



2026:AHC:11936

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 14882 of 2025

Mr. Rajesh Kumar Pandey

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Kamal Yash Sahwal
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Kamal Yash Sahwal, learned counsel for the petitioner and Sri Gaurav Singh, learned Standing Counsel, who appears for State-respondents.
2. Counter affidavit has been filed on behalf of the respondents sworn by Deputy Superintendent of Police (Crime), District Gorakhpur dated 16.12.2025 which is available on record. Learned counsel for the writ petitioner submits that he does not propose to file any further affidavit and the petition be decided on the basis of the documents available on record, thus with the consent of the parties, writ petition is being decided at the fresh stage.
3. The case of the writ petitioner is that he was appointed on the post of Constable (M) on the consolidated salary on 29.04.1997 under Dying-in-Harness Rules, 1974. However, according to the respondents, the writ petitioner was not entitled to the benefits from the date of the appointment in terms of the Government orders so issued from time to time and his salary stood reduced from Rs. 62200/- to Rs. 60400/- and recovery orders came to be passed on 12.06.2025 by the Finance Controller and 14.07.2025 by the Superintendent of Police, Gorakhpur. The only basis for not according the said benefits and the recovery of the order dated 05.11.2014, 28.04.2017, 02.12.2019 and 07.06.2022.
4. Questioning the same, the writ petitioner has been filed the present writ petition.
5. Learned counsel for the writ petitioner has submitted that now the issue is

no more *res integra*, particularly, when similar situate incumbents had approached the Hon'ble High Court of Judicature at Lucknow Bench being **Writ-A No. 11744 of 2024 (Asi (M) Shafeeq Ahmad v. State of U.P. and 5 others)** along with other writ petitions wherein the Government order dated 28.04.2017 and 02.12.2019 and office order dated 07.06.2022 was set aside. He submits that the writ petitioner was also not put to notice.

6. Learned Standing Counsel on the other hand submits that whatever might be the matter needs to be revisited, particularly, when the Government orders dated 28.04.2017, 02.12.2019 and office order dated 07.06.2022 have been quashed by the coordinate Bench.

7. I have heard learned counsel for the parties and gone through the records carefully.

8. Apparently, parties are in agreement that the controversy akin to and similar to which before this Court in the present proceedings was subject in **Asi (M) Shafeeq Ahmad (supra)** wherein the following orders were observed as under:

"1. Heard learned counsel for petitioners and learned State counsel for respondents.

2. These writ petitions have been filed challenging government orders dated 28.4.2017 and 2.12.2019, along with consequential office order dated 7.6.2022, whereby, for the purposes of granting benefits of Assured Career Progression Scheme, eligibility has been taken from the date of grant of regular pay scale instead of from the date of initial appointment on a consolidated salary basis. Also under challenge are orders directing and effecting recovery from emoluments of petitioners on the ground that they were granted pay scale incorrectly at the initial stage of entry itself.

3. The aforesaid writ petitions have been consolidated earlier since they constitute the same cause of action and are, therefore, being adjudicated upon by this common judgement and order.

4. It has been submitted by learned counsel for petitioners that they were appointed initially on compassionate basis under the U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974 (hereinafter referred to as the 'Rules 1974') but their initial orders of appointment indicated that they were appointed on a fixed consolidated salary along with only other admissible emoluments. It has been submitted that subsequently by means of various orders, petitioners were admitted to regular pay scales. It has also been submitted that most of petitioners were appointed on compassionate basis on the post of Constable (M) and were subsequently promoted on the post of Assistant Sub Inspector (M)

whereafter only, regular pay scale was made available to them.

5. It has further been submitted that by means of impugned Government orders dated 28.4.2017 and 2.12.2019 as well as the consequential impugned office order dated 7.6.2022, benefit of Assured Career Progression Scheme to the petitioners have been directed to be made available only from the date when petitioners were admitted to regular pay scale and not from the date of their initial appointment on compassionate basis on a consolidated salary.

6. It has also been submitted that aforesaid Government orders are contrary to the very nature of appointment of petitioners, since it is settled law that compassionate appointments in terms of the 'Rules 1974' are substantive in nature irrespective of the consolidated nature of emoluments being paid to them.

7. Learned counsels for petitioners has placed reliance upon a judgement of Division Bench of this Court in the case of Ravi Karan Singh Vs. State of U.P. and others reported in 1999 (17) LCD 641 and a judgement of the co-ordinate Bench of this Court in the case of Praveen Kumar Vs. State of U.P. and others (2023) 10 ADJ 17.

