



2026:AHC:6341

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19239 of 2025

Shreeman Narayan Dixit

.....Petitioner(s)

Versus

State Of U.P. And 4 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Krishna Kumar, Soumyesh Dutt Tripathi
Counsel for Respondent(s)	:	C.S.C., Krishna Kumar Chand

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri S.D. Tripathi, learned counsel for the writ petitioner as well as Sri Gaurav Singh, learned Standing Counsel for the State and Sri Gaurav Kumar Chand (A/G 0032/12) holding brief of Sri K.K. Chand for respondents no. 3 to 5.

2. A statement has been made by learned counsel for the opposite parties that they are equipped with the instructions 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 Junior Clerk in the office of Shiksha Adikshak Nagar Palika Kalpi, Jalaun on 24.07.1982 and promoted as Senior Clerk on 28.10.2003 and promoted as Head Clerk on 16.01.2014 and superannuated on 31.01.2019. Since the writ petitioner was not being accorded the leave encashment, he preferred Writ-A No. 12875 of 2025 which came to be disposed of on 01.09.2025 and a correction application was decided on 17.09.2025, now order impugned has been passed on 04.12.2025 by District Basic Education Officer, Jalaun at Orai rejecting the claim.

4. Questioning the said order, the present writ petition has been filed.

5. Learned counsel for the petitioner has sought to argue that the order dated 14.11.2025 passed by respondent No.4 cannot be sustained even for

a single moment inasmuch as the issue with regard to the payment of leave encashment to the employee of Basic Shiksha Parishad stands already decided by co-ordinate Bench of this Court in Writ-A No.16921 of 2008 (Dharmidhar Dubey Vs. State of U.P. Thru' Principal Secretary and Others) decided on 25.08.2014 and Writ-A No.29685 of 2015 (Phul Chandra Mishra and Another Vs. State of U.P. and 4 Others) decided on 21.05.2015. It is contended that against the order passed in Phul Chandra Mishra (supra), an Special Appeal Defective No.497 of 2016 (State of U.P. and 4 Others Vs. Phul Chandra Mishra and another) came to be preferred which was dismissed on 09.08.2016 and S.L.P. (C) No.36259 of 2016 also came to be rejected on 15.03.2024. Thus, it is submitted that the considerations which weigh the authority in rejecting the claim of the petitioner that there are no circulars or rules provided for the same cannot be accepted.

6. Learned Standing Counsel and Sri Girijesh Kumar Tripathi, learned counsel for respondent Nos.3 to 5 submit that in view of the judgment of co-ordinate Bench of this Court and thereafter upheld by the Hon'ble Apex Court, the matter needs to be revisited.

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

8. The impugned order dated 04.12.2025 reads as under:

"माननीय उच्च न्यायालय इलाहाबाद में योजित याचिका सं०/12875/2025 श्रीमन नारायण दीक्षित बनाम उ०प्र० सरकार व अन्य में पारित आदेश दिनांक 01.09.2025 एवं दिनांक 17.09.2025 का प्रभावी अंश निम्नवत् हैं-

In view of the above, this petition stands disposed of with direction to the respondent no.4 to take into and consider the claim of the petitioner as raised in his representation dated 04.06.2025 and decide the same as expeditiously as possible preferably within a period of two months from the date of production of certified copy of this order. Needless to add, the order to be passed shall be reasoned and speaking one.

माननीय उच्च न्यायालय इलाहाबाद में योजित याचिका सं०/12875/2025 श्रीमन नारायण दीक्षित बनाम उ०प्र० सरकार व अन्य में पारित आदेश दिनांक 01.09.2025 एवं दिनांक 17.09.2025 प्रत्यावेदन सहित मूल सत्य प्रतिलिपि दिनांक 10.10.2025 को कार्यालय में प्रस्तुत की गई। जिसमें कथन किया गया है कि याची की नियुक्ति कार्यालय के आदेश संख्या/शि०सं०/1904/82-83 दिनांक 24.07.1982 को नगर शिक्षा

