

**Manoj Kumar Tiwari Vs. State of U.P. and ors.**

**Manoj Kumar Tiwari Vs. State of U.P. and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/470320](http://sooperkanoon.com/470320)

**Court :** Allahabad

**Decided On :** Feb-28-2002

**Reported in :** 2002(2)AWC1376

**Judge :** Ashok Bhushan, J.

**Appeal No. :** C.M.W.P. No. 8387 of 2002

**Appellant :** Manoj Kumar Tiwari

**Respondent :** State of U.P. and ors.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Sudhakar Pandey and ;Prabhakar Pandey, Advs.

**Disposition :** Writ petition dismissed

**Judgement :**

**Ashok Bhushan, J.**

1. Heard counsel for the petitioner and learned standing counsel.
2. By this writ petition, the petitioner has prayed for quashing of the order dated 23rd October, 2001, passed by District Development Officer, Ballia, rejecting the claim of the petitioner for appointment as dependent of deceased employee.

3. The facts of the case as given in the writ petition are ; petitioner's father was appointed as Gram Sevak/Gram Vikas Adhikari on 29th September, 1961. It has been stated in the writ petition that petitioner's father died on 23rd January, 1985 and thereafter an application was made by mother of the petitioner for providing job to the petitioner and for other benefits. From the facts, which have come up on the record, it is clear that petitioner's father absented from his duties from 31st May, 1973. He served the department from 24th October, 1961 to 30th May, 1973 and thereafter he was not working. Subsequently, he died on 23rd January, 1985. The petitioner's case is that the Joint Development Commissioner has written a letter on 30th July, 1987 to the District Development Officer, Ballia, in which it was mentioned that Immediate action be taken with regard to general provident fund and arrears of salary of late Sri Badrinath Tiwari and action be also taken for appointment of the petitioner as dependent of deceased employee. The petitioner states that a writ petition was also filed which was disposed of on 29th May, 1997, with the direction that petitioner's claim regarding G.P.F. of her late husband and arrears of salary be considered and claim of petitioner's (Smt. Prabhawati Devi) son for providing the job be also considered in accordance with law. Reference has also been made to the letter of Joint Development Commissioner to District Development Officer, Ballia. that action should be taken for appointment as dependent of deceased employee under the U. P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974. Subsequently, an order has been passed by District Development Officer on 23rd October, 2001, rejecting the claim of the petitioner. The District Development Officer in his order has stated that petitioner's father has not worked after 30th May, 1973 and absented from duty and according to Financial Hand Book Part II, Vol. 4. Rule 18, the maximum period on which a person can remain on leave is five years. It has further been held that petitioner's father was absent from 31st May, 1973 and retirement benefits have been fixed treating his period of service up to 31st May, 1973 and the aforesaid benefits have been accepted without any objection. Due to the aforesaid reasons, the District Development Officer has rejected the claim of the petitioner.

4. The counsel for the petitioner has submitted that services of petitioner's father were never terminated after 31st May, 1973 and till his death, he will be deemed to be in service since he had been sending applications for medical leave and other

leave from time to time. The second submission of counsel for the petitioner is that amendment made in the year 1993 in the U. P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974, will be prospective and that will not be applicable in case of the petitioner. The third submission raised by counsel for the petitioner is that the District Development Officer has no authority to reject the claim of the petitioner since he is not the appointing authority and further the Joint Development Commission had already directed him to consider the claim of the petitioner. The counsel for the petitioner has further submitted that in pursuance of the order of this Court, the Joint Development Commissioner has decided the claim in favour of the petitioner, hence the District Development Officer has no jurisdiction to reject the claim of the petitioner.

5. I have considered the submissions of counsel for the petitioner and perused the records. The first submission of counsel for the petitioner is that petitioner's father was in service till his death. From the findings as given in the order of District Development Officer, it is clear that petitioner's father absented from 31st May, 1973. It has also been stated that maximum period for which a person can avail the leave is five years according to Financial Hand Book. Admittedly, after 31st May, 1973, the petitioner's father could not have been sanctioned leave up to the date of his death. i.e., 23rd January, 1985, nor any such leave could be held to be admissible. It has further been held by District Development Officer that retrial benefits have been accepted with regard to petitioner's father treating his service from 1961 to 31st May, 1973. without objection. The District Development Officer has taken the view that father of the petitioner could not be said to have continued in service till the date of death. However, in the facts of the present case, this question does not require adjudication as to whether petitioner's father continued in service till 23rd January, 1985 or not since neither any service benefits after 31.5.1973, had been claimed by father of petitioner nor actually any service benefits after 31.5.1973 were given. The finding is that service benefit up to 30.5.1973. has been accepted without any objection, thus no error has been committed in holding that on date of death, father of petitioner was not in service. The District Development Officer has rightly said that since the service period for which the benefits have been given to petitioner's father was up to 31st May, 1973. hence petitioner's father cannot be said to be in service till 23rd January, 1985.

