

applicants would acquire importance and this Court finds that both the accused-applicants never joined the investigation which concluded in filing of a charge sheet against them as an absconder and again they are absconding from the trial court despite knowledge of the proceedings and thus are not entitled to invoke the inherent powers of this Court for seeking quashing of proceedings. They cannot short circuit the legal system and provision and thus gain advantage.

21. In view of the said facts and total non cooperation of the applicants in the investigation, vagueness of the pleadings, the conduct of the applicants in not joining the investigation and not co-operating therein due to which charge sheet was submitted against them as absconders, intentional efforts to avoid the courts orders as would appear from the order of the revisional court and the fact that charge sheet is not being challenged on its merits coupled with the fact that the order of taking cognizance dated 01.3.2024 being challenged in a revision which stood dismissed on its merits, no ground for interference is called for.

22. The present Criminal Misc. Application U/S 482 Cr.P.C. is **dismissed**.

(2025) 3 ILRA 167

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 12.03.2025

BEFORE

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

Writ A No. 368 of 2021

Amna Khatoon C/o Rajeeb Ahmad & Ors.

...Petitioners

Versus

A.M.U. & Anr.

...Respondents

Counsel for the Petitioners:

Sri Mohd. Aadil Siddiqui, Sri Tauseef Khan,
Sri Alibin Saif, Sri Zeeshan Khan

Counsel for the Respondents:

A.S.G.I., Sri Abrar Ahmad, Sri Tirath Raj
Shukla, Sri Shashank Shekhar Singh

Civil Law - Service Law - Appointment - Ambiguity in Advertisement - ambiguous expressions like "concerned/relevant/allied subject" - Aligarh Muslim University's recruitment to post of Assistant Professor (Chemistry) - AMU used ambiguous expressions like "*concerned/relevant/allied subject*" in the advertisement - Supreme Court in *Mohd. Sohrab Khan v. Aligarh Muslim University, (2009) 4 SCC 555* has very specifically directed that the University shall lay down the qualification necessary for filling up the post laying down exact essential qualification indicating allied subject and subject stream which is required to be mentioned for making application for filling up said post - Writ petition disposed of with direction to AMU to ensure future advertisements carry specific, unambiguous qualifications to avoid prejudice and exclusion of otherwise eligible candidates (Para 15, 18)

Allowed. (E-5)

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

1. Heard S/Sri Alibin Saif and Zeeshan Khan, learned advocates for petitioners, Sri Tirath Raj Shukla, learned advocate holding brief of Sri Shashank Shekhar Singh, learned counsel for respondent-Aligarh Muslim University (for short "A.M.U.").

2. Petitioners (Amna Khatoon, Dr. Mohd. Azfar Shaida and Dr. Syed Md.

Humayun Akhter) have approached this Court in the year 2021 with a prayer that they may be allowed to participate in a selection process initiated in pursuance of an Advertisement No. 4/2019(T) dated 03.07.2019 as well as in Advertisement No. 2/2020(T) dated 11.06.2020 issued by A.M.U. contending that they are also qualified for post of Lecturer (Chemistry) having a qualification of M.Sc. in 'Industrial Chemistry' which could be an "allied subject" i.e. an essential qualification for that post.

3. It is not disputed that earlier a similar controversy arose in regard to an earlier recruitment process conducted by respondent-A.M.U. and matter reached upto Supreme Court in a case of **Mohd. Sohrab Khan vs. Aligarh Muslim University and others, (2009) 4 SCC 555** wherein it was finally held that Master Degree holder in Industrial Chemistry would not be better suited for post of Lecturer (Chemistry) without there being any specific declaration in the advertisement to this effect. In that regard, it was further observed that post advertised was meant to be filled up by a person belonging to pure Chemistry stream, without any specific clause that a person holding M.Sc. Industrial Chemistry would also be eligible or could be suited more. Relevant part of judgment is quoted below :-

"21. Learned counsel appearing for the University on our enquiry fairly stated before us that the aforesaid post which was advertised to be filled up in the aforesaid manner is at present vacant and the same is being manned by appointing a Guest Lecturer who holds a Master's degree in Pure Chemistry.

22. If the requirement was to have a person having Master's degree in Industrial Chemistry, then in that event the post would have been manned through a Guest Lecturer from the Industrial Chemistry stream. Therefore, it cannot be accepted that the person holding a Master's degree in Industrial Chemistry would be better suited for appointment as against the said post.

23. The post advertised was meant for a person belonging to Pure Chemistry Department for if it was otherwise, then it would have been so mentioned in the advertisement itself that a person holding a Master's degree in Industrial Chemistry should only apply or that a person holding such a degree could also apply along with other persons. It was not so mentioned in the advertisement and, therefore, except for Merajuddin Ahmad, no other degree-holder in Industrial Chemistry had applied for becoming a candidate as against the aforesaid post."

