



2026:AHC-LKO:67510

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 2291 of 1994

Uma Kant Tripathi

.....Petitioner(s)

Versus

C/M Bahraich Coop Bank Ltd.

.....Respondent(s)

Counsel for Petitioner(s)	: S.C. Sitapuri, A.m.tripathi, Sachichida Nand Shukla
Counsel for Respondent(s)	: P.k. Khare, A.r. Khan, Neeraj Chaurasia, Pawan Kumar Mishra

Reserved on 22.07.2026

Delivered on 23.09.2026

Court No.30

HON'BLE GARIMA PRASHAD, J.

1. Heard Mr. Sachchidanand Shukla, learned counsel for the petitioner, Mr. Pawan Kumar Mishra, learned counsel for the respondent No.2 and Mr. Pankaj Srivastava, learned Additional Chief Standing Counsel for the State.

2. The petitioner has assailed the orders dated 16.03.1994 and 23.03.1994, whereby his appointment as a Class IV employee on the post of “Sahyogi” in the Bahraich District Cooperative Bank Limited was annulled and he was consequently relieved from service. He has also prayed for continuance in service together with salary and arrears.

3. The petitioner had initially challenged the validity of Rule 7 of the Co-operative Banks Centralised Service Rules, 1976 and Regulation 17(d) of the Uttar Pradesh Co-operative Societies Employees' Service Regulations, 1975. However, prayer clause (iv), containing the said challenge, was deleted as not pressed by order dated 16.12.2024. The constitutional challenge, therefore, no longer survives.

4. The petitioner was initially appointed as a Sahyogi by an order dated 07.09.1993. Another appointment order was issued on 22.12.1993. Both orders described the appointment as wholly temporary, for a period not exceeding 89 days, and terminable without prior notice. The appointment was also made subject to the post being filled through regular selection.

5. The petitioner's case is that he was duly selected by the Committee of Management and that the appointment order was issued pursuant to its resolution. He joined the post and continued to discharge his duties until the impugned orders were implemented in March 1994.

6. The respondents, however, question the legality of the appointment. According to them, after the death of the then Secretary/General Manager on 22.12.1993, the Chairman authorised Shri Radha Mohan Singh, Junior Branch Manager, merely to look after the work of that office. Shri Singh was neither a member of the centralised service nor competent to make appointments. It is also alleged that no lawful selection was held and that several appointment orders were issued without authority.

7. The Deputy Registrar, Co-operative Societies, thereafter exercised his powers under Section 128 of the Uttar Pradesh Co-operative Societies Act, 1965 and annulled the authorisation as well as the

appointment orders issued pursuant to it. The Bank, in consequence, passed the order relieving the petitioner from service.

8. When the writ petition was taken up on 02.05.1994, this Court directed the respondents to file their counter affidavits. In the meantime, the impugned order was kept in abeyance, and the respondents were directed to allow the petitioner to work and to pay him salary.

9. According to the petitioner, the interim direction was never complied with. In his supplementary affidavit dated 19.11.2017, he stated that, despite repeated representations, he was neither permitted to work nor paid any salary.

10. On 08.08.2022, the parties were granted time to place on record the relevant material indicating whether a regularly selected candidate had joined the post. The petitioner subsequently asserted that no such candidate had been appointed. No independent service or vacancy record has, however, been produced to substantiate this assertion.

11. Learned counsel for the petitioner submits that the Committee of Management was the competent appointing authority and had duly selected the petitioner. Shri Radha Mohan Singh, it is argued, merely issued the appointment order in implementation of the Committee's decision. It is further submitted that, before annulling the appointment, the Deputy Registrar neither required the Committee of Management to reconsider its decision, as contemplated by the proviso to Section 128 of the Act, nor afforded the petitioner an opportunity of hearing.

12. Learned counsel for the respondents, on the other hand, submits that the appointment was made without an open selection and by an officer who had no authority to make it. In any event, the appointment was expressly limited to 89 days and, therefore, conferred no right upon

the petitioner either to continue in service or to seek regularisation. It is also submitted that an appointment void from its inception could be cancelled without undertaking an empty formality and could not confer any entitlement to salary or other service benefits.

13. Having considered the rival submissions, the Court finds that the petitioner's claim must first be examined in the light of the terms of his appointment. The orders dated 07.09.1993 and 22.12.1993 did not appoint the petitioner on a substantive basis. On the contrary, they expressly provided that the appointment was wholly temporary, would not exceed 89 days, could be terminated without prior notice and would remain subject to the post being filled through regular selection. The petitioner accepted the appointment on those terms.

14. No subsequent appointment order, statutory provision or decision of the competent authority extending the petitioner's tenure or regularising his service has been placed on record. The assertion that no regularly selected candidate subsequently joined the post, even if accepted, would not convert a time-bound temporary appointment into a permanent one. The petitioner, therefore, acquired no enforceable right to continue after the expiry of the stipulated period.

