

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

**Writ Petition (S/B) No.1205/2002**

Deepak Shukla ..... Petitioner

Versus

State of Uttaranchal and others ..... Respondents

.....

**Sri B.S.Khanka, learned counsel for the petitioner.**

**Sri H.M.Raturi, learned Standing counsel for the State of Uttarakhand.**

**Sri Sandeep Tandon, learned counsel for the respondent Nos. 4 & 5.**

**Date: April 29, 2008.**

**Hon'ble P.C.Verma,J.**

This petition has been filed by the petitioner seeking writ of mandamus commanding the respondents to issue appointment letter under the Dying-in-Harness Rules.

2. The father of the petitioner late Sri Rajendra Mohan Shukla was employed in Nagar Palika Parishad, Khatima (District-Udham Singh Nagar) and was posted as Clerk at the relevant time. On 03.01.2002 he died during the period of suspension. The petitioner having requisite qualification of Intermediate for the post of Clerk has applied for appointment on the post of Clerk

under the Dying-in-Harness Rules on 22.4.2002 but he has not given appointment.

3. The respondent Nos. 4 & 5 contended that the petitioner's father late Shri Rajendra Mohan Shukla was posted as Clerk in the respondent department and he was under suspension since 1994. He was also facing criminal trial in a case under Section 409 of the Indian Penal Code. A departmental inquiry was also pending against him. During the pendency of the trial and inquiry the petitioner's father Rajendra Mohan Shukla died on 03.01.2002 and after his death, the Chairman, Nagar Palika Parishad passed order terminating the services of the petitioner's father on 07.01.2002. The respondent /Nagar Palika Parishad also contended that on the post of Clerk one Sri Rajesh Kotiyal has been appointed after the death of petitioner's father on 08.03.2002.

4. The learned counsel for the petitioner submitted at bar that the claim of the petitioner for appointment under the Dying-in-Harness Rules has been rejected by the respondents. It is also submitted by the learned counsel for the petitioner that the order dated 07.01.2002 terminating the services of late Sri Rajendra Mohan Shukla without concluding the inquiry has been challenged in the High Court in Writ Petition (S/S) No.18 of 2003 and the said order has been quashed by deciding the writ petition on 20.02.2007. The respondents were further directed to conclude the inquiry initiated against late Sri Rajendra Mohan Shukla, Clerk, on the basis of records available to them and only thereafter they may pass orders in accordance with law.

5. Sri Sandeep Tandon, learned counsel for the Nagar Palika Parishad, Khatima stated at bar that the post of Clerk is not vacant in the Nagar Palika Parishad and the case of the petitioner for appointment under the Dying-in-Harness Rules on Class IV post is being considered by the respondents.

6. In view of above statement, the respondents are directed to re-consider the case of the petitioner for appointment under the Dying-in-Harness Rules keeping in view of his qualification on any post vacant in the Nagar Palika Parishad concerned.

7. With the aforesaid observation, the petition is disposed of finally.

**(P.C.Verma,J.)**  
29.04.2008