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**Court :** Allahabad

**Decided On :** Oct-17-2011

**Judge :** Rajesh Kumar

**Appeal No. :** Civil Misc. Writ Petition NO. 55804 of 2011

**Appellant :** Ajay Kumar

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

**Judgement :**

Rajes Kumar, J.

The petitioner is claiming compassionate appointment on account of death of his father, who died on 29.9.2007 under the U.P. Recruitment of Dependents of Government Servants Dying in Harness, Rules, 1974 (hereinafter referred to as ("Dying in Harness, Rules, 1974")).

The contention of the petitioner is that his father was employed as a daily wager on the post of Forest Guard in the year 1984 in Badaun. In pursuance of the order of the apex Court in the case of State of U.P. and others Vs. Putti Lal, reported in (2006) 9 SCC-337, he was getting minimum pay-scale of the pay-scale of the regular employee. On 24.5.2008, the petitioner's mother had requested respondent to extend the benefit of Dying in Harness Rules, 1974 to the petitioner, the son of the deceased, and also claimed pension. The Divisional Director Social Forestry Division, Badaun, District Badaun wrote a letter to the District Magistrate,

Badaun dated 3.6.2008 stating therein that Late Sri Ram Pal was working as a daily wager in the minimum of pay-scale, died on 29.9.2007 and since he was working as a daily wager, the dependants of the deceased are not entitled for the benefit of pension and compassionate appointment. The compassionate appointment has accordingly been denied. Being aggrieved, the petitioner filed the present writ petition.

Heard Sri Pankaj Srivastava, learned counsel for the petitioner and Ms. Suman Sirohi, learned Standing Counsel for the respondents.

Learned counsel for the petitioner submitted that father of the petitioner was regularly appointed employee and put three years continuous service therefore, under sub-clause (iii) of clause (a) of Rule 2 of the Dying in Harness Rules, 1974, the father of the petitioner was covered under the Government servant and, therefore, the petitioner is entitled for the compassionate appointment.

Ms. Suman Sirohi, learned Standing Counsel submitted that the father of the petitioner was engaged as a daily wager. He was neither regularly appointed nor his appointment was against the regular vacancy and, therefore, the father of the petitioner was not Government servant as defined under clause (a) of Rule 2 of the Dying in Harness Rules, 1974. She further submitted that Rule 2 (a) (iii) of the Dying in Harness Rules, 1974 came up for consideration before the apex Court in the case of General Manager, Uttaranchal Jal Sansthan vs. Laxmi Devi and others, reported in (2009) 2 SCC (Lands) 304 wherein it has been held that the daily wager not employed in regular vacancy is not a Government servant and not entitled for compassionate appointment. She further submitted that the issue involved is squarely covered by the Full Bench decision of this Court in the case of Pawan Kumar Yadav vs. State of U.P. and others, reported in [2010 (8) ADJ 664 (FB)] wherein it has been held that dependants of the daily wager or work charge employee, not holding any post either substantive or temporary and not appointed in any regular vacancy; even if he worked for three years before the death not entitled for appointment on compassionate ground.

I have considered the rival submissions.

The issue involved is no more res integra. It is not the case of the petitioner that the father of the petitioner was engaged against the regular vacancy following the proper procedure laid down for the recruitment to the post. It is also not the case of the petitioner that the service of his father had ever been regularized. Merely because the father of the petitioner was getting the minimum of pay-scale in view of the decision of the apex court in the case of State of U.P. and others Vs. Putti Lal, reported in (2006) 9 SCC-337 (supra), the status of the employment will not change. His engagement was a daily wager and on the date of the death he worked as a daily wager. He was not regularly appointed employee against the regular vacancy. The apex Court in the case of General Manager, Uttaranchal Jal Sansthan vs. Laxmi Devi and others (supra) has considered Rule 2 (a) (iii) of the Dying in Harness Rules, 1974 and has held that the daily wager not employed in regular vacancy is not a Government servant under Rule 2 (a) (iii) of the Dying in Harness Rules, 1974 and the dependants of such daily wagers are not entitled to be considered for compassionate appointment. The word "regular vancancy" has been interpreted as means the vacancy which occurs against a sanctioned post of a cadre strength. It has been further held that regular vancancy cannot be filled up except in terms of the recruitment rules as also upon compliance with the constitutional scheme of equality. In view of the Explanation appended to Rule 2 (a), for the purpose of this case would, however, assume that such regular appointment was not necessarily to be taken recourse to. In such an event sub-clause (iii) of clause (a) as also the Explanation appended thereto would be rendered unconstitutional. The provision of law which ex facie violates the equality clause and permits appointment through the side-door being unconstitutional must be held to be impermissible and in any event requires strict interpretation. It was, therefore, for the respondents to establish that at the point of time the deceased employees were appointed, there existed regular vacancies. The apex Court further held that merely because the deceased was drawing salary on a regular scale of pay, the same would not mean that there existed a regular vacancy.

The Full Bench of this Court in the case of Pawan Kumar Yadav vs. State of U.P. and others (supra) on consideration of Rules 5 (1) and 2 (a) of the Dying in Harness Rules, 1974 has held that the dependants of the daily wager or work charge employee not holding any post either substantive or temporary and not

appointed in any regular vacancey; even if he worked for more than three years before the death is not entitled for appointment on compassionate ground.

In view of the above, I do not find any merit in the claim of the petitioner and is liable to be rejected. The writ petition is accordingly dismissed.

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