

Court No. - 33**Reserved****A.F.R.****Case :-** WRIT - A No. - 5519 of 2023**Petitioner :-** Pawan Kumar**Respondent :-** State of U.P. through Additional Chief Secretary, Forest Department, Civil Secretariat, Lucknow and others**Counsel for Petitioner :-** Mr. Ram Bali Tiwari, Advocate**Counsel for Respondent :-** C.S.C.**Hon'ble J.J. Munir,J.**

1. This writ petition is directed against an order of the Divisional Forest Officer, Social Forestry & Wildlife Division, Pratapgarh dated 05.06.2023, rejecting the petitioner's claim for compassionate appointment.

2. The petitioner's mother was engaged on daily-wages as a Sweeper by the Establishment of the Divisional Forest Officer, Social Forestry & Wildlife Division, Pratapgarh, respondent No.4 (for short, 'the Divisional Forest Officer') in the month of November, 1984. She served as a daily-wager continuously since the month of November, 1984 and pursuant to a judgment of the Supreme Court in S.L.P. No.28317-28321 of 2010 dated 02.02.2016 placed on the minimum salary admissible to a Class-IV employee *vide* order dated 06.03.2016 passed by the Divisional Forest Officer. She was in receipt of a monthly salary of Rs.7000/-. It appears that the State Government on 12.09.2016 issued a Government Order regarding regularization of services of daily-wage employees working in various departments of the Government. According to the Government Order dated 12.09.2016, the petitioner's mother was also entitled to be regularized in service. Acting in furtherance of the Government Order above mentioned, the Divisional Forest Officer took proceedings for regularization of daily-wagers employed in his Establishment at Pratapgarh. He

directed a medical examination of the daily-wagers to be undertaken. The medical examination was conducted, because the daily-wagers did not have any proof of their age on 08.07.2022. The name of such daily-wagers, who had to undergo medical examination to determine their age, figures in an order of 08.07.2022 passed by the Divisional Forest Officer, which is on record. The name of the petitioner's mother in the said order. Before the petitioner's mother's case for regularization could come to fruition, she died on 27.01.2023. After her demise, the petitioner approached the Divisional Forest Officer requesting for an appointment under the Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (for short, 'the Rules of 1974'). The basis of the petitioner's claim was the penurious condition in which the deceased employee's family were placed, after her demise. The petitioner moved an application for the purpose to the Divisional Forest Officer on 22.05.2023. The deceased employee has left behind six members in her family, including the petitioner, all of whom are her dependents.

3. It is the petitioner's case that he is educationally qualified for appointment under the Rules of 1974 as he has earned his matriculation certificate from the U.P. Board of High School and Intermediate Education in the examination of 2005. The petitioner's father put in an affidavit of 'No Objection' about the petitioner's candidature for compassionate appointment. The petitioner says that his mother was working regularly as a daily-wager since the year 1984 until her demise on 27.01.2023 and had repeatedly requested for regularization of her services in accordance with different Government Orders, that were issued on the subject, directing regularization of daily-wagers, who had worked for a very long period of time. The petitioner's mother

worked for as long as a period of 39 years, serving as a daily-wager and by all standards under the Government Orders issued from time to time she was entitled to be regularized as the petitioner says. It is the petitioner's case that going by the principle in **Secretary, State of Karnataka and others v. Umadevi (3) and others, (2006) 4 SCC 1**, as a one-time measure, daily-wagers, working for a period of 10 years or more, were held entitled to be regularized. The petitioner's mother's case was eminently fit for consideration.

4. The petitioner prays that there is no other breadwinner in the family and after his mother's demise, they are plunged in penury. He, therefore, had a case for consideration under the Rules of 1974. By the impugned order, the petitioner's claim was rejected solely on the ground that under the Rules of 1974, it is only the dependents of regular employees, who could be considered for appointment and not the dependents of daily-wagers. They were not ineligible.

5. Aggrieved, this writ petition has been instituted.

6. A notice of motion was issued on 01.08.2023. A counter affidavit was filed on behalf of the respondents, to which a rejoinder was also put in. When the matter came up before this Court on 25.01.2024, parties having exchanged affidavits, it was admitted to hearing, which proceeded forthwith to conclusion. Judgment was reserved.