15. At this stage, it would be appropriate to refer to Section 128 of the Uttar Pradesh Co-operative Societies Act, 1965, under which the Deputy Registrar acted. The provision reads as follows:

“128. Registrar's power to annul resolution of co-operative society or cancel order passed by an officer of a co-operative society in certain cases:—

The Registrar may—

(i) annul any resolution passed by the committee of management, or the general body of any co-operative society; or
(ii) cancel any order passed by an officer of a co-operative society;

If he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the society, or is in contravention of the provisions of this Act, the rules or the bye-laws of the society, whereupon every such resolution or order shall become void and inoperative and be deleted from the records of the society.

[Provided that, the Registrar shall, before making any order, require the Committee of management, general body or officer of the co-operative society to reconsider the resolution, or as the case may be the order, within such period as he may fix but which shall not be less than fifteen days, and if he deems fit may stay the operation of that resolution or the order during such period.]”

16. The petitioner has specifically pleaded that the impugned action was taken without notice or an opportunity of hearing. Although the subsequent counter affidavit states that a report was called for and considered, nothing has been placed on record to show that the Committee of Management or the officer concerned was required to reconsider the decision in the manner contemplated by the proviso to Section 128.

17. Even if this procedural objection is accepted, it would not necessarily entitle the petitioner to the substantive relief sought. The jurisdiction to issue a writ of certiorari is discretionary. Such a writ need not be issued where setting aside the impugned action would merely revive an appointment that could not otherwise be sustained or had already come to an end by efflux of time.

18. In ***Bhartiya Seva Samaj Trust v. Yogeshbhai Ambalal Patel***, (2012) 9 SCC 310, the Supreme Court held that an order need not be set aside where the consequence would be the revival of another order that could not lawfully be sustained. Thus, even if the action taken under Section 128 were set aside, the petitioner would not acquire any right to continue after the expiry of his temporary appointment.

19. Reference may also be made to ***Union of India v. Raghuwar Pal Singh***, (2018) 15 SCC 463, wherein the Supreme Court explained that an appointment made without the authority or essential approval required under the governing rules is a nullity and that the absence of a prior hearing does not, by itself, require its restoration. In the present case, however, it is unnecessary to enter into the wider question of whether the appointment was void from its inception. The matter can be decided on the narrower and undisputed ground that the appointment was temporary and had exhausted its stipulated tenure.

20. The effect of the interim order dated 02.05.1994 must also be considered. The order remained binding upon the parties so long as it was operative, and the respondents were not at liberty to disregard it. Their failure to permit the petitioner to work in terms of that order is undoubtedly unsatisfactory. Nevertheless, an interim order is intended to preserve the subject matter of the proceedings pending final

adjudication. It cannot create or enlarge a substantive right that the petitioner did not otherwise possess.

21. The petitioner did not discharge any duties after March 1994. The first affidavit on the present record specifically complaining of continued non-compliance with the interim direction was filed on 19.11.2017. No material has been produced to show that, during the intervening period, the petitioner took steps to enforce the interim order or that his appointment was extended beyond its fixed tenure. In these circumstances, the interim order cannot independently support a claim for salary and other service benefits extending over more than three decades.

22. There is yet another aspect of the matter. In his supplementary affidavit, the petitioner disclosed his date of birth as 21.04.1966 and stated that he would attain the age of superannuation on 20.04.2026. That date has already passed. A direction requiring the respondents to permit him to join or continue on the post can, therefore, no longer be implemented.

23. The claim for monetary relief cannot be considered independently of the petitioner's right to hold the post. The petitioner has not established that he was regularly appointed, that his temporary appointment was extended or that he actually discharged duties after March 1994. An appointment limited to 89 days cannot form the basis of a claim for salary, pension or other service benefits until the date of superannuation merely because the writ petition remained pending.

24. This conclusion, however, does not absolve the State authorities of responsibility for the manner in which the proceedings were conducted. On 02.05.1994, learned Standing Counsel accepted notice on behalf of

opposite party nos. 3 to 5, and the respondents were directed to file their counter affidavits within six weeks. Opposite party nos. 3 and 4, whose action formed the basis of the impugned orders, nevertheless filed their counter affidavit only after further orders were passed in 2025. No explanation has been offered for this delay of more than three decades. During this period, the Court was also not informed that its interim direction had remained unimplemented.

25. The State cannot avoid responsibility for this lapse merely because the petitioner has failed to establish his substantive claim. The prolonged delay deprived the Court of timely assistance from the authorities concerned and allowed the issue of compliance with the interim order to remain unresolved until the petitioner had crossed the age of superannuation. The petitioner is, therefore, entitled to be compensated by way of costs, though not by the grant of service benefits to which he has established no legal right.

26. For the reasons stated above, the writ petition is dismissed on merits, and the interim order stands discharged. However, having regard to the unexplained delay on the part of the State authorities and their failure to bring the non-compliance with the interim order to the notice of the Court, costs of ₹1,00,000 are imposed upon the State. Opposite party nos. 3 and 4 shall ensure that the amount is paid to the petitioner within six weeks from the date of this judgment.

(Garima Prashad,J.)

September 23, 2026

Kuldeep