



2026:AHC:22420

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 17034 of 2025

Kripa Shankar Mishra

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s) : Ajit Dwivedi, C.S.C., Shivendu Ojha, Sr. Advocate

Counsel for Respondent(s) :

Court No. - 33

HON'BLE VIKAS BUDHWAR, J.

1. Heard Sri R.K. Ojha, learned Senior Counsel assisted by Sri Ratnakar Upadhyay, learned counsel for the writ petitioner and Sri Pramod Kumar Srivastava, learned Additional Chief Standing Counsel for the State.

2. A counter affidavit has been filed on behalf of the respondents no. 1 to 3 sworn by SSP, Police, Legal Cell, Police Headquarters, Allahabad dated 29.01.2026 which is taken on record.

3. The case of the writ petitioner is that in pursuance of the recruitment drive so sought to be initiated by the respondents, the writ petitioner applied for the post of Deputy Superintendent of Police under the dependent of freedom fighter category. The selection year of the writ petitioner is 1985 and he came to be appointed as Deputy Superintendent of Police on 05.01.1989. However, owing to a complaint lodged against the entitlement of the writ petitioner to be under freedom fighter category, the writ petitioner was placed under suspension on 02.06.2001 and thereafter, on 10.10.2001, an order came to be passed for withdrawal of the recommendation by the UP Public Service Commission and thereafter, a consequential order came to be passed on 23.03.2004 and 22.04.2010 removing the writ petitioner from the post of Deputy Superintendent of Police under freedom fighter category. The writ petitioner challenged the said orders while filing Writ Petition No. 966(SB) of 2010 which came to be decided on 21.09.2011.-

"Heard Sri S.K. Kalia, Senior Advocate for the petitioner, Sri Anuj Kuddesia for the State and Sri Rajnish Kumar for the opposite party no. 2.

The petitioner, Sri Kripa Shanker Misra, challenges the order of withdrawal of recommendation dated 10.10.2001 passed by the U.P. Public Service Commission(hereinafter referred to as 'the Commission') for his appointment on the post of Deputy Superintendent of Police under the Dependent of freedom fighter category and the order dated 23.03.2004 in compliance whereof the impugned order dated 22.04.2010 has been passed removing the petitioner from service, after holding that he has failed to substantiate that he was dependent of freedom fighter, under which quota his appointment was made based on the recommendation of the Commission. The candidature of the petitioner has been rejected by the Commission and consequently he has been removed from the service.

The petitioner appeared in the combined State Service Examination in the year 1985, conducted by the U.P. Public Service Commission, wherein he claimed his appointment under the quota of dependent of freedom fighter. In pursuance of the aforesaid selection, the petitioner was appointed on the post of Deputy Superintendent of Police in the year 1989 and had been working as such ever since then.

It appears that on some complaints being made that the petitioner has incorrectly shown him to be the dependent of freedom fighter, various enquiries were conducted and ultimately the impugned order has been passed on 22.04.2010 by the State Government in the wake of withdrawal of recommendation and cancellation of the candidature of the petitioner by the Commission.

The controversy thus revolves around the questions namely, (1) whether the petitioner could have claimed his appointment under the quota of dependent of freedom fighter and (2) whether the procedure adopted by the Commission as well as the respondent State in holding enquiries conforms to the principle of natural justice and whether the impugned orders can be said to have been passed keeping in view the principle of natural justice or in violation thereof.

It would be pertinent to mention here that in various enquiries which have been conducted by different officers, the petitioner was never associated with any such enquiry, a fact, which is not disputed by the respondents and rather stands admitted that the enquiries which were conducted by the Revenue Officer and the Sub Divisional Magistrate, of their own, where the petitioner was not included in any such enquiries.

The relevant facts which gave rise to the controversy can be summarized as under:-

The petitioner claimed that his grand father namely, late Sri Yaduvanshi Mishra suffered gun shot injury in Kahala Goli Kand on 16.02.1931 when he was participating in the fight of freedom and the petitioner is dependent of late Yaduvanshi

Mishra. Sri Yaduvanshi Mishra died in the year 1966.