अधीक्षक कालपी में लिपिक के पद पर हुई थी। तत्पश्चात कार्यालय के पत्रांक / बे०शि०प०/पद०/455/2003-04 दिनांक 26.10.2003 के द्वारा याची की पदोन्नति वरिष्ठ लिपिक के पद पर कार्यालय उप बेसिक शिक्षा अधिकारी जालौन स्थान उरई में की गई थी। तदोपरान्त कार्यालय सचिव उ०प्र० बे०शि०प०, इलाहाबाद के आदेश संख्या-बे०शि०प०/14289-309/2013-14 दिनांक 16.01.2014 द्वारा याची की पदोन्नति प्रधान लिपिक कार्यालय उप बेसिक शिक्षा अधिकारी जालौन स्थान उरई में रिक्त पद के प्रति की गई थी। अभिलेखानुसार याची की जन्मतिथि 01.02.1959 के आधार पर अधिवर्षता आयु के पूर्ण होने पर दिनांक 31.01.2019 को सेवानिवृत्त हुआ। उक्तानुसार अपर निदेशक, कोषागार एवं पेंशन, कमिश्नरी कम्पाउण्ड झांसी के पत्रांक / 8074/अ०नि०को०/एम०आई०-005/194/012322 सी आर 11996 दिनांक 30.03.2019 के द्वारा पेंशन/पेंशन का राशिकरण एवं उपादान (ग्रेच्युटी), सागूहिक बीमा धनराशि का भुगतान प्राप्त हुआ। लेकिन अर्जित अवकाश का नकदीकरण का भुगतान अभी तक नहीं हुआ। इस सम्बन्ध में निवेदन करने पर बताया गया कि परिषदीय कर्मचारियों का यह सुविधा अनुमन्य नहीं है, का कथन किया गया।

सन्दर्भित कम में कार्यालय के पत्रांक कोर्ट फेस/12266/2025-26 दिनांक 29.10.2025 के द्वारा दिनांक 10.11.2025 को सुनवाई निर्धारित की गयी। जिसके क्रम में याची दिनांक 10.11.2025 को सुनवाई में उपस्थित हुए। सुनवाई के उपरान्त प्रकरण के सम्बन्ध में कार्यालय के पत्रांक-13195/2025-26 दिनांक 19.11.2025 के द्वारा वित्त एवं लेखाधिकारी, बेसिक शिक्षा, जालौन स्थान उरई से प्रधान सहायक (परिषदीय संवर्ग) के पद से दिनांक 31.01.2019 को सेवानिवृत्त हुए याची को अर्जित अवकाश नकदीकरण का भुगतान देय है अथवा नहीं के सम्बन्ध में स्पष्ट आख्या चाही गयी। तत्कन में वित्त एवं लेखाधिकारी, बेसिक शिक्षा, जालौन स्थान उरई ने अपने पत्रांक-1732/2025-26 दिनांक 26.11.2025 के द्वारा आख्या प्रस्तुत की गयी। जिसमें कथन किया गया कि प्रकरण का परीक्षण किया गया। परीक्षण में पाया गया कि सेवानिवृत्त कर्मचारी बेसिक शिक्षा परिषद के अन्तर्गत कार्यरत था। शिक्षा निदेशक (३०) उ०प्र० निशातगंज लखनऊ के पत्रांक - दे०शि०प०/प्रबन्ध-1 / 14838/91-92 दिनांक 05.09.1991 के क्रम में उपसचिव उ०प्र० शासन के अर्ध शासकीय पत्र संख्या- 3049/15-5-91-370/82 शिक्षा (5) अनुभाग दिनांक मई 1992 के अनुसार बेसिक शिक्षा परिषदीय कर्मचारियों को सेवा निवृत्ति के पश्चात बचे अवकाश का नकदीकरण की सुविधा दिये जाने के सम्बन्ध से अवगत कराया गया था कि उ०प्र० बेसिक शिक्षा परिषदीय कर्मचारियों को अवकाश का नकदीकरण की सुविधा दिया जाना सम्भव नहीं है।

