



2026:AHC-LKO:8765-DB

Reserved on: 13.01.2026

Delivered on: 05.02.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 239 of 2023

State of U.P. Thru. Prin. Secy. Deptt. of Technical Edu. Govt. of
U.P. Lko. and 3 others

.....Appellant(s)

Versus

Rajendra Dutt Sharma

.....Respondent(s)

Counsel for Appellant(s) : C.S.C.,
Counsel for Respondent(s) : Mohammad Tauseef Siddiqui,

Along with :

Special Appeal No. 238 of 2023:

State of U.P. Thru. Prin. Secy. Deptt. of Technical Edu.

1. Govt. of U.P. Civil Sectr. Lko. and others

Versus

Rajesh Kumar Mishra

Special Appeal No. 240 of 2023:

State of U.P. Thru. Prin. Secy. , Forest Deptt. U.P. Civil

2. Sectr. Lko. and others

Versus

Ram Achal

Special Appeal No. 242 of 2023:

State of U.P Thru. Prin. Secy. Deptt. Technical Education

3. Govt. Civil Sectr. Lko. and 3 others

Versus

Maslahuddin and 4 others

4. **Special Appeal No. 257 of 2023:**

State of U.P. Thru. Prin. Secy. Deptt. of Food and Civil
Supplies Govt. of U.P. Lko. and others

Versus

Deep Chand Yadav

Special Appeal No. 260 of 2023:

5. State of U.P. Thru. Addl. Chief Secy. Deptt. of Public Works Deptt. Govt. of U.P. Lko. and others

Versus

Ahibaran Sinh Yadav

Special Appeal No. 303 of 2023:

6. State of U.P. Thru. Prin. Secy. Rural Engineer Services U.P. Civil Secrett. Lko. and others

Versus

Smt. Janki Devi

Special Appeal No. 304 of 2023:

7. State of U.P. Thru. Prin. Secy. Public Works Deptt. Lko. and 2 others

Versus

Shiv Kumar Gaur

Special Appeal No. 308 of 2023:

8. State of U.P. Thru. its Prin. Secy. Public Works Deptt. Sectt. Lko. and others

Versus

Smt. Sukhrani (Deceased) Thru. Legal Heirs Rajesh

Special Appeal No. 314 of 2023:

9. State of U.P. Thru. Prin. Secy. Revenue , Lucknow and others

Versus

Shri Vijay Pratap Singh and Ors.

Special Appeal No. 315 of 2023:

10. State of U.P. Thru. Secy. Deptt. Irrigation, U.P. Lucknow and others

Versus

Mata Prasad Tiwari

Special Appeal No. 345 of 2023:

11. State of U.P. Thru. Secy. Irrigation Deptt. U.P. Govt. Civil Secrett. Lko. and others

Versus

Raja Ram and another

12. **Special Appeal No. 353 of 2023:**

State of U.P. Thru. Addl. Chief Secy. Deptt. of Revenue

Govt. of U.P. Civil Sectr. Lko. and others

Versus

Moti Ram Singh and others

Special Appeal No. 354 of 2023:

State of U.P. Thru. Addl. Chief Secy. Deptt. of Revenue

13. Govt. of U.P. Civil Sectr. Lko. and others

Versus

Bachchoo Lal

Special Appeal No. 355 of 2023:

State of U.P. Thru. Addl. Chief Secy. Sinchai Evam Jal

14. Sansadhan U.P. Govt. Lko. and others

Versus

Raja Ram Mishra

Special Appeal No. 375 of 2023:

State of U.P. Thru. Secy. Rajya Sampatti Vibhag Civil Sectr.

15. Lko. and others

Versus

Ram Bhajan

Special Appeal No. 379 of 2023:

State of U.P. Thru. Secy. Irrigation Deptt. Civil Sectr. Lko.

16. and others

Versus

Chhotey Lal and another

Special Appeal No. 382 of 2023:

State of U.P. Thru. Prin. Secy. Food and Civil Supplies

17. Govt. of U.P. Lko. and others

Versus

Ashok Kumar

Special Appeal No. 386 of 2023:

State of U.P. Thru. Prin. Secy. Public Works Deptt. U.P.

