
(1997) 09 AHC CK 0129
In the Allahabad High Court
Case No : Writ Petition No. 933 (S/B) of 1997

Girja Prasad Shukla

APPELLANT

Vs

State of U.P.& Others

RESPONDENT

Date of Decision : 24-09-1997

Acts Referred:

Citation : (1997) 09 AHC CK 0129

Hon'ble Judges : D.K.Trivedi, J and I.P.Vasishth, J

Final Decision : Allowed

Judgement

D.K. Trivedi, J.—The instant writ petition has been filed by the petitioner challenging the impugned order dated: August, 1997 contained in Annexure no. 1 to this writ petition by which the petitioner was informed that his application for renewal of the term as District Government Counsel (Civil), Faizabad dated 17.1.97 has been rejected by the State Government.

2. It is not disputed that initially the petitioner was appointed as Panel Lawyer (Civil) by order dated 27.11.69 and thereafter, he was appointed as Assistant District Government Counsel (Civil), Faizabad on 26.9.84. Thereafter in the year 1990 the petitioner was appointed as incharge D.G.C. (Civil), and finally he was appointed as D.G.C. (Civil), Faizabad on 17.8.93. It is also not disputed that the petitioner had completed the age of 60 years on 2.1.97. The petitioner, thereafter moved an application for renewal of his term as D.G.C. (Civil), Faizabad as he has been enjoying good health and there is no complaint against him. The District Judge, Faizabad as well as the District Magistrate, Faizabad after scrutiny of the matter, reported that the performance of the petitioner as District Government Counsel (Civil), Faizabad was found good; he has sound integrity and he is physically fit to perform the duties of D.G.C. (Civil), Faizabad. The question of physical fitness further finds support from the medical certificate dated 16.12.96 contained in Annexure no. 3 to this writ petition issued by the Chief Medical Officer, Faizabad. On receipt of the recommendations submitted by the District Judge and District Magistrate, Faizabad, the State Government

considered the same and thereafter, refused to renew the term of the petitioner as District Government Counsel (Civil), Faizabad and the District Magistrate, Faizabad was informed to this effect vide letter contained in Annexure no. 1 to this writ petition which is impugned in this petition. Consequently, the petitioner filed the instant writ petition in this Court and this Court by order dated 17.9.97 summoned the relevant record. In compliance of the said order, the Standing Counsel produced the relevant record before this Court and we have perused the records and have heard the learned counsel for the parties.

3. From the perusal of the records, it appears that the District Judge as well as the District Magistrate, Faizabad clearly pointed out that the performance of the petitioner as D.G.C. (Civil), Faizabad is good; he has sound integrity and he is physically fit to perform his duties as D.G.C.(Civil). On receipt of this recommendation, the Joint Secretary (Law) also submitted a report recommending the renewal of the petitioner in view of the recommendations made by the District Judge, Faizabad as well as the District Magistrate, Faizabad. However, the Joint Secretary (Law) also pointed out that the representation of the Scheduled Castes is not adequate, therefore, a panel be prepared to assign the work of the Law Officers in the District to the Scheduled Castes candidates. Thereafter, the Secretary (Law) also endorsed the above mentioned opinion but it appears that the State Government rejected the renewal of the term of the petitioner as D.G.C. (Civil) because the Scheduled castes candidates did not have proper representation in the District, and in spite of the fact that the posts are available the list of the Panel has not been submitted. On these grounds the renewal of the term of the petitioner as D.G.C. (Civil) has been rejected.

4. As pointed out above, it is not disputed that the petitioner fulfils all the requisite conditions mentioned in Para7.08 (Footnote) of the U.P. Legal Remembrancer's Manual and further that the petitioner is continuously working on this post and this post was not reserved for the Scheduled Castes and Scheduled Tribes candidates or even for any other category. It has also been pointed out that there are other vacancies also which exist in Faizabad judgeship and the Scheduled Castes candidates can be accommodated on those posts. The Standing Counsel tried to support the impugned order but after the decision of the case of Kumari Shrilekha Vidyarthi v. State of U.P. reported in 1990 (Volume2) UPLBEC 1174, the law is settled that the State action must be free from the vice of arbitrariness and the State cannot claim comparison with a private individual in the field of contract. Keeping in mind the ratio of the case of Kumari Shrilekha Vidyarthi (supra) followed by this Court in a case of P.N. Sethi v. State of U.P. and others (in W.P. no. 47 (M/B) of 1992 decided on 31.1.92, we have no hesitation to hold that the State action is unsustainable. Therefore, the petitioner deserves to get his term as District Government Counsel (Civil), Faizabad renewed since he fulfils all the three conditions mentioned in Para7.08 (footnote) of the U.P. Legal Remembrancer's Manual namely; performance of good work, sound integrity and good health. Therefore, the State Govt. is dutybound to consider all the facts mentioned above before passing any order on

the aforesaid renewal application of the petitioner.

5. As pointed out above, the State Government has not considered the facts mentioned in para 7.08 (Footnote) of the U.P. Legal Remembrancer's Manual and has rejected the petitioner's application for renewal of the term of the D.G.C. (Civil), Faizabad for extraneous reasons as mentioned above.

6. Accordingly, the present writ petition is hereby allowed. A writ of Certiorari is issued quashing the impugned order contained in Annexure no. 1 to this writ petition. We further direct the State Government to reconsider the petitioner's application for renewal of the term as D.G.C. (Civil), Faizabad in accordance with law mentioned above within two weeks from the date of receipt of copy of this order and in the meantime, the petitioner shall continue to work as District Government Counsel (Civil), Faizabad.