2026:AHC:234687-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 3771 of 2023

Dr. Neeraj Srivastava

.....Petitioner(s)

Versus

Additional Chief Secretary Higher Education And 6 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	In Person
Counsel for Respondent(s)	:	C.S.C., Divyanshu Chaudhary, Nishant Mishra, Rashi Misra, Rohit Pandey, Sanjay Kumar Singh, Vishwambhar Nath

Court No. - 21

HON'BLE ARINDAM SINHA, J.
HON'BLE SATYA VEER SINGH, J.

(Per Arindam Sinha, J.)

1. Petitioner appears in person. We by our order dated 13th July, 2026 had appointed Mr. Udit Chandra, learned advocate as Amicus Curiae. Mr. Chandra appears to assist the Court.

2. We understand from learned amicus curiae, petitioner has in effect challenged cancellation of his teacher code as a consequence of the employer college having successfully surrendered its affiliation, in respect of the subject/course (Political Science). Petitioner was appointed on letter dated 25th August, 2001, issued by the Principal of the college with copy marked to, *inter alia*, the university. English translation of the text is reproduced below.

> *"Dr. Neeraj Srivastava, son of Mr. Birendra Singh Srivastava, is hereby appointed as a Lecturer for Political Science classes run under the Self-Financed Scheme, purely on a temporary basis, from the date of joining until **30-04-2002**.*
>
> *Fixed salary shall be paid to him as per Government Orders."*

Soon thereafter, the temporary appointment was approved by the University. Relevant disclosure dated 27th November, 2002 and other documents have been translated to English and handed up by Mr. Chandra.

3. On further query learned amicus curiae draws attention to circular dated 23rd August, 2011, issued by the Secretary to the Registrars of all State universities. Paragraph 6 from English translation of the circular is reproduced below.

> *"(6) Permission to open self-financed courses in non-government aided colleges is granted by the Government.* ***Therefore, if the number of students in any course becomes zero, the college shall submit its report to the University, and such a course can be closed with the permission of the University only after approval from the Government****. This arrangement shall be implemented from the date of issuance of G.O. No. 5699/Seventy-2-2007-2(85)/97, dated January 11, 2008."*
>
> (emphasis supplied)

4. Mr. Chandra relies on **judgment dated 1st March, 2013** of a Division Bench, sitting at the Lucknow Bench in **Civil Misc. Writ Petition no. 729 of 2012 (Dr. Suresh Kumar Pandey vs. State of U.P. and others)**, paragraph 53(iii)(Law Finder print). Relied upon clause under the paragraph is reproduced below.

> *"(iii)* ***All those courses which are open under self-financing scheme, the universities as well as colleges shall at least pay minimum pay scale admissible to teachers in accordance with Rules****. The services of teachers appointed under the self-financing scheme, should be permitted to continue till continuance of course or satisfactory discharge of duty."*
>
> (emphasis supplied)

5. Learned amicus curiae sums up, *inter alia* that though petitioner's service on substantive appointment was arbitrarily terminated but, he is entitled to continue in service and arrears of salary. He submits further, there is also under challenge Government Order (GO) dated 13th March,

2020, English translation of it at page 59 of the translation compilation. He draws attention to clause 6 and demonstrates that though the GO is said to be issued pursuant to **Dr. Suresh Kumar Pandey** (supra), thereunder 75% of tuition fee payable to teaching and non-teaching staffs in respect of self-financed courses was reduced to be reckoned with the salary, in violation of the directions in **Dr. Suresh Kumar Pandey** (supra) of reckoning it with the minimum pay scale.

6. Mrs. Archana Tyagi, learned advocate, Additional Chief Standing Counsel appears for State. Mr. Ankit Prakash, learned advocate holding the brief appears for respondent no.3 (the Chancellor). Mr. Rohit Pandey, learned advocate assisted by Ms. Shambhavi Tiwari, learned advocate holding the brief appear for respondent nos. 4 and 5 (the university) and Mr. Nishant Mishra, learned advocate, for respondent no.6 (the college). Respondent no.7 is the Principal of the college.

7. Mr. Mishra submits, it cannot be disputed that there were only 5 students admitted in the course for academic year 2018-19 and 4 in 2019-20. In the circumstances, his client having self-financed the course for long, almost twenty years, it could not be carried on any further. Representation was made to the university for surrendering the affiliation and it was allowed. In usual course, the service of petitioner was terminated on cancellation of his teacher code, in respect of the course. Regarding petitioner's reliance on GO dated 13th March, 2020 for his stand in respect of cancellation of affiliation, Mr. Mishra refers to clause 7(1) of said GO. English version of the clause is reproduced below.

