

Court No. - 20

Case :- WRIT - A No. - 127 of 2022

Petitioner :- Kamlesh Mathur

Respondent :- State Of U.P Thru. Addl. Chief Secy. Irrigation And Water Resources And 5 Others

Counsel for Petitioner :- Ripu Daman Shahi, Mohd. Hayan Hasan

Counsel for Respondent :- C.S.C.

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner and learned State counsel appearing on behalf of opposite parties no.1 to 4.

2. In view of order being proposed to be passed, notices to opposite parties no.5 and 6 stand dispensed with.

3. Petition has been filed challenging order dated 25.10.2021 so far as it relates to denial of petitioner's claim for post retiral benefits accruing to late Mahesh Chandra Mathur.

4. It has been submitted that earlier petitioner was married to one Phool Chandra Kannaujia from whom she was divorced and subsequently married late Mahesh Chandra Mathur with such marriage being solemnized on 10.02.2008. It is submitted that it is an admitted position that the first wife of deceased Smt. Krishna Kumari had pre-deceased late Mahesh Chandra Mathur and therefore petitioner's marriage to the deceased was perfectly valid and in accordance with norms and provisions.

5. It is submitted that the impugned order has rejected petitioner's claim only on the ground that she was unable to submit the divorce decree with regard to her first marriage but has completely ignored the aspect that the deceased has clearly named the petitioner as a nominee in his service records and therefore petitioner would be entitled to claim benefits accruing to the deceased. It is submitted that petitioner was also claiming under the registered will deed dated 21.09.2017 and therefore also was entitled for the aforesaid benefits since there was no dispute with regard to aforesaid will.

6. Learned counsel has adverted to Rule 4 of the General Provident Fund (Uttar Pradesh) Rules 1985 as well as the Government Order dated 02.11.1980 to buttress his claim with regard to the benefits.

7. Mr. Diwakar Singh, learned State Counsel appearing on behalf of opposite parties has refuted submissions advanced by

learned counsel for petitioner with the submission that it would be evident from a perusal of impugned order that the petitioner has clearly admitted being married previously to one Mr. Phool Chandra Kannaujia and has although claimed divorce from him prior to her alleged marriage to deceased but was unable to produce any evidence regarding such divorce. It is also submitted that the order also indicates that petitioner was also unable to produce any evidence or certificate regarding her marriage to deceased.

8. Learned counsel has also adverted to U. P. Retirement Benefits Rules, 1961 as well as the General Provident Fund (U.P.) Rules 1985 to submit that as per aforesaid Rules, nomination can be made only in favour of family members, a term which has been defined in Rule 2 (c) of the Rule of 1985 and includes only spouse or children of deceased.

9. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that petitioner has admitted being previously married to Mr. Phool Chandra Kannaujia and has although claimed divorce from the said person as per customary practice but it has been clearly adverted in the impugned order that petitioner was unable to produce any documentary or oral evidence to substantiate such a claim. This Court has also examined the reasoning in the impugned order with regard to same and cannot find any exception to the said finding recorded in the impugned order.

10. It is also evident from a perusal of impugned order that with regard to claim of petitioner in pursuance of the registered will deed, liberty has been granted to petitioner to produce a succession certificate with regard to her claim whereafter it can be processed.

11. Considering the aforesaid facts and particularly the fact that no evidence was produced regarding petitioner's first marriage having been terminated as is also admitted in the letter dated 23.06.2021 submitted by her son, it cannot be said at this stage that petitioner's marriage to deceased could be valid in accordance with law.

12. To that extent, this Court does not find any exception in the finding recorded in the impugned order.

13. Since petitioner has also claimed benefits in accordance with registered will deed, a liberty has already been granted to her to produce a succession certificate. This liberty also cannot be found faulty by this Court particularly in view of Rule 6 of

the U.P. Retirement Benefits Rules 1961 read with Rule 2 (c) (i) of the Rules 1985 in which the definition of family has been defined as in the case of a male subscriber, the wife or wives and children of a subscriber and the widow or widows and a children of deceased son of the subscriber.

14. Since the aforesaid definition is clearly plural, the petitioner may be covered by the aforesaid definition but subject to grant of succession.

15. In view of the aforesaid, this court does not find any occasion to interfere with the impugned order dated 25.10.2021 although liberty is granted to petitioner pursue her claim in case succession is granted in her favour as has already been indicated in the impugned order.

16. In view of said directions, petition stands **disposed of**.

Order Date :- 11.10.2023

Subodh/-