



2026:AHC:165192-DB

Reserved on 31.07.2026

Delivered on 07.08.2026

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 697 of 2011**

Subhash Chandra Tyagi

.....Appellant(s)

Versus

State of U.P. and others

.....Respondent(s)

Counsel for Appellant(s)	: Adarsh Singh, Abhishek Singh
Counsel for Respondent(s)	: Akanksha Sharma (S.C.)

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.**

(Per : Kshitij Shailendra, J.)

2. This intra Court appeal is directed against order dated 01.02.2011 whereby the learned Single Judge has dismissed Writ-A No.6090 of 2011 filed by the appellant with a further direction to the appellant to deposit cost of Rs.2,16,000/- within a period of six weeks, failing which the said amount shall be recovered as arrears of land revenue from him by the Collector.

3. The writ petition was filed challenging the orders dated 19.01.2011 and 20.01.2011, respectively passed by the District Inspector of Schools, Baghpat ('D.I.O.S.') and Authorized Controller of Shastri Smarak Inter College, Ahmad Shahpur, Padra, District-Baghpat ('the institution'). By the said orders, taking note of the fact that a previous Writ-A No.42763 of 1993 filed by the appellant had been dismissed by this Court as infructuous, services of the appellant were terminated.

BRIEF FACTS

4. The case has a chequered history and sequence of events would reveal as to how robbery is committed on the purse of the State exchequer and, when revealed, in what manner unscrupulous litigants like the appellant herein, in collusion with those who are entrusted to protect rule of law and prevent misuse of State funds, succeed in abusing the process of law for years.

5. The institution is a recognized and aided institution and case of the appellant is that on account of one Mr. Ved Prakash Harit ('Mr. 'Harit'), an Assistant Teacher in LT Grade, having gone on leave without pay for a period of two years w.e.f. 09.09.1992, a short term vacancy on the said post arose. The institution, at that time, was under the control of Authorized Controller who issued notice dated 24.11.1992 inviting

6. The appellant joined the institution and when salary was not paid to him, he filed Writ-A No. 42763 of 1993. An interim order was passed by this Court on 04.10.1993 directing the D.I.O.S. to pass order for granting or refusing approval to the appellant's appointment within three weeks and, till the appointment was disapproved, the appellant was allowed to continue in service and in case of disapproval, the D.I.O.S. was directed to record specific reasons.

7. On 23.05.1995, one Mr. S.S. Rawat, the then D.I.O.S., approved the appointment of the appellant in the pay-scale of 1400-2300, w.e.f. 21.12.1992, i.e. the date on which he was appointed, subject to the condition that on return of Mr. Harit, the said vacancy would automatically come to an end. At the strength of the interim order dated 04.10.1993 and the approval granted by the D.I.O.S., the appellant continued to work in the institution and started receiving salary month to month.

8. After 15 years in 2010, the writ petition came up for final disposal on merits and, having found that no counter affidavit was filed by the State, direction was issued by this Court, pursuant whereunto, counter affidavit was filed by the D.I.O.S.-Kamlesh Kumar on 06.01.2011 taking a stand that pursuant to orders passed by this Court, he had sent a letter dated 14.12.2010 to the Controller to make available relevant records regarding the appointment and termination of the appellant, the alleged application dated 09.09.1992 submitted by Mr. Harit for grant of leave without pay, six months pay bills prior to 09.09.1992, original service book, residential address of Mr. Harit and resignation letter or application, if any, by Mr. Harit after expiry of his alleged leave period, however, the documents were not made available by the Controller and it

9. Further stand taken by the D.I.O.S. was that against Mr. S.S. Rawat, the erstwhile D.I.O.S. who had passed the order in favour of the appellant, an order was passed by the State Government on 24.03.2009 mentioning that charges for facilitating 96 fraudulent appointments/payment of salary in various institutions during his service tenure at Meerut, having been proved against Mr. S. S. Rawat, his entire gratuity had been seized and 50% of pension was directed to be deducted permanently every month. A supplementary counter affidavit was also filed by the D.I.O.S. taking a stand that the records regarding appointment of the appellant were not available. Original pay bill register of teaching and non-teaching staff for the period w.e.f. July, 1992 to May, 1993 was also annexed along with the affidavit to substantiate the defence against Mr. Harit and the appellant.

10. The writ Court passed a detailed order dated 07.01.2011 taking note of the aforesaid position which reflected manipulations and securing fraudulent appointment by the appellant and directed the matter to be listed on 11.01.2011, i.e. after four days, asking the management and the appellant to file evidence establishing that Mr. Harit was ever paid salary from the State exchequer as a teacher of the institution and as to what procedure was followed in the matter of appointment of the appellant.

