

(2018) 12 UK CK 0021

Uttarakhand High Court

Case No: Writ Petition (S/S) No. 2535 Of 2018

Smt. Reeta Samaddar

APPELLANT

Vs

State Of Uttarakhand
& Others

RESPONDENT

Date of Decision: Dec. 1, 2018

Hon'ble Judges: Sudhanshu Dhulia, J

Bench: Single Bench

Advocate: S.K. Mandal, Devesh Ghildiyal, T.A. Khan, A.K. Arya

Final Decision: Allowed

Judgement

Sudhanshu Dhulia, J.

1. The apex body in matter of sugarcane and sugar and other allied matters in the State of Uttarakhand is known as Uttarakhand Cooperative Sugar

Mill Federation Limited. It has both Cooperative Sugar Factories as well as Government Sugar Factories under its control. Presently there are two

Cooperative Sugar Factories and two Government owned Sugar Factories which are under the control of Uttarakhand Cooperative Sugar Mill

Federation Limited (Uttarakhand Sugars).

2. The husband of the petitioner was an employee of Kisan Sahakari Chini Mill Ltd., Gadarpur, District Udham Singh Nagar which has now been

closed on 29. 09.2015 and all the employees of the sugar mill have been adjusted to other sugar mills, which are working under the control and

management of Uttarakhand Cooperative Sugar Mill Federation Limited. The husband of the petitioner passed away on 20.11.2014 much before the

closure of the sugar factory i.e. Kisan Sahakari Chini Mill Ltd., Gadarpur. The present petitioner being the widow had applied for appointment on

compassionate ground, which was denied to the petitioner on ground that though the Government sugar factories has a scheme for appointment on

compassionate ground that in case such an appointment cannot be granted, then such family were compensated by monetary means. The respondent

department has said that an ex-gratia payment of Rs.67,860/- (Rupees Sixty Seven Thousand Eight Hundred Sixty Only) was offered to the petitioner,

which she refused to accept and filed the present writ petition before this Court.

3. The scheme dated 15.11.2011 is applicable in the Uttarakhand Cooperative Sugar Mill Federation Limited (Uttarakhand Sugars). The provisions of

the scheme on which reliance is being placed by the learned Senior Advocate for the respondent nos.2 & 3 " Mr. T.A. Khan, is as under:-

4. An appointment on compassionate ground will only be given to family members of the deceased, in case of available vacancies, the female

dependent of the family shall not be given an employment inside the sugar factory, the female employee of a dependent who is the dependent of the

aggrieved family will be given appointment only in the office, hospital or schools being run by the Uttarakhand Cooperative Sugar Mill Federation

Limited (Uttarakhand Sugars).

4. This policy was subsequently amended on 16.01.2013 wherein it was stated that in case the employment cannot be given to the aggrieved person

then the family be compensated by giving 12 times of the salary last drawn by the employee. For example, therefore, if the salary of the employee at

the time of death was Rs.5,000/-, then as an ex-gratia payment of Rs.60,000/- would be given to the family. In this case, the ex-gratia amount which

was calculated for the family was Rs.67,860/-(Rupees Sixty Seven Thousand Eight Hundred Sixty Only), which the petitioner has already refused.

5. It is the settled position of law that appointment on compassionate ground is not a usual employment. It is an exception created by law, which is

given in particular contingencies where the aggrieved family has lost its sole breadwinner. Such an appointment is made so that the family is able to

cope up the misfortune and hardship. The admitted fact in this case is that the deceased was the sole breadwinner of the family. He has not only left

behind his wife i.e. present petitioner, who is presently 38 years of age, but also three minor children, which according to the petitioner are aged about 14, 12 and 11 respectively. The financial relief which the petitioner has got after the death of her husband is as follows:-

Retaining allowance Rs.38,429/-

Gratuity Rs.1,06,186/-

GIS (Insurance) Rs.96,683/-

Total Rs.2,41,290/-

6. This is the only amount which the petitioner has received, and on which the petitioner is surviving since November 2014. It is not a case with the respondents that the appointment on compassionate ground cannot be given by them, as they have a Scheme under which such appointment is given which is admitted by them. The very fact that the sugar mill itself was closed down though has some relevance, but the fact remains that all such employees have been adjusted in the remaining sugar factories as there are four sugar mills which have offices, schools, hospitals, etc, where the petitioner can be appointed. In case the petitioner cannot be appointed in these areas, respondents must consider giving employment to the petitioner inside the sugar factory, in whichever capacity.

7. Consequently, the writ petition is allowed. Orders dated 01.07.2017 and 07.07.2017 are hereby quashed. A mandamus is hereby issued to the respondents to explore all the possibilities for giving appointment to the petitioner preferably in a hospital, office or school which is run by the respondent Sugar Corporation within a period of six weeks from the date of production of a certified copy of this order. In case they fail to find out the place for the petitioner for appointment in those areas, they shall consider giving appointment to the petitioner inside the factory and the rule that a woman cannot be given employment inside the sugar factory will not come in the way, as that would be a case of gender bias.

8. It is made clear that though Class IV posts have been declared as dying cadre by Government order dated 24.03.2011 but while considering the appointment on compassionate ground on Class IV posts, the respondent authorities shall take into consideration the Government order dated

05.07.2011 which makes it clear that while considering appointment on Class IV posts on compassionate ground Government Order dated 24.03.2011

shall not be applicable. Copy of Government Order dated 05.07.2011 which has been produced by the learned counsel for the petitioner is made a part of record.