6. The second submission of the counsel for the petitioner that amendment in the U. P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, are not prospective appears to be correct. Although the amendments which have been brought in 1974 Rules has to be held to be prospective but the period which has lapsed from the date of death and the claim are relevant. The application of the petitioner has not been rejected on the ground that it is barred by time nor any finding has been recorded that this application has to be rejected in accordance with amended Rules, 1974.

7. The third submission of counsel for the petitioner that the District Development Officer has no jurisdiction to pass an order has to be considered. In the order of Commissioner dated 7.2.2001 which has been annexed as Annexure-6 to the writ petition as well as the letter dated 30th July. 1987 of Joint Development Commissioner, It is clear that the District Development Officer is the appointing authority. It has specifically been mentioned in the letter dated 7.2.2001 that the District Development Officer is the appointing authority. In view of the aforesaid fact, the contention of the petitioner's counsel that District Development Officer is not the appointing authority is misconceived. The District Development Officer has every Jurisdiction to consider the claim of the petitioner and pass appropriate order.

8. The last submission of counsel for the petitioner is that Commissioner vide his order dated 7.2.2001 has accepted the claim of the petitioner in pursuance of the direction of this Court, hence the District Development Officer could not have rejected the claim. From the letter dated 7.2.2001 (Annexure-6 to the writ petition), It is clear that the said order does not decide the claim of the petitioner as per direction of this Court dated 29th May, 1997. There is no mention of the order of this Court in the aforesaid letter dated 7.2.2001. Further, the aforesaid letter directs the appointing authority, i.e.. District Development Officer to consider the claim in accordance with law. Thus, from the letter, it cannot be said that there was any direction for appointment of the petitioner as dependent of deceased employee. When the matter was referred to District Development Officer, it is discretion of appointing authority to consider the claim in accordance with law. The District Development Officer after the aforesaid letter has considered all facts in

detail and has refused to give appointment to the petitioner as dependent of deceased employee. In view of the reasons in the order of District Development Officer, it is clear that he has refused to give appointment to the petitioner on valid reasons.

9. There is one more reason due to which the claim of the petitioner for compassionate appointment cannot be accepted. It is admitted fact that petitioner's father absented from 31st May, 1973 and did not work thereafter. The District Development Officer in the impugned order has recorded a finding that no service benefit has been given to the petitioner's father after 31st May, 1973 till his date of death. The petitioner's father was absent from 31st May, 1973 and did not draw salary or any emoluments. The Apex Court in *Umesh Kumar Nagpal v. State of Haryana and Ors.* 1994 (4) SCC 138, has held that compassionate appointment cannot be granted after a lapse of reasonable period. The consideration for such employment is not a vested right, which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner. On the date of death, i.e., 23rd January, 1985, the petitioner's father was neither drawing salary nor was receiving any service benefit. When the petitioner's father was not getting any salary or any service benefit from the year 1973, it cannot be said that due to death of petitioner's father, the whole family was plunged into financial crisis. The object of compassionate appointment is to give support to the family when a person who is continuing in service dies. The father of the petitioner, admittedly, was not enjoying any service benefit after 1973 when he died in 1985. There is no question of loss of family due to cessation of financial support which was being received by the father of the petitioner. With regard to service benefits after 1973 neither any claim was raised nor when the retiral benefits were paid on account of death of petitioner's father for the period 1961 to 1973, any objections were raised. Without entering into issue as to whether the father of the petitioner was continuing in service at the time of death, it is clear that it has been accepted by the petitioner that no service benefit was received by his father after 1973. The very object for which compassionate appointment is given is missing in the present case. The petitioner's father himself in his lifetime never claimed any service benefit after 1973 when he absented himself from job. Even after death of petitioner's father, no

claim appears to have been made for treating him in service and giving him service benefits up to the date of death of petitioner's father. When no service benefit has been claimed nor granted, the District Development Officer has rightly presumed that petitioner's father was not continuing in service at the time of his death. Due to this reason, there is no error in rejecting the claim of the petitioner for compassionate appointment.

10. In view of the above, I do not find any error in the order of District Development Officer. The writ petition lacks merit and is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**