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**(2009) 02 AHC CK 0062**

**Allahabad High Court**

**Case No:** None

Kanpur Jal Sansthan and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision:** Feb. 16, 2009

**Citation:** (2009) 85 AWC 1911 : (2009) 2 AWC 1911 : (2009) 2 UPLBEC 1214

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

**Final Decision:** Allowed

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### **Judgement**

S.U. Khan, J.

Heard learned Counsel for the parties.

2. This writ petition is directed against award dated 20.4.2008 given by Presiding Officer, Labour Court-I, U.P., Kanpur in Adjudication Case No. 34 of 1997. The matter referred to the labour court was as to whether action of the petitioner employer in not giving the pay scale and designation of steno to respondent No. 3, Nagendra Kumar Srivastava since deceased and survived by legal representative was valid or not.

3. Case of the respondent No. 3 was that he was appointed on daily wage basis on 1.7.1983 and after one year he was given the designation and pay scale of clerk/typist, that since 1985 the job of stenographer/typist was being taken from the respondent No. 3, that thereafter w.e.f. 1.1.1987, General Manager granted him the designation and pay scale of stenographer on daily wage basis.

4. The case of the petitioner employer was that petitioner was appointed on daily wage basis and he was not performing the job of steno/typist. The allegation w.e.f. 1.7.1983 respondent No. 3 was given the designation and pay scale of clerk/typist was denied. It was also denied that w.e.f. 1.1.1987 respondent No. 3 was made steno/typist. According to the petitioner employer the respondent No. 3 was given the designation and pay scale of clerk-cum-typist w.e.f. 7.12.1989 and he was

continuing on the said post and designation. It was also stated that no post of stenographer was vacant in their concern. It was also stated that respondent No. 3 never performed the job of steno.

5. The dispute was raised by respondent No. 3 in 1996 as No. of C. B. Case is 170 of 1996. Reference was made on 21.12.1996. Labour court found that respondent No. 3 was performing the duty of steno. The said finding was recorded on the basis of some certificate.

6. Accordingly, labour court directed that respondent No. 3 must be given designation and pay scale of steno w.e.f. August, 1987.

7. Firstly, the dispute had been raised at very late stage, i.e., after about 9 years. Secondly, petitioner was appointed as typist-cum-clerk and post of steno is a promotional post. Labour court cannot direct the promotion as it is managerial function. By maximum it could direct the employer to consider the case of the workman for promotion. It was not a case of fitment. In this regard reference may be made to U.P. State Sugar and Cane Development v. Chini Mill Mazdoor Sangh 2008 AIR SCW 7437. Moreover for promotion the case of all those similarly situate employees will have to be taken into account who fall within consideration zone.

8. Moreover, labour court did not say any thing regarding the plea of the petitioner that no post of steno was vacant in their concern.

9. As respondent No. 3 has died, hence there is no question of directing the management to consider his case for promotion.

10. Accordingly, writ petition is allowed. Impugned award is set aside.