

Dinesh Rai Vs. District Inspector of Schools and ors.

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SooperKanoon Citation : sooperkanoon.com/470795

Court : Allahabad

Decided On : May-04-1990

Reported in : (1992)ILLJ123All

Judge : M.P. Singh and ;B.P. Singh, JJ.

Acts : Limitation Act - Sections 5

Appeal No. : C.M.W.P. No. 7710/1989

Appellant : Dinesh Rai

Respondent : District Inspector of Schools and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Ranjit Saxena, Adv.

Disposition : Petition allowed

Judgement :

M.P. Singh, J.

1. Heard Sri Ranjeet Saxena, learned counsel for the petitioner and Sri. H.R. Misra appearing for the State.

2. By means of the present petition, the petitioner has prayed for issue of a writ of mandamus directing the respondents to comply with the G.O. dated September 23, 1981 (Annexure 1) and to give suitable job to him to the post for which he is found suitable.

3. Admittedly, the father of the petitioner was an employee of Town Inter College, Mohamadabad Gohna, District Mau. Unfortunately, he died on January 30, 1987. After his death, the petitioner made an application on August 22, 1987 to District Inspector of Schools, Azamgarh for appointment as a class three employee. He possessed the minimum qualification to be appointed as such. However, the application referred to above remained pending. Nothing has been done by the respondents.

4. On December 16, 1984 an interim mandamus was issued by this Court directing the District Inspector of Schools, Azamgarh/Mau either to appoint the petitioner in any one of the institutions of the district or to show cause within a period of one month from the date of production of a certified copy of the order before him. In spite of the service of the said order, nothing has been done in the matter, though the time granted by this Court has already expired. Ultimately, a belated counter-affidavit has been filed on February 8, 1990 alongwith an application under Section 5 of the Limitation Act. However, the delay in filing the counter affidavit was condoned on February 8, 1990.

5. In paragraph 14 of the writ petition, it has been stated that one vacancy was going to occur in Public Girls Inter College, Baramadpur, Mohamdabad Gohna on account of retirement of the Head Clerk. This fact has not been denied in the counter-affidavit.

6. Learned counsel for the petitioner placed reliance on the decision reported in Smt. Sushma Gosain v. Union of India, wherein it has been held (1990-I-LU-169 at 170):

'It must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate grounds is to mitigate the

hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.'

7. The facts of that case are practically similar to the present case.

8. In the instant case it is not disputed that one post has fallen vacant. Even if no post is there, it is mandatory on the part of the State Government to create the post and appoint the applicant,

9. In the result, the writ petition succeeds and is allowed. A mandamus is issued to District Inspector of Schools, Mau and respondent No.4 to appoint the petitioner either by creating a new post or on any existing vacancy within a period of one month from the date of presentation of a certified copy of this order.

10. Let a copy of this order be issued to learned counsel for the petitioner on payment of usual charges within a week.