



Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/B) No.284 of 2017

Reserved on: 08.08.2018

Delivered on: 12.09.2018

Sarita Singh

..... **Petitioner**

Versus

State & others

... **Respondents**

Mr. Tapan Singh, Advocate for the petitioner.

Mr. S.S. Chauhan, Dy. A.G., for the State/respondent no.1.

Ms. Beena Pande, S.C., for the State of U.P./respondent no.3.

Mr. V.K. Kohli, Sr. Advocate assisted by Mr. Parikshit Saini, Advocate, for the respondent no.4.

Coram: Hon'ble Rajiv Sharma , J.
Hon'ble Manoj Kr. Tiwari, J.

Per: Hon. Rajiv Sharma, J.

Key facts necessary for the adjudication of this petition are that Dr. Sunil Kumar (petitioner's husband) obtained MBBS degree from A.N. Magadh Medical College Hospital, Gaya, Magadh University in January, 1990. He got himself registered with Bihar Medical Council on 1.4.1991. He joined and worked as a Junior Resident in Orthopaedics Department of A.N. Magadh Medical College Hospital, Gaya from 1.4.1991 to 18.8.1991. He also worked as a Junior Resident in Surgery Department of Hindu Rao Hospital, Delhi from 19.8.1991 to 18.8.1992. He was appointed as Medical Officer on ad hoc basis vide U.P. Government letter dated 22.8.1992. He was posted to Combined Health Center (C.H.C.) Parmanandpur, Nainital on 19.9.1992. Thereafter, he joined as Medical Officer at CHC, Patrampur on 19.5.1994.



2. The Uttar Pradesh Re-organization Act, 2000 was enacted whereby the State of Uttarakhand was carved out. Dr. Sunil Kumar was allocated to the State of Uttarakhand. However, Dr. Sunil Kumar opted for the State of Uttar Pradesh, but, he was not relieved by the State of Uttarakhand.

3. Dr. Sunil Kumar was transferred to CHC, Jaspur (U.S. Nagar) as Paediatrician. He was shot dead on 20.4.2016 while discharging his duties in the C.H.C., Jaspur in Room No.5. The FIR was lodged at P.S. Jaspur by the Emergency Medical Officer/Superintendent, CHC, Jaspur. A criminal case was registered bearing No.773 of 2016 against the assailants, namely, Manik Rathi and Shubham Tyagi.

4. Dr. Sunil Kumar was born on 5.10.1965. He was the sole bread earner of his family. At the time of death, his elder son was studying in B.Tech. Final Year. His younger son was pursuing plus two.

5. According to the averments made in the petition, a study was conducted by the Indian Medical Association, whereby it was found that 75% of the doctors across the country have faced some sort of physical violence in connection with discharge of their duties. A survey was conducted by the Bureau of Labour Statistics, USA which shows that 21 percent of registered nurses and nursing students were reported to be physically assaulted and over 50 percent were reported to be verbally abused. 12 percent of Emergency Department Nurses experienced physical violence and 59 percent experienced verbal abuse.



6. The State Government, in order to curb the violence against doctors and medical institutions, has enacted 'Uttarakhand Medicare Service Persons and Institutions (Prevention of Violence and Damage to Property) Act, 2013. Section 2(a) defines 'medical service institutions' as under: -

(a) 'Medicare Service Institutions' means all institutions providing medicare to people or through mobile medical unit or by arranging medical camps, which are under the control of State or Central Government or Local Bodies etc. including any private hospital having facilities for treatment of the sick and used for their reception or stay, any private material home where women are usually received and accommodated for the purpose of confinement and ante-natal and post-natal care in connection with child birth or anything connected therewith, and any private nursing home used or intended to be used for the reception and accommodation of persons suffering any sickness, injury or infirmity whether of body or mind, and providing treatment or nursing or both of them and includes a maternity home or convalescent home, etc. and an ambulance;

7. Section 2(b) defines 'medical service persons' as under: -

(b) 'Medicare Service Persons' in relation to a Medicare Service Institutions, shall include--

*(i) Registered Medical Practitioner, working in Medicare Institutions (including those having provisional registration);
(ii) Registered Nurses;
(iii) Auxiliary Nurse Mid-wife and General Nursing Midwife;
(iv) Trained Dai;
(v) Medical Students;
(vi) Nursing Students; and
(vii) Para medical and other auxiliary workers employed and working in Medicare Service Institutions;"*

8. Section 3 provides for prohibition of Violence which reads as under: -

"Any act of violence against, Medicare Service Persons or damage to property in the Medicare Service Institutions is hereby prohibited."

