

**Court No. - 35**

**Case :-** WRIT - A No. - 16349 of 2023

**Petitioner :-** Smt. Kamana Pandey

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

**Counsel for Petitioner :-** Onkar Nath Mishra

**Counsel for Respondent :-** C.S.C.

**Hon'ble Vikas Budhwar,J.**

1. Heard Sri Onkar Nath Mishra, learned counsel for the writ petitioner as well as Sri Ratan Deep Mishra, learned Standing Counsel, who appears for the respondent nos.1 to 5.

2. The case of the writ petitioner is that her husband, namely, Late Naveen Prakash Pandey, who was appointed as an Assistant Teacher on 12.07.2012 in Janta Sanskrit Vidyalaya, Noorpur, Saraihaji Mubarakpur, District – Azamgarh after completing 28 years of service expired on 05.06.2021. Since, the death-cum-retiral gratuity was not being paid to the writ petitioner, so the writ petitioner preferred Writ - A No. 18989 of 2022 (Smt. Kamana Pandey vs. State of U.P. and others), in which on 21.11.2022, the following the orders have been passed :-

"1. Solitary grievance of the petitioner appears to be non-payment of death gratuity payable to her arising from the death of her husband Sri Naveen Prakash Pandey, who died in harness on 05.06.2021 while working on the post of Assistant Teacher at Janta Sanskrit Vidhyalaya, Noorpur Saraihaji, Mubarakpur, Azamgarh.

2. In the above regard, the claim is to be dealt with and decided by respondent no.5. In absence of any decision by that authority, no useful purpose may be served in keeping the present petition pending or calling for a counter affidavit, at this stage.

3. Accordingly, present writ petition is disposed of with a direction, in case the petitioner files proper claim before

respondent no.5 within a period of two weeks from today supported by her personal affidavit annexing thereto all relevant documents as she may seek to rely, that claim may be decided on its own merit, as expeditiously as possible, preferably within a period of three months from the date of compliance shown by the petitioner.

4. Any amount found admittedly payable, be paid out to the petitioner within a further period of one month therefrom together with due interest."

3. Post remand on 09.08.2023, the fifth respondent, Deputy Director, Sanskrit, Uttar Pradesh has proceeded to pass the order dated 09.08.2023 negating the claim of the writ petitioner, fifth respondent.

4. Questioning the said order, the writ petitioner has filed the present writ petition.

5. This Court entertained the writ petition on 13.10.2023, while passing the following order :-

"The contention of learned counsel for the writ petitioner, while assailing the order dated 09.08.2023, passed by the Deputy Director of Education (Sanskrit), Uttar Pradesh, Prayagraj is that though the claim of the writ petitioner for grant of gratuity has been denied on the ground that the deceased only had served the institution as a teacher for six years, thus he has not been covered under the Government Order, dated 15.10.2020. However, the said ground is not available in view of the provisions contained under the Rules of the Uttar Pradesh Schools and Colleges, Teachers Gratuity Fund, according to which, only three years of service is required.

Sri Saurabh, learned Standing Counsel seeks time to obtain instructions.

Put up this case as a fresh case on 18.10.2023, at 02:00 p.m."

6. Thereafter, on 27.10.2023, this Court proceeded to pass the following orders :-

"On the request of Shri Shailendra Singh, learned Standing Counsel for the official respondents, put up this matter as fresh tomorrow i.e. on 28.10.2023 at 2.00 pm."

7. Today, Sri Ratan Deep Mishra, learned Standing Counsel, who appears for the respondents have produced before this Court the instructions under the signature of the fifth respondent, Deputy Director, Sanskrit, Uttar Pradesh Prayagraj, wherein a stand has been taken that the fifth respondent had no authority to pass the said order, as the orders is to be passed by the third respondent, Deputy Director (Secondary Education) Region, Azamgarh.

8. Since, a stand has been taken in the instructions itself, thus the order dated 09.08.2023 is set aside, the matter stands remitted back to the third respondent, Deputy Director (Secondary Education) Region, Azamgarh to pass fresh orders strictly in accordance with law after putting to notice the writ petitioner as well as the institution where at the writ petitioner claimed to be posted and to pass appropriate orders within a period of two months from the date of the production of the certified copy of the order.

9. The passing of the order may not be construed to be an expression that this Court has adjudicated upon the merits of the matter, as the order has been set aside on the ground of jurisdiction and authority and the third respondent shall pass an order strictly in accordance with law with independent application of mind.

10. With the aforesaid observations, the writ petition stands **disposed of**.

11. The instructions filed today is taken on record and marked as Appendix 'A'.

**Order Date :- 28.10.2023**

S Rawat