

(2025) 07 AHC CK 0800
In the Allahabad High Court
Case No : Writ Petition A No. 46032 Of 2017

Hriday Narain Pandey And 4 Others

APPELLANT

Vs

State Of U.P. And Another

RESPONDENT

Date of Decision : 21-07-2025

Acts Referred:

Citation : (2025) 07 AHC CK 0800

Hon'ble Judges : Saurabh Shyam Shamshery, J

Bench : Single Bench

Advocate : Seemant Singh, Abhishek Srivastava, Vineet Kumar Singh

Final Decision : Dismissed

Judgement

Saurabh Shyam Shamshery, J

1. Petitioners in present bunch of writ petitions are retrenched employees of U.P. Cement Corporation which was wound up way back in the year 1999 and have approached this Court that their claim for absorption in any alternative government department be considered in terms of Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service Rules, 1991 (for short "Rules of 1991") as well as that benefit of absorption granted to other retrenched employees of same Corporation by a judgment of Supreme Court in Sunil Kumar Verma vs. State of U.P. and others, (2016) 1 SCC 397 be extended to them also.

2. S/Sri Radha Kant Ojha, learned Senior Advocate assisted by Sri Shivendu Ojha, Advocate as well as Sri Madan Lal Srivastava, Sri Yogesh Kumar Saxena, Sri R.K. Singh Gaharwar, Sri Vijay Kumar, Sri Kanhaiya Lal, Sri Abhay Kumar Srivastava, Sri Shatrughan Sonwal, Sri Pankaj Srivastava, Sri Animesh Srivastava, Sri Krishna Pratap Singh Kaushik and Sri Rahul Kumar Tiwari, Advocates for petitioners have vehemently urged that petitioners were before this Court through their Association way back in the year 1998, when Corporation was under process of winding up by way of filing a Civil Misc. Writ

Petition No. 21199/1998, which was disposed of vide order dated 07.07.1998 that claim of petitioners therein be considered for absorption in accordance with law. For reference, relevant part of said order is quoted below :-

"Heard learned counsel for petitioners. This petition is disposed of with liberty to the petitioners to make a representation to the authority concerned regarding his grievance and the same will be decided within two months of the production of certificate of copy of this order in accordance with law."

3. Learned Senior Advocate for petitioners has further submitted that despite various communications and representations, submitted in pursuance of above referred order, their respective claim for absorption were not considered.

4. Learned Senior Advocate has not disputed that they were not party in writ petitions which ultimately reached up to Supreme Court in Sunil Kumar Verma (supra) i.e. neither they were party before learned Single Judge nor before Division Bench of this Court nor before Supreme Court, despite said litigation remained pending before above Courts from 2003 to 2016 (i.e. for 13 years), when finally the Supreme Court has passed above referred judgment of Sunil Kumar Verma (supra).

5. Learned Senior Advocate has further submitted that in Sunil Kumar Verma (supra), relevant provisions of 'Rules of 1991', subsequent Rule viz. UP Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Rules, 2003 (for short "Rules of 2003") and also Uttar Pradesh Absorption of Retrenched Employees of Government or Public Corporations in Government Service (Rescission of Rules) Act, 2009 (for short "Act of 2009") were considered and taken note of and only thereafter has passed direction for absorption of the appellants before Supreme Court. However, they were not able to much dispute that Supreme Court in Sunil Kumar Verma (supra) has passed directions only qua to appellants therein. Learned Senior Advocate for petitioner was failed to show any part of said judgment that there was a direction that effect of said judgment would be applicable to other retrenched employees also, whether or not they were before the Court. For reference, directions made by the Supreme Court in Sunil Kumar Verma (supra) are mentioned below :-

"22. We have highlighted this aspect as we intend to ingeminate that this kind of unnecessary enthusiastic quest should be avoided. It is because it is contrary to the principles of judicial discipline. In this regard reference to Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] would be apt. In the said ruling, it has been observed thus : (SCC p. 52, para 78)

"78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed

the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system.”

23. In view of the aforesaid analysis, we find no reason that the appellants herein should not reap the benefits of absorption and, accordingly, it is directed that they shall be absorbed by the State Government as per their seniority and be given the benefit of increments, within eight weeks hence. Needless to say, they will be entitled to their seniority as per the prevalent rules. If anyone has been retired from service, he shall get the retiral benefits inclusive of pension.

