

Court No. - 33

Case :- WRIT - A No. - 15792 of 2022

Petitioner :- Smt. Dharamviri

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Raj Kumar Dhama, Shantanu

Counsel for Respondent :- C.S.C., Rajesh Yadav

Hon'ble Ashutosh Srivastava, J.

Heard Sri Raj Kumar Dhama, learned counsel for the petitioner, learned Standing Counsel for the State Respondent No.1 and Sri Rajesh Yadav, learned counsel for the Respondent Nos.2 & 3.

Husband of the petitioner was initially appointed as Assistant Teacher. The husband of the petitioner died on 12.10.2005 while serving at Prathmik Vidyalaya Mahrampur, Vikas Kshetra Khekra, District Baghpat. Other retiral benefits have been paid to the petitioner except the amount of Gratuity.

It appears that the amount of Gratuity has not been paid on the ground that option to retire at the age of 60 years was not exercised by the deceased employee.

Controversy in that regard has already been adjudicated by this Court in number of petitions. Reference can be had to the judgment of this Court in ***Writ Petition No.17399 of 2019 (Usha Rani vs. State of U.P. and others)***, decided on 7.11.2019. Relevant portion of the aforesaid order is extracted hereinafter:-

".....

Following the decision rendered in the judgment of Noor Jahan (Supra) as well as Smt. Omwati (Supra), matter of Smt. Brijesh (Supra) for payment of gratuity was allowed by this Court by quashing the impugned orders by which gratuity was denied.

Similar controversy was also decided by Lucknow Bench of this Court vide order dated 5.8.2019 passed in the matter of Smt. Mala Tripathi (Supra) in which Court has taken a similar view and held that if husband of petitioner died before attaining the age of 60 years and has not given option for retirement at the age of 60 years, gratuity cannot be denied only on this ground. Relevant paragraph of the said judgment is quoted below:-

"Heard learned counsel for the contesting parties and perused the records.

From perusal of the records, it clearly comes out that the petitioner's husband died in harness on 26.08.2012 while working as Assistant Teacher in an aided and recognized institution. It is also admitted that the family pension has been paid to the petitioner. The only dispute revolves around the payment of gratuity to the petitioner. The ground taken by the respondents of the petitioner's husband not having opted for retiring at the age of 60 years which thus entails non-payment of gratuity to her at the very outset does not stand to legal scrutiny inasmuch as it is

an admitted case by the respondents also that the petitioner's husband died in harness on 26.08.2012 despite his actual date of superannuation being November 2019. Thus, an employee is only expected to submit an option prior to his retirement and not decades prior to his retirement. However, this aspect of the matter has not been considered by the respondents and even the letter of the Institution dated 19.03.2014, a copy of which has been filed as Annexure-3 to the petition, does not address the aforesaid issue.

Accordingly, keeping in view the aforesaid discussions, the order dated 19.03.2014 (Annexure-3 to the petition) cannot be said to be valid in the eyes of law. As such, the writ petition deserves to be partly allowed and is hereby partly allowed. A writ of certiorari is issued quashing the order dated 19.03.2014. A writ of mandamus is issued directing the respondents to consider the case of the petitioner for payment of gratuity in accordance with law and relevant rules within a period of three months from the date of receipt of a certified copy of this order."

Facts of the case and dispute involved in the present case is squarely covered by the pronouncements made by this Court which are referred herein above, therefore, under such facts and circumstances, impugned order dated 30.7.2019 passed by respondent No. 7- Block Education Officer Block Kadarchauk, District Badaun is hereby quashed.

Respondents are directed to compute the amount payable to the petitioner's husband towards gratuity in terms of the scheme and release the same, maximum within a period of three months from the date of production of certified copy of this order."

It is also submitted by learned counsel for the petitioner that the petitioner has represented the matter in this regard before the Respondent No.2, District Basic Education Officer, Baghpat on 26.08.2022 but no orders have been passed till date.

Learned Standing counsel on the other hand submits that an appropriate direction may be issued to the Respondent No.2 to examine the claim of the petitioner in the light of judgement in the case of **Usha Rani (supra)** within stipulated period.

In view of the aforesaid, the writ petition stands disposed of with the direction upon Respondent No.2, District Basic Education Officer, Baghpat, to decide the representation of the petitioner dated 26.08.2022 (Annexure No.2 to the writ petition) in light of judgement in the case of **Usha Rani (Supra)** in accordance with law within a period of three months from the date of production of a certified copy of this order. All consequential action shall be taken without any further loss of time.

Petitioner's claim for gratuity shall not be rejected on the ground that "Option Form" has not been filled by the husband of the petitioner.

Order Date :- 30.9.2022

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