

Court No. - 7

Case :- WRIT - A No. - 8698 of 2023

Petitioner :- Anush Gupta

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education Deptt. Lko. And 2 Others

Counsel for Petitioner :- Maneesh Pandey

Counsel for Respondent :- C.S.C., Rishabh Tripathi

Hon'ble Abdul Moin, J.

1. Heard Shri Maneesh Pandey, learned counsel for the petitioner, learned Standing Counsel for the respondent No. 1, Shri Rishabh Tripathi, learned counsel for the respondents No.2 & 3.

2. Briefly stated case of the petitioner is that his mother Anita Gupta had joined the post of Assistant Teacher on 03.05.1997 and she died in harness on 19.08.2018. The petitioner applied for payment of gratuity after death of his mother but no action was taken on his representations. It is stated that the authorities orally informed the petitioner that his mother had not exercised her option for retirement on attaining the age of 60 years and, therefore, she is not entitled for payment of gratuity.

3. Learned counsel for the petitioner has placed reliance on a judgment of this Court rendered in the case of **Anoop Kumar Vs. State of U.P. & others, 2018 ADJ 63** wherein after relying upon various earlier decisions, this Court held that for rejection of the petitioner's claim of payment of gratuity on the ground that the employee had not exercised his option, is not sustainable in law and, accordingly, the order of rejection was quashed and the authorities were directed to consider the claim of the petitioner for payment of gratuity afresh, which shall not be rejected on the ground that the petitioner's wife had not exercised her option. The aforesaid decisions has been followed by a Coordinate Bench of this Court in the judgment and order dated 02.06.2022 passed in Writ A No. 3410 of 2022.

4. Accordingly, keeping in view the proposition of law laid down as in the aforesaid case, the instant writ petition also deserves to be allowed.

5. Consequently, the writ petition is **allowed**. The respondent No. 2 is directed to consider the claim of the petitioner for payment of gratuity within a period of four weeks from the date

a certified copy of this order is produced before him and it is provided that while considering the merit of the claim, it shall not be rejected on the ground that the mother of the petitioner had not exercised her option for retirement on attaining the age of 60 years.

6. However, there shall no order as to costs.

Order Date :- 7.11.2023

A. Katiyar