> *"7-Regarding service conditions of teachers / non-teaching staff:—*
>
> *(1)* ***The service of teachers and non-teaching staff shall continue as long as the course of the concerned subject continues*** *or until the service remains satisfactory. In case of unsatisfactory service, prior to terminating the service contract, it shall be mandatory to ensure compliance with the principles of natural justice and obtain the approval of the Vice-Chancellor of the concerned university."*
>
> (emphasis supplied)

He points out, the GO was in supersession of earlier GOs including circular dated 23rd August, 2011.

8. In reply Mr. Chandra submits, petitioner had filed for contempt regarding compliance in respect of the service on payment of minimum pay scale salary. In hot haste there was scramble to make the representation for surrendering the affiliation and cancelling the course, within 10 days thereof. Petitioner has suffered at hands of the college, university and State.

9. Petitioner's appointment was subsequently approved by the university. It was on temporary basis. Condition of fixed salary payable as per GOs was applicable. Facts are also that the college having launched the self-financed courses on obtaining affiliation, ran it for almost 20 years. There has been submission at the Bar that students taken admission in year 2018-19 and 2019-20 were absorbed in other courses. We have not been told that any of the students have a grievance.

10. On query learned amicus curiae points out to letter dated 20th August, 2003, where under grant of approval for affiliation of the college, under self-financed scheme with effect from 1st July, 2003 for, *inter alia*, Political Science at post graduation by the Chancellor was communicated. There is nothing in it in context of definition of 'self finance course'. Section 2(18) in U.P. State Universities Act, 1973 is reproduced below.

> *"(18) "Self finance course" means a course with respect to which* ***all financial liabilities shall be borne by the Management of an associated or affiliated college or by a University****."*
>
> (emphasis supplied)

It follows, financial liabilities in respect of the course were to be borne by the management of the college or by the university. We have ascertained that respondent nos. 4 and 5 is a State university.

11. We accept contention of petitioner through learned amicus curiae that he had substantive appointment. The law applicable in the facts and circumstances says so. Then came judgment in **Dr. Suresh Kumar**

Pandey (supra). There was direction, as would appear from GO dated 13th March, 2020, said to be pursuant for all courses which are opened under self financing scheme, to have the universities as well as the colleges pay at least minimum pay scale admissible to teachers in accordance with rules. Further direction was for the teachers appointed under self financing scheme should be permitted to continue till continuation of the course on satisfactory discharge of duty. We have not been shown any unsatisfactory report of petitioner's discharge of duty. Facts are, the affiliation was surrendered and thereby petitioner's appointment came to be terminated on cancellation of affiliation in respect of the course.

12. Petitioner having been given a substantive appointment was entitled to be heard on termination of his service. In this case, termination did not happen because of any act of omission or commission by petitioner. As aforesaid, there is no report of unsatisfactory discharge of duty. Hence, there was no reference to him. His service came to be discontinued because the self financing course was not self financing itself, according to the college. Petitioner's substantive appointment, however, does not give him a vested right to continue to be in employment. The facts and circumstances do not invite interference in respect of termination of the service. Petitioner was not noticed nor heard because running of the course was in domain of the college and the university. Its running has been brought to an end by them.

13. There appears to be deviation on part of State in having issued GO dated 13th March, 2020. Said GO stating that it was issued pursuant to direction in **Dr. Suresh Kumar Pandey** (supra) makes us understand that State accepted the judgment and it has come final. Hence, the directions in it need to be complied with. Paragraph 53(iii) of the judgment stands reproduced above. The college and the university, in terms of meaning given in section 2(18), are to compute arrears of salary payable to petitioner on the basis of minimum pay scale admissible to teachers in accordance with the rules on services rendered. Petitioner will apply and obtain certified copy of the judgment. He shall communicate photocopies thereof to college and university. The university being the controlling authority will cause the calculation of arrears, sanction and disbursement

within four weeks thereof.

14. Mr. Mishra points out that petitioner has only prayed for arrears since year 2013. **Dr. Suresh Kumar Pandey** (supra) will having had become final is the correct position of law applicable to the facts. The Supreme Court in **Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited** reported in **(2008) 14 SCC 171** declared that when the Court discovers the correct position in law, its judgment is of retrospective application. A part of paragraph 35 from the judgment is reproduced below.

> *"35..... In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively....."*

The Supreme Court recently reiterated the same position in **Kanishk Sinha and another v. The State of West Bengal and another** arising out of **Special Leave Petition (Criminal) nos. 8609-8614 of 2024**, available at **2025 LiveLaw (SC) 259**.

15. We appreciate assistance rendered by learned amicus curiae. Applicable fee payable to learned amicus curiae for the hearings taken place since his appointment are to be paid.

16. The writ petition is **disposed of**.

(Arindam Sinha,J.)

(Satya Veer Singh,J.)

November 16, 2026
Mohini

Digitally signed by :-
MOHINI RAI
High Court of Judicature at Allahabad