

THE STATE OF UTTAR PRADESH & ORS.

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v.

UTTAM SINGH

(Civil Appeal No. 4575 of 2021)

AUGUST 03, 2021

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**[SANJAY KISHAN KAUL AND HRISHIKESH ROY, JJ.]**

*Service Law: Compassionate appointment – By impugned order of High Court, respondent was granted benefit of compassionate appointment on account of demise of his father who was working with the appellants – Challenged by appellant-Department on the ground that father of respondent was not regular employee and was merely granted equivalent benefits on the principle of ‘equal pay for equal work’ and therefore, respondent was not entitled to the benefit of compassionate appointment – Held: There is no error in the view of High Court that the appointment of father of respondent was against the regular vacancy though it continued to be termed as a ‘Part Time’ appointment apart from the fact that his work hours were of a regular employee entitling him to equal pay for equal work – During his 13 long years of employment and before that having battled the appellants for 6 years to get his dues, the deceased employee was also transferred from one department to the other, normally an aspect which would be associated with a person who had a regular employment – The most significant aspect was that had the deceased employee not been considered a regular appointee, there would have been no occasion for the Department to volunteer his services to the State Election Commission to perform election duties, which is done only by a Government employee, as is specified under s.159 of the Representation of the People Act, 1950 – Further, at least two persons were employed in a similar scenario whose father and husband respectively died in harness as Part Time tubewell operators – It is apparent that there is an discrimination against the respondent possibly arising from the previous litigation between the appellants and the deceased father of the respondent – There is no satisfactory explanation for the same – No interference with the order of High Court called for.*

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A        **Dismissing the appeal, the Court**

- HELD:** 1. The High court noted the contention that though the father of the respondent was termed as a Part Time tubewell operator but he was always treated as a regular employee. The order of appointment in the case of the father of the respondent was found to be unambiguous in its terms in accordance with norms after verification of all his certificates. A complete process of selection was conducted by the appellants as the employer. At the first instance, appointment was denied to him on account of he not being a resident of the command area of the tubewell concerned but this ground was found unsustainable by the judicial view taken by the High Court by an earlier order dated 29.01.2003 and consequently the father of the respondent was appointed. It is in these given facts of the case that it has been found that the benefit should be made available to the respondent under the Rules. The facts have been found sufficient by the High Court to come to the conclusion that the appointment of the father of the respondent was against a regular vacancy and that is why in that background from the inception regular pay-scale was allowed to him and he thus satisfied the parameters of the Rules aforesaid. [Para 8][350-B-F]
- E        2. During his 13 long years of employment and before that having battled the appellants for the period of 6 years to get his dues, the father of the respondent was also transferred from one department to the other, normally an aspect which would be associated with a person who had a regular employment. The most significant aspect is that had the father of the respondent not been considered a regular appointee, there would be no occasion for the Department to volunteer his services to the State Election Commission to perform election duties, which could have been done only by a Government employee, as is specified under Section 159 of the Representation of the People Act, 1950 (“Staff of certain authorities to be made available for election work”). The present case is thus one which is peculiar in its given factual scenario which for all practical purposes, it is a case of an appointment against a regular vacancy. The respondent’s father was treated as a regular employee by the aforesaid conduct of the appellants even though he was labelled as a Part Time
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tubewell operator. Further, at least 2 persons were employed in a similar scenario whose father and husband respectively died in harness as Part Time tubewell operators. It is quite obvious that there is an discrimination against the respondent possibly arising from the previous litigation between the appellants and the deceased father of the respondent. There is no satisfactory explanation for the same and we cannot permit the appellant-Department to harass the respondent in this manner. [Paras 10-12][351-A-F]

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*Gen. Manager, Uttarakhand Jal Sansthan v. Laxmi Devi & Ors.* (2009) 7 SCC 205 : [2009] 9 SCR 791 – referred to.

#### Case Law Reference

[2009] 9 SCR 791

referred to

Para 4

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4575 of 2021.

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From the Judgment and Order dated 10.09.2018 of the High Court of Judicature at Allahabad in Special Appeal No.D-264 of 2018.

V. Shekhar, Sr. Adv., Rajeev Kumar Dubey, Kamlendra Mishra, Advs. for the Appellants.

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R. M. Sinha, Ravindra S. Garia, Vishal Vishwadheesh, Ms. Sukhneet Kaur, Shashank Singh, Advs. for the Respondents.

