2026:UHC:10139-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI AND HON'BLE SRI JUSTICE SUBHASH UPADHYAY

3rd Novermber, 2026

Special Appeal No. 342 of 2026

Prakash Chandra Joshi --Appellant

Versus

State of Uttarakhand and Others --Respondents

Counsel for the appellant : Mr. Pooran Singh Rawat, learned counsel

Counsel for the State : Mr. B.P.S. Mer, learned Standing Counsel

The Court made the following:

JUDGMENT:(per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)

1. This Intra-Court appeal by writ petitioners is directed against the judgment and order dated 20.07.2026, rendered by learned Single Judge in Writ Petition (SS) No. 2059 of 2022. Operative portion of the impugned judgment is reproduced below:

> "8. Admittedly, the petitioner's father was working as a daily-wage employee at the time of his death on 08.01.2022. Mere inclusion of his name in the list dated 05.01.2022 for consideration of regularisation did not amount to actual regularisation or confer upon him the status of a regular Government servant, particularly when the process was subject to scrutiny and approval by the competent authority. Since no order regularising his services was issued during his lifetime, he continued to remain a daily-wage employee and, therefore, did not fall within the definition of a "Government Servant" under Rule 2(a) of the Dying in Harness Rules, 1974. The petitioner's claim was duly reconsidered pursuant to the earlier directions issued by this Court and rejected by a reasoned order dated 30.09.2022. In view of the settled legal position that the dependant of a daily-wage employee cannot claim compassionate appointment under the 1974 Rules, this Court finds no illegality or arbitrariness in the impugned order warranting interference under Article 226 of the Constitution of India."

2. In the writ petition, appellant challenged order dated 30.09.2022 passed by Chief Conservator of Forest

(HRD), Dehradun, whereby his claim for compassionate appointment was rejected on the ground that his father was yet to attain the status of a regular government servant.

3. Perusal of the documents enclosed with the writ petition, reveals that appellant earlier filed Writ Petition (SS) No. 1009 of 2022 wherein a direction was issued to the competent authority to consider appellant's application for compassionate appointment, in the light of the fact that decision to regularise services of his father was already taken on 05.01.2022, even though formal order of regularisation could not be passed, till 08.01.2022, when his father passed away.

4. Learned Single Judge dismissed the writ petition by holding that appellant's father had not acquired status of a regular Government servant, till his death, therefore appellant is not entitled to benefit of U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974, as applicable in State of Uttarakhand.

5. Learned counsel for the appellant submits that appellant's father was serving as daily wager in forest department continuously since 01.04.1993 without any break whatsoever and competent authority in the department initiated exercise for regularisation of daily wagers, in terms of judgment rendered by Hon'ble Supreme Court in the case of State of U.P. and others Vs. Putti Lal, reported as (2006) 9 SCC 337 and also the Regularisation Rules framed by State of Uttarakhand in 2013; appellant's father was entitled for regularisation as

per the judgment and also under the 2013 Rules and his name figured in the list of persons who were found entitled for regularisation; said list was published on 05.01.2022; but, formal order was not immediately issued, therefore death of appellant's father 3 days after publication of the list cannot have the effect of denuding his dependents of the benefit which is available to dependents of a regular Government servant.

6. Per contra, learned counsel for the respondents submits that since appellant's father died before order of regularisation could be issued in his favour and his status was that of a daily wager, therefore learned Single Judge rightly dismissed the writ petition, as dependents of daily wager are not entitled for compassionate appointment under Dying in Harness Rules.

7. We do not find substance in the submission made by learned counsel for the respondents.

8. Appellant's father was serving continuously since 1993 as a daily wager in forest department and he had put in more than 29 years of continuous satisfactory service at the time of death. It is not in dispute that other daily wage employees, including juniors to appellant's father were regularised but appellant's father was not regularised because of his death.

