

Court No. - 8

Case :- WRIT - A No. - 3175 of 2022

Petitioner :- Namrata Verma And 2 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Home Deptt. Govt. Of Up Lko. And Others

Counsel for Petitioner :- Yadukul Shiromani Srivastava (Y.S.Lohit),Ankit Kumar Chaudhary,Deepthi Singh

Counsel for Respondent :- C.S.C.,Anurag Narain Srivastava

Hon'ble Dinesh Kumar Singh,J.

1. Heard Sri Y.S. Lohit, learned counsel for the petitioners as well as Sri Shailendra Kumar Mishra holding brief of Anurag Narain Srivastava, learned counsel for opposite party no.4 and Sri Shiv Pujan Maurya, learned Standing Counsel.

2. The present writ petition under Article 226 of the Constitution of India has been filed seeking a Writ of Mandamus commanding the opposite parties that in case the authorities of the department wish to consider the case of opposite party no.4, Smt. Pratibha Verma @ Pratima Verma for compassionate appointment, the same may be subject to the condition that a considerable portion of such salary and allowances etc. is deducted at source from her salary to the extent of the statutory mandate provided under sub-rule (3) of Rule 5 of the U.P. Recruitment of Dependents of Government Servant Dying in Harness Rules, 1974 (for short Dying in Harness Rules).

3. The petitioners are children of opposite party no.4, who have filed this writ petition through their grandmother, Smt. Kamla Devi.

4. Opposite party no.4 was married to Varunendra Vikram Shah, father of the petitioners, who was employed in Uttar Pradesh Police as Constable. Varunendra Vikram shah died on 30.7.2019

in harness. Opposite party no.4 was nominee in the service record of late Varunendra Vikram Shah. She has received the death-cum-retirement dues of her late husband.

5. Learned counsel for the petitioners submits that as Varunendra Vikram Shah died intestate, therefore, his estate including the death-cum-retirement dues are to be divided as per the Hindu Marriage Act amongst the surviving legal heirs. Opposite party no.4 has kept all death-cum-retirement dues of her late husband and she has not paid anything to her children or the mother of the deceased. He also submits that opposite party no.4 has applied for appointment on compassionate ground under the Dying in Harness Rules. If the opposite parties are offering appointment to opposite party no.4 under the Dying in Harness Rules, then they should ensure the mandate of sub-rule (3) of Rule 5 of the Dying in Harness Rules.

6. On the other hand, learned counsel for opposite party no.4 submits that opposite party no.4 wants her children, however, she has been denied the custody of her minor children by their grandparents. Opposite party no.4 had filed Habeas Corpus Petition No.2281 of 2021 before this Court. The case was referred to the Mediation and Conciliation Center, however, no agreement could be arrived at in the said proceedings. He further submits that opposite party no.4 will maintain her children and if she offers the appointment on compassionate ground, she would comply the mandate of Rule 5(3) of the Dying in Harness Rules.

7. Considering the aforesaid submissions and stand of opposite party no.4 that she would maintain her children out of her earning/salary, this writ petition is ***disposed of*** with direction that the opposite parties to ensure the compliance of Rule 5(3) of the Dying in Harness Rules in case opposite party no.4 is

given appointment on compassionate ground under the Dying in Harness Rules. Opposite party no.4 is directed to make FDRs of Rs.1.5 Lakh each in favour of her children i.e. the petitioners out of the death-cum-retirement dues received by her of her late husband. Such FDRs should be made within a period of one month from today.

Order Date :- 4.7.2023

Rao/-