

Court No. - 2

Case :- SPECIAL APPEAL No. - 209 of 2025

Appellant :- Rana Pratap And 7 Others

Respondent :- State Of U.P. Thru. Its Chief Secy. Civil Sectt. Lko. And 10 Others

Counsel for Appellant :- Anurag Shukla

Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,Shikhar Anand,Utsav Mishra

Hon'ble Alok Mathur,J.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Supplementary affidavit, filed by learned counsel for the appellant, is taken on record.

2. Heard Sri Anurag Shukla, learned counsel for the appellants, learned Standing Counsel for respondents No. 1 to 3, Sri Shikhar Anand, learned counsel for respondents No. 4 & 5 and Ms. Anushri Mishra, Advocate brief of Sri Utsav Mishra, learned counsel for respondent No.6.

3. It has been submitted by learned counsel for the appellants submits that all the appellant are working on the post of Junior Assistant/Clerk in U.P. State Information Commissioner since 2007 and were hopeful of being regularized on their posts till an advertisement was issued by respondent No.7 on 4.8.2023, inviting applications for fresh appointments on the posts which are occupied by the appellants. It has further submitted that by filing a writ petition being Writ-A No. 6293 of 2025 and also prayed for a writ of mandamus, seeking a direction to the respondents to regularize the services of the petitioners from the date of their initial appointment. It is submitted that the case was listed before Hon'ble Single Judge of this Court on 11.8.2025 on which date the counsel for petitioners pressed the petition accordingly to restrain the respondents from proceeding with the recruitment process in pursuance of the advertisement. Considering the fact that in case fresh recruitment is made, then the third party rights would be created and such selected persons would be allowed to join on the posts which are held by the petitioners, Hon'ble Single Judge of this Court on 29.5.2023 granted time to the counsel for respondents to file counter affidavit and was pleased to list the case on 11.8.2025. Against the order date 29.5.2025 the present special appeal has been filed, stating that irreparable loss and injury would be caused to the appellants in case the selected candidates are required to join by the said date and the petitioners would have been relieved.

4. It has further been submitted by counsel for the appellants that the Information Commission itself has recommended the case of the appellants for regularization to the State Government by means of letter dated 19.10.2020. In the said letter it has been stated that all the appellants/petitioners are working on

ad hoc basis and their services are entitled to be regularized and accordingly directions have been sought from the State Government for regularization of their services. It has been vehemently submitted that no decision is forthcoming from the State Government and, accordingly, the matter pertaining to regularization is pending consideration before the State Government and till the said matter is decided the respondents cannot be permitted to proceed for regular selection on the posts which are held by the appellants.

5. The writ petition has been vehemently opposed by learned counsel for the respondents and it has submitted that under Chapter VIII Rule 5 of the Allahabad High Court Rules, a writ petition would be maintainable against the final order and the order impugned in the present appeal dated 29.5.2025 is merely an interlocutory order which does not decide rights of any of the parties much less would a final order and consequently a special appeal would not be maintainable.

6. Learned counsel for the appellants, on the other hand, has submitted that even in a matter where the interim relief has been denied or has not been granted and it can be demonstrated that the matter demonstrates vital and valuable rights of the parties and serious irreparable injustice could be caused to the parties by not granting an interim relief, in such situations a special appeal would be maintainable. In support of his submissions learned counsel for the appellants has relied upon the judgement of the Full Bench of this Court in the case of ***Ashutosh Shrotriya and others v. Vice-Chancellor, Dr. B.R. Ambedkar University and others***; 2015 SCC OnLine All 8553.

7. When a pointed query was made to the counsel for the State Commission to inform us with regard to the fate of the letter dated 19.10.2020 wherein the matter pertaining to the regularization of services of the appellants has been referred to the State Government, it has been informed that till date the matter is pending but the State Commission has relied upon subsequent orders of the State Government, more specifically order dated 22.4.2022 authored by the Chief Secretary, U.P. directing all the departments and ministries of the State Government to forward the name to the respective service commission for direct appointment considering the matter till the interim period U.P. Subordinate Services Selection Commission has come to effect and all the posts within the purview of the said Selection Commission would now be filled through regular recruitment and therefore, all the departments were asked to send their requisition by 31.5.2022. It is the said letter which according to the State Commission in effect rejects the proposal dated 19.10.2020. It has further been submitted that in pursuance of the order dated 22.4.2022, the State Commissioners has forwarded its requisition by means of letter dated 22.3.2023 including the vacancies which are subject matter of the present dispute to the U.P. Subordinate Services Selection Commission.

