

D.B.CIVIL SPECIAL APPEAL (W) NO.63/2005

Mukesh Sharma.

vs.

Urban Improvement Trust, Bhilwara.

DATE OF ORDER                               :::               16.12.2005

HON'BLE THE CHIEF JUSTICE MR. S.N. JHA

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Hemant Dutt, for the appellant.

Mr. Sandeep Shah, for the respondent.

- - - - -

This special appeal is directed against the order of learned Single Judge dated 18.10.2004 in S.B. Civil Writ Petition No.1924/1993 dismissing the writ petition of the appellant.

The appellant had filed writ petition seeking direction to consider his case for appointment on the post of lower division clerk in the light of the order of District Collector cum Chairman, Urban Improvement Trust, Bhilwara dated 16.4.1995. The learned Single Judge noticed that the appellant had already crossed the upper age limit for appointment on the post and accordingly, dismissed the writ petition observing that the appellant was not eligible for appointment.

Counsel for the appellant submitted that the appellant was appointed on the post of Civil Mistry granting him

relaxation of age pursuant to the order of the State Government in Urban Development Department dated 24.3.1995 on the condition that as and when vacancy arises in the post of lower division clerk, the case of the appellant would be considered on priority basis.

The submission in the facts of the case is misconceived. We are of the view that the order of the State Government referred to in the letter dated 24.3.1995 (supra) stood exhausted by reason of appellant's appointment on the post of Civil Mistry. The appellant cannot claim benefit of the said order again for future appointment on another post. We are also of the view that the order of the District Collector cum Chairman, UIT, Bhilwara to the effect that the appellant's case will be considered for appointment on the post of lower division clerk on priority basis in future on availability of the vacancy was not a correct order. There cannot be an anticipatory order for appointment of a person in future as and when vacancy arises in the post. The appellant admittedly being overage, he could not be considered for appointment on the post of lower division clerk. The learned Single Judge, therefore, did not commit any error in dismissing the writ petition.

Accordingly, this appeal is dismissed.

(PRAKASH TATIA), J.

(S.N. JHA), CJ.