

Court No. - 4

Case :- WRIT - A No. - 5365 of 2024

Petitioner :- Krishna Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Public Work Deptt. Lko
And 4 Others

Counsel for Petitioner :- S.P. Singh Somvanshi

Counsel for Respondent :- C.S.C.

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 24.7.2024 which reads as under :

"Heard.

This Court has passed order dated 16.7.2024 which reads as under :

"1. Heard learned counsel for the petitioner and Shri V.K. Bajpai, learned Standing Counsel for the State-respondents.

2. By means of this petition, the petitioner has prayed following main relief(s):-

"i) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to give the substantive compassionate appointment to the petitioner (as regular employee) from the date of initial appointment i.e. 12.06.2002.

ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to provide all consequential benefit as like seniority, increments, ACP, Arrear etc, as substantive compassionate appointment from the date of initial appointment i.e. 12.06.2002."

3. Attention has been drawn towards the judgement and order 25.8.2022 passed by this Court in Writ-A No. 4963 of 2022 (Jagdish Prasad Yadav vs. State of U.P. and others), which reads as under:-

"1. Heard Sri S.P. Singh somvanshi, learned counsel for petitioner, learned Standing Counsel for the respondents.

2. The petitioner has approached this Court seeking a writ of mandamus commanding the opposite parties to treat the petitioner as regular employee from the date of initial appointment i.e. 20.02.2009 and pass in regard of the same.

3. It has been submitted by learned counsel for petitioner that petitioner was appointed on compassionate ground after the death of his father Ram Lal who was working on the post of Beldar. The father of the petitioner died in 2008 and subsequently the petitioner was appointed on 20.02.2009 on the post of Beldar in P.W.d., district Pratapgarh on daily wage/muster roll.

4. Learned Standing Counsel on the basis of instructions has submitted that once the petitioner has accepted his appointment on the daily wages he cannot after 13 years turn around and seek a direction for being considered as a regular employee. It has been submitted that father of the petitioner was a daily wager and was not holding any post.

5. It is noticed that in the Full Bench Decision of Pawan Kumar Yadav Vs. State of U.P. & Others (Civil Misc. Writ Petition No. 15505 of 2005) pertains to the fact

that where a dailywager and workcharge employee in connection with affairs of are not holding any post whether substantive or temporary, and is not appointed in any regular vacancy, even if he was working for more than 3 years, is not a 'Government Servant' within the meaning of Rule 2(a) of U.P. Recruitment of Dependents of Government Servant (Dying in harness) Rules, 1974, and thus his dependents on his death in harness are not entitled to compassionate appointment under these Rules."

6. It is noticed that the said judgment is not concerned with the dispute at the moment where the respondents have already appointed the petitioner on daily-wager and he has continuously worked for the last 13 years and is seeking regular appointment and also parity with regard to judgment of the Division Bench passed in the case of Ravi Karan Singh State of U.p. and others, 1999 (3) UPLBEC 2263.

7. It has been submitted that in similar circumstances, this Court had allowed the case of a similarly situated person being Writ A No. 3526 of 2022 (Rajesh Kumar Yadav Vs. State of U.P. and others), which is quoted hereinunder:-

"This writ petition has been filed for issuing writ of mandamus commanding the respondents to pass the fresh order in regard to appointment of the petitioner from the initial date of appointment on 24.11.2009 as regular employees of the same cadre with all consequential benefits.

Heard Sri S.P. Singh Somvanshi, learned counsel for the petitioner and learned Standing Counsel.

Contention of learned counsel for the petitioner is that case of petitioner is similar to the case of Writ Petition No.8258 (SS) of 2009, which has been allowed by this Court vide judgment and order dated 22.4.2014. Relevant extract of judgment is being reproduced below:-

"Even after 14 years of service, petitioner is being treated temporary and has not been regularised. It has been held by Division Bench of this Court in the case of Ravi Karan Singh v. State of U.P. and others, reported in (1999) 3 UPLBEC 2263 that appointment made under Rules, 1974 is to be treated as permanent appointment. Relevant paragraph of the decision is being reproduced below:-

"In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments"

Following this, other Division Benches of this Court in the case of Sanjai Kumar v. Deputy Director General (NCE), Directorate U.P., Lucknow and others, (2002) 3 UPLBEC 2748; and Ram Chandra v. State of U.P. and others, 2008 (2) ESC 1053, have held that the appointment on compassionate ground is always permanent in nature. Learned counsel has placed the judgment delivered by Hon'ble S.N.Shukla, J. in the Writ Petition No. 3145 of 2002 (S/S), Mohd. Agram and others v. State of U.P. & others and several other judgments given in Writ Petition No. 69 of 2008 (S/S), Buddhi Ram v. State of U.P. & others, Writ Petition No. 3170 of 2009 (S/S), Smt. Usha Singh v. State of U.P. and others and Writ Petition No. 116 of 2010 (S/S), Arvind Pratap Singh v. State of U.P. & others. Smt. Usha Singh's case is similar as her husband was working as Beldar in P.W.D. and appointment of his dependent was ordered to be treated to be a regular appointment. It is not disputed that in the appointment letter, rule has not been mentioned but non-mention of rule will not alter the position as there is no other Government order governing such appointments, her appointment has to be treated to have been made under Rules, 1974 and will be treated to be a regular appointment. Petitioner has to be treated to be an employee on regular

basis, as such petitioner has made out a case for interference."

