

(2011) 05 UK CK 0047

In the Uttarakhand High Court

Case No : Writ Petition No. 1477 of 2006 (S/S)

Ram Mehar Singh

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Road Transport Corporations Act, 1950 — Section 23(3), 45, 5
Uttar Pradesh State Road Transport Corporation Employees (Other than Officers)
Service Regulations, 1981 — Regulation 21

Citation : (2011) 05 UK CK 0047

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Prabhakar Joshi, Advocate for the Petitioner, Mr. N.P. Sah, Standing Counsel for the State of Uttarakhand and Mr. Rajeev Singh Bisht, Advocate for Uttarakhand Road Transport Corporation.

2. The Petitioner is a driver in the Respondent Corporation. He has filed this writ petition praying that he should be considered for promotion to the post of driver-cum-instructor. It has been admitted by the learned Counsel representing the Corporation that under Regulation 21 of the State Road Transport Corporation Employees (Other than Officers) Service Regulations, 1981 framed u/s 45 of the Road Transport Corporations Act, 1950 (from hereinafter referred to as the Act) promotion to the post of driver-cum-instructor from the post of driver is made based on seniority subject to rejection of unfit. Earlier the Petitioner had filed a writ petition being Writ Petition No. 575 of 2002 (S/B) claiming the same relief, which was disposed of by a learned Single Judge of this Court directing the Petitioner to move a representation before the concerned Authority. The representation of the Petitioner was dismissed vide order dated 11.8.2006 stating that the Petitioner is not being considered for promotion as the last five years' service record of the Petitioner have not been found to be satisfactory. It is this order, which the Petitioner has challenged in the present writ petition.

3. In the counter affidavit, it has been stated that a Departmental Promotion Committee for considering the promotion of eligible candidates for promotion to the post of driver-cum-instructor was held on 18.8.2006. All the same, since the Petitioner was involved in an accident in the year, 2004, his case was not considered. Today, learned Counsel representing the Corporation Mr. Rajeev Singh Bisht has produced before this Court the instructions issued by the Corporation on 25.10.1990. According to the Petitioner, these instructions have been issued by the Corporation under the powers of the Corporation u/s 5 of the Act. Section 5 of the Act reads as follows:

5. Management of Corporation and Board of Directors.-

(1) The General Superintendence, direction and management of the affairs and business of a Corporation shall vest in a Board of Directors which, with the assistance of its committees and Managing Director, may exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

(2) The Board shall consist of a Chairman and such other Directors, being not less than five and not more than seventeen, as the State Government may think fit to appoint.

(3) The State Government may, if it so thinks fit, appoint one of the other Directors as the Vice-Chairman of the Board.

(4) Rules made under this Act shall provide for the representation, both of the Central Government and of the State Government concerned, on the Board in such proportion as may be agreed to by both Governments and of appointment by each Government of its own representatives thereto and where the capital of a Corporation is raised by the issue of shares to other parties under Sub-section (3) of Section 23, provision shall also be made for the representation of such shareholders on the Board and the manner in which the representation shall be elected by such shareholders.

(5) The term of office and the manner of filling casual vacancies among the Directors shall be such as may be prescribed.

4. This instruction (which is being made a part of the court record) states in Clause (3) that five years" service record of the candidate will be considered and it will be seen that such person has not committed any major accident and his conduct is satisfactory for the last five years. This is an admitted fact that the Petitioner was involved in an accident in 2004. Learned Counsel for the Corporation also states that consequently a disciplinary proceeding was initiated against the Petitioner, in which a penalty of Rs. 3000/- was also imposed upon the Petitioner, as such, no relief can be granted to the Petitioner. All the same, this Court also cannot loose the sight of the fact that now we are in the year 2011. Moreover, a statement has been made at the bar by the learned Counsel for the Petitioner that the Petitioner shall reach the age of superannuation on

31.7.2011. Even assuming that in the year 2006 the accident was liable to be considered, the same cannot be considered now as presently it does not come within the "five years" as the accident had taken place in 2004. According to the Petitioner, the claim of the Petitioner for promotion to the post of driver-cum-instructor is liable to be considered subject to the availability of vacancies. As such while dismissing the writ petition of the Petitioner, it is directed that the Respondent Authorities shall consider the claim of the Petitioner for promotion to the post of driver-cum-instructor, subject to availability of vacancies and service record of the Petitioner and take a decision on it as expeditiously as possible but in any case within thirty days from today. This is being done considering the fact that the Petitioner is now reaching the age of superannuation on 31.7.2011.

5. With the aforesaid observations, the writ petition is disposed of.

6. No order as to costs.