

Court No. - 36

Case :- WRIT - A No. - 8399 of 2020

Petitioner :- Pramod Kumar Sharma

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Rewti Raman Patel, Awadhesh Kumar Malviya

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Sunita Agarwal, J.

Counter affidavit filed today is taken on record.

A perusal of the order dated 11.06.2019 indicates that the cancellation of appointment of the petitioner is on account of some video of the petitioner which was made viral by someone. Further, the assertion in paragraph No.8 of the counter affidavit shows the perception of the officer who had passed the order of cancellation. Sexual orientation of the petitioner has been stated to be indulgence in untoward activity, which is completely in violation of the observations of the Apex Court in **Navtej Singh Johar v. Union of India** reported in (2018) 10 SCC 1. The Apex Court in the said case has held that the sexual orientation of the person is his individual choice and any act of treating it as an offence would be interference in the right of the privacy of the person concerned.

It was held that any display of affection amongst the members of the LGBT community towards their partners in the public, so long as it does not amount to indecency or has the potentiality to disturb public order cannot be bogged down by majority perception.

From the reading of the order itself, it is found to be vindictive in nature. The order of the cancellation of the appointment of the petitioner dated 11.06.2019 from the post of Home Guard passed by the District Commandant of Home Guards, Bulandshahar is hereby quashed.

The writ petition is **allowed**.

The respondent No.2 i.e. the Commandant General of Home Guards, Head Quarters, U.P. Lucknow is directed to take the petitioner back in service with immediate effect. The petitioner shall be entitled to all admissible dues and the honorarium shall be paid regularly as and when the same falls due.

Order Date :- 2.2.2021

Himanshu