

**Rakesh Kumar Vs. Deputy Inspector of Schools, Etawah and Others**

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**Court :** Allahabad

**Decided On :** Nov-24-2000

**Reported in :** 2001(1)AWC236; [2001(88)FLR1081]; (2001)1UPLBEC118

**Judge :** V.M. Sahai, J.

**Acts :** U.P. Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974 - Rule 7; [Constitution of India](#) - Articles 32 and 226

**Appeal No. :** C.M.W.P. No. 50856 of 2000

**Appellant :** Rakesh Kumar

**Respondent :** Deputy Inspector of Schools, Etawah and Others

**Advocate for Def. :** Senior Counsel

**Advocate for Pet/Ap. :** Aditya Narayan Tewari, Adv.

**Judgement :**

**V. M. Sahai, J.**

1. Sri Ram Shanker Tiwari, father of the petitioner, was working as Assistant Teacher in Junior High School, village Birondhi, district Etawah. He died-in-harness on 9.2.1984. His elder son Ram Adhar was given appointment on 23.6.1989 as Assistant Teacher in Primary Pathshala, village Tiliya Katara, district

Etawah, under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying-in-Harness Rules, 1974 (in brief rules). Petitioner made an application for appointment under the rules before the respondents on 5.1.1991 on the allegation that his elder brother Ram Adhar who was given appointment on compassionate ground, after his marriage, has left the joint family in 1989. And the family of the deceased is again facing financial crisis, therefore, petitioner who is the son of deceased be given appointment under the rules. By order dated 24.4.1991 petitioner was given appointment by Deputy Inspector of Schools Etawah, on a class-IV post in Junior High School. Bharthana, Etawah. A complaint was made by one Deen Bandhu Pathak to District Basic Education Officer that appointment of petitioner was illegal and two dependants of late Sri Ram Shanker Tiwari have been given appointment, contrary to the provisions of rules. District Basic Education Officer appointed City Magistrate. Etawah, as inquiry officer. The inquiry officer after giving opportunity of hearing on 21.8.2000 to petitioner and his brother submitted his report on 24.8.2000. District Basic Education Officer dismissed the petitioner by order dated 6.9.2000. The petitioner has challenged the order dated 6.9.2000 by means of this writ petition.

2. I heard Sri Aditya Narain Tiwari, learned counsel for the petitioner and standing counsel for the respondent Nos. 1, 3 and 4.

3. Learned counsel for the petitioner has urged that under Rule 7 of the rules, more than one member of the family could be appointed on compassionate grounds. He further urged that the impugned order of dismissal has been passed contrary to principles of natural Justice. On the other hand, the learned standing counsel has urged that the petitioner has rightly been dismissed from service.

4. From the admitted facts of this case, it is clear that the petitioner's elder brother Ram Adhar was given appointment under the Rules in 1989. He is still in service as assistant teacher. Petitioner claimed appointment under the rules on the ground that his elder brother Ram Adhar who was given appointment on compassionate ground in 1989, has left the joint family. Thereafter, the family of deceased is still facing financial crisis and petitioner was rightly appointed under rules and he could not be dismissed from service on the ground that petitioner's elder brother had

earlier been given compassionate appointment. Government order dated 23.3.1990 read with rules provide that appointment under rules is to be provided to one member of the family of the deceased. The argument of learned counsel for the petitioner that under Rule 7 of the rules, more than one person of a family can be appointed on compassionate grounds is devoid of any merit. The object of the rule is to grant immediate relief to the family of deceased, that is facing financial crisis due to the sudden death of sole bread-earner of the family. Rule 7 provides that if more than one member of the family of the deceased is claiming appointment under the rules, in that case the appointing authority shall determine who amongst them is suitable for appointment. In taking this decision, he has to consider the welfare of the family. Rule 7 does not provide for giving appointment to more than one family member of the deceased. The Rules or Government order do not confer any right on the members of the family of the deceased to claim, more than one appointment.

5. The other argument of learned counsel for the petitioner that the impugned order of dismissal has been passed without affording any opportunity of hearing to the petitioner also does not have any substance. From the facts, it is clear that petitioner could not be appointed under the Rules or Government order as his elder brother had been given appointment on compassionate ground. In inquiry proceedings, opportunity of hearing was given to the petitioner. By order dated 6.9.2000 appointment of petitioner has been cancelled and he has been dismissed from service. No opportunity of hearing was given to him before passing this order. The Apex Court in *M. C. Mehta v. Union of India and others.* (1999) 6 SCC 237, in paragraph 17 has held as under :

'..... It is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.'

6. In view of the admitted facts of this case, only one conclusion is possible that petitioner could not have been appointed under the rules on compassionate grounds as his elder brother had earlier been given appointment on compassionate grounds, who is still working. And if the impugned order is quashed, being in violation of principles of natural justice. It would result in restoring the appointment of the petitioner, which is not in accordance with law. Discretionary power under Article 226 should not be exercised which would result in revival of an illegal order. Therefore, the petitioner is not entitled for any relief.

7. For the aforesaid reasons, I do not find any merit in this writ petition.

8. This writ petition fails and is accordingly dismissed.

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