Since the provision for award of freedom fighter pension was introduced in the year 1972, i.e. after the death of late Sri Yaduvanshi Mishra, therefore, there was no occasion for him to claim pension, as a freedom fighter.

The Government Order dated 15.01.1983 was issued laying down the conditions for issuance of certificate to dependent of freedom fighter for the purposes of taking benefit in the matter of employment in the government service. The first clause of the aforesaid Government order provided that freedom fighter would mean a person who has taken part in the Indian freedom struggle and remained in imprisonment at least for a period of two months or has remained in house arrest or was an under trial prisoner in Jail at least for a period of three months or has suffered a sentence of ten Kora (Whip) or he was declared absconding or has suffered bullet injury or has attained martyrdom. Besides this there were certain other conditions which entitle a person to be a dependent of freedom fighter and seek employment in the government service.

The petitioner applied for his appointment under the aforesaid combined examination under the quota of dependent of freedom fighter but he did not furnish any such certificate at the time of submitting his application form. On his selection being made, which, of-course, was provisional selection subject to furnishing of necessary certificate of dependent of freedom fighter, the Commission asked the petitioner to furnish the said certificate, to which the petitioner replied saying that the same was under process before the District Magistrate Pratapgarh. On 16.10.1987, the District Magistrate Pratapgarh requested the State Government for guidance in the matter and the State Government on 18.11.1987 clarified that the grant of certificate may be considered in the light of the Government order dated 15.01.1983.

On 20.01.1988 the Commission wrote a letter to the District Magistrate, Pratapgarh about the certificate of dependent of freedom fighter in respect of the petitioner and on 2.2.1988 the District Magistrate Pratapgarh issued a certificate certifying petitioner's grandfather, a freedom fighter and petitioner, his dependent.

Prior to the issuance of the said certificate by the District Magistrate, the same District Magistrate Sri B.N. Pandey had refused to issue certificate on 03.12.1987 after observing that he was not dependent of freedom fighter but any how, the same very officer on making further enquiries, being satisfied that the petitioner was a dependent of freedom fighter, issued the said certificate on 02.02.1988. The said certificate was made available to the Commission by the District Magistrate, Pratapgarh on 04.02.1988. On 29.02.1988, the certificate was issued to the petitioner in the prescribed form. However, the Commission did not stop at this juncture and the Commission wrote a letter to the District Magistrate, Pratapgarh on 27.07.1988 enquiring about the genuineness of the certificate as there were complaints that the

certificate was forged. On 02.08.1988 the then District Magistrate, Pratapgarh enquired into the matter and submitted his report before the Commission, stating that the certificate was not forged.

On 17.01.1989 the Commission again wrote a letter to the District Magistrate, Pratapgarh saying that the Commission is sending a recommendation to the Government for appointment of the petitioner on the post of Deputy Superintendent of Police, however an unknown complaint has been received in which it has been stated that the certificate was wrongly issued. The then District Magistrate on 31.01.1989 informed the Commission that the certificate was authentic and was issued under the relevant Government Orders.

In the background of the aforesaid facts, the State Government issued the appointment order in the year 1989 to the petitioner. Soon thereafter one Sri Rajan Babu, who also appeared in the said selection and was unsuccessful and was later appointed in the Commission on the post of LDA made a complaint against the petitioner regarding authenticity of the certificate. On this complaint, the Commission required the District Magistrate to enquire into the complaint, of Sri Rajan Babu on 26.12.1989.

The District Magistrate Smt. Harjeet Singh Kaur Sandhu appointed the Sub Divisional Magistrate, Patti as Enquiry Officer on 22.06.1990. Smt. Harjeet Singh Kaur Sandhu, on the basis of the report submitted by Sub Divisional Magistrate, Patti, on 04.09.1990 found that it was not possible to verify the certificate issued by the earlier District Magistrate Sri B.N. Pandey. She placed reliance upon the report of the Sub Divisional Magistrate, Patti, who in turn had relied upon the statement of Sri Rama Kant Tripathi, the then Gram Pradhan who was only of 56 years of age at that time and thus was not even born when Kahala Goli Kand took place on 16.02.1931.

