affording any opportunity of hearing to him. The termination order has been passed on the basis of some report which probably was not even supplied to the respondent. No show cause notice appears to have been issued to the respondent. Therefore, the order of termination of his services, even if on contractual basis, has been passed on account of alleged misconduct without following the Principles of Natural Justice. The termination order is apparently stigmatic in nature which could not have been passed without following the Principles of Natural Justice.”*

17. In the case of **Dr. Vijayakumaran C.P.V.** (supra), Hon'ble Supreme Court after considering the facts of that case, set aside the order of termination on the ground that since the impugned termination of is illegal being ex

facie stigmatic as it has been issued without subjecting the appellant of that case to a regular enquiry as per the service rules. In the present case also, the same is the situation.

18. A coordinate Bench of this Court while dealing with the issue in question in the case of **Shasya Singh** (supra) held as under:-

“ 10. *The Hon'ble Apex Court in re: Parshotam Lal Dhingra vs Union of India reported in 1958 AIR 36, 1958 SCR 828 has held the stigmatic termination order may not be passed without affording an opportunity of hearing to an employee if the order entails civil consequences could not have been passed without affording an opportunity of hearing to an employee. Apex Court in the case of High Court of Gujarat Vs. Jayshree Chamanlal Budhhabhatt, 2013 (16) SCC 59, has taken the view that once any allegations are made against the incumbent concerned, which results in stigma, the minimum requirement is to inform the concern person, the charge against him, and to give him reasonable opportunity of being heard. Apex Court in the case of SBI Vs. Palak Modi, 2013 (3) SCC 607, has considered the issue of termination simplicitor or punitive termination. Mention has been made that if misconduct /misdemeanor constitutes the basis of final decision taken by competent authority to dispense with the services of an incumbent albeit by a non-stigmatic order, the Court can lift the veil and declare that in the garb of termination simplicitor, the employer has punished the employee for misconduct.*

.....

13. *Be that as it may, since the appointing authority are not satisfied with the conduct of the petitioner as being*

*reflected in the impugned orders and the instruction letter and the recital to that effect has also been given in the impugned order, therefore, a proper departmental inquiry strictly in accordance with law should have been conducted and concluded against the petitioner to that effect if it is so warranted and after providing an opportunity of hearing to the petitioner any appropriate order can be passed. Any appropriate order can be passed only by the disciplinary authority independently and such order may not be passed pursuant to the direction being passed by the superior authority.”*

19. In the case of **Daya Lal** (supra), it is to be noted that the said case is pertaining to the employees working on contract basis in aided hostels. Similarly, in the case of **Kaushal Kishore Shukla** (supra), it is to be seen that termination of ad hoc or temporary government servant on assessment of suitability on consideration of adverse entry and preliminary enquiry is held to be valid and not to be punitive. Likewise, **Mohd. Nihal Siddiqui** (supra) is a case where temporary employee in terms of appointment letter was terminated, therefore, it did not cast stigma, for which opportunity of hearing was required. Thus, the aforesaid three judgements relied by counsel for opposite parties no.4 and 5 are not applicable to the facts of the present case. In the present case, it is relevant to be seen that the petitioner was appointed on the post of Tax Collector after following the due procedure and duly approved by the authority concerned and was working for more than seventeen years.

### **Finding:**

20. Since it is a trite law that if any punishment order is stigmatic or based on

