
(2009) 05 AHC CK 0008
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12467 of 2009

Santosh Kumar Sharma

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Citation : (2009) 122 FLR 218

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : A.K. Singh and Ram Raj, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the petitioner and Standing Counsel who has accepted notice on behalf of the respondents No. 1 to 4.

The facts of the case in brief are that the petitioner was given compassionate appointment as Peon on 10.11.2008 in the office of respondent No. 4. Respondent No. 4 vide his order dated 14.11.2008 cancelled the appointment of the petitioner on the ground that there is defect in vision of the petitioner's right eye which is 6/24.

2. Aggrieved, petitioner filed writ petition No. 63286 of 2008; Santosh Kumar Sharma v. State of U.P. and others challenging his termination. The aforesaid writ petition was disposed of by this Court vide order dated 8.12.2008 observing that if the petitioner files a representation before respondent No. 4 raising all his grievances within a period of two weeks along with certified copy of the order, the respondent No. 4 is directed to decide the said representation expeditiously preferably within another period of four weeks by a reasoned and speaking order in accordance with law after giving opportunity of hearing to the petitioner.

Pursuant to the aforesaid order of this Court, petitioner moved representation dated 15.12.2008 which has been rejected by the respondent No. 4 vide order

dated 9.1.2009.

3. At the time of admission of the writ petition the Court on 4.3.2009 had passed the following order:

The petitioner's representation after judgment of this Court has been rejected on the ground that on expert opinion the petitioner's vision with glasses was still 6/24 and 6/18, which makes him unfit for job and that Government Order relates to disabled person requires consideration.

Let the petitioner explain either at relevant rules or by medical text books that his vision at 6/24 and 6/18 would not be a medical disqualification for the job of peon offered to the petitioner on compassionate ground. As prayed, put up day-after-tomorrow.

4. Thereafter petitioner filed a supplementary affidavit stating that the vision with corrections his vision in the left and right eye is at 6/24 and 6/36 respectively and the petitioner is disabled only to the extent of 20%. He would still be able to read and write. This Court vide order dated 19.3.2009 further directed to produce the authorised text book of Optometry to establish the fact.

5. Learned Counsel for the petitioner has placed certain extracts of the book "Comprehensive Ophthalmology" written by A.K. Khurana. Table 20.1 which shows the category of visual impairment, is as under:

Table 20.1. Categories of visual impairment (WHO 1977)

Category of visual impairment

Level of visual acuity (Snellen)

Normal vision

0 6/6 to 6/18

Low vision

1 Less than 6/18 to 6/60

2 Less than 6/60 to 3/60

3 Less than 3/60 (FC at 3m) to

1/60(FC at 1m) or

Visual files between 5* and 10*

Blindness

4 Less than 1/60 (FC at 1m) to

Light perception or visual field less than 5*

6. A perusal of the impugned order shows that admittedly petitioner had not

sought appointment under Disabled Category but the Medical Certificate (Annexure 2 to the writ petition) shows that the petitioner is fit for the purpose and even with visual impairment he can perform his duties efficiently. The only ground for termination of his services is that respondent No. 4 had consulted with experts orally and has come to the conclusion that the eye-sight of the petitioner is so weak that he would not be able to discharge his duties. On the one hand the medical certificate issued by the Chief Medical Officer, Hamirpur provides that visual impairment of the petitioner is not a disqualification of the petitioner for employment in the department whereas on the other hand, the authority has relied upon only some oral consultation with some experts but the name of the experts has not been given in writing by which the Court can come to the conclusion that the medical certificate issued by the Chief Medical Officer, Hamirpur to the effect that the petitioner is fit for services, is wrong. It also appears that no work was taken from the petitioner by the authority concerned as his services were terminated within next four days of his appointment.

7. In these circumstances, there is no basis for coming to the conclusion that the petitioner would not be able to perform his duties.

Per contra, it is proved from Medical Certificate issued by the Chief Medical Officer, Hamirpur (Annexure 2 to the writ petition) that the petitioner would not be able to discharge his duties efficiently even inspite of so called visual impairment which is also proved by authorised text book of Ophthalmology extract of which is reproduced above.

8. In these circumstances, writ petition deserves to be allowed and is hereby allowed. The impugned orders dated 14.11.2008 and 9.1.2009 are quashed. Respondents are directed take work from petitioner forthwith and pay his salary month to month and arrears of salary.