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**(2000) 02 AHC CK 0168**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 88 (SB) of 1999**

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| Smt. Shashi Sharma         | Vs | APPELLANT  |
| State of U. P. and another |    | RESPONDENT |

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**Date of Decision :** 24-02-2000

**Acts Referred:**

Constitution of India, 1950 — Article 16  
Consumer Protection Act, 1986 — Section 10, 10(2)  
Uttar Pradesh Consumer Protection Rules, 1987 — Rule 3, 3(2), 3(5)

**Citation :** (2000) 3 AWC 2202 : (2000) AWC 2202 : (2000) 3 UPLBEC 2630

**Hon'ble Judges :** Kamal Kishore, J; Amarbir Singh Gill, J

**Bench :** Division Bench

**Advocate :** H.S. Sahai and R.B. Srivastava, for the Appellant; C.S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

Amarbir Singh Gill, J.—The petitioner being aggrieved of order dated 25.11.1998 cancelling her appointment as member Consumer Dispute Redressal Forum No. 1 (In brief District Forum No. 1). Bareilly, has approached this Court seeking issuance of writ, order or direction in the nature of certiorari quashing the same impugned order as contained in Annexure-2 to the writ petition and for issuance of mandamus prohibiting the opposite parties from taking any steps to appoint any member in her place.

2. The case of the petitioner is that she was duly selected and appointed by the State Government on November 23, 1998 as member of District Forum No. 1 at Bareilly against a vacancy of woman member. There are two separate District Forums having separate Chairman, Jurisdiction and functioning at Bareilly. The husband of the petitioner is already working as member in District Forum No. 2 before her appointment as woman member of District Forum No. 1. She has been appointed against a clear vacancy, however, by the Impugned order dated November 25, 1998. the appointment of the petitioner has been cancelled on the

ground that her husband Chain Sukh Dutta is already a member of the District Forum at Bareilly, The petitioner claims that since two District Forums are independent of each other in functioning and jurisdiction, her appointment has wrongly been cancelled. No notice of cancellation of her appointment was given and her husband being member of another District Forum cannot be a ground for cancellation of her appointment.

3. The opposite parties in their counter-affidavit have set up a case that since the petitioner did not Inform that her husband is already a member of the other District Forum at the same station, her appointment has been cancelled in the Interest of proper maintenance of administration and social justice.

4. Heard the counsel for the parties.

5. It would be useful to refer to the provisions of Consumer Protection Act, 1986. In so far aa it provides the procedure of composition of District Forum, condition and qualification of its members and mode of appointment of Chairman and Members. Section 0 of the Consumer Protection Act. 1986, refers to the composition of the District Forum. It provides as under :

"10. Composition of the District Forum.--(1) Each District Forum shall consist of-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President ;

(b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, Industry, public affairs or administration, one of whom shall be a woman.

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following, namely :

(i) the President of the State Commission ... Chairman (ii) Secretary. Law Department of the State ... Member (iii) Secretary in charge of the Department dealing with consumer affairs in the State ... Member

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 whichever is earlier, and shall not be eligible for re-appointment ;

Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted. his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.

(3) The salary or honorarium and other allowances payable to. and the other terms and conditions of service of the members of the District Forum shall be

such as may be prescribed by the State Government."

Other relevant provision available in U. P. Consumer Protection Rules, 1987. Rule 3 so far as it is relevant to the present controversy is reproduced below :

"3. Salaries and other allowances and terms and conditions of the President and members of the District Forum (1).....

(2) The President and the members of the District Forum shall be entitled for such travelling allowance and dally allowance on official tour as are admissible to Grade-I officers of the State Government.

(3) The salary, honorarium and other allowances shall be defrayed out of the consolidated fund of the State Government.

(4) .....

(5) in addition to provisions of Section 10(2). State Government may remove from the office, the President and member of a District Forum who-

(a) has been adjudged an insolvent ; or

(b) has been convicted of an offence which in the opinion of the State Government. Involved moral turpitude ; or

(c) has become physically or mentally Incapable of acting as such member ; or

(d) has acquired such financial or other Interest as is likely to affect prejudicially his functions as a member ; or

(e) has so abused his position as to render his continuance in office prejudicial to the public Interest :

Provided that the president or member shall not be removed from his office on the ground specified in clauses (d) and (e) of sub-rule (5) except on an enquiry held by the State Government in accordance with such procedure as it may specify in this behalf and finds the member to be guilty of such ground.

(6) The terms and conditions of the service of the president and the members of the District Forum shall not be varied to their disadvantage during their tenure of office.

(7) .....

(8) .....

(9) .....

