

Court No. - 33**Case :-** WRIT - A No. - 15929 of 2022**Petitioner :-** Smt. Prema Devi Gaur**Respondent :-** State of U.P. and others**Counsel for Petitioner :-** Mr. Subedar Mishra, Advocate**Counsel for Respondent :-** C.S.C., Mr. Abhishek Srivastava**Hon'ble J.J. Munir, J.**

1. The petitioner, Smt. Prema Devi Gaur, is the widow of the late Ram Gopal Gaur, a one time Sub-Divisional Officer with the Uttar Pradesh Power Corporation Limited, Lucknow (for short, 'the Corporation'). Ram Gopal Gaur superannuated on 31.01.2004. He held a pensionable post and did enjoy retirement pension during his lifetime. Ram Gopal Gaur passed away on 30.01.2014, leaving behind him, his widow and three children as his survivors. The petitioner applied for the grant of family pension and submitted requisite documents in this regard in the month of April, 2014. No action was taken by the respondents, her husband's quondam employers for a considerable period of time.

2. Aggrieved by inaction on the respondents' part, the petitioner instituted Writ-A No.40017 of 2017 before this Court, seeking a command to the respondents to pay her pension.

3. This Court summarily parted with the matter directing the respondents in the following terms *vide* order dated 01.09.2017:

"Accordingly and without going into the merits or otherwise of the claim of the petitioner, the writ petition shall stand disposed of with the following directions:

(A) The petitioner is permitted to furnish a detailed representation before the second respondent within a period of two weeks from today.

(B) In case such a representation alongwith requisite particulars is presented before the respondent No. 2, within the period aforementioned, the said respondent shall have the same duly enquired into and proceed to pass a reasoned and speaking order dealing with the claim of the petitioner.

(C) The respondent shall proceed in the matter with expedition and shall endeavour to consider and dispose of the representation of the petitioner preferably within a period of eight weeks from the date of its receipt.

It is made clear that this Court has not ruled upon the merits or otherwise of the claim of the petitioner."

4. The petitioner, accordingly, submitted an application on 13.09.2017 and addressed, rather defectively to the U.P. Power Corporation Limited, Shakti Bhawan, Lucknow, with no human face of the Corporation described, requesting necessary consideration of her claim in compliance with this Court's order dated 01.09.2017 (*supra*). Acting on the said representation, the Director, U.P. Power Corporation Limited *vide* his letter dated 05.11.2018, asked the petitioner to furnish documents, like a certified copy of the divorce decree dated 15/16.01.1990, proof of the petitioner's marriage to the late Ram Gopal Gaur, marriage certificate of Mamta Gaur (if married) and a succession certificate. A copy of the divorce decree was sought because the petitioner's husband, Ram Gopal Gaur was earlier married and after securing divorce from his former wife had married the petitioner while still in employment.

5. In response to the memo dated 05.11.2018, the petitioner submitted a memo dated 20.04.2022, furnishing therewith a certified copy of the divorce decree passed between her late husband, Ram Gopal Gaur and his ex-wife, Smt. Rajbala Gaur by the Civil Court, Aligarh in Petition No.149 of 1982. Apart from the last mentioned document, an affidavit dated 29.01.2020,

sworn by Ramesh Chand Sharma son of the late Dharampal Sharma, the Pandit who had solemnized the petitioner's marriage to Ram Gopal Gaur, was also annexed. A proof about Mamta Gaur being married, was also enclosed, besides a certificate regarding the deceased Ram Gopal Gaur's family issued by the Tehsildar, Sadar, Agra.

