

Sujit Singh Vs. Managing Director, U.P.S.R.T.C. and anr.

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Court : Allahabad

Decided On : Feb-16-2009

Reported in : 2009(85)AWC1917

Judge : S.U. Khan, J.

Appellant : Sujit Singh

Respondent : Managing Director, U.P.S.R.T.C. and anr.

Disposition : Petition dismissed

Judgement :

S.U. Khan, J.

1. Heard learned Counsel for the parties.

2. Petitioner's father was an employee of respondents. He died in-harness on 2.10.1993. Petitioner was minor at that time. Petitioner's mother filed an application on 13.7.1994 stating that her sons were minor and a post shall be kept vacant for them. Petitioner passed High School in 1997 and Intermediate in 2000. In paragraphs 8 and 9 of the writ petition, it has been stated that petitioner gave applications for appointment under dying-in-harness Rule on 3.7.1998 and 7.11.1999. In para 9, it is stated that representation dated 7.11.1999 was sent through U.P.C. (Under certificate of post). Respondents have denied receipt of any

of these two representations. In para 10, it is stated that on 3.1.2000 another representation was given, which was received by the concerned clerk on 3.1.2000 and acknowledgment of receipt was made on the copy of the representation. This representation is admitted to have been received by the respondents. In case petitioner had in fact sent the earlier representations on 3.7.1998 and 7.11.1999, then on the copies of the said representations also he should have got the receipt of acknowledgment. Accordingly, his version that he sent these representations cannot be believed.

3. According to the counter-affidavit, representation of the petitioner was rejected on the ground of delay and rejection order was communicated on 29.8.2002 (there is no mention of this fact in the writ petition). An interim order was passed in this writ petition directing respondents to consider the representation of the petitioner. In pursuance of that representation was again considered and rejected through order dated 17.4.2003 on the ground of delay. In the said order also it is mentioned that first representation was received on 3.1.2000. The said order has also been challenged through amendment.

4. According to the High School certificate of the petitioner, his date of birth is 21.7.1980 and he became major on 21.7.1998 (Para 8 of the counter-affidavit). Accordingly application dated 3.1.2000 having been filed beyond 5 years was belated.

5. In any case now more than 15 years have passed since the death of the father of the petitioner. The purpose of giving appointment under dying-in-harness Rule is to help the dependants immediately after the death of bread earner. It is an exception to the general rule of appointment in Government or governmental agencies, which shall be governed by Articles 14 and 16 of the Constitution of India according to which opportunity must be provided to every citizen to participate in the process of selection. Supreme Court in *State of J. and K. v. Sajad Ahmed Mir* : AIR 2006 SC2743 and *National Institute of Technology v. Niraj Kumar Singh* : (2007)IILLJ23SC , has held that passing the order of appointment on compassionate ground by Court after 15 years of death of the employee is wrong.

Accordingly, there is no merit in the writ petition, hence it is dismissed.

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