



AFR

Reserved on 08.01.2026

Delivered on 27.01.2026



2026:AHC:17507-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL NO.-646 of 2025

Anita Rani

.....Appellant(s)

Versus

State of U.P. and 4 Others

.....Respondents(s)

Counsel for Appellant(s)

: Siddharth Khare, Sr. Advocate

Counsel for Respondent(s)

: Akanksha Sharma, C.S.C.

Court No. -3

**HON'BLE SAUMITRA DAYAL SINGH, J.
HON'BLE INDRAJEET SHUKLA, J.**

(Per Indrajeet Shukla, J)

1. Heard Mr. Ashok Khare, learned Senior Counsel assisted by Mr. Umang Srivastava, learned counsel for the appellant; Ms. Akanksha Sharma, learned counsel for respondent nos.3 & 4 and, Mr. Ankit Gaur, learned Standing Counsel for the State.
2. Present intra-Court appeal has arisen against the order of learned Single Judge dated 08.05.2025 in Anita Rani versus State of U.P. and 4 others, Neutral Citation:-2025:AHC:74204 whereby the learned Single Judge dismissed the writ petition, observing as follows:-

"11. In view of above, the relevant dates are (I) date of completion of Special BTC Course, (ii) date of submission of form for recruitment process and (iii) date of appointment.

12. In present case, petitioner has completed Special BTC Training course on 12.06.2012 and advertisement was issued on 19.12.2014 i.e. after 2 years and 6 months and 7 days. The petitioner was a Scheduled Caste candidate,

therefore, a relaxation of 5 years was granted in maximum age limit i.e. 45 years and she can apply after adding 2 years 6 months and 7 days i.e. up to 47 years 6 months 21 days as on cut off date i.e. 01.07.2014 taking into consideration that course was concluded on 12.06.2012 and application was submitted on 01.07.2014, but she was about 48 years 2 months, therefore, she was not entitled to apply as well as she was granted appointment on 02.07.2016, when she has crossed maximum age of 50 years, therefore, her appointment was void-ab-initio.

13. In aforesaid circumstances, since above referred facts are undisputed, therefore, in terms of G.O. dated 29.10.2015, the petitioner was not eligible to participate in the recruitment process itself and therefore, illegally appointed, therefore, there is no ground to cause interference in impugned order whereby her appointment was declared void-ab-initio.”

3. Facts, which reflect from the record, are that the appellant was selected for Special Basic Training Certificate in the year 2008, however, she could complete said training on 05.06.2012. Subsequently, she passed her U.P.T.E.T. Examination on 24.05.2014. No recruitment process of Special BTC Trained Candidates for appointment to the post of Assistant Teachers was immediately commenced.
4. It is on 09.12.2014, State of U.P. issued a notification for recruitment of 15000 Assistant Teachers from Special BTC Trained candidates wherein the appellant applied and got appointment on 02.07.2016, however, on 20.12.2017, a notice was issued to the appellant requiring her to explain that as the appellant had completed the age of more than fifty years on the date of appointment, i.e., 02.07.2016, her appointment was liable to be cancelled. A reply to the said notice was filed, however, vide order dated 28.10.2023 passed by District Basic Education Officer, Moradabad, the appointment of the appellant was declared void-ab-initio.
5. Feeling aggrieved, appellant preferred Writ-A No. 19644 of 2023, which has been dismissed by learned Single Judge vide order impugned herein.

6. The record transpires that as per the notification/advertisement dated 09.12.2014 issued for the post in question, the last date for submission of the application form was 10.02.2015 and in pursuance to aforesaid notification, the petitioner applied for the post in question on 05.01.2015. The age of the original petitioner/appellant herein was 48 years 8 months 4 days on the date of submission of application form. The case of the appellant is that she is entitled for age relaxation of 2 years six months 21 days in terms of Third Proviso appended to Rule 6 contained in Part IV of the U.P. Basic Education (Teachers) Service Rules, 1981 (For sake of brevity hereinafter shall be referred as “Rules of 1981”).

7. For ready reference relevant portion of Rules of 1981 are extracted as under:-

Part IV - Qualification

“6. आयु नियम 5 के खण्ड (क) या खण्ड (ख) के उपखण्ड (तीन) और (चार) या नियम 5 के खण्ड (ख) के परन्तुक में निर्दिष्ट किसी पद पर भर्ती के लिए अभ्यर्थी की आयु उस वर्ष के जिस वर्ष सीधी भर्ती के लिए रिक्त विज्ञासि की जाये, अनुवर्ती वर्ष की प्रथम जुलाई को 21 वर्ष की होनी चाहिए और 40 वर्ष से अधिक नहीं होनी चाहिए :

