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## Smt. Sundari Devi Vs State of U.P. and Others

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**Court:** Allahabad High Court

**Date of Decision:** Nov. 17, 2009

**Citation:** (2010) 2 AWC 1282 : (2010) 124 FLR 606

**Hon'ble Judges:** Sudhir Agarwal, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### Judgement

Sudhir Agarwal, J.

The present writ petition has been filed seeking a writ of mandamus commanding the respondents to provide the

petitioner compassionate appointment due to death of her husband, who was working as Clerk in Meerut Development Authority, Meerut for the

last 17 years. It is an admitted case of both the sides that the petitioner's husband was a daily wage work charge employee. It is not disputed that

U.P. Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 (hereinafter referred to as 1974, Rules) are applicable to

the Meerut Development Authority for the purpose of extending the benefit of compassionate appointment to the heirs of the deceased employee,

who died in-harness. However, the only question up for consideration is whether the said benefit is available to the legal heirs of a daily wage

employee or not under the 1974 Rules. Rule 2(a) of 1974 Rules reads as under :

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

(i) was permanent in such employment; or

(ii) though temporary had been regularly appointed in such employment ; or

(iii) though not regularly appointed, 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.

2. This very rule has recently been considered by the Apex Court in General Manager, Uttaranchal Jal Sansthan Vs. Laxmi Devi and Others,

wherein it has been held that the daily wager is not a Government employee. It has further been observed that in order to extend the benefit to the

employees who are not appointed on regular basis but working against regular vacancy, it must be shown that there was a vacancy occurred on a

sanctioned post and against such vacancy, the incumbent was working so as to get the benefit of Rule 2(a)(iii) of 1974, Rules. Therein a similar

argument was advanced that a work charge employee, if has worked continuously for several years, would raise a presumption that there exist a

vacancy and there is regular need of services. Reliance was sought to be placed on behalf of the employee to the Apex Court decision in The

Workmen of Bhurkunda Colliery of Central Coalfields Ltd. Vs. The Management of Bhurkunda Colliery of Central Coalfields Ltd., However,

rejecting the contention and distinguishing the above judgment, the Apex Court in Uttaranchal Jal Sansthan (supra) observed as under :

The said case, in our opinion, would have no application to the present case. These observations only lend support to the presumption as to a

regular need for work of the daily wage worker but not as to the existence of a regular vacancy in this respect. In any event, it is one thing to say

that by reason of such contingencies the services of the work charged employee should be directed to be regularized but it is another thing to say

that although they were not absorbed in the permanent cadre, still on their deaths, their dependants would be entitled to invoke the Rules.

23. In any view of the matter the fact that there was a regular need by itself would not mean that there was a regular vacancy. A distinction must be

made between a need of regular employees and existence of regular vacancies. The High Court, therefore, in our opinion was not correct in

proceeding to allow the writ application filed by the respondents herein on the premise that the deceased had been working for a long time.

24. Indisputably the services of the deceased had not been regularized. In both the cases writ petitions were filed but no effective relief thereto had

been granted.

3. Besides above, in respect to the another decision cited before the Apex Court, namely, Commissioner of Income Tax, Jullundur Vs. Ajanta

Electricals, Punjab, the Apex Court in para 30 clearly observed as under :

In any event all such decisions must be held to have been overruled In Umadevi.

4. The Apex Court held that dally wagers are not Government servants covered by the definition of the Government Employees under U.P.

Recruitment of Dependents of Government Servants Dying-in-Harness Rules, 1974 and, therefore, question of compassionate appointment does

not arise. In my view, petitioner"s case is squarely covered by the aforesaid decision and in absence of any pleading or material to show that

petitioner's husband was ever appointed in regular vacancy or was absorbed in the department, no benefit under 1974 Rules can be claimed.

5. The writ petition, therefore, lacks merit. Dismissed.