

2. Today, personal affidavit of Shri N.B. Savita, presently posted as Joint Development Commissioner, Kanpur Division, Kanpur has been filed in Court which is taken on record. The said officer is also personally present before us.

3. The grievance raised by means of this writ petition is to the effect that despite culmination of inquiries, one after another, in favour of the petitioner, the respondent-officers are bent upon to hold de novo inquiry which is an abuse of the process of law. Considering the material on record and the arguments advanced, this Court passed following order on 08.08.2024:-

“Learned counsel appearing on behalf of the petitioner seeks and is granted permission to carry out necessary corrections in the writ petition including the prayer clause.

Issue notice to respondent Nos.6 and 7.

Steps be taken within a week.

List this matter on September 2, 2024 as fresh, by which date learned Standing Counsel may get instructions in the matter.

In the meantime, Joint Development Commissioner, Kanpur Region, Kanpur is directed to stay his hands with regard to third de novo investigation.”

4. On 11.11.2024, the Court was informed about initiation of another inquiry in violation of interim order passed on 08.08.2024. Consequently, the respondent No.5 i.e. Joint Development Commissioner, Kanpur Division, Kanpur, was directed to

file his personal affidavit. In the personal affidavit, a stand has been taken substantially to the effect that the inquiries conducted earlier were initiated on the complaint of one Dalveer Singh which were distinct in nature and unrelated to the instant writ petition whereas the action taken now is pursuant to two fresh independent complaints submitted by Smt. Anupam Pal and Dalveer Singh. The Court may note that, in sum and substance, the allegations levelled against the petitioner are in respect of alleged financial irregularities committed qua construction/development of some cattle shelter shed and the inquiries held earlier were also in respect of same allegations but had ended in favour of the petitioner having found no irregularities on her part.

5. As far as reason behind going ahead with the fresh inquiry despite interim order dated 08.08.2024 operating in the instant writ petition, a copy of the letter dated 13.09.2024 annexed as ‘Annexure No.SA-3’ to the supplementary affidavit was referred to during the course of arguments. The letter reads as under:-

"प्रेषक,

संयुक्त विकास आयुक्त,
कानपुर मण्डल, कानपुर।

सेवा में,

अधीक्षण अभियन्ता,
ग्रामीण अभियन्त्रण विभाग
कानपुर मण्डल कानपुर।

संख्या – एस०टी०/ जांच ग्रा० प० –

चपुन्ना / मनरेगा / 2024 – 25 दिनांक
13.09.2024

विषय- जनपद कन्नौज के विकास खण्ड हसेरन की ग्राम पंचायत चपुन्ना में कैटल शेड / पशु आश्रय स्थल का निर्माण कार्य कराये बिना अनियमित

तरीके से मनरेगा मद की धनराशि का दुरुपयोग किये जाने की शिकायत की जांच कराए जाने के संबंध में महोदय,

कृपया, उपर्युक्त श्री दलवीर सिंह पुत्र श्री प्रकाश चन्द्र निवासी ग्राम व पोस्ट चपुन्ना विकास खण्ड हसेरन थाना सौरिख के रजिस्टर्ड प्रार्थना पत्र संख्या – EU226966167IN दिनांक 03.09.2024 (संलग्न) का सन्दर्भ ग्रहण करने का कष्ट करें जिसके माध्यम से शिकायतकर्ता द्वारा अधोहस्ताक्षरी के प्रेषित पत्र संख्या – 451/ एस०टी०/ जाँच ग्रां० पं० – चपुन्ना / मनरेगा /2024 – 25 दिनांक 23.08.2024 द्वारा मा० उच्च न्यायालय, इलाहाबाद में योजित संख्या – 21949 / 2024 अमिता उर्फ नेहा त्रिपाठी बनाम प्रमुख सचिव, ग्राम्य विकास, उ०प्र० लखनऊ आदि 06 पारित आदेश दिनांक 08 – 08 – 2024 के अनुपालन में याचिका का निस्तारण न होने तक अग्रिम कार्यवाही न किये जाने दिए गए निर्देश के क्रम अवगत कराया गया है कि मा० उच्च न्यायालय इलाहाबाद में योजित रिट संख्या – 21940 / 2024 से मामला इतर होने के कारण जांच किए जाने की मांग की गयी है।