9. The petitioner (wife of late Dr. Sunil Kumar Singh) made a representation to the Chief Secretary,



health along with a copy to the Hon'ble Chief Minister, State of Uttarakhand for providing extraordinary pension under Rule 10 of the Uttar Pradesh Civil Services (Extraordinary Pension) (First Amendment) Rules, 1981. The Chief Medical Officer, Udham Singh Nagar also sent a communication dated 21.4.2016 to the Director, Medical Department, Uttarakhand, Dehradun for providing compensation to the petitioner.

10. The Chief Secretary to the State of Uttarakhand made a proposal to the Hon'ble Chief Minister on 26.5.2016 for grant of following benefits to the petitioner: -

- A. Compensation of Rs.50.00 lakh
- B. Compassionate appointment to the elder son of the petitioner on the post of Lecturer in any polytechnic in Dehradun on permanent basis; and
- C. Government accommodation for the petitioner for a period of 5 years in Dehradun.

11. The Hon'ble Chief Minister of the State endorsed the proposal by endorsing 'proposal approved'. Copy of the same is Annexure P-16 to the petition. However, the fact of the matter is that the petitioner widow family has only been paid Rs.1.00 lakh. Petitioner's elder son was given the compassionate appointment as Lecturer in Compute Science Department of State Polytechnic, Dehradun on contractual basis. The last drawn salary of petitioner's husband was Rs.1,27,315/-. The Government of Uttar Pradesh vide letter dated 22.2.2017 approved the financial benefit in



Regional Medical & Health Services of Level-3 post holders who has put in continuous and satisfactory services for 11, 17 and 24 years. The name of Dr. Sunil Kumar figured at Serial No.122. Arrears of salary of petitioner's husband were not paid but it has come in the counter affidavit that these were ordered to be paid.

12. Dr. Sunil Kumar's date of birth was 05.10.1965. His year of retirement was October, 2025. He was due to be promoted to the post of Chief Medical Officer.

13. The State has filed the counter affidavit. According to the averments made in the counter affidavit, the Medical Superintendent, CHC, Jaspur vide order dated 22.9.2017 has directed to make payment of salary of Rs.10,65,000/-. The official accommodation has been provided to the petitioner by the said Department. The son of the petitioner has been appointed as Lecturer, Computer Science on contractual basis. The encashment of earned leave has been paid on 4.8.2016. 90% of GPF was released on 24.9.2016. 10% of GPF was released on 4.9.2017. Pension and gratuity has been released on 19.9.2017.

14. The case of the respondent-State is that the benefit of Uttar Pradesh Civil Servants (Extraordinary Pension) Rules, 1981 is granted to an incumbent who risks his life in service. The petitioner is not entitled for extraordinary pension because the work of a doctor does not fall under the definition of work in which the life is put to risk. The monthly pension of Rs.76,409 is being paid to the petitioner.



15. What emerges, from the facts enumerated hereinabove, is that the petitioner's husband was discharging the official duties at CHC, Jaspur. He was shot dead on 20.4.2016. The Hon'ble Chief Minister has agreed to pay compensation of Rs.50.00 lakh but till date, only a sum of Rs.1.00 lakh has been paid to the petitioner. It was the duty cast upon the State Government to protect the life of petitioner's husband. He was on duty as per the averments made in the petition. Killing a doctor, while on duty, amounts to negation of rule of law.

16. Petitioner's husband died while discharging his official duties. Thus, the petitioner was entitled to extraordinary pension as per the Uttar Pradesh Civil Services (Extraordinary Pension) Rules, 1981, as amended from time to time. The stand taken by the respondent-State that the Rules are not applicable is not tenable. The purpose of framing these Rules is to help the family after the death of employee on duty. The Court can take judicial note of the fact that Doctors also risk their lives while performing their duties. In the present case, the petitioner's husband, in no manner, was responsible for the death of relatives of assailants. It is not that only the police officers are killed during discharge of official duties. The pensionary provisions are required to be construed liberally. Thus, the doctors or for that matter any government employee whose life is under threat while discharging the duties, will be covered within the ambit of Uttar Pradesh Civil Services (Extraordinary Pension) (First Amendment) Rules, 1981.



