

(2011) 05 AHC CK 0377
In the Allahabad High Court
Case No : Special Appeal No. 1320 of 2010

Ram Tirath Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 05 AHC CK 0377

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present appeal has been filed against the judgment and order dated 16th April, 2009, passed by the learned Single Judge, whereby the writ petition preferred by the Appellant, seeking quashing of the order dated 8.12.2005 passed by the Director, Animal Husbandry rejecting his representation for appointment on the post of Livestock Extension Officer, has been dismissed.

2. We have heard Sri Bijendra Kumar Mishra, learned Counsel for the Appellant, learned Standing Counsel, who represents the Respondents and perused the impugned judgment and order dated 16th April, 2007, passed by the learned Single Judge, giving rise to the present appeal, the grounds taken in the memo of appeal and the documents filed along with the appeal.

3. Briefly stated facts giving rise to the present appeal are as follows:

The Appellant is an ex-service man. He has worked as Remount Veterinary Corps for a period of 17 years in the Indian Army. In terms of the Central Government Order dated 21/22.5.1980 and the State Government Order dated 24th May, 1988 granting preference to ex-service men, the Appellant made an application on 23rd May, 2002 for appointment as Stockman/Stock Assistant in the Department of Animal Husbandry, Government of U.P., Lucknow. The application was forwarded by the officiating Officer Commanding 49 Military Veterinary Hospital C1-III, Paharpur, Gaya-5 on 23rd May, 2002 with a reminder dated 24th

September, 2002. When nothing was being done, the Appellant approached this Court by means of Writ petition No. 2308 of 2005 which was disposed of vide judgment and order dated 1.8.2005 with a direction to the Appellant to make a representation before the concerned authority to be decided by a speaking and reasoned order within three months.

4. It appears that the representation was not decided whereupon the Appellant preferred Contempt Petition No. 786 of 2006 and in the contempt petition a compliance affidavit was filed enclosing the copy of the order dated 8.12.2005 whereby the Director has rejected the Appellant's representation.

5. The order dated 8.12.2005, passed by the Director was subject matter of challenge before this Court in the writ petition giving rise to the present appeal.

6. The learned Single Judge had dismissed the writ petition on the ground that the Appellant lacks academic qualification as he has not passed the intermediate examination which is the minimum requisite qualification, therefore, he is not eligible for being appointed in view of the U.P. Animal Husbandry Department Livestock Extension and Poultry Development Service Rules, 2002 which came into effect on 9th August, 2002.

7. Learned Counsel for the Appellant submitted that the application was made on 22nd May, 2002, when the aforesaid Rules were not in force, therefore, the Appellant cannot be non suited on the ground that he did not possess minimum academic qualification that is having passed the intermediate examinations. He further submitted that similarly situated persons have already been given appointment and, therefore, he cannot be arbitrarily discriminated. He further submitted that the Appellant had passed the Prathama examination conducted by Hindi Sahitya Sammelan, which is equivalent to intermediate examination and, therefore, the view taken by the Director that he is not qualified is wholly illegal.

8. Learned Standing Counsel submitted that from the writ petition it is not clear as it has not been stated anywhere that the Appellant has passed the intermediate examination and further whether or not he has filed the certificate issued by the Hindi Sahitya Sammelan as it is also not on the record. He, therefore, submitted that the order passed by the Director, Animal Husbandry rejecting his representation which has been affirmed by the learned Single Judge does not call for any interference.

9. We have given our thoughtful consideration to the various plea raised by the learned Counsel for the parties. We find that merely because the Appellant had made an application on 22nd May, 2002 seeking appointment on the post of Livestock Extension Officer in the department of Animal Husbandry would be of no consequence. It is well settled that unless the vacancies are advertised, the question of seeking appointment does not arise. Admittedly, in the present case, the vacancies were advertised on 29th December, 2004 when the Service Rules had come into force which prescribes the minimum academic qualification to be intermediate. The preferential qualification of 15 years service in the army was to

be considered only when the other things remain equal. As the Appellant had not passed intermediate examination, the Director has rightly held the Appellant to be ineligible.

10. We may mention here that in view of the decision of Hon''ble Supreme Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, the State cannot be permitted to make any appointment by back door. The appointment has to be made in a transparent manner and in this view also the application made in the year 2002 when the vacancies were not advertised, cannot be considered.

11. That being the position, we are of the considered opinion that the order passed by the learned Single Judge does not suffer from any legal infirmity.

12. The appeal fails and is dismissed.

13. Dismissed.

14. For orders, see order of date passed on separate sheets.