After hearing, I find that petitioner's case is similar, as such, he is entitled to the benefit of above judgment.

Consequently, Writ petition is disposed of directing the respondents to pass appropriate order in regard to appointment of petitioner within six weeks from today in the light of judgment dated 22.4.2014 given in Writ Petition No. 8258 (SS) of 2009 (Komal Vs. State of U.P.)."

8. It is noticed that there is no reason as to why the petitioner can be denied similar benefits as has been granted in the case of Rajesh Kumar Yadav (Supra), accordingly, the writ petition is disposed of directing the respondents to pass appropriate orders with regard to appointment of the petitioner within six weeks from today in light of the judgement dated . passed in the case of Komal Vs. State of U.P. (Service Single No. 8258 (SS) of 2009)."

4. Learned counsel for the petitioner has stated that the subject matter in question/issue has been adjudicated finally and the competent authority has complied with the judgement and order dated 25.8.2022 passed in favour of identically placed employee on 16.12.2023 (Annexure-17).

5. Shri Bajpai prays for and is granted a week's time to seek complete written instructions in the matter particularly on the point that the subject matter in question has been finalized and also as to whether the compliance has been done by the competent authority in favour of identically placed employees.

6. List this case on 24.07.2024 as fresh.

7. This matter may be taken up immediately after fresh cases."

Sri Tushar Verma, learned Standing Counsel has stated that though he has received instructions in the matter but he could not receive instructions on the point as to whether against the order being passed by the Appellate Court any S.L.P. has been filed or not. In the order it has been indicated that the orders of writ court and appellate court are being complied with subject to final outcome of the S.L.P.

List / put up on 31.7.2024 as fresh.

This matter shall be taken up immediately after fresh cases.

In the meantime Sri Tushar Verma may seek complete instructions on the point as to whether against the order passed by the Appellate Court any Special Leave Petition has been filed or not."

3. Learned counsel for the petitioner has stated that the controversy in question has been settled and the candidates who were given appointment on compassionate ground by the competent authority on the post of 'Beldar' on work-charge basis have been permitted to be treated as regularly appointed with all consequential benefits.

*4. Attention has been drawn towards Annexure no. 8 which is a judgment and order dated 22.4.2014 passed by this Court in **Service Single No. 8258 of 2009 : Komal vs. State of U.P. and another** which is a similar matter. The order dated 22.4.2014 reads as under :*

"By means of instant writ petition, petitioner has sought the relief in the nature of mandamus commanding the respondent no.1 to treat him as regular employee.

It appears that petitioner was given appointment on compassionate ground by Executive Engineer, Division II, P.W.D., Pratapgarh on the post of Beldar on

work-charge basis. Although pay-scale has been mentioned in the order but with restriction that he will not get more than Rs. 3200/-. Prayer is that he should be given regular appointment rather appointing him temporarily.

Ms. Kriti Srivastava, learned Standing Counsel, submits that since petitioner's father was not a regular employee, as such petitioner has no right to seek appointment under the Uttar Pradesh, Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974. She further submits that dependents of temporary worker cannot claim appointment on compassionate ground. In support of submission, she has cited a decision of Full Bench given in Pawan Kumar Yadav v. State of U.P. & others (Civil Misc. Writ Petition No. 15505 of 2005). The relevant paragraph is being reproduced below:-

"(1) A daily wager and workcharge employee employed in connection with the affairs of the Uttar Pradesh, who is not holding any post, whether substantive or temporary, and is not appointed in any regular vacancy, even if he was working for more than 3 years, is not a 'Government servant' within the meaning of Rule 2(a) of U.P. Recruitment of Dependents of Government Servant (Dying in Harness) Rules, 1974, and thus his dependants on his death in harness are not entitled to compassionate appointment under these Rules."

