

Counter Affidavits in Writ Petitions

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1. **Law relating to affidavits in Writ Petitions & SLPs** : Laws relating to filing of affidavits and counter affidavits in Writ Petitions etc. before the Allahabad High Court including its Lucknow Bench and in SLPs etc. before the Supreme Court of India are as under :
 - (i) Chapter IV of the Allahabad High Court Rules, 1952
 - (ii) Rules 5, 6, 11 of the Allahabad High Court Rules, 1952
 - (iii) Administrative instructions issued by the Allahabad High Court
 - (iv) Supreme Court Rules, 2013
2. **Any person can swear and file affidavit (Rule 10)** : As per Rule 10 of the Allahabad High Court Rules, 1952, except as otherwise provided by law or by these Rules or by order of the Court, an affidavit may be sworn by any person having knowledge of the facts deposed to therein.
3. **Joint affidavit by two or more persons (Rule 10)** : Two or more persons may join in an affidavit each deposing separately to such facts as are within his knowledge.
- 4(A). **Deponent to disclose his complete identity in affidavit (Rule 9)** : Rule 9 of the Allahabad High Court Rules, 1952 requires that deponent of an affidavit shall fully describe following particulars in his affidavit:
 - (i) full name
 - (ii) age
 - (iii) father's name
 - (iv) religious persuasion
 - (v) his rank or degree in life
 - (vi) profession
 - (vii) calling

- (viii) occupation or trade
- (ix) true place of residence

4(B). **Identification of deponent (Rule 13)** : Every person swearing an affidavit shall, if not personally known to the person before whom the affidavit is sworn, be identified before that person by someone known to him; and in such case the person before whom the affidavit is made shall state at the foot of the affidavit, the name, address and description of the person by whom such identification was made. Such identification may be made by a person :

- (a) personally acquainted with the person to be identified, or
- (b) who is reasonably satisfied as to his identity

Provided that in the latter case the person so identifying shall sign at the foot of the affidavit a declaration in the following form, after there has been affixed to such declaration in his presence the thumb impression of the person so identified, namely :

Form of declaration

I (name, description and address) declare that I am satisfied on the grounds stated below that the person making this affidavit and alleging himself to be A B is that person : (Here state the grounds).

4(C) **Office memorandum No. 13514 dated 07.10.2015 issued by the Allahabad High Court for observance by Oath Commissioners regarding photographs and identification etc. of the deponents of affidavits** : The Allahabad High Court has issued following directions to the Oath Commissioners and the members of Bar for photographs and identification etc. of the deponents of affidavits :

"(1) the Oath Commissioners shall maintain a register which shall contain the prescribed particulars with respect to each affidavit sworn.

- (2) *the deponent of every affidavit shall affix his or her passport size photograph together with the identification number issued by the Allahabad High Court Bar Association.*
- (3) *For one particular case, one identification number shall be allocated to a person by the Allahabad High Court Bar Association which may be used for all subsequent affidavit to be filled by the same deponent in the same case.*
- (4) *The identification number allocated to a particular deponent in a case shall also be specifically recorded in the register.*

Provided that the above modalities shall not be insisted upon in regard to the affidavits to be filed by the officials of the State or Union Governments or on behalf of the instrumentalities of the State.

It is further directed that having due regard to the nature of the work which is to be carried out by the Allahabad High Court Bar Association and the administrative expenses involved, an amount of Rs. Seventy per identification number may be charged by the Bar Association. The amount so prescribed shall not be enhanced without prior approval of the Registrar General on the instructions of the Chief Justice.

All concerned are directed to comply with aforesaid order with immediate effect."

5(A). How to begin to draft affidavit to be presented in Court (Rule 8) ? :

The provisions of Rules 5, 6 & 11 of Chapter IX of Allahabad High Court Rules, 1952, shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the general heading : "**In the High Court of Judicature at Allahabad.**" The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.

5(B). Affidavit not to contain argumentative matters (Rule 8) :

The affidavit shall contain no statement which is in the nature of an expression of opinion or argument.

6. Affidavit to bear serial number and coupon etc.(Rule 4) :

Each affidavit shall have recorded on it the number and the year of the register

in which it is entered and the serial number and the date of the entry. It shall also have the coupon, as supplied by the Court, affixed to it by the Oath Commissioner .

Provided that the affidavit verified by the Oath Commissioners of other State by an Officer of Jail in the State of Uttar Pradesh by the Superintendent-cum-Accountant of the office of Official Liquidator High Court, Allahabad and by the Police Sub-Inspector (M) in the office of the Inspector General of police at Lucknow on whom powers of Oath Commissioner have been conferred can be presented before the Court without such coupons.

7. **Form of affidavit (Rule 11)** : When the deponent speaks to any facts within his own knowledge, he must do so directly and positively, using the word "I affirm" or "I make oath and say" or words to that effect.
- 8(A). **Facts to be within the deponent's knowledge or source to be stated (Rule 12)** : Except on interlocutory applications, an affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove. On an interlocutory application when a particular fact is not within the deponent's own knowledge, but is based on his belief or information received from others which he believes to be true, the deponent shall use the expression "I am informed and verily believe such information to be true, "or words to that effect, and shall sufficiently describe for the purpose of identification the person or persons from whom his information was received. When any fact is stated on the basis of information derived from a document, full particulars of that document shall be stated and the deponent shall verify that he believes such information to be true.
- 8(B). **Oath or affirmation by deponent (Rule 17)** : The person administering an oath or affirmation to the person making an affidavit shall follow the provisions of the **Indian Oaths Act, 1873**.

Form of Oath

I swear that this my declaration is true;
that it conceals nothing;
and that no part of it is false.
So help me God.

Affirmation

I solemnly affirm that this my declaration is true;
that it conceals nothing;
and that no part of it is false.

