

Court No. - 4**Case :-** WRIT - A No. - 3143 of 2021**Petitioner :-** Mohd. Jamil**Respondent :-** Managing Director Kanpur Electricity Supply Company (Kesco) And 2 Others**Counsel for Petitioner :-** Usha Devi Singh**Counsel for Respondent :-** Rajendra Kumar Misra,Rajendra Kumar Pandey,Usha Kiran**Hon'ble Ajit Kumar,J.**

1. Heard Ms. Usha Devi Singh, learned counsel for the petitioner, Ms. Usha Kiran, learned counsel appearing for respondents.

2. Petitioner who claims to be a disabled person and totally dependent upon the parents is aggrieved by the decision taken by the Senior Accounts Officer, Pension of the Kanpur Electricity Supply Company Ltd. dated 12.11.2020 whereby his claim for dependent/ family pension has been rejected.

3. Learned counsel for the petitioner has argued that under the relevant Government Order issued by the state government on 20.05.1997, disabled persons have been made entitled to family pension. Such disability can be physical or mental but it should be of the nature that it is difficult for the dependent to earn livelihood for survival. It is submitted that such disability pension to the dependents for physical or mental disability is in the nature of family pension and this is how the erstwhile Government Order dated 06.08.1981 has been amended to facilitate this family pension.

4. It is submitted by learned counsel for the petitioner that father of

the petitioner who was an ex-employee of the respondent retired upon attaining age of superannuation on 31.05.1975 and thereafter he died in the year 2003 and so consequently the mother of the petitioner started getting pension. Mother according to the petitioner died later on 21.04.2013 and resultantly the petitioner being dependent upon his mother made an application for family pension, to respondent on 07.05.2013. After petitioner moved an application, he received a letter from Senior Accounts Officer, Pension, asking him to furnish medical certificate of Chief Medical Officer or of an equivalent medical officer regarding his physical disability. After this letter was received by the petitioner he obtained physical disability certificate from the Chief Medical Officer, Kanpur Nagar on 11.10.2013 and submitted the same before the concerned respondent, namely, Senior Accounts Officer on 14.10.2013.

5. Ms. Usha Singh Devi, learned Advocate submitted that despite medical certificate of the Chief Medical officer submitted before the authority, the matter was referred to a four member committee constituted to examine the claim of the petitioner and whereas the committee was not equipped with any medical skill, nor committee consisted of any medical officer, it rejected the claim of the petitioner only on the ground that at some point of time he was running public call office (PCO) and so he was able to earn and that the petitioner was found to be physically disabled up to some extent. Thus, according to her committee rejected the petitioner's claim of disability and so his claim for pension wholly illegally. As a consequence to the decision taken by the committee the Accounts Officer who was one of the members of the committee passed an order dated 12.11.2020 impugned in the petition rejecting claim of the petitioner.

6. Learned counsel for the petitioner has argued that merely because at the some point of time the petitioner ran a PCO, petitioner was not a disabled person and such a decision was bad for the reason that none of the members of the committee was qualified enough to reject the certificate of the Chief Medical officer. It is submitted that as per the rules and the relevant government orders, in every government service and also for the purposes of pension etc, it is the certificate of the Chief Medical Officer or medical officer of an officer of equivalent rank which would weigh and not the decision of unskilled persons or the committee which has no medical officer on its panel. It is argued that medical certificate issued by an authorized officer can only be questioned by a medical board or medical officer of higher rank and not by administrative officer like Deputy General Manager, Senior Accounts Officer, Account Officer or Assistant Accountant.

7. *Per contra*, defending the decision taken by the authority, learned counsel appearing for the respondents Ms. Usha Kiran has sought to argue that if the petitioner could have survived for so many years if was able to run a PCO, such person cannot be said to be a disabled person to become entitled to family pension under the relevant Government Order. However, Ms. Ushan Kiran would not dispute that none of the officers on the panel of the committee had the requisite skill or knowledge of the medical field so as to dislodge the medical certificate issued by the Chief Medical Officer. She would also not dispute the argument advanced by the learned counsel for the petitioner that in government service and for all the official purposes also so far the disability part is concerned, medical certificate issued by the Chief Medical Officer would matter and not of any other officer. She would also not dispute that no medical board was constituted to look into the

correctness of medical certificate issued by the Chief Medical Officer, Kanpur Nagar certifying the petitioner to be suffering from physical disability due to Polio disease.

8. Having heard learned counsel for the respective parties, having perused the record and the order impugned, I find it to be admitted position in the pleadings of the parties that there is government order issued on 20.05.1997 amending the earlier government order dated 06.08.1981 making disabled son and daughter of an ex-government employee to be entitled to family pension. This government order is applicable to be department concerned and therein also an admitted position to the parties that petitioner upon been asked by the Senior Accounts Officer, had furnished disability certificate of Chief Medical Officer, copy whereof has been brought on record as annexure-8 to the petition. The certificate showing the petitioner to be suffering from 60% disability issued by the Chief Medical Officer, Kanpur Nagar has been brought on record as annexure-2.

9. These above documents have not been disputed as such to have been obtained either by fraud or forgery or have been procured by the petitioner misleading the Chief Medical Officer concerned. The order impugned only records that petitioner was directed to appear before the committee and that he admitted to have run some PCO in past for his survival. It is on account of this statement made that committee came to conclude that petitioner was able to survive and, therefore, would not be treated to be a disabled person. The provisions of circular letter of the Corporation dated 20.05.1999 has been cited in which it had been provided that if a person was not able to survive for his disability, he would be entitled to family pension. In my considered view, even if the

circular letter of the corporation is taken to mean that a disable person should be such that he would not be able to survive but for family pension, the committee has not returned any finding as to how the petitioner would be surviving with 60% disability. He might have operated some PCO in the past but failed to continue with the business and will be taken to be so only on account of this disability. Disability if disqualifies him to run a business, in my considered view, is sufficient enough to prove that such a disabled person deserves family pension.

10. I find merit in the submissions advanced by learned counsel for the petitioner that the committee constituted with four persons had no medical officer on its panel to question the disability certificate issued by the Chief Medical Officer. Even in the counter affidavit, there is no such pleading that certificate was obtained by fraud or forgery or procured for the purpose of obtaining the family pension. Certificate issued by a Chief Medical Officer could have been questioned only by the panel of medical officers in the field of orthopaedics, otherwise one could not say that merely because someone ran a business in the past, maybe he was a disabled, he would not be entitled for family pension. This analogy given and findings arrived at by the committee constituted for the said purpose and the order of Senior Account Officer is clearly unsustainable.

11. The matter could have been remanded, had the respondent questioned the medical certificate by appointing a medical officer or medical board having knowledge of the field concerned. This respondent having not done, I do not find there to be any reason not to believe the physical disability certificate issued by the Chief Medical Officer. The Government Order is very clear on the point

and 60% physical disability is sufficient enough for a person to hold him entitled for family pension as a disabled who had been dependent of his parents who later died on 21.04.2013.

12. In view of the above the writ petition succeeds and is allowed. The order dated 12.11.2020 whereby his claim for dependent/ family pension has been rejected is hereby set aside.

13. Respondents are directed to accord family pension to the petitioner. Appropriate orders be passed by the competent authority within a period of one month from the date of presentation of certified copy of the order.

Order Date :- 9.7.2024

Nadeem