

Court No. - 36

Case :- WRIT - A No. - 19058 of 2023

Petitioner :- Smt. Quamar Jahan

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

Counsel for Petitioner :- Mohd. Ishraque Farooqui

Counsel for Respondent :- C.S.C.,Rajesh Khare

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing for the petitioner, Sri Suresh Srivastava, learned Standing Counsel appearing for the Respondent No.1 as well as Sri Rajesh Khare, learned counsel appearing for the Respondents No.2, 3 and 4.

2. Petitioner through this writ petition has prayed for the following relief:-

"i. Issue a writ, order or direction in the nature of mandamus commanding the Respondent No.2 to pay the half share in pension and other consequential benefit of her husband namely Mahmood Ahmad being her first legally wedded wife."

3. Petitioner in her writ petition has stated that she is legally wedded wife of Sri Mahmood Ahmad Khan, who has retired from the post of Assistant Teacher of Purv Madhyamik Vidyalaya, Fatehganj (Composite Naraini), District Banda. Learned counsel appearing for the petitioner has submitted that husband of the petitioner Sri Mahmood Ahmad Khan, after retirement from the post of Assistant Teacher, is receiving pension and therefore, direction be issued to the authorities to provide half share of pension of Sri Mahmood Ahmad Khan to the petitioner for the reason that she is his legally wedded wife.

4. On the other hand, Sri Suresh Srivastava, learned Standing Counsel appearing for the Respondent No.1 as well as Sri Rajesh Khare, learned counsel appearing for the Respondents No.2, 3 and 4 have submitted that writ petition filed by the petitioner is liable to be dismissed as Sri Mahmood Ahmad Khan is alive and is receiving pension in the capacity of a retired Assistant Teacher and this court can not issue any direction for paying half share of the said pension to the petitioner. It has further been argued that if petitioner has any claim in respect of her maintenance from the petitioner, she can avail remedies available to her but in this writ petition direction for providing half share of pension of Sri

Mahmood Ahmad Khan to the petitioner cannot be issued.

5. I have considered the submissions advanced by the learned counsels appearing for the parties and I find that Sri Mahmood Ahmad Khan is a retired Assistant Teacher and is receiving pension from the government. Petitioner's claim for half share of pension of Sri Mamood Ahmad Khan in this writ petition is absolutely misconceived as pension is absolute right of the retired employee and therefore, no direction can be issued by this court to provide half share of pension to the petitioner on the ground that she is legally wedded wife of Sri Mahmood Ahmad Khan.

6. In view of the aforesaid reasons, this writ petition is dismissed.

7. It is made clear that if petitioner has any remedy for getting some amount from her husband as maintenance, then it is always open to her to avail such remedy available under the law.

Order Date :- 23.11.2023

Salim