



Reserved on: 15.07.2026
Delivered on: 06.08.2026



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 4739 of 2024

Hasan Ahmad

.....Petitioner(s)

Versus

State of U.P. Thru. Secy. Rural Engineering Deptt. U.P. Lko. and 2 others
.....Respondent(s)

Counsel for Petitioner(s)	: Atul Kumar Singh, Anshuman Singh Rathore
Counsel for Respondent(s)	: C.S.C.,

AFR

Court No. – 18

HON'BLE INDRAJEET SHUKLA, J.

1. Heard Sri Atul Kumar Singh Parmar, learned counsel for the petitioner and Sri Vijay Kumar Bajpai, learned Standing Counsel for the State respondents.

2. The jurisdiction of this Court under Article 226 of Constitution of India has been invoked for issuance of a writ in the nature of certiorari for quashing the impugned order dated 17th March, 2023

passed by second respondent/Director and Chief Engineer, Rural Engineering Department, U.P. Lucknow and further a writ in the nature of mandamus has been prayed for reconsideration of regularization of petitioner's father with a consequential relief of compassionate appointment on suitable post in favour of petitioner.

3. This Court, after perusal of the record of the writ petition, finds that repeated orders have been flouted by the answering respondent either due to absence of understanding or deliberate defiance and having scant regard for the majesty of this Court.

4. The petitioner's father, namely, Rifakat Hussain, was initially engaged on the post of Junior Assistant way back on 01.11.1985 in the Work Charge Establishment of Rural Engineering Department Block Hardoi, had served the department for more than 18 years, prior to his sudden demise on 11.08.2012. In the meantime, the State Government promulgated U.P. Regularization of Daily Wages Appointment on Group-C Posts (Outside the purview of the Uttar Pradesh Public Service Commission), Rules, 1998 (hereinafter referred as "Regularization Rules" for the sake of brevity).

5. In terms of the Regularization Rules, a seniority list for the purpose of undertaking the regularization process was carved out on 7th July 2005, figuring the name of the petitioner's father (deceased employee) at serial no. 58.

6. The Government of U.P. sanctioned 172 Group-C posts by virtue of Government Order dated 21st June 2012 for regularization of Daily Wager/Work Charge/Court case employees in the Pay Band of Rs. 5,200-20,200, Grade Pay-1,900. After creation/sanctioned of Group-C posts as aforesaid, a Selection Committee was constituted for regularization of daily wage/work charge/court case employees and the Selection Committee so constituted issued letter dated 14th

August 2012 directing Executive Engineer, Rural Engineering Department, Block Hardoi, to certify the requisite records of Daily Wager, Work Charge, Court Case employees and thereafter, they were required to appear before the same Selection Committee on 30.08.2012.

7. In the meantime, misfortune intervened, and petitioner's father passed away on 11.08.2012; consequently, his regularization could not be undertaken; however, other similarly situated employees, were regularized in selection/regularization process.

8. This court is faced with a fundamental question 'whether a person's legal right perishes with his death, more particularly when they devolve upon the surviving legal heirs, especially right of consideration of regularization'?

9. In factual background mentioned hereinabove, petitioner's mother namely Smt. Zahida Begum, knocked the doors of this Hon'ble Court by virtue of Writ Petition No. 10144(SS) of 2017, which was disposed of vide order dated 23rd March, 2018, taking note of the Division Bench judgment of this Court rendered in the case of **State of U.P. and others Vs. Kuldeep Thakur**¹ for consideration of the case of regularization of petitioner's father and if it finds favour, then thereafter consideration of claim of appointment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as "1974 Rules") in favour of petitioner's mother. The operative excerpt of aforesaid final order is reproduced below :

"In view of above, in my opinion, the ends of justice would be subserve by permitting the petitioner to make a representation annexing therewith a certified copy of this order, including orders of regularization of persons junior to husband of the petitioner working in the Department within three weeks from today. In case

¹ 2017 (4) ADJ 94 (DB)

such a representation is moved, the respondent No.2, Director and Chief Engineer, Rural Engineering Department, U.P., Lucknow to first consider the case of the husband of the petitioner for regularization. In case respondent No.2 comes to the conclusion that the husband of petitioner was entitled for regularization, the case of petitioner for appointment in Dying in Harness Rules be also considered by him. Let such exercise be completed by the respondent No.2 within a period of three months”.