9. **Affidavit by 'pardanashin' woman when permissible (Rule 14) ?** : No affidavit purporting to have been sworn by a woman who did not appear unveiled in the presence of the person before whom the affidavit was made, shall be used unless she was identified in the manner specified in Rule 13, and the affidavit is accompanied by a separate affidavit by the person identifying her made at the time of identification setting forth the circumstances in which she was personally known to him or he was satisfied that she was such person as she alleged herself to be in her affidavit.
- 10(A).**Contents of affidavit to be explained to deponent (Rule 15)** : The person before whom an affidavit is sworn shall ask the deponent if he has read the affidavit and understands the contents thereof. If the deponent state that he has not read it or appears not to understand the contents or does not know the language thereof he shall read and explain it or cause another person to read and explain it to such person in his presence. Until he is satisfied that the deponent fully understands its contents he shall not allow the affidavit to be sworn.
- 10(B).**Impounding of affidavit by Oath Commissioner when deponent does not understand the contents of affidavit (Rule 16)** : When it appears to the Oath Commissioner that the deponent cannot be made or

will not understand the contents of the affidavit, he shall impound it and forward it to the Registrar General for such action as he may consider necessary. When an affidavit is impounded under this Rule, the person impounding the same shall certify thereon the date on which and the circumstances in which it was impounded.

- 11(A). **Correction in affidavit (Rule 18)** : All interlineations, alterations or erasures in an affidavit shall be initialled by the person swearing it and the person before whom it is sworn. Such interlineations, alterations, or erasures shall be made in such manner as not to obliterate or render it impossible or difficult to read the original matter. In case such matter has been obliterated so as to make it impossible or difficult to read it, it shall be re-written on the margin and initialled by the person before whom the affidavit is sworn. No interlineation, alteration or erasure shall be made in an affidavit after it has been sworn.
- 11(B). **Affidavit containing numerous corrections may not be accepted (Rule 20)** : The Court or the Registrar General may refuse to receive an affidavit in which interlineations, alterations or erasures appear to be so numerous as to make it expedient that the affidavit should be re-written.
12. **Certificate of verification (Rule 19)** : The person before whom an affidavit is sworn shall certify at the foot of the affidavit the fact of the swearing of the affidavit before him, the manner in which he has complied with Rule 15 and the date and hour of the swearing of the affidavit and shall mark, initial and date any exhibits referred to therein.
13. **Uncontroverted fact contained in affidavit can be taken to be true** : If the averments contained in an affidavit are not controverted by counter affidavit, the facts contained in that affidavit can be accepted as correct and true. In such cases presumption in terms of Section 114(g) of

the Evidence Act can be drawn in favour of the party/deponent whose affidavit has gone uncontroverted. See :

- (i) **Managing Committee Shiksha Parishad, Nagawa Ballia Vs. Asstt. Registrar, Firms, Chits & Societies, Azamgarh, 2005 (2) AWC 1951 (All)**
- (ii) **State of Gujarat Vs. S. Tripathy, AIR 1987 SC 479**

14(A). Defective affidavit filed u/o 19, rule 1 CPC & rectification thereof :

If there is some slight defect or irregularity in filing of affidavit, party concerned should be given an opportunity to rectify the same. What needs to be seen in such matters is whether there is substantial compliance with the requirements regarding the rules relating to affidavits and their verification and even if there is some breach or omission, whether it can be fatal to the case of the party. The plea of defects in affidavits cannot be allowed to be raised after inordinate delay. See :

- (i) **Associated Journals Ltd. Vs. Mysore Paper Mills Ltd., (2006) 6 SCC 197**
- (ii) **Malhotra Steel Syndicate vs. Punjab Chemi-Plants Ltd., 1993 Supp. (3) SCC 565**

14(B). Court may permit to replace defective affidavit due to improper

verification or swearing : Improper verification of affidavit is not fatal. If the court finds that the affidavit is not properly sworn or verified in accordance with the procedure prescribed under the rules of the court, the court may direct the person swearing the affidavit to replace the same by filing a proper affidavit but such defect in the affidavit cannot be said to be fatal in any manner. See : **Dr. Umesh Kumari Vs. State of UP, 1999 (17) LCD 463 (All)(LB)**

15(A). Affidavits not “evidence” u/s 3 of the Evidence Act :

Affidavits have got no evidentiary value as the affidavits are not included in the definition of “evidence” in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons court passes an order like the one under Order 19, rule 1 & 2 of the CPC. See :

- (i) **Ayaubkhan Vs. State of Maharashtra, AIR 2013 SC 58**

(ii) **Smt. Sudha Devi Vs. M.P. Narayanan & others, AIR 1988 SC 1381.**

15(B). Affidavit of witnesses in judicial proceedings not 'evidence' unless permitted by law or court : In the case of a living person, evidence in judicial proceedings must be tendered by calling the witness. Testimony of such witness cannot be substituted by an affidavit unless the law permits so as u/s 295 and Section 407(3) CrPC or the court expressly allows it. See : **Munir Ahmad Vs. State of Rajasthan, AIR 1989 SC 705.**

15(C). Getting affidavit of witnesses in advance deprecated by Supreme Court : Practice of getting affidavits of witnesses in advance has been deprecated by Supreme Court and has been treated as an attempt aimed at dissuading witnesses from speaking the truth before the court. The Supreme Court has directed that such interference in criminal justice should not be encouraged and should be viewed seriously. See : **Rachapalli Abbulu & others Vs. State of AP, AIR 2002 SC 1805.**

16(A). Swearing in false affidavit punishable as offence u/s 193 IPC : Swearing in false affidavit is punishable as offence u/s 193 IPC.