24. At this juncture, the question arises as to what amount should be paid towards back wages. In this context, our attention has been invited to the order passed by this Court in contempt proceeding. However, after some debate, the learned counsel for the appellants left it to the discretion of this Court. Ms Reena Singh, learned Additional Advocate General for the State vehemently opposed with regard to grant of any back wages. Having heard the learned counsel for the parties on this score and regard being had to the facts and circumstances of the case, we think that the cause of justice would be best subserved if each of the appellant is paid 40% of the back wages, and it is so directed. It shall be computed as per our directions issued here-in-before within a period of twelve weeks hence and be paid to the appellants.”

6. Learned Senior Advocate for petitioners have also vehemently placed reliance upon a judgment passed by Division Bench of this Court in bunch of Special Appeals leading being State of U.P. and others vs. Shiv Jag Sharma and others, 2023:AHC:155290-DB that petitioners therein were retrenched employees of Churk and Dala Cement Factories established by Government of U.P. who were benefited with the direction that they be entitled for pension and ratio of law as held therein is applicable in present case also.

7. Learned Senior Advocate for petitioners have also referred following paragraphs of Sunil Kumar Verma (supra) that provisions of ‘Act of 2009’ will not act as an adverse factor to negate the claim of petitioners for absorption.

“13. The Division Bench expressed the view that the decision in Subhash Prasad [Special Appeal Defective No. 233 of 2007, order dated 15-3-2007 (All)] was squarely applicable and governed the field. It also referred to the decision in Prabhu Nath Prasad v. State of U.P. [2007 SCC OnLine All 1221 : (2007) 2 All LJ 280] , wherein the learned Single Judge had opined that merely because some incumbents had been offered appointment under the cover of the orders passed by the Court, it will not improve the case of the petitioners therein as two wrongs would not make a thing right. Endorsing the said view, the Division Bench proceeded to state that : (Sunil Kumar Verma case [State of U.P. v. Sunil Kumar Verma, 2010 SCC OnLine All 2581 : (2010) 5 All LJ 582] , SCC OnLine All paras 94-96)

“94. ... We having found that the right of consideration for absorption under the

1991 Rules having come to an end after the Rescission Rules, 2003, no mandamus can be issued for enforcing the said right. However, it is relevant to note that under the Rescission Rules, 2003 as well as under the 2009 Act certain benefits have been provided to the retrenched employees even after 8-4-2003. The retrenched employees i.e. writ petitioners are fully entitled to take the benefit of the aforesaid Rule 3(ii) of the Rescission Rules, 2003 and Section 3(2) of the 2009 Act.

95. The appeals filed by the retrenched employees challenging the order of the learned Single Judge in Prabhu Nath Prasad case [2007 SCC OnLine All 1221 : (2007) 2 All LJ 280] deserves to be and are hereby dismissed in view of the foregoing discussions. Thus, all the appeals of Group I, Group III and Group IV are partly allowed setting aside the directions issued by the learned Single Judge for absorbing the writ petitioners.

96. However, it is directed that retrenched employees of U.P. Cement Corporation, Bhadohi Woollen Mills and U.P. State Sugar Corporation shall be entitled for the benefits as contemplated under Rule 3(ii) of the Rescission Rules, 2003 and saved under Section 3(2) of the 2009 Act on Group C and Group D posts.””

8. Per contra, S/Sri Abhishek Srivastava, learned Chief Standing Counsel assisted by Sri P.K. Shahi, Additional Chief Standing Counsel for State-Respondents and Sri Ashish Agarwal, Advocate for Official Liquidator have vehemently placed reliance on provisions of 'Act of 2009' and for reference, relevant part of Act of 2009 are mentioned hereinafter :-

“3. Rescission and saving

(1) The Absorption Rules which was rescinded with effect from April 8, 2003 by the Rescission Rules shall be rescinded and be deemed to have been rescinded on May 9, 1991 and consequent upon such rescission,–

(a) the retrenched employees except those who were absorbed during the period from May 9, 1991 to April 8, 2003 shall have no claim with regard to their absorption rules or under any Government orders issued in regard thereto and their right regarding absorption accrued under the absorption Rules shall be deemed terminated.

