

Court No. - 34**Reserved**
A.F.R.**Case :- WRIT - A No. - 13833 of 2023****Petitioner :- Akhtari Khatoon****Respondent :- State of U.P. and others****Counsel for Petitioner :- Balendra Deo Misra, Ram Ji Singh****Counsel for Respondent :- C.S.C., Shrawan Kumar Tripathi****Hon'ble J.J. Munir,J.**

1. The petitioner's father, the late Nasir Ahmad, was a Centrifugal Mechanic in the employ of the Purvanchal Vidyut Vitran Nigam Limited (short, 'the Corporation'), and last posted in the establishment of the Executive Engineer, Electricity Distribution Phase-III, Malviya Road, Basti. The petitioner was married to one Nisar Ahmad, who is said to have divorced her through a *Talaqnama* dated 01.01.2008, pronouncing a *Talaq* upon his wife, in accordance with the Shariat Law, applicable to parties. The divorce, according to the *Talaqnama* was pronounced in the presence of two competent witnesses. After the petitioner's divorce, it is her case that she came back to her father's house at Village Tilauli, Post Sohnaag, District Deoria and is living there since January, 2008. A copy of the certificate of residence dated 12.04.2010 issued by the Deputy Collector on behalf of the Collector is on record.

2. The petitioner says that she is the only legal heir of the late Nasir Ahmad and for the said reason, has staked claim to a compassionate appointment. It is also said that for the same reason, she has applied for the payment of her father's retiral dues *vide* a representation dated 21.09.2010. The respondents directed the petitioner to produce a succession certificate issued by a Court of competent jurisdiction, entitling her to the dues. Accordingly, the petitioner moved the District Judge,

Deoria for the grant of a succession certificate under the Indian Succession Act, 1925. The petitioner's petition for succession was registered as Succession Case No.597 of 2010 and assigned to the Additional District Judge, Court No.5, Deoria. The learned Additional District Judge granted a succession certificate in the petitioner's favour, holding her entitled to receive from the Executive Engineer, Electricity Distribution Division-I, Basti, gratuity in the sum of Rs.4,02,501/-, leave encashment in the sum of Rs.84,159/-, an *ex gratia* sum of Rs.30,000/-, besides dues on account of GPF in the sum of Rs.1,73,559/-, totalling a figure of Rs.6,90,219/-.

3. The petitioner points out that the Executive Engineer, Electricity Distribution Division Phase-I, District Basti, sought legal opinion in the matter and the Corporation's Counsel at Basti *vide* his opinion dated 31.12.2014, opined that all the documents produced by the petitioner have been verified from the Civil Court at Deoria as well as the Collectorate, which are genuine. It was further opined that the petitioner is entitled to all dues on account of the deceased employee's services, which she claims.

4. It is the petitioner's case that in order to delay processing of her claim for compassionate appointment, the Executive Engineer last mentioned sought information once again *vide* letter dated 21.03.2018, addressed to the petitioner, to the effect if the petitioner made her claim for compassionate appointment within five years of death of the employee, and, secondly, if the *Talaqnama* produced has been authenticated or verified by an institution, recognized by the Government of India or the State Government, or established by the said Governments. The petitioner says that she has the liability of three unemployed sons on her shoulders and there is no other

source of income for the family to survive. This Court must remark that it has not been clarified in paragraph No.14 of the writ petition if the responsibility of 'unemployed sons' spoken of, refers to the petitioner's sons or those of her deceased father's sons, to wit, her brothers.

5. The petitioner says that for one she is entitled to receive post retiral dues on account of her father's services, a fact authenticated by orders made by the Additional District Judge granting a succession certificate in her favour. She further says that she is entitled to a compassionate appointment, inasmuch as by virtue of the law now declared, 'married daughters' are also entitled to compassionate appointment under Rule 2(c)(iii) of the Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short, 'the Rules of 1974'). The petitioner further avers in paragraph No.17 that though she has been paid her father's retiral dues and also her pension in the year 2019-20 for some period of time, it has been stopped without any rhyme or reason.

6. Accordingly, the petitioner has moved this Court, seeking family pension for herself on account of her deceased father's services and also a direction to the respondents to offer her a compassionate appointment.

7. A counter affidavit has been filed on behalf of respondents Nos.2 and 3 jointly, to which the petitioner has filed a rejoinder.

