

Court No. - 34

Case :- WRIT - A No. - 18138 of 2023

Petitioner :- Smt. Poonam Chauhan

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Gopal Das Srivastava, Prabhat Kumar Tiwari

Counsel for Respondent :- C.S.C

Hon'ble Ajit Kumar,J.

1. Heard Sri Gopal Das Srivastava, learned counsel for the petitioner as well as learned Standing Counsel.

2. By means of this petition filed under Article 226 of the Constitution, the petitioner is seeking compassionate appointment on account of her husband dying in harness while in service on 29.10.2022.

3. Petitioner's husband was initially engaged as a Forest Guard on daily wage basis in April 1991. Later on his services came to be regularized on 10.08.2022. However, it appears that later on, on the basis of some report being submitted to the effect that petitioner's services from the year 1991 till December 2001 were not found to be continued one. This view being erroneous in law in the light of definition given for the purpose of regularization under the relevant regularization Rules, 2001, upon being challenged this Court entertained a writ petition being Writ - A No. 6348 of 2019 and had passed an interim order on 23.04.2019. Resultantly petitioner's husband was wholly illegally denied to work but was in service when he died. The said writ petition has remained pending and petitioner's application for compassionate appointment is not being disposed of only on the ground of pendency of that writ petition.

4. This Court has repeatedly held that the interpretation of words and expression "continuing in service" on the date of commencement of rules for the purposes of regularization under the U.P. Regularization of Daily Wages Appointments on Group D Posts Rules, 2001 has been made to mean appointed prior to cut off date and working as such on the date of commencement of relevant rules. In the case of **Janardan Yadav v. State of U.P., (2008) 1 UPLBEC 498**, the Court vide paragraph nos. 7 & 8 has held thus:

"7. Respondents have not disputed the existence of all the said three conditions but their further presumption is that the Rules also contemplate continuous service throughout from the date of initial engagement till the date of commencement of the Rules and only then a person appointed on daily

wage basis would be entitled for regularization. It is also the stand of the respondents, which is evident from para-20 of the counter-affidavit, which reads as under:

"20. That the contents of para 23 of the writ petition is not correct and denied. As stated the petitioner is continuously working relates to the working of a daily wager without any break as there is no break mentioned in the regularization rules. The petitioner or a daily wager has to work throughout year except on the national holiday."

8. The said stand is contrary to the Rules and it amounts to reading certain words in Rule 4(1) which is not provided therein by the Rule framing authority. The Rule framing authority has not framed the aforesaid Rules in manner as are being read by the respondents. Since the Rules are applicable only to daily wage employees, the Rules framing authority was aware that such employee could not have worked continuously throughout and, therefore, has clearly provided that the engagement must be before 29.6.1991 and he is continuing as such on the date of commencement of the Rules. If a daily wage engagement has been made before 29.6.2001 and was continuing on 21.12.2001, meaning thereby the daily wage engagement remained necessity of the department or the requirement thereof for more than 10 years, for such a person only, the benefit of regularization under 2001 Rules has been provided, and it nowhere requires further that the incumbent must have worked continuously from the date of initial engagement till the commencement of these Rules and to read these words would amount to legislation, which is not permissible in law. While interpreting the statute, it is well settled that neither any word shall be added nor be subtracted but if a plain reading of the statute is clear and unambiguous, the same has to be followed as such. This Court does not find any ambiguity in Rule 4(1) providing as to which kind of persons would be entitled for regularization and it nowhere requires that the incumbent must have worked throughout from the date of initial engagement till the date of commencement of the Rules."

5. In the circumstances, therefore, I do not see any justification for the respondents not to consider the claim of the petitioner for compassionate appointment only on the ground that the writ petition is still pending.

6. In view of the above, this petition stands **disposed of** with direction that the petitioner's claim for compassionate appointment shall be considered strictly in accordance with law without being influenced by the report submitted by Chief Conservator of Forest/ Additional Chief Conservator of Forest, Agra Zone, Agra dated 24.05.2023. The matter shall be disposed of within a period of two months from the date of presentation of certified copy of this order and and in the event petitioner is held otherwise entitled for compassionate appointment the same shall be offered to her within a further period of one month.

Order Date :- 30.10.2023/IrfanUddin