

Balram Singh Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Feb-08-1999

Reported in : (1999)3UPLBEC2118

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Articles 14 and 16

Appeal No. : C.M.W.P. No. 2010 of 1999

Appellant : Balram Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C. and ;R.K. Tripathi, Adv.

Advocate for Pet/Ap. : R.C. Sinha, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner claims appointment under the Dying-in-Harness Rules and has accordingly applied for.

2. Shri R. C. Sinha, learned counsel for the petitioner submits that the petitioner's case has been refused by order dated 13.11.1998 which is Annexure-8 to the writ petition. In the said order, it has been pointed out that the petitioner did not

possess the educational qualification for being appointed in the post, however, his case may be considered for appointment against a Class IV post. He further submits that at the time when the petitioner had submitted his application, his qualification was intermediate but subsequent thereto the qualification has been upgraded. According to him, subsequent amendment cannot be applied in the case of the petitioner. He relies on the decision in the case of *Kripa Shankar Yadav v. State of U. P. and others*, 1998 (3) ESC 2237 (All). In the said decision, it was held that a candidate must possess the minimum qualification on the date of submission of application form. Any subsequent amendment in the statute/regulations granting any relief to the candidate with regards to exemption/curtailment of minimum qualification after submission of application form cannot stand in the way of right of the candidate for being considered.

3. I have heard learned counsel for the petitioner and learned standing counsel at length.

4. The decision in the case of *Kripa Shankar Yadav* (supra) was rendered on the basis of application made pursuant to an advertisement published for recruitment whereas in the present case, the application was for appointment under the Dying-in-Harness Rules which is a distinct and separate question from a regular selection process. In the present case, the application is for grant of appointment under the Dying-in-Harness Rules which is not through a regular selection process. The appointment under the Dying-in-Harness Rules is an exception to and relaxation of the principles enunciated under Articles 14 and 16 of the Constitution to save the family of an employee from immediate destitution. It stands altogether on a different footing from regular recruitment system. In the case of *Umesh Kumar Nagpal v. State of Haryana and others*, 1994 (2) SLR 677, the Apex Court had held that Dying-in-Harness Rules does not confer any vested right to claim appointment. Therefore, it does not confer any absolute legal right at par with the process of regular recruitment subject to the Recruitment Rules. Recruitment under the Dying-in-Harness Rules are dehors the recruitment Rules on the principle laid down in the Dying-in-Harness Rules itself. The principle of application of subsequent amendment cannot apply in such case. The question would be determined on the date of consideration. The candidate must possess the

relevant qualification as on the date of consideration.

5. In such circumstances. I am unable to agree with the contention of the learned counsel for the petitioner. The writ petition fails and is accordingly dismissed. However, this order will not prevent the respondents to consider the representation of the petitioner which is contained as Annexure-3 to the writ petition and the same may be considered by respondent No. 3.

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