10. In compliance of order dated 23rd March, 2018 passed in Writ Petition No. 10144 (S/S) of 2017, second respondent passed an order on 8th October 2018 refusing regularization of petitioner's father namely Rifakat Hussain on the ground that petitioner's father passed away on 11.08.2012 i.e. before completion of regularization process in favour of other similarly situated employees, thus his regularization cannot be considered.

11. The second respondent did not stop there and further observed that under Rules, 1974, there is no provision for appointment of the dependents of Work Charge employees, which led to the claim of petitioner's mother being refused in toto.

12. The relevant portion of the order dated 8th October, 2018 for ready reference is reproduced below :

"प्र० उ०प्र० शासन वित्त (वेतन आयोग) अनुभाग-2 के शासनादेश संख्या-वे०अ०-2-2063/10 -54 (एम)/2008 टीसी, दिनांक-08.09.2010 द्वारा विभाग में दिनांक-29.06.1991 से पूर्व वर्कचार्ज दैनिक वेतन में कार्यरत कार्मिकों का विनियमितीकरण किये जाने के निर्देशों के क्रम में तत्समय विभाग में कनिष्ठ सहायक के पद रिक्त न होने के कारण निदेशालय के कार्यालय आदेश संख्या-जी-131/ग्रा.अ.से./स्था-2/2010-11, दिनांक..07.10.2010 द्वारा ग्रामीण अभियंत्रण विभाग में 172 कनिष्ठ सहायक के अधिसंख्य पदों का सृजन किये जाने का प्रस्ताव शासन को प्रेषित किया गया, जिसके क्रम में उ०प्र० शासन, ग्रामीण अभियंत्रण अनुभाग-1 के पत्र संख्या-1929/92-12- 74 आरईएस/98, दिनांक-21.06.2012 द्वारा 172 कनिष्ठ सहायक के अधिसंख्य पदों के सृजन के उपरान्त विभाग में दैनिक वेतन एवं वर्कचार्ज के रूप में कार्यरत कार्मिकों को स्वीकृत अधिसंख्य पदों के विरुद्ध विनियमितीकरण कार्यवाही की प्रक्रिया जनवरी 2013 को पूर्ण करने के उपरान्त उक्त कनिष्ठ सहायकों का विनियमितीकरण किया गया। जिसके पूर्व श्री रिफाकत हुसैन की मृत्यु दिनांक-11.08.2012 को हो जाने के कारण उक्त कार्मिकों के साथ विनियमितीकरण नहीं किया जा सका है।"

उ०प्र० शासन के शासनादेश संख्या-612-1973 नियुक्ति-4, दिनांक-21.12.1973 एवं नियुक्ति अनुभाग-4 की अधिसूचना संख्या-6/12/1973-नियुक्ति-4, दिनांक-07.10.1974 द्वारा प्रख्यापित मृतक आश्रित सेवा नियमावली 1974 में केवल नियमित अधिष्ठान में कार्यरत कार्मिकों को ही मृतक आश्रित के रूप में सेवा योजित किये जाने का प्राविधान है। वर्कचार्ज दैनिक वेतन भोगी में कार्यरत कार्मिकों को मृत्यु के उपरान्त उनके आश्रितों को मृतक आश्रित के रूप में सेवा योजित / नियुक्ति किये जाने का कोई प्राविधान नहीं है।

उक्त स्थिति में श्रीमती जाहिदा बेगम को उनके पति स्व० रिफाकत हुसैन, वर्कचार्ज दैनिक वेतन, ग्रामीण अभियंत्रण विभाग, प्रखण्ड-हरदोई नियमित अधिष्ठान में कार्यरत न होने कारण मृतक आश्रित सेवा नियमावली 1974 में निहित प्राविधानों के अन्तर्गत मृतक आश्रित के रूप में याची जाहिदा बेगम को मृतक आश्रित के अन्तर्गत सेवा में योजित किया जाना शासनादेशानुसार एवं विधिसम्मत नहीं है।