प्रकरण में मा० उच्च न्यायालय इलाहाबाद में योजित याचिका संख्या – सी०एम०डब्लू० पी० (सी० – 21949/2024) अमिता त्रिपाठी / नेहा त्रिपाठी बनाम उ० प्र० राज्य व अन्य में मुख्य स्थायी अधिवक्ता के पत्र दिनांक 29- 8-2024 (संलग्न) से स्पष्ट होता है कि आई०जी०आर० एस० सन्दर्भ संख्या – 80016024000589 में ही जाँच न कराये जाने के निर्देश दिये गए हैं।

अतः श्रीमती अनुपम पाल पत्नी श्री उदयपाल सिंह निवासी ग्राम व पोस्ट चपुन्ना विकास खण्ड हसेरन जनपद कन्नौज एवं श्री दलवीर सिंह पुत्र श्री प्रकाशचन्द्र पाल निवासी ग्राम व पोस्ट चपुन्ना तहसील तिर्वा जनपद कन्नौज के कार्यालय पत्र संख्या 424 / शिकायती पत्र दिनांक 09-08-2024 (संलग्न) द्वारा प्रेषित शिकायती प्रार्थना पत्रों में उठाये गये बिन्दुओं पर गुण दोष के आधार पर जाँच कर जाँच आख्या यशाशीघ्र उपलब्ध कराने का कष्ट करें।

संलग्नक – उपरोक्तानुसार। भवदीय

(एन०बी०सविता)
संयुक्त विकास आयुक्त
कानपुर मण्डल कानपुर।

संख्या एवं दिनांक उपरोक्तानुसार।

प्रतिलिपि – शिकायतकर्ता (1) श्रीमती अनुपम पाल पत्नी श्री उदयपाल सिंह निवासी ग्राम व पोस्ट चपुन्ना विकास खण्ड हसेरन जनपद कन्नौज। (2) श्री दलवीर सिंह पुत्र श्री प्रकाशचन्द्र पाल निवासी ग्राम व पोस्ट चपुन्ना तहसील, तिर्वा जनपद कन्नौज। (3) श्री अमिता उर्फ नेहा त्रिपाठी ग्राम व पोस्ट चपुन्ना विकास खण्ड हसेरन जनपद कन्नौज का सुचनार्थी।

संयुक्त विकास आयुक्त,
कानपुर मण्डल, कानपुर। "

6. A bare perusal of the aforesaid letter would show that despite having full knowledge of the interim order dated 08.08.2024, Shri N.B. Savita, the officer who is present in Court, directed the Superintending Engineer (Rural), Engineering Department, Kanpur Division, Kanpur to hold another inquiry by interpreting the communication made by Chief Standing Counsel of this Court vide his letter dated 29.08.2024 that directions have been issued not to conduct inquiry in relation to IGRS reference No.80016024000589 only. Though the letter of Chief Standing Counsel dated 29.08.2024 was shown to be annexed to the officer's letter dated 13.09.2024, its copy has not been placed before this Court nor has been annexed to the officer's personal affidavit filed by the officer today. Under such circumstances, the Court has all reason to believe that the officer is trying to shield his action of violating the interim order passed by this Court by taking aid of letter written by Chief Standing Counsel without bringing the same on record. This is a clear case where adverse inference must be drawn against the officer for not placing the relevant document before the Court.

7. Apart from the above, the stand taken in the personal affidavit as regards the distinct nature of complaints, the Court may notice that action impugned in the present writ petition is in pursuance of complaint moved by Smt. Anupam Pal (respondent No.6), wife of Uday Pal Singh (respondent No.7). The respondent No.7 is admittedly posted as Sub Inspector, Jalaun which is apparent from an endorsement made at the top of the complaint moved by respondent No.6 before the Commissioner. The endorsement reads as under:-

“CDO

Mr. Uday Pal Singh , who is a Sub Inspector posted in Jalaun raised very serious allegation. So pls send ADO on sight to verify if the complaint is right or wrong.” (It appears that the word “sight” is wrongly mentioned. The correct word is “site”).