परन्तु यह कि अनुसूचित जातियों, अनुसूचित जनजातियों तथा अन्य पिछड़े वर्गों के अभ्यर्थियों के मामले में उच्चतर आयु सीमा 5 वर्ष या उतने वर्ष अधिक होगी जितनी राज्य सरकार द्वारा समय-समय पर उपबन्धित की जाये :

परन्तु यह और कि उच्चतर आयु सीमा किसी अभ्यर्थी के मामले में जो भूतपूर्व सैनिक है तीन वर्ष से अधिक या जैसे कि समय-समय पर सरकार द्वारा उपबन्धित की जाये, होगी :

परन्तु यह भी कि विकलांग अभ्यर्थी के मामले में उच्चतर आयु सीमा

15 वर्ष अधिक होगी :

परन्तु यह भी कि जहां बेसिक स्कूलों के अध्यापकों के लिए विहित प्रशिक्षण पाठ्यक्रम को सफलतापूर्वक पूरा करने के पश्चात् किसी अभ्यर्थी को जिले में रिक्त उपलब्ध न होने के कारण नियुक्ति न मिल सकी हो वहां उसकी आयु की संगणना के लिए उतनी अवधि को जब तक उसे नियुक्ति न मिली हो, नहीं गिना जायेगा, यदि नियुक्ति के दिनांक को उसने 50 वर्ष से अधिक आयु प्राप्त न की हो :

परन्तु यह और भी कि उच्चतर आयु सीमा बी.एड./ एल.टी./बी.पी.एड./ सी.पी.एड. या डी.पी.एड. प्रशिक्षित अभ्यर्थियों के मामले में जिन्होंने वर्ष 1999 में विशेष बी.टी.सी. प्रशिक्षण

पाठ्यक्रम पूरा कर लिया हो, लागू नहीं होगी :

परन्तु यह भी कि उद्दे में प्रवीणता रखने वाले और द्विवर्षीय बी.टी.सी. उद्दे के विशेष प्रशिक्षण

पाठ्यक्रम पूर्ण कर लेने वाले या विशेष या विशेष बी.टी.सी. प्रशिक्षण पाठ्यक्रम पूर्ण कर लेने वाले किसी अभ्यर्थी के मामले में उच्चतर आयु सीमा ऐसी होगी जैसा कि सरकार द्वारा समय-समय पर अवधारित किया जाये :

परन्तु यह और भी कि मोअल्लिम-ए-उद्दे उपाधि धारकों के मामले में, जिन्होंने दिनांक 11 अगस्त,

1997 से पहले ऐसी उपाधि प्राप्त कर ली हो, उच्चतर आयु सीमा अधिवर्षिता की आयु से अधिक नहीं होगी:

परन्तु यह और भी कि प्रशिक्षु शिक्षक के रूप में, अभ्यर्थियों के चयन के लिए उच्चतर आयु

सीमा, ऐसी होगी, जैसी कि सरकार द्वारा समय-समय पर अवधारित की जाये :

परन्तु यह और भी कि शिक्षामित्र के मामले में अधिकतम आयु सीमा 60 वर्ष तक होगी।"

8. The advertisement in question was issued on 09.12.2014 and the appellant could complete the requisite training on 05.06.2012, thus, she claims benefit of 2 years 6 months 2 days relaxation in terms of 3rd Proviso of Rule 6 of the 1981 Rules.

9. It is not in dispute that on the date of completion of training of B.T.C. Course i.e. 5th June, 2012, the appellant was 46 years 1 month 4 days old, thus at the time of completion of Special B.T.C. Course itself she had crossed 45 years of age. In such factual position, the relaxation contained in 3rd Proviso appended to Rule 6 of 1981 Rules is of no assistance for her, as neither on the date of completion of B.T.C. Course nor on the date of publication of advertisement, the appellant having more than 45 years of age was eligible, having crossed outer age limit fixed by the statutory rules.

10. The perusal of advertisement/notification dated 09.12.2014 brought on record exhibits upper age limit for the post in question is not

prescribed/mentioned in the notification but even in such a situation the relevant rules i.e. 'Rules of 1981' as indicated in notification itself, would govern and operate the field of eligibility/prescribing outer age limit.

11. The case of the respondents is that apart from B.T.C. course the appellant was also required to pass T.E.T. examination for applying the post in question. The B.T.C. course was completed by the appellant on 05.06.2012, whereas she passed the T.E.T. examination on 24.05.2014 as such on both the dates, appellant-writ petitioner crossed the outer age limit prescribed for the post in question in terms of conjoint reading of Rules of 1981 and notification dated 09.12.2014 and even on the date of appointment i.e. on 02.07.2016, she was above 50 years, which is again in the teeth of 'Rule 6 of 1981 Rules' as well as Circular dated 29.10.2015 contained as Annexure C.A.3 to the counter affidavit.

