

**(2016) 10 UK CK 0010**

**Uttarakhand High Court**

**Case No:** Writ Petition (S/S) No. 1546 of 2016

Smt. Kavita Pant

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

**Date of Decision:** Oct. 4, 2016

**Acts Referred:**

- Maternity Benefits Act, 1961 - Section 3(o), Section 5

**Citation:** (2017) 2 CLR 230 : (2017) 152 FLR 796 : (2017) LabLR 467 : (2016) LIC 4564 : (2017) 1 UAD 548

**Hon'ble Judges:** Sudhanshu Dhulia, J.

**Bench:** Single Bench

**Advocate:** Mr. M.C. Pant, learned counsel, for the Petitioner; Mr. Neeraj Garg, Advocate, for the Respondent Nos. 5 and 7; Mr. N.P. Sah, Standing Counsel, for the State of Uttarakhand/Respondent Nos. 1 to 3; Mr. Naresh Pant, Advocate, for the Respondent Nos. 4 and 6

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

**Sudhanshu Dhulia, J.** (Oral)—The petitioner is a woman employee working as Data Entry Operator on contractual basis with Uttarakhand Power Corporation Ltd. through outsourcing agency called "Uttarakhand Purva Sainik Kalyan Nigam Ltd." (in short "UPNL"). Since the petitioner was on her family way, therefore, she applied for maternity leave on 06.02.2016 from 08.02.2016 onwards and claims all maternity benefits, as provided under the Maternity Benefit Act, 1961, which have been denied to the petitioner on the ground that such benefits are not applicable in case of a contractual employee. Hence, she was constrained to file the present writ petition before this Court.

2. The Uttarakhand Power Corporation has filed its counter affidavit in this case, wherein the stand of the Power Corporation is that the salary cannot be given to the

petitioner, since the bills have not been forwarded by the outsourcing agency UPNL to it. On the other hand, learned counsel for the UPNL - Mr. Neeraj Garg says that they are governed by Order dated 21.07.2014 by which such benefits are not given to a contractual employee.

3. Learned counsel for the petitioner would argue that this Court has already decided this controversy in Smt. Indu Joshi v. State of Uttarakhand & another (in WPSS No. 826 of 2013, decided on 08.07.2013) wherein it has held that maternity leave is liable to be given to the contractual employees as well. This Court while disposing of the said matter relied upon a decision of Hon"ble Apex Court in **Municipal Corporation of Delhi v. Female Workers (Muster Roll) & another reported in (2003) 3 SCC 224.**

4. Apart from the above, learned counsel for the petitioner has also relied upon Section 3(o) of the Maternity Benefit Act in which definition of "woman" has been defined, which reads as under:-

"3. Definitions (o) "woman" means employed, whether directly or through any agency, for wages in any establishment."

(Emphasis supplied)

5. He further draw the attention of this Court to Section 3(e) of the Act in which definition of "establishment" has been mentioned, which reads as under:-

""establishment" means ♦

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
- (iva) a shop or establishment; or
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of Section 2 to be applicable."

6. Learned counsel for the petitioner submits that in view of the above provision of the Act, Uttarakhand Power Corporation would definitely come under the definition of "establishment". He further draws the attention of this Court to Clause (4) of Section 21 of the Contract Labour (Regulation and Abolition) Act, 1970, which reads as under:-

"21. Responsibility for payment of wages ♦ (1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of each representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."

7. On the basis of the above provision, not only the woman is an "employee" through a contractual agency is covered under the benefit of the above Act, but in a given contingency, where these benefits are not being given by the agent or contractual agency, the same are also liable to be paid by the principal employer, which in the present case is Uttarakhand Power Corporation.

8. At the fag end of the arguments, learned counsel for the UPNL has brought a Government Order dated 12.09.2016 before this Court, which is now part of the record as Annexure - "A", which clearly says that the benefits of maternity leave, as provided under the Benefit of Maternity Act, will also be applicable in the case of contractual employee.

9. In view thereof, this Court is also of the considered view that maternity leave is liable to be given to the present petitioner as well. The writ petition is allowed accordingly.

10. Let all the benefits of maternity leave, including salary benefit, be given to the petitioner forthwith, but definitely within a period of three weeks from the date of production of a certified copy of this order.

11. Let the certified copy of this order be supplied to the petitioner within a period of 48 hours on the payment of usual charges.