16(B). Section 195/340 CrPC when not attracted : Where forged document (sale deed) was produced in evidence before court and the same was relied on by the party for claiming title to property in question, relying on its previous Constitution Bench decision in Iqbal Singh Marwah Vs. Minakshi Marwah, AIR 2005 SC 2119 (Five-Judge Bench), it has been held by the Supreme Court that since the sale deed had not been forged while it was in *custodia legis*, therefore, bar in Section 195 CrPC against taking of cognizance of offences u/s 468, 471 of the IPC on charge-sheet was not attracted. See : **C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC).**

16(C). Stricture against Sessions Judge for misunderstanding the provisions of Sec. 156(3) CrPC r/w Sec. 195/340 CrPC : Where the Sessions Judge had recorded findings in the judgment in a sessions trial

that the informant had lodged false FIR against the accused and, contrary to the provisions u/s. 195/340/344 CrPC, directed the SSP in his judgment for registration of FIR against the informant u/s. 182 of the IPC, the Allahabad High Court quashed the directions of the Sessions Judge as being illegal and without jurisdiction and directed the Registrar General of the High Court to send a copy of the judgment of the High Court to the Sessions Judge concerned for his guidance in future. See : **Lekhraj Vs. State of UP, 2008 (61) ACC 831 (All).**

17. Summary of different steps to be taken by deponent for drafting & swearing of affidavits : Summary of different steps to be taken by deponent for drafting & swearing of affidavits is as under :

1. The deponent should first declare what is his status, whether he is competent to sign on the pleadings as per the provisions of the Allahabad High Court Rules, 1952 and the CPC.
2. The deponent should mention in the starting of the affidavit that facts mentioned in the affidavit are based on record and he has seen entire records of the concerned file.
3. The deponent will also obtain permission from the competent authority for filing affidavit, petition etc.
4. The deponent will first prepare (or direct the subordinate or concerned official) to prepare the parawise comments (narratives) of the petition and then will send the same for vetting to the concerned authority, specially the Law Department or the Legal Advisor.
5. The deponent should first explain the facts of the case with relevant provisions to the Advocate concerned, who drafts the affidavit.
6. The affidavit supported by Annexures should be filed by the deponent.

1. Application for dismissal of writ petition.
2. Counter Affidavit
3. **ANNEXURE NO. CA -1**
I.D. Proof
4. **ANNEXURE NO. CA -2**
A copy of the G.O. dated 10.12.2003
5. **ANNEXURE NO. CA -3**
A copy of the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979.
6. **ANNEXURE NO. CA -4**
A copy of the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001

Dated May, 2016

(XY)
Advocate
Counsel for the Opposite Parties

**IN THE HONB'LE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW**

**Application No. of 2016
Writ Petition No. (S/S) of 2016**

**AB, aged about 44 years, son of ----- Resident of -----, District ...
..... Petitioner**

VERSUS

- 1. The State of Uttar Pradesh through the Principal Secretary, Government of Uttar Pradesh, Department of ---- Civil Secretariat, Lucknow-226001.**
- 2. Uttar Pradehs Prashasan and Prabandhan Academy (U.P Academy of Administration and Management), Sector-D, Aliganj, Lucknow through its Director General.**
- 3. The Director, Uttar Pradesh Prashasan and Prabandhan Academy (U.P Academy of Administration and Management), Sector-D, Aliganj, Lucknow through its General.**
- 4. The Chairman, Board of Governors, Uttar Pradesh Prashasan and Prabandhan Academy (U.P Academy of Administration and Management), Sector-D, Aliganj, Lucknow**
- 5. The Principal Secretary, Government of Uttar Pradesh, Finance Department, Civil Secretariat, Lucknow-226001.**

..... Opposite parties

APPLICATION FOR DISMISSAL OF WRIT PETITION.

That the above named opposite party, most respectfully begs to submit as under:-

That for the facts, reasons and circumstances as stated in the accompanying Counter Affidavit, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to dismiss the Writ Petition.

Any such other order or orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the above case may also be passed in favour of the opposite parties against the Petitioners.

Lucknow

Dated May, 2016

(XY)
Advocate
Counsel for the Opposite Parties/
Respondents

**IN THE HONB'LE HIGH COURT OF JUDICATURE AT
ALLAHABAD, LUCKNOW BENCH, LUCKNOW
Application No. of 2016
Writ Petition No. ----- (S/S) of 2016**

**AB aged about 44 years, son of ---Resident of -- District, ---.
..... Petitioner**

VERSUS

- 1. The State of Uttar Pradesh through the Principal Secretary, Government of Uttar Pradesh, Department of ---- Civil Secretariat, Lucknow-226001.**
- 2. Uttar Pradehs Prashasan and Prabandhan Academy (U.P Academy of Administration and Management), Sector-D, Aliganj, Lucknow through its Director General.**
- 3. The Director, Uttar Pradesh Prashasan and Prabandhan Academy (U.P Academy of Administration and Management), Sector-D, Aliganj, Lucknow through its General.**
- 4. The Chairman, Board of Governors, Uttar Pradesh Prashasan and Prabandhan Academy (U.P Academy of Administration and Management), Sector-D, Aliganj, Lucknow**
- 5. The Principal Secretary, Government of Uttar Pradesh, Finance Department, Civil Secretariat, Lucknow-226001.
..... Opposite parties**

COUNTER AFFIDAVIT ON BEHALF OF THE OPPOSITE PARTIES
NO. 2 TO 4.

I, -----, aged about 60 years, Son of ----- Religion, Hindu, qualification Graduate, profession Service, Presently posted as Secretary/Administrative Officer in Uttar Pradesh Prashasan avam Prabandhan Academy, the deponent solemnly do affirm on oath as under:-

1. That the deponent is filing his Driving License an Identity proof. A Photo copy of driving license filed herewith as **Annexure No.CA -1** to this affidavit
2. That the deponent is presently posted Secretary/Administrative Officer in Uttar Pradesh Prashasan Evam Prabandhan Academy as such he is fully conversant with the facts and circumstances of the case.
3. That the deponent is authorized by the opposite party no-2 to 4 to file present affidavit on their behalf in the instant writ petition.
4. That the writ petition have been read and understood the contents of the paras of the writ petition and he has also been seen the records of the present case and now he is giving the parawaise reply and relevant facts of the case by way of filing present counter affidavit in the present case.
5. That before submitting the paragraph wise reply the deponent is submitting herewith the relevant facts of the matter for just and proper appreciation of the subject matter.