8. Learned counsel for the U.P. Subordinate Services Selection Commission has also informed this Court that usually in a recruitment for the posts which are subject matter of the present dispute takes two-three months to conclude, but no specific timeline can be submitted by her in the present case.

9. Considering the rival submissions, firstly with regard to the maintainability of the special appeal, we have perused the provision of Chapter VIII Rule 5 of the Allahabad High Court Rules and also the judgement of the Full Bench of this Court in **Ashutosh Shrotriya (supra)**, we find that the ground on which the present special appeal has been preferred is that despite pressing the application for interim relief and praying for stay of the recruitment process, the Court did not grant any interim injunction or interim order in favour of the petitioners and rather directed the respondents to file counter affidavit, listing the writ petition on 11.8.2025.

10. We find that the appellants have a reasonable apprehension that their rights might be adversely affected in the light of the fact that examination/recruitment on the posts held by the appellants is scheduled to be held on 29.6.2025 by the U.P. Subordinate Services Selection Commission.

11. It is submitted by the counsel for the appellants that once the selection has taken place then the Commission would declare the results and immediately thereafter the selected candidates would be joining on the post. In the aforesaid eventuality the appellants would be discharged from the posts held by them and accordingly, they would suffer irreparably.

12. In this regard we also find that while dealing with such a situation, the Full Bench in paragraph No. 43 and 44 of the judgement in **Ashutosh Shrotriya (supra)** had taken into account such eventualities and observed as under:-

"43. However, the appellate court has the unquestioned jurisdiction to decide whether the direction is of a procedural nature against which a special appeal is not maintainable or whether the interlocutory order decides matters of moment or affects vital and valuable rights of parties and works serious injustice to the party concerned. Where the Division Bench in a special appeal is of the view that the order of the learned single Judge is not just a procedural direction but would result in a grave detriment to substantive rights of an irreversible nature, the jurisdiction of the Court is wide enough to intervene at the behest of an aggrieved litigant. The Rules of Court are in aid of justice. We, therefore, affirm the principle that a purely processual order of the nature upon which the reference is made would not be amenable to a special appeal not being a judgment. The Division Bench will have to decide in the facts of each case, the nature of the order passed by a single Judge while determining whether the appeal is maintainable.

44. In view of the aforesaid discussions, we answer the question of law referred to the Full Bench by holding that, an order of a learned single Judge upon a petition under Articles 226 or 227 of the Constitution only calling for counter and rejoinder affidavits is merely a procedural order in aid of the progression of the case. An order of this nature which is purely of a procedural nature in aid of the progression of the case and to enable the Court to forth a. considered view after a counter affidavit and a rejoinder are filed would not be amenable to a special appeal under Chapter VIII, Rule 5. Such an order does not decide anything nor does it have the trappings of finality. If a party to the proceedings seeks to press an application for ad interim relief of a protective nature even before a counter affidavit is filed, on the ground that a situation of irretrievable injustice may result or that its substantive rights would be adversely affected in the meantime, such an argument must be addressed before the single Judge. If such an argument

is urged, it should be dealt with however briefly, consistent with the stage of the case, by the single Judge. It is for the Division Bench hearing the special appeal to consider whether the order decides matter of moment or is of such a nature that would affect the vital and valuable rights of the parties and causes serious injustice to the concerned party."

13. We find that for the reasons aforesaid, the special appeal in the peculiar circumstances of the present case would be maintainable. We have also given our anxious consideration to the prayer sought by the appellants and we have been informed that the examination is schedule to be held on 29.6.2025 and as per learned counsel for respondent No.6, it may take at least two or three months to finalize the name of the selected candidates.

14. Accordingly, without entering into the merits of the controversy and also considering the fact that the dispute is pending before the Single Judge of this Court and there is no urgency to decide or pass any interim order during the vacations, it would be appropriate in the interest of justice to list this case before the Hon'ble Single Judge at the earliest.

15. Sri Shikar Anand, appearing on behalf of the State Commission has very fairly submitted that he would be filing a counter affidavit before this Court on the first day of opening after summer vacations i.e. on 2.7.2025. The petitioners shall file rejoinder affidavit within three days thereafter.

16. We find that the matter is urgent and all the issues raised by the appellants can be adequately dealt with by the Single Judge who is seized of the entire lis in the present dispute, accordingly, we are disposing of the present special appeal by listing Writ-A No. 6293 of 2025 on 14.7.2025 on which date the parties would be at liberty to make a mention and inform the Court about the order passed in the present case.

17. With the aforesaid direction, the special appeal is **disposed of**.

Order Date :- 26.6.2025

Vandana

(Arun Kumar Singh Deshwal,J) (Alok Mathur,J)