After receiving the aforesaid report of the District Magistrate, Smt. Harjeet Singh Kaur Sandhu the Commission again on 09.07.1991 wrote a letter to the District Magistrate, Pratapgarh saying that it would be relevant to enquire the matter from those persons who had given statement that late Yaduvanshi Mishra had received gun shot injury in Kahala Goli Kand in the year 1931. One freedom fighter Sri Ram Raj Shukla had given one more certificate on 09.01.1992 saying that late Yaduvanshi Mishra was a freedom fighter.

Since the report of Smt. Harjeet Singh Kaur Sandhu, was based upon the statement of such persons who could not have personal knowledge of the incident of the year 1931 and there were contrary reports also, it appears that the State Government asked the District Magistrate, Pratapgarh Sri J.D. Puri on 07.09.1992 to enquire with the matter in detail and submit his enquiry report to the Government.

Sri J.D. Puri, the District Magistrate, submitted his report on 11.04.1993 to the Government certifying that the certificate issued by Sri B.N. Pandey, the then District

Magistrate, Pratapgarh was genuine and authentic and that it was issued under the relevant Government Order, after obtaining the certificates of two freedom fighters. The District Magistrate Sri J.D. Puri also observed that there were no grounds to believe the report of the the District Magistrate Pratapgarh, Smt. Harjeet Singh Kaur Sandhu, moreso when her report was based on the statement of Sri Rama Kant Tripathi.

Despite the aforesaid report of Sri J.D. Puri, the District Magistrate, the Government issued a show cause notice to the petitioner on 25.11.1994 requiring him to explain as to why his services be not terminated on the ground of misconduct since he secured appointment as a dependent of freedom fighter.

This show cause notice was challenged by the petitioner by filing Writ Petition No. 33 of 1995 (SB) wherein the operation thereof was stayed vide order dated 31.01.1995. The State, ignoring the order dated 31.01.1995, passed by this Court, lodged an FIR against the petitioner on 08.03.2001 in Police Station Hazratganj, at case Crime No. 87 of 2011, under sections 420,467,468,471 IPC, in which after investigation made by the police, a final report was filed, which was accepted by the Magistrate concerned on 09.12.2002.

The petitioner was thereafter suspended vide order dated 02.06.2001 on the allegation that he submitted forged certificate for obtaining appointment order. This suspension order was again challenged by filing Writ Petition No. 1548 (SB) of 2001, wherein no interim order was passed but later on during pendency of the said writ petition, one M.L.A. Sri Sanjay Garg raised a question in the session of the Assembly in year 2001 about the genuineness of the aforesaid certificate issued to the dependent of freedom fighter to which the Ashwasan Samiti of the Vidhan Sabha submitted its report confirming that the certificate issued in favour of the petitioner was valid and genuine.

The Hon'ble Minister of Karagar and Political Pension also gave statement in writing to the Assembly that the certificate was true and genuine in nature. Meanwhile the Commission wrote a letter to the State Government on 10.10.2011 regarding its decision of cancellation of petitioner's candidature and withdrawal of its recommendation of appointment of petitioner on the post of Deputy Superintendent of Police. However, the Home Department sent a letter to the Commission on 18.12.2003 saying that the candidature of the petitioner should be reconsidered according to the report of Sri J.D. Puri, final report of police and the report of Assurance Committee of the Assembly so that he may be reinstated in service. The Commission, however, refused to reconsider the matter on 23.04.2004. Aggrieved, the petitioner preferred Writ Petition No. 10240 of (SB) 2006, later on, the petitioner withdrew the said writ petition and the State was given liberty to take final decision in the matter. The State Government, however, on the basis of the report submitted by Smt. Harjeet Singh Kaur Sandhu, the District Magistrate, Pratapgarh, has passed the impugned order.

A perusal of the order passed by the State Government reveals that the report submitted by Smt. Harjeet Singh Kaur Sandhu the then District Magistrate, Pratapgarh is the main basis for removal of the petitioner from service. Also, since, the Commission recommended withdrawal of the candidature of the petitioner, therefore, the State Government appears to have passed the aforesaid order.