8. This petition was admitted to hearing on 04.10.2023, which proceeded forthwith. Judgment was reserved.

9. Heard Mr. Balendra Deo Misra, learned Counsel for the petitioner, Mr. Shrawan Kumar Tripathi, learned Counsel

appearing on behalf of respondent Nos. 2 and 3, and Ms. Monika Arya, learned Additional Chief Standing Counsel appearing on behalf of the State, respondent No.1.

10. This Court must remark at the outset that the petitioner had earlier approached this Court by means of Writ-A No.16500 of 2019, which was disposed of by an order dated 21.10.2019, ordering the respondents in the following terms:

“As the claim of the petitioner has yet not been considered by the competent authority, without expressing any opinion as to the merits of claim of the petitioner, the present writ petition is being disposed of with the direction to the respondent no. 2 namely the Executive Engineer, Purvanchal Vidyut Vitaran Nigam Ltd., Electricity Distribution Phase-III, District Basti to decide the claim of the petitioner both for grant of family pension and other retiral dues and for compassionate ground being divorced daughter of the deceased employee, by passing a reasoned and speaking order, in accordance with law, preferably, within a period of two months from the date of submission of certified copy of this order, after completion of necessary formalities.”

11. It appears that out of the claims directed to be decided by this Court *vide* order dated 21.10.2019, the respondents have paid post retiral dues on account of the petitioner's father's services, authorized by the succession certificate dated 27.07.2014, issued by the Additional District Judges, Deoria. The directions carried in this Court's order dated 21.10.2019 about consideration of the petitioner's claim for compassionate appointment and her entitlement to receive family pension, has decidedly been observed in breach in the sense that the Executive Engineer, Electricity Distribution Phase-III, Basti has not passed any reasoned and speaking orders, deciding the petitioner's claim for the grant of family pension or compassionate appointment, as ordered by this Court. There is

an averment in paragraph No.1 of the writ petition, specifically to the effect that the orders of this Court dated 21.10.2019, passed in Writ-A No. 16500 of 2019, directing the Executive Engineer aforesaid to pass orders on the petitioner's claim for the grant of family pension as well as compassionate appointment, has been knowingly flouted. In the counter affidavit filed on behalf of respondent Nos.2 and 3, which is an affidavit by Kedarnath Mishra, the incumbent Executive Engineer, Electricity Distribution Phase-III, Basti, it is averred in paragraph No.4, in answer to paragraph No.1 of the writ petition:

"4. That the contents of paragraph No.1 of the writ petition being matter of record which can verify there from, in reply there to it is respectfully submitted that allegation made in paragraph is wrong hence denied, retire benefits has been paid to the petitioner, for other benefit petitioner is not entitle, petitioner has not given necessary documents, which is require under the law therefore representation of the petitioner has not been decided."

12. It is one thing to say that the petitioner is not entitled to the family pension, she claims, or the compassionate appointment, and quite another, not to pass orders in regard to these claims, despite a *mandamus* by this Court to decide those claims by reasoned and speaking orders. *Ex facie*, the Executive Engineer has acted in disobedience of this Court's orders dated 21.10.2019 passed in Writ-A No. 16500 of 2019, by failing to pass a speaking order, deciding the petitioner's claim in regard to family pension and compassionate appointment.

13. This Court is of opinion that by the aforesaid act of disobedience, apart from the question of contempt, with which we are not concerned in this petition, the Executive Engineer,

respondent No.2, has forced the writ petitioner to move this Court again for a writ of *mandamus* to consider those very claims, regarding which he is under a command to decide. This is an act of causing unnecessary litigation to be generated, taxing both the petitioner and the public exchequer. For the said reason, we are of opinion that irrespective of the event in this case, which we propose to decide finally on merits, the Executive Engineer, Electricity Distribution Phase-III, Basti ought to be admonished for his action in disobeying the earlier orders of this Court. The admonition will be conveyed to the concerned incumbents in the office of the Executive Engineer, through the Chairman, U.P. Power Corporation, Lucknow.

14. The respondents have resisted the petitioner's claim to receive both the family pension on account of her father's services as well as the compassionate appointment due to his demise in harness. We could have sent back the matter to the third respondent, compelling him to comply with the earlier directions and decide those claims, but in view of the stand taken in the counter affidavit, we think that it would be a wasteful expenditure of the parties' resources as well as those of the Court. The matter, therefore, ought to be determined finally now, which we proceed to do hereby.

