
(2010) 12 UK CK 0106

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1915 of 2010

Bhagwan Singh Majila

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Notary Rules 1956 — Rule 8(b)

Citation : (2010) 12 UK CK 0106

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the Petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 15-12-2009 (Annexure 5 to the petition). The Petitioner has further sought a writ of mandamus directing the Respondents to condone the delay in filing the application for renewal of the notary licence of the Petitioner as has been provided under the Notary Rules 1956.

3. According to the Petitioner, on 04-12-2004 he was appointed as Notary for a period of five years and the licence of notary was to expire on 4-12-2009. On 9-10-2009, the Petitioner applied for renewal of the licence for a further period of five years along with necessary documents through the District Judge Nainital. However, the Respondent No. 1 informed the Petitioner that there was delay of 35 days in making the application for renewal and the delay was not explained, hence the Petitioner was asked to explain the delay. The Petitioner by his letter dated 19-11-2009 sent through the District Judge Nainital to the Under Secretary of the Respondent No. 1 that the Petitioner had no knowledge of the amendment in Rule 8(b) of the Notary Rules that application for renewal was to be sought three months prior to the date of expiry of the licence and the delay was not deliberate on his part. He requested to relax the condition and to renew the notary licence of the Petitioner.

4. The grievance of the Petitioner is that the State Government did not find favour with the Petitioner to condone the delay in filing the application for renewal of licence and ultimately rejected the prayer by letter dated 15-12-2009 (Annexure-5 to the petition) and returned the requisite fee and stamp paper sent by the Petitioner.

5. On behalf of the Respondents, counter affidavit has been filed. The affidavit is duly sworn in by the Additional Secretary Law, Government of Uttarakhand. It is stated in the counter affidavit that the application for renewal of licence has been rejected by the State Government after due consideration of the entire facts and circumstances of the case. In paragraph No. 14, it has been inter alia stated as under:

Further, in the matter, it is submitted that after the certificate of the Petitioner was not renewed by the Government, applications for the post of notary for Tehsil Lalkuan, District Nainital were invited by the Government from the eligible candidates vide letter dated 12-01-2010. Besides other advocates, Petitioner also applied in response to the advertisement. In this process, five eligible candidates including the Petitioner were called for interview. The interview was held by the Board which recommended name of Shri Rajiv Mohan Birkhani for the post of notary. Shri Birkhani has already been appointed notary for the said Tehsil vide Government order dated 16.6.2010. Accordingly, now the post of notary at Tehsil Lalkuan, District Nainital is not lying vacant. However, whenever vacancy will occur in future, Petitioner may again apply for the said post.

6. In the course of arguments, learned Counsel for the Petitioner has urged that in similar facts and circumstances, this Court has already disposed of the writ petition of one Ashok Kumar in W.P.M.S. No. 673 of 2010 vide order dated 7-6-2010 and the controversy involved in the present writ petition is identical. He has submitted that this writ petition may be disposed of accordingly.

7. I have perused the order dated 7-6-2010 passed by this Court in Writ Petition (M/S) No. 673 of 2010 Ashok Kumar v. State of Uttarakhand and another. So far as the rejection part of the application for renewal of notary certificate is concerned, the facts are similar, but in the case at hand, the Petitioner had not challenged the impugned order in the very first opportunity. It appears that the vacancy was notified by the Government after rejection of his application by order dated 15-12-2009 and the Petitioner also chose to participate against the advertisement made by the Government for the vacant post of Notary in Tehsil Lalkuan and when the ultimate result of interview went against the Petitioner and one Shri Birkhani has been appointed as Notary, the Petitioner has come up before this Court to challenge the order dated 15-12-2009 when the chapter has already been closed and attained finality. The counter version as set out by the Respondents has not been refuted on behalf of the Petitioner that the vacancy of notary does not exist at Tehsil Lalkuan at present. The Petitioner has not challenged the appointment of his successor as Notary in the present writ petition.

8. In this view of the matter, the earlier order dated 7-6-2010 passed by this Court does not help the Petitioner and there is no good ground to challenge the impugned order when there exists no vacancy of Notary. However, as and when any vacancy of Notary occurs in Tehsil concerned in future, the Petitioner may apply for the same before the authority concerned.

9. With the above observations, the writ petition is disposed of finally.