11. On the next date fixed, i.e. 11.01.2011, counsel for the appellant made a statement that he did not want to file reply to the supplementary counter affidavit and that in view of subsequent developments, writ petition had become infructuous. The writ Court, after noticing the fact that in the salary bills of the year 1991-1993, name of Mr. Harit was not included therein and that he was not within the teachers who were paid

12. As a result of dismissal of writ petition, orders dated 19.01.2011 and 20.01.2011 terminating the services of the appellant were passed and the same were challenged by means of Writ-A No.6090 of 2011 giving rise to the present special appeal.

ORDER PASSED BY LEARNED SINGLE JUDGE

13. When the matter came up before the learned Single Judge, after discussing of the factual position as well as reproducing the orders passed in the previous writ petition on 07.01.2011 and 11.01.2011, the learned Single Judge dismissed the writ petition by making serious observations to the effect that incumbents like that of the appellant are able to withdraw salary from State exchequer by fraudulent means in collusion with pliable officers because generally the Courts are reluctant to pass stringent orders to send a signal that it would not sympathize with manipulators and fraudsters at any cost.

14. The learned Single Judge also observed that in the present case also, the Court allowed the appellant to withdraw the petition and the result emboldened him to yet again approach the Court with technical arguments without even caring to ponder over the fact that there are no legal foundations to it. The learned Single Judge, after noticing the fact that the petitioner was appointed in the pay-scale of 1400-2300 on 23.05.1995 apart from other allowances and the pay would have increased manifolds in subsequent years, imposed cost upon the appellant @ 1,000 per month for all the years he had withdrawn salary and quantified the same at Rs.2,16,000/- with directions to pay/recover, as already indicated hereinabove.

(i). The appellant was appointed after following due procedure of law against the short term vacancy and his appointment having been approved by the D.I.O.S. on 23.05.1995, on the date when the writ petition was dismissed as infructuous, the same had actually become infructuous and, therefore, merely because the petition was dismissed as such, the D.I.O.S./Controller were not justified in terminating the services of the appellant;

(ii). The orders terminating the services of the appellant being non-speaking, the same were liable to be set aside on this ground alone;

(iii). The findings and observations recorded against the appellant in the order of learned Single Judge or in the earlier orders passed in Writ-A No.42763 of 1993 were not warranted as the appellant was not at fault nor did he collude with anyone including the D.I.O.S. or the Controller or the Principal of the institution and his appointment, being in consonance with the provisions of Section 33-F of **U.P. Secondary Education Services Selection Board Act, 1982 ('the Act of 1982')**, termination of his services and dismissal of writ petition is not justified. Reliance has been placed on the judgment of Hon'ble Supreme Court in **Radhey Shyam Yadav and another v. State of U.P. and others : (2024) 11 SCC 770**.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

16. *Per contra*, learned Standing Counsel has made submissions that once the record establishes that Mr. Harit never received salary from the State exchequer and no documents were found establishing his going on short term leave, the very appointment of the appellant being fraudulent, no error has been committed by the learned Single Judge in dismissing

while hearing Writ A No.42763 of 1993, orders were passed and though the appellant was granted time to establish legality of his appointment, he did not obey the orders, rather cleverly made a statement through counsel that the writ petition had become infructuous and be dismissed as such.

17. Further submission has been made that once Writ-A No.42763 of 1993 was dismissed and interim order was vacated, benefits received by the appellant arising from the interim order were bound to reverse and, therefore, no error was committed by the D.I.O.S. and the Controller in terminating the services of the appellant nor did the learned Single Judge err in directing recovery of only very minor part of salary earned by the appellant at the strength of his working over a period of many years and, hence, no interference is warranted in the matter.