15. It is not in dispute that the petitioner is a married daughter of the deceased employee, Nasir Ahmad. She claims a divorce sometime in the year before her father's death. The deceased employee's widow is not alive and no other family members of the deceased has applied. The petitioner says that she is entitled to a consideration of her claim, because this Court in the case of **Smt. Vimla Srivastava v. State of U.P. and another, 2016 (1) ADJ 21 (DB)** has struck down Rule 2(c)(iii) of the Rules of 1974 to the extent that it has excluded married

daughters from the definition of the family as violative of Articles 14 and 15 of the Constitution. It is pointed out that it has been done by striking down the word 'unmarried' in Rule 2(c)(iii) of the Rules of 1974, so that the expression that survives in Rule 2(c)(iii) is 'daughter' without any qualification as to marital status.

16. The learned Counsel for the petitioner submits that once the word 'unmarried' has been struck down in Rule 2(c)(iii) of the Rules of 1974, the stand of the respondents taken in the counter affidavit that the petitioner is not entitled, cannot be countenanced. On the other hand, the learned Counsel for the respondents submits that the Rules of 1974 are not applicable to the Corporation and they are governed by their own rules and regulations framed by the Board of Directors. The attention of this Court in this regard has been invited to the amended provisions of Rule 2 of the Uttar Pradesh State Electricity Board Recruitment of Dependants of Board's Servants Dying in Harness Rules, 1975 (for short, 'the Rules of 1975'), amended on 5th July, 2012. The said amendment has been carried out in keeping with the amendment to the Rules of 1974, then made by the 9th Amendment in the year 2011. Amended Rule 2 as well as the pre-amended provisions of the said Rule would indicate, according to the learned Counsel for the respondents, that it is the unmarried daughters, including unmarried adopted daughters, widowed daughters and widowed daughters-in-law, who qualify as members of the family under Rule 2(c) of the Rules of 1975 (as amended in the year 2012).

17. It is also submitted by the learned Counsel for the respondents that the various circumstances pointed out in the counter affidavit indicate that the petitioner was not at all a dependent of her father at the time of his demise. It is urged

that the *factum* of her divorce is not established because she has not produced any decree of divorce from a Court of competent jurisdiction. It is also said that the petitioner was aged 34 years in the year 2010 and would now be 47 years of age. Now, the presumption is that she is capable of earning for herself and not entitled for the said reason to family pension.

18. The learned Counsel for the respondents, Mr. Shrawan Tripathi and Ms. Monika Arya, learned Additional Chief Standing Counsel have placed reliance in support of their case upon a Bench Decision of this Court in **State of U.P. and another v. Madhavi Mishra and others, 2021(9) ADJ 529 (DB)**, where following the Supreme Court in **Director of Treasuries in Karnataka and another v. V. Somyashree, (2021) 12 SCC 20** and the Kerala High Court in **V. Sunithakumari v. K.S.E.B. and others, 1992 SCC OnLine Ker 145**, it has been held that a married daughter is not included in the definition of 'family' under the Rules of 1975. It is also submitted by the learned Counsel appearing for the respondents that the petitioner is not entitled to claim compassionate appointment as a matter of right, specially when she has deliberately omitted to mention her mother's eligibility to receive family pension.

19. We have carefully considered the submissions advanced on behalf of learned Counsel appearing for the parties and perused the record.

20. It is no doubt true that in Rule 2(c) (iii) of the Rules of 1974, the word 'unmarried' qualifying the word 'daughter' has been struck down as unconstitutional by the Court in **Smt. Vimla Srivastava (supra)**. But, that by itself would not entitle the petitioner to a striking down of Rule 2(c) (3) of the Rules of 1975, which apply to the respondents' establishment. The

respondents are not governed by the Rules of 1974, but their own rules, to wit, the Rules of 1975, as amended. The petitioner has not challenged the *vires* of Rule 2(c) (3) of the Rules of 1975, where the Court could have gone into the issue if the said Rule was *ultra vires* Articles 14 and 15 of the Constitution. Howsoever extendable in its logic, the principle laid down in **Smt. Vimla Srivastava**, cannot of itself result in the striking down of another rule without its *vires* being properly challenged. In **Smt. Vimla Srivastava** the *vires* of Rule 2(c) (iii) of the Rules of 1974 was under challenge, which is not the case here. The Rules of 1975 have been amended on 5th of July, 2012 by a memo of the said date issued by the Director of the Corporation acting under an order of the Corporation's Board. The amended and the pre-amended Rule 2 of the Rules of 1975, which no doubt has followed the amendment then made to Rule 2 of the Rules of 1974, is being quoted *in extenso*:

"संख्या-2018-औस/ 2012-27-एफ 0 /80

दिनांक 5 जुलाई, 2012

कार्यालय ज्ञाप

उत्तर प्रदेश सरकार का अधिसूचना संख्या-6/12/73/कार्मिक-2/ 2011-टी0 सी0-IV, दिनांक 22.12.2011 द्वारा उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के आश्रितों की भर्ती (नवाँ संशोधन) नियमावली 2011 के नियम-2 में किये गये संशोधन को अंगीकार किये जाने का पावर कारपोरेशन ने निर्णय लिया है।

उपरोक्त अधिसूचना अंगीकृत किये जाने के फलस्वरूप एतद्द्वारा उ 0 प्र 0 राज्य विद्युत परिषद सेवाकाल में मृत सेवकों के आश्रितों की भर्ती नियमावली 1975 (यथा संशोधित) के नियम- 2 में नीचे स्तम्भ-1 में दिये गये वर्तमान खण्ड (ग) के स्थान पर स्तम्भ-2 में दिया गया खण्ड प्रतिस्थापित किया जाता है:-

स्तम्भ-1 <u>विद्यमान खण्ड</u>	स्तम्भ - 2 <u>एतद्द्वारा प्रतिस्थापित खण्ड</u>
(ग) कुटुम्ब के अन्तर्गत मृत सरकारी सेवक के निम्नलिखित सम्बन्धी होंगे:- 1. पत्नी या पति, 2. पुत्र 3. अविवाहित पुत्रियां तथा विधवा पुत्रियां, 4. मृत सरकारी सेवक पर आश्रित अविवाहित भाई, अविवाहित बहन और विधवा माता यदि मृत सरकारी सेवक	(ग) कुटुम्ब के अन्तर्गत मृत सरकारी सेवक के निम्नलिखित सम्बन्धी होंगे:- 1. पत्नी या पति 2. पुत्र / दत्तक पुत्र 3. अविवाहित पुत्रियां अविवाहित दत्तक पुत्रियां, विधवा पुत्रियां और विधवा पुत्र वधुएँ, 4. मृत सरकारी सेवक पर आश्रित अविवाहित भाई, अविवाहित बहन और विधवा माता यदि मृत सरकारी सेवक

<p>अविवाहित था।</p> <p>परन्तु यदि मृत सरकारी सेवक के उपरिउल्लिखित सम्बन्धियों में से किसी से सम्बन्धित कोई व्यक्ति उपलब्ध नहीं है या वह शारीरिक और मानसिक रूप से अनुपयुक्त पाया जाय और इस प्रकार सरकारी सेवा में नियोजन के लिये अपात्र हो तो केवल ऐसी स्थिति में शब्द "कुटुम्ब" के अन्तर्गत मृत सरकारी सेवक पर आश्रित पौत्र और अविवाहित पौत्रियाँ भी सम्मिलित होंगी।</p>	<p>अविवाहित था।</p> <p>5. ऐसे लापता सरकारी सेवक, जिसे सक्षम न्यायालय द्वारा 'मृत' के रूप में घोषित किया गया है, के उपरिउल्लिखित सम्बन्धी, परन्तु यदि मृत सरकारी सेवक के उपरिउल्लिखित सम्बन्धियों में से किसी से सम्बन्धित कोई व्यक्ति उपलब्ध नहीं है या वह शारीरिक और मानसिक रूप से अनुपयुक्त पाया जाय और इस प्रकार सरकारी सेवा में नियोजन के लिए अपात्र हो तो केवल ऐसी स्थिति में शब्द "कुटुम्ब" के अन्तर्गत मृत सरकारी सेवक पर आश्रित पौत्र और अविवाहित पौत्रियाँ भी सम्मिलित होंगी।</p>
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नियमावली के अन्य प्राविधान यथावत् रहेंगे।

निदेशक मण्डल की आज्ञा से,
निदेशक (का0 प्रब 0 एवं प्रशा0)