So far as view of Full Bench is concerned, there cannot be any dispute but what is relevant is that petitioner was appointed on 24.7.1998 on the compassionate ground on account of the death of his father while in service. Appointments are governed by Rules, 1974 which provides for appointment on compassionate ground. There is no other rule under which petitioner's appointment can be justified. Prior to the decision of Full Bench, number of writ petitions were decided and orders were passed. Even after 14 years of service, petitioner is being treated temporary and has not been regularised. It has been held by Division Bench of this Court in the case of Ravi Karan Singh v. State of U.P. and others, reported in (1999) 3 UPLBEC 2263 that appointment made under Rules, 1974 is to be treated as permanent appointment. Relevant paragraph of the decision is being reproduced below:-

"In our opinion, an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment then it will follow that soon after the appointment service can be terminated and this will nullify the very purpose of the Dying in Harness Rule because such appointment is intended to provide immediate relief to the family on the sudden death of the bread-earner. We, therefore, hold that the appointment under Dying in Harness Rule is a permanent appointment and not a temporary appointment and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975 will not apply to such appointments"

Following this, other Division Benches of this Court in the case of Sanjai Kumar v. Deputy Director General (NCE), Directorate U.P., Lucknow and others, (2002) 3 UPLBEC 2748; and Ram Chandra v. State of U.P. and others, 2008 (2) ESC 1053, have held that the appointment on compassionate ground is always permanent in nature. Learned counsel has placed the judgment delivered by Hon'ble S.N.Shukla, J. in the Writ Petition No. 3145 of 2002 (S/S), Mohd. Agram and others v. State of U.P. & others and several other judgments given in Writ Petition No. 69 of 2008 (S/S), Buddhi Ram v. State of U.P. & others, Writ Petition No. 3170 of 2009 (S/S), Smt. Usha Singh v. State of U.P. and others and Writ Petition No. 116 of 2010 (S/S), Arvind Pratap Singh v. State of U.P. & others. Smt. Usha Singh's case is similar as her husband was working as Beldar in P.W.D. and appointment of his dependent was ordered to be treated to be a regular appointment. It is not disputed that in the appointment letter, rule has not been mentioned but non-mention of rule will not alter the position as there is no other Government order governing such appointments, her appointment has to be treated to have been made under Rules, 1974 and will be treated to be a regular appointment. Petitioner has to be treated to be an employee on regular basis, as such petitioner has made out a case for interference. Writ petition is allowed. Respondents are directed to treat the petitioner as regular appointee entitled to all consequential benefits.

Compliance of this judgment and order will be made within four weeks from today."

5. The State of U.P. went in special appeal by filing Special Appeal Defective No. 448 of 2014 : State of U.P. and others vs. Komal and the aforesaid special appeal was dismissed by the Division Bench vide judgment and order dated 14.8.2014 which reads as under :

"Heard learned Additional Chief Standing Counsel for the appellants and Shri S.P. Singh Somvanshi, learned Counsel for the respondent.

With the consent of learned counsel for the parties, we proceed to decide the instant appeal at the admission stage.

This appeal arises out of the judgment and order dated 22.04.2014 passed in Writ Petition No.8258 (SS) of 2009, whereby the learned Single Judge allowed the writ petition.

In nutshell, the case of the appellant is that the father of respondent, namely Ram Manohar was initially appointed on the post of Beldar and thereafter he was promoted to the post of Work Charge and he was worked in the department for more than 19 years. While in service, he expired on 11.10.1996. Thereafter, the respondent claimed for appointment Dying in Harness Rules, 1974 and he was given appointment on 24.7.1998 under Dying in Harness Rules on the post of Beldar as work charge employee. Thereafter, the respondent made several representations before the appellants for regularization of his services, but no action was taken on the said representations. Feeling aggrieved, the respondent preferred a writ petition No.8258 (SS) of 2009, which was allowed by the learned Single Judge vide judgment and order dated 22.04.2014 with the following observations :-

"Following this, other Division Benches of this Court in the case of Sanjai Kumar v. Deputy Director General (NCE), Directorate U.P., Lucknow and others, (2002) 3 UPLBEC 2748; and Ram Chandra v. State of U.P. and others, 2008 (2) ESC 1053, have held that the appointment on compassionate ground is always permanent in nature. Learned counsel has placed the judgment delivered by Hon'ble S.N.Shukla, J. in the Writ Petition No. 3145 of 2002 (S/S), Mohd. Agram and others v. State of U.P. & others and several other judgments given in Writ Petition No. 69 of 2008 (S/S), Buddhi Ram v. State of U.P. & others, Writ Petition No. 3170 of 2009 (S/S), Smt. Usha Singh v. State of U.P. and others and Writ Petition No. 116 of 2010 (S/S), Arvind Pratap Singh v. State of U.P. & others. Smt. Usha Singh's case is similar as her husband was working as Beldar in P.W.D. and appointment of his dependent was ordered to be treated to be a regular appointment. It is not disputed that in the appointment letter, rule has not been mentioned but non-mention of rule will not alter the position as there is no other Government order governing such appointments, her appointment has to be treated to have been made under Rules, 1974 and will be treated to be a regular appointment. Petitioner has to be treated to be an employee on regular basis, as such petitioner has made out a case for interference. Writ petition is allowed. Respondents are directed to treat the petitioner as regular appointee entitled to all consequential benefits."