DISCUSSION

18. We have considered the submissions made and have perused the material available on record.

19. The case of the appellant that his entry in service on account of Mr. Harit going on leave without pay w.e.f. 09.09.1992 was lawful, needs examination in the light of material available on record. The starting point is occurrence of alleged short term vacancy that was notified on the notice board of the institution on 24.11.1992. The same reads as under:-

“रिक्ति सूचना-01/दिनांक 24.11.1992”

संस्था में प्रशिक्षित स्नातक वेतनक्रम में सहायक अध्यापक की अल्पकालिक रिक्ति में तदर्थ नियुक्ति हेतु एक योग्य अभ्यर्थी की आवश्यकता है। **उक्त नियुक्ति में आरक्षित**

20. A perusal of the notice indicates that only one post on *ad-hoc* basis was notified in short term vacancy qua which preference was to be given to the candidates belonging to reserved category and 06.12.1992 was notified as the date of interview. On 06.12.1992, the Controller held a meeting in the institution and Resolution No.2 was passed in the following words:-

“शास्त्री स्मारक इण्टर कालेज अहमद शाह पढडा मेरठ।

प्रस्ताव संख्या-2 दिनांक 6.12.1992 की सत्य प्रतिलिपि

प्रस्ताव संख्या- 2

एल०टी० वेतनक्रम में सहायक अध्यापकों के पद पर तदर्थ नियुक्ति करने के सम्बन्ध में विचार एवं निश्चय ।

विद्यालय के प्रधानाचार्य महोदय ने बताया कि सहायक अध्यापक श्री **वेद प्रकाश हरित** **दिनांक 9.2.92 दो वर्ष अवैतनिक अवकाश पर है** जिससे छात्रों के अध्ययन कार्य में व्यवधान हो रहा है। जिसे दृष्टिगत रखते हुये उक्त पद पर तदर्थ नियुक्ति हेतु विद्यालय के नोटिस बोर्ड पर लगायी गयी रिक्ति सूचना दिनांक 24.11.1992 के आधार पर आज योजित साक्षात्कार में **आरक्षित जातियों से कोई भी अभ्यर्थी उपस्थित न होने के कारण सामान्य जाति के अभ्यर्थी श्री सुभाष चन्द्र त्यागी** का गण विषयक अंकों के आधार पर चयन किया जाना चाहिये। जिसका संचालक महोदय ने समर्थन किया तथा विचार विमर्श के बाद उक्त प्रस्ताव सर्व सम्मति से पारित करते हुये **स्पष्ट किया गया कि श्री सुभाष चन्द्र त्यागी की तदर्थ नियुक्ति श्री वेद प्रकाश हरित की वापसी होने अथवा आयोग द्वारा चयनित अभ्यर्थी द्वारा कार्यभार ग्रहण करने के समय तक निरन्तर बनी रहेगी ।**

प्रधानाचार्य

प्रबन्धक संचालक”

21. The resolution No.2 reads to the effect that the Assistant Teacher-Ved Prakash Harit was on leave without pay for next two years w.e.f. 09.09.1992 due to which, the students were suffering and, based upon the notification pasted on the notice board of the institution on 24.11.1992, since no candidate belonging to reserved category had

Commission (Uttar Pradesh Public Service Commission) is given charge on the post.

22. Apparently, the appellant does not belong to reserved category and though indication was made that he was selected on account of non-participation of any candidate belonging to reserved category, the same is not sufficient to attach legality to the selection/appointment of the appellant. The fact remains that the writ Court thoroughly examined the matter in its entirety and once it came on record of Writ-A No.42763 of 1993 that no documents pertaining to Mr. Harit were found in the institution nor did he ever receive salary from the State exchequer, the said writ petition was liable to be dismissed. Though the Court passed detailed order on 07.01.2011 noticing the facts in their entirety and granted time to the appellant to produce evidence, he chose not to file the same, rather made a clever statement that writ petition be dismissed as infructuous.

23. The orders dated 07.01.2011 and 11.01.2011 passed in Writ-A No.42763 of 1993 discuss the factual aspects as they stood reflected. The same read as under:-

“ Order dated 07.01.2011

Counter affidavit, affidavit by respondent no. 2 and supplementary counter affidavits filed today on behalf of the D.I.O.S. are taken on record.

Petitioner prays for and is granted time up to Tuesday to file reply thereto.

The facts as disclosed in the aforesaid three affidavits of the District Inspector of Schools present a very disturbing picture. Petitioner claims to have been appointed against a leave vacancy caused because of grant of leave to one Ved Prakash Harit for the period of two years with effect from 0.0.1992. His appointment was not granted financial

against the short term vacancy with effect from 23.5.1995. It is stated that in terms of the aforesaid order, the petitioner has been paid his salary since 23.5.1995 and is being paid his salary even today.

On behalf of the D.I.O.S. it is stated that said Ved Prakash Harit was not a teacher of the institution and was never paid salary from the State exchequer, in support thereof photostat copy of the salary bills of the month April 1991 up-to December 1992 and relevant attendant registers of the institution have been enclosed along with counter affidavit.