8. Mr. Sandeep Sharma, learned State counsel, on the basis of counter affidavit, submits that provisions of grant of Assured Career Progression Scheme have been accorded in terms of Government order dated 5.11.2014, which clearly prescribes grant of such benefits in a particular pay scale and upon completion of continuous satisfactory service for a stipulated service period. It has been submitted that since petitioners were appointed on a consolidated salary, provisions of Government order dated 5.11.2014 are thus, applicable only from the date when the petitioners were admitted to regular pay scale. It has further been submitted that the present dispute, therefore, pertains only to grant of benefits of ACP since for the purpose of other benefits, services of petitioners from the initial date of appointment have already been taken into account. It has also been submitted that it is on account the fact although petitioners were appointed on a consolidated salary but were made admissible to the regular pay scale incorrectly, that recovery orders have been directed.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of the material available on record, the question that arises for consideration in this petition is whether petitioners, who have been appointed on a compassionate basis would be entitled to the benefits of ACP from the date of entry into service on a consolidated salary or from the date when they were made eligible for the regular pay scale.

10. With regard to the nature of appointment of petitioners, the aforesaid aspect has already been adjudicated upon by the Hon'ble Supreme Court in the case of U.P. State Road Transport Corporation Vs. Brijesh Kumar AIR 2025 SC (CIVIL) 62 as well as by the Division Bench of this Court in the case of Ravi Karan Singh (supra) in which

it has been clearly held that the nature of appointment on compassionate basis is substantive from the date of initial appointment itself. The relevant portion of judgement is as follows:

"This petition has come up before us on a reference made by the learned Single Judge by his order dated 19.12.1997. The point involved is very simple, that is, whether an appointment under the Dying in Harness Rules is a permanent appointment or temporary appointment. According to the learned Single Judge, this Court had earlier held that an appointment under Dying in Harness Rules is a permanent appoint vide Budhi Sagar Dubey v. D.O.I.S., (1993) 1 UPLBEC 197; Gulab Yadav v. State of U.P. and others, (1991) 2 UPLBEC 995 and Dhirendra Pratap Singh v. D.I.O.S. & Others. (1991) 1 UPLBEC 427. The learned Single Judge who passed the referring order dated 19.12.1997 disagreed with the above mentioned decisions and hence has referred the matter to a larger Bench.

In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments.

The petition is disposed of accordingly."

11. From a perusal of the aforesaid judgment and the facts and circumstances of the case, it is admitted that the petitioners were initially appointed on a compassionate basis under the 'Rules 1974' but on a consolidated salary. In terms of pronouncement of law as discussed hereinabove, it is evident that nature of petitioners' appointment is substantive, they were, therefore, required to be placed in regular pay scale for the post to which they were appointed from the initial date of appointment itself, rather than being engaged on a consolidated salary.

12. It is, therefore, quite evident that providing appointments to petitioners on a consolidated salary would be against the very nature of their appointments, which were substantive. In such circumstances, it is held that appointment of petitioners only on consolidated salary and not on the regular pay scale was evidently erroneous on the part of opposite parties.

13. Once it is evident, as held hereinabove, that initial appointment itself was substantive in nature and petitioners were thus entitled to a regular pay scale instead of a consolidated salary, the aspect of applicability of ACP from a subsequent date

becomes irrelevant. It is, thus, held that since petitioners were entitled to a regular pay scale from the date of their initial appointment itself, they would be covered by the government order dated 5.11.2014 from the date of their initial appointment itself, and not from the date when they were subsequently granted a regular pay scale.

14. It is also clear from the previous Government order dated 21.11.2013 that earlier the State Government itself had granted such benefits to petitioners, who were appointed on compassionate basis but said facility has been withdrawn by means of impugned Government orders as well as office order apparently on a misconception with regard to nature of appointment of petitioners.

15. Considering the discussions made hereinabove, impugned Government orders dated 28.4.2017 and 2.12.2019 as well as consequential impugned office order dated 7.6.2022 are hereby quashed by issuance of a writ in the nature of certiorari so far as they were denying grant of ACP to petitioners from their initial date of appointment.

16. Resultantly, various recovery orders issued against petitioners for recovery/adjustment of pay scales made admissible to them from the initial date of appointment also stands quashed by issuance of writ in the nature of certiorari. Further, a writ in the nature of mandamus is issued, commanding the opposite parties to refund the deductions made in pursuance of impugned recovery notices/orders expeditiously within a period of eight weeks from the date of production of a certified copy of this order is served upon the concerned authority.

17. Consequently, the writ petitions succeed and are allowed. Parties to bear their own costs."

9. On a pointed query being raised to Shri Gaurav Singh, learned Standing Counsel whether the said order put to appeal, he could not give any concrete reply, however, he submits that the matter would be re-considered. The Court further finds and till also not forthcoming from the order that the writ petitioner was put to notice before the reduction of the salary of the writ petitioner.

10. Accordingly, the writ petition is being decided in the following manner:

(a). The order dated 12.06.2025 passed by the Finance Controller and the order dated 14.07.2025 by Superintendent of Police, Gorakhpur are set aside.

(b). The matter stands remitted back to authority to pass fresh order strictly in accordance with law within a period of two months from the date of presentation of the certified copy of the order bearing in mind the decision in *Asi (M) Shafeeq Ahmad (supra)*.

11. Accordingly, the writ petition stands **disposed of**.

12. Instructions filed today are taken on record as marked as appendix A.

January 19, 2026

A. Prajapati

(Vikas Budhwar,J.)