

(2018) 07 UK CK 0012

In the Uttarakhand High Court

Case No : Special Appeal No. 292 of 2018, Special Appeal No. 293 of 2018,
Special Appeal No. 294 of 2018, Special Appeal No. 295 of 2018

Indian Institute of Technology Roorkee & others

APPELLANT

Vs

Devta Din & others

RESPONDENT

Date of Decision : 03-07-2018

Acts Referred:

Citation : (2018) 07 UK CK 0012

Hon'ble Judges : K.M. JOSEPH, C.J.;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Vipul Sharma, Pankaj Purohit

Judgement

SHARAD KUMAR SHARMA, J.

K.M. JOSEPH, C.J. (ORAL)

1. The appellants are the respondents in the writ petitions. This batch of appeals arises out of the common judgment rendered in four writ petitions.

We take Writ Petition (S/S) No. 22 of 2011 from which Special Appeal No. 292 of 2018 arises as the leading case.

2. Briefly put, the case of the writ petitioner is as

follows :-

The petitioner was initially appointed in the erstwhile Roorkee University on 01.10.1965 on monthly adhoc basis in the Asian African Hostel of the

erstwhile University of Roorkee. Vide order dated 24.05.1974, the services of the petitioner was made quasi regular. He was given pay-scale of

Rs.140-2-180-E.B.-3-201. Thereafter, the pay of the petitioner was fixed at Rs. 3215 w.e.f. 01.01.1998 as per the then revised pay scale of Rs.2,610-

3540. Later on, the erstwhile Roorkee University was changed into Indian

Institute of Technology, Roorkee and the pay scale of the petitioner was mapped as per IIT system vide Office Memorandum dated 17.04.2003. Though the Roorkee University has changed into the IIT Roorkee, the service conditions of the petitioner and such employees identically placed as petitioner never changed. Office Order dated 14.11.1996 was issued on behalf of the Chancellor of the erstwhile Roorkee University by virtue of which, it made applicable the Government Order dated 01.07.1989, wherein, pension was made payable to those employees who retired as temporary employees after rendering 10 or more years of service. Petitioner alleges that he opted for the said pension scheme, but pension has not been paid. The petitioner made representation Annexure-7; there is no reason given while deciding the same. Annexure No. 8 is the notice by which pension is denied.

3. The appellant filed counter affidavit. Therein, the stand taken, inter alia, is as follows:

In the erstwhile Roorkee University, in the year 1956, a Guest House was established under the name 'Khosla International House'. This Guest

House was formerly known as Asian African Hostel. This was meant to provide accommodation to the Trainee Officers from the Central

Government, various States Government and some African and South-East Asian Countries under the Colombo Plan. It was and is being run as an

independent and self-financing unit on the premises of the erstwhile University of Roorkee and since conversion, on the premises of the Indian

Institute of Technology, Roorkee without any financial assistance from the University or the Institute. The expenditures of the House are met from the

funds generated from the room rent and other charges recovered from the Foreign Students, Trainee Officers and other Guests staying in the House.

These funds never flowed either into the Treasury of the then University or that of the present Institute. The funds are managed in their entirety by

the Chief Warden of the House in a separate bank account and a separate set of accounting books of the Guest House. The staff working in the

House has been given pay by the Khosla International House and not by the then University or the present IIT, though the scales of pay were similar

to the pay scales of the regular staff of the University. The benefits of group insurance, contributory provident fund, leave encashment and gratuity

were also made admissible to these employees by the Chief Warden, who

incidentally is the 4th respondent in the writ petition and 4th appellant in these appeals. All the expenditure was met from the self generated funds of the Guest House. In the case of selection of the staff in the House, the entire process used to be initiated and completed at the level of the 4th respondent only. In order to select competent staff and to render transparency to the selection process, various functionaries of the then University were incorporated in the selection committee, but that itself will not grant the status to the petitioner to be the employee of the University or the present IIT. Petitioner was getting salary etc. out of the self generated funds of the House although at par with the erstwhile University of Roorkee. It is the further case of the respondents that the list of quasi regular employees of the University was issued by U.P. Government vide order dated 14.03.1978. Petitioner's name does not figure in the list. Petitioner has filed rejoinder affidavit. He has produced order dated 24.05.1974, by which, three persons have been made quasi regular.

4. The learned Single Judge held as follows :-

The petitioners are holding posts in the University. A decision was taken by the Government to pay pension to those employees who were working as temporary employees. According to the learned Single Judge, this decision was a decision to pay pension to the persons in the category of the petitioners. The Government Order dated 01.07.1989 was adopted on 14.11.1996 by the erstwhile University of Roorkee. Dealing with the argument of the appellants that the petitioners were not its employees, it is found that the appointments were done by the Assistant Registrar and, therefore, there was the requisite master-servant relationship. The learned Single Judge noted that the petitioners have served over 30 years of uninterrupted service. Dealing with the argument of the appellants that names of the petitioners did not figure in the order dated 14.03.1978, the learned Single Judge took the view that it should have been dealt with by the University in the matter of adopting it. The writ petitions were accordingly allowed and the relief of pension was ordered to be given.