What is more surprising is that the petitioner himself in paragraph 2 of the writ petition has stated that the leave granted to Ved Prakash Harit for a period of 2 years only commencing 9.9.1992 which would expire on 9.9.1994. Yet the D.I.O.S. who is stated to have passed the order on 23.5.1995 directed payment of salary till the teacher concerned returns and on the strength of such order the petitioner is stated to have drawn salary for the last 18 years and continues to draw salary even today. What has happened to Ved Prakash Harit has not been disclosed.

Prima facie it appears that fraud has been played upon the public exchequer.

However before any final orders are passed in the matter it would appropriate that the petitioner and the D.I.O.S. as well as Committee of Management may submit a reply to the facts as stated in the counter affidavit filed by the D.I.O.S. and noticed above. The D.I.O.S. Meerut must also bring on record a copy of the dispatch register with reference to the discharge number mentioned in the letter of the approval of D.I.O.S. dated 23.5.1995 and to produce the original register before this Court on the next date.

The D.I.O.S. Meerut must also bring on record the details of the number of post of teachers created in the institution under various orders referable to section 9 of Act No. 24 of 1971 from time to time and the actual number of teachers, who have been paid salary since 1991.

The management and the petitioner may file such evidence, as they may be advised for establishing that Ved Prakash Harit was ever paid salary from the State exchequer as a teacher of the institution and as to what procedure was followed in the matter of the appointment of the petitioner.

Put up on 11.1.2011.

Order dated 11.01.2011

Counsel for the petitioner states that he does not want to file reply to

After the matter was argued at some length, counsel for the petitioner submits that in view of the subsequent development the writ petition has become infructuous.

In view of the aforesaid statement, writ petition is dismissed as infructuous. Interim order, if any, stands discharged.

24. There is nothing on record to establish that Mr. Harit ever received salary from the State exchequer and no documents were found existent in the institution establishing even his going on short term leave. Infact, there is no indication as to when Mr. Harit actually went on leave and when did he come back to institution. His name also did not find mention in the pay register for any period. The erstwhile D.I.O.S., who was directed by this Court to consider the question of approval to the selection/appointment of the appellant, approved the same without verifying the fact situation and record particularly as to whether there was actually some teacher named Ved Prakash Harit or he was simply an imaginary figure brought on scene for the purposes of creating a short term vacancy so as to somehow accommodate the appellant.

ROBBERY ON PURSE OF STATE EXCHEQUER CANNOT BE ALLOWED

25. The constitutional courts cannot permit the sanctity of public employment to be eroded by fraudulent or unlawful appointments secured through deceit, misrepresentation or abuse of judicial process. Public office is a public trust and every appointment made in contravention of law constitutes a direct assault on the constitutional mandate of equality, fairness and transparency embodied in Articles 14 and 16 of the Constitution. An unscrupulous litigant who secures or continues in public employment by obtaining interim protection from the Court, despite having no lawful entitlement to the post, cannot be

26. It is a well-settled principle that an interim order is always subject to the final outcome of the proceedings and does not create an independent or indefeasible right. Consequently, once the writ petition is dismissed and the very foundation of the appointment or continuance disappears, every consequential benefit flowing therefrom must also fall. The doctrine of restitution mandates that a party who has derived an undeserved advantage under the shelter of judicial proceedings must restore the same so that no person is permitted to profit from an illegality or from an order that ultimately ceases to have legal efficacy.

27. In **Amarjeet Singh and others v. Devi Ratan and others : (2010) 1 SCC 417**, it has been held that no litigant can derive any benefit from mere pendency of case in a court of law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised.

28. On similar lines, in **Ram Krishna Verma v. State of U.P. (1992) 2 SCC 620 : AIR 1992 SC 1888** the Hon'ble Supreme Court has examined the similar issue and after placing reliance upon its earlier judgment in **Grindlays Bank Ltd. v. ITO, (1980) 2 SCC 191 : 1980 SCC (Tax) 230 : AIR 1980 SC 656**, it has been held that in case an interim order has been passed and the petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised.

years on the basis of such fraudulently obtained employment, he cannot get any equity in his favour or any estoppel against the employer.

30. It is well settled that fraud vitiates even the most solemn act and fraud and justice never dwell together. Reference, in this regard, can be made to judgments of Hon'ble Supreme Court in **Ram Chandra Singh v. Savitri Devi and others** : (2003) 8 SCC 319, **The State of Andhra Pradesh & Anr. v. T. Suryachandra Rao** : JT 2005 (6) SC 391, **A.V. Papayya Sastry & others v. Government of A.P. & Ors.** : JT 2007 (4) SC 186 and **Ganpatbhai Mahijibhai Solanki v. State of Gujarat & others** : JT 2008 (3) SC 452.