17. The Hon'ble Chief Minister to the State of Uttarakhand has also sanctioned a sum of Rs.50.00 lakh but the fact of the matter is that only Rs.1.00 lakh was released to the petitioner.

18. In CWP No.475 of 2013 (Naval Kumar @ Rohit Kumar v. State of H.P.) decided on 9.1.2015, the Division Bench of Himachal Pradesh High Court has awarded compensation of Rs.1.25 crore to a minor boy whose both arms were electrocuted due to electrocution. The appeal was carried out to Hon'ble Supreme Court bearing Civil Appeal No.1339 of 2017 (State of H.P. v. Naval Kumar @ Rohit Kumar) decided on 02.02.2017. The Hon'ble Supreme Court has reduced the amount to Rs.90.00 lakh with interest payable @6 percent per annum from the date of filing of writ petition. The Hon'ble Supreme Court passed the following order: -

“In other words, the compensation awarded by the High Court is, accordingly, reduced from Rs.1,25,000,00/- to Rs.90,00,000/- with interest payable at the rate of 6% .a. from the date of filing of the writ petition.”

19. Their Lordships of the Hon'ble Supreme Court in Chairman, Railway Board and others Vs. Chandrima Das (Mrs) and others (2000) 2 Supreme Court Cases 465 have held that the State has vicarious liability to pay compensation for tortuous acts of its employees. Their Lordships have further held that the doctrine of sovereign power not applicable in welfare State where functions of the State now extend to various fields which cannot be strictly related to sovereign power. Their Lordships have held as under:



“9. Various aspects of the Public Law field were considered. It was found that though initially a petition under Article 226 of the Constitution relating to contractual matters was held not to lie, the law underwent a change by subsequent decisions and it was noticed that even though the petition may relate essentially to a contractual matter, it would still be amenable to the writ jurisdiction of the High Court under Article 226. The Public Law remedies have also been extended to the realm of tort. This Court, in its various decisions, has entertained petitions under Article 32 of the Constitution on a number of occasions and has awarded compensation to the petitioners who had suffered personal injuries at the hands of the officers of the Govt.

11. Having regard to what has been stated above, the contention that Smt. Hanuffa Khatoon should have approached the Civil Court for damages and the matter should not have been considered in a petition under Article 226 of the Constitution, cannot be accepted. Where public functionaries are involved and the matter relates to the violation of Fundamental Rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under Private Law.”

20. Petitioner’s husband was 51 years of age at the time when he was shot dead. His last drawn salary was Rs.1,27,300/-. He was bound to be promoted to the post of Chief Medical Officer (CMO). In case of promotion to the C.M.O., his salary would have been Rs.1,91,000/-. Even after making necessary deductions, the figure comes to Rs.1,25,300/-. The reasonable multiplier at the age of ‘51’ would be ‘11’. Thus, the family is entitled to Rs.1,89,09,000/- as compensation. The petitioner’s family is also entitled to the loss of consortium and love and affection quantified as Rs.10.00 lakh. The State Government is remiss in implementing the provisions of the Uttarakhand Medicare Service Persons and Institutions (Prevention of Violence and Damage to Property) Act, 2013. It is the duty cast upon the State Government to protect the Medicare Service Persons and Institutions throughout the State of Uttarakhand.



21. Accordingly, the present petition is allowed by issuing the following mandatory directions: -

A. The State Government is directed to pay the compensation of Rs.1,99,09,000/- (One Crore, Ninety Nine Lakh, Nine Thousand Only) along with interest 7.5% per annum, to the petitioner, from the date of filing of petition.

B. The respondent-State is directed to award extraordinary pension to the petitioner as per the provisions of the Uttar Pradesh Civil Services (Extraordinary Pension) (First Amendment) Rules, 1981, as adopted by the State of Uttarakhand, within ten weeks from today along with the arrears at the rate of 8.5% per annum.

C. The State Government is directed to enforce the provisions of 'Uttarakhand Medicare Service Persons and Institutions (Prevention of Violence and Damage to Property) Act, 2013, in letter and spirit.

22. Pending application, if any, stands vacated.

(Manoj Kr. Tiwari, J.)
Rdang

(Rajiv Sharma, J.)