निष्कर्ष

याची की नियुक्ति कार्यालय के आदेश संख्या/शि०सं०/1904/82-83 दिनांक 24.07.1982 को नगर शिक्षा अधीक्षक कालपी में लिपिक के पद पर हुई थी। तत्पश्चात कार्यालय के पत्रांक / बे०शि०प०/पदी०/455/2003-04 दिनांक 28.10.2003 के द्वारा याची की पदोन्नति वरिष्ठ लिपिक के पद पर कार्यालय उप बेसिक शिक्षा अधिकारी जालौन स्थान उरई में की गई थी। तदोपरान्त कार्यालय सचिव उ०प्र० बे०शि०प०, इलाहाबाद के आदेश संख्या-बे०शि०प०/14289-309/2013-14 दिनांक 16.01.2014 द्वारा याची की पदोन्नति प्रधान लिपिक कार्यालय उप बेसिक शिक्षा अधिकारी जालौन स्थान उरई में रिक्त पद के प्रति की गई थी। शिक्षा निदेशक (बे०) उ०प्र० निशातगंज लखनऊ के पत्रांक- बे०शि०प०/प्रबन्ध-1/14838/91-92 दिनांक 05.09.1991 के क्रम में उपसचिव उ०प्र० शासन के अर्द्ध शासकीय पत्र संख्या-3049/15-5-91-370/82 शिक्षा (5) अनुभाग दिनांक मई 1992 के अनुसार बेसिक शिक्षा परिषदीय कर्मचारियों को सेवा

निवृत्ति के पश्चात बचे अवकाश का नकदीकरण की सुविधा दिये जाने के सम्बन्ध में अवगत कराया गया था कि उ०प्र० बेसिक शिक्षा परिषदीय कर्मचारियों को अवकाश का नकदीकरण की सुविधा दिया जाना सम्भव नहीं है।

निर्णय

याची द्वारा प्रस्तुत प्रत्यावेदन दिनांक 10.10.2025 तथ्यात्मक एवं बलहीन होने के कारण माननीय उच्च न्यायालय इलाहाबाद में पारित आदेश दिनांक 01.09.2025 के अनुपालन में निरस्त कर निस्तारित किया जाता"

9. In Dharmidhar Dubey (supra) following was observed:

"Heard Sri S. C. Pandey, learned counsel for the petitioner and learned Standing Counsel for respondent nos. 1 to 4 and Sri P. D. Tripathi, learned counsel for respondent no.5."

By means of present writ petition, the petitioner has prayed for following relief:-

"A. Issue a writ, order or direction in the nature of mandamus commanding the respondent authority to provide the facility of the leave encasement to the petitioner within specific period as fix by the Hon'ble Court.

B. Issued as writ, order or direction in the nature of mandamus commanding the respondent no.1 to approve the resolution of the respondent no.4 dated 24.02.2006 relating to the payment of the leave encashment after attending the age of 60 years within specific periods as fix by the Hon'ble Court.

C. Issue a writ order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case in the interest of justice.

D. Award the cost of the petition to the petitioner."

Learned counsel for the petitioner submits that the petitioner was initially appointed on 13.07.1965 in city area Mirzapur and thereafter he was transferred in U.P. Basic Shiksha Parishad on 30.07.1981 and finally after completing 41 years 11 months 17 days of his service, had attained the age of superannuation on 30.06.2007.

Learned counsel for the petitioner submits that employees of the recognized school by the U.P. Basic Shiksha Parishad are getting the benefit of leave encashment. In this regard the U.P. Basic Shiksha Parishad, Karmarchari Union through its President had raised grievance before the respondent nos. 2 and 3 and the Director of Basic Education/Chairman of Basic Education Board U.P. was made certain proposal on

24.02.2006 and the same was sent to the State Government for consent.

Learned counsel for the petitioner further submits that certain employee namely Rajeshwar Prasad Singh had filed Claim Petition No. 381 of 1998 before the State Public Services Tribunal, Lucknow and, thereafter, the Tribunal vide order dated 15.05.1999 had given direction to the State Government for providing facility of leave encasement to the employees of U.P. Basic Shiksha Parishad. He further submits that aggrieved with the direction issued by the State Public Services Tribunal, Lucknow, the Zila Basic Shiksha Adhikari, Agra and others had filed Civil Misc. Writ Petition No. 8832 of 2000, which was dismissed by the Division Bench of this Court vide order dated 22.07.2004.

