

(2015) 01 AHC CK 0034

In the Allahabad High Court

Case No : Special Appeal No. 14 of 2015

Vivek Kumar Sharma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-01-2015

Acts Referred:

Citation : (2015) 2 ADJ 3 : (2015) 4 ALJ 171 : (2015) 110 ALR 160 : (2015) 2 ESC 853 : (2015) 146 FLR 506

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.;Suneet Kumar, J.

Bench : Division Bench

Advocate : Anamika Singh, for the Appellant

Final Decision : Dismissed

Judgement

1. The five appellants were appointed on compassionate basis in the police department of the State as Constables. They accepted their appointment as Constables. On 7 October 2014, they submitted a representation claiming that they should have been appointed as Sub Inspectors and sought to re-agitate the legality of the physical endurance test which they had failed. Hence, compassionate appointment was sought in a higher post of Sub Inspector. Eventually, a writ petition was filed in which the appellants sought the benefit of an order passed by a learned Single Judge on 11 April 2013 in Kamal Singh v. State of U.P., Writ-A No. 26386 of 2006. In that case, a mandamus was issued to the respondents to consider the application of the petitioner for appointment on compassionate grounds for the reason that adequate notice of the endurance test had not been furnished. The appellants also sought to rely on a decision of a Division Bench of this Court dated 10 December 2012 in Ajay Kumar Yadav v. State of U.P., Special Appeal (D) No. 1068 of 2012. In that case also, it was found that adequate time was not granted to the appellant to prepare for the endurance test. The learned Single Judge, noted that there is not even a single averment in the writ petition that the appellants did not have notice of the physical endurance test and, hence, dismissed the writ petition. Further,

admittedly, the appellants accepted the post of Constables under compassionate appointment.

2. In *State of Rajasthan Vs. Umrao Singh*, , the Supreme Court has categorically held that once the right has consummated, any further or second consideration for a higher post on the ground of compassion would not arise.

3. The Supreme Court in *I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi*, , held that once the appointment on compassionate ground as per the scheme had been completed, any further or second consideration for a higher post on the ground of compassion would not arise. Para 12 of the judgment is as follows:

"12. Furthermore, the respondent accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefore. A person cannot be appointed unless he fulfills the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power." 4. In *State of U.P. and Others Vs. Pankaj Kumar Vishnoi*, , the Supreme Court held as follows:

"22. It is accepted position that the respondent appeared in the test and could not qualify. Once he did not qualify in the physical test, the High Court could not have asked the department to give him an opportunity to hold another test to extend him the benefit of compassionate appointment on the post of Sub-Inspector solely on the ground that there has been efflux of time. The respondent after being disqualified in the physical test could not have claimed as a matter of right and demand for an appointment in respect of a particular post and the High Court could not have granted further opportunity after the crisis was over." 5. We see no reason to differ with the view which has been taken by the learned Single Judge. The appellants were granted compassionate appointment - as stated before the Court by the learned counsel, in 2005. Admittedly, they failed in the physical endurance test for appointment as Sub Inspector. At this lapse of time, it was not open to them in 2014 to question the appointments which were granted to them and to seek appointment on a higher post. The learned Single Judge has made a valid distinction between the position of law which has been adopted in *Kamal Singh (surpa)* as well as the decision of the Division Bench in *Ajai Kumar Yadav (supra)*. For these reasons, we find no merit in the special appeal. The appeal is, accordingly, dismissed. There shall be no order as to costs.