तदनुसार याची जाहिदा बेगम पत्नी स्व० रिफाकत हुसैन, वर्कचार्ज, कनिष्ठ सहायक, ग्रामीण अभियंत्रण विभाग, प्रखण्ड-हरदोई को प्रत्यावेदन एतद्वारा निस्तारित किया जाता है।"

(underlined by court)

13. The petitioner's mother challenged the order dated 8th October 2018 by filing Writ-A No. 3792 of 2019, which was again disposed of by this Court directing the second respondent to consider the claim of petitioner's father's regularization, in case, persons junior to him were regularized with further mandate to extend the same benefit and thereafter claim of petitioner's mother under Dying-in-Harness Rules, 1974 was to be processed. The operative portion of the judgment and order dated 27.01.2023 passed in Writ-A No. 3792 of 2019 is quoted below :

"Hence, the impugned order dated 08.10.2018 cannot stand and the same is set aside.

Respondent no.2 is directed to consider the claim of husband of petitioner on merits and in case persons junior to her husband were regularized, the same benefit shall also be extended to the petitioner's husband also. Thereafter, claim of petitioner for appointment under Dying in Harness Rules, shall also be considered. Such a claim be considered and finally decided by respondent no.2 within a period of six weeks from the date a certified copy of this order is placed before him.

With the aforesaid, present writ petition stands allowed."

(emphasis added by court)

14. Upon receipt of a certified copy of the judgment and order dated 27.1.2023 passed in Writ-A No. 3792 of 2019, the second respondent proceeded to pass the impugned order refusing to regularize the services of the petitioner's father and declined the consequent claim of compassionate appointment by adopting the same line of reasoning as was adopted by the predecessor in office of the second respondent.

15. The startling feature of this case is that this Court issued a categorical mandate to the second respondent to extend the benefit of regularization in favour of the petitioner's father if any one junior to him was regularized. Thus, the second respondent had no authority to refuse the claim of regularization of petitioner's father, reiterating the verbatim ground which his predecessor in office did, by virtue of the order dated 08.10.2018 but while taking decision on regularization of petitioner's father and on consequent claim set up by petitioner's mother for being appointed under Dying-in-Harness Rules, 1974, the second respondent has adopted same analogy of order dated 08.10.2018. Thus, the order impugned dated 17.03.2023 is nothing but a standing monument of the stubborn attitude of respondent authorities, attempting and endeavoring to defy the majesty of this Court, which is ex-facie contemptuous.

16. The assertion and finding contained in the impugned order dated 17.03.2023 that no person junior to the petitioner's father was regularized prior to his death or until the completion of the regularization drive in January 2013 is hardly of any consequence, as even an employee had independent rights of consideration for regularization, irrespective of whether any junior employee had been regularized or not. Furthermore, the impugned order does not disclose the serial number or the name of the last person regularized from the relevant seniority list. Consequently, the finding that no

person junior to the petitioner's father was regularized is vague and uncertain at least for the purposes of judicial review. The right of consideration for notional regularization continues to exist even after death of an employee for purposes of computing benefits devolved upon legal heirs/successors of deceased employee.

17. For ready reference the relevant excerpt of impugned order dated 17.03.2023 is extracted as under:

“7. चूंकि याचिनी के पति स्व० श्री रिफाकत हुसैन की मृत्यु निदेशालय के उक्त कार्यालय पत्रांक सं०-1202 दिनांक-14.08.2012 द्वारा अधिशासी अभियन्ता प्रखण्ड हरदोई को निर्देशित किये जाने के पूर्व दिनांक 11. 08.2012 को हो गई थी, जबकि विनियमितीकरण कार्यवाही की प्रक्रिया जनवरी 2013 में पूर्ण होने के उपरान्त चयन समिति द्वारा की गयी संस्तुति के क्रम में पात्र पाये गये कनिष्ठ सहायकों का नियमानुसार विनियमितीकरण किया गया। अतः याचिनी के पति स्व० रिफाकत हुसैन का विनियमितीकरण किये जाने का नियमानुसार अवसर नहीं है।

