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**(2002) 10 AHC CK 0131**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 37905 of 1995

Ram Dhyan Yadav

APPELLANT

Vs

Director, Harijan Evam Samaj Kalyan Vibhag, U.P. Lucknow and  
Others

RESPONDENT

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**Date of Decision :** 25-10-2002

**Acts Referred:**

**Citation :** (2002) 10 AHC CK 0131

**Hon'ble Judges :** Rakesh Tiwari, J

**Final Decision :** Dismissed

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**Judgement**

Rakesh Tiwari, J.—Heard the learned Counsel for the parties and perused the records.

2. The petitioner was given temporary appointment on 31121982 on the post of Chaukidar in Harijan Girls Primary Pathshala, Palhanee, Azamgarh (hereinafter referred to as institution) which is a recognized institution on the grantinaid from Harijan and Social Welfare. He joined the Institution on 111983.

3. The petitioner was being paid Rs. 45 per month in the year 1974. On 2581987 the Head Master of the institution requested the Director, Harijan Evam Samaj Kalyan Vibhag, U.P. Lucknow to pay the salary of the petitioner of the post of Chaukidar, which is a ClassIV post of the State Government. The petitioner also moved representations on 13111987, 1681988 and 1691989 before Zila Samaj Kalyan Adhikari, Azamgarh, but he has not been granted the pay scale of ClassIV employee. Aggrieved by the nonpayment of salary of aforesaid post, he filed the present writ petition challenging the action of nongranted the salary on the ground that it is illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

4. At the time of admission the petitioner prayed that he may be permitted to move an application before respondent No. 4 for revision of his pay. This Court vide order dated 22121995 granted permission to the petitioner for moving an

application for revision of his pay scale before respondent No. 2 and further directed that in case an application is filed, the same shall be decided by means of speaking order within a period of one month from the date of filing of such application in accordance with law.

5. In the counter affidavit filed by the Zila Samaj Kalyan Adhikari, Azamgarh, it has been, inter alia, stated that the petitioner had been appointed on the post of Chaukidar in the fixed pay scale which he had accepted in the agreement and this matter has already been decided by an Order No. 4001/2 dated 31/3/1996 and as such he is not entitled to pay scale of Class IV employee.

6. Counter and rejoinder affidavits have been exchanged between the parties. I have perused the same.

7. The petitioner is a workman within the meaning of Section 2 (ii) of the U.P. Industrial Disputes Act, 1947. He has raised the disputed question of fact in this writ petition, which cannot be adjudicated except by adducing oral and documentary evidence, which cannot be decided under Article 226 of the Constitution of India.

8. In view of the Full Bench decision of this Court in Chandrama Singh v. Managing Director, U.P. Cooperative Union, Lucknow, 1991 (2) UPLBEC 898, the petitioner has an alternative and efficacious remedy available to him before the labour Court.

9. For the aforesaid reasons, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.