18. Civil Sectr. Lko. and others

Versus

Umakant Mishra

Special Appeal No. 387 of 2023:

State of U.P. Thru. Prin. Secy. Public Works Deptt. U.P.

19. Lucknow and others

Versus

Sankata Prasad Pandey and another

20. **Special Appeal No. 395 of 2023:**

State of U.P. Thru. Secy. Minority Welfare and Muslim
Waqf Minority Welfare Deptt. Lko. and others

Versus

Mohsin Murtaza Rizvi

Special Appeal No. 398 of 2023:

21. State of U.P. Thru. the Prin. Secy. Deptt. of Irrigation U.P.
Sectt. Lko. and others

Versus

Anil Kumar Kapoor

Special Appeal No. 403 of 2023:

22. State of U.P. Thru. Addl. Chief Secy. Deptt. Revenue, U.P.
Lucknow and 3 others

Versus

Guru Narayan

Special Appeal No. 404 of 2023:

23. State of U.P. Thru. Prin. Secy. Public Works Deptt. Civil
Sectt. Lko and 3 others

Versus

Ambika Prasad

Special Appeal No. 431 of 2023:

24. State of U.P. Thru. Prin. Secy. P.w.d. Civil Sectt. Lko. and
2 others

Versus

Sant Ram

Special Appeal No. 432 of 2023:

25. State of U.P. Thru. Prin. Secy., Public Works Deptt.,
Lucknow and 3 others

Versus

Ramdev and another

Special Appeal No. 433 of 2023:

26. State of U.P. Thru. Addl. Chief Secy. Prin. Secy. Youth
Welfare Deptt. P.r.d. Lko. and another

Versus

Ajay Kumar Srivastava

Special Appeal No. 436 of 2023:

27. State of U.P. Thru. Prin. Secy. Rural Eng. Deptt. Lko. and
2 others

Versus

Shatrughan Prasad Tiwari and another

- Special Appeal No. 437 of 2023:**
State of U.P. Thru. Addl. Chief Secy. / Prin. Secy. Deptt.
28. Revenue Lko. and 2 others

Versus

Shailendra Kumar Sharma @ Shailendra Sharma

- Special Appeal No. 440 of 2023:**
State of U.P. Thru. the Addl. Chief Secy./Prin. Secy. Public
29. Works Deptt. U.P. Lko. and others

Versus

Lalta Prasad Tiwari

- Special Appeal No. 450 of 2023:**
State of U.P. Thru. the Secy. Deptt. of Estate, Civil Sectt.
30. Lko. and another

Versus

Ravindra Nath Srivastava and 2 others

- Special Appeal No. 453 of 2023:**
State of U.P. Thru. Prin. Secy. Public Works Deptt. Civil
31. Secrett. Lko. and 3 others

Versus

Srichand Dubey and another

- Special Appeal No. 500 of 2023:**
Jal Kal Vibhag Nagar Nigam Lko. Thru. General Manager
32. and another

Versus

Ravi Prakash Srivastava

- Special Appeal No. 8 of 2024:**
State of U.P. Thru. Prin. Secy. Rural Engineering Deptt.
33. Govt. U.P. Lucknow and others

Versus

Santosh Kumar Shukla

- Special Appeal No. 55 of 2024:**
State of U.P. Thru. Prin. Secy. Public Works Deptt. Lko.
34. and another

Versus

Vinod Kumar Awasthi

Court No. - 1

HON'BLE RAJAN ROY, J.

HON'BLE ABDHESH KUMAR CHAUDHARY, J.

(Per: Rajan Roy, J.)

(1) Heard.

(2) This is a bunch of special appeals filed by the State and its officials under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 (hereinafter referred to as 'the Rules, 1952') challenging a judgment and order dated 17.02.2023 passed by learned Single Judge Bench allowing a bunch of writ petitions.