6. That the petitioner was appointed on 01.05.1996 on the post of Cook (group 'D') in the pay-scale Rs. 750-940 on temporary basis.
7. That the petitioner ----- and others had earlier filed writ petition No. 6019 (S/S)/2013, in which petitioner had prayed for pay revision according to Vth pay commission recommendations by Academy from Hon'ble High Court and the writ petition is already pending before the Hon'ble Court.
8. That in accordance with G.O. dated 10/12/2003 & G.O. dated 29.11.2004, the employees of the Academy were to be approved fifth pay commission recommended pay scale. G.O. dated 29.11.2004 is annexed as annexure no. 10 to the writ petition. A copy of the G.O. dated 10.12.2003 is filed herewith **as Annexure No.CA-2** to this counter affidavit.
9. That it was decided that the employees appointed after 1.1.1996 should be first regularized then only the pay-scale will be revised to fifth pay commission recommendations.
10. That at that time the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was not adopted by Academy. A copy of the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 is filed herewith **as Annexure No. CA-3** to this affidavit.

11. That in year 2015, the proposal for adoption of U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was made to Chief Secretary and Board of Governors and after getting approval of same, the regularization of various employees of Academy was made. A copy of the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 is filed herewith **as Annexure No. CA-4** to this affidavit.
12. That the regularization of petitioner was also made and his pay determination was made on pay scale at appointment Rs. 750-940 which was revised accordingly to pay scale recommendation of fifth pay commission.
13. That in accordance with order of the state government G.O. No. 5/2016/376/47-Ka-3-2016-24/2/2009 dated 11 February, 2016, his pay fixation was made in pay scale of Rs. 5200-20200 grade pay- Rs. 1800/-.
14. That it is mentioned in U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 that any person who was directly appointed before 30 June, 1998 on Adhoc Basis will be considered for regularization in accordance with the date of commencement of the rule. Accordingly petitioner and one group 'C' and one Driver and two

other group 'D' employees were regularized on the post they were appointed.

15. That the impugned order dated 22.12.2015, 22.12.2015 and 12.02.2016 contained in annexure no. 1, 2 & 2A of the writ petition, were passed by the Academy in accordance with government orders. The petitioner had not prayed for quashing the Government orders on the basis of which the impugned order was passed.

PARAWISE REPLY-

16. That in reply of the contents of para-1 of the writ petition needs no comments.

17. That in reply of the contents of para-2 of the writ petition, as stated wrong and denied. It is submitted that in accordance with G.O. dated 10/12/2003 & G.O. dated 29.11.2004, the employees of the Academy were to be approved fifth pay commission recommended pay scale and it was decided that the employees appointed after 1.1.1996 should be first regularized then only the pay-scale will be revised to fifth pay commission recommendations. It is further submitted that at that time the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was not adopted by Academy.

It is further submitted that in year 2015, the proposal for adoption of U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was made to Chief Secretary and Board of Governors and after getting approval of same, the regularization of various employees of Academy was made and among others the regularization of Sri --- ---- was also made and his pay determination was made on payscale at appointment Rs. 750-940 which was revised accordingly to pay scale recommendation of fifth pay commission.

It is also submitted that in accordance with order of the state government G.O. No. 5/2016/376/47-Ka-3-2016-24/2/2009 dated 11 February, 2016, his pay fixation was made in pay scale of Rs. 5200-20200 grade pay-Rs. 1800/ according to the 6th Pay Commission Recommendation.

It is relevant here to mention that it is mentioned in U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 that any person who was directly appointed before 30 June, 1998 on Adhoc Basis will be considered for regularization in accordance with the date of commencement of the rule. Accordingly Sri ----- and one group 'C' employee, one Driver and two other group 'D' employees

were regularized on the post they were appointed. A detailed reply has already been given in the preceding paragraphs.

18. That in reply of the contents of para-3 of the writ petition needs no comments.

19. That in reply to para-4 & 5 of the contents of the writ petition, as stated are wrong and denied. It is submitted that Sri ----- was appointed in the erstwhile IMDUP. The State Government in the year 2003 established U.P. Administration and Management Academy. The employees of newly established Academy were to be approved fifth pay commission recommended pay scale and it was decided that the employees appointed after 1.1.1996 should be first regularized then only the pay-scale will be revised to fifth pay commission recommendations. It is further submitted that at that time the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was not adopted by Academy.

It is further submitted that in year 2015, the proposal for adoption of U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was made to Chief Secretary and Board of Governors and after getting approval of same, the regularization of various employees of Academy was made. The services of Sri ----- was regularized and his pay scale in fifth pay commission recommendation and

later in accordance with the 6th pay commission recommendation was made. A detailed reply has already been given in the preceding paragraphs.

20. That in reply of the contents of paras- 6 to 9 of the writ petition needs no comments.

21. That in reply to para-10 of the contents of the writ petition, as stated are wrong and denied. It is submitted that in accordance with G.O. dated 10/12/2003 & G.O. dated 29.11.2004, the employees of the Academy were to be approved fifth pay commission recommended pay scale and it was decided that the employees appointed after 1.1.1996 should be first regularized then only the pay-scale will be revised to fifth pay commission recommendations. It is further submitted that at that time the U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was not adopted by Academy.

