



2026:AHC-LKO:14779-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

SPECIAL APPEAL No. - 93 of 2026

Shailendra Kumar

.....Appellant(s)

Versus

State Of U.P. Thru. Prin. Secy. Secondary Education
Sectt. Lko. And 5 Others

.....Respondent(s)

Counsel for Appellant(s)	:	Krishna Madhav Shukla, Sardul Vikram Swaroop
Counsel for Respondent(s)	:	C.S.C., Alok Kr. Misra, Sanjay Kumar Singh

Court No. - 1

HON'BLE RAJAN ROY, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

1. Heard.

2. After hearing learned counsel for the parties what comes out is that there is one clerical post vacant in the educational institution in question. The appellant-petitioner is working on class-IV post. He was to be promoted to the clerical post in view of Regulation-3 of Chapter-II of the U.P. Intermediate Education Act, 1921 as also as per law settled on this subject by the Full Bench decision of this Court in the case of **Jai Bhagwan Singh Vs. District Inspect of Schools and others** reported in **[2006(9) ADJ 292 (All)(DB)]**.

3. The order, which was impugned before the writ Court is dated 25.09.2025 by which compassionate appointment was recommended on the sole clerical post. Initially, an interim order was passed on 08.01.2026, restraining the respondents from appointing private respondent in the writ petition on the post in question till the next date of listing. On the next date, the writ-Court found that the appellant-petitioner was not the senior most eligible person for being considered for promotion against the aforesaid post, therefore, the interim order was vacated on 16.01.2026 and against this order the present special appeal has been preferred.

4. Contention of learned counsel for the appellant-petitioner is that though the appellant-petitioner is a junior class-IV employee for being considered for promotion to the aforesaid clerical post but the senior most person is also not eligible. Even otherwise for being promoted from class-IV to class-III post as there is a selection process prescribed including typing test, therefore, it is not entirely a post of seniority. This aspect has been lost sight of by the learned

Single Judge while vacating the interim order. Even otherwise, the promotional post cannot be filled by appointing a person on compassionate ground. He has relied upon decision of Hon'ble the Supreme Court in the case of ***Hira Man Vs. State of U.P. and others*** reported in ***AIR 1997 SC 3288*** to submit that no compassionate appointment can be made contrary to quota rule on a promotional post.

5. We have considered the submissions advanced by learned counsel for the appellant-petitioner and find merit that the post in question being promotional post, no compassionate appointment can be made against it, unless there is provision permitting the same. Respondent no. 4 was not issued notice by the writ-Court, therefore, we have not issued notice to him. Likewise, the respondent no. 6-principal of the educational institution was also not issued notice, though the Managing Committee was represented after notice having been issued to it. Respondent no. 3 has been served notice of this appeal but none has appeared on its behalf.

6. At this stage, learned State Counsel submits that respondent no. 4, who was issued notice by the writ-Court, shall be adjusted elsewhere under the Dying in Harness Rules.

7. In view of aforesaid, we find that the order impugned in the writ petition deserves to be quashed.

8. For the reasons mentioned herein above, we ***quash*** the impugned order and ***dispose of*** the writ petition with a direction to the competent authority to consider eligible persons for being promoted to the sole post of clerk, in accordance with the criteria of promotion and fill the same accordingly.

9. Writ petition is ***allowed***, but only in the aforesaid terms, so is the appeal.

(Abdhesh Kumar Chaudhary,J.) (Rajan Roy,J.)

February 24, 2026 MVS/-