7. Heard Mr. Ram Bali Tiwari, learned Counsel for the petitioner and Mr. Prakhar Mishra, learned Additional Chief Standing Counsel appearing on behalf of the respondents.

8. It is argued by Mr. Ram Bali Tiwari, learned Counsel for the petitioner that on 08.07.2022, the Divisional Forest Officer

issued a letter regarding the absence of age certification for the petitioner's mother and directing her medical examination for the purpose, along with ten other similarly circumstanced daily-wagers. It is submitted that the letter dated 08.07.2022 clearly says that the process of regularization for the petitioner's mother and the ten other employees, whose names figure in the said letter, is proposed against vacant posts of Class-IV. It is also submitted by the learned Counsel for the petitioner that others like her in the list of daily-wagers, to wit, Sheetla Prasad Singh and Ram Sewak had been regularized by the respondents while the petitioner's mother's case was ignored. After implementation of the 7th Pay Commission, the petitioner's mother approached this Court praying that the minimum salary that she was drawing be ordered to be paid in accordance with the 7th Pay Commission's recommendations. For the purpose, she instituted Writ-A No.335 of 2023, which was disposed of by this Court at Lucknow with a direction that for the purpose of being granted the minimum pay according to the 7th Pay Commission's recommendations, or whatever grievance she has, the petitioner's mother may make a representation to the Divisional Forest Officer, who would pass a reasoned and speaking order within a period of two months from the date of production of a copy of the order along with a representation. It is submitted by the learned Counsel that before the order dated 16.01.2023 could be complied with by the Divisional Forest Officer, the petitioner's mother passed away. After her demise, the petitioner's father, Phool Chand moved this Court by means of Writ-A No.5717 of 2023, seeking a *mandamus* directing the Divisional Forest Officer to pay him arrears of salary determined in accordance with minimum pay due to his deceased wife w.e.f. 1st April, 2018 till 27th January, 2023. This Court disposed

of the said writ petition *vide* order dated 08.08.2023 with a direction to the petitioner's father to file a fresh representation before the Divisional Forest Officer, who was ordered to consider and decide it within a period of eight months from the date of production of a certified copy of the order made in the last mentioned writ petition. It is pointed out that in compliance, the petitioner's father was paid arrears of salary on account of revision of the minimum salary payable to the petitioner's mother, revised in terms of the 7th Pay Commission. He was paid a sum of Rs.6,36,551/- on this account by an order of the Divisional Forest Officer dated 02.12.2023.

9. The thrust of the submission of the learned Counsel for the petitioner is that though similarly circumstanced daily-wagers have been regularized in the year 2011 in accordance with the Uttar Pradesh Regularization of Daily Wages Appointments on Group 'D' Posts Rules, 2001 (for short, 'the Rules of 2001'), but the petitioner's mother was denied that right, to which she was legally entitled. It is also emphasized that on 13th August, 2015, a Government Order was issued directing regularization of services of daily-wagers, who were working as such and appointed after 31st March, 1996, but the respondents ignored the petitioner's mother's claim. In assailing the order impugned, learned Counsel for the petitioner submits that the petitioner's mother being clearly entitled to regularization and the process for her regularization being underway when she passed away, it is a case where the petitioner's mother's case should, in the first instance, be considered for regularization with appropriate orders made and then the petitioner's claim for compassionate appointment considered.

10. Mr. Prakhar Mishra, learned Additional Chief Standing Counsel, on the other hand, submits that this is an arithmetically closed case, where on the date of her demise, the petitioner's mother was neither a government employee nor appointed on a regular basis though temporary. He further submits, relying on Rule 2(a)(iii) of the Rules of 1974 that even a person not regularly appointed, who has put in three years' continuous service in a regular vacancy, can be considered, but the petitioner's mother was not retained against a regular vacancy or sanctioned post, even if it was *dehors* the rules. Therefore, the petitioner's mother never qualified as a government servant defined under Rule 2 of the Rules 1974, entitling the petitioner to claim compassionate appointment. The submission, therefore, is that there is absolutely no scope for the petitioner's case to be considered under the Rules of 1974 and the impugned order is infallible.