(b) the orders of the Government issued from time to time prescribing the norms of absorption for retrenched employees of a particular Government Department or Public Corporation in Government Service and granting of consequential benefits including pay protection shall stand revoked ab-initio.

(2) Notwithstanding such rescission,–

(a) the benefit of absorption provided to the retrenched employees absorbed before April 8, 2003 under the provisions of the Absorption Rules, shall not be withdrawn;

(b) the benefit of pay protection granted to the retrenched employees absorbed prior to April 8, 2003 shall also be maintained.

(c) a retrenched employee covered by the Absorption Rules, but who has not been absorbed till April 8, 2003 shall be entitled to get relaxation in upper age limit for direct recruitment to such Group 'C' and Group 'D' posts which are outside the purview of the Uttar Pradesh Public Service Commission to the extent he has rendered his continuous services in substantive capacity in the concerned Government Department or the Public Corporation in completed years.

4. Rescinded of Rules :-

The Rescission Rules, be rescinded and be deemed to have been rescinded on April 8, 2003."

9. Learned advocates for respondents have submitted that in view of above provisions of 'Act of 2009', claim of petitioners, if any, stands negated as well as that provisions of 'Act of 2009' are not under challenge at the behest of petitioners in present bunch of writ petitions.

10. Learned Advocates for respondents have also placed reliance on two judgments passed by Division Bench of this Court in State of U.P. vs. Shambhu Nath Srivastava and others, 2019:AHC:98463-DB and State of U.P. and others vs. Sinchai Mazdoor Sangh and others, 2025:AHC:7569-DB.

11. Learned Advocates for respondents have further submitted that Shambhu Nath Srivastava (supra) is in regard retrenched employees of U.P. State Cement Corporation and it is squarely applicable in present bunch of cases against the petitioners since similar claim was rejected after taking note of Sunil Kumar Verma (supra) and effect of Act of 2009 and they have referred following relevant paragraphs of said judgment which are quoted below :-

"18. By Section 4, Rules 2003 have been rescinded with effect from 8th April, 2003. Therefore, Recession Act, 2009 in fact has made entire slate clear which was initiated by Absorption Rules, 1991 and ended by Rules, 2003. Still litigation continued, hence State Legislature intervened and both the Rules, from the date of their enforcement, have been rescinded. In respect of Absorption Rules, 1991, there is a deeming clause, rescinding the same with effect from 9th May, 1991 but subject to some protection in Section 3.

19. Section 3(1)(a) of Recession Act, 2009 clearly declares that except those retrenched employees who were absorbed during 9th May, 1991 and 8th April, 2003, all unabsorbed retrenched employees shall have no claim with regard to their absorption under Absorption Rules, 1991 or under any Government Order issued in that regard and their right relating to absorption accrued under absorption Rules shall be deemed terminated. Thus no protection has been made to a person not already absorbed till 8.4.2003. Section 3(1)(a) of Recession Act, 2009 clearly bars any right of absorption to any retrenched employee governed by Rules, 1991, if not already absorbed and now no such right survive.

20. There is a little protection provided under Section 3(2)(c) to retrenched employees who have not been absorbed with regard to relaxations in upper age limit for direct recruitment on Group 'C' and 'D' posts. Except protection with regard to relaxations in upper age limit given vide Section 3(2)(c), petitioner or any other person like him, after promulgation of Recession Act, 2009, cannot be allowed any absorption as Absorption Rules, 1991 have been rescinded from the date of their promulgation, i.e. 9th May, 1991, leaving no such right open to the petitioner or any person like him.

21. With regard to relaxations, some are even otherwise provided under different Service Rules framed under proviso to Article 309 of Constitution, applicable to different departments and a detailed discussion we find in a Single Judge judgement rendered in Ajit Raizada and others Versus State of U.P. and others, 2011 (6) ADJ 511.

22. We are also opinion of a decision of Apex Court in Sunil Kumar Verma and others Versus State of U.P. and others in Civil Appeal Nos. 9165 to 9172 of 2010, decided on 09.09.2016 but we find that therein incumbents were already appointed, hence and Court had no occasion to apply effect and consequences under Recession Act, 2009. Therefore, in our view, aforesaid judgement has no application in this appeal.

