



2026:AHC-LKO:19353

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 5580 of 2005

Rajendra Nath

.....Petitioner(s)

Versus

State Of U.P.Through Secretary Secondary
Education And 4 Ors

.....Respondent(s)

Counsel for Petitioner(s)	:	K.D.Nag
Counsel for Respondent(s)	:	C.S.C., Manish Shula

Court No. - 17

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri K.D. Nag, the learned counsel for the petitioner, Sri Sandeep Srivastava, the learned Standing Counsel for the State of U.P. representing opposite parties no. 1 to 4 and Sri Vineet Kumar Chaurasia who has filed his vakalatnama on behalf of opposite party no. 5 which is taken on record.

2. By means of the instant writ petition the petitioner has sought issuance of a writ of mandamus commanding the opposite parties to pay salary for the post of Class-IV employee as the petitioner is working as such in Shiv Prasad Pandey Inter College, Padri Kalan, Unnao since 14.02.2005. It has inter alia been pleaded in the writ petition that four vacancies of Class-IV employees arose in Shiv Prasad Pandey Inter College, Padri Kalan, Unnao. It has inter alia been pleaded in the writ petition that there are 12 sanctioned class-IV posts in Shiv Prasad Pandey Inter College, Padri Kalan, Unnao. Four vacancies of Class-IV had occurred by the end of December, 2004. The Principal of the college (opposite party no. 5) sent a letter dated 25.01.2025 seeking permission of the District Inspector of Schools for filling the aforesaid four posts. On 29.01.2005, the DIOS has sent a letter to the Principal of the college granting

permission to make appointment on 2 posts which were reserved for scheduled castes and other backward classes. The DIOS neither granted approval for making appointment to the other two posts nor did he reject the request of the Principal for making appointment. On 01.02.2005, an advertisement was issued in a Hindi daily newspaper 'Aaj' and thereafter selections were made on four vacant Class-IV posts and appointment letters were issued to them on 14.02.2005. On 14.02.2005, the college sent information of the appointment to the DIOS and of their joining. On 24.05.2005, the DIOS wrote a letter to the Principal of the college stating that he had granted approval for making appointment to two posts reserved for scheduled castes and other backward classes only and asked the petitioner to justify the appointment made on all 4 posts. Thereafter, on 24.05.2005 the DIOS, Unnao wrote a letter to the Joint Director, Education bringing the aforesaid facts to his knowledge.

3. On 04.07.2005, all the four persons who had been appointed to the Class-IV post in furtherance of the advertisement issued, gave an application to the Principal of the college for payment of salary as also to the DIOS.

4. On 29.08.2025, this Court had passed an interim order in the present writ petition directing the opposite parties to pay salary to the petitioner w.e.f. 01.08.2005 and to continue to pay the same every month. Although a copy of the writ petition had been served in the office of the learned Chief Standing Counsel on 25.08.2005 and the aforesaid interim order was passed by this Court on 29.08.2025, till date no counter affidavit has been filed disputing the correctness of the averments made in the writ petition. The learned counsel for the opposite party no. 5 has supported the claim of the petitioner and he has submitted that the petitioner has been working continuously.

5. The learned counsel for the petitioner has placed reliance of a judgment rendered by a coordinate Bench of this Court **Vinod**

Kumar & Anr. v. DIOS, Muzaffarnagar & Ors, 1999 (2) UPLBEC 1603. The learned counsel for the petitioner has submitted that upon approval of vacancies the Principal of the college had sought permission of the DIOS for making appointment. The DIOS granted permission for making appointment on two reserved posts but he did not decline permission for making appointment to all four vacant posts. He has submitted that there is no denial that four vacancies existed in the college in question when the college had sought permission to make appointments and had issued advertisement for making the selection and appointment.

6. He has further submitted that mere inaction of the DIOS to take suitable decision on the petitioner's request would not make the appointments made on vacant sanctioned post illegal.

7. The learned Standing Counsel has opposed the writ petition as he has submitted that since the appointments were made without sanction having been granted by the DIOS, the same are illegal.

8. From the aforesaid facts and circumstances evident from the material available on record and the submissions advanced before this Court, it appears that it is undisputed that there existed four class-IV vacancies in the college in the end of December, 2004. The Principal of the college had sought approval of DIOS for making appointments on all Class-IV vacant posts. The DIOS granted permission for making appointments on two reserved posts but he remained silent on the request of opposite party no. 5 seeking permission to make appointments on two unreserved posts. In any case the DIOS has not declined the permission to make appointments on the two unreserved class-IV posts in the college. Although the petitioner is working in the college under an interim order dated 29.08.2005 passed by this Court, the opposite parties have not filed any application for vacation of the interim order and any counter affidavit disputing the correctness of the

averments made in the writ petition.

9. In these circumstances, when the opposite parties have impliedly admitted the case set up by the petitioner by not filing any counter affidavit, the averments made in the writ petition are impliedly admitted.

10. In the aforesaid circumstances, when the opposite parties have not disputed the correctness of the averments made in the writ petition and have impliedly admitted the same and the petitioner is working continuously under the interim order dated 29.08.2005, I am of the view that the writ petition deserves to be allowed.

11. Accordingly, the writ petition is ***allowed***. The opposite parties are directed to continue payment of salary to the petitioner on the class-IV posts on which he is working in the opposite party no. 5-college.

March 17, 2026

Pradeep/-

(Subhash Vidyarthi,J.)