6. The aforesaid provisions of the Act and Rules no way mention if the wife of a sitting member of a District Forum cannot be appointed member of another Forum. Even it does not mention if husband and wife both cannot be member of the same District Forum. The standing counsel much relied upon the application submitted by the petitioner for appointment as member (woman) in District

Forum wherein it is not mentioned if husband of the petitioner was working as member of any District Forum. There appears to be no reason for the petitioner to mention if her husband was already working as a member of a District Forum since it was not required to be mentioned in the application. No format of any application has been prescribed nor has been indicated in the counter-affidavit which requires any such details to be filled in the application for appointment as member of the District Forum. The opposite parties in the counter-affidavit have conceded that the petitioner was duly selected by Selection Committee in accordance with the Rules which Implied that she had all the qualifications necessary for appointment as member of the District Forum. There is, as yet, no law or rule which prohibits a wife seeking any public appointment by dint of her own qualifications if her husband is already holding any appointment similar to one which is applied for by his wife. The opposite parties have not referred to any rule or policy which justifies the exclusion of a wife of a sitting member of a District Forum to apply for appointment as member (woman) in another District Forum in the State or at the same station if there are two District Forums. The learned standing counsel could not justify the cancellation of the appointment if the appointment of the petitioner as woman Member of District Forum No. 1 at Bareilly would have any bearing in the functioning of her husband as Member of the District Forum No. 2. The plea of social justice raised in the counter-affidavit also does not Justify the cancellation of the appointment of the petitioner rather the cancellation of the appointment in the manner as Indicated in the impugned order is against the spirit of social justice. If the petitioner being a woman has excelled in social service or has sufficient experience in public dealings and she has been selected on merit by the selection committee. Keeping in view the requirement of Section 10(1)(b) there appears to be no reason that she be debarred from functioning as member of District Forum solely on the ground that her husband was working in similar capacity in the other forum.

7. The next contention raised by the standing counsel is that the appointment of the petitioner has been cancelled before she assumed charge of the member of the District Forum and as such she has no vested right or claim to the appointment since it was cancelled before it could be given effect to. The contention again is devoid of force. The petitioner has been duly selected by the recommendation of the Selection Committee, cannot be prevented from functioning as member by simply cancelling her appointment unless the same is cancelled by the State Government in accordance with law. A member of District Forum may resign in writing as contemplated in proviso-2 to sub-section (2) of Section 10 of Consumer Protection Act. 1986 or can be removed in accordance with sub-rule (5) of Rule 3 of the U. P. Consumer Protection Rules. 1987. The petitioner admittedly has neither resigned nor the State Government had recourse to removal of the petitioner from membership on any contingency as stipulated in sub-rule [5], of Rule 3. of the aforesaid Rules. Lastly it was contended that the appointment, if any, was in the nature of honorary appointment and cannot be taken appointment as of a Government servant, the

contention on the face of it is without merit. The law is well-settled by the Hon'ble Supreme Court in its decision *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, . Admittedly Section 10, of the Consumer Protection Act. 1986. refers to appointment of a member of District Forum by the State Government on recommendation of Selection Committee specifies for specific term of appointment on remuneration. Besides sub-section (2) of Consumer Protection Act. 1986, Rule 3. of the U. P. Consumer Protection Rules, 1987. provides that the member of the Forum shall be entitled to travelling allowance and daily allowance as admissible to a Grade 1 Officer of the State Government and the salary, honorarium and other allowance shall be defrayed out of the consolidated fund of the State Government. The aforesaid provisions of the Act and Rules thus make it appointment on a post under the Government. The Apex Court in case of *Union of India (UOI) Vs. M.A. Chowdhary*, , laid down the following test to determine if a person is holding a civil post :

- (i) the post is one in the civil establishment of the Government and not in the defence establishment ;
- (ii) the post is not in a regular civil service of the State ;
- (iii) the holder is employed to do a particular service under the State ;
- (iv) the holder is under the administrative control of the Government ;
- (v) there is relationship of master and servant between the holder and the Government ;
- (vi) there is payment by the Government of the holder, but it is not necessary that the post should carry a definite rate of pay ; remuneration In any form is sufficient."

By the aforesaid test, it can safely be said that appointment as a member of the District Forum is appointment to a post under the State. Undisputedly the petitioner was duly selected and her appointment was notified. Thus, it became effective and final appointment and there accrued a right in her favour which appointment could be cancelled only in accordance with law. The cancellation of appointment entails civil consequences as it affects her civil right to work as member of District Forum on the basis of her appointment. The cancellation of appointment was without notice to the petitioner and, in the circumstances, was arbitrary in nature. The petitioner has been deprived of her legal right to the appointment. Every citizen enjoys fundamental right of availability of equality of opportunity in the matter of public employment under Article 16 of the Constitution. Cancellation of the appointment of the petitioner, in the circumstances. Infringes her right available under Article 16 of the Constitution. The impugned order of cancellation of the appointment of the petitioner being contrary to the provisions of Section 10 of the Consumer Protection Act. 1986 and Rule 3 of the Consumer Protection Rules. 1987, cannot be sustained, more so being arbitrary in nature.

8. The petition is allowed. The Impugned order dated 25.11.1998, as contained in Annexure-2. Is quashed. The opposite parties shall give effect -to the appointment of the petitioner as member of District Forum No. 1 at Bareilly in accordance with law.