6. After a considerable period of time and the petitioner chasing her claim, the Director (PM & Admin.), U.P. Power Corporation Limited, Lucknow passed an order dated 02.08.2022, rejecting the petitioner's claim. The impugned order records that the late Ram Gopal Gaur had mentioned the name of his daughter Km. Mamta Gaur in his pension papers and not the petitioner. It is remarked that if the petitioner had been married on 31.01.1990, she would surely have been mentioned in the pension papers by the deceased employee. While alive, Ram Gopal Gaur never got the petitioner's name recorded in his service papers. It is also said in the impugned order that in the year 2011, the petitioner had asked for certain information relating to Ram Gopal Gaur, such as the length of his service, punishment(s) awarded to him, his date of retirement, the details of his post retiral benefits, to which Ram Gopal Gaur at that time had written to the Department that the petitioner was a very cunning woman given to litigation, who is misusing the provisions of the Right to Information Act. The deceased during his lifetime did not agree to furnish information that the petitioner had sought, which showed, according to respondent No.3, that the petitioner was not related to the deceased employee. It is also remarked that the affidavit of the Pandit, who had solemnized marriage between parties and the Village Pradhan, are not valid evidence about marriage. The documents presented to claim her rights as the late Ram

Gopal's widow mentioned the petitioner as Prema Devi Gaur, elsewhere as Premwati, and, at still others as Prema etc., which makes her identity suspicious.

7. It is on all these grounds that the impugned order has proceeded to reject the petitioner's claim. It is averred, amongst other things, that the late Ram Gopal Gaur and the petitioner were married on 31.01.1990 after dissolution of his first marriage. It is, particularly, emphasized that after marriage, some disputes had arisen between the petitioner and the late Ram Gopal Gaur, leading to litigation. The petitioner had proceeded against Ram Gopal, seeking maintenance. It is asserted that Mamta Gaur was Ram Gopal's daughter born of his first marriage. Mamta was married on 31.01.2005. She lives in Chandigarh. It is also asserted that the petitioner and the late Ram Gopal were blessed with two children, Km. Ishita Gaur and Master Ishan Gaur.

8. Annexed as Annexure No.10 to the writ petition, are orders passed by the Principal Judge, Family Court, Agra in proceedings under Section 125 of the Code of Criminal Procedure, awarding interim maintenance to the petitioner and her two minor children and an interim order passed by this Court in an application under Section 482 Cr.P.C., preferred by Ram Gopal Gaur against the petitioner and the parties' children, Ishan Gaur and Km. Ishita.

9. A counter affidavit has been filed on behalf of respondent Nos.2 and 3, where the claim is resisted on the ground that the petitioner has not been mentioned anywhere in the departmental records as the late Ram Gopal's widow nor any succession certificate has been produced. It is emphasized that the deceased employee had nominated his daughter Km.

Mamta Gaur, born of Smt. Rajbala Gaur in his pension papers, as the person to whom family pension was payable.

10. Along with the rejoinder affidavit, a copy of the judgment passed in Marriage Petition No.149 of 1982 by the Civil Judge, Aligarh (now Civil Judge, Sr. Div.) dated 05.01.1990 has been annexed, which shows that Ram Gopal Gaur and Smt. Rajbala had been divorced under a decree of the Court of competent jurisdiction.

11. Heard Mr. Subedar Mishra, learned Counsel for the petitioner, Mr. Abhishek Srivastava, learned Counsel appearing on behalf of respondent Nos.2 and 3 and Ms. Amrita Singh, learned Additional Chief Standing Counsel appearing on behalf of respondent No.1.

12. Upon hearing learned Counsel for parties, this Court finds that *prima facie* there is much evidence about the petitioner and the late Ram Gopal Gaur being man and wife, which has been ignored by the Director (PM & Admin.), U.P. Power Corporation Limited, Lucknow while passing the order impugned. He has missed it for a fact that the deceased employee had secured a decree for divorce against his first wife from a Court of competent jurisdiction, way back in January, 1990. There is evidence about the fact that the parties had married, but their relationship had soured. A maintenance case was instituted by the petitioner against her deceased husband, Ram Gopal Gaur, giving rise to Case No.743 of 2007 on the file of the Principal Judge, Family Court, Agra. In the said case, the Principal Judge, Family Court, Agra had passed an order dated 29.05.2009, granting interim maintenance to the petitioner in the sum of Rs.4000/- and Rs.1000/- each to the parties' minor children. In the order granting interim maintenance, the learned

