



2026:AHC:5328

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 17643 of 2025

Kesh Kumar

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Dileep Chandra Mishra, Sagar Saxena
Counsel for Respondent(s)	:	C.S.C.

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri Dileep Chandra Mishra, learned counsel for the writ petitioner and Sri SK. Pal, learned Additional CSC for the State.
2. Since counter rejoinder affidavits have been exchanged between the parties and they do not propose to file any affidavit and the writ petition be decided on the basis of the documents available on record. With the consent of the parties, the 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 in the year 1999, however, owing to certain allegations regarding commission of misconduct, the writ petitioner was dismissed from service on 22.11.2011, an appeal was preferred which came to be rejected on 18.12.2012 and revision was rejected on 20.06.2013 which was subject matter of challenge in Claim Petition No. 586 of 2014 which came to be allowed on 29.04.2024 by the U.P. Public Service Tribunal. Thereafter, the writ petitioner was reinstated in service on 2/6.07.2025 and a show cause notice was issued show causing the writ petitioner tendered his reply and thereafter, an order came to be passed on 11.08.2025 by the Superintendent of Police, Hathras treating the period from 22.11.2011 to 06.07.2025 as no work no pay.
4. Questioning the said order, the present writ petition has been preferred.
5. Learned counsel for the writ petitioner has sought to argue that the order impugned cannot be sustained for the simple reason that once the termination, appellate and revisional order came to be set aside with a direction for grant of all consequential benefits then in absence of challenge to the said order, the writ petitioner is entitled to all consequential benefits.
6. Learned Standing Counsel, on the strength of averments made in the counter affidavit has sought to argue that there happens to be a Government Order dated 28.08.2008, in case, a Government servant does

not work for certain period then he is not entitled for payment of salary.

7. I have heard the submission so made across the bar and perused the record.

8. Facts are not in issue. It is not in issue that the appellate and revisional order was subject matter of challenge in claim petition which came to be allowed, relevant extract whereof is being quoted hereinunder.-

"उपरोक्त समीक्षा के प्रकाश में याची की याचिका स्वीकार की जाती है याची के विरुद्ध पारित पदच्युत संबंधी दण्डादेश दिनांकित 22-11-2011, अपीलीय आदेश दिनोंकित 18-12-2012 एवं पुनरीक्षण निरस्तीकरण आदेश दिनोंकित 30-06-2013 (संलग्नक संख्या 1, 2 एवं 3) को निरस्त करते हुए विपक्षीगण को निर्देशित किये जाते हैं तथा उपरोक्त आक्षेपित दण्डादेशों के निरस्तीकरण के उपरान्त याची को देग समस्त सेवा संबंधी लाभ इस आदेश की प्रमाणित प्रति प्राप्ति के तीन माह के अंतर्गत उसे प्रदान किया जाये।"

9. The said order was implemented by the respondents but now the period from 22.11.2011 till 06.07.2025 has been treated to be for no work no pay. In the opinion of the Court once there was an order for consequential benefits post setting aside appellate and revisional order then the respondents were not justified in not paying the consequential benefits. A Division Bench of this Court in **Civil Misc. Writ Petition No. 22808 of 2003 (Union of India Vs. Praveen Kumar & others)** decided on 22.05.2003 had the occasion to consider a position akin to the present case wherein the following was observed.-

"Thus in view of the above, whatever may be the merits and correctness of the findings of fact recorded by the Tribunal earlier in its judgment and order dated 2.4.2002 it was not open to the petitioner Union of India to reopen the issue sitting as an appellate authority over and above the Tribunal. It had been assigned a limited role of execution/implementation of the order passed by the Tribunal and by no stretch of imagination it could have the competence to sit in appeal against the said judgment, and thus, the order dated 7.5.2002 passed by the petitioner Union of India has rightly been set aside by the judgment and order dated 31.3.2003. We find no force in the submissions made by Shri B.N.Singh placing reliance upon the judgment in Rajiv Yadav (supra) as the facts of the said case are quite distinguishable and the ratio of the said judgment has no application in the instant case. Once it is held that one vacancy available for insider candidate in U.P. was meant for the candidate of the general category that could not be filled up by the reserved category candidate. The respondent no. 1 had legitimate expectation for allocation against the said vacancy.

Thus in view of the above, we are of the considered opinion that the petitioner Union of India while passing the order dated 7.5.2002 had acted without competence/jurisdiction as it had never been assigned the role to function as an appellate authority over the judgment and order of the Tribunal. It has been assigned a limited role of the execution of the judgment and order dated 2.4.2002. The order has rightly been set aside by the Tribunal vide judgment and order dated 31.3.2002. The case does not present any special feature warranting interference by this Court in a limited jurisdiction of judicial review.

The petition is, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

10. Accordingly, the writ petition is being decided in the following terms.-

(a) the order dated 11.08.2025 passed by fourth respondent, Superintendent of Police, Hathras is set aside; (b) matter stands remitted back to the authority to pass a fresh order in accordance with law within a period of two months.

11. With the aforesaid observation, the writ petition stands disposed of.

(Vikas Budhwar,J.)

January 8, 2026

Rajesh