Feeling aggrieved, the instant appeal has been preferred.

The sole contention of the learned Counsel for the appellants is that while working in the work charge establishment, the father of the respondent, was expired on 11.10.1996 and the respondent was offered an appointment on 24.07.1998 on the post of Beldar as work charge establishment. Learned Single Judge has held that at the relevant time, if any employee while in service has expired, her legal heirs is offered an appointment under the Uttar Pradesh, Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 and the said appointment so offered is of permanent in nature. Learned Single Judge has placed reliance in the case of Sanjai Kumar vs. Deputy Director General (NCE), Directorate U.P. Lucknow and others, (2002) 3 UPLBEC 2748 and Ram Chandra vs. State of U.P. and others, 2008 (2) ESC 1053,

whereby it was held that the appointment on compassionate ground is always permanent in nature.

Learned standing counsel submits that Pawan Kumar Yadav vs. State of U.P. and others (Civil Misc. Writ Petition No.15505 of 2005) have held that in view definition of 'Government Servant' as defined in Rule 2(a) of U.P. Recruitment of Dependents of Government Servant (Dying in Harness) Rules, 1974, a daily wager and work charge employee, who is not holding any post in any capacity is not covered within the meaning of Government Servant and as such he cannot be his legal heirs are not extended the benefit of recruitment under the aforesaid Rules. The said judgment was rendered in the year 2005, whereas the instant case, the respondent was offered an appointment as back as in the year 1998 and at the relevant time as stated here-in-above the U.P. Recruitment of Dependents of Government Servant (Dying in Harness) Rules, 1974 can be extended to the legal heirs.

In view of above, we do not find any illegality or infirmity in the impugned judgment and order dated 22.4.2014 passed by the learned Single Judge.

Accordingly, the Special Appeal is dismissed."

6. Thereafter some more writ petitions bearing **Service Single No. 8235 of 2009 : Babu Lal vs. State of U.P. and others** which was allowed vide judgment and order dated 22.4.2014 and the special appeal thereof bearing **Special Appeal Defective No. 435 of 2014 : State of U.P. and others vs. Babu Lal** has been rejected vide judgment and order dated 12.8.2014. Some more writ petitions were filed and those writ petitions were allowed in terms of the orders being passed in **Komal (supra)** and special appeal thereof has been rejected.

7. Learned counsel for the petitioner has further stated that against all the aforesaid orders being passed by the Single Judge and Division Bench no special appeal has been filed till date.

8. Per contra, Sri Tushar Verma has submitted that the appointment of the petitioner is not under the Compassionate Appointment Rules, 1974 but the petitioner has been appointed under the Office Order dated 27.6.1996. Sri Verma could not demonstrate any document to show that the aforesaid orders being passed by the Single Judge and Division Bench has been assailed by filing Special Leave Petition before the Apex Court.

9. Learned counsel for the petitioner has stated that instead of challenging those orders before the Hon'ble Apex Court the authorities have complied with the orders. So far as the present case is concerned learned counsel for the petitioner has stated that the father of the petitioner namely late Dharampal was initially appointed on the post of 'Beldar' as muster roll / daily wages in the year 1980. Further, the father of petitioner died on 12.01.2001 during the service from the post of work-charge establishment and total services approx 22 years. The Executive Engineer, Nirman Khand, Public Works Department, Pratapgarh appointed the petitioner under the scheme of Dying in Harness Rules on the post of 'Beldar' and directed the Assistant Engineer -I to accept the joining of the petitioner and permit him to discharge the duties vide appointment letter dated 12.6.2002 (Annexure no. 4). Since then the petitioner is regularly discharging his duties. Thereafter his services have been regularized on 30.8.2010 (Annexure no. 6).

10. Learned counsel for the petitioner has stated that since the issue in question is squarely covered with the aforesaid judgments, therefore, the

opposite parties may be directed to treat the petitioner as a regular employee w.e.f. the date of initial appointment i.e. 12.6.2002 and he be paid all consequential service benefits.

11. Since the issue in question is no more res integra, therefore, the writ petition is ***allowed***.

12. The respondents are directed to treat the petitioner as regularly appointed employee and pay all consequential benefits.

13. Consequential orders to be passed with expedition.

14. No orders as to costs.

.

[Rajesh Singh Chauhan, J.]

Order Date :- 31.7.2024

Om