Learned counsel for the petitioner further submits that the order dated 22.07.2004 passed by the Division Bench of this Court had also been assailed before Hon'ble Supreme Court by filling Civil Appeal No(s). 538 of 2007 (Zila Basic Shiksha Adhikari, Agra and others Vs. Rajeshwar Prasad Singhal and others). The said Civil Appeal was dismissed in default vide order dated 10.03.2011.

In these circumstances, learned counsel for the petitioner submits that in the identical facts and circumstances of the case the Division Bench has already decided the controversy in Civil Misc. Writ Petition No. 8832 of 2000 and same has assailed before Hon'ble Supreme Court by filling Civil Appeal No(s). 538 of 2007 (Zila Basic Shiksha Adhikari, Agra and others Vs. Rajeshwar Prasad Singhal and others). The said Civil Appeal was also dismissed in default vide order dated 10.03.2011. Therefore, the petitioner is also entitle for leave encashment and there is no other impediment in not granting the same benefit to the petitioner

It is apparent from the record that learned counsel for the petitioner has already brought on record the order dated 10.03.2011 passed by the Hon'ble Apex Court, by which the S.L.P. which had been filed by the Zila Basic Shiksha Adhikari, Agra, had been dismissed in default, but at the same time it is also apparent that respondents have not brought any thing on record, by which it can be ascertain that order dated 10.03.2011 had been recalled.

Therefore, in view of the above, the writ petition is allowed, with a direction to the respondents to calculate and pay the due amount as payable towards the leave encashment to the petitioner, within a period of two months time from the date of presentation of a certified copy of this order, before him."

10. In **Phul Chandra Mishra (supra)**, following was observed:

"Heard learned counsel for the petitioners and learned Standing Counsel for respondent nos. 1 to 3. Sri P. D. Tripathi appears for respondent nos.4 & 5.

By means of present writ petition, the petitioner has prayed for following relief:-

"i. Issue a writ, order or direction in the nature of mandamus commanding the respondents to provide the facility of leave encasement to the petitioners with immediate effect alongwith interest.

ii. Issue a writ order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case in the interest of justice.

iii. Award the cost of the petition to the petitioner."

Learned counsel for the petitioners submits that the petitioners were initially appointed on 28.4.1979 and 12.2.1974 on the post of Junior Clerk in U.P. Basic Shiksha Parishad and have retired on attaining the age of superannuation 30.6.2014 and 31.7.2014 respectively.

Learned counsel for the petitioners submits that employees of the recognized school by the U.P. Basic Shiksha Parishad are getting the benefit of leave encashment. In this regard the U.P. Basic Shiksha Parishad, Karmarchari Union through its President had raised grievance before the respondent nos. 2 and 3 and the Director of Basic Education/Chairman of Basic Education Board U.P. was made certain proposal on 24.02.2006 and the same was sent to the State Government for consent.

Learned counsel for the petitioners further submits that certain employee namely Rajeshwar Prasad Singh had filed Claim Petition No. 381 of 1998 before the State Public Services Tribunal, Lucknow and, thereafter, the Tribunal vide order dated 15.05.1999 had given direction to the State Government for providing facility of leave encasement to the employees of U.P. Basic Shiksha Parishad. He further submits that aggrieved with the direction issued by the State Public Services Tribunal, Lucknow, the Zila Basic Shiksha Adhikari, Agra and others had filed Civil Misc. Writ Petition No. 8832 of 2000, which was dismissed by the Division Bench of this Court vide order dated 22.07.2004.

Learned counsel for the petitioners further submits that the order dated 22.07.2004 passed by the Division Bench of this Court had also been assailed before Hon'ble

Supreme Court by filling Civil Appeal No(s). 538 of 2007 (Zila Basic Shiksha Adhikari, Agra and others Vs. Rajeshwar Prasad Singhal and others). The said Civil Appeal was dismissed in default vide order dated 10.03.2011.

