

**Court No. - 10**

**Case :-** WRIT - A No. - 34618 of 2007

**Petitioner :-** Smt. Urmila Devi

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** T.I. Khan, Kamlesh Singh, Shamim Ahmad Ansari

**Counsel for Respondent :-** C.S.C.

**Hon'ble Kshitij Shailendra, J.**

1. Heard Sri Shamim Ahmad Ansari, learned counsel for the petitioner and Sri Deepak Chauhan, learned Additional Chief Standing Counsel for the State-respondents and perused the record.

2. The petitioner's husband was working as a daily-wager Beldar since 1988 and it is contended that in 1991 his services were terminated, however, due to intervention of this Court, he was again permitted to join services on 01.06.1995 and that he continued to work in the department for a period of 10 years until his death, which occurred on 20.07.2005. The petitioner being widow, made her claim for compassionate appointment and filed a writ petition, which was disposed of directing the authorities to consider her claim in the light of certain authorities noted in the order impugned itself. The petitioner's claim has been rejected by the Executive Engineer of the Department by the order impugned dated 12.03.2007.

3. Learned counsel for the petitioner submits that the order impugned is unsustainable as it contains wrong interpretation of Uttar Pradesh Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974, particularly, Rule 2 thereof and that the respondents have ignored the continuous services of the petitioner's husband. He has also argued on the poor financial condition of the petitioner and submits that the petitioner has not yet attained the age of superannuation and is aged about 53 years as on today and, therefore, after setting aside the order impugned, she may be offered compassionate appointment.

4. Per contra, learned Additional Chief Standing Counsel submits that for offering appointment on compassionate ground, the concerned applicant should be dependent of a government servant as defined under Rule 2 of the Rules of 1974. It is contended that the petitioner's husband was assigned work on the basis of necessity as a muster roll daily-wager and his appointment was not

against any sanctioned post. It is, therefore, contended that the petitioner is not entitled to the reliefs claimed.

5. Having heard the learned counsel for the parties, I find that the ground, on which the petitioner's claim has been rejected has correlation with definition of "Government Servant" as per Rule 2 of the Rules, 1974, which is quoted herein below for a ready reference:-

**"2. Definitions.-** In these rules, unless the context otherwise requires,-

(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;

(b) "deceased Government servant" means a Government servant who dies while in service;

(c) "family" shall include the following relations of the deceased Government servant:

(i) Wife or husband;

(ii) Sons;

(iii) Unmarried and widowed daughters;

(d) "Head of Office" means Head of Office in which the deceased Government servant was serving prior to his death."

6. Considering the nature of services of the petitioner's husband, though it has been argued by Sri Ansari that even if the petitioner's husband was not regularly appointed, since he had put in more than three years of continuous services in the department, the case of the petitioner would be covered by Rule 2 (a) (iii) of Rules, the Court is not in a position to accept the submissions advanced. The reason is that out of three categories mentioned of a government servant, first category relates to permanent nature of employment, the second category relates to temporary appointment but

regularized later on and the third category relates to an employee who is not regularly appointed but has put in three years continuous service in regular vacancy in such employment. The petitioner's husband might have completed 10 years of service in the department, but there is nothing on record to establish that his services were ever regularized or even if not regularized his appointment was against the regular vacancy.

7. Continuity in service has been associated with regular vacancy under Rule 2(iii) and in absence of any material before this Court, considering the nature of the work done by the petitioner's husband, the Court cannot treat his services as "continuous service in regular vacancy", particularly, in view of the specific stand taken not only in the order impugned but also in the counter affidavit that the appointment of the petitioner's husband was not made against a regular vacancy in the department.

8. In view of the above discussion, no error is found in the order impugned.

9. The writ petition lacks merit and is, accordingly, **dismissed**.

**Order Date :-** 30.11.2023

AKShukla/-