11. Upon hearing learned Counsel for the parties, this Court finds that it is true that a daily-wager, who is not appointed against a sanctioned post and retained *dehors* the rules, cannot qualify as a government servant within the meaning of Rule 2(a)(iii) of the Rules of 1974. This position of the law is no longer in the realm of doubt after the holding of the Full Bench in **Pawan Kumar Yadav v. State of U.P. and others, 2011 (1) AWC 1028 (FB)**.

12. Notwithstanding the fact that the petitioner's mother would not qualify as a government servant going by the provisions of Rule 2 of the Rules of 1974, there is a clear *niche* carved out by a Bench decision of this Court in **State of U.P. and others v. Kuldeep Thakur, 2017 (2) AWC 1523 (LB)**. The Division Bench had before their Lordships the claim for compassionate appointment by the son of a deceased daily-wager, whose case

for regularization was under consideration in accordance with the Government Order dated 13.08.2015, but he died before a decision could be taken. Their Lordships of the Division Bench were of opinion that in a situation where the right to be regularized had crystallized under a Government Order and under consideration, but could not fructify on account of the employee's untimely demise, the right of the employee to be declared regular would not get eclipsed, abandoned or defeated. The right of the deceased employee to be regularized would have to be considered in the first instance by the respondents, who would then be obliged to take an appropriate decision with regard to the claim of the deceased employee's/daily-wager's son in the case of regularization. In **Kuldeep Thakur** (*supra*) the remarks of the Division Bench, which are relevant, read:

"9. However, in the present case, this claim has to be looked into from the point of view that the father of the respondent-petitioner was entitled for being regularized in view of the terms and conditions of the Government order dated 13.8.2015. This consideration process had already commenced and the name of the father of the respondent-petitioner had already been forwarded but no decision had been taken, and in between in October, 2015, the father of the respondent-petitioner died.

10. Learned counsel for the respondent therefore, has pressed into service the judgment in the case of Prem Ram v. Managing Director, Uttarakhand Pay Jal and Nirman Nigam, Dehradun and others, (2015) 3 UPLBEC 1766, to urge that the termination of the employment or the death of the employee would not make any difference with regard to consideration of regularization in the above circumstances. We have examined paragraph-9 of the said judgment where also the employee had already retired from service yet the Apex Court came to the conclusion that since the tenure of the person who was claiming such benefit had to be regularized, then in that event the Apex Court in view of the Articles 14 and 16 of the Constitution of India having been violated, ruled

that such benefit would also accrue to the said claimant and consequently, issued direction for his consideration though he had retired from service. In that case similarly placed junior employees had been regularized.

11. Applying the said analogy, the claim of the father of the respondent-petitioner had already been forwarded and he was very much alive when the Government order dated 13.8.2015 was issued. In such a situation the State Government or its concerned department ought to have considered the claim of the respondent-petitioner for regularization and then could have proceeded to determine as to whether the respondent-petitioner was entitled to any benefit or not. In our opinion, the fortuitous circumstance of the death of the father of the respondent-petitioner does not absolve the State Government of its obligation to consider the claim of regularization of the father of the respondent-petitioner. There can be a case where the consideration has been made and the regularization accepted but before the order reaches a man dies or his death takes place in the near vicinity or simultaneously with regularization. In this situation, the claim of regularization of the deceased-employee does not remain an option to be ignored by the State Government. The State Government or its authorities are under an obligation to consider such a claim and to award any consequential benefits if the process has been set into motion as has happened in the present case. Once the father of the respondent-petitioner is found entitled to be regularized as on the date of the Government order dated 13.8.2015, on which date he was admittedly alive, then in that event the claim of the respondent-petitioner can also be considered.

12. The consideration of the right of being regularized by operation of law while in force had already accrued in favour of the father of the respondent-petitioner, and his death in between further gave rise to the expected consequential claim of compassionate appointment of the petitioner, provided his father's services were declared regular. The consideration of such right, whether had accrued, does not get eclipsed nor could it be abandoned. If the consideration results in the services of the petitioner's-father becoming regular, then the Full Bench judgment in the case of Pawan Kumar Yadav (supra) would not be an impediment for the respondent-petitioner to be considered for compassionate

appointment. The appellant-State and its authorities therefore, cannot escape this exercise and defeat the right of consideration by their inaction or the absence of timely and prompt action. Such exercise of consideration will not evaporate because of untimely death which is a fortuitous circumstance so as to result in any advantage to the State.