उल्लेखनीय है कि याचिनी के पति स्व० श्री रिफाकत हुसैन के दिनांक 11.08. 2012 को मृत्यु के पूर्व याचिनी के पति स्व० श्री रिफाकत हुसैन से कनिष्ठ किसी तृतीय श्रेणी कनिष्ठ सहायक का विनियमितीकरण विभाग में कनिष्ठ सहायक के पद पर तत्समय प्रचलित विनियमितीकरण की कार्यवाही के जनवरी 2013 में पूर्ण होने के पूर्व नहीं किया गया है। अतः याचिनी के पति स्व० रिफाकत हुसैन का विनियमितीकरण कनिष्ठ कार्मिक के विनियमितीकरण किये जाने की तिथि से विनियमित किये जाने का औचित्य नहीं है।

9. चूंकि याचिनी के पति श्री रिफाकत हुसैन की मृत्यु चयन समिति के समक्ष निर्धारित तिथि को उपस्थित होने के पूर्व दिनांक 11.08.2012 को हो गई थी अतः याचिनी के पति स्व० रिफाकत हुसैन को नियमानुसार विनियमित किये जाने का औचित्य नहीं है।

10. उल्लेखनीय है कि नियमित कर्मचारी की परिधि में वही कर्मी आते हैं, जिनकी किसी सेवा नियमावली के अन्तर्गत चयन कर किसी स्वीकृत / सृजित पद के सापेक्ष नियुक्ति की गयी हो अथवा शासन द्वारा बनाये गये स्टेट्यूटरी रूल्स के तहत विनियमितीकरण किया गया हो।

11. उ० प्र० शासन के शासनादेश संख्या 612-1973 नियुक्ति-4 दिनांक 21.12. 1973 एवं नियुक्ति विभाग-4 की अधिसूचना संख्या 6/12/1973- नियुक्ति-4 दिनांक 07.10.1974 द्वारा प्रख्यापित मृतक आश्रित नियमावली 1974 के प्राविधानों के अन्तर्गत याचिनी को मृतक आश्रित के रूप में सेवा योजित किये जाने का नियमानुसार औचित्य नहीं है। उक्त नियमावली 1974 में निहित प्राविधानों के अन्तर्गत केवल नियमित अधिष्ठान के अन्तर्गत कार्यरत मृतक कार्मिकों के आश्रितों को सेवायोजित किये जाने का प्राविधान है।

12. उल्लेखनीय है कि वर्कचार्ज / दैनिक वेतन भोगी कार्मिकों की मृत्यु के उपरान्त उनके आश्रितों को सेवायोजित/नियुक्ति करने का कोई प्राविधान मृतक विप्राश्रित नियमावली में न होने के कारण मृतक आश्रित के रूप में याचिनी श्रीमती जाहिदा बेगम पत्नी स्व० श्री रिफाकत हुसैन को सेवायोजित/नियुक्ति किया जाना नियमानुसार विधि सम्मत नहीं है।

13. चूंकि याचिनी के पति स्व० श्री रिफाकत हुसैन का विनियमितकरण किया जाना नियमानुसार सम्भव नहीं हैं। अतः याचिनी को मृतक आश्रित नियमावली 1974 में निहित प्राविधानों के अन्तर्गत मृतक आश्रित के रूप में सेवा योजित किया जाना विधि सम्मत नहीं है।

अतः याचिनी श्रीमती जाहिदा बेगम पत्नी स्व० श्री रिफाकत हुसैन का दिनांक रहित प्रत्यावेदन मा० उच्च न्यायालय द्वारा पारित आदेश/निर्णय दिनांक 27.01.2023 के अनुपालन में सम्यक विचारोपरान्त याचिनी के पति स्व० रिफाकत हुसैन को विनियमित किये जाने का नियमानुसार औचित्य न होने तथा उक्त के क्रम में याचिनी श्रीमती जाहिदा बेगम को मृतक आश्रित के रूप में मृतक आश्रित सेवा नियमावली के अन्तर्गत सेवा योजित किया जाना नियमानुसार विधि सम्मत न होने के कारण याचिनी का प्रकरण उक्तानुसार एतद्वारा निस्तारित किया जाता है।"

(underlined by court)

18. The bare reading of the order impugned dated 17.03.2023 reflects that the same has been passed in the teeth of the mandate issued by this Court in Writ-A No. 3792 of 2019, though the final judgment passed therein attained finality and is still intact. The conduct of passing an order with the same reasoning having been set aside by the Court is prima facie contemptuous, for which this Court takes a serious view of the matter and censures the conduct of the second respondent with clear stipulated warning to caution in future.

