

petitioner, has referred to the appointment letter of the respondent workman (Exhibit WW-1/2 at page 36 of the Paper Book) to contend that the respondent workman was appointed as daily wager specifically mentioning it in his appointment order that the case of the respondent workman for his regular appointment on compassionate grounds is being considered separately as per rules. The contention of the learned counsel appearing on behalf of the petitioner is that, in case, the impugned award is allowed to stand, then a daily wager will be made a regular employee without following the due process.

5. There is no substance or merit in this submission made on behalf of the petitioner. This was not the case of the petitioner in its written statement filed before the Labour Court that it was still considering the case of the respondent workman for his appointment on compassionate grounds on regular basis separately as per rules. This contention is raised before this Court for the first time. It is not disputed by the learned counsel appearing on behalf of the petitioner that the appointment of the respondent workman was on compassionate grounds. His appointment came in place after more than two years of the death of his father Dharam Singh.

6. It sounds strange that the petitioner was still considering the case of the respondent for his regular appointment on compassionate grounds even after two years of the death of his father. In the opinion of this Court, two years time after the death of the father of the respondent was a sufficient time with the petitioner to decide whether the respondent was entitled to appointment on compassionate grounds under the rules or not.

7. On being repeatedly asked, the learned counsel appearing on behalf of the petitioner, could not show that the rules for appointment on

compassionate grounds provide for appointment on daily wage basis. Once the petitioner had appointed the respondent on compassionate grounds it amounts to an admission on the part of the petitioner that the respondent was entitled for compassionate appointment. Compassionate appointment could have been made only on regular basis and not on daily wage basis.

8. It shall be significant to mention that the witness of the petitioner itself namely WW-1 Surinder Singh has admitted two important facts in his cross-examination, one that the appointment of the respondent vide appointment letter (Exhibit WW-1/2) was against a vacant post and the second admission made by him is that the respondent all along had been discharging the similar nature of work as discharged by his deceased father and he possess the same qualification as possessed by his deceased father.

9. Under the circumstances, I do not find any illegality or perversity in the impugned order holding that the respondent is entitled to be treated as regular employee with effect from the date of his initial appointment, i.e., 31.03.2003. This writ petition, therefore, fails and is hereby dismissed in limine. The stay application is also dismissed.

NOVEMBER 09, 2009
'BSR '

S.N.AGGARWAL, J