13. Apart from this, in the present case those who were at par with the father of the respondents had been extended the benefit of regularization. This distinguishing feature therefore, is in addition to the issues involved in the case of Pawan Kumar Yadav (supra) and consequently, the claim of the respondent-petitioner was at least entitled for consideration by the State Government in the light of the observations made hereinabove.

14. Learned counsel for the appellant-State submits that the services of the father of the respondent-petitioner could not be straight away treated to have been regularized and the learned single Judge erred in issuing directions for consideration of appointment on compassionate basis of the petitioner. We agree with the submissions of the learned standing counsel for the appellant and to that extent, the judgment cannot be sustained. Learned single Judge also does not appear to have noted the judgment of Pawan Kumar (supra).

15. Consequently, we modify the judgment dated 22.11.2016 to the extent that it shall be open to the appellant-State to consider the status of regularization of the father of the respondent and then proceed to take an appropriate decision with regard to the claim of the respondent-petitioner for compassionate appointment in the light of the observations made hereinabove."

13. In the present case what we find from a perusal of the order dated 08.07.2022 is that the petitioner's mother's case was under consideration for the regularization of service and she was directed to undergo medical examination for the determination of her age because she did not produce or did not have any educational certificate about it. The petitioner's mother had a right to be considered for regularization much earlier than what is reflected from the memo dated 08.07.2022

issued by the Divisional Forest Officer. Her case ought to have been considered, as already said, in accordance with the decision of the Supreme Court in **Umadevi** (*supra*) and decidedly in terms of the Rules of 2001 made by the Governor in the exercise of powers under the proviso to Article 309 of the Constitution. Rule 4 of the Rules of 2001 reads:

"4. Regularisation of daily wages appointments on Group 'D' Posts.-

(1) Any person who.--

(a) was directly appointed on daily wage basis on a Group 'D' post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group 'D' post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes of citizens and other categories shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993 as amended from time to time and the orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of the service rules.

(4) The appointing authority shall, having regard to the provisions of sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of

order of appointment on daily wage basis and if two or more persons were appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection Committee along with such relevant records pertaining to the candidates, as may be considered necessary, to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4), and if it considers necessary, it may interview the candidates also.

(6) The Selection Committee shall prepare a list of selected candidates in order of seniority, and forward the same to the appointing authority."

14. There is nothing to show that the petitioner's mother, who was appointed on daily-wage basis way back in the year 1984, was ever considered for regularization in accordance with Rule of the Rules of 2001 by a Selection Committee constituted for the purpose. The Rules of 2001 were repealed and replaced by the Uttar Pradesh Regularisation of Persons Working on Daily Wages or On Work Charge or On Contract in Government Departments on Group "C" and Group "D" Posts (Outside the Purview of the Uttar Pradesh Public Service Commission) Rules, 2016 (for short, 'the Rules of 2016'). Under Rule 4(d) of the Rules 2016, a daily-wager is defined as follows:

"4. Definitions.—Unless there is anything repugnant in the subject or context:

(d) "Daily Wages" means a person who is engaged or employed or deployed on a casual work on day to day basis and whose wages/remuneration is calculated on the basis of the days he has worked;"

15. Rule 6 of the Rules of 2016 provide:

"6. Regularisation.--

(1) Any person who--

(i) was directly engaged or employed or deployed or working on daily wages or on work charge or on contract in a Government

Department on Group 'C' or Group 'D' post (outside the purview of the Uttar Pradesh Public Service Commission) on or before December 31, 2001 and is still engaged or employed or deployed or working as such on the date of the commencement of these rules; and

(ii) possessed requisite qualifications prescribed for regular appointment for that post at the time of such engagement or employment or deployment on daily wages or on work charge or on contract, under the relevant service rules and, subject to the provisions of above mentioned Rules 2 and 5.

shall be considered for regular appointment on Group 'C' or Group 'D' post (outside the purview of the Uttar Pradesh Public Service Commission) in permanent or temporary vacancy as may be available on the date of the commencement of these rules, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

(2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and other categories, shall be made in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, and the Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1993, as amended from time to time, and the orders of the Government in force at the time of regularisation under these rules.

