

Court No. - 36

Case :- WRIT - A No. - 17234 of 2023

Petitioner :- Husntara

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

Counsel for Petitioner :- Alok Kumar Yadav, Shailendra Yadav

Counsel for Respondent :- C.S.C, Ashish Kumar (Nagvanshi)

Hon'ble Manjive Shukla, J.

1. Heard learned counsel appearing for the petitioner, learned Standing Counsel appearing for the Respondent No. 1 and Mr. Ashish Kumar Nagvanshi, learned counsel appearing for the Respondents No. 2, 3 & 4.

2. Petitioner through this writ petition has challenged the order dated 12.09.2023 passed by the District Basic Education Officer, Deoria whereby petitioner's claim for death cum post retiral dues of her husband has been rejected on the ground that marks shown in the mark sheet of B.T.C. Examination submitted by petitioner's husband at the time of his initial appointment are different to that of the marks shown in the mark sheet issued by the Government Junior Training College, Agra.

3. Facts of the case, in brief, are that husband of the petitioner was appointed on the post of Assistant Teacher on 14.02.1997 in a Primary School at district Siddharth Nagar. Husband of the petitioner continued to work on his post and also received salary from the State exchequer. Husband of the petitioner was transferred to district Deoria on 23.06.2001 and unfortunately he died on 22.03.2021.

4. Petitioner raised her claim for payment of death cum post retiral dues of her deceased husband but since nothing was done on the part of the respondents, she filed Writ-A No. 15619 of 2022 which was finally disposed of vide order dated 28.09.2022 with a direction to consider and decide petitioner's representation. In compliance of the order dated 28.09.2022 passed in Writ-A No. 15619 of 2022 District Basic Education Officer, Deoria has passed order on 12.09.2023 which has been impugned in this writ petition.

5. Learned counsel appearing for the petitioner has submitted that District Basic Education Officer has rejected the claim of the petitioner for payment of death cum post retiral dues of her

husband on the ground that the marks entered in the mark sheet of B.T.C. examination which was filed by the petitioner's husband at the time of his initial appointment are different to that of the marks entered in his actual mark sheet.

6. Learned counsel appearing for the petitioner has vehemently argued that in the year 1990 mark sheets of the B.T.C. Examination were being prepared manually and therefore, there may be some manual mistake while entering the marks in the B.T.C. mark sheet but the fact remains that husband of the petitioner has passed out B.T.C. Examination in the year 1990 and selection on the post of Assistant Teacher in the year 1997 has only been made on the basis of B.T.C. certificate. Learned counsel appearing for the petitioner has also argued that at the time of selection and appointment of the husband of the petitioner marks obtained in the B.T.C. Examination were not at all criteria for selection and appointment on the post of Assistant Teacher, therefore, by no stretch of imagination, it can be presumed that petitioner's husband with any ill intention created a forged mark sheet and used it for his appointment.

7. Learned counsel appearing for the petitioner has also emphatically argued that in no way forgery can be attributed to the husband of the petitioner, as it is admitted fact in between the parties that by putting different marks in the mark sheet of the B.T.C. husband of the petitioner could not have got any benefit as his selection was made only on the basis of he having passed out B.T.C. Examination.

8. Learned counsel appearing for the petitioner has thus concluded his arguments by submitting that once husband of the petitioner has rendered his services with the respondents from 1997 to 2021 and there could not have been any benefit to petitioner's husband by creating a mark sheet with different marks at the time of his initial appointment, then it is quite apparent that there was some manual mistake in preparing the mark sheet and therefore, the said ground for withholding death cum post retiral dues of the husband of the petitioner is absolutely unsustainable in the eyes of law.

9. Counter affidavit has been filed in this matter on behalf of Respondents No. 2 & 3. This court after hearing parties counsels passed a detailed order on 17.11.2023 whereby learned Additional Chief Standing Counsel was directed to take instructions as to whether husband of the petitioner has actually passed out B.T.C. Examination in the year 1990 or not. For ready reference order dated 17.11.2023 is extracted as under :-

"1. Heard learned counsel appearing for the petitioner, learned Standing

Counsel appearing for the Respondent No. 1 and Sri Ashish Kumar Nagvanshi, learned counsel appearing for the Respondents No. 2, 3 and 4.