4. In above referred judgment, it was also directed that :-

"University to lay down the qualification necessary for filling up the aforesaid post. The University shall now advertise the said post by laying down exact essential qualification indicating the particular subject and subjects-stream which is required to be possessed for making an application to fill up the said post."

5. It appears that A.M.U. has not understood the direction and has not followed above referred judgment in its true spirit and without making any specific clarification for purpose of appointment of Assistant Professor (Chemistry) in subsequent advertisement i.e. whether

M.Sc. Industrial Chemistry would be an equal eligibility or not and instead of having used some ambiguous words i.e. “A Master’s degree with 55% marks (or an equivalent grade in a point-scale wherever the grading system is followed) in a concerned/relevant/allied subject from an Indian University, or an equivalent degree from an accredited foreign university” in the advertisement in question. The words “concerned/relevant/allied subject may have different meaning in different circumstances.

6. In aforesaid circumstances, learned advocates for petitioners have submitted that for purpose of Assistant Professor in Chemistry, degree of M.Sc. in Industrial Chemistry would fall within “allied subject”.

7. Learned advocates further submitted that instead of removing above referred ambiguity, the A.M.U. published a Corrigendum dated 05.11.2019 stating that in view of Mohd. Sohrab Khan (supra), Industrial Chemistry cannot be equalled with M.Sc. degree. For reference, relevant part of Corrigendum dated 05.11.2019 is quoted below :-

Corrigendum

Reference: Local Advertisement No. 12/ Poly/2019-2020 Dated: 23.10.2019

The following changes in the qualification in above notification for the post of Assistant Professor Contractual (Chemistry) may kindly be noted.

As per the Judgment of the Honourable Supreme Court in the civil appeal No. 1130 of 2009, regarding the course structure of graduate and post graduate classes in Chemistry and Industrial Chemistry, the Honourable Court came to the conclusion that the courses of

the two subjects are quite different and distinct and in the light of the findings it is also recorded that the degree of M.Sc. in Industrial Chemistry cannot be equated with the degree of M.Sc. in Chemistry.

It is therefore notified that the candidates with qualification M.Sc. in Industrial Chemistry are not eligible for the post of Assistant Professor-Contractual (Chemistry) in Applied Science & Humanities Section University Polytechnic-AMU.

8. Learned advocates further submitted that ambiguity further perpetuated and they have referred a document annexed in counter affidavit filed by the University being CA-15 i.e. Minutes of Meeting held on 14.07.2021 to discuss issue relating to Industrial Chemistry as an “allied subject” in the discipline of Chemistry for recruitment of Assistant Professor in the University and it was held that “Industrial Chemistry is an allied subject for the post of Assistant Professor in the University Polytechnic. However, the candidates for allied subject will only be considered, if the candidates from concerned subject are not available and the same will be examined by the competent/relevant body empowered to determine the eligibility of the candidates prior to the selection. This will only apply to the post of Assistant Professor (Chemistry) in the University Polytechnic.” Above decision has caused more prejudice to petitioners and both decisions were not only self-contrary but arbitrary also.

9. Learned counsel for respondent-University has submitted that judgment of Mohd. Sohrab Khan (supra) was followed and ambiguity, if any, was cleared and M.Sc. Industrial Chemistry was declared to be an “allied subject” for consideration on

post of Lecturer (Chemistry). He further submitted that in pursuance of Adv. No. 2/2022(T) dated 03.05.2022 and 4/2022(T) dated 06.08.2022, a Selection Committee met on 06.12.2024 and two candidates were appointed on the post of Lecturer (Chemistry) and since their appointments are not under challenge in this writ petition and they are also not a party-respondents, therefore, no relief could be granted to petitioners in this writ petition.

10. In reply to above submissions, learned advocates for petitioners submitted that law in this regard is well settled that since appointments of selected candidates (two in numbers) are not under challenge, therefore, present writ petition may not be maintainable, however, they further submitted that a direction be passed to A.M.U. to clear the position as and when a new advertisement is published, so that petitioners and similarly situated candidates may apply for same, that it should be specifically mentioned whether M.Sc. Industrial Chemistry is an eligibility for post of Lecturer Chemistry and further arbitrary direction that candidature of such candidates would be considered in last should be specifically removed.

11. I have considered above submissions and perused the record.

12. As referred above, Supreme Court in the judgement of Mohd. Sohrab Khan, (supra) has dealt with an issue whether for appointment of post of Lecturer (Chemistry), A.M.U. a candidate having M.Sc. in Industrial Chemistry would be eligible for the post of Lecturer M.Sc. (Chemistry) or not and whether without any specific declaration in the advertisement, such candidates would be considered more suitable and, after

consideration, action of A.M.U. was criticized and an direction was passed that in future advertisement should clearly reflect the eligibility without any ambiguity.