19. The specific case of writ petitioner is that dependants of many Work Charge employees in the department of petitioner's father had been granted compassionate appointment, as such the petitioner and his mother have been met with hostile discrimination and there is no denial at the end of answering respondent in the counter affidavit, which attracts **malice in law**.

20. Refuting the claim of the petitioner, the answering respondents filed a counter affidavit taking specific plea that earlier the claim was processed by petitioner's mother; as such a new claim in favour of petitioner cannot be set up by him particularly in view of the delay and laches in approaching this Court at the end of petitioner. It has been emphasized in the counter affidavit that petitioner does not have any legal right to institute instant writ petition being barred by

time and the lis pursued by his mother cannot be carried forward on his behest in continuation to challenge the order impugned.

21. The further pleaded case in the counter affidavit is, that petitioner's father was not a confirmed employee within the definition of Government servant; as such, any of his dependents could not have been considered under the strength of Uttar Pradesh Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974.

22. The submission advanced on behalf of the counsel for the State respondent is that although the petitioner is a dependant of the deceased employee cannot be permitted to set up a new case asking for an appointment under Dying-in-Harness Rules in his favour after his mother failed to establish such a claim.

23. The petitioner being dependent of a deceased Work Charge employee cannot be considered for being appointed under Dying-in-Harness Rules, 1974 in view of dictum laid down by Full Bench of Allahabad High Court in the case of **Pawan Kumar Yadav Vs. State of U.P.**² in which it has been held that daily wage and work charge employees are not 'Government Servants' under the U.P. Recruitment of Dependent of Government Service Dying in Harness Rules 1974 and are thus ineligible for compassionate appointment, since such employees do not hold any regular, substantive or temporary public post.

24. At this stage, this court cannot lose sight of the fact that the respondent authorities have, on more than one occasion, been afforded an opportunity to reconsider the matter in the light of the binding directions issued by this Court. Instead of undertaking the exercise in its true spirit, the authorities have repeatedly reiterated

² (2010) 8 ADJ 664 (ALL)

substantially the same reasoning which had already been found unsustainable. Such an approach defeats the very purpose of judicial remand and necessitates closer scrutiny of the legality of the impugned order, including whether the exercise of power stands vitiated by malice in law.

25. In order to examine whether the repeated rejection of claim of petitioner on same reasoning despite having been set aside by this Court, in earlier round of litigation, the malice in law would be attracted or not, it is apt to examine authoritative pronouncements of the Supreme Court elucidating the doctrine of malice in law and its effect on the validity of administrative action. It is well settled that malice in law does not necessarily imply personal ill-will, spite or animosity on the part of the authority concerned. Rather, it denotes an action taken without lawful justification, for an unauthorised purpose, or in disregard of the statutory scheme governing the exercise of power.

26. The following decisions of the Supreme Court authoritatively expounds the aforesaid principle:

27. In the case of **Ratnagiri gas and power Private Limited vs RDS Projects and others**³, the Supreme Court has held:

“410. Between 'malice in fact' and 'malice in law' there is a broad distinction which is not peculiar to any system of jurisprudence. The person who inflicts a wrong or an injury upon any person in contravention of the law is not allowed to say that he did so with an innocent mind. He is taken to know the flaw and can only act within the law. He may, therefore, be guilty of 'malice in law', although, so far as the state of his mind was concerned he acted ignorantly, and in that sense innocently. 'Malice in fact' is a different thing. It means an actual malicious intention on the part of the person who has done the wrongful act.”

³ 2013 (12) SCC 786

28. Reference may also be made to authority in the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray**⁴, wherein the Hon'ble Supreme Court held:

"19. Malice in law. "Malice in law" is however, quite different. Viscount Haldane described it in Shearer Shields, (1914) AC 808 as:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or fro want of reasonable or probable cause. (See S.R. Venkatarcunan v.Union of India (1979) 2 SCC 491)"

29. This Court finds that it is well settled law that a daily-wage employee, who has neither been appointed against a sanctioned post nor engaged in accordance with the prescribed statutory rules, cannot be regarded as a government servant within the meaning of Rule 2(a) (iii) of the Rules, 1974. The legal position on this issue is no longer *res integra* and stands authoritatively settled by the Full Bench of this Court in the case of **Pawan Kumar Yadav** (supra).

