

**(2010) 06 UK CK 0126**  
**In the Uttarakhand High Court**

Smt. Madhu Sharma

APPELLANT

Vs

District Magistrate, Udham Singh Nagar and Another

RESPONDENT

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**Date of Decision :** 15-06-2010

**Acts Referred:**

**Citation :** (2010) 06 UK CK 0126

**Hon'ble Judges :** Tarun Agarwala, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Tarun Agarwala, J.—Heard Ms. Puja Banga, the learned Counsel for the petitioner and Shri Paresh Tripathi, the learned Brief Holder for the State/respondents.

2. A class IV post became vacant in the regulated area of Bajpur, District Udham Singh Nagar. A resolution dated 04/10/2000 was passed resolving to appoint the petitioner on the vacant post. At the time when the resolution was passed, the qualification and relevant details with regard to the age of the petitioner was known to the respondents. The Controlling Authority, namely, the District Magistrate pursuant to the aforesaid resolution issued an appointment letter dated 27/11/2000 and, based on the said appointment letter, the petitioner joined on 4th December, 2000 and continued to work till 29th November, 2001 when, by the said order, the services of the petitioner was terminated on the ground that she was found to be overage at the time when she was issued the appointment letter. The petitioner, being aggrieved by the said order, filed the present writ petition in which an interim order dated 15/12/2001 was passed staying the impugned order. As a result of the interim order, the petitioner is still working as a class IV employee.

3. The counter affidavit reveals the stand taken by the respondents, namely, that the petitioner was appointed on a temporary basis, and that, as per the appointment letter, the services of the petitioner could be dispensed with at any moment of time. Further resort was taken to the provision of Rule 9 of the Group

"D" Employees Service (U.P.) Rules, 1985 in which the maximum age for appointment on a class IV post is 30 years which has been extended to 32 years by a subsequent notification. The contention of the respondents is that since the petitioner was 30 years old on the date of the appointment, such an appointment was wholly illegal and against the Rules and, accordingly, the appointment letter was cancelled.

4. Having heard the learned Counsel for the parties, the Court is of the opinion that the writ petition is liable to be allowed. In the first instance, the petitioner has been appointed in accordance with the provision of law. The Committee resolved and considered the application of the petitioner and, thereafter, the District Magistrate, who was the Controlling Authority of the regulated area, issued an appointment letter. Based on the said appointment letter, the petitioner joined and continued to work for about a year. The petitioner's services could not have been dispensed with without issuing a notice. The petitioner was appointed on a vacant post in a substantive capacity and, therefore, was entitled to be given a notice before dispensation of services. Since the same was not done, the impugned order on this ground, cannot be sustained. Even otherwise, the Court is of the opinion that once the petitioner has been appointed in a substantive capacity, the criteria for being overage would be deemed to have been waived. There is nothing to indicate that the petitioner had concealed her age when she had applied for the post in question.

5. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The writ petition is allowed.