31. In view of above discussion, once the writ petition filed by the appellant was dismissed and interim order was discharged after recording reasons, not only in the final order but in previous orders too, no orders of any other nature were required to be passed by the respondents except to terminate the services of the appellant. The net effect is that no validity could be attached to the appointment of the appellant and whatever benefits he had received as salary from the State exchequer, the same were bound to be recovered from him.

QUESTION OF REMAND TO OR CONSIDERATION BY STATE GOVERNMENT

32. As far as the last submissions made by counsel for the appellant with reference to Section 33-F of the Act of 1982, we proceed to deal with the same. The provision reads as under:-

“[33-F. Regularisation of appointments against short term vacancies. -

(1) Any teacher who, -

(a) was appointed by promotion or by direct recruitment in the

(b) possesses the qualification prescribed under, or is exempted from such qualifications in accordance with, the provisions of the Intermediate Education Act, 1921;

(c) has been continuously serving the Institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001;

(d) has been found suitable for appointment in a substantive capacity by the Selection Committee referred to in clause (a) of sub-section (2) of Section 33-C in accordance with the procedure prescribed under clause (b) of the said sub-section;

shall be given substantive appointment by the Management.

(2) (a) The names of the teachers shall be recommended for substantive appointment in order of seniority as determined from the date of their appointment.

(b) If two or more such teachers are appointed on the same date, the teacher who is elder in age shall be recommended first.

(3) Every teacher appointed in a substantive capacity under sub-section (1) shall be deemed to be on probation from the date of such substantive appointment.

(4) A teacher who is not found suitable under sub-section (1) and a teacher who is not eligible to get a substantive appointment under that sub-section shall cease to hold the appointment on such date as the State Government may by order specify.

(5) Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Ordinance referred to in clause (c) of sub-section (1) such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act.”

33. Submission made before us is that since the appellant was appointed against a short term vacancy under sub-Section (1) of Section 33-F within the period specified there, he was entitled for substantive appointment by the management and, in any case, as per sub Section (4), if he is not found suitable or eligible to get a substantive appointment, he shall cease to hold the appointment on such date as the State Government may by order specify. Vehement submissions were made that, in any case, the matter could have been referred to the State Government to pass an order to that effect in terms of sub-Section (4) of Section 33-F and even this Court may relegate the matter now to the State Government to hold an inquiry and deal with the matter in terms of

unlawful. There cannot be any law that even if Court finds an unlawful/fraudulent occurrence and filling of vacancy, it would ignore the same and would mechanically rely upon the provision so as to confer any benefit upon the wrongdoer.

35. Recently the Hon'ble Supreme Court in **Sujej Singh v. Ram Naresh and others : (2025) 12 SCR 584**, after referring to decisions in the case of **M.C. Mehta v. Union of India and others : (1996) 6 SCC 237**; **State of Uttar Pradesh v. Sudhir Kumar Singh and others : (2021) 19 SCC 706** and **Krishnadatt Awasthy v. State of Madhya Pradesh : 2024 SCC Online SC 493**, has held that higher Courts should avoid unnecessary remand which may generate fresh round of litigation. The view has been reiterated in **Mahendra Prasad Agarwal v. Arvind Kumar Singh and others : 2026 LiveLaw (SC) 195**.

36. There is yet another aspect of the matter. It stands borne out from record that the erstwhile D.I.O.S. was acting in collusion with the appellant and despite the issue of payment of salary from State exchequer, either to Mr. Harit or to the appellant on the alleged short term vacancy being involved in the matter, surprisingly, the appellant did not implead 'State of U.P.' as a party-respondent in Writ A No.42763 of 1993. The only State official in the array was the then D.I.O.S., who was punished in the departmental proceedings for facilitating 96 unlawful appointments. The said fact also goes to show that the appellant somehow wanted adjudication in his favour behind the back of the State Government and he almost succeeded in his designs.

37. An interim order was passed in this appeal on 02.05.2011 staying recovery directed under the order passed by learned Single Judge as a

38. The appeal has no substance: the same is, accordingly, **dismissed**.
Interim order dated 02.05.2011 passed in this appeal stands **vacated**.

39. Consequences to follow.

(Kshitij Shailendra, J) (Arun Bhansali, CJ)

August 7, 2026

Jyotsana