



2026:AHC-LKO:19683-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 395 of 2025

State Of U.P.Throu.Prin.Secy.Geology And Mining
Lko.And Anr.

.....Appellant(s)

Versus

Rajesh Kumar And Ors.

.....Respondent(s)

Counsel for Appellant(s)	: C.S.C.
Counsel for Respondent(s)	: Sanjay Kumar Singh, Ranvijay Singh, Ravi Shanker Singh, Sameer Kalia, Srideep Chatterjee

Court No. - 1

HON'BLE RAJAN ROY, J.

HON'BLE AMITABH KUMAR RAI, J.

1. This is an appeal filed by the State challenging the judgment and order dated 17.06.2016 passed in Writ Petition No.14270(S/S) of 2016 as well as order dated 28.07.2016 passed in review application.
2. The facts and issues of this appeal bearing No.395 of 2025 are similar to those in the connected Special Appeal No.396 of 2025. We have already decided the connected Special Appeal No.396 of 2025 by a detailed order in the following terms :-

"1. Heard learned Standing Counsel for the State-appellants and Shri Sameer Kalia, learned Senior Advocate assisted by Shri Srideep Chatterjee and Mohd. Shameem Rizvi, learned counsel for the respondents.

2. This is an appeal filed by the State challenging the judgment and order dated 17.06.2016 passed in Writ Petition No.14277(S/S) of 2016 as well as order dated 28.07.2016 passed in review application.

3. The contention of the appellant's counsel is that admittedly, the respondents-petitioners were engaged as a stop-gap arrangement through a service provider till the posts of Khanij Moharrir (Class III post), driver and peon are filled up regularly. In fact, the post of Khanij Moharrir, being a Class III post, falls within the purview of the Subordinate Services Selection Commission and recruitment has to be made through the said Commission. A person engaged as a purely stop-gap arrangement through a service provider does not have any right of absorption on the

regular post; therefore, the order is apparently unsustainable. An application seeking review of the impugned judgment and order dated 17.06.2016 was filed by the respondents-petitioners in Writ Petition No.14277 (S/S) of 2016, wherein an order was passed on 28.07.2016 reviewing the aforesaid judgment and providing that the respondents-petitioners along with other similarly situated persons, shall be considered on the basis of eligibility criteria to be laid down by the department, subject to their fulfillment of eligibility criteria for absorption against the respective vacant posts before making any regular appointment. It was further clarified that the case had been decided by the Court keeping in view the peculiar facts and circumstances of the case, which shall not be a precedent for other matters.

4. The contention is that there is no provision for absorption of persons engaged through a service provider on regular posts in the department, an aspect which has been lost sight of by the learned writ Court.

5. It is informed by the counsel for the appellant that, except for nine persons in Special Appeal No.396 of 2025 and three persons in connected Special Appeal No.395 of 2025, none of the other persons have been working after 2016 and they had worked only for about two years.

6. Learned counsel for the respondents-petitioners submitted that in the order of review itself, conditions have been put for considering their absorption; therefore, the appellants herein are at liberty to see as to whether the respondents-petitioners fulfill those qualifications and conditions or not.

7. We are not impressed by the arguments advanced by the learned counsel for the respondents-petitioners for the simple reason that it is an admitted position that the respondents-petitioners were engaged through a service provider purely as a stop-gap arrangement till the regular posts are filled up by regular recruitment as per the procedure prescribed in the rules. The respondents-petitioners did not have any right to claim absorption on any such regular post. There is no such provision for absorption of such personnel engaged through service provider in the rules determining the conditions of service on the post of Khanij Moharrir, driver and peon, nor has any such provision been shown. Even for considering regularization of services, there are rules on the subject framed by the State Government and there are no such rules under which the respondents-petitioners may fall for consideration. We accordingly find that the learned Single Judge has gravely erred in allowing the writ petition and then passing another order in the review proceedings as noticed hereinabove.

*8. We accordingly **allow** the appeal and quash both the impugned orders. The writ petition and the review application stand dismissed.*

9. Our order shall also not come in the way of continuance of service of any of the respondents-petitioners, if they are still working and in future there are any rules under which such persons are entitled to be considered for regularization, our order will not come in the way of such consideration."

3. For the reasons already given in the above-quoted judgment, this appeal also succeeds and is **allowed**. The orders impugned in this case, i.e., order dated 17.06.2016 and the order dated 28.07.2016 passed in the review proceedings reviewing the order dated 17.06.2016 are hereby quashed. The writ petition and review application stand dismissed.

(Amitabh Kumar Rai,J.) (Rajan Roy,J.)

March 18, 2026

Shubhankar