

(2019) 07 UK CK 0170

In the Uttarakhand High Court

Case No : Writ Petition No. 1382, 1328, 1380, 1381, 1403, 1383 Of 2019 (S/S),
Writ Petition No. 1475, 1476, 4211, 1017 Of 2018 (S/S)

Mohd. Irfan & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 19-07-2019

Acts Referred:

Uttar Pradesh Sugarcane (Regulation Of Supply And Purchase) Act, 1953 — Section 16, 17, 17(3), 17(4), 18

Uttar Pradesh Sugarcane (Regulation Of Supply And Purchase) Rules, 1954 — Rule 49

Citation : (2019) 07 UK CK 0170

Hon'ble Judges : Lok Pal Singh, J

Bench : Single Bench

Advocate : M.C. Kandpal, Chitrarth Kandpal, Virendra Singh Rawat, Manav Sharma

Final Decision : Disposed Of

Judgement

Lok Pal Singh, J

1. Since the factual matrix of the above mentioned writ petitions and law governing the field is the same, therefore, all the above mentioned writ petitions are being decided together by a common judgment and order.

2. By means of the present writ petition, petitioners have prayed for the following relief:

(i) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents authorities to pay the arrears of the salary as per the 6th Pay Commission, arrears of the A.C.P., leave encashment and the gratuity amount.

(ii) Issue writ, order or direction in the nature of mandamus commanding and directing the respondent authorities to pay 12% on the delayed payment of the dues of the petitioner services.

3. Brief facts of the case are that petitioners are employees of Cooperative Cane Development Societies of District Udham Singh Nagar.

4. For the sake of brevity and convenience, facts of Writ Petition no. 1475 of 2018 (S/S) shall be the leading case.

5. According to the petitioner, he rendered continuous satisfactory service of about 40 years in Cooperative Cane Development Society Ltd. Kiccha and retired in the month November, 2017. Petitioner has filed present writ petition claiming the arrears of salary as per 6th and 7th pay commission, amount of gratuity & leave encashment payable to him.

6. Respondent nos. 2 & 3 have filed their joint counter affidavit. In the counter affidavit they have although admitted the liability to pay the amount claimed by the petitioner, however, it has been stated that outstanding dues can be released only after receiving of sugar development commission amount from the Sugar Mills. Paragraph No. 6 of the counter affidavit is extracted below:

"6. That the contents of para no. 8 of the writ petition are not admitted as stated. However it is submitted that dues of payment of petitioner can be disbursed after receiving the payment from the main source of income from the Sugar Mill in the shape of Sugarcane Development Commission, after receiving the said commission amount the dues amount of the petitioner can be disbursed. The answering respondents also requested to the Government and concerned Sugar Mills to release the balance Sugar Development Commission amount, but till date neither the Government, nor the concerned Sugar Mills released the due Sugarcane Development Commission amount, due to that reason the payment could not be disbursed to the petitioner, the answering respondent society has only the source of income and the said society is totally based upon the Sugarcane Development Commission."

7. Respondent no.4 has also showing his inability to release the dues to the petitioner for want of funds as, according to him, the sugar mills have not paid the sugar development commission for last six years. Learned counsel for the respondent no.4 would submit that the Cooperative Cane Development Societies Ltd. of District Udham Singh Nagar are not getting the amount of commission from the Sugar Mills, therefore, respondent no.4 is not in a position to pay the dues to the petitioner. He would further submit that the Society is unable to meet its day-to-day expenses. He would further submit that the society has made repeated representation to the State Government to provide the financial assistance, so retired employee be paid arrears of A.C.P., gratuity, leave encashment as per the 6th and 7th pay Commission, however, the State Government has not taken any interest in this regard.

7. Learned counsel for the petitioner referred order dated 12.03.2019 passed by the Coordinate Bench of this Court in WPSS No. 1476 of 2018 and other analogues petitions, in which identical controversy was involved. The relevant paragraphs of the said order is extracted below:

"Learned counsel for respondent no.4 would submit that in view of Section 16 of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953 (hereinafter referred to as 'the Act'), the Cane Grower and Cane Grower Cooperative Society has to supply sugarcane only to such sugar factory for which the area has been reserved by the State Government. He would further submit that Section 17 of the Act deals with payment of cane price.

Learned counsel for the respondent no.4 has relied upon Section 17(3) of the Act, which provides that in case of delay of more than 15 days in paying the cane price, the concerned sugar factory can also be liable to pay interest. He would further submit that the Cane Commissioner is under a statutory duty under Section 17(4) of the Act to issue a recovery certificate against the sugar factory, if it fails to pay the cane price within the stipulated period. He would further submit that the Cane Cooperative Society is entitled to commission on the sugarcane supplied by it under Section 18 of the Act read with Rule 49 of U.P. Sugarcane (Regulation of Supply and Purchase) Rules, 1954, which provides that sugar factory shall pay commission one cane purchase @3% of minimum statutory cane price fixed by the Government, out of which, 75% shall be payable to the Cane Growers Cooperative Society and 25% to the Council.

Learned counsel for respondent no.4 would submit that based on the aforesaid provisions, due to inaction on the part of the authorities including the State Government Cooperative Cane Development Societies are not getting their commission for the last several years, due to which they are unable to meet their obligations. He would further submit that retiral dues of all employees would be paid, once the Cooperative Cane Development Societies Ltd. of District Udham Singh Nagar get their legitimate due from the Sugar Factories. He would further submit that the societies have no other source of income to fall back upon.

I find some substance in the contention made by the learned counsel for the respondent no.4. The Co-operative Cane Development Societies, which have supplied cane to the sugar factories, are entitled to commission in terms of the statutory provisions."

8. The Cane Commissioner is under statutory obligation under Section 17(4) of the Act to issue a recovery certificate against the sugar factory, if it fails to pay the cane price within the stipulated period and the Cane Cooperative is entitled to sugar development commission on the sugarcane supplied by it under Section 18 of the Act read with Rule 49 of U.P. Sugarcane (Regulation of Supply and Purchase) Rules, which strictly provide that sugar factory shall pay commission one cane purchase 23% of minimum statutory cane price fixed by the Government, out of which, 75% shall be payable to the Cane Growers Cooperative Society and 25% to the Council.

9. Since, the licence to run Sugar Mill has been granted by the State Government, therefore, and now, the Sugar Mills are run by the funds provided by the State Government. Therefore, the employees of the Cooperative Cane

Development Societies Ltd., who are attached with State Government, the State Government is bound to take care of its direct or indirect employees.

10. Having heard learned counsel for the parties and after perusal of the order passed by Coordinate Bench of this Court in bunch of petitions, this Court is of the view that the request be made to respondent no.1 /Competent Authority to look into the matter and take necessary steps, in accordance with law, to ensure that the commission payable to the Cooperative Cane Development Societies is paid to them at the earliest, so that the Cooperative Cane Development Society be able to meet its obligations.

11. In view of the above, the respondents/Competent Authority shall made efforts for payment of arrears of the salary as per the 6th and 7th Pay Commission, arrears of the A.C.P., The gratuity amount and leave encashment to the petitioners within eight weeks from the date of production of copy of this order.

12. The writ petitions stands disposed of accordingly.

13. No order as to costs.