The following Judgment of the Court was delivered

#### JUDGMENT

Leave granted.

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1. The appellants seek to assail the judgment of the Division Bench of the Allahabad High Court in terms whereof the respondent before us has been granted the benefit of compassionate appointment under the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as “the Rules”) on account of demise of his father, who was working with the appellants.

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2. The father of the respondent had earlier waged a legal battle against the appellant-Department arising out of his endeavour to get his appointment post his selection for the post of Tubewell Operator. The

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- A High Court in the impugned order opined that the selection process of the father of the respondent was unambiguous and against the regular vacancy whereby he had submitted all the requisite documents to the Irrigation Department. The case of the respondent is that the appellants held up this issue over six years and the actual appointment took place only on 29.01.2003. The respondent's father continued to work and draw emoluments for a period of 13 years equivalent to the regular pay-scale till he unfortunately passed away on 09.03.2016.
  - 3. The case of the respondent is also that in identical matters, the appellants have appointed one Balram and one Smt. Geeta Devi, whose father and husband respectively died in harness, as Part Time Tubewell Operators and many other candidates of whose record is not available. The respondent argues that he was singled out in being denied the benefit possibly on account of the earlier litigation between the father of the respondent and the appellant-Department.
  - 4. The case of the appellants is that the father of the respondent had not been regularized and merely grant of equivalent benefits on the principle of 'equal pay for equal work' would not make him regular employee and thus the respondent is not entitled to the benefit of the Rules for compassionate employment. In this behalf reference is made to the judgment of this Court in Gen. Manager, Uttaranchal Jal Sansthan vs Laxmi Devi & Ors. (2009) 7 SCC 205 stated to be dealing with the very Rule in question. It will be useful to reproduce the relevant extract of the Rules where Rule 2 (a)(iii) reads as under :

“2. Definitions-

....

F (a) Government servant” means a Government employed in connection with the affairs of Uttar Pradesh who-

    - (i) xxxxx
    - (ii) Xxxxx

G (iii) though not regularly appointment, had put in three years continuous service in regular vacancy in such employment;

Explanation- “regularly appointed” means appointed in accordance with the procedure laid down for recruitment to the post of service, as the case may be;”
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5. Thus the respondent contends that since his father was employed for more than 3 years in continuous service, he was bound to be considered as a Government Servant and thus the benefit should extend to the respondent. On the other hand, relying upon the aforesaid judgment where the same Rules have been analyzed, learned Senior counsel for the appellants seeks to contend that this Court opined that a person not regularly appointed but who had otherwise put in 3 years continuous service in a regular vacancy cannot mean to imply that a Daily Wager would get the benefit of the Rule. We may, however, note that the Court had opined on the facts of that case holding that benefit would not accrue to the respondent. The regular vacancy was held to mean a vacancy which occurred in posts sanctioned by the competent authority. The service of the deceased employee had not actually been regularized though they have claimed regularization. The fact that the deceased employee was drawing salary in a regular pay-scale was held not to mean that they are against a regular vacancy.

6. We may note an interesting aspect pointed out by the learned counsel for the respondent, *inter alia*, in his synopsis (as usual the appellants did not consider it appropriate to assist this Court by filing a synopsis as had been directed vide the last order, apart from the note on the cause list!). The respondent has stated that during the period of 13 years of the employment of the father of the respondent, he was transferred from the Irrigation Department to Panchayati Raj Department as ‘Gram Panchayat Vikas Adhikari’ and vice versa, i.e., he was transferred 2 or 3 times by the appellants and was even appointed as a polling officer by State Election Commission on 15.10.2015, 26.11.2015 and 03.12.2015. It is thus the submission that there could not have been such inter-departmental transfers and re-transfers if the father of the respondent was not being considered as a regular employee. Not only that, it is contended that there would possibly be no case where a person is deployed under the Representation of People Act, 1951, who is not a Government employee. This is apart from the fact that the respondent’s father was the operator of 2 Government tubewells which was stated to be equivalent to the job of a regular tubewell operator i.e., a 9 a.m. to 5 P.m., which some times ran over more than 8 hours, subject to the demand of farmers.

