2026:AHC:209283

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 2120 of 2017

Jogendra Singh

.....Petitioner(s)

Versus

State Of U.P. And 3 Ors.

.....Respondent(s)

Counsel for Petitioner(s)	:	Abhishek Bhushan, Deepak Upadhyay, Mukesh Chandra Gupta
Counsel for Respondent(s)	:	C.S.C.

Court No. - 34

(SN.89)

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Rajesh Kumar Singh, Advocate holding brief of Sri Deepak Upadhyay, learned counsel for the petitioner and Sri Raj Kumar Tiwari, learned Standing Counsel for the State.

2. The instant petition has been filed by the petitioner seeking quashing of the order dated 01.12.2016, passed by the District Magistrate, Agra, whereby the claim of the petitioner for compassionate appointment after the death of his father, Sri Bahadur Singh, who was working as a Temporary Driver, without there being any permanent or substantive post available for the driver in the said department, who has reportedly died on 04.11.2013, was rejected.

3. Previously also, petitioner has filed a writ petition being Writ-A No. 43313 of 2016 (Jogendra Singh vs. State of U.P. and others), which was disposed of vide order dated 12.09.2016 by this Court, directing the respondent no. 3 to consider and decide the representation of the petitioner. Vide impugned order dated 01.12.2016, the District Magistrate has rejected to decide the representation of the petitioner regarding compassionate appointment of the petitioner, having regard to the facts of the case that the father of the petitioner was appointed temporarily without there being any post of driver available in the concerned department, though his claim for regularization was pending and before it

could be adjudicated, the father of the petitioner has died on 04.11.2013.

4. Learned counsel for the petitioner submits that subsequent to the filing of the instant petition, the claim of the other identically situated persons has already been adjudicated in Writ-A No. 632 of 2020, which was adjudicated by this Court and the direction for regularization of such candidates by creating supernumerary post was issued vide order dated 31.07.2023. Therefore, learned counsel for the petitioner claims that the dependent of the petitioner, had he been continued in service, would have been entitled for the compassionate appointment.

5. Learned counsel for the petitioner has also relied upon the judgment of this Court in ***Writ-A No. 15168 of 2007 (Renu Tiwari vs. State of U.P.)***, wherein, after the death of the identically situated driver, this Court has directed for consideration of the dependent of such driver for compassionate appointment vide order dated 29.11.2011. The said order was challenged by filing the special appeal by the respondents. The said special appeal was dismissed vide judgment and order dated 02.08.2023. Thus, learned counsel for the petitioner further submits that thereafter, after considering the claim of the said petitioner in Writ-A No. 15168 of 2007, she has already been given the compassionate appointment by the department as per his information.

6. *Per contra*, Sri Raj Kumar Tiwari, learned Standing Counsel for the State, relying upon the definition of 'Government Servant' as provided in U.P. Recruitment of the Dependents of Government Servants Dying in Harness Rules, 1974, submits that the father of the petitioner, by no stretch of imagination, can be considered as the Government Servant, which could entitle the petitioner to claim the compassionate appointment under 1974 Rules. Therefore, learned Standing Counsel for the State further submits, since the appointment of the father of the petitioner was only temporary as a stop-gap appointment, and there was no substantive vacancy available against which the father of the petitioner was appointed, and before the claim of regularization of the father of the petitioner could be adjudicated, he has died on 04.11.2013. Therefore, there is no illegality in rejecting the claim of the petitioner for compassionate appointment by the impugned order dated 01.12.2016.

Therefore, he seeks dismissal of the instant petition.

7. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the perusal of the appointment letter of the father of the petitioner, it is apparent that he was appointed as driver in the Panchayati Raj Department temporarily as stop-gap arrangement vide appointment letter dated 18.11.1980. It is the claim of the petitioner that his father continued in service uninterruptedly till his death. Though, the Regularization Rules 2001 came into force, the claim of the regularization of the father of the petitioner could not be considered. Therefore, the father of the petitioner had also filed a writ petition 44091 of 2012 along with other identically situated persons claiming regularization. However, before the said writ petition could be adjudicated, the father of the petitioner has died during pendency of the said petition on 04.11.2013. Therefore, at the time of the time of his death on 04.11.2013, the father of the petitioner was only working as Driver without there being any substantive post of Driver in the Panchayati Raj Department as a stop-gap arrangement.

8. Section 2(a) of 1974 Rules defines the 'Government servant', which is as under:

> *"2 (a) "Government servant" means a Government servant employed in connection with the affairs of Uttar Pradesh who-*
>
> *(i) was permanent in such employment; or*
>
> *(ii) though temporary had been regularly appointed in such employment; or*
>
> *(iii) though not regularly appointed, had put in three years' continuous service in regular vacancy in such employment.*
>
> *Explanation."Regularly appointed" means appointed in accordance with the procedure laid down for recruitment to the post or service, as the case may be ;"*

9. From the aforesaid definition, it is apparent that a person who has been appointed in the Government service permanently or temporarily against

the substantive vacancy or though he has not been regularly appointed, has put in three years continuous service in regular vacancy in such employment can only be treated as 'Government Servant'. It is admitted case that till the death of the father of the petitioner, there was no regular vacancy available in the department concerned. In such view of the matter, by no stretch of imagination, the father of the petitioner could be treated as a Government servant under 1974 Rules. Therefore, the claim of the petitioner for compassionate appointment under 1974 Rules cannot survive.

10. Though, the Counsel for the petitioner has pleaded while arguments claiming parity with the case of ***Renu Tiwari (supra)***, however, there was no pleading in the writ petition or in the supplementary affidavits filed on behalf of the petitioner. Therefore, there is no occasion for the respondents to respond to this issue. In such view of the matter, no right that too of negative parity can be adjudicated in the instant petition.

11. Accordingly, the instant petition is ***dismissed***.

(Anish Kumar Gupta,J.)

October 7, 2026
Shubham Arya

Digitally signed by :-
SHUBHAM ARYA
High Court of Judicature at Allahabad