संख्या: 2018- (1) औस/2012 - तददिनांक

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु निम्नलिखित को प्रेषित :-

- 1- प्रबन्ध निदेशक, पूर्वान्चल / पश्चिमांचल / मध्यांचल / दक्षिणांचल विद्युत वितरण निगम लिमिटेड, वाराणसी / मेरठ / लखनऊ / आगरा एवं केस्को, कानपुर।
- 2- निदेशक (आपरेशन), उ 0 प्र 0 पावर ट्रांसमिशन कारपोरेशन लिमिटेड शक्ति भवन विस्तार, लखनऊ।
- 3- मुख्य अभियन्ता (जल-विद्युत)/ अध्यक्ष, विद्युत सेवा आयोग/ जॉच समिति, उ 0 प्र 0 पावर कारपोरेशन लि0।
- 4- समस्त मुख्य अभियन्ता वितरण क्षेत्र एवं पारेषण क्षेत्र, उ 0 प्र 0 पावर कारपोरेशन लि0।
- 5- समस्त अधीक्षण अभियन्ता / अधिशासी अभियन्ता, उ 0 प्र 0 पावर कारपोरेशन लिमिटेड।
- 6- समस्त मुख्य महाप्रबन्धक (लेखा) / महाप्रबन्धक (लेखा) / उप महाप्रबन्धक (लेखा) / उप मुख्य लेखाधिकारी, उ 0 प्र 0 पावर कारपोरेशन लिमिटेड।
- 7- समस्त उप महाप्रबन्धक (औस)/ वरिष्ठ कार्मिक अधिकारी/ कार्मिक अधिकारी, उ 0 प्र 0 पावर कारपोरेशन लि0।
- 8- उपसचिव (विनियम), उ 0 प्र 0 पावर कारपोरेशन लि0, शक्ति भवन, लखनऊ।
- 9- समस्त अनुभाग अधिकारी / निजी सचिव, प्रशासनिक एवं लेखा स्कन्ध, उ 0 प्र 0 पावर कारपोरेशन लि0।
- 10- अधिशासी अभियन्ता (वेब), कक्ष संख्या-407, शक्ति भवन को इस अनुरोध के साथ प्रेषित कि वे वेबसाइट www.uppcl.org पर लोड करने हेतु।
- 11- कम्पनी सचिव, उ 0 प्र 0 पावर कारपोरेशन लिमिटेड, शक्ति भवन, लखनऊ को निदेशक मण्डल की बैठक नब्बे(28) / 12, दिनांक 15.06.2012
- 12- कट फाइल।

ह 0 अपठित
(कौशल चन्द्र सक्सेना)
उप महाप्रबन्धक (औस)।

21. It would be important to note that neither under the pre-amended Rules nor post amendment, married daughters have been included in the definition of family under Rule 2(c) (3) of the Rules of 1975. The principle that unless the provisions of a statute or statutory rule is challenged through a duly framed writ petition, it cannot be struck down by the Court, is well settled in view of the law laid down in **Union of India and others v. Manjurani Routray and others, (2023) 9 SCC 144**. In **Manjurani Routray (supra)**, it was observed:

"10. After hearing the learned counsel for the parties and considering the prayer made in the writ petition, it is luculent that Respondent 1 did not set out any grounds to declare Rule 4(b) of the Rules as ultra vires. No such relief was even prayed for in the writ petition. Respondent 1 in the writ petition merely sought a writ in the nature of certiorari to set aside the order of CAT. Therefore in the given facts, there was no occasion for the High Court to declare Rule 4(b) as ultra vires.

11. While hearing the learned counsel appearing for the parties, we asked Shri B.H. Marlapalle, learned Senior Counsel along with Shri Shibashish Mishra appearing on behalf of the respondents and intervenors, as to how, in absence of any pleading setting out grounds challenging the vires of Rule 4(b) and in the absence of seeking any relief to that effect, the High Court was justified in exercising jurisdiction to declare Rule 4(b) as ultra vires? In response, the learned Senior Counsel has fairly stated that it is a defect in the pleadings as well as in the relief sought before CAT and in the writ petition. But still, they made an unsuccessful attempt to satisfy this Court that the said rule appears to be discriminatory and therefore the High Court has rightly exercised the jurisdiction while passing the impugned order. It is a trite law that for striking down the provisions of law or for declaring any rules as ultra vires, specific pleading to challenge the rules and asking of such relief ought to be made, that is conspicuously missing in the present case. In the absence of such a pleading, the Union of India did not have an opportunity to rebut the same. The other side had no opportunity to bring on record the object, if any, behind the Rules that

were brought into force. We are also of the considered view that, in the writ petition seeking a writ of certiorari challenging the order of CAT, the High Court ought not to have declared Rule 4(b) as ultra vires in the above fact situation. Therefore, the High Court was not justified to declare Rule 4(b) as ultra vires."