Principal Judge has noticed the stand of the petitioner's husband, denying marriage between parties, but also noted that he did not deny that the two minor children were begotten of him. The learned Judge has remarked that there is a document 12-Ga/22, where it is mentioned Prema Devi wife of Ram Gopal, which shows that Ram Gopal accepts the petitioner to be his wife. The issue was left to be decided finally at the hearing.

13. The learned Counsel for the petitioner has invited the attention of this Court to the interim order dated 25.06.2009 passed by this Court in Criminal Misc. Application No.14765 of 2009, under Section 482 Cr.P.C. This Court has remarked that the *factum* of relationship between the applicant and opposite parties Nos.2 to 4 to the said application has not been disputed. Though these orders are tentative in nature, but there are lots of circumstances, which make the issue at least worth a careful examination of evidence, documentary, circumstantial and oral, if the petitioner and the late Ram Gopal were married after Ram Gopal's divorce, that happened in terms of a decree passed by a Court of competent jurisdiction. The two had also raised a family and this fact was not denied by Ram Gopal in the proceedings for maintenance before the Family Court etc.

14. In the circumstances, this Court is of opinion that the dismissive manner, in which the impugned order has been passed by the Director (PM & Admin.), U.P. Power Corporation Limited, Lucknow, does not commend itself to us. If on a careful examination of all evidence that is offered by the petitioner, the inference of matrimony between parties is inescapable, the mere non-mention of the fact in the pension papers or the service record, cannot be decisive. The reason is that the

petitioner had admittedly married the deceased employee after Ram Gopal had secured a divorce from his first wife, granted by a Court of law. The petitioner was, therefore, a late entrant in the deceased employee's life and the two had raised a family. Their relationship also seems to have been embittered at some stage, leading to litigation of myriad kind. One of these were maintenance proceedings, which travelled upto this Court arising out of the interim maintenance order. Some criminal proceedings had also been taken between parties.

15. In these circumstances, it is not difficult to infer that at some turn of the embittered relationship between the deceased employee and his second wife, he may have mentioned his daughter, born of his first marriage in his service record or pension papers as his nominee. The decision, in these circumstances, would be more a product of emotion and would not in any manner detract from the petitioner's right to receive pension, if by other evidence her marriage to the deceased employee is indeed established. We do not find that the Director (PM & Admin.), U.P. Power Corporation Limited, Lucknow has done that kind of a careful consideration of evidence, which ought to have been his approach in the matter.

16. This Court has remarked that the approach of the Director has been dismissive. We say this because pension is a social security measure and no clue or evidence of a relationship matrimonial between the deceased employee and the petitioner ought to have been left unturned, to find out by reasonable standards, if the two were married. We have only noticed that there is evidence worth consideration, which has hardly been examined. It now ought to be examined very carefully and a

fresh decision taken in the matter with opportunity to the petitioner to produce such further evidence as she desires.

17. In the circumstances, this petition succeeds and is **allowed in part**. The impugned order dated 02.08.2022 passed by the Director (PM & Admin.), U.P. Power Corporation Limited, Lucknow is hereby **quashed**. A *mandamus* is issued to the Director aforesaid to consider the petitioner's case afresh, granting her opportunity to produce such further evidence as she desires. Fresh orders in the matter shall be passed within a period of two months of receipt of a copy of this order, bearing in mind the guidance in this judgment.

18. There shall be no order as to costs.

19. Let a copy of this order be communicated to the Director (PM & Admin.), U.P. Power Corporation Limited, Lucknow by the Registrar (Compliance).

Order Date :- 8.12.2023

Anoop/ Deepak

(J.J. Munir, J.)