At the outset, the State and the Commission could not explain that when there were numerous reports of different District Magistrates, and that the report submitted by Smt. Harjeet Singh Kaur Sandhu was not accepted by the Commission as well as by the State Government and also when a detailed enquiry was required to be conducted by Sri J.D. Puri, District Magistrate, who submitted his report in favour of the petitioner, then under what circumstances and why the aforesaid reports were not considered and the report of Smt. Harjeet Singh Kaur Sandhu was made the basis of the impugned order.

Once the report of Smt. Harjeet Singh Kaur Sandhu was not acted upon and further enquiry was ordered to be made, it was incumbent upon the State Government and the Commission to consider the report of Sri J.D. Puri. If Sri Puri's report or other enquiries conducted in relation to the petitioner's matter were not satisfactory in the opinion of the State Government or the Commission, then remedial measures ought to have been taken. But in any case, placing reliance upon a report which did not attain finality and which was not accepted by the State Government or the Commission, cannot be said to be in consonance with the principles of natural justice.

This apart, the petitioner was not associated with the enquiry said to have been made by the Sub Divisional Magistrate, Patti or any other enquiry of the like nature, and on all the occasions whenever any enquiry was conducted by any officer, the petitioner was neither associated nor his views were called for consideration. The petitioner was issued a show cause notice but he was not afforded any opportunity to participate in the enquiry despite he being suspended for the aforesaid charge and despite writ petition preferred by him having been withdrawn with liberty to the State Government to take final decision after taking the enquiry to its logical conclusion, the State did not issue even a charge sheet but passed the impugned order, merely on issuance of show cause notice.

It is not a case of cancellation of appointment for any reason which could be attributable to the petitioner, but it is a case where the State Government and the Commission plead specific misconduct on the part of the petitioner for obtaining the appointment by giving forged certificate.

That being so, the petitioner being a confirmed Government servant, he could not have been removed from service without holding due enquiry in accordance with law. Even if the petitioner has been removed by the State Government on the basis of the withdrawal of the recommendation by the Commission or cancellation of his candidature, the removal of the petitioner could not have been ordered unless due

opportunity was afforded to the petitioner and all the relevant material had been taken into consideration.

In view of the admitted position that the petitioner was not associated in any of the enquiries and that no charge sheet was issued to him, but the impugned order was passed merely on a show cause notice issued, on the basis of the letter of the Commission, where the latest report of Sri J.D. Puri and the report of the Home Department were not considered nor other reports were considered including the final report and the statement given by the Minister of the House, the impugned order cannot be sustained, which is based on the report of Smt. Harjeet Singh Kaur Sandhu, the then District Magistrate, which cannot be relied upon for the reasons given above.

It is also to be mentioned here that the certificate issued to the petitioner has not yet been cancelled by the competent authority and therefore, it is extremely doubtful whether in the absence of certificate being cancelled, the Commission could have withdrawn its recommendation for appointment, though, it is a different matter that on enquiries being made and the certificate having been found to be forged or that the petitioner was not found entitled for being declared as dependent of freedom fighter, appropriate action could have been taken and the certificate can be cancelled.

We, therefore, quash the order of withdrawal of recommendation dated 10.10.2001 passed by the U.P. Public Service Commission for appointment of the petitioner and the order dated 23.03.2004 in compliance whereof the impugned order dated 22.04.2010 has been passed removing the petitioner from service and direct that the petitioner shall be reinstated in service forthwith. It will be open for the respondents to hold enquiry afresh and pass appropriate orders after affording due opportunity to the petitioner.

The writ petition is allowed. No orders as to cost. "

4. Post passing of the order by the writ court on 22.09.2011 in Writ Petition No. 966 (SB) of 2010, the respondents in view of the liberty so accorded, conducted the inquiry and thereafter, the inquiry report came to be submitted on 28.09.2024 whereby the writ petitioner was found to be eligible under the freedom fighter category. However, the writ petitioner was accorded joining on 31.12.2012 and on the said date, the writ petitioner also superannuated. However, now the order impugned dated 16.10.2024 has been passed by the Additional Chief Secretary on behalf of the State negating the claim of the writ petitioner for grant of monetary benefits while applying the doctrine of no work no pay.

5. Questioning the said order insofar as he denies grant of salary and other

monetary benefits, the present writ petition has been preferred.