22. Now, the other question that remains is if there is so striking a similarity between the "unconstitutional" provisions of Rule 2(c) (iii) of the Rules of 1974 and those of Rule 2(c) (3) of the Rules of 1975, should this Court not 'read down' the provisions of Rule 2(c) (3) of the Rules of 1975, to save it from the peril of unconstitutionality.

23. This Court in **Kanhai Ram and others v. State of U.P. and others, Neutral Citation No. - 2024:AHC:52835** has referred a question, amongst others, for consideration by a larger Bench, if the Court, in the absence of a challenge to the *vires* of a statute can 'read down' its provisions, that appear to be *ultra vires*. We would have made a reference of the question in the present matter also or awaited answer to the pending reference, but we do not think that the question really arises in this case. We have also taken note of an opinion contrary to that in **Smt. Vimla Srivastava**, expressed by another Division Bench of this Court, later in point of time, in **Madhavi Mishra (supra)**, which is expressed in the following words:

"15. It is settled principle of law that the object of the scheme is not to provide employment to the unemployed among the dependent relatives of the employee, who died in harness, but to enable one of the dependents to get some employment so as to eke out a livelihood for the members of the family of the deceased. The intention of the scheme can only be to provide immediate relief to the family of the deceased employee for their sustenance. A married daughter is excluded from that category and the exclusion is not without reason that married daughter goes out of the family and is dependent on her husband of her necessities. The father could render

financial assistance to his married daughter, if he is in position to give assistance, but that is not reason to hold that married daughter still continues to dependent on her father specially when law enjoins a duty on the husband to maintain his wife and enables her to claim alimony in case he refuses to pay. Therefore, the dependency on the father ceases the moment the daughter is given in carriage and that is the justification for excluding married daughter from the category of dependents and to include only unmarried daughters. This aspect has been considered by the High Court of Kerala in minutest details in case of V. Sunithakumari v. K.S.E.B. and others, 1992 SCC OnLine Ker 145.

16. Thus, in the light of the law laid down by Hon'ble Supreme Court in case of Director of Treasuries in Karnataka and another (supra) and Kerala High Court in case of V. Sunithakumari (supra), we are of the opinion that petitioner is not entitled to compassionate appointment firstly on the ground that a married daughter is not included in the definition of a family under the Regulations of 1995 and secondly petitioner cannot claim compassionate appointment as a matter of right specially when she has deliberately omitted to mention eligibility of her mother to get family pension, thus not leaving her in penury and also not making her dependent on the present applicant and thirdly because both as per the law and the tradition, a married daughter is dependent on her husband and not on her father."

24. The impact of the decisions of the Supreme Court would also have to be considered, as referred to by the Division Bench in **Madhavi Mishra** as also certain other decisions, on which learned Counsel for the respondents have placed reliance. This, however, would be necessary if for the decision of the case, it was imperative to go into the question about the validity of Rule 2(c) (3) of the Rules of 1975. That is neither under challenge nor do we think that in the facts of the present case, the question of the rule being suitably 'read down', necessarily arises in order to decide the cause. The reason why it is not necessary to go into the question of *vires* of Rule 2(c) (3) of the Rules of 1975, or exploring the possibility of a

'reading down' thereof, is that assuming that the petitioner is entitled to stake her claim for compassionate appointment, the facts here do not entitle her to it on reputed criteria to judge such claims.

25. The petitioner has not shown with full particulars, how she was dependent upon her father at the time of his demise. This case is not about a discrimination on the ground of sex alone, but something very different. If in the petitioner's stead, a son of the deceased, placed in the circumstances that she is, had applied, his claim too would not have been accepted. It is a dependent son, who can claim for himself and for the benefit of supporting the deceased's widow and minor children, a consideration for compassionate appointment. Likewise, if on the date of demise of the employee in harness, it can be shown that a married daughter is dependent upon him, or his widow and minor family members could be taken care of by the married daughter, if granted compassionate appointment, it may be a case for considering the claim and judging the validity of the prohibitive rule.

