



2026:AHC:1477

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 18923 of 2025

Smt Reena

.....Petitioner(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Petitioner(s)	: Grijesh Tiwari
Counsel for Respondent(s)	: Ajay Kumar Yadav, C.S.C., Shashi Prakash Singh, Shiv Bahadur Singh

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. Heard Mr. Grijesh Tiwari, learned counsel for the petitioner, Mr. Shashi Prakash Singh, learned counsel for respondent nos.2 & 3 and learned Standing Counsel for the State. Dr. Shiv Bahadur Singh, learned counsel has assisted the Court on the legal issue.

2. The present writ petition has been filed *inter-alia* for the following reliefs:-

"1. Issue a writ, order or direction in the nature of certiorari quashing the impugned dismissal order dated 12.11.2025 (Annexure no.1 to this writ petition) passed by the District Basic Education Officer, Mau, i.e. by the respondent no.3.

2. Issue a writ, order or direction in the nature of mandamus commanding / directing the respondents not to take any coercive action against the petitioner in pursuance of the impugned order dated 12.11.2025 passed by the District Basic Education Officer, Mau, i.e. by the respondent no.3.

3. Issue a writ, order or direction in the nature of mandamus commanding / directing the respondents to reinstate the petitioner in service and not to interfere in his peaceful functioning as Assistant Teacher and to pay her salary regularly month to month as and when it falls due.

4. Issue any other suitable writ order or direction which this Hon'ble Court made deem fit and proper under the facts and circumstances of the case.

5. Award the cost of the petition to the petitioner."

3. Placing brief facts of the case, learned counsel for the petitioner submits that the petitioner was selected and appointed as an Assistant Teacher in a primary school on 07.11.2015. Subsequently, on the basis of a complaint made by one Rampravesh Rajbhar, alleging that the petitioner had performed marriage with one Arvind Yadav, who already had a living wife, the impugned order has been passed relying upon the provisions of Rule 12 of the Uttar Pradesh Basic Education (Teachers Service) Rules, 1981 (hereinafter referred to as "the Rules, 1981"), which is arbitrary, illegal, and unreasonable.

4. Learned counsel for the petitioner further submits that the impugned order has been challenged on the ground that the services of the petitioner have been terminated without holding any detailed disciplinary inquiry, as required under law. It is further submitted that the petitioner was not aware of the fact that the first wife of Arvind Yadav was alive at the time when the petitioner performed marriage with him. Even assuming the applicability of the Rules, 1981, the alleged charge does not prescribe termination as a major punishment under the said Rules. In support of his submissions, learned counsel for the petitioner has relied upon the judgment of the Division Bench of the Lucknow Bench of this Court in the case of **Balram Panwar vs. State of U.P. through Secretary, Nyay Vibhag, U.P. & Another**¹, as well as the interim order dated 05.11.2024 passed in Writ-A No. 11264 of 2024². Therefore, for the aforesaid reasons, the impugned order is liable to be set aside.

5. Learned counsel for the respondents could not dispute the aforesaid facts. However, he submits that in view of the provisions of Rule 12 of the Rules, 1981, though the termination order could not have been passed, but the appointment of the petitioner could have been cancelled

1 Writ-A No. 5111 of 2022, decided on 18.09.2024

2 Ghanshyam Das Yadav vs. State of U.P. and 2 Others

on the ground that she had married a person whose first wife was alive at the relevant time.

