
(2018) 12 UK CK 0057

In the Uttarakhand High Court

Case No : Writ Petition No. 4165, 4166, 4167, 4168, 4170 Of 2018 (S Of S)

Bijendra Rana & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Citation : (2018) 12 UK CK 0057

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Amar Shukla, N.S. Pundir

Final Decision : Allowed

Judgement

Sharad Kumar Sharma, J

1. All these Writ Petitions have been filed before this Court for identical reliefs, i.e. payment of minimum of pay scale based on the principle of 'equal pay for equal work', which has been enunciated by the judgment rendered by the Hon'ble Apex Court in State of Punjab & Others vs. Jagjit Singh & Others as reported in 2017(1) SCC 148.

2. The contention of the petitioners is that after their initial appointments against their respective posts in the department, which is common in all the cases, they have been working on different posts on which they have been appointed on a consolidated salary and their work and conduct has been found to be satisfactory but, despite of serving regularly and discharging the same quantum of services, as that of a regular employee, yet they have not been suitably remunerated, with the equivalent salary, as it has been made available to the regular employees working in the same department and even so much so their claim for regularization too has not been considered, though the other incumbents, who have been working under identical circumstances with the respondents their claim has been considered for regularization and perhaps the same has been granted also.

3. At this stage, this Court is not to travel on the issue of regularization, the reason being that is not the relief sought for in the present Writ Petitions and, hence, this Court would be confining itself to the relief sought for, i.e. the payment of minimum of pay scale to the petitioners.

4. In support of his contention the learned counsel for the petitioners submits that in relation to the same department and for the same issue with regards to the payment of minimum pay scale, it had come up for consideration in a bunch of Writ Petitions with a leading Writ Petition No. 949/2017 (S/S), wherein, the Coordinate Bench of this Court by the judgment dated 12.05.2017 had disposed of the Writ Petition directing the respondents to consider the case of the petitioners for regularization, as well as, for the grant of minimum of pay scale, in accordance of the principle of 'equal pay for equal work'. Relevant part of the judgment is quoted hereunder:

"Salary is the property within the meaning of Article 300A of Constitution of India and no person can be deprived of the property save by authority of law. Respondent-State is a welfare State. It cannot be oblivious to the genuine difficulty faced by the employees. The employees have to maintain their families. It is expected at least from the State that the salary and also arrears should be disbursed timely to the employees. Accordingly, writ petitions are disposed of with the direction to the respondents to consider the case of the petitioners for regularization as per Regularization Rules, 2013 within a period of eight weeks from today and also to consider for release of minimum pay scale in accordance with law on the principle of equal pay for equal work. Respondents are also directed to pay salary of the petitioners from September, 2016 to April, 2017 forthwith."

5. The concept behind the delivery of the judgment was that the petitioners would be entitled to be remunerated with the salary equivalent to that of regular employee or atleast a minimum of pay scale in the light of the interpretation given to Article 300A of the Constitution of India, wherein, it has been held that the salary payable to the petitioner is a property and he cannot be deprived of it except with due process of law. This judgment dated 12.05.2017, as rendered in a bunch of Writ Petition with a leading Writ Petition No. 949/2017 has been adhered to and rather the State Government has issued a Government Order No. 1335/XXVIII(I)/2018-Writ-26/2018 dated 8.10.2018, whereby, the State Government has accepted the propriety of the Government Order and had extended the benefit of payment of minimum of pay scale of the employees of the respondent-department, which is quoted hereunder:

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Accordingly writ petitions are disposed with of the direction to the respondents to consider the case of petitioners for regularization as per Regularization, 2013 within a period of eight weeks from today and also to consider for release of minimum pay scale in accordance with law on the principle of equal pay equal work. Respondents are also directed to pay salary of the petitioners from September, 2016 to April 2018 forthwith

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Taking a leaf out of judgment of coordinate Bench of this court in writ petition no. 983/2017 (S/S) and connected writ petitions (decided on 12.05.2017), a direction is given to the respondents to consider for release of minimum pay scale, in accordance with law, on the principle of equal pay for equal work from July 2017 onwards, for the period the petitioners have worked with respondent no. 3

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6. Yet another bunch of Writ Petition came for consideration before another Coordinate Bench with the leading Writ Petition No. 247/2018 'Pradeep Singh & Others vs. State of Uttarakhand & Others', wherein, the petitioners of the various Writ Petitions claimed enforcement of judgment dated 12.05.2017 rendered in Writ Petition No. 949/2017, which too was disposed of by the Coordinate Bench of this Court by the judgment dated 09.02.2018, issuing a Writ of mandamus to the respondent for the payment of minimum of pay scale to the petitioners and such other identically placed employees. Relevant part of the judgment is quoted hereunder:

"9. Taking a leaf out of judgment of coordinate Bench of this court in writ petition no. 983/2017 (S/S) and connected writ petitions (decided on 12.5.2017), a direction is given to the respondents to consider for release of minimum pay scale, in accordance with law, on the principle of equal pay for equal work, from July 2017 onwards, for the period the petitioners have worked with respondent no. 3."

7. This judgment rendered in a bunch of Writ Petition No. 247/2018 also constituted as to be one of the foundation for issuance of the Government Order No. 1335/XXVIII(I)/2018-Writ-26/2018 dated 08.10.2018.

8. The argument of learned counsel for the petitioners is that when the judgments rendered therein have not been challenged and have attained finality when they were not complied with, the matter traveled in a Contempt Petition No. 591/2018 along with the other connected contempt petitions, and thereafter after filing of the Contempt Petition the respondents have proceeded to comply with the judgment dated 12.05.2017 and 09.02.2018, and the benefits have been extended to those petitioners whose rights were adjudicated by the aforesaid two judgments. In the Contempt Petition counsel for State made a statement that scale is being paid in compliance of judgments dated 12.05.2017 & 19.02.2018 and thus contempt petition was closed.

9. The issue once again came for consideration before the learned Single Judge in Writ Petition No. 2761/2017 'Devendra Prasad Lakhera vs. State of Uttarakhand & Others'. The Coordinate Bench of this Court had disposed of the Writ Petition with the direction to the respondents to pay minimum of pay scale to the petitioner in the light of the decision rendered by the Hon'ble Apex Court in the State of Punjab vs. Jagjit Singh's case. This judgment rendered by the Coordinate Bench on 20.11.2017 was challenged in Special Appeal, and the Special Appeal being SPA No. 398/2018 'State of Uttarakhand & Others vs. Devendra Prasad Lakhera' was dismissed by the Division Bench of this Court on 12.06.2018, against which the State of Uttarakhand has preferred a Special Leave Petition (Civil) Diary No. 36539/2018, which too has been dismissed by the Hon'ble Apex Court by the judgment dated 02.11.2018 only with a slight modification with regards to the liability of cost, which was imposed by the Division Bench of this court.

10. Having considered the judgments on which the reliance has been placed by the learned counsel for the petitioners and having considered the fact that in the light of the pleadings raised in the Writ Petition that the petitioners claim for grant of minimum of pay scale happens to be settled by the aforesaid judgments as referred herein above, this Writ Petition too would stand allowed in terms of the judgment rendered in Writ Petition No. 947/2017 on the basis of which the State Government has issued the Government Order No. 1335/XXVIII(I)/2018-Writ-26/2018 dated 08.10.2018 and consequently extend the benefit of payment of minimum of pay scale for the petitioners also.

11. Consequently, the Writ Petition stands allowed. Writ of mandamus is issued to the respondents to pay the minimum of pay scale to the petitioners within a period of six weeks from the date of presentation of the certified copy of this order.

12. There would be no order as to cost.