(3) For the purpose of sub-rule (1), the appointing authority shall constitute a Selection Committee in accordance with the relevant provisions of service rules.

(4) The appointing authority shall, having regard to the provisions of sub-rule (1), prepare an eligibility list of the candidates, arranged in order of seniority as determined from the date of engagement or employment or deployment on daily wages, on work charge or on contract and, if two or more persons are engaged or employed or deployed together, from the order in which their names are arranged in the said engagement or employment or deployment order. The list shall be placed before the Selection Committee along with their character rolls and such other relevant

records pertaining to them, as may be considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records, referred to in sub-rule (4), and if it considers necessary, it may interview the candidates also to assess their suitability.

(6) The Selection Committee shall prepare a list of selected candidates arranging their names in order of seniority and forward the same to the appointing authority."

16. It must be remarked that the petitioner's mother was all through treated as a daily-wager though under orders of the Supreme Court, she was placed on a minimum salary that was subsequently revised in accordance with the 7th Pay Commission. Nevertheless, her status as a daily-wager was not in issue and her claim for regularization under the Rules of 2016 was under consideration when she passed away. The petitioner's mother was clearly eligible to be considered for regularization under the Rules of 2016 as well. This Court may dare say that though it has almost become a sacrilege by a consensus of judicial opinion to issue a *mandamus* to any employer, even a State employer, to regularize the services of an employee, the proposition may require a rationalized understanding in case of exceptionally long retention in service on daily-wages like the present case. Here, the petitioner's mother was retained as a daily-wager for as long a period as 39 years. No doubt, her case ought to have been considered in the first instance under the Rules 2001, and then, under the Rules of 2016, if not decided under the Rules of 2001. But, there is little scope for the statutory Selection Committee constituted under the Rules to think against regularization of her services in the face of a period of time as long as 39 years of daily-wage service. It is nowhere said in the counter affidavit as well that

the petitioner's mother's services were at any time considered substandard or determined. She was in continuous employ.

17. In the circumstances, we think that the ratio of the Bench decision in **Kuldeep Thakur** is squarely attracted to the facts of the petitioner's case. This Court takes notice of the decision of a learned Single Judge in **Nikhil Bharadwaj v. State of U.P. and others, 2021:AHC:118710**, where long retention in service and inaction to regularize after enforcement of the Rules of 2001 and the Rules of 2016 of an employee's services was regarded as violation of a vested right to be regularized. It was held in **Nikhil Bharadwaj (supra)** that notwithstanding the non-regularization of services of the petitioner's father, a daily-wager, his services would be deemed to be regularized as the right to regularization was an accrued right of the petitioner's father in that case. This Court would not venture to expand the principle to that extent. Nevertheless, it is true that it is almost an inescapable conclusion that the petitioner's mother's services ought to have been regularized during the long period of 39 years that she was rendering her services to the respondents, either under the Rules of 2001 or the Rules of 2016.

18. Also, the petitioner's mother was entitled to be considered for regularization in terms of the Government Order dated 13.08.2015, a copy of which has been annexed to the rejoinder affidavit. That too was not done and though under consideration, the case for regularization of the petitioner's mother's services, solely on account of the respondents' inaction and lethargy, remained inchoate.

19. In the circumstances, we are of opinion, following the directions made by the Division Bench in **Kuldeep Thakur**, that this writ petition deserves to be allowed.

20. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 05.06.2023 passed by the Divisional Forest Officer is hereby **quashed**. A *mandamus* is issued to the Divisional Forest Officer aforesaid, as well as the other respondents, to consider amongst themselves, regularization of the petitioner's mother's services notionally and then proceed to pass the necessary orders with regard to the petitioner's claim for compassionate appointment on the basis of the petitioner's mother's re-determined status. The necessary orders shall be passed by the fourth respondent as well as the other respondents, whoever be concerned, within a period of one month of receipt of a copy of this judgment.

21. There shall be no orders as to costs.

22. Let a copy of this order be communicated to the Principal Chief Conservator of Forest, Rana Pratap Marg, Lucknow, the Conservator of Forest, Prayagraj Circle, Prayagraj and the Divisional Forest Officer, Social Forestry & Wildlife Division, Pratapgarh by the Senior Registrar.

Order Date :- 23.7.2024
Anoop/Lko

(J.J. Munir, J.)