6. Learned counsel Dr. S. B. Singh, while assisting the Court, has placed reliance upon the judgment of the Apex Court in the case of **Khursheed Ahmad Khan vs. State of U.P. and Others**³, wherein the applicability of Rule 29 of the U.P. Government Servant Conduct Rules, 1956, has been considered. It has been contended that, in view of the above **Rule 12 of the Rules of 1981** is applicable in facts of present case and the appointment of the petitioner is void *ab initio*, as the same was obtained by concealment of a material fact, namely, that the petitioner had married a person whose first marriage was still subsisting at the relevant time. He has placed emphasis upon Para no.11 of the aforesaid judgment, which is as follows:-

“11. As already mentioned above, there is adequate material on record in support of the charge against the appellant that he performed second marriage during the currency of the first marriage. Admittedly, there is no intimation in any form on record that the appellant had divorced his first wife. In service record she continued to be mentioned as the wife of the appellant. Moreover, she has given a statement in inquiry proceedings that she continued to be wife of the appellant. The appellant also admitted in inquiry conducted on directions of the Human Rights Commission that his first marriage had continued. In these circumstances, the finding of violation of Conduct Rules cannot be held to be perverse or unreasonable so as to call for interference by this Court. In these circumstances, the High Court was justified in holding that the penalty of removal cannot be held to be shockingly disproportionate to the charge on established judicial parameters.”

7. Before discussing the merits of the case, it would be appropriate to place on record certain provisions which are necessary for the proper adjudication of the matter.

8. Rule 3 of the U.P. Government Servant's Conduct Rules, 1956 reads as follows:-

"3. General.

(1) Every Government servant shall at all times maintain absolute integrity and devotion to duty.

(2) Every Government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force."

9. Rule 29 of the U.P. Government Servant's Conduct Rules, 1956 reads as follows:-

"29. Bigamous marriages.

(1) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.

(2) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government.

(3) The minimum punishment to be imposed for contravention of sub-rule (1) or sub-rule (2) shall be the withholding of increments for three years."

10. Section 6 of the U.P. Basic Education Act, 1972 reads as follows:-

"6. Officers and other employees of the Board. -

(1) For the purpose of enabling it efficiently to discharge its functions under this Act the Board may appoint such number of officers, teachers and other employees as it may, with the previous approval of the State Government, think fit.

(2) [* * *] [Omitted by U.P Act No. 12 of 1978 (w.e.f. 27.4.1978).]

(3) [* * *] [Omitted by U.P Act No. 21 of 1975 (w.e.f. 3.5.1975).]"

11. Section 19 of the U.P. Basic Education Act, 1972 reads as follows:-

"19. Power to make Rules. -

[(1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -

(a) the recruitment, and the conditions of service of persons appointed to the posts of officers, teachers and other employees under Section 6;

(b) the tenure of service, remuneration and other terms and conditions of service of officers, teachers and other employees transferred to the Board under Section 9;

(c) the recruitment, and the conditions of service of the persons appointed, to the posts of teachers and other employees of basic schools recognised by the Board;

(d) any other matter for which insufficient provision exists in the Act and provision in the rules is considered by the State Government to be necessary;

(e) any other matter which is to be or may be prescribed.]"

12. Rule 12 of the U.P. Basic Education (Teachers) Service Rules, 1981 reads as follows:-

"12. Marital status.

- A male candidate who has more than one wife living or a female candidate who has married a person already having a wife living, shall not be eligible for appointment to the service :

Provided that the Board may, if satisfied that there exists special ground for doing so, exempt any person from the operation of this rule."

13. Upon a plain and literal interpretation of Rule 3 read with the relevant part of Rule 29 of the U.P. Government Servants' Conduct Rules, 1956, it is manifest that the misconduct contemplated thereunder, which is made punishable by the U.P. Government Servants (Discipline and Appeal) Rules, 1999, is relatable only to a "government servant", namely, a person who is already borne on the cadre and in government service. The said rules do not envisage their application to a person prior to his or her entry into service.

14. The disciplinary jurisdiction under the 1999 Rules can be invoked only when the relationship of employer and employee subsists. In the absence of such a relationship, initiation of disciplinary proceedings or imposition of punishment would be wholly without authority of law and unsustainable.

15. It is a settled principle of service jurisprudence that conduct rules operate prospectively and regulate the behaviour of a government servant during the tenure of service, and not prior thereto. Any action taken de hors the existence of a master-servant relationship would be arbitrary and violative of Articles 14 and 16 of the Constitution of India.

