

Court No. - 35

Case :- WRIT - A No. - 16477 of 2023

Petitioner :- Ranjita Tiwari

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

Counsel for Petitioner :- Arti Raje

Counsel for Respondent :- C.S.C.

Hon'ble Vikas Budhwar,J.

Heard Ms.Arti Raje, learned counsel for the petitioner and Sri Saurabh learned Standing Counsel, who appears for respondents 1 and 2 .

In view of the order, which is being proposed to be passed today, notices are not being issued to the third and fourth respondents.

The case of the writ petitioner is that father of the writ petitioner namely Late Tribhuvan Nath Dixit who was working as Class-IV employee since 1998 in the third respondent institution Kidwai Nagar Inter College, Kidwai Nagar, Kanpur expired on 3.5.2021.

As per the writ petitioner her mother expired prior to the death of the father and her father left behind one son namely Mukesh Kumar Dixit and the writ petitioner. The writ petitioner stakes her claim for being accorded compassionate appointment and when the same was not processed she preferred Writ-A No.4323 of 2023 which came to be disposed of on 28.3.2022 requiring the respondents to consider the claim of the writ petitioner.

However, now the claim of the writ petitioner has been negated by the District Inspector of Schools, Kanpur, District Kanpur, second respondent.

Questioning the order dated 23.8.2023 of the District Inspector of Schools, Kanpur, District Kanpur the writ petitioner is filed the present writ petition.

Ms. Arti Raje, learned counsel for the writ petitioner submits that the claim set up by the writ petitioner ought not to have been rejected on the premise that on the death of the father the writ petitioner was a married woman as the said ground is no more available particularly in view of the law laid down in the case of

Smt. Vimla Srivastava vs. State of U.P., 2016 (1) ADJ 21 wherein the provisions of the U.P. Recruitment of Dependants of Government Servant Dying in Harness Rules, 1974 (In short 1974 Rules) was read down in so far as it seek to create a classification/distinction between the married and unmarried daughter. According to the learned counsel for the writ petitioner post decision in the said case the matter traveled to Supreme Court and the said view was affirmed and thereafter amendments have been made in the Rule in question. It is the further case of the writ petitioner that even as per the provisions contained under Chapter-III, Regulations 101 to 107 of the U.P. Intermediate Education Act, 1921 by virtue of notification dated 24.11.2022 now married daughter has also been made entitled for compassionate appointment. She further submits that the issue in question needs determination on the said aspect of the matter. According to her the order be set aside and the matter be remitted back.

Sri Saurabh learned Standing Counsel who appears for the Official State respondents submits that crucial question arises as to whether on the date of the death of the writ petitioner there was any rule empowering the authorities to consider the case of the writ petitioner and according to him these aspects of the matter also reconsideration by the District Inspector of Schools, Kanpur, District Kanpur.

To such a submission, learned counsel for the petitioner seeks to rely upon that decision in **Special Appeal No.126 of 2023 (State of U.P. vs. Himanshu Yadav)** decided on 7.7.2023 so as to contend that a conscious decision is to be taken as to whether which of the Rules either prevalent at the time of the death of the deceased on at the time of the consideration is to be seen while considering the claim of the writ petitioner.

Sri Saurabh, learned Standing Counsel submits that the order be set aside and the matter be remitted back for passing a fresh order strictly in accordance with law after hearing the third and the fourth respondent. He further submits that he does not propose to file any response to the writ petition.

Considering the submissions of the rival parties as well as stand taken by them, the writ petition is being disposed off in the following matter (a) the order dated 23.8.2023 passed by the second respondent, District Inspector of Schools, Kanpur, District Kanpur (b) matter stands remitted to the second respondent to decide the matter afresh after putting to notice the third and fourth respondent bearing in mind eligibility, suitability of the writ

petitioner, applicability of the Rules as well as the import and the impact of the notification dated 24.11.2022 decision in the case of **Vimla Srivastava(Supra)** as well as **Himanshu Yadav (Supra)** within a period of two months from the date of production of the certified copy of this order.

Needless to point out that the writ petition has been decided without seeking any response from the respondents. Thus, passing of this order may not be construed to an expression that this Court has gone into the merits of the case.

With the aforesaid observation, the writ petition is **disposed off**.

Order Date :- 17.10.2023

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