9. In the case of State of U.P. and others Vs. Putti Lal, reported as 1998 (79) FLR 592, a Division Bench of Hon'ble Allahabad High Court vide judgment dated 10.12.1997 decided a batch of writ petitions and appeals

by directing the State Government to appoint a committee consisting of Secretaries of Finance, Forest and Law Department for considering the question of framing scheme for regularisation/absorption of daily wage employees serving in Forest Department.

10. The judgment rendered by Division Bench of Hon'ble Allahabad High Court was challenged before Hon'ble Supreme Court. Hon'ble Supreme Court disposed of the appeals and special leave petition vide judgment dated 21.02.2002, which is reported as 2006 (9) SCC 337. Relevant extract of said judgment is reproduced below:

> **"3.** On behalf of the employees an IA had been filed claiming that they should at least be allowed their regular wages during the pendency of the appeals, but by order dated 27-9-1999 that prayer was rejected and it was held that the persons working will be paid only the amount payable to a daily-wager. When these matters had been posted for hearing before the Court on 1-5-2001, after hearing the parties for a considerable length of time, the Court felt that the impugned direction of the High Court for providing a scheme for regularisation of all the daily-wage workers/muster-roll employees under the Forest Department who have rendered 10 years of service or more, should be regularised by making appropriate scheme. The Court directed that the scheme should be framed within three months from the date of the order. As the State of U.P. was bifurcated into two States and the State of Uttaranchal had come into existence, by a subsequent order the State of Uttaranchal was also impleaded as a party and it had been granted time to file its response. Pursuant to the aforesaid direction of the Court dated 1-5-2001 the State of U.P. has framed a set of rules in exercise of power conferred under the proviso to Article 309 of the Constitution called "the Uttar Pradesh Regularisation of Daily Wagers (Appointment on Group 'D' Posts) Rules, 2001". It appears that a similar rule has been framed for regularisation of Group 'C' daily-wage employees. Both these statutory rules would govern the case of all daily-wagers appointed in any department including the Forest Department, which Department was before us pursuant to the direction of the Division Bench of the Allahabad High Court. Since a statutory rule has been framed indicating the manner in which the daily-wagers can

be regularised, question of framing any further scheme by the State of Uttar Pradesh does not arise.

6. So far as the State of Uttaranchal is concerned, a scheme for regularisation of daily workers has been produced before us which prima facie does not appear to be objectionable excepting the provision regarding qualification for regularisation. Be it stated that the qualification essential for being regularised would be the qualification as was relevant on the date a particular employee was taken in as a daily-wager and not the qualification which is being fixed under the scheme. The fact that the employees have been allowed to continue for so many years indicates the existence or the necessity for having such posts. But still it would not be open for the Court to indicate as to how many posts would be created for the absorption of these daily-wage workers. Needless to mention that the appropriate authority will consider the case of these daily-wagers sympathetically who have discharged the duties for all these years to the satisfaction of their authority concerned. So far as the salary is concerned, as we have stated in the case of the State of Uttar Pradesh, a daily-wager in the State of Uttaranchal would be also entitled to the minimum of the pay scale as is available to his counterpart in the Government until his services are regularised and he is given regular scale of pay.

7. The civil appeals and the special leave petitions stand disposed of accordingly."

11. From the judgment rendered in the case of State of U.P. and others Vs. Putti Lal, reported as 2006 (9) SCC 337, it is revealed that State of Uttranchal had submitted scheme for regularisation of daily wage workers before Hon'ble Supreme Court during the course of hearing in February, 2002 which was approvd by the Apex Court, however, appellant's father was not considered for regularisation for more than two decades thereafter.

12. State of Uttarakhand framed Rules for regularisation of daily wage/ad-hoc employees in the year 2011, which provided that anyone who has completed 10 years of continuous service as on 21.11.2011 against a sanctioned vacant post is eligible for regularisation.

13. Thereafter, another set of regularisation rules were framed in 2013, which provided that anyone who has served continuously for 5 years as daily wager/work charged/contract employee is entitled for regularisation. Appellant's father was entitled for regularisation under the 2011 Regularisation Rules but his name was not considered for considerable period of more than 11 yeras.