It is further submitted that in year 2015, the proposal for adoption of U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 was made to Chief Secretary and Board of Governors and after getting approval of same, the regularization of various employees of Academy was made. Among them the regularization of Sri -----

was also made and his pay determination was made on payscale at appointment Rs. 750-940 which was revised accordingly to pay scale recommendation of fifth pay commission.

It is also submitted that in accordance with order of the state government G.O. No. 5/2016/376/47-Ka-3-2016-24/2/2009 dated 11 February, 2016, his pay fixation was made in pay scale of Rs. 5200-20200 grade pay-Rs. 1800/.

It is relevant here to mention that it is mentioned in U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001 that any person who was directly appointed before 30 June, 1998 on Adhoc Basis will be considered for regularization in accordance with the date of commencement of the rule. Accordingly Sri Om Prakash, one Driver and one group 'C' and two other group 'D' employees were regularized on the post they were appointed.

It is also submitted that there is a provision in Regularization Rules U.P (post outside the purview of Public Service Commission) Regulations of adhoc appointments Rule, 1979 and U.P (post outside the purview of Public Service Commission) Regulations of adhoc appoints (3rd amendment) Rules, 2001, that there will be no retrospective effect of the said order and a person appointed under these rules shall be entitled to seniority only from the date of order of appointment, after selection in accordance with these rules and shall in all cases, be placed below the persons

appointed in accordance with the relevant service rules or as the case may be, the regular prescribed procedure, prior in the appointment of such person under these rules. A detailed reply has already been given in the preceding paragraphs.

22. That in reply of contents of para 11 & 12 of the writ petition needs no comments. It is relevant here to mention that Sri ----- and others had earlier filed writ petition No. 6019 (S/S)/2013, in which petitioner had prayed for pay revision according to Vth pay commission recommendations by Academy from Hon'ble High Court and the writ petition is already pending before the Hon'ble Court. A detailed reply has already been given in the preceding paragraphs.

23. That in reply to paras- 13, 14 & 15 of the contents of the writ petition, needs no comments.

24. That in reply to para-16 of the contents of the writ petition, as stated are wrong and denied. It is submitted that in accordance with the decision taken in the Academy the pay-scale of the petitioner was to be revised according to the fifth pay commission recommendations and later to sixth pay commission recommendation as per rules. A detailed reply has already been given in the preceding paragraphs.

25. That in reply to para- 17 & 18 of the contents of the writ petition, needs no comments.

Lucknow

Dated : May, 2016

Deponent.

VERIFICATION

I, the deponent, named above, do hereby verify that the contents of paragraphs --- ----- of affidavit are true to my personal knowledge; those of paragraphs ----- of this affidavit are based on information derived from records; those of paragraphs of this affidavit are based on legal advice. No part of it is false and nothing material has been concealed. So, help me God.

Lucknow

Date

Deponent

I personally know the deponent who has signed before me.

Solemnly affirmed before me on _____ at am/pm by the deponent, -----, identified by

I have satisfied myself by examining the deponent that he understands the content of this affidavit which have been read over and explained to him.

OATH COMMISSIONER

18 (B). **Sample of draft of counter affidavit to be filed in Writ Petition :**

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD SITTING AT LUCKNOW**

Writ Petition No. ----- (M/B) 2014

AB, aged about years, son of ----- R/o ---- District : -----
..... Petitioner

Versus

1. State of U.P., through Secretary, Nagar Vikas Vibhag, Civil Secretariat, U.P Lucknow.
2. Housing Commissioner, Uttar Pradesh Avas Evam Vikas Parishad, 104, Mahatma Gandhi Marg, Lucknow.
3. Executive Engineer, Nirman Khand-12, Uttar Pradesh Avas Evam Vikas Parishad, Office Complex-IIInd Floor, Sector-9A, Vrindavan Yojna, Lucknow
4. Vastukala Evam Niyojan Ikai-III, Uttar Pradesh Avas Evam Vikas Parishad, Nelgiri Complex, IInd Floor, Indira Nagar, Lucknow.
5. ----- (S/o Not known), R/o ----- District : -----.
6. Assistant Housing Commissioner, Uttar Pradesh Avas Evam Vikas Parishad, Gonda.

..... Opposite Parties

COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE PARTY NO. 2 and 3.

I, AB, aged about 52 years, Son of-----, Religion : Hindu, qualification B.Tech., profession Service, Presently posted as Executive Engineer, Construction Division-5, Uttar Pradesh Avas Evam Vikas Parishad, IInd Floor, Office Complex, Sector-9, Vrindavan Yojna, Lucknow, the deponent solemnly do affirm on oath as under:-

2. That the deponent is filing Voter I.D. Card as an Identity proof. A Photo copy of Voter I.D. Card filed herewith as Annexure No.CA -1 to this affidavit
3. That the deponent is presently posted as Executive Engineer, Construction Division-5, Uttar Pradesh Awas Evam Vikas Parishad, IInd Floor, Office Complex, Sector-9, Vrindavan Yojna, Lucknow,, as such he is fully conversant with the facts and circumstances of the case.
4. That the deponent is himself opposite party No. 3 and is authorized by the opposite party No. 2 & 4 and competent to file present Counter Affidavit on his behalf in the instant writ petition.
5. That the deponent has gone through the writ petition and the relevant records and has understood the same and as such he well equitant with the facts disposed as under.
6. That the present writ petition filed by the petitioner for the following relief:-
 - (a) Issue a writ, order or direction in the nature of Mandamus commanding the O.P. No. 1 to 4 to pass an order to the effect that the illegal construction being raised by the O.P. No. 5 on Plot No. B-----, Lucknow in utter violation and disregard of the sanction granted by the Vastukala Evam Niyojan Ikai-III i.e. O.P. No. 4 vide letter No. 375/Ni.Pra.2013/28 dated 13.06.2013 be demolished.
 - (b) Issue a writ, order or direction in the nature of Mandamus commanding the O.P. No. 1 and 2 to take action against the persons, who have given patronage and connived with the O.P. No. 5 to make

illegal construction upon the Plot No. B-28, Rajajipuram Lucknow in utter violation and disregard of the sanction granted by the Vastukala Evam Niyojan Ikai-III i.e. O.P. No. 4 vide letter No. 375/Ni.Pra.2013/28 dated 13.06.2013, despite of the repeated agitation by the Petitioner and the persons of the locality, where the above said illegal construction being raised out.