16. A conjoint reading of Section 6 with Section 19 of the Uttar Pradesh Basic Education Act, 1972 clearly indicates that the Board has been constituted for the purpose of appointment of teachers, as well as for regulating the recruitment and conditions of service of persons appointed as teachers and other employees of basic schools recognized by the Board. In exercise of the powers conferred under sub-section (1) of

Section 19 of the Act of 1972, the State Government has accordingly framed the Uttar Pradesh Basic Education Teachers Service Rules, 1981.

17. Rule 12 of the Rules of 1981, deals with the marital status of a candidate and provides that a person shall be ineligible for appointment to the service on the grounds specified therein. However, the Rule further empowers the Board to grant exemption from the operation of this provision, if it is satisfied that special grounds exist in favour of such person.

18. In the facts of the present case, it is undisputed that the petitioner contracted marriage with Arvind Yadav in the year 2009, during the subsistence of his first marriage with another woman. However, the petitioner was appointed as an Assistant Teacher only in the year 2015.

19. Rule 29 of the Uttar Pradesh Government Servants' Conduct Rules, 1956 applies to the conduct of a government servant during the period of service. Acts or omissions that took place prior to entering into government service do not fall within the ambit of the said rule. Since the alleged marital irregularity pertains to the year 2009, i.e., much prior to the petitioner's appointment in 2015, the provisions of Rule 29 of the Conduct Rules, 1956 are clearly inapplicable to the petitioner's case.

20. Accordingly, any action sought to be taken against the petitioner by invoking Rule 29 of the Conduct Rules, 1956, on the basis of an event that occurred before she entered government service, is legally unsustainable and cannot be upheld.

21. To be more specific, Rule 3 and Rule 29 of the Uttar Pradesh Government Servants' Conduct Rules, 1956 makes it manifest that these provisions govern the conduct of a government servant. Rule 3 opens with the expression "every government servant", while Rule 29 expressly begins with the words "no government servant". The deliberate and consistent use of this phraseology leaves no manner of

doubt that the Rules are intended to regulate the conduct of persons who are already in government service.

22. Consequently, the applicability of the Conduct Rules, 1956 is confined to those who have entered government service, and the said Rules cannot be invoked against a person at a stage prior to appointment. Any interpretation extending their operation to candidates or persons not yet in service would be contrary to the plain language of the Rules and the settled principles of statutory construction.

23. Be that as it may, the issue which falls for consideration in the facts of the present case is not the applicability of the Conduct Rules, 1956, but the eligibility of the candidate with respect to marital status, as prescribed under Rule 12 of the Rules of 1981. It is this statutory provision which governs the eligibility for appointment and, therefore, the same alone is required to be examined in the context of the present facts.

24. Accordingly, the determination of the controversy must rest upon an assessment of the petitioner's eligibility under the Rules of 1981, rather than upon any alleged infraction of the Conduct Rules, 1956, which operate only after a person has entered government service.

25. The present case is required to be examined in the context of the applicability of Rule 12 of the Uttar Pradesh Basic Education Teachers Service Rules, 1981. The determinative issue is whether the petitioner was eligible for appointment as an Assistant Teacher, having contracted marriage in the year 2009 with a person whose first marriage was subsisting at the relevant time. Consequently, the further question that arises for consideration is the nature of consequences or punishment, if any, that may ensue, and the statutory provision under which such action is permissible.

26. Thus, the present case must be examined primarily with reference to Rule 12 of the Uttar Pradesh Basic Education Teachers Service Rules, 1981, which governs the eligibility of a candidate at the stage of initial

appointment. Rule 12 creates a statutory bar on appointment where a candidate has contracted a marriage with a person whose spouse is living, unless an exemption is granted by the competent authority on special grounds.

27. In the facts of the present case, it is not in dispute that the petitioner solemnized her marriage in the year 2009 with a person whose first marriage was subsisting at the relevant time. Therefore, the crucial question is not one of misconduct during service, but whether the petitioner was eligible for appointment at all when she was appointed as an Assistant Teacher.

