

Court No. - 35

Case :- WRIT - A No. - 15007 of 2023

Petitioner :- Krishna Kumar Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Brahma Nand Tripathi, Ravindra Kumar Dubey

Counsel for Respondent :- CSC

Hon'ble Vikas Budhwar, J.

1. Heard Sri Brahmanand Tripathi, learned counsel for the writ petitioner as well as Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel who appears for the respondents no. 1 to 5. Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel submits that he is armed with complete instructions and he does not proposed to file any response in the view of the nature of the order which is being proposed to be passed.

2. With the consent of the parties, the writ petition is being decided at the fresh stage.

3. The case of the writ petitioner is that his father namely Ishwar Prasad Yadav who was working as an Assistant Teacher in Shree Anant Intermediate College, Satraon, Deoria, died in harness on 21.3.2018. Post death the mother of the writ petitioner, Smt. Malti Devi was made entitled to the family pension since 21.3.1998 to 31.12.2009. She expired on 30.12.2009.

4. In para 7 of the writ petition, the writ petitioner asserts that his brother Sri Shiv Kumar Yadav was also made entitled to the family pension at the age of attaining 25 years and he was accorded pension till 30.6.2017 and the writ petitioner thereafter preferred an application for granting family pension owing to the fact that he has 55% locomotive disability with right thumb 15% and low vision both eyes 40%. He seeks to rely upon the certificate issued by the Medical Authority, Deoria, Uttar Pradesh. According to the writ petitioner, though he is entitled for the said benefit. However, on 14.6.2022, an order has been passed whereby the writ petitioner claims for being accorded family pension has been negated by Deputy Director of Education, Madhyamik, 7th region Gorakhpur.

5. Questioning the order dated 14.6.2022, the writ petitioner has

preferred present petition. This court entertained the writ petition on 6.9.2023 while passing the following orders:-

"Learned counsel for the writ petitioner has argued that the writ petitioner's father namely Late Ishwar Prasad Yadav was working as an Assistant Teacher in Shree Anant Intermediate College Satraon Deoria who died in harness on 21.3.2018 (the petitioner claims that the date of the death is 21.3.1998 however it has been wrongly typed as 21.3.2018).

As per the writ petitioner consequent to the death of his father his mother namely Malti Devi was made admissible to family pension from 21.3.1998 to 31.12.2009 and she expired on 30.12.2009. After the death of the mother of the writ petitioner, the petitioner's brother Shiv Kumar Yadav was further made admissible to family pension till the attaining of the age of 25 years. He as per the writ petitioner was paid pension till 30.6.2017.

The writ petitioner claims to be a disabled person with 55% disability, locomotive disability about right thumb 15% and low vision both the eyes 40%. In order to buttress his claim to be under the physically handicapped category relevant development has been made in para 9 of the writ petition and document to the said extent has been annexed as annexure-6 at page 32 of the paper book.

Pleadings further reveal that the petitioner stake his claim for being granted family pension and the Principal of the institution in question Shree Anant Intermediate College Satraon Deoria after completing the formalities and getting the certified from District Inspector of Schools, Deoria certifying that the writ petitioner suffers from physical disability the matter was sent before the respondents.

According to the writ petitioner the District Inspector of Schools, Deoria on 28.2.2021 made a communication before the Deputy Director of Education, Madhyamik, Gorakhpur Division, Gorakhpur recommending the case of the writ petitioner however the claim of the writ petitioner was not being accorded consideration on merit in view of the Government Order dated 12.11.1997.

According to the writ petitioner on 20.5.2022 a recommendation has been made by the District Inspector of Schools, Deoria to the Deputy Director of Education, Madhyamik, Gorakhpur Division, Gorakhpur siding the case within the ambit of 1997 Government Order however the same as per the writ petitioner has been rejected on 14.6.2022.

Learned counsel for the petitioner has invited the attention of the Court towards the Government Order dated 12.11.1997 so as to contend that the Government Order dated 6.8.1981 has undergone amendment as now that disability attached during the course of the employment of the deceased who was working by the dependent also stands covered.

Sri Dharendra Singh, learned Standing Counsel seeks time to obtain instructions.

Put up this case as a fresh case on 19.9.2023."

6. Thereafter the matter was taken up on 27.9.2023 wherein the following orders were passed:-

"This Court on 06.09.23 proceeded to pass the following order:-

"Learned counsel for the writ petitioner has argued that the writ petitioner's father namely Late Ishwar Prasad Yadav was working as an Assistant Teacher in Shree Anant Intermediate College Satraon Deoria who died in harness on 21.3.2018 (the petitioner claims that the date of the death is 21.3.1998 however it has been wrongly typed as 21.3.2018).