5. We heard Mr. Vipul Sharma, learned counsel on behalf of the appellants and Mr. Pankaj Miglani, learned counsel on behalf of the writ petitioners/respondents.

6. Learned counsel for the appellants would reiterate that the petitioners were not employees of the University or the Institute; instead they were employees of the 4th respondent, who is shown as the Chief Warden of the Guest House. The appellants' argument, apparently, are that they were being paid from out of the funds generated by the activities of the Hostel and that granting of pay scale at par with that of the University employees alone was ordered which would itself not establish relationship of employee with the Institute. Equally, when mapping pattern was followed among the employees of the University that did not make them the employees of the University. More importantly, he would submit that the petitioners may not be entitled to the benefit of the order dated 01.07.1989 for the purpose of payment of pension. This is for the reason that the Government Order dated 01.07.1989 though adopted by the University by its proceedings dated 14.11.1996, it was conditioned upon the fact that for extension of benefit of GO dated 01.07.1989 and on being adopted by the University on 14.11.1996, their names must be reflected in the order dated 14.03.1978. The writ petitioners' names admittedly are not to be found in the proceedings held for preparing list dated 14.03.1978. Thus, on an overall scrutiny of facts involved in the case, it could be deduced that they cannot be treated as appointed against any sanctioned post of the then University of now the Institute. Since, the petitioners were claiming benefit of the order dated 01.07.1989 and since the order adopting the aforesaid Government order itself was having a condition, it stands in the way of the petitioners being granted the relief as being not included in the list of 14.03.1978.

7. Per contra, the learned counsel for the writ petitioners, Shri Pankanj Miglani supported the order of the learned Single Judge. He would point out that the petitioners have put in 30 years of service. He would also submit that two out of four petitioners were work charge employee and two were made quasi regular by the orders of the Registrar. He would also point out that it was the responsibility of the Universities to send the names of all the persons, who were entitled to the benefit and they cannot be permitted to take advantage of their own lapse and the Court may notice that they have been working for 30 years.

8. The writ petitions were filed on being aggrieved by the refusal to pay pension. The order impugned (notice which is impugned) is, in fact, was

issued by the 4th respondent/ 4th appellant, namely, the Chief Warden of the Hostel. The basis of the case of the petitioners and their claim is the

order dated 01.07.1989. This is an order issued by the Government of undivided State of U.P. The purport of the order dated 01.07.1989 is to provide

for pension to those State employees, who are working in the temporary capacity for the period of 10 years or more and who retired after without

being confirmed. The Government wishes to give benefit to such employees by providing that they will be entitled to pension. As such, the

Government Order dated 01.07.1989, was apparently not applicable to the University. Hence, it was that the University which proceeded to adopt the

order dated 01.07.1989 by the proceeding dated 14.11.1996. In fact, the writ petitioners were also claiming the benefit of the proceedings dated

14.11.1996, as is clear from the ground â??bâ?? of the writ petition. The University has been succeeded by the Indian Institute of Technology,

Roorkee, who are the appellants. The order adopting the proceedings dated 01.07.1989 is not unconditional. It is conditioned upon that it will be

available to those persons, who are working as against sanctioned temporary posts, and whose names are mentioned in the order / list dated

14.03.1978. There is no dispute that the petitioners names did not figure in the order dated 14.03.1978. If that be so, the argument of the learned

counsel for the appellants that not putting in issue the order dated 14.11.1996 regarding the condition relating to the names figuring in the order dated

14.11.1978, appeals to us as a contention, which may merit acceptance. On this being the situation, Shri Pankaj Miglani, learned counsel for the writ

petitioners submits that he may be permitted to amend the writ petitions and challenge the order dated 14.11.1996.

9. We would think that we should not refuse this submission made on behalf of the learned counsel for the writ petitioners. Solely, in the interest of

justice, we would think that this request of the writ petitioners to seek amendment before the learned Single Judge must be allowed so as to enable

them to have their say against non-inclusion of their name in the list of 14.11.1978 and consequential denial of the pension.

10. In such circumstances, we are inclined to set aside the judgment of the learned Single Judge and remit the matter back so that if inclined, the writ

petitioners may move for appropriate amendment of the writ petitions. We make it clear that it will be open to the appellants to raise all contentions in

regard to the application seeking amendment and it will be for the learned Single Judge to independently take decision in the matter. The writ petitions will stand listed before the learned Single Judge on 7th August, 2018.