23. Be that as it may, we have already discussed Absorption Rules, 1991 in the light of present scenario, where State Legislature has rescinded aforesaid Rules vide Rescission Act, 2009 with deeming clause with effect from 9th May, 1991, i.e. the date on which aforesaid Rule."

12. Learned Advocates for respondents have further submitted that same proposition of law was followed in Sinchai Mazdoor Sangh (supra).

13. In rejoinder, learned Senior Advocate appearing for petitioners have submitted that in the judgment of Shambhu Nath Srivastava (supra), the Division Bench, in a very short observation, has rejected the effect of judgment of Supreme Court in Sunil Kumar Verma (supra) and in case there are two contrary judgments of Division Benches on a same legal issue, this Bench may refer the matter to Larger Bench by making a request to Hon'ble The Chief Justice.

14. Heard learned counsel for parties and perused the records.

15. Court has already observed in preceding paragraphs that judgment of Sunil Kumar Verma (supra) is not in rem rather it is a judgment of in persona limited to appellants therein and for that Court also takes note of orders passed in earlier rounds of litigation wherein petitioners were also not party as well as that directions made in paragraphs 22, 23 and 24 of Sunil Kumar Verma (supra) (already quoted in earlier paragraphs).

16. Even after observing above, it cannot be denied that petitioners may have a benefit of law as crystalized by Supreme Court in Sunil Kumar Verma (supra) if

they are similarly retrenched employees and would be able to satisfy that they were active towards their claim i.e. whether they were fence-sitter or not as well as effect of 'Act of 2009' and Shambhu Nath Srivastava (supra) wherein identical claim of similarly retrenched employees was rejected after taking note of Sunil Kumar Verma (supra) is also required to be taken note of.

17. It is admitted case of petitioners on basis of averments made in this writ petition as well as on basis of submissions that for claim of absorption, they were lastly approached this Court way back in the year 1998 i.e. after 19 years present bunch of writ petitions was filed. No substantial argument or submission or documents are placed along with these writ petitions that they have regularly approached before concerned respondents for absorption during said period of 19 years.

18. On basis of material available, it is not much disputed that litigation was pending before Single Bench, Division Bench of this Court as well as before Supreme Court for about more than 13 years involving similar issues but the petitioners have never taken any steps to become party either before Single Bench, Division Bench or Supreme Court. Therefore, Court is of considered view that petitioners are fence-sitter and awake from a long slumber of

19 years and approached this Court in the year 2017 only after issue was crystallized on basis of writ petitioners who were before Courts for 13 years and finally, the Supreme Court passed a judgment in Sunil Kumar Verma (supra).

19. The Court is also of the view that judgment passed by Division Bench in Shambhu Nath Srivastava (supra) is squarely against the case of petitioners whereby Division Bench has rejected the similar claim of retrenched employees of U.P. Cement Corporation as well as distinguished Sunil Kumar Verma (supra) also. There is no reason to take a different view.

20. So far as judgment of Shiv Jag Sharma and others (supra) is concerned, it was in regard to grant of pension to retired employees of U.P. Rajya Cement Nigam Ltd. at Churk and petitioners therein were already absorbed in State services, whereas petitioners herein were admittedly not absorbed, therefore, facts of Shiv Jag Sharma and others (supra) are distinguishable and it are not applicable to present case.

21. Court also takes note of Act of 2009 which is absolutely against the petitioners' claim as in terms of Section (3) of the Act, "Absorption Rules which was rescinded with effect from April 8, 2003 by the Rescission Rules shall be rescinded and be deemed to have been rescinded on May 9, 1991" and petitioners were not protected as well as now they could not take benefit of Rules of 1991.

22. Court also takes note of 'Rules of 2003' and 'Rules of 2009' as discussed in Sunil Kumar Verma (supra) wherein Supreme Court has upheld judgment given by Learned Single Judge that petitioners therein were before respondents before

Rules of 2003 came into force, therefore, its benefit was granted whereas in present case, as referred above, petitioners were sleeping for a very long period, therefore, adverse effect of Act of 2009 would definitely fall upon them.

23. Considering overall circumstances, this Court does not find any ground to grant relief to petitioners.

24. Accordingly, all writ petitions are dismissed.