(c) Issue a writ, order or direction in the nature of Mandamus commanding the O.P. No. 1 to 4 to take action and convene enquiry against the other scrupulous builders who are making construction in blatant violation of the sanction provided by the appropriate authority for making construction in urban areas throughout the City of Lucknow.

(d) Award the cost of the writ petition in favour of the petitioner.

7. That the answering respondents issued a show cause notice dated 19.07.2013 to the opposite party No. 5. After receiving the said notice opposite party No. 5 submitted his reply on 01.08.2013 in which he has stated that he stopped the illegal construction with immediate effect. A copy of the notice dated 19.07.2013 and reply dated 01.08.2013 are filed herewith **as Annexure No. 2 & 3** collectively to this affidavit.

8. That after 01.08.2013 the respondent no. 5 not demolished the illegal construction which was mentioned in show-cause notice 19.07.2013 served to the respondent no. 5 issued by the opposite party no. 3. Thereafter opposite party No. 3 approached the District Administration Authorities on dated 07.10.2013 for providing the police aid for demolition of unauthorized construction raised by the opposite party

No. 3 in plot No. B-28, Rajajipuram Lucknow but Police Force could not be provided by the District Administration Authorities.

9. That subordinate of the opposite party No. 3 reported that opposite party No. 5 again started the illegal construction on the said plot. After that concerned Assistant Engineer wrote a letter dated 8.10.2013 to the Station House Officer, Police Station Talkatora, in which it is stated that opposite party No. 5 had misbehaved with the staff of the parishad so that they could have provided the police force for to stop the illegal construction raising by the opposite party no. 5. A copy of the letter dated 08.10.2013 is filed herewith **as Annexure No. 4** to this affidavit.
10. That opposite party No. 3 continuously perused the matter with senior officials of the district administration and also created pressure upon the opposite party no. 5 not to raise illegal construction on the said plot.
11. That on 09.07.2014 the competent authority issued a notice under section 82 of Uttar Pradesh Awas Evam Vikas Parishad Adhiniyam 1965 for demolition of the illegal construction raised by the opposite party No. 5 and copy of the said notice was endorsed to the ACM-VI, C.O, Bazar Khala and S.H.O. Talkatora, Rajajipuram Lucknow and other officers. A copy of the Notice dated 09.07.2014 is filed herewith **as Annexure No. 5** to this affidavit.
12. That in the mean time the present petitioner filed the present writ petition for demolition of the said illegal construction. The matter was taken up before the Hon'ble Court on 09.12.2014 and the Hon'ble Court directed the Housing Commissioner and Additional Housing Commissioner and Secretary of the Housing Board appear on

11.12.2014 along with record and relevant rules and regulation to explain the situation and assist the court.

13. That the matter was taken up on 12.12.2014 on which date it was submitted by the Awas Evem Vikas Parishad before the Hon'ble Court that due none assistance on the part of the District Administration in providing adequate police force the demolition of the illegal construction could not be taken by them. On the same date the learned Chief Standing Counsel stated before the Hon'ble Court that for a number of reasons, the police force might not have been provided when asked for. He however, has assured the court that as and when any requisition is made by the Avas Evan Vikas Parishad to provide police force, the same shall be provided by the authorities.

14. That the opposite party no. 2 & 3 has written letters on 12.12.2014 to the District Magistrate/Senior Superintendent of Police for providing police aid and to depute Magistrate for controlling the situation of law and order.

15. That on the letter dated 12.12.2014 the office of the District Magistrate has directed to ACM-VI and C.O. Bazarkhala Lucknow to assist the officials of the Housing board for demolition drive and maintain the position of law and order in the area. A copy of the letter of the District Magistrate/Senior Superintendent of Police dated 12.12.2014 is filed herewith **as Annexure No. 6 & 7** collectively to this affidavit.

16. That the opposite party no. filed a writ petition No. 12606 (M/B)2014 Dinesh Goswami Vs State of U.P and others before this Hon'ble Court for the following relief:-

- i. Issue a writ, order or direction in the nature of certiorari to quash the impugned General Information/Notice dated 12.12.2014 for demolition of unauthorized portion of the residential house of the petitioner constructed on Plot No. B-28, Rajjipuram, Lucknow published in Daily News Paper “Hindustan” dated 13.12.2014 and notice dated 12.12.2014 for demolition which was affixed on the wall of the house in question 16.12.2014 contained as annexure no. 1 and 2 to this writ petition.
- ii. To issue writ, order or direction in the nature of mandamus commanding the opposite parties consider application dated 15.12.2014 submitted by the petitioner for compounding of unauthorized construction of the house in question in accordance with Regulation 16 of the Uttar Pradesh Housing and Development Board Regulations 1982.
- iii. To issue writ, order or direction in the nature of mandamus commanding the opposite parties not to demolish alleged unauthorized construction of the residential house constructed on Plot no. B-28, Rajajipuram, Lucknow until application dated 15.12.2014 submitted by the petitioner for compounding of unauthorized construction of the house in question in accordance with Regulation 16 of the Uttar Pradesh Housing and Development Board Regulations 1982 is considered and decided by the respondents.
- iv. To issue a writ, order, or direction which this Hon’ble Court may deem just, fit and proper in the nature and circumstances of the case.

v. To award cost of the writ petition in favour of the petitioner.