As per the writ petitioner consequent to the death of his father his mother namely Malti Devi was made admissible to family pension from 21.3.1998 to 31.12.2009 and she expired on 30.12.2009. After the death of the mother of the writ petitioner, the petitioner's brother Shiv Kumar Yadav was further made admissible to family pension till the attaining of the age of 25 years. He as per the writ petitioner was paid pension till 30.6.2017.

The writ petitioner claims to be a disabled person with 55% disability, locomotive disability about right thumb 15% and low vision both the eyes 40%. In order to buttress his claim to be under the physically handicapped category relevant development has been made in para 9 of the writ petition and document to the said extent has been annexed as annexure-6 at page 32 of the paper book.

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Learned counsel for the petitioner has invited the attention of the Court towards the Government Order dated 12.11.1997 so as to contend that the Government Order dated 6.8.1981 has undergone amendment as now that disability attached during the course of the employment of the deceased who was working by the dependent also stands covered.

Sri Dhirendra Singh, learned Standing Counsel seeks time to obtain instructions.

Put up this case as a fresh case on 19.9.2023."

Today, instructions have been produced under the signature of District Inspector of Schools, Deoria dated 15.09.2023. Sri A.K. Shukla, learned Standing Counsel while relying upon the Government Order dated 12.11.1997 which has been appended at page 29 of the paper book has sought to contend that the Government Order dated 12.11.1997 stood modified/clarified on 25.01.2016 according to which the dependant who is handicapped would get the benefit of family pension provided the disability got reflected prior to the death of the person against whom in lieu thereof the family pension is being sought to be claimed.

Sri Brahmanand Tripathi, learned counsel for the writ petitioner has made a statement on the basis of the averment that the disability was by birth and according to him, the matter be referred to the medical board in order to verify the said fact as to whether the disability occurred by birth or not or prior to the death of the deceased.

Sri H.K. Shukla, learned Standing Counsel seeks further time to obtain instructions.

Put up this case on 05.10.2023 as fresh.

The instructions filed today are kept on record and marked as Appendix 'A'."

7. The Instructions under the signature of the District Inspector of Schools, Deoria dated 15.9.2023 was produced before this court relying upon the provisions contained under the government order dated 12.11.1997. Yesterday, when the matter was taken up this court proceeded to pass the following order:-

"Today, when the matter has been taken up, learned counsel for the writ petitioner submits that the writ petitioner appeared before the Medical Board constituted by the respondents. However, he is not aware of the fact as to what was the final outcome of the same.

Sri H.K. Shukla, learned Standing Counsel seeks time to obtain instructions.

Put up tomorrow at 02:00 P.M."

8. Today, Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel has produced before this court the instructions under the signature of District Inspector of Schools, Deoria dated 4.10.2023, according to which, the writ petitioner was subjected to the medical board, wherein it was found that the writ petitioner is physically disabled since birth, however, he is in a position to sustain himself. Learned counsel for the writ petitioner submits

that earlier the ground on which the claim of the writ petitioner was negated was with regard to the fact that writ petitioner was not entitled to family pension since the disability stood occurred subsequent to death of the deceased, however, he submits that once there is a report of the medical board that too tilting in favour of the writ petitioner providing that the disability of the petitioner is prior to death of the deceased then he is entitled to the benefits with relation to the government order dated 16.11.1997. He submits that the order be set aside and the matter be remitted back.

9. Sri Pradeep Kumar Sahi, learned Additional Chief Standing Counsel, on the other hand submits that since certain subsequent developments have cropped up which needs determination afresh by the authority, thus, according to him the order impugned be set aside and matter be remitted back to the authority to pass a fresh order giving an opportunity to the writ petitioner to put forward his say.

10. To such a submission learned counsel for the petitioner has no objection and he gracefully accepts the same.

11. Considering the rival submissions of the parties as well as stand taken by them in particular, the subsequent developments which have occasioned, the matter needs reconsideration.

12. Accordingly, the order dated 14.06.2022 passed by Deputy Direction of Education, 7th Region, Gorakhpur, respondent no. 2, is set aside. The matter stands remitted back to the decide afresh strictly in accordance with law within a period of six weeks from the date of production of certified copy of this order, after putting the writ petitioner to notice.

13. Needless to point out that the said exercise shall be done strictly in accordance with law, government order, statutory schemes. Passing of the order may not be construed to an expression that this court has gone into the merits of the case.

14. Instructions filed today are taken on record and marked as appendix A.

Order Date :- 13.10.2023

S.A.