13. However, it appears that A.M.U. has not followed the dictum passed by Supreme Court in Mohd. Sohrab Khan (supra) and perpetuated the ambiguity in subsequent advertisements though they have tried to clear the position later on that, on one hand, they have adopted that M.Sc. Industrial Chemistry would fall within “allied subject”, therefore, treated it to be an eligibility for consideration for the post of Lecturer (Chemistry), however, an arbitrary decision was taken that their candidature will be considered in the last if the candidates having M.Sc. (Chemistry) were not available or not found suitable.

14. Said action on face of it is arbitrary. They have published subsequent advertisement and described eligibility of having Master’s degree with 55% marks in a concerned/relevant/allied subject without making any clarification that whether M.Sc. Industrial Chemistry would be allied subject for purpose of Chemistry or not, therefore, it was possible that many candidates having M.Sc. Industrial Chemistry have chosen not to participate.

15. Supreme Court in Mohd. Sohrab Khan (supra) has very specifically directed the University shall lay down the qualification necessary for filling up the post laying down exact essential qualification indicating allied subject and subject stream which is required to be mentioned for making application for filling up said post, however, such dictum was not followed and ambiguity was, therefore, repeated.

16. At this stage, Court takes note that during pendency of this writ petition i.e. for last 5 years, much water has flown and that posts have already been filled up and since their selection are not under challenge, therefore, relief sought in present writ petition is rendered infructuous.

17. However, Court takes note of last submission of learned counsel for petitioners that a direction be passed that not only judgment of Supreme Court be followed in letter and spirit but such ambiguity may not be repeated.

18. In aforesaid circumstances, this writ petition is **disposed of** with a direction that judgment of Supreme Court in Mohd. Sohrab Khan (supra) shall be followed in its letter and spirit. Registrar, A.M.U. shall remain cautious in future while publishing advertisement that it may not to create ambiguity but such ambiguity should be removed i.e. words shall be chosen carefully and instead of ambiguous words “concerned/relevant/allied subject”, the University must specifically mention about qualification so that all eligible candidates may participate in advertisement and no one be left prejudiced.

19. Registrar (Compliance) to take steps.

(2025) 3 ILRA 171

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 25.03.2025

BEFORE

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

Writ A No. 634 of 2025

Dilip Kumar Singh Rajpoot & Ors.

...Petitioners

Versus

State Of U.P. & Ors.

...Respondents

Counsel for the Petitioners:

Sri Ashok Khare, Sri Radha Kant Ojha (Sr. Adv.), Sri Anurag Tripathi, Sri Shevindu Ojha, Sri Prabhakar Awasthi, Sri Seemant Singh, Sri Ravindra Prakash Srivastava, Sri Phool Chnadra Singh, Sri Bhanu Pratap Singh, Sri Amit Kumar Tiwari, Sri Rajesh Kumar Verma, Sri Jainendra Pandey, Sri Kabir Tiwari

Counsel for the Respondents:

Smt. Archana Singh, Sri Sanjay Kumar Singh, Sri V.P. Singh Kachwa, Sri Jai Prakash Singh, Sri Shashi Prakash Rai, Sri Atul Kumar Shahi, Sri Abhishek Srivastava, C.S.C., Sri A.K. Nagwanshi, A.C.S.C., Smt. Stati Malviya

अ) सेवा नियम - शिक्षा नीति - संवैधानिक मामले - शैक्षणिक संसाधन व्यक्तियों (ARP- Academic Resource Person) के चयन और कार्यकाल से संबंधित विवाद - ARP के चयन प्रक्रिया और कार्यकाल की वैधता - संवैधानिक अधिकारों का उल्लंघन - भारतीय संविधान - अनुच्छेद 14, 16, उत्तर प्रदेश बेसिक शिक्षा अधिनियम - समानता का अधिकार - युक्तियुक्त वर्गीकरण - नीतिगत निर्णयों में न्यायिक हस्तक्षेप की सीमा - नीतिगत निर्णयों में न्यायालय तभी हस्तक्षेप करेगा जब वे मनमाने, तर्कहीन या संवैधानिक प्रावधानों के विपरीत हों। (पैरा - 26,27)

याचिकाकर्ता उत्तर प्रदेश के विभिन्न विद्यालयों में सहायक अध्यापक के पद पर कार्यरत हैं - ARP के रूप में 3 वर्ष तक सेवा दे चुके हैं - शासनादेश दिनांक 22.10.2019 के तहत ARP के पदों का पुनर्गठन किया गया - जिसमें नए चयन प्रक्रिया के लिए पूर्व ARP को अयोग्य घोषित कर दिया गया। (पैरा 1, 10, 17)

निर्णीत: याचिकाकर्ताओं का ARP पद पर पुनः चयन के लिए अयोग्य घोषित किया जाना संवैधानिक या विधिक