

(2004) 03 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 65 of 2001 (S/B)

Kusum Lata (Ms.)

APPELLANT

Vs

Director of Factories and Another

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 3A

Citation : (2004) 101 FLR 1167 : (2004) 3 LLJ 357

Hon'ble Judges : P.C. Verma, Acting C.J.; Rajesh Tandon, J

Bench : Division Bench

Advocate : Gopal Narain, for the Appellant; Chief Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Verma, A.C.J. and Rajesh Tandon, J.—By means of the present Writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to fix the salary of the petitioner in accordance with the provisions of Rule 3-A of the U.P. Factories Welfare Officers' Rules, 1955 w.e.f. January 1, 1986. The petitioner has further claimed a writ of mandamus commanding the respondents to pay the entire arrears of salary including difference of salary, as fixed by the respondents and as claimed by the petitioner together with 18% interest per annum. The petitioner has also prayed for declaring the order dated July 28, 1990/March 10, 1990 fixing the pay of the petitioner w. e.f. February 27, 1990 as illegal, null and void.

2. Brief facts giving rise to the present writ petition according to the case of the petitioner's husband are that the petitioner's husband was appointed as a Labour Welfare Officer, Grade II in the respondent-Sugar Mill. On September 10, 1973, the grade of the husband of the petitioner was revised consequent upon the revision of pay scales and again, it was revised on September 4, 1980.

3. The husband of the petitioner was promoted as a Grade I Labour Welfare

Officer on May 7/15, 1985. The grievance of the husband of the petitioner is that on February 27, 1990 the State Government amended the Rule known as U.P. Factories Welfare Officers" Rules, 1955 and the pay scales were drastically revised to the extent that for Labour Welfare Officer, Grade I, the pay scale was revised to Rs. 3000-100-3500-125-4750 w.e.f. January 1, 1986. Further the grievance of the husband of the petitioner is that the revised Grade has not been paid to him.

4. Learned counsel for the petitioner has referred the amended Rule 3-A, the same is quoted below:

"3-A. Fixation of initial pay in the revised scale of pay. - For purposes of fixation of initial pay of a Welfare Officer in the scale of pay prescribed for his respective Grade, he shall be allowed one advance increment over the minimum thereof for every three years of continuous services subject to a maximum of five such increments.

Provided that fraction of service not less than twenty months but below three years shall also entitle a Welfare Officer for an advance increment.

Provided further that if in the case of any Welfare Officer the fixation of pay in the revised scale of pay application to his grade, or the principle laid down above is not beneficial to him, his pay shall be fixed in that scale of pay the stage next above the pay drawn by him immediately before revision of the scale of pay."

5. During the pendency of the writ petition, the husband of the petitioner (who was earlier the petitioner in this case) expired and was substituted by Ms. Kusum Lata, his wife. Learned counsel for the respondents has submitted that the respondent-Company being a private Sugar Mill, is not amenable to the jurisdiction of Article 226 of the Constitution of India. Neither it is an instrumentality of the State nor the agency of a Government and therefore, it is not covered under Article 12 of the Constitution of India.

6. Further, learned counsel for the respondents has submitted that the husband of the petitioner has an alternative remedy u/s 3/4 of the U. P. Industrial Peace Timely Payment of Wages Act. Learned counsel for the respondents has further submitted that the revised pay scale was never implemented by the respondents-Company. Learned counsel for the respondents has referred the judgment of the Apex Court reported in the case of General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, where the Apex Court has held as under at p. 1112 of LLJ:

" 9.... In the present case the Mill is engaged in the manufacture and sale of sugar which, on the same analogy, would not involved any public function. Thus, we have no difficulty in holding that jurisdiction of the High Court under Article 226 of the Constitution could not have been invoked."

7. There is no evidence on record that the respondent No. 2 Mahalaxmi Sugar Mills Company where the husband of the petitioner was working has adopted the

revised Rules framed by the State Government.

8. In view of the above facts and circumstances, the writ petition lacks merit and is hereby dismissed. No order as to costs.