

Court No. - 36

Case :- WRIT - A No. - 15428 of 2023

Petitioner :- Kshama Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Atul Pandey, Dewarshi Kumar Rai

Counsel for Respondent :- C.S.C., Kushmondeya Shahi

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondent No. 1 and Sri Kushmondeya Shahi, learned counsel appearing for the Respondents No. 2 to 4 .

2. Facts of the case, in brief, are that husband of the petitioner Sri Sanjay Kumar Pandey, who was working on the post of Assistant Teacher in Senior Basic School, Bahraicha, District Prayagraj is missing since 16.10.2018. Petitioner has lodged a missing report on 16.10.2018 in Police Station Kydganj, District Prayagraj.

3. Learned counsel appearing for the petitioner has submitted that husband of the petitioner is missing since 16.10.2018 and, therefore, his death should be presumed and petitioner should be given death-cum-post retiral dues in terms of the provisions made in the Government order dated 20.03.1987.

4. Learned counsel appearing for the petitioner has also invited attention of this court towards the various representations submitted by the petitioner whereby she has requested the District Basic Education Officer, Prayagraj to pay death-cum-post retiral benefits as her husband is missing since 16.10.2018.

5. I have considered the provisions made in the Government orders dated 20.03.1987 and 13.4.2017, wherein, it has been categorically provided that if a report has been lodged with the police in respect of missing of a government servant and thereafter police has given report that inspite of its best efforts, whereabouts of the missing government servant could not be traced out then after six months from the date of missing of the said government servant, death-cum-post retiral dues can be released in favour of the legal heirs of the missing government servant.

6. For ready reference, clause-4 of the Government order dated 13.4.2017 is extracted as under:-

" 4- इस संबंध में मुझे यह कहने का निदेश हुआ है कि प्रकरण पर सम्यक विचारोंपरान्त राज्य सरकार द्वारा यह निर्णय लिया गया है कि यदि कोई सरकारी सेवक / पेंशनर / पारिवारिक पेंशनर लापता हो जाता है तो उसके लापता होने की रिपोर्ट उसके परिवार द्वारा पुलिस में दिये जाने तथा पुलिस से यह रिपोर्ट प्राप्त होने पर कि समस्त प्रयासों के उपरान्त भी लापता सरकारी सेवक / पेंशनर / पारिवारिक पेंशनर का पता नहीं चल सका, पुलिस में रिपोर्ट दर्ज कराने की छः माह की अवधि के उपरान्त , उसके अवशेष वेतन / पारिवारिक पेंशन / ग्रेच्युटी / अवकाश नकदीकरण का भुगतान शासनादेश दिनांक 20 मार्च, 1987 के प्रस्तर -2 में उल्लेखित औपचारिकताओं को पूर्ण करने पर किया जा सकता है"

7. This court while noting down the provisions of the aforesaid Government orders dated 20.3.1987 and 13.4.2017 directed the learned Standing Counsel to take instructions from the Commissioner of Police, Prayagraj about the status of the investigation regarding petitioner's husband. Commissioner of Police in his letter dated 16.11.2023 addressed to the learned Chief Standing Counsel, High Court, Allahabad has categorically stated that since 16.10.2018 police has continuously made efforts to trace the whereabouts of the petitioner's husband but till date he could not be traced out. Relevant portion of the letter dated 16.11.2023 is extracted as under:-

"उल्लेखनीय है कि उक्त गुमशुदा व्यक्ति के तलाश के क्रम में स्थानीय थाना पुलिस द्वारा सभी सम्भव सार्थक प्रयास किये जाने के बाद भी उक्त गुमशुदा व्यक्ति के सम्बन्ध में अब तक की पुलिस जांच से कोई लाभप्रद जानकारी प्रकाश में नहीं आई और न ही उक्त गुमशुदा व्यक्ति को दिनांक 16.10.2018 से अब तक गुमशुदा के किसी परिजन अथवा किसी परिचित ने कही न देखा है और न ही कही गुमशुदा को सुना। उक्त गुमशुदा व्यक्ति के मृत्यु का कोई साक्ष्य पुलिस जांच से अब तक उपलब्ध नहीं है। प्रकरण में उक्त गुमशुदा की तलाश के क्रम में पुलिस उपायुक्त नगर, कमिश्नरेट प्रयागराज द्वारा अपने आदेश पत्र संख्या - वाचक/डीसीपी - नगर - (टीम गठन संजय कुमार पाण्डेय)/2023, दिनांक 15.11.2023 (छायाप्रति संलग्न) के माध्यम से एक टीम गठित किया गया तथा गठित टीम को गुमशुदा की बरामदगी हेतु संगत निर्देश निर्गत किये गये हैं।"

8. On the other hand, learned Chief Standing Counsel as well as Sri Kushmondeya Shahi, learned counsel appearing for the Respondents No. 2 to 4 has submitted that since Commissioner of Police, Prayagraj has provided instructions to this court vide letter

dated 16.11.2023, therefore, it would be in the fitness of things if a direction is issued by this court to District Basic Education Officer, Prayagraj to consider the case of the petitioner and to pass appropriate order in terms of the provisions contained in the Government orders dated 20.3.1987 and 13.4.2017 and the instructions provided by the Commissioner of Police, Prayagraj to learned Chief Standing Counsel, High Court, Allahabad vide his letter dated 16.11.2023.

9. In view of the aforesaid submissions advanced by the learned counsels appearing for the parties, this writ petition is finally disposed of with a direction to Respondent No. 2 to consider the case of the petitioner for release of death-cum-post retiral dues of the husband of the petitioner and to pass appropriate order as per provisions made in Government orders dated 20.3.1987 and 13.4.2017 and letter dated 16.11.2023 written by the Commissioner of Police, Prayagraj to learned Chief Standing Counsel Allahabad. Respondent No. 2 shall pass the order within two months from the date of service of copy of this order.

Order Date :- 17.11.2023

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