8. The statement contained in the personal affidavit filed today to the effect that earlier action was taken pursuant to a complaint moved by Dalveer Singh, not party to the writ petition and further, the same was in relation to some irregularities committed by the petitioner in the year 2019-2020, having no concern with the allegations levelled now. This Court has perused the ‘Annexure No.3’, annexed to the personal affidavit which refers to not only financial year 2019-2020 but also financial year 2020-2021, inquiries initiated and culminated thereafter including the inquiry report dated 08.03.2024. This Court has also examined the fact that respondent No.6, i.e. the complainant, is none other than sister-in-law (Bhabhi) of Dalveer Singh as is mentioned in the complaint filed by Dalveer Singh himself.

9. In view of the above, it is apparently clear that Shri N.B. Savita, presently posted as Joint Development Commissioner, Kanpur Division, Kanpur is treating himself to be not only above the law but also as an appellate authority sitting over the stay order passed by this Court. He has not only clearly violated the interim order dated 08.08.2024 but, even thereafter, did not file his personal affidavit pursuant to order dated 11.11.2024 and has appeared today only when the Court directed his personal appearance. The audacity of the officer goes to the extent that in order to shield his action of going ahead despite an interim order being operative, he has attempted to put the blame squarely upon the Chief Standing Counsel of this Court who takes care of the interest of the State and its machinery in all proceedings before this Court. The attempt is to somehow impress this Court as if it was the Chief Standing Counsel who directly/ indirectly/ expressly/ impliedly directed the officer to go ahead with the inquiry though the facts are absolutely contrary to the same.

10. Though ‘Annexure No.7’ to the personal affidavit is a copy of letter dated 21.11.2024 written by Shri N.B. Savita to the Superintending Engineer cancelling the earlier letter dated 13.09.2024 with immediate effect with a further direction that no inquiry be conducted, this Court is of the view that it is merely an eye-wash and a device to show that this Court’s order has now been complied with. However, it is patently clear that this has been done by the officer because of the order dated 21.11.2024 directing his personal appearance.

11. The overall conduct of the officer leaves no room for doubt that he has abused his position and was dancing to the

tune played by the respondent No.7, a Sub-Inspector and treating himself to be above the law with a further attempt to bring the Chief Standing Counsel into hot waters. Such malpractices and reprehensible conduct cannot be tolerated by this Court.

12. In view of the above, this Court deems it appropriate to direct the State Government to initiate disciplinary proceedings against Shri N.B. Savita, presently posted as Joint Development Commissioner, Kanpur Division, Kanpur. The State Government shall be at liberty to make interim arrangements for the functional discharge of duties concerning the post of Joint Development Commissioner, Kanpur Division, Kanpur.

13. List this petition in top ten cases before appropriate Bench on 16.01.2025.

14. On the next date fixed, the learned Standing Counsel shall place before this Court the action taken by the State Government pursuant to and in furtherance of this order.

15. Registrar (Compliance), High Court, Allahabad is directed to send a copy of this order to the Chief Secretary (U.P. Government, Lucknow) for immediate action in compliance of this order.

(2024) 11 ILRA 571

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: ALLAHABAD 05.11.2024

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.

Writ -A No. 5709 of 2019

Ashish Kumar Rajbhar ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:

Sanjay Goswami, Shreyas Srivastava,
Sudhanshu Kumar

Counsel for the Respondents:

Chandan Kumar, Swapnil Kumar

A. Service Law – Non-disclosure of criminal case – Appointment/Recruitment - Suppression of "material" information presupposes that what is suppressed that "matters" not every technical or trivial matter. The employer has to act on due consideration of rules/instructions, if any, in exercise of powers in order to cancel candidature or for terminating the services of employee. Though a person who has suppressed the material information cannot claim unfettered right for appointment or continuity in service but he has a right not to be dealt with arbitrarily and exercise of power has to be in reasonable manner with objectivity having due regard to facts of cases. (Para 8)

B. Broad-brushing every non-disclosure as a disqualification, would be unjust and the same would tantamount to being completely oblivious to the ground realities. (Para 9)

Nature of the criminal case; the overall consideration of the judgement of acquittal; the nature of the query in the application/verification form; the contents of the character verification reports; the socio economic strata of the individual applying; the other antecedents of the candidate; the nature of consideration and the contents of the cancellation/termination order' were some of the crucial aspects which should enter the judicial verdict in adjudging the suitability and in determining the nature of relief to be ordered. (Para 9)

Broad- brushing every non-disclosure as a disqualification would be unjust and it would be arbitrary and unreasonable to disqualify a