30. Notwithstanding the fact that the petitioner's father would not fall within the definition of a government servant under Rule 2 of the Rules, 1974, a distinct exception has been recognized by a Division Bench of this Court in the case of **Kuldeep Thakur, 2017** (supra). In the said case, the Division Bench was considering the claim for compassionate appointment made by the son of a deceased daily-wage employee whose case for regularization was under active consideration in terms of the Government Order dated 13.08.2015, but who passed away before a decision on regularization could be taken.

⁴ 2007 (14) SCC 568

31. The Division Bench held that, where an employee's right to regularization had crystallized under the applicable Government Order and the matter was pending consideration, such right would not stand extinguished or defeated merely on account of the employee's untimely demise. In such circumstances, the competent authority is first required to consider and decide the deceased employee's claim for regularization, and only thereafter take an appropriate decision on the dependent's claim for compassionate appointment in light of the outcome of the regularization proceedings.

32. The relevant observations made by the Division Bench in **Kuldeep Thakur** (supra) are extracted below:

“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 13.08.2015. 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 Pw Works & Construction 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 13.08.2015 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 13.08.2015, 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.”

33. In the present case, a perusal of the order dated 17.03.2023 reveals that the petitioner’s father’s claim for regularization was under active consideration. The material on record further indicates that the petitioner’s father had acquired entitlement to consideration for regularization much prior to the stage reflected in the said memorandum. His claim ought to have been considered at the appropriate point of time, in accordance with the law laid down by the Hon’ble Supreme Court in the case of **Secretary, State of Karnataka and others v. Umadevi and others**⁵ (supra), and, more particularly, in terms of the provisions of the Uttar Pradesh Regularisation of Daily Wages Appointments on Group ‘D’ Posts Rules, 2001, framed by the Governor in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 4 of the Rules, 2001, reads as under:

“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

⁵ (2006) 4 SCC 1

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.”

34. In the case of **Pawan Kumar v. State of U.P. and Others** (Writ-A No. 5519 of 2023, decided 23.07.2024.) this Court, while following the principle laid down by the Division Bench in the case of **Kuldeep Thakur** (supra), held that where the claim of a deceased daily-wage employee for regularization had matured, same ought to have been considered during his lifetime, the mere failure of the authorities to take a timely decision would not defeat or extinguish the accrued right to be considered for regularization.

35. The Coordinate Bench observed that the ratio laid down in **Kuldeep Thakur (supra)** squarely applied in such circumstances and also took note of the decision in **Nikhil Bharadwaj v. State of U.P. and Others**⁶, wherein prolonged retention of a daily-wage employee in service without considering regularization under the Rules of 2001 and the Rules of 2016 was held to constitute a violation of the employee's vested right to be considered for regularization. Although the Court in **Pawan Kumar (supra)** refrained from extending the principle to hold that the services of the deceased employee would stand automatically or deemedly regularized, it nevertheless recorded an unequivocal finding that where an employee had continuously served the State for an exceptionally long period, the competent authorities were under a legal obligation to consider regularization in accordance with the applicable statutory Rules. The Court further held that the inaction of the authorities in discharging that obligation could not be permitted to prejudice the rights of the employee or the dependent claiming compassionate appointment. Consequently, allowing the writ petition, the Coordinate Bench quashed the order impugned therein and issued a writ of mandamus directing the competent authorities to first consider the deceased employee's case for notional regularization in accordance with the applicable statutory Rules and, thereafter, to take an appropriate decision on the dependant's claim for compassionate appointment in the light of such determination.

36. The ground raised in the order impugned that petitioner's father, since deceased, is no more in existence, thus the case for regularization cannot be considered at this stage would not hold good being in teeth of the judgment rendered by Division Bench of this Court in the case of **Kuldeep Thakur (supra)**, as the cause of action for consideration of regularization in favour of petitioner's father

⁶ Neutral Citation No. AHC:118710

already crystallized when seniority list for purposes of regularization in terms of statutory scheme was carved out and the case of petitioner's father was under active consideration. The aforesaid right becomes more solid when the juniors to petitioner's father were regularized but the said benefit cannot be conferred on petitioner's father due to his demise.