17. That the said petition was taken before this Hon'ble Court on 19.12.2014 and the Hon'ble Court after hearing the parties, writ petition has dismissed by a reason and detail order dated 19.12.2014. A copy of the Hon'ble High Court order dated 19.12.2014 is filed herewith **as Annexure No. 8** to this affidavit.

18. That on 20.12.2014 the district administration provided the Magistrate and Police force for demolition drive in the Rajajipuram area, the answering opposite parties proceeded for demolition drive and the answering opposite parties demolished 03 illegal construction upon the plot No. B-28 (plot in question), plot C-3337, D-97 (reference given in the writ petition) in the Rajajipuram area. Photographs have also taken by the answering respondents during demolition process. Photographs of the demolition proceeding is filed herewith **as Annexure No. 9** collectively to this affidavit.

19. That the present petitioner filed an application for withdrawal of present writ petition as not press. The said application was taken up before the Hon'ble Court on 18.12.2014 and the Hon'ble Court permitted the petitioner to withdraw the petition but the petitioner was discharged from petition and the Hon'ble Court appoint amicus curiae.

20. That from the said facts the present writ petition is not maintainable in the eye of law and the present petition filed by the petitioner for individual grievance and problem and present petition is not in the nature of public interest litigation. It is respectfully submitted that till date present petition is not registered as Public Interest Litigation and in the light of the prayer of the petitioner the illegal construction raised by

the opposite party no. 5 demolished by the answering opposite parties and petition does not maintainable and survived, therefore writ petition may be dismissed and infectious.

21. That Magistrate and police authorities were available on 20th December, 2014 and on 22 December, 2014 only police force was available for half day and magistrate was not available, inspite the order of the District Magistrate was for five days.

22. That present case was taken up on 23.12.2014 before the Hon'ble Court and the Hon'ble Court issued direction to the opposite parties to file affidavit as per direction given in the order dated 23.12.2014 passed by the Hon'ble Court in the present writ petition. A copy of the order dated 23.12.2014 of the Hon'ble Court is filed herewith **as Annexure No. 10** to this affidavit.

23. That in compliance of the order dated 23.12.2014 the answering respondents is filing present affidavit.

24. That Uttar Pradesh Avas Evam Vikas parishad has been created under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam 1965 and the Parishad is a statutory authority.

25. That the officials of the Avas Evam Vikas Parishad discharged their duties under the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam 1965.

26. That the creation of the Uttar Pradesh Avas Evam Vikas Parishad for to develop the area of the cities of the State of Uttar Pradesh and for providing the residences and shopping complexes, schools and other similar requirements of the citizen.

27. That the answering opposite parties respectfully submitted before this Hon'ble Court to explain the working of the Housing Board for development of the area.
28. That initially Uttar Pradesh Avas Evam Vikas Parishad acquired the land under section 28 of the Uttar Pradesh Avas Evam Vikas Parishad Adhiniyam 1965 and thereafter adopts the procedure and under section 32 of the Adhiniyam the scheme is implemented. Thereafter under section 34 of the Adhiniyam the scheme is executed and under which a layout plan of the land is prepared by the competent authority and the Parishad proceeded as per layout plan. That in the layout each and every thing of the basic and civil amenities is earmarked.
29. That as per the layout plan in some of the area the Parishad constructs residence, shopping complex, community centre/convention centre, stadium, park and development work/infrastructure. Many time as per layout plan the plots are allotted to the allottees for different purchases but it is clarify that on those plots the construction work is carried out as per master plan and sanction map which is approved by the competent authority of the parishad.
30. That after allotment of the plots the allottees submitted the map before the competent authority as per rules and the authorities examined the map according to the Parishad building bylaws and other rules and regulations and the maps are examined by the different officers on different stages. Thereafter the map is sanctioned as per Parishad building bylaws and other rules and regulations. A copy of the building by laws of the Parishad is filed herewith **as Annexure No. 11** to this affidavit.

31. That after sanctioning the map when the allottee started the construction with prior information to the Parishad.
32. That the officials of the parishad continuously watched the construction and also ensured that the work is done in accordance with the sanction map. If the construction is not in accordance with sanction map then the field official informed the competent authority aforesaid illegal construction and the competent authority issued show cause notice to the allottee and directed the allottee to stop the illegal construction and the copy of the same is forwarded to the concerned S.H.O., C.O. and concerned area Magistrate.
33. That many time the allottee do not stop the illegal construction and when the officials of the Parishad visited the site then the allottee and their supporters misbehaved and manhandling and so many times the district authorities not in a position to protect the officials of the Parishad and also not taken any efforts for stopping the illegal construction raised by the allottees.
34. That it is respectfully submitted on behalf of the answering respondents the officials of the Parishad always tried no illegal construction be raised in their area but none cooperation of the district administration including police authority the allottee raised illegal construction.
35. That the officers of the answering opposite parties
36. That the answering respondent is Executive Engineer
37. That in reply of the contents para 1 and 2 of the writ petition need no comments.

38. That in reply of the contents para 3 and 4 of the writ petition needs no reply, it is a matter of record.
39. That in reply of the contents para 5 of the writ petition, only this much is admitted that the petitioner is highest bidder and rest of the contents are denied.
40. That in reply of the contents para 6 of the writ petition as stated wrong and denied. It is further submitted that the letter dated 01.11.2014 contained as annexure No. in the writ petition is self speaking. It further stated that the property in question was put on the auction thrice and on the first time the highest bid was Rs. 18300/- Sq. Mt. but the successful highest bidder requested to the answering respondent to cancel the auction proceeding due some personal problem and the auction was cancelled and as per the rules 20% of the security amount was forfeited of the bidder. The property in question again put on auction second time and highest bid was Rs. 18200/- which was less than the previous bid, therefore the whole proceedings of the auction was cancelled. Thereafter the property in question third time put on auction which subject matter of the present writ petition. In this auction the highest bid was Rs. 11100/-, which was much less from the earlier auction and when the matter was sent before the competent authority for approval of the auction proceeding on 30.09.2014. The competent authority examined the matter and it was found that the highest bid was very from the earlier auction and in the interest of the Awas Vikas Parishad, the auction proceeding was cancelled. Thereafter a letter dated 01.11.2014 to the petitioner to complete the formalities and take back his money.