(3) The facts of the case in brief are that respondents-petitioners were engaged on daily wages, work-charge, adhoc etc. basis. Their services were subsequently regularized as per rules. These respondents-petitioners preferred a writ petition seeking directions for counting their services rendered as aforesaid on daily wages, work-charge, adhoc etc. basis also for the purposes of computing qualifying service for payment of pension under the Old Pension Scheme. It is claimed by the appellants that at the time of filing of the writ petition, most of the respondents-petitioners had retired.

(4) The writ petitions were filed on the strength of decision of Hon'ble the Supreme Court rendered in the case of '**Prem Singh vs. State of U.P. & Ors.**' reported in (2019) 10 SCC 516 and other decisions rendered on its basis. However, subsequent to the decision of Hon'ble the Supreme Court in **Prem Singh (supra)**, U.P. Ordinance No.19 of 2020 i.e. the U.P. Qualifying Services for Pension and Validation Ordinance, 2020 was published on 21.10.2020 which ultimately became an Act, namely, U.P. Qualifying Service for Pension and Validation Act, 2021 (hereinafter referred to as the Act, 2021). By means of this Act, the definition of the 'qualifying service' contained in Section

2 of the U.P. Retirement Benefit Rules, 1961 (hereinafter referred to as 'the Rules, 1961') was redefined. This Validation Act was enacted so as to take away the basis of the decision of Hon'ble the Supreme Court in **Prem Singh** (supra) and avoid its consequences. The validity of the Act, 2021 is under challenge in a bunch of petitions filed before Hon'ble the Supreme Court. Some petitions have been filed before this Court also. These facts were admitted to all the parties during the course of hearing.

(5) Be that as it may, learned Single Judge has allowed the writ petition filed by the respondents-petitioners by reading down Section 2 of the Validation Act, 2021. The contention of learned counsel for the appellants is that without there being any challenge to the vires of the said provision or any other provision of the Validation Act, 2021 and without there being any pleading in any of the writ petitions in this regard nor any argument having been advanced during course of hearing on this issue, learned Single Judge has read down the provision and allowed the writ petition which is apparently erroneous both on facts and in law. Further, vires of the aforesaid enactment was already in issue before Hon'ble the Supreme Court, therefore, for this reason also there was no occasion for the learned Single Judge to have embarked on exercise of reading down, as aforesaid.

(6) Learned counsel for the respondents-petitioners were confronted in this regard, whereupon they very fairly submitted that there were no such pleadings before the writ court. In fact, during course of arguments before the learned Single Judge also this issue of applying the principle of reading down did not

come up at all, but, learned Single Judge has decided the writ petition on the strength of the said principle.

(7) We have gone through the decision impugned before us as also the pleadings etc. and find that without any challenge to the vires of Validation Act, 2021 or any provision contained therein and without putting the State to notice that the court intended to apply the principles of reading down, assuming it could have been done in the absence of any such challenge, the impugned judgment has been passed, reading down Section 2 of the Act, 2021 and thereby holding that the services rendered by the respondents-petitioners on temporary/ permanent post should be read as work taken from a person on a position, be it temporary or permanent, otherwise, it would be hit by judgment of Hon'ble the Supreme Court in the case of **Prem Singh (supra)**. In fact, in this process, learned Single Judge has also considered as to on what ground the Validation Act, 2021 can be passed ignoring the fact that there was no such challenge to the Validation Act, 2021 in any of the writ petitions nor any pleadings in this regard. The very purpose of pleadings is to let the other side know the case of the petitioner so that it may respond to it. The State could not be taken by surprise in the adjudication of the writ petitions before the learned Single Judge in such a manner.