14. In the year 2021, exercise for regularising daily wage employees serving in Forest Department was undertaken by the State Government and a list of daily wage employees, whose right of regularisation was crystallized, was prepared after necessary exercise, which was published on 05.01.2022. Issuance of regularisation order however was kept on hold for reasons best known to the authorities.

15. Now, the question which falls for consideration is as to whether delay on the part of the competent authority in issuing formal order of regularisation in respect of a daily wage employee, who is found entitled for regularisation, will have the effect of denuding the dependents of such daily wage employee of the benefits, which they would be entitled to, if there was no delay in issuing regularisation order.

16. Learned counsel for the appellant submits that regularisation committee, after undertaking the exercise contemplated in Regularisation Rules found appellant's father to be entitled for regularisation, and issuance of

regularisation order thereafter was only a ministerial act and appellant cannot be denied the benefit which he would have received if the regularisation order was issued simultaneously with publication of list of employees, who were found entitled for regularisation.

17. We find substance in the submission made by learned counsel for the appellant.

18. Since a Regularisation Committee was constituted, which examined the question of eligibility, suitability and availability of vacancy etc., and appellant's father was found entitled for regularisation, and his name was mentioned in the list of daily wage employees who were to be regularised, which indicates that the long satisfactory services rendered by appellant's father were duly recognised and inclusion of his name in the list created a right in his favour. Delay, if any, on the part of the competent authority in issuing regularisation order therefore will not divest appellant of the right which his father had earned, by inclusion of his name in the list of employees who were to be regularised.

19. Even otherwise also, delay in issuing regularisation order is not attributable to appellant or his father and there is no plausible justification for the delay caused in issuing formal regularisation order in favour of appellant's father.

20. Law is well settled that no one can take advantage of his own wrong. Thus, appellant cannot be non suited for compassionate appointment for a lapse on the part of

the competent authority in issuing formal regularisation order in favour of his father in time. Even otherwise also, in a case like present one, issuance of regularisation order is a ministerial act which has to be performed by the competent authority based on the recommendation of Regularization Committee. The question of qualification, inter-se seniority amongst daily wagers, eligibility for regularisation and availability of vacancy, etc. are relevant aspects which were to be considered by the Regularisation Committee and the appointing authority was required to issue formal order based on determination made by regularisation committee. Thus, the act of appointing authority of issuing regularisation order is only ministerial in nature and delay on his part in issuing formal order cannot have the effect of denuding dependant family members of a daily wager of the benefit which he earned after rendering continuous satisfactory service for nearly three decades.

21. This is not a case where a person who is recommended for appointment in an open selection dies before issuance of formal appointment order, where it can be contended that mere selection does not confer indefeasible right of appointment and unless formally appointed, no right will accrue to a selected candidate or his dependant family members.

22. Present is the case where a daily wage employee, has earned the right of regularisation after rendering decades of satisfactory service and after fulfilling the conditions of eligibility as per regularisation rules. Thus, death of the daily wager, who is found entitled for

regularisation, will not divest his dependents of the legitimate right to be considered for compassionate appointment, merely because no formal order was passed before death of such daily wage employee.

23. Hon'ble Jharkhand High Court in the case of Sangita Thakur Vs. The State of Jharkhand in L.P.A. No. 717 of 2023, while taking similar view has held as under:

> 32. The ground which has been taken by the State that the husband of the appellant-writ petitioner was not holding substantive post primarily which according to the considered view of this court is having no substance for the following reasons:
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> (i) The position of law is well settled that if a wrong has been committed by anybody, no advantage can be allowed to be taken by the said wrong doer. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in Kusheshwar Prasad Singh Vrs. State of Bihar and Ors., (2007) 11 SCC 447, wherein at para-14, it has been laid down by making reference of the judgment rendered by the Hon'ble Apex Court in Mrutunjay Pani Vrs. Narmada Bala Sasmal, reported in AIR 1961 SC 1353, wherein an obligation is cast on a party and if he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong). The said proposition has also been discussed in detail by the Hon'ble Apex Court in the judgment rendered in Indore Development Authority Vrs. Shailendra and Ors., (2018) 2 SCC 412 as would be evident from para-143 and 167 by quoting the judgment rendered in the case of Mrutunjay Pani Vrs. Narmada Bala Sasmal (supra), that no litigant can take the benefit of his own wrong. The doctrine commodum ex injuria sua nemo habere debet means convenience cannot accrue to a party from his own wrong.
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> (ii) Herein, it is a commission of wrong but it can be said to be in violation of the mandate of the judgment of the Hon'ble Apex Court that too of the Constitution Bench wherein as under paragraph-53, specific time was given to conclude the process of regularization within the period of six months but herein, the order of regularization was passed on 03.03.2021 by accepting the recommendation dated 19.05.2020.
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> (iii) Further the order passed by the Constitution Bench rendered in the case of Secretary, State of Karnataka & Ors. Vs. Uma Devi (3) (supra) has been flouted because the deceased husband of the appellant-writ petitioner was found to be in service since 13.06.2006 and as such, he had

completed 10 years of service on 12.02.2016 but very surprisingly, the initiative was taken by the State after lapse of four years without any explanation what to say about the reasonable explanation.

(iv) It is the admitted case of the State that the husband of the appellant-writ petitioner was fit to be regularized and accordingly, he was regularized on 03.03.2021 but in the meantime, her husband had died then question is that whether benefit of regularization can be deprived which has been already been deprived to the husband of the appellant-writ petitioner who was not alive to see the fruits of the recommendation of regularization.

(v) Further, when the State has found the husband of the appellant-writ petitioner fit and if the lapses has been committed in not taking immediate decision of regularization while the husband was working on a sanctioned post, how can the State be allowed to take the ground of husband of the appellant-writ petitioner not working against a sanctioned post.

It is evident from the documents that the son of the appellant writ petitioner was working but in the daily rated capacity. The State has taken the same as a ground, which according to the considered view of this Court, working in daily rated capacity cannot be said to be a reason for denial of the claim because when the State has taken first ground while rejecting the appointment on compassionate ground merely on the basis that the husband of the appellant-writ petitioner was on daily rated capacity then how the ground of daily rated employee be allowed to be taken by the State. The matter would have been different if the dependant son of the appellant-writ petitioner was on the substantive post, then it would be understood that there was means of survival and the family will not be put to starvation but that is the situation herein. Exactly the similar issue has been dealt with by the Punjab and Haryana High Court in the L.P.A. No. 1483 of 2015 (O&M) wherein in the identical facts, before taking decision of regularization, the concerned employee had died and in such circumstances, the High Court has considered the delay in issuance of order of regularization of services cannot work to the disadvantage of the dependants of the deceased employee. The relevant paragraph of the said order is being referred as under:

“(4) Otherwise also, the admitted facts on record reveal that the deceased had served for more than 21 years. He was entitled to regularization of services as per Government policy dated 18.03.2011. The eligibility condition for regularization of services was that a daily wager must have completed 10 years of service on or before 31.12.2006. The deceased employee admittedly fulfilled those eligibility conditions. The delay in issuing the formal order of regularization was attributable to the ministerial exercise of the appellants and not to the deceased employee. In terms of the Government policy, the status has to be seen as on 31.12.2006 and he was admittedly eligible for regularization on the said date. At best his status could

be seen on the date when the Government policy dated 18.03.2011 was issued and on that date also, he was very much alive fulfilling the eligibility condition for regularization of services. Still further, his claim was recommended for regularization on 01.03.2011, namely, the date when he was alive and in service. In this view of the matter, the delay in issuance of order of regularization of services cannot work to the disadvantage of the dependents of the deceased employee. The services of late Bhola Singh therefore shall be deemed to have been regularized as on 01.04.2011. Consequently, he is taken to have died as a regular employee thereby entitling the respondent eligible for appointment on compassionate grounds under the ex gratia policy and for grant of family pension."