28. A clear distinction must be drawn between: (i) ineligibility at the threshold of appointment; (ii) misconduct committed by a government servant after entering service.

29. Rule 12 of the Rules of 1981 does not prescribe any punishment. It merely stipulates a condition of eligibility. If such condition is violated, the appointment itself becomes void ab initio, having been made in contravention of statutory rules.

30. On the other hand, punitive provisions, such as those contained in the Uttar Pradesh Government Servants Conduct Rules, 1956 or the Discipline and Appeal Rules, 1999, apply only to persons who are validly appointed and are government servants in the eyes of law. These provisions cannot be invoked to punish a person for an act which renders her ineligible for appointment itself.

31. Where an appointment is found to be in violation of Rule 12 of the Rules of 1981: the consequence is cancellation of appointment, not punishment and in such a case, no departmental inquiry or disciplinary proceedings are required, as the issue is not misconduct but lack of statutory eligibility.

32. The question of imposing punishment under the Conduct Rules, 1956 does not arise, as those rules presuppose a lawful entry into service.

33. To make it more clear, Rule 12 of the Rules of 1981 prescribes a condition relating to the marital status of a candidate at the stage of eligibility for appointment. The said provision neither defines any act as misconduct nor prescribes any penalty for its breach. It is well settled that eligibility conditions governing entry into service stand on a different footing from rules regulating conduct after appointment.

34. Punishment can be imposed only when an act falls within the ambit of misconduct as defined under the applicable Conduct Rules, namely, the U.P. Government Servants' Conduct Rules, 1956, read with the U.P. Government Servants (Discipline and Appeal) Rules, 1999. A rule governing eligibility cannot, by itself, be elevated to the status of a penal provision unless the statute expressly so provides.

35. Further, Rule 12 itself empowers the competent authority to grant exemption on special grounds, which clearly indicates that the provision is directory in nature and non-penal. A provision containing a power of relaxation cannot ordinarily be construed as creating an offence or misconduct.

36. At best, a violation of Rule 12 may render the appointment voidable, subject to adjudication, but cannot attract disciplinary punishment unless the appointment was secured by fraud, suppression of material facts, or deliberate misrepresentation. In the absence of such elements, initiation of disciplinary proceedings would be legally unsustainable.

37. The Supreme Court has consistently held that breach of eligibility conditions relates to the validity of appointment and not to misconduct, unless accompanied by fraud or deception.

38. It is settled law that no punishment can be imposed unless the act complained of is defined as misconduct under the service rules. Where an appointment is obtained by misrepresentation or suppression of material facts, disciplinary action is permissible; otherwise not, presence of a power to relax conditions indicates that the rule is not intended to be punitive.

39. In view of the above discussion, this Court is of the considered opinion that the petitioner, having contracted marriage in the year 2009 with a person whose first marriage was subsisting, was rendered ineligible for appointment under Rule 12 of the Uttar Pradesh Basic Education Teachers Service Rules, 1981. The defect goes to the very root of the appointment, rendering it void ab initio. The case does not involve misconduct attracting punishment under the Conduct Rules or the Discipline and Appeal Rules, but concerns a statutory disqualification existing at the time of appointment itself.

40. In view of the aforesaid, the impugned order dated 12.11.2025 passed by respondent no.3 is hereby **quashed**. The matter is remitted to the respondent no.3, District Basic Education Officer, Mau, to pass a fresh reasoned and speaking order in accordance with law, after issuing a show-cause notice to the petitioner and affording her an opportunity of hearing, keeping in mind the relevant statutory provisions as well as the observations of the Court, as expeditiously as possible, preferably within a period of two months from the date of production of certified copy of this order, if there is no legal impediment.

41. The writ petition stands **allowed** accordingly. No order as to costs.

(Mrs. Manju Rani Chauhan,J.)

January 06, 2026

Jitendra/-