In these circumstances, learned counsel for the petitioners submits that in the identical facts and circumstances of the case the Division Bench has already decided the controversy in Civil Misc. Writ Petition No. 8832 of 2000 and same has been assailed before Hon'ble Supreme Court by filling Civil Appeal No(s). 538 of 2007 (Zila Basic Shiksha Adhikari, Agra and others Vs. Rajeshwar Prasad Singhal and others). The said Civil Appeal was also dismissed in default vide order dated 10.03.2011. Therefore, the petitioners are also entitle for leave encashment and there is no other impediment in not granting the same benefit to the petitioners.

Learned counsel for the petitioners has already brought on record the order dated 10.03.2011 passed by the Hon'ble Apex Court, by which the S.L.P. which had been filed by the Zila Basic Shiksha Adhikari, Agra, had been dismissed in default, but at the same time it is also apparent that respondents have not brought anything on record, by which it can be ascertained that order dated 10.03.2011 had been recalled.

Therefore, in view of the above, the writ petition is allowed, with a direction to the respondents to calculate and pay the due amount as payable towards the leave encashment to the petitioners, within a period of two months time from the date of presentation of a certified copy of this order, before them."

11. An inter-court appeal against the same came to be dismissed on 09.08.2016 i.e. Special Appeal Defective No.497 of 2016, order whereof is quoted below:

"Heard Sri Q.H. Siddiqui, learned Additional Advocate General assisted by Sri Bhanu Pratap Singh, learned standing counsel for the appellants and Sri Vidya Bhushan Shukla, for the respondents.

The parties are ad idem that the issues raised in this intra court appeal stand concluded in light of the judgment rendered by a Division Bench of the Court in Special Appeal Defective No. 25 of 2016 (The U.P. Basic Shiksha Parishad and 4 others Vs. Dharnidhar Dubey). Dealing with the issue of entitlement of leave encashment facility in respect of Assistant Teachers serving in schools administered by the Basic Shiksha Parishad, the Division Bench held as follows:-

In our view, neither the circular of the Parishad dated 2 December 1994 nor for that matter, the communication of the State Government dated 5 May 1992 would amount to a Rule within the meaning of Section 9. Section 9 of the Act specifically protects the tenure, remuneration and other terms and conditions of service of the transferred employees until they are altered by Rules made by the State Government in that behalf. The silence of the Rules of 1981 cannot be construed as an alteration of an entitlement which existed to leave encashment prior to the transfer of the employees on the appointed date to the Basic Shiksha Parishad. In fact, the record also contains a specific representation made on 24 February 2006 by the Basic Shiksha Parishad to the Special Secretary in the State Government in the Education Department referring to the fact that the facility of leave encashment was available to the employees of the erstwhile local bodies. It was followed by a further communication dated 29 May 2006 of the Director of Basic Education to the Joint Secretary in the Education Department once again reiterating the same position. The issue is whether the entitlement to leave encashment which would be protected by Section 9 of the Act in the case of transferred employees was altered by any Rule. The answer must be in the negative.

The State has not been able to place before this Court any such Rule altering the entitlement. The communication of the State Government dated 5 May 1992 read with the circular of the Board dated 2 December 1994 cannot be regarded as a Rule within the meaning of Section 9. Hence, we see no merit in the contention that silence of the rules amounted to an alteration in the service conditions of transferred employees.

Accordingly and for the reasons noted above, this Special Appeal shall stand dismissed."

12. Finally, SLP came to be rejected on 15.03.2024, the order whereof is extracted as under:

"We are not inclined to interfere with the impugned judgment and order of the High Court. Accordingly, the Special Leave Petition is dismissed.

Pending application(s), if any, shall stand disposed of."

13. Accordingly, the order dated 14.12.2025 passed by respondent No.4-District Basic Education Officer, Jalaun is set aside. The matter stands remitted back to the authority to pass a fresh order within a period of two

months.

14. With the above observations, the writ petition stands disposed of.

(Vikas Budhwar,J.)

January 9, 2026
Rajesh