

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 2946 of 2023

Applicant :- Rama Shankar

Opposite Party :- Smt. Aporva Dubey Distt. Magistrate, Distt. Unnao

Counsel for Applicant :- Onkar Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard.

2. This Court has passed the order dated 10.10.2023 which reads as under:

"1. Heard learned counsel for the petitioner and Sri Amrendra Pratap Singh, learned Additional Chief Standing Counsel.

2. Sri Amrendra Pratap Singh has filed the affidavit of compliance of Ms. Apoorva Dubey, District Magistrate, Unnao, the same is taken on record.

3. Sri Amrendra Pratap Singh has drawn attention of this Court towards the order dated 04.10.2023 which has been annexed as Annexure no. CA-1, whereby the District Magistrate has decided the issue of petitioner, rejecting the grievance by submitting that the wife of the petitioner was not found Corona positive, therefore, she cannot be given payment of ex-gratia in terms of the Government Order dated 01.06.2021.

4. The Writ Court has decided the case of the present petitioner in the light of judgment rendered in the case of Kusum Lata Yadav Vs. State of U.P. & Others; Writ-C No. 28249 of 2021 decided on 25.07.2022. In the case of Kusum Lata Yadav (supra), the State of U.P. has filed a review petition bearing Civil Misc. Review Application No. 90 of 2023 and the said review petition was decided on 28.02.2023. The order dated 28.02.2023 reads as under:

"We have heard learned counsel for the review applicant i.e. State through video conferencing.

This is an application filed by the State for review of the judgement passed by this Court in a batch of writ petitions decided on 25.7.2022. The review application is accompanied with an application for condonation of delay.

It appears that the judgement sought to be reviewed was challenged before the apex court in SLP (C) Nos. 18992-18997/2022 which was dismissed in terms of the order passed on 7.1.2022.

We would have rejected the review application on the ground of delay itself but having regard to the order passed by the apex court, we deem it appropriate to condone the delay and hear the review application on admission.

The delay in filing the review application is accordingly condoned and the application allowed.

Learned counsel for the review applicant has made two-fold arguments. It is firstly contended that the dismissal of SLP in limine does not bar the institution of a review application inasmuch as the judgement of this Court as a consequence of the dismissal of SLP does not merge in the apex court order, therefore, the review applicants are entitled to be heard on all aspects of the matter urged herein on merit. It is secondly contended that even if the review application fails, on other aspects, yet the application seeking review of the judgement impugned

may be heard insofar as it relates to the claim of Geeta Devi in Writ Petition No. 9406 of 2022 decided by means of the common judgement dated 25.7.2022.

Learned counsel for the review applicants has not taken us through any error apparent on the face of record and no new ground was convincingly argued, which may have led us to take a different view of the matter contrary to what has been expressed on the interpretation of the government order discussed in the judgement sought to be reviewed.

Suffice it to say that the ex-gratia payment made admissible to the government employees sent on election duty was a beneficial measure the scope whereof has been interpreted strictly, hence the financial implications arising therefrom have not been read in a manner which may be construed to be contrary to the State policy or the intention of the beneficial measures adopted by the State. Therefore, the submissions made by the learned counsel for the review applicant in view of the detailed reasons put forth in the impugned judgement are hereby reiterated, hence challenge to the impugned judgement through this review application fails on the first submission.

Insofar as the case of Geeta Devi is concerned, it is crystal clear that the case of Geeta Devi who had claimed ex-gratia payment on account of the death of her husband, was a case of first category i.e. asymptomatic. This Court has carefully considered the fact that the deceased husband of the petitioner of Writ-C No. 9460 of 2022, Geeta Devi was sent for training on 13.4.2021 and his death occurred on 25.4.2021. The causes indicated in the medical reports i.e. typhoid or malaria were the causes assessed in a short span of less than 14 days.

It is clear from the judgement rendered by this Court that the said death had even not completed the incubation period within which the certainty of contracting Covid positive could be ascertained by any medical means and the death having occurred for want of adequate facility of treatment by itself goes to show that such a case was rightly categorised in the first category of cases and the submissions built on the medical record by the State as have been urged for review of the impugned judgement are nothing but misleading.

In regard to all those cases where the death had occurred within a period of thirty days from the date of undertaking training, the government order itself in paragraph 10 and 12 when read conjointly clarifies the position. The government itself had clearly provided that the incubation period for detection of Covid-19 in any case, being not less than fourteen days, therefore, non-detection of a case as Covid positive cannot be read as a bar once it is undisputed that the death occurred within a period of 15 days from the date a public servant underwent training to carry out the election duties.

The two categories of cases have been minutely considered within the scope of government order dated 1.6.2021 hence this Court on the submissions put forth relating to the case of Geeta Devi is also not impressed by the arguments put forth.

The application for review is accordingly rejected."

5. The last but one paragraph of the order dated 28.02.2023 (supra) clearly provides that "non-detection of a case as Covid positive cannot be read as a bar once it is undisputed that the death occurred within a period of 15 days from the date a public servant underwent training to carry out the election duties". In the present case, the petitioner has stated that the wife of the petitioner was also a public servant had underwent training to carry out the election duty and during such period, she infected and hospitalized where she died on the same date i.e. on 27.04.2021. The District Magistrate has stated in her order that the wife of the petitioner was admitted in the hospital at 6:50 a.m. on 27.04.2021 and she died during treatment on the same date at 11:45 a.m. It has been informed at the bar that the order passed in the case of Kusum Lata Yadav (supra) has attained finality.

6. Therefore, in the wake of aforesaid development, the alleged compliance vide order dated 04.10.2023 does not, prima facie, appear to be compliance of the

order of Writ Court.

7. Accordingly, the learned Additional Chief Standing Counsel is directed to file afresh affidavit of compliance considering the aforesaid observations.

8. List this case on 23rd of November, 2023.

9. On or before 23rd of November, 2023, Smt. Apoorva Dubey, District Magistrate, Unnao shall file afresh affidavit of compliance, making compliance of the order of Writ Court in its letter and spirit, failing which she shall appear in person on the next date."

3. Sri Prashant Singh Atal, learned Chief Standing Counsel-I has filed the affidavit of compliance, the same is taken on record.

4. In the aforesaid affidavit of compliance, it has been categorically indicated in Para no. 7 that the petitioner has been paid the amount in terms of the order of Writ Court. The copy of the order dated 17.11.2023 passed by District Magistrate, Unnao has been enclosed which indicates that the amount of compensation has been ordered to be paid to the petitioner.

5. In the wake of aforesaid development, nothing remains to be adjudicated in the present contempt petition.

6. Accordingly, the instant contempt petition is **dismissed**.

7. Notices, if any, are discharged.

8. However, it is expected that the amount in question shall be credited in the account of the petitioner at the earliest, preferably within a period of three weeks, to be more precise on/before 23rd of December, 2023, failing which the petitioner may file an application for revival of the contempt petition and if such application is filed and it is found that the amount in question has not been credited in the account of the petitioner, the contempt petition may be revived and in that case any coercive order may be passed. Therefore, the authority concerned shall ensure that the amount in question be credited in the account of the petitioner in terms of the aforesaid order.

[Rajesh Singh Chauhan,J.]

Order Date :- 23.11.2023

kkv/