7. Learned counsel for the appellants however gives an explanation by stating that these persons were originally deployed as Gram Panchayat Vikas Adhikari, transferred and re-transferred back and the challenge

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- A to the same was repelled in U.P. Gram Panchayat Adhikari vs Daya Ram Saroj & Ors., (2007) 2 SCC 138.
- B the case of Gen. Manager, Uttaranchal Jal Sansthan vs Laxmi Devi & Ors, (2009) 7 SCC 205 (*supra*)<sup>1</sup>. However, it noted the contention that though the father of the respondent was termed as a Part Time tubewell operator but he was always treated as a regular employee. The Court took note of the rule referred to aforesaid and the explanation given thereto which requires that an appointment with procedure laid down for recruitment to the post or the service. The order of appointment in the case of the father of the respondent has been found to be unambiguous in its terms in accordance with norms after verification of all his certificates. A complete process of selection was conducted by the appellants as the employer. At the first instance, appointment was denied to him on account of he not being a resident of the command area of the tubewell concerned but this ground was found unsustainable by the judicial view taken by the High Court by an earlier order dated 29.01.2003 and consequently the father of the respondent was appointed. It is in these given facts of the case that it has been found that the benefit should be made available to the respondent under the Rules. The facts have been found sufficient by the High Court to come to the conclusion that the appointment of the father of the respondent was against a regular vacancy and that is why in that background from the inception regular pay-scale was allowed to him and he thus satisfied the parameters of the Rules aforesaid.
- C 8. If we turn to the impugned order of the Division Bench, the High Court has taken note of the Full Bench of the Allahabad High Court which is in consonance with the view propounded by this Court in
- D to him on account of he not being a resident of the command area of the tubewell concerned but this ground was found unsustainable by the judicial view taken by the High Court by an earlier order dated 29.01.2003 and consequently the father of the respondent was appointed. It is in these given facts of the case that it has been found that the benefit should be made available to the respondent under the Rules. The facts have been found sufficient by the High Court to come to the conclusion that the appointment of the father of the respondent was against a regular vacancy and that is why in that background from the inception regular pay-scale was allowed to him and he thus satisfied the parameters of the Rules aforesaid.
- E 9. We are in complete agreement with the view taken by the High Court in the given factual scenario. We may say, it appears that the appellants, for reasons best known to them, endeavoured to deny the father of the respondent his dues even though the appointment was through a proper process. The High Court opined against the manner in which
- F the father of the respondent was denied employment. That is the reason that from the very inception he was given the benefits of a regular employee while designating him as a Part Time tubewell operator. The High Court has found that these facts show that the appointment was against the regular vacancy though it continued to be termed as a 'Part
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- H <sup>1</sup>Pavan Kumar Yadav v. State of Uttar Pradesh & Ors., (2010) 18 ADJ 664

Time' appointment apart from the fact that his work hours were of a regular employee entitling him to equal pay for equal work.

10. We have also taken note of the fact that during his 13 long years of employment and before that having battled the appellants for the period of 6 years to get his dues, the father of the respondent was also transferred from one department to the other, normally an aspect which would be associated with a person who had a regular employment. The most significant aspect is that had the father of the respondent not been considered a regular appointee, there would be no occasion for the Department to volunteer his services to the State Election Commission to perform election duties, which could have been done only by a Government employee, as is specified under Section 159 of the Representation of the People Act, 1950 ("Staff of certain authorities to be made available for election work").

11. The present case is thus one which is peculiar in its given factual scenario which we have discussed above and thus for all practical purposes, it is a case of an appointment against a regular vacancy. The respondent's father was treated as a regular employee by the aforesaid conduct of the appellants even though he was labelled as a Part Time tubewell operator.

12. We may like to further say that from the illustrations given by the appellants, at least 2 persons, as noted before, were employed in a similar scenario i.e., Balram and Smt. Geeta Devi whose father and husband respectively died in harness as Part Time tubewell operators. It is quite obvious that there is an discrimination against the respondent possibly arising from the previous litigation between the appellants and the deceased father of the respondent. There is no satisfactory explanation for the same and we cannot permit the appellant-Department to harass the respondent in this manner.

13. We are thus of the opinion that the course adopted by the Division Bench of the High Court is in accordance with law and the impugned order does not call for any interference.

14. The appeal is dismissed with costs throughout.

15. The necessary orders be issued in the case of the respondent within one month from date the order.