

Court No. - 22

Case :- WRIT - A No. - 9318 of 2023

Petitioner :- Smt. Saiyada Khatoon

Respondent :- State Of U.P. Thru. Prin. Secy. (Medical And Health) Govt. U.P. Lucknow And 4 Others

Counsel for Petitioner :- Satya Prakash Mishra, Brijesh Kumar, Nidhi Singh

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the petitioner as well as learned State Counsel and perused the record.
2. The present petition has been preferred for quashing of the order dated 30.10.2023 passed by respondent no. 3, i.e., Director (Administration) (Medical and Health Services), U.P., Swasthaya Bhawan, Lucknow, by which the claim of the post retiral dues/ family pension of the petitioner has been rejected on the ground that the documents required were neither provided by the Chief Medical Officer, Balrampur nor by the petitioner.
3. The learned counsel for the petitioner has submitted that the petitioner is the legally wedded wife of late Sri Vakeel Ahmad. It is further submitted that the husband of the petitioner was working on the post of non-medical attendant under the opposite parties and after serious illness, he had expired on 09.01.2000.
4. Thereafter, one Smt. Akhtar Nisha claimed the post retiral dues of late Sri Vakeel Ahmad alleging herself to be the wife of late Sri Vakeel Ahmad and for which she had also filed a case before the Consumer Forum in which the petitioner was arrayed as respondent.
5. The Consumer Forum decided the matter in favour of Smt. Akhtar Nisha against which the petitioner had filed a case before the District Forum and the order passed in favour of Smt. Akhtar Nisha was stayed by the District Forum with an observation that the dispute is civil in nature. Thereafter the petitioner filed a civil suit bearing No. 295 of 2006 for declaration, praying for payment of arrears of salary, gratuity, G.P.F., pension and other post-retiral dues of Late Sri Vakeel Ahmad in favour of the petitioner.

6. It is submitted that the said suit is still pending. It is further submitted that during the pendency of the suit, Smt. Akhtar Nisha has expired on 26.06.2021. Thereafter the petitioner made a representation for payment of dues to the authorities and since no action was taken the petitioner had approached this Court by filing Writ - A No. 5820 of 2023 which was disposed of by this Court vide order dated 09.08.2023, directing the respondents to decide the representation of the petitioner within a period of two months.

7. In compliance of the order dated 09.08.2023 passed by this Court, the representation of the petitioner was rejected vide impugned order dated 30.10.2023, mentioning therein that neither the Chief Medical Officer, Balrampur nor the petitioner has provided certain documents i.e. the death certificate of the second wife of Late Sri Vakeel Ahmad namely Smt. Akhtar Nisha and the family register/succession certificate.

8. It is further submitted that the said documents were asked by the Chief Medical Officer, Balrampur from the petitioner vide its letter dated 04.11.2023 i.e. subsequent to the passing of the impugned order. It is further submitted that the petitioner had submitted all the documents to the Chief Medical Officer, Balrampur in compliance of the letter dated 04.11.2023 though no receiving of documents was not given to her.

9. On the other hand learned State Counsel has submitted that the claim of the petitioner has rightly been rejected by the impugned order dated 30.10.2023 as the required documents were never provided by the petitioner therefore, there is no illegality or perversity in the impugned order.

10. After hearing the submissions advanced by learned counsels for the parties, going through the record of the case the fact that emerges is that the Chief Medical Officer, Balrampur had asked the petitioner to submit the documents vide its letter dated 04.11.2023 i.e. subsequent to the passing of impugned order dated 30.10.2023. The petitioner was never asked by the authority to submit these documents prior to the passing of the impugned order dated 30.10.2023.

11. In the circumstances mentioned in the preceding paragraphs it would be appropriate and would meet the ends of justice that the petitioner is permitted to submit the documents as mentioned in the impugned order dated 30.10.2023 i.e. death certificate of Late Smt. Akhtar Nisha and the family register/succession certificate to the respondent no. 2 i.e. Director General (Medical and Health Services), U.P., Swasthaya Bhawan, Lucknow within a period of two weeks

along with affidavits and it is expected that the respondent no. 2 i.e. Director General (Medical and Health Services), U.P., Swasthaya Bhawan, Lucknow, shall decide the claim of the petitioner within a period of two months from the date of the receipt of the documents from the petitioner.

12. Hence the order dated 30.10.2023 is not tenable in the eyes of law. And as directed above, the respondent no. 2 i.e. Director General (Medical and Health Services), U.P., Swasthaya Bhawan, Lucknow shall consider and decide the representation of the petitioners as mentioned above within a period of two months.

13. With the aforesaid observations, the present writ petition is **allowed** and the impugned order dated 30.10.2023 is hereby quashed.

Order Date :- 6.12.2023

Manoj K.