26. Here, the petitioner has not pleaded material facts and particulars to show how she was herself dependent on her deceased father at the time of his demise. There is a vague allegation that in the year 2008, her husband, Nisar Ahmad has divorced the petitioner. The evidence produced in this regard is a *Talaqnama*, written in Urdu on a plain paper and dated 1st January, 2008. It purports to have effected a divorce between the petitioner and her husband. Another document is a Hindi transliteration of the *Talaqnama*, written on a general stamp worth Rs.10/-. The Hindi transliteration shows that her husband has divorced the petitioner by pronouncing a triple *Talaq* in accordance with Shariat Law applicable to parties in the

presence of two competent witnesses. The document to its face is a surreptitious one, which does not inspire confidence with this Court. The document has no authenticity about its record, even so much as a postal dispatch to the petitioner or its service being effected upon her through some dependable and ascertainable mode. It is also not pleaded by the petitioner or established by the so-called *Talaqnama* for how long the petitioner was married, and if she had children of her own. There is one telltale circumstance about the deceased's marital status, which cannot be ignored. In her affidavit filed in support of the writ petition she has chosen to describe herself as wife of Nisar Ahmad, instead of saying daughter of the late Nasir Ahmad, as said elsewhere, such as the cause title and her applications made to the respondents. The contents of an affidavit signed and sworn by the petitioner cannot be lightly brushed aside.

27. This Court is of opinion that in the circumstances, the respondents were perfectly justified in asking the petitioner to produce evidence of her claimed divorce by a decree of a Court of competent jurisdiction, or some dependable evidence about it. If the *factum* of divorce is not believable, the petitioner cannot be regarded a dependent of the deceased at all. Still, taking the principle that she is eligible on assumption, if it was the petitioner's case fully pleaded and established that the deceased left behind him his widow and minor children, whom the petitioner was willing to support, there might have been a case worth consideration, of course, subject to be relevant rule being struck down or read down in accordance with law. But, that is not the case here, because the petitioner has not pleaded the full particulars of the deceased's dependents, except saying in paragraph No.14 that she bears the liability of

three unemployed sons on her shoulders. It is not said by even as much as a hint as to who are the sons referred to in paragraph No.14. Whether they are sons of the deceased or the petitioner's sons, is not at all clear. If they are the deceased's sons, their ages and competence to apply for themselves ought to have been disclosed in order to ascertain whether it was necessary for the petitioner to be offered a compassionate appointment in order to support the deceased's sons, who would qualify as his dependents. If the reference is to the petitioner's sons, they are certainly not the deceased's dependents and to support them, the petitioner cannot stake her claim to compassionate appointment on account of her father's demise in harness.

28. Besides the above facts, the affidavit filed by the petitioner in support of this petition shows that she is now 50 years of age. At this age, if she can be granted an appointment at all, compassionate or otherwise, by the respondents, has to be answered against her. The reason is for one that she would no longer be eligible for appointment in terms of the maximum age of prescribed. The other is that by this time, it would be assumed that she has managed to find her way in life and settled down, where the deceased's demise in harness has not destituted her.

29. So far as the other claim about the family pension is concerned, the respondents have denied it saying that the petitioner is not eligible under the Rules to receive family pension on account of services rendered by the deceased. It is for the petitioner to establish under what rule about pension and family pension, she is eligible. Not a word has been said in the writ petition or the rejoinder affidavit, except that it was paid for some time and then stopped. The right to receive both pension

and family pension has to flow from some statute, statutory instrument or rules. Nothing of that kind has been pointed out by the petitioner in order to entitle her to receive family pension for her father's service. This part of the petitioner's claim is, therefore, also untenable.

30. In the circumstances, this Court is of the opinion that no *mandamus* can be issued to the respondents either to consider the petitioner's claim for compassionate appointment or for the grant of family pension on account of her deceased father's services

31. In the result, this writ petition fails and is **dismissed**.

32. There shall be no order as to costs.

33. Let this order be communicated to the Chairman, U.P. Power Corporation Limited, Lucknow by the the Registrar (Compliance) with the remark that he will carry out the direction in paragraph No.13 of this judgment.

Order Date :- 02.4.2024
Anoop

(J.J. Munir, J.)