



2026:AHC-LKO:20570

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - A No. - 152 of 2026**

Mahesh Kumar Srivastava

.....Petitioner(s)

Versus

State Of U.P. Thru. Secy. Revenue Lko. And 2 Others

.....Respondent(s)

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|---------------------------|---|--------------------------|
| Counsel for Petitioner(s) | : | Om Prakash Mani Tripathi |
| Counsel for Respondent(s) | : | C.S.C.                   |

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**Court No. - 7**

**HON'BLE MANISH MATHUR, J.**

1. Heard Mr. O.P.M. Tripathi, learned counsel for petitioner and learned State Counsel appearing on behalf of the opposite parties.

2. Rejoinder affidavit filed today is taken on record.

3. Present petition under Article 226 of Constitution of India has been filed seeking a direction to opposite parties to count services of petitioner from initial date of appointment on 18.11.1985 for purposes of pensionary benefits admissible to petitioner under the old pension scheme with regard to post of Revenue Inspector. Prayer for sanction of regular pension under the old pension scheme on the basis of last pay drawn on the post of Revenue Inspector with effect from 01.04.2024 has also been made along with prayer for payment of gratuity and arrears with interest.

4. It has been submitted that petitioner's father late Krishna Kumar Srivastava who was substantively appointed as Lekhpal in the Department passed away in harness on 01.09.1985 whereafter petitioner was appointed on compassionate basis in terms of U.P. Recruitment of Dependents of Government Servants (Dying in Harness) Rules, 1974(hereinafter referred to as the Rules of 1974) on the post of Lekhpal whereupon he joined duties on 23.11.1985 with first promotional pay scale, additional increments and other service benefits being provided to him whereafter he was promoted on the post of Revenue Inspector on 19.04.2022 whereafter he has superannuated on the said post on 31.03.2024.

5. It is submitted that since petitioner's initial appointment was in terms of the Rules of 1974 on compassionate basis, his initial

appointment itself would be substantive in nature due to which he would be entitled for all pensionary benefits including gratuity and being included under the old pension scheme but such benefits have not been provided.

6. Learned State Counsel on the basis of counter affidavit dated 06.02.2026 has submitted that in paragraphs 5 and 7 thereof, it is admitted that petitioner was appointed on compassionate basis in terms of the Rules of 1974 but the initial appointment was only temporary on the post of Lekhpal whereafter he was regularized only on 27.10.2007 and since the period prior to regularization could not be taken into account for purposes of pensionary benefits, the said period from 23.11.1985 till 24.01.2007 cannot be taken into account for purposes of pensionary benefits.

7. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is thus admitted that petitioner's initial appointment in 1985 was on the post of Lekhpal on compassionate basis in terms of the Rules of 1974. He has been found ineligible for grant of pensionary benefits only on account of fact that his services were regularized in year 2007 and such temporary services rendered prior to year 2007 cannot be taken into account.

8. Aforesaid aspect as to whether petitioner's services can be treated to be substantive from the date of initial appointment or only temporary is therefore required to be adjudicated upon.

9. The said aspect has been dealt with by Hon'ble the Supreme Court in **U.P. State Road Transport Corporation & ors. v. Brijesh Kumar & another** [Civil Appeal No.9903 of 2024 arising arising out of S.L.P. (C) No.10546 of 2019, decided on 28.08.2024] in the following manner:-

*"12. There is no dispute to the legal proposition that any appointment made on compassionate basis is in the nature of a permanent appointment and is not liable to be treated as temporary or contractual. However, the fact remains whether in the instant case, the appointment of the respondent is under the Dying in Harness Rules or is independent of it on contractual basis."*

10. Regarding nature of services of compassionate appointee, a Division Bench of this Court in the case of **Ravi Karan Singh v. State of U.P. and others**, (1999) 3 UPLBEC 2263, by referring to earlier decisions in the case of **Budhhi Sagar Dubey v. DOIS**, (1993) 1 UPLBEC 197; **Gulab Yadav v. State of UP**, (1991) 2 UPLBEC 995

and **Dhirendra Pratap Singh v. DIOS**, (1991) 1 UPLBEC 427, has held that the appointment under dying-in-harness rules is of permanent nature. Later on, another Division Bench approved the decision in the case of **Ravi Karan Singh** (supra) while deciding Special Appeal No. 348 of 2002 by judgment dated 16.07.2002 in the case of **Sanjai Kumar v. Deputy Director General (NCC) Directorate, U.P. Lucknow**.

11. The relevant paragraphs of the judgment in **Ravi Karan Singh** (supra) reads as follows:-

*"2. In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of UP. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments."*

12. Upon applicability of aforesaid judgment(s) in the present facts and circumstances, once it is admitted that petitioner was appointed on compassionate basis in terms of the Rules of 1974, his services from such appointment with effect from 18.11.1985 itself would be substantive and not temporary.

13. The mere fact that the order of appointment of petitioner indicates his services to be temporary in nature would be irrelevant once law on that point is settled that compassionate appointment is substantive from the date of initial appointment itself.

14. In view of discussions made herein above, a writ in nature of Mandamus is issued commanding the opposite parties to treat petitioner's appointment with effect from 18.11.1985 as substantive and to issue appropriate orders including the pension payment order for pensionary benefits counting services rendered by petitioner with effect from 23.11.1985 for purposes of pensionary benefits. Petitioner shall also be entitled for payment of gratuity as admissible.

15. It is further directed that petitioner shall be entitled to interest at

the rate of 6% per annum on the delayed payment of pension and gratuity with effect from 01.04.2024 till the date of actual payment.

16. Resultantly, the petition succeeds and is allowed. Parties to bear their own costs.

**March 20, 2026**

kvg/-

**(Manish Mathur,J.)**