24. Similarly, Hon'ble High Court of Punjab & Haryana in CWP No. 26809 of 2013, Babli Devi alias Kailash Kumari Vs. State of Punjab and others, has held as under:

"Heard.

It is to be noticed that Ramesh Kumar, late husband of the petitioner, joined the services of the respondents as Pump Operator on daily wages on 01.06.1991. He worked as Pump Operator at various places in District Hoshiarpur for 19 years and 10 months without any 3 of 6 break in service till 02.03.2011 i.e. the date of his death.

In Gurdeep Kaur versus The State of Punjab and others CWP No.3320 of 2013 decided on 10.02.2015 it was held as under:-

"On due consideration of the matter, I am of the view that stand of the respondents is unjust. The policy such as grant of compassionate appointment have to be viewed from the perspective of its intended beneficial object and cannot be restricted to technicalities. The husband of the petitioner was indeed entitled to regularization in terms of the regularization policy and would have certainly been granted the benefit, had the will of providence not prevailed. Undisputedly, his name had been sent up for the benefit of regularization on 1.4.2011 and in normal course, such a benefit ordinarily would have flowed to the husband of the petitioner in which eventuality, the petitioner's case for grant of compassionate appointment in the event of the death of her husband would have also been considered appropriately."

Further in LPA No. 1483 of 2015 titled as State of Punjab and others vs. Gurdeep Kaur decided on 16.05.2017 it was held as under:-

> "Otherwise also, the admitted facts on record reveal that the deceased had served for more than 21 years. He was entitled to regularization of services as per Government policy dated 18.03.2011. The eligibility condition for regularization of services was that a daily wager must have completed 10 years of service on or before 31.12.2006. The deceased employee admittedly fulfilled those eligibility conditions. The delay in issuing the formal 4 of 6 order of regularization was attributable to the ministerial exercise of the appellants and not to the deceased employee. In terms of the Government policy, the status has to be seen as on 31.12.2006 and he was admittedly eligible for regularization on the said date. At best his status could be seen on the date when the Government policy dated 18.03.2011 was issued and on that date also, he was very much alive fulfilling the eligibility condition for regularization of services. Still further, his claim was recommended for regularization on 01.03.2011, namely, the date when he was alive and in service. In this view of the matter, the delay in issuance of order of regularization of services cannot work to the disadvantage of the dependents of the deceased employee. The services of late Bhola Singh therefore shall be deemed to have been regularized as on 01.04.2011. Consequently, he is taken to have died as a regular employee thereby entitling the respondent eligible for appointment on compassionate grounds under the ex gratia policy and for grant of family pension."

Keeping in view the dictum of law, this Court is of the opinion that had the husband of the petitioner not died, the benefit of regularization would have flowed to him and he would have died as a regular employee. Thus, the present civil writ petition is allowed. The impugned order dated 06.03.2013 (Annexure P-10) is quashed. The respondents are directed to notionally regularize the service of late Ramesh Kumar-husband of the petitioner with effect from the date, the services of his juniors were regularised. The respondents are directed to reconsider the claim of the petitioner for grant of benefit of 5 of 6 compassionate appointment by treating her husband as a regular employee. The petitioner would also be entitled to the benefit of family pension. The necessary exercise be done within a period of two months from the date of receipt of copy of the judgment."

25. We are in respectful agreement with the view taken

by Hon'ble Jharkhand high Court as well as Hon'ble Punjab and Haryana High Court.

26. For the aforesaid reasons, the view taken by learned Single Judge is interfereble.

27. We, accordingly, allow the appeal and set aside the impugned judgment, as well as the rejection order dated 30.09.2022, passed by Chief Conservator of Forest (HRD), Dehradun and direct the Chief Conservator of Forest (HRD), Dehradun to re-consider appellant's claim for compassionate appointment by treating his father to be a regular Government servant.

MANOJ KUMAR TIWARI, A.C.J.

SUBHASH UPADHYAY, J.

Dt: 03.11.2026
Mahinder

MAHINDER SINGH
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