2. Counter-Affidavit has been filed by the District Basic Education Officer, Deoria wherein it has been stated that there is difference of marks in B.T.C. Marksheet of the husband of the petitioner and therefore, petitioner is not entitled for death-cum-retiral benefits of her husband.

3. This court finds that appointment of husband of the petitioner was made on 14.02.1997 on the post of Assistant Teacher and at that point of time, only requirement was that a candidate must have passed out BTC Examination. There is no document annexed with the Counter-Affidavit to show that husband of the petitioner did not pass the BTC examination prior to his appointment on the post of Assistant Teacher.

4. Sri Ashish Kumar Nagvanshi, learned counsel appearing for the District Basic Education Officer, Deoria has submitted that this court may direct learned Additional Chief Standing Counsel appearing for the Government of U.P. to take categorical instructions from Examination Regulatory Authority, Prayagraj in respect of the fact as to whether husband of the petitioner has passed out BTC Examination prior to his appointment on the post of Assistant Teacher or not.

5. In view of the aforesaid, let learned Additional Chief Standing Counsel appearing for the State of U.P. take categorical instructions in the matter within three days from today.

6. Put up this case on 23.11.2023 as fresh."

10. Learned Additional Chief Standing Counsel on the basis of instructions received from Secretary, Examination Regulatory Authority, U.P. Prayagraj vide his letter dated 30.11.2023 has submitted that husband of the petitioner has passed out B.T.C. Examination in the year 1990 but there is difference of marks in the actual mark sheet and the mark sheet filed by him at the time of his initial appointment.

11. Mr. Ashish Kumar Nagvanshi, learned counsel appearing for the Respondents No. 2, 3 & 4 has argued that once it is established that marks in the B.T.C. mark sheet submitted by the husband of the petitioner at the time of his initial appointment are different to that of the marks entered in his actual mark sheet then it is apparent that petitioner's husband has committed forgery and therefore, respondents are perfectly justified in not releasing his death cum post retiral benefits in favour of the petitioner.

12. I have considered rival submissions advanced by the learned counsels appearing for the parties, and I find that appointment of petitioner's husband was made in the year 1997 and at that point of time criteria for selection and appointment was only that a candidate must have passed out B.T.C. Examination. Selection of the petitioner's husband was not dependent on the

marks obtained by him in his B.T.C. Examination.

13. This court is of the view that once selection of petitioner's husband was not dependent on the marks obtained by him in the B.T.C Examination and was only based on whether he has passed out B.T.C. Examination or not, there was no occasion for the husband of the petitioner to commit forgery and to prepare a forged mark sheet. This court also finds that in the year 1990 since the mark sheets of the B.T.C. Examination were being prepared manually, therefore, there may be possibility that the person deputed for preparation of the mark sheets might have committed some mistake and would have entered incorrect marks in mark sheet of the petitioner's husband but fact remains that by increasing marks in the B.T.C. mark sheet husband of the petitioner would not have obtained any undue benefit as his selection was not dependent on the marks obtained in the B.T.C. Examination and since it is admitted case of the parties that he has passed out B.T.C. Examination in the year 1990, therefore, allegation of forgery can very easily be ruled out.

13. This court further finds that husband of the petitioner has severed the respondents as Assistant Teacher from 1997 to 2021 i.e. for about 24 years and during said period no action was taken against him, therefore, after his death, death cum post retiral dues can not be withheld. Even if the charge levelled against the husband of the petitioner is taken to be true on its face value that can not be a ground for denying the death cum post retiral dues as it is admitted fact between the learned counsels appearing for the parties that by changing marks in the mark sheet husband of the petitioner could not have get any benefit as the criteria for selection for appointment on the post of Assistant Teacher was not the marks obtained in the B.T.C. Examination.

14. In view of the aforesaid reasons, this writ petition is **allowed**. Order dated 12.09.2023 is quashed. District Basic Education Officer, Deoria and Finance and Accounts Officer, Basic Education, Deoria are directed to release all the death cum post retiral dues admissible to petitioner's husband in favour of the petitioner within a period of two months from the date of service of certified copy of this order.

Order Date :- 1.12.2023

Gaurav