6. Learned Senior Counsel for the writ petitioner. Accordingly, the order came to be passed on 16.10.2024 in favour of the writ petitioner. The writ petitioner has submitted that the order impugned dated 16.10.2024 passed by the first respondent insofar as it denies salary cannot be sustained for a single moment particularly when the adverse orders which came to be passed cancelling the recommendation for selection and the appointment for the post of Deputy Superintendent of Police under freedom fighter category as well as the order dated 23.03.2004 and 22.04.2010 removing the service once they were set aside in the earlier spell of litigation and liberty was accorded to the respondents to reinstate and to hold fresh inquiry and in the fresh inquiry so conducted, the writ petitioner was found to be eligible for freedom fighter category then the period when the writ petitioner was denied to perform duties is to be accounted for the payment of salary. Submission is that the writ petitioner right from the inception was agreeable and willing to serve the respondents but on account of the orders passed by the respondents, the writ petitioner has been denied the benefit of working in that regard. Learned counsel for the writ petitioner submits that net legal consequences which would flow from setting aside of the adverse order would be that they are to be presumed not to be in existence in the eye of law and the writ petitioner to be accorded all consequential benefits.

7. Sri P.K. Srivastava, learned Additional Chief Standing Counsel while countering the submission so made by the learned counsel for the writ petitioner has submitted that the respondents have not erred in law in applying the principles of no work no pay particularly when the petitioner cannot get the monetary benefits for the period when he has not served.

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

9. Facts are not in issue. It is not in dispute that the writ petitioner was selected and appointed on the post of Deputy Superintendent of Police under freedom fighter category on 05.01.1989. Owing to complaint, an inquiry

stood conducted and on 10.10.2001 the UP Public Service Commission withdrew the recommendation of the writ petitioner for being appointed as Deputy Superintendent of Police and thereafter, the writ petitioner was suspended on 02.06.2001 thereafter, on 23.03.2004/22.04.2010, orders came to be passed for removing the writ petitioner from service which was subject matter of challenge in Writ Petition No. 966(SB) of 2010 which came to be allowed on 21.09.2011 while setting aside the order impugned reinstating the writ petitioner in service and directing the respondents to hold fresh inquiry if they choose so. Thereafter, fresh inquiry stood conducted and an inquiry report was submitted on 28.09.2024 holding the writ petitioner to be admissible and eligible for appointment under freedom fighter category and the writ petitioner was thereafter, reinstated in service on 31.01.2012 and on the said day, the writ petitioner superannuated, however, now by virtue of the order impugned dated 16.10.2024 passed by the first respondent, the writ petitioner has been denied the monetary benefit relatable to payment of salary and other allowances while applying the principles of no work no pay.

10. In the opinion of the Court, once the order negating the claim of the writ petitioner withdrawing the recommendation and terminating the services of the writ petitioner was set aside and the writ petitioner was directed to be accorded reinstatement and after fresh inquiry post grant of liberty by this Court, the writ petitioner was found to be eligible dependent upon the freedom fighter category then the respondents cannot in any manner whatsoever take away the legal rights which flows from such a situation. Furthermore, it has not come in the impugned order that the writ petitioner despite being directed to join the post had not joined and further it is the consistent stand of the writ petitioner that the writ petitioner was willing to perform the duties, thus, it is not open for the respondents to apply the principles of no work no pay.

11. In **Commissioner of Karnataka Housing Board Vs. C. Muddaiah (2007) 7 SCC 689**, the following was observed.-

"33. The matter can be looked at from another angle also. It is true that d while

granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay". In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant Board, therefore, has no substance and must be rejected."

12. Thus, in the opinion of the Court, the impugned order cannot be sustained.

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

(a) the order dated 16.10.2024 passed by the Additional Chief Secretary, U.P. at Lucknow, first respondent is set aside;

(b) writ of mandamus is issued directing the respondents to release the arrears of salary by counting the entire salary from the date of suspension

of the writ petitioner till reinstatement and to pay pensionary benefits to the writ petitioner on the last pay drawn holding the writ petitioner to be in service within a period of three months from the date of production of certified copy of the order.

14. With the aforesaid observations, the writ petition stands **disposed of**.

February 2, 2026
Rajesh

(Vikas Budhwar,J.)