37. This case is a solemn reminder that the law, while clothed in formalities of procedure, must never lose sight of its humane purpose. Neither the petitioner nor his mother sought charity; rather, they sought the pursuit of justice which could not have been served during the lifetime of the deceased employee. The recognition of the right of regularization qua service rendered by the deceased employee was under constitutional mandate and was covered by the statutory scheme. The right of regularization in view of the perennial nature of work, could be recognised by the Hon'ble Supreme Court in the cases of **Jaggo Vs. Union of India**⁷, **Sripal and another Vs. Nagar Nigam Ghaziabad**⁸, and **Dharam Singh and others Vs. State of U.P. and another**⁹. Thus, the long service, particularly 18 years rendered by the deceased employee, could not be permitted to go in vain on the caprice, whims and stubborn attitude of respondents who neither have any regard for law nor the orders passed by this Court.

38. The conduct of the second respondent in repeating the reasoning despite being quashed by this Court for refusing regularization is hereby rebuked. Since a counter affidavit has been filed to defend the same repeated reasoning, as such, even for rebuking the conduct, any other personal hearing is not needed, but the second respondent wants to be vigilant in future to carefully go through the order passed

⁷ 2024 SCC OnLine SC 3826

⁸ 2025 SCC OnLine SC 221

⁹ 2025 INSC 998

by this Court and only after understanding the spirit and mandate of this Court should proceed ahead which was quashed in earlier round of litigation by this court, the only possible inference is, there was no other impediment/valid ground for refusal of regularization of petitioners. Thus, to give a break to a long-drawn litigation, the petitioner's father shall be treated to be regularised, as the other similarly situated employees have been accorded such favour.

39. The right of consideration of regularization with respect to Daily Wage, Work Charge employees who had rendered service for a period of 10 years or more as a one time scheme is the mandate recognized by Constitution Bench of Hon'ble Supreme Court in the case of **Secretary, State of Karnataka and others Vs. Uma Devi and others**⁵.

40. It was imperative on the part of the State respondents to consider the case of petitioner's father for regularization may be notionally notwithstanding his unfortunate demise, so that consequential service benefits in his favour or at least in favour of his legal heirs could naturally flow.

41. This Court cannot lose sight of the fact that the petitioner was a minor at the time of untimely demise of his father and now his mother has already surrendered her claim after being faced with hostile discrimination. The protracted litigation has given rise to such a situation that, just to repose faith in the justice delivery system, even the belated claim of the petitioner is required to be referred for consideration of the State Government, as non-consideration of the claim of the petitioner would be nothing except giving premium to the illegal action and hostile discrimination which legal heirs of the deceased employee met for a long period of time, which is alien to the rule of law, thus, attracts the Latin maxim *Nullus commodum*

⁵ 2006 4 SCC 1

capere potest de injuria sua propria (no man can take advantage of his own wrong) in its later and spirit.

42. This Court cannot allow the technicalities to subvert the spirit of justice. The right of regularization when accrued, travels with the person and in their absence, survives through their legal representatives. The State, being a model employer, is bound to uphold not merely the letter of the contract, but the spirit of fairness, equality and compassion.

43. This court rarely direct for treating an employee as regularized one, but in the case in hand several round of litigation could lead only one reason of non-consideration of regularization of petitioner's father is, 'his unfortunate death before decision on regularization could be crystallized' and the respondent authority could not dispel any other reason on every occasion, when the mandate was issued for consideration of regularization of deceased employee, more particularly said reason having been set aside in earlier round of litigation and attained finality, therefore, the fifth round of consideration at the end of respondent authorities would not be in the interest of administration of justice, who have already displayed blatant disregard to the authority of this court and the rule of law. Thus, this court refrains to remit the matter back and give another opportunity for said purpose.

44. Accordingly, this Court holds that the deceased employee shall be deemed to have been regularized from the date on which he became eligible for such benefit. All consequential entitlement, including monetary and otherwise, shall accordingly be made over to the legal heirs, who today stand not merely as a claimant to the financial dues, but as representatives of a moral wrong seeking

redress. Justice, even if delayed, must be seen to repair what was broken not only in legality, but in principle.