12. Submission advanced on behalf of the appellant-writ petitioner is that the appellant is a reserved category candidate (Scheduled Caste) and for her, there is a relaxation of 5 years in upper age limit. Thus, she could apply for the post in question till she attained the age of 45 years. If relaxation of further 2 years 6 months 21 days by virtue of 3rd Proviso of Rule 6 of 1981 Rules is extended, even then the maximum permissible age limit would be 47 years 6 months 21 days, whereas the appellant was of 48 years 7 months and 8 days on the date of submission of her application form. Thus, the appellant-writ petitioner was over the age limit on the date of submission of her application, making her ineligible to apply for the post in question, nonetheless, it is abundantly clear as day light that the respondent authorities accepted the application form and offered appointment with open eyes.

13. Further submission is, attempt to file an application for securing job cannot be termed as to be any fraudulent act as admittedly correct date of

birth was mentioned in the application form and nothing was concealed at the end of the appellant. It was the authorities, who ought to have been remained vigilant, which they utterly failed. In response to application form tendered, not only the registration was accepted, but the e-Chalan was also generated permitting the appellant to deposit requisite examination fee. Thereafter, an appointment was offered to the appellant, despite the appellant having crossed the maximum age limit at the time of submitting the application form as well as on the date of completion of B.T.C. Training Course.

14. Learned Senior Counsel strenuously urged that the respondents cannot be permitted to annul the appointment at a belated stage, i.e. after lapse of more than 7 years as the appointment was made on 2nd July, 2016 and the order of termination has been passed on 28.10.2023.

15. The counsel for the appellant in order to get the appointment saved has specifically relied upon paragraph nos.26 & 27 of the judgement of Hon'ble Supreme Court rendered in case of **Radhey Shyam Yadav Versus State of U.P. and others** reported in **(2024) 11 SCC 770** wherein the appointment of appellant therein having served 6 years was saved as same was not result of fraud and misrepresentation. For ready reference paragraph nos. 26 & 27 of the judgement of Hon'ble Supreme Court in **Radhey Shyam Yadav (supra)** are extracted as under:-

*“26. In **Vikas Pratap Singh (supra)**, this Court, while protecting the selection of the appellants, had the following to say:-*

“27. Admittedly, in the instant case the error committed by the respondent board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.”

27. *Vikas Pratap Singh (supra)* was followed in *Anmol Kumar Tiwari and Others vs. State of Jharkhand and Others*, (2021) 5 SCC 424. This Court, in para 11, held as follows:-

*"11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the writ petitioners. The High Court directed reinstatement of the writ petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the writ petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the writ petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the writ petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in *Vikas Pratap Singh* case where this Court considered that the appellants therein were appointed due to an error committed by the respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the writ petitioners are similarly situated to the appellants in *Vikas Pratap Singh* case, we are in agreement with the High Court that the writ petitioners are entitled to the relief granted. Moreover, though on pain of contempt, the writ petitioners have been reinstated and are working at present."*

16. We are persuaded to grant limited indulgence in view of the Judgment of Hon'ble Supreme Court in the Case of **Vikas Pratap Singh and others vs. State of Chhattisgarh and others, 2013 (14) SCC 494**.

Paragraph-22 of *Vikas Pratap Singh (supra)* is extracted hereunder:-

*"The pristine maxim of *fraus et jus nunquam cohabitant* (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi*, (1990) 3 SCC 655, *P. Chengalvaraya Naidu v. Jagannath and others*, (1994) 1 SCC 1 and *Union of India and others v. M. Bhaskaran*, 1995 Suppl. (4) SCC 100). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee*

and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: Vinodan T. and Ors. v. University of Calicut and Ors.,(2002) 4 SCC 726; State of U.P. v. Neeraj Awasthi and Ors. (2006) 1 SCC 667). "

17. Therefore, in view of facts of this case as noted above, viz. continuance of appellant-writ petitioner for considerable period of 7 years coupled with the fact that the respondent authority could not lay any foundation of fraud and manipulation practised by appellant-writ petitioner to secure the appointment and further error of **judgement** if any (in computing the correct age of the petitioner) was of the respondents, that aspect may have escaped the attention of the learned Single Judge. To the extent, an error on principle may have been caused in the order of the learned Single Judge, thus, the instant Special Appeal as well as Writ Petition deserve to be **partly allowed**. The order dated 08.05.2025 passed by Writ Court, which is impugned herein as well as the order dated 28.10.2023 passed by respondent no.3, Basic Shiksha Adhikari, Moradabad are set-aside.

18. In order to balance equities in facts of this case, we direct that the appellant shall be permitted to continue to hold the post in question, but she shall not be entitled to the payment of salary for the period she has not performed her duties/ remained out of service.

19. A copy of this order may also be kept with the record of the writ petition.

20. No order as to costs.

(Indrajeet Shukla, J.) (Saumitra Dayal Singh, J.)

January, 27 , 2026
S.P.