
(1990) 10 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. Nil of 1990

Shailesh Kumar Pandey

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-10-1990

Acts Referred:

Citation : (1991) 62 FLR 535 : (1992) 2 LLJ 237

Hon'ble Judges : N.L. Ganguly, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.L. Ganguly, J.—The petitioner by this writ petition prayed for a writ of mandamus directing the respondent to appoint the petitioner on the post of Asst. Regional Inspector(Technical). The petitioner's father was an Accountant in the Roadways Transport Officer at Gorakhpur who died in harness. The petitioner applied for employment according to the Rules of Persons Dying in Harness. The petitioner is fully qualified for being appointed as Asst. Regional Inspector(Technical). He passed Diploma in Mechanical Engineering in I Division. The petitioner was given an appointment of Asstt. Cashier in the Transport Department under the Dying in Harness Rules on February 2, 1983. The petitioner continued to work as Asst. Cashier in the Department. A number of vacancies arose in 1983 for appointment at different places in the Department. The petitioner submitted representations before the Opposite Party No. 1 for appointing him on the post of Asstt. Regional Inspector (Technical). The representations were forwarded by the Asstt. Regional Transport Officer (Administration), Azamgarh recommending that petitioner is fully qualified and entitled to be appointed on the post of Asstt. Regional Inspector (Technical). The representations dated September 16, 1988 and August 10, 1989 submitted by the petitioner before the Opposite Party No. 1 were not considered. He was not given any appointment as Asstt. Regional inspector (Technical).

2. The Dying in Harness Rules for giving the employment to the dependents of

the Government employees is made with specific purpose that dependent of such persons may be given suitable protection and the hardship caused on account of the death of breadwinner may be mitigated. The intention of the law is that the persons are not only given appointment, but such appointment should be made to such posts for which the person applying is really eligible and competent. It is clear from the recommendations made by the Authorities to the Opposite Parts No. 1 that petitioner is qualified to be appointed as Asstt. Regional Inspector (Technical). There is no justification in denying the benefit of Rules to the petitioner. Even if no post is available, in such circumstances, the Supreme Court in Smt. Sushma Gosain and Anr. v. Union of India^{1990 LLJ 169} observed that if no such post is available, supernumerary post may be created to accommodate such applicants. Similar view is also expressed by the Division Bench of this Court in 1989 U.P. Local Bodies of Educational Cases 496.

3. After hearing the counsel for the petitioner and the Standing Counsel, Sri Tej Ram, I propose to dispose of the petition at the admission stage. The standing counsel has no objection in finally disposing of writ petition at this stage. After considering the facts and circumstances, it is directed that the Respondent No. 1 may consider the petitioner's representations already filed before him vide representations dated July 27, 1987, August 14, 1987 and August 10, 1989, The petitioner may submit photostat or typed copies of the same representations again before the Respondents No. 1 for convenience so that the Respondents may dispose of the petitioner's representations within two months from the date of filing of such copy of representations along with a certified copy of the order before him. It is expected that if the petitioner possessed requisite qualification for being appointed as Asstt. Regional Inspector (Technical), he may be given an appointment to the said post within a period of three months from the date of submitting the certified copy of the order. In case the Opposite Party No. 1 feels that there is no post available, he may create supernumerary post to accommodate the petitioner in view of the Supreme Court judgment quoted supra within a period of three months.

4. The writ petition is disposed of accordingly. No order as to cost.

5. A copy of the order be given to the petitioner's counsel in a week's time on payment of usual charges.