(8) We may in this very context refer to the law pertaining to principle of reading down and its application to a statute as reported in (2011) 13 SCC 262 '**State of Rajasthan & Ors vs. Sanyam Lodha**' wherein their lordships held in para 12 as under:-

"12. It is true that any provision of an enactment can be read down so as to erase the obnoxious or unconstitutional element

in it or to bring it in conformity with the object of such enactment. Similarly, a rule forming part of executive instructions can also be read down to save it from invalidity or to bring it in conformity with the avowed policy of the Government. When courts find a rule to be defective or violative of the constitutional or statutory provision, they tend to save the rule, wherever possible and practical, by reading it down by a benevolent interpretation, rather than declare it as unconstitutional or invalid. But such an occasion did not arise in this case as there was no challenge to the validity of Rule 5 and the parties were not at issue on the validity of the said Rule. We are therefore of the view that in the absence of any challenge to the Relief Fund Rules and an opportunity to the State Government to defend the validity of Rule 5, the High Court ought not to have modified or read down the said Rule."

(9) We may then refer to another decision of Hon'ble the Supreme Court reported in AIR 2023 SC 1685 '**Arup Bhuyan v. State Of Assam & Anr**' wherein three judges' Bench of Hon'ble the Supreme Court was considering a reference made to it regarding correctness of certain other earlier decisions in the case of Arup Bhuyan vs. Union of India reported in (2011) 3 SCC 377 as well as '**State of Kerela vs. Raneef**' reported in (2011) 1 SCC 784. In that context, Hon'ble the Supreme Court considered the reading down of Section 10(a)(i) of the UAPA, 1967. Para no.11 to 11.5 are quoted hereinbelow:-

"11. In light of the aforesaid factual aspects let us now consider the correctness of the decisions of this Court in the case of Raneef: (AIR 2011 SC 340)(supra), Arup Bhuyan : (AIR 2011 SC 957) (supra) and Indra Das : (2011 AIR SCW 1223) (supra):

11.1. Now so far as the reading down of Section 10(a)(i) of the UAPA, 1967 by this Court in the case of Arup Bhuyan : (AIR 2011 SC 957) (supra) is concerned, at the outset it is required to be noted that such reading down of the provision of a statute could not have been made without hearing the Union of India and/or without giving any opportunity to the Union of India.

11.2. When any provision of Parliamentary legislation is read down in the absence of Union of India it is likely to cause enormous harm to the interest of the State. If the opportunity would have been given to the Union of India to put forward its case on the provisions of Section 10(a)(i) of the UAPA, 1967, the Union of India would have made submissions in favour of Section 10(a) (i) of the UAPA including the object and purpose for enactment of such a provision and even the object and purpose of UAPA. The submission made by Shri Parikh, learned Senior Counsel relying upon the decision of this Court in the case of Sanjeev Coke: (AIR 1983 SC 239)(supra) that it is ultimately for the Court to interpret and read down the provision to save any provision from declaring as unconstitutional is concerned, it is true that it is ultimately for the Court to interpret the law and/or particular statute. However, the question is not the power of the Courts. The question is whether can it be done without hearing the Union of India?

11.3. Even otherwise in absence of any challenge to the constitutional validity of Section 10(a)(i) of the UAPA there was no question of reading down of the said provision by this Court.

Therefore, in absence of any challenge to the constitutional validity of Section 10(a)(i) of UAPA, 1967 there was no occasion for this Court to read down the said provision.

11.4. Even otherwise as observed and held by this Court in the case of Subramanian Swamy and others v. Raju through Member, Juvenile Justice Board and Anr., (2014) 8 SCC 390 : (AIR 2014 SC 1649) reading down the provision of a statute cannot be resorted to when the meaning of a provision is plain and unambiguous and the legislative intent is clear. This Court has thereafter laid down the fundamental principle of "reading down doctrine" as under:

"Courts must read the legislation literally in the first instance. If on such reading and understanding the vice of unconstitutionality is attracted, the courts must explore whether there has been an unintended legislative omission. If such an intendment can be reasonably implied without undertaking what, unmistakably, would be a legislative exercise, the Act may be read down to save it from unconstitutionality. At the cost of repetition, it is observed that reading down a particular statute

even to save it from unconstitutionality is not permissible unless and until the constitutional validity of such provision is under challenge and the opportunity is given to the Union of India to defend a particular parliamentary statute".

