

(2004) 09 UK CK 0010

In the Uttarakhand High Court

Case No : Civil Writ Petition No. 245 (M/B) of 2003

Darbari Lal and Others

APPELLANT

Vs

Finance Controller, Directorate of Higher Education U.P.

RESPONDENT

Date of Decision : 14-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 2 UC 1301

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : M.S. Pal, U.S. Kalakoti, D.C. Joshi and C.S. Bagdwal, for the Appellant; Beena Pande, Learned S.C. (U.P. Govt.), for the Respondent

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—By means of this writ petition, moved under Article 226 of the Constitution of India, the Petitioners have sought mandamus directing the Respondent to release the minimum pension at the rate of Rs. 1275/- per month to the Petitioners.

2. Brief facts of the case as stated in the writ petition, are that the Petitioners were in service of the Kumaon University, Nainital as Sweeper and Daftari before retirement. The Petitioner No. 1 is getting pension at the rate of 857/- per month since 01-01-1999 whereas the Petitioner No. 2 gets pension at the rate of Rs. 861/- per month since 01-04-1999, and Petitioner No. 3 is receiving Rs. 850/- per month as pension w.e.f. 1-10-1998. As per the Government Orders, the minimum pension to which each of the Petitioners is entitled, is Rs. 1275/- per month. The Finance officer of Kumaon University, Nainital sent a letter dated 24-08-2001/7-9-2001 (Copy Annexure-II) to the Respondent for fixing the minimum pension as above. When no response was made by the Respondent, another letter dated 6-8-2002/7-8-2002 (Copy annexure 3) was sent to the Respondent by the Finance Officer of the University quoting the Government Orders for directions to provide the minimum pension of the Petitioners. The

Government Orders No. 6895/15-(15)-1985-46(7)/82 dated 24-01-1984 provides regarding the pensionary benefits to the retired non teaching staff of the State Universities. The Government Order No. 901/ 70-4/98-46 (14)/83 dated 16-5-1998 makes it clear that the pension of the non teaching employees of Universities will be at the same rates as applicable to the Government servants. The G.O. No. 2815/3-70-6/98 dated 30-11-1998 provides for the revised pension w.e.f. 1-1-1996 G.O. No. 3-384/10-300/99 dated 13-4-2000 provides for the minimum pension at the rate of Rs. 1275/-per month. The Petitioners have alleged that they are being deprived of the minimum pension by the Respondent. Hence the writ petition.

3. A counter affidavit has been filed on behalf of the Respondent in which para 1 and 2 of the writ petition are not disputed by the Respondent. As to the minimum pension payable at the rate of Rs. 1275/- per month it is admitted in para 5 of the counter affidavit that said rate was made payable to the Government servants but a defence has been set up that the said rate does not apply to the employees of the University. In reply to this a rejoinder affidavit has been filed on behalf of the Petitioners annexing the copy of G.O. dated 24-11-2001 (Copy Annexure RA-I whereby the G.O. dated 13-4-2000 has been made applicable to the retired employees of the State Universities.

4. I heard Learned Counsel for the Petitioners and Learned Standing Counsel for the State of U.P.

5. The short question for consideration before this Court is that whether the Petitioners are wrongly denied to the minimum pension at the rate of Rs. 1275/- per month.

6. Admittedly the Petitioners are retired Class-IV employees of the Kumaon University who are getting pension at the rate of less than the minimum prescribed in G.O. dated 13-4-2000. It is also not disputed that all the three Petitioners are retired employees of the period prior to creation of the State of Uttaranchal. It is also not disputed that the Finance Officer of the Kumaon University made a request through letters annexure-2 and annexure-3 for revision of the pension of the Petitioners for providing them the minimum payable pension at the rate of Rs. 1275/- per month. The only defence taken by the Respondent is that the G.O. dated 13-4-2000 was applicable to the Government servants and not to the University employees. The defence taken by the Respondent is lame and has no legs as by U.P. G.O. No. 3147/70-4/210/46(14)/93 dated 24-11-2001 issued by the Higher Education Section-4 (Copy annexure RA-1 to the rejoinder affidavit) makes it clear that the G.O. dated 13-4-2000 has been made applicable to the retired employees of Universities. Ms. Beena Pande Learned Standing Counsel for State of U.P. fairly stated that the said G.O. is applicable to the retired employees like Petitioners who got superannuated prior to creation of State of Uttaranchal.

7. In view of the above G.O. dated 13-4-2000 read with dated 24-11-2001 the

Petitioners (retired prior to creation of State of Uttaranchal) are entitled to the relief claimed by them as they are wrongly deprived by the Respondent to the minimum pension payable to them.

8. Accordingly, the writ petition is allowed. A mandamus is issued against the Respondent directing it to issue necessary orders regarding payment of pension at the rate of Rs. 1275/- per month to each of the Petitioners in view of the above G. Os. within a period of one month from the date of the certified copy of this order is produced before the Respondent. No orders as to costs.