Court No. - 17

Case :- WRIT - A No. - 3064 of 2023

Petitioner :- Ram Asarey Mishra
Respondent :- State Of U.P. Thru. Its Secy. Deptt. Of Basic Edu. Lko. And 3 Others
Counsel for Petitioner :- Ramesh Chandra
Counsel for Respondent :- C.S.C.,Shobhit Mohan Shukla

Hon'ble Pankaj Bhatia,J.

Heard learned counsel for the petitioners, learned Standing counsel for the State and Shri Shobhit Mohan Shukla, learned counsel for the respondent nos.3 & 4.

Learned counsel for the petitioner claims that the petitioner is entitled to gratuity in terms of the rules which is not being paid only on the ground that no option was exercised prior to death of the employee.

Learned counsel for respondents admits the fact that the G.O. dated 23.11.1994 relating to payment of gratuity to teachers of basic schools is referable to Section 13 of Basic Education Act, 1972 which has been promulgated subsequent to the Rules of 1964 and is more beneficial. As regards the requirement of option in the said Government Order the counsel for the petitioner relies upon a Division Bench judgement in the case of ***Smt. Ranjana Kakkar Vs. State of U.P. and ors. reported in 2008(10) ADJ 63*** wherein it has been held that if death of a person is on account of unforeseen circumstances which could not be predicted, it cannot be presumed that the employee would have chosen to retire at particular age much prior in time than the contingency of achieving the age of retirement, therefore, the requirement of option would not apply in such a case. The said decision has been followed in subsequent decisions in the case of ***Smt. Angoori Devi Vs. Regional Joint Director of Education, Agra Region & Others 2012 (1) LCD 674*** and several other cases.

Learned counsel for the respondents could not dispute this legal position.

In view of the above, the respondent Nos.3 and 4 are directed to consider the claim of the petitioner for gratuity aforesaid and pass reasoned order in accordance with law within a period of 6 weeks from the date a certified copy of this order is submitted before them. The claim shall not be rejected on the ground that the employee had not exercised his option under the Government Order dated 23.11.1994.

While passing the order, the respondents shall also take into consideration the law laid down in the case of ***Usha Rani v. State of U.P. & Ors. (Writ - A No.17399 of 2019) decided on 07.11.2019;*** the special appeal filed against which has been dismissed and the S.L.P. No.19089 of 2021 (State of U.P. & Ors. v. Usha Rani) has also been dismissed, as well as the Government Order dated 10.01.2023.

The petition is disposed of in view of the aforesaid terms.

Order Date :- 25.4.2023
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