41. That in reply of the contents para 7 of the writ petition as stated wrong and denied. It is further submitted that the reserve price of the plot in question was Rs. 8624/- per sq. Mt.
42. That in reply of the contents para 8 of the writ petition need no comments.
43. That in reply of the contents para 9 of the writ petition as stated wrong and denied. Detailed reply already given in the preceding paragraphs.
44. That in reply of the contents para 11 to 13 of the writ petition as stated wrong and denied. It is further submitted detailed reply already given in the preceding paragraphs. It is further point out that the property in question was put on auction forth time on 22.12.2014 and highest bid have come Rs. 19250/- and the said auction proceeding was referred to the competent authority for further auction.
45. That in reply of the contents para 14 of the writ petition needs no comments.
46. That the grounds urged are without any substance and not tenable in eye of the law and writ petition is liable to dismiss with cost.

Lucknow

Dated: May, 2016

Deponent.

VERIFICATION

I, the deponent, named above, do hereby verify that the contents of paragraphs _____ of affidavit are true to my personal knowledge;

those of paragraphs _____ of this affidavit are based on information derived from records; those of paragraphs _____ of this affidavit are based on legal advice. No part of it is false and nothing material has been concealed. So, help me God.

Lucknow

Date

Deponent

I personally know the deponent who has signed before me.

Solemnly affirmed before me on _____ at am/pm by the deponent, _____, identified by _____

I have satisfied myself by examining the deponent that he understands the content of this affidavit which have been read over and explained to him.

OATH COMMISSIONER

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD SITTING AT LUCKNOW**

Writ Petition No. ----- (M/B) 2014

AB

..... Petitioner
Versus

State of U.P. and others

..... Opposite Parties

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Dated May, 2015

(XY)

Advocate

Counsel for the Opposite Parties

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD SITTING AT LUCKNOW**

Writ Petition No. 12119 (M/B) 2014

AB, aged about years, son of Late----- , R/o-----, District :-----
..... Petitioner

Versus

1. State of U.P., through Secretary, Nagar Vikas Vibhag, Civil Secretariat, U.P Lucknow.
2. Housing Commissioner, Uttar Pradesh Avas Evam Vikas Parishad, 104, Mahatma Gandhi Marg, Lucknow.
3. Executive Engineer, Nirman Khand-12, Uttar Pradesh Avas Evam Vikas Parishad, Office Complex-IIInd Floor, Sector-9A, Vrindavan Yojna, Lucknow
4. Vastukala Evam Niyojan Ikai-III, Uttar Pradesh Avas Evam Vikas Parishad, Nelgiri Complex, IInd Floor, Indira Nagar, Lucknow.
5. Dinesh Goswami (S/o Not known), R/o 118, Talkatora Industrial Area, Lucknow-II.
6. Assistant Housing Commissioner, Uttar Pradesh Avas Evam Vikas Parishad, Gonda.

..... Opposite Parties

APPLICATION FOR DISMISSAL OF WRIT PETITION.

That the above named opposite party, most respectfully begs to submit as under:-

That for the facts, reasons and circumstances as stated in the accompanying Counter Affidavit, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to dismiss the writ petition.

Any such other order or orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the above case may also be passed in favour of the opposite party against the petitioner.

Lucknow

Dated May, 2015

(XY)

Advocate

Counsel for the Opposite Parties

**IN THE HON’BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD SITTING AT LUCKNOW**

Writ Petition No. 12119 (M/B) 2014

AB, Petitioner
Versus

State of U.P. and others, Opposite Parties

DATE AND EVENTS

DATES FACTS AND EVENTS OF WRIT PETITION

22.12.2014 Present writ petition was filed.

23.12-2014 Hon’ble Court directed to the opposite parties to file counter affidavit.

January, 2015 Hence present counter affidavit.

Lucknow

Dated May, 2015

(XY)
Advocate
Counsel for the Opposite Parties

**IN THE HON'BLE HIGH COURT OF JUDICATURE AT
ALLAHABAD SITTING AT LUCKNOW**

Writ Petition No. 12119 (M/B) 2014

AB

..... Petitioner
Versus

State of U.P. and others

..... Opposite Parties

I/We the undersigned do hereby nominate the appointment of Sri -----
----- Advocate, Chamber Address, ----- Lucknow to be counsel in the above
matter and for me/us and on my/our behalf to appear, plead, act and answer in
the above Court or any appellate Court or any Court to which the business is
transferred in the above matter and to sign and file petitions, statements,
accounts, exhibits, compromises or other documents what so ever in
connection with the said matter arising there from, and also to apply for and
receive all documents or copies of documents, depositions, etc, and to apply
for issue of summons and other writs or subpoena and to apply for and get
issued and arrest, attachment or order execution warrant or order and to
conduct any proceeding that may rise there out and to apply for and receive
payment of any or all sums or submit the above matter to arbitration.
Provided, however, that if any part of the Advocate's fee remains unpaid
before the first hearing of the case or any hearing of the case by fixed beyond
the limits of the town then and in such an event my/our said advocate shall not
be bound to appear before the court and if my/our said advocate death appear
in the said case he shall be entitled to an outstation fee and other expenses or
travelling lodging, etc provided ALSO that if the case be dismissed by default,
or if be proceeded ex-parte, the said advocate s shall lawfully do. I do hereby
agree to and shall in future ratify and confirm

Accepted

Signature of Client -----

1. ----- Advocate
2. -----Advocate
