
(2019) 02 UK CK 0051

In the Uttarakhand High Court

Case No : Writ Petition No. 2978, 2507, 2517, 2689, 2962 Of 2018 (S Of S)

Atul Shankar Rana & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Citation : (2019) 02 UK CK 0051

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Pankaj Tangwan, S.K. Mishra

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J

1. The Delay Condonation Application no. 2262 of 2019 filed in support of the counter affidavit in Writ Petition No. 2978/2019 as filed by respondent nos. 1 & 2, as well as the Delay Condonation Application no.2263 of 2019 as filed by respondent no.3 are allowed. Delay which has chanced in filing counter affidavit has been satisfactorily explained. Thus, counter affidavit is taken on record. Miscellaneous application No.7947/2019 as filed in Writ Petition No. 2507/2018 is allowed. Counter affidavit is taken on record. The Delay which has chanced in filing the counter affidavit in Writ Petition No. 2962/2018 has been satisfactorily explained. Hence, the delay would stand condoned and the Delay Condonation Application No. 2344 of 2019 is allowed. Counter affidavit is taken on record.

2. The petitioners in the present writ petitions were working with the respondent as an Ayurvedic Pharmacist in the department of Ayurvedic and Unani Services, Government of Uttarakhand, Dehradun. By virtue of the decision consciously taken by the State Government on 04.08.2014 the pay scale of the Pharmacist cadre of the Ayurvedic and Unani department of the State was enhanced by virtue of the Government Order dated 04.08.2014, as aforesaid, and were paid to pay band-2 of Rs.5,200-20,200 carrying the grade pay of Rs.2800/-. After

completion of two years of services they were entitled for a non-functional pay scale of Rs.9300-34800 with grade pay of Rs.4200/-. As a consequence thereto, because of the upgradation the petitioners were extended the benefit of the said revised scale, which was based upon the exclusive and conscious decision taken by the State Government in which the petitioners were not at all instrumental in the decision making process nor there is any allegation that petitioners have mislead the authorities or have committed any fraud while benefit of revised scale was extended to them by the voluntary act of the respondents. The respondents have passed an order on 13.01.2017, which is impugned in the writ petition, by virtue of which the benefit of the revised pay scale, which has been extended to the petitioners by the decision of the Government Order No. 122/XXXX/2014-78/2004 dated 04.08.2014, has been sought to be withdrawn by the impugned order under challenge.

3. It has been argued by the learned counsel for the petitioners that the issue raised in the present writ petition stands squarely covered by the judgment rendered in the bunch of writ petitions with the leading writ petition being Writ Petition No. 2661/2018 'Amit Kumar Tiwari vs. State of Uttarakhand & Others', which too related to the grant of upgraded scale pursuant to the Government Order dated 04.08.2014, which was identically sought to be withdrawn by the impugned order dated 13.11.2017. Relevant paragraph of which is quoted hereunder:

"40. On that limited score only all these writ petitions would stand allowed. All the impugned orders passed in each set of writ petitions (as detailed above) would stand quashed. However, this will not preclude or prejudice the rights of the respondents to take a fresh action on the same facts and conditions, but only after providing an opportunity of hearing to the petitioners and after recourse as permissible under law by adopting the parameters laid down by Hon'ble Apex Court in Rafiq Masih's case (Supra). During the period in which the respondents take an action in pursuance to today's judgment, the recovery as sought to be made would be kept in abeyance unless determined afresh, after providing an opportunity to the petitioners. However there is one more clarification required to be made at this juncture that the recovery as sought to be made would be exclusively dependent upon the decision which has to be taken by the respondents after providing an opportunity to the petitioners in pursuance of today's order. Respondents are also directed that till the time they take a decision the orders pertaining to the recovery and reduction of pay scale too would be kept in abeyance."

4. The controversy as against the said issue had been decided by this Court vide its judgment dated 08.08.2018 rendered in Writ Petition No. 2661 of 2018 'Amit Kumar Tiwari vs. State of Uttarakhand & Others'. After going through the averments made in the writ petition as well as the judgment as referred above it is apparent that the matter would stand squarely covered by the aforesaid judgment dated 08.08.2018.

5. Accordingly, the writ petitions too are disposed of in terms of the judgment dated 08.08.2018 as rendered in Writ Petition No.2661 of 2018 'Amit Kumar Tiwari vs. State of Uttarakhand & Others'. The judgment dated 08.08.2018 would constitute to be the part of the present judgment.

6. However, there would be no order as to cost.