45. The untimely death of the petitioner's father is noticed to be of the year 2012, and now more than a decade has passed, coupled with the admitted position under the Rules that an application for employment under the 1974 Rules is to be made within five years from the death of the Government servant. Though there is a proviso appended to the Rules that where the State Government is satisfied that the time limit for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement and consider the case in a just and equitable manner. The second proviso further mandates that, for the purposes of the first proviso appended to Rule 5(iii), the person claiming the benefit is required to explain the reasons and give proper justification in writing regarding the delay caused in making the application for employment after the expiry of the time limit fixed for making such application, along with the necessary documents and proof of such delay, and the Government, after taking into consideration all the facts leading to such delay, shall take appropriate action. The relevant excerpts of Rule 5(iii) of the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 are extracted below:

“5. Recruitment of a member of the family of the deceased : (1) In case a Government servant dies in harness after the commencement of these rules, and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purpose, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh

Public Service Commission, in relaxation of the normal recruitment rules if such person—

.....

(iii) makes the application for employment within five years from the date of the death of the Government servant:

Provided that where the State Government is satisfied that the time-limit fixed for making the application for employment causes undue hardship in any particular case, it may dispense with or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner:

Provided further that for the purpose of the aforesaid proviso. The person concerned shall explain the reasons and give proper justification in writing regarding the delay caused in making the application for employment after the expiry of the time-limit fixed for making the application for employment along with the necessary documents/proof in support of such delay and the Government shall, after taking into consideration all the facts leading to such delay take the appropriate decision”

46. This Court notices Rule 10 to be another enabling provision conferring power upon the State Government to remove difficulties. Rule 10 of the 1974 Rules reads as under:

***“Removal of difficulties.*—If any difficulty arises in giving effect to the provisions of these Rules, the State Government may, by order, make such provisions not inconsistent with these Rules as appear to it to be necessary or expedient for removing the difficulty.”**

47. The chequered history of the factual matrix of the present case, as set out herein above, is required to be examined by the State Government in exercise of the powers conferred under the provisos appended to Rule 5(iii), read with Rule 10 of the 1974 Rules. Upon receipt of an application seeking compliance with this order, the required exercise shall be undertaken by the State Government in accordance with law.

48. In light of the above, this Court recognises the right of consideration for compassionate appointment accrued in favour of the legal heir of the deceased employee who has been left to pursue a right that was long overdue due to protracted litigation and untimely

death of petitioner's father. It is only just and equitable that the vested right in favour of the petitioner now be acknowledged and honoured in favour of his legal heirs. Second respondent is further commanded to proceed for consideration of the claim of appointment of the petitioner under Dying-in-Harness Rules, 1974, and if the same is not within his competence of the second respondent due to delay or for any other valid reason, the matter be forwarded for consideration to the State Government under the mandate of Rule 5 (iii) read with Rule 10 of Rules, 1974, strictly in terms of Rules of 1974. In any event, the entire exercise shall be completed within a period of two months from the date of production of certified copy of this order.

49. In these three rounds of litigation, the only ground raised for refusal of the claim of the petitioner's father's regularization is his untimely demise before active regularization exercise could reach a logical end which even after being disapproved by this Court repeated time and again. The petitioner, being a victim of the stubborn attitude of official respondents, was compelled to knock the doors of this Court, as respondent officials failed to comply with the repeated mandate of this Court. Thus, costs of Rs 50,000 are awarded in favour of the petitioner.

50. With the aforesaid observations and finding, the instant writ petition is **allowed**.

51. Let this order be communicated to the Secretary Rural Engineering Department, Government of U.P., Civil Secretariat, Lucknow and the Director and Chief Engineer, Rural Engineering Department, U.P. Lucknow through the Chief Judicial Magistrate, Lucknow, by the Registrar (Compliance), within 24 hours.

52. Before parting with the case, the Court places on record its appreciation for the diligent efforts and valuable assistance rendered by Ms. Shreya Shukla, Research Associate. Her contribution has meaningfully aided the adjudication of the present matter and deserves due acknowledgment.

(Indrajeet Shukla,J.)

Order Date: 06.08.2026

Pratima