11.5. In view of the above in all the aforesaid three decisions, this Court ought not to have read down Section 10(a)(i) of the UAPA, 1967 more particularly when neither the constitutional validity of Section 10(a)(i) of the UAPA, 1967 was under challenge nor the Union of India was heard."

(10) The decision in the case of **Sanyam Lodha (supra)** was followed in a subsequent decision of Hon'ble the Supreme Court reported in AIR 2025 SC 195 '**Allahabad University etc. vs. Geetanjali Tiwari (Pandey)**'. In fact the law as to reading down of provision of a statute was extensively dealt with in the said decision.

(11) From the above decisions, it is clear that one of the requirements for applying the principle of reading down is that the constitutionality/ vires of a statutory provision or a statute itself should be under challenge and also that the Union of India or the State as the case may be should have notice of such challenge or intention to read down the provision. Further, there should be requisite pleadings in this regard. Bereft of the aforesaid, reading down of any provision by the court would be arbitrary. Learned Single Judge of this Court in the case of '**Kanai Ram & Ors. vs. State of U.P. & Ors.**' reported in (2024) 9 ADJ 92 has also considered this very aspect. In fact, he has referred to an earlier decision by the Supreme Court of India in the case of '**Coal India Ltd. and Anr. vs. Competition Commission of India**' reported in (2023) 10 SCC 345 wherein one of the arguments was that there was no challenge mounted to the vires

of the Act thus there was no scope for reading down the law in the absence of the challenge. This was considered and answered by Hon'ble the Supreme Court in para 128 as under:-

"128. There are certain salient features to be noticed. In the first place, there is no challenge to the Act. Secondly, taking the Act as it plainly reads, the power to order division and, what is more, all the things enumerated in Section 28(2), are clearly conferred on CCI. Apart from the general non obstante clause contained in Section 60 of the Act, a noticeable feature about Section 28 of the Act is that it is made even more clear, apparently, by way of abundant caution in Section 28(1), that all that CCI could order would be notwithstanding anything contained in any other law for the time being in force. Parliament has authored both the Nationalisation Act as also the Act. There is no question of lack of legislative competence. We are not called upon to pronounce on the vires of the Act. There is absolutely no scope, at any rate, for reading down the provision even proceeding on the basis that an attempt can be made even in the absence of the challenge. The words of the provision do not admit of reading down the same. What follows is, therefore, Parliament has intended, in order to ensure the proper implementation of the Act, confer power to order division of an enterprise enjoying dominant power. This would include the appellants as well. We must, no doubt, understand the provision to mean that it is not a power to be exercised lightly. It is a special power intended to ensure prevention of abuse of dominant position. The generality of the power is revealed in Section 27. We incidentally notice that though there can be abuse of dominant position by an enterprise and a group, which is sought to be prohibited, Section 28 speaks about the division of an enterprise. Having regard to the discussion above, we find no merit in the case sought to be made for escaping from the net of the Act."

(12) Based on the aforesaid, learned Single Judge in the case of **Kanai Ram (supra)** opined that doctrine of reading down cannot be invoked where there is no challenge raised to the vires of a statute. Learned Single Judge also distinguished application

of principle of reading down vis-a-vis harmonious construction of different provisions of the statute.

(13) In this case, apart from there being no challenge to constitutionality of the Validation Act, 2021 or any part of it, there was absolutely no pleading in the writ petitions in this regard or in respect of reading down nor was this issue debated, discussed and argued during hearing as accepted by learned counsel for the respondents-petitioners especially Dr. Ramesh Kumar Srivastava.

(14) As the entire judgment which is impugned herein is based on reading down of Section 2 of Validation Act, 2021 which could not have been done in view of the law as discussed hereinabove, therefore, we are of the opinion that the judgment in question cannot be sustained on this count. We, accordingly, set aside the judgment impugned. Consequently, all the writ petitions shall stand restored to their original number and shall now be considered as per law by the appropriate Single Judge Bench.

(15) Accordingly, the appeals are **allowed**.

(16) Let all the writ petitions out of which these appeals arise be listed before the learned Single Judge on 09.03.2026.

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

February 5th, 2026
Shanu/-