

(2019) 05 UK CK 0044

In the Uttarakhand High Court

Case No : Special Appeal No. 368 Of 2019, Writ Petition (S/S) No. 667 Of 2019

Kamlapati Sanwal And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 06-05-2019

Acts Referred:

Citation : (2019) 05 UK CK 0044

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Subhash Upadhyay, S.S. Chaudhary, Seema Sah

Final Decision : Disposed Off

Judgement

Ramesh Ranganathan, CJ

1. While the present appeal is preferred against the interlocutory order passed by the learned Single Judge in Stay Application No. 3880 of 2019 in

Writ Petition (S/S) No. 667 of 2019 dated 28.03.2019, both Mr. Subhash Upadhyay, learned counsel appearing on behalf of the petitioners and Mrs.

Seema Sah, learned Standing Counsel appearing on behalf of the respondent-Corporation, would submit that, instead of keeping the writ petition

pending on the file of this Court and modifying the order under appeal, this Court may consider disposing of the writ petition itself. As such Writ

Petition (S/S) No. 667 of 2019 is itself taken up for hearing.

2. The petitioners, six in number, have invoked the jurisdiction of this Court seeking a writ of certiorari to quash the order dated 06.03.2019 passed by

the Regional Manager (Kumaun); a writ of mandamus directing the respondents to pay full salary to the petitioners, as was being paid to them in the

earlier months, prior to reduction pursuant to the letter dated 05.02.2019; and a

writ of mandamus directing respondents 3 to 8 to remit the reduced amount which was reduced in pursuance of the impugned order dated 06.03.2019 passed by the fourth respondent.

3. Facts, to the limited extent necessary, are that the petitioners are all employees of the Uttarakhand Forest Development Corporation (for short â??Corporationâ?). The Managing Director of the Corporation passed an order on 26.08.2009 informing all General Managers, and other officials of the Corporation, that a decision was taken to extend service benefits to the petitioners, or those who were regularized vide Government Order dated 23.12.2002. The benefit of the Sixth Pay Scale was allowed to employees of the Corporation pursuant thereto vide order dated 14.09.2009. The earlier order, passed by the Managing Director dated 26.08.2009, was modified by the subsequent order dated 15.07.2010 to the extent of calculation of dues of supernumerary employees to be appointed from 19.09.1991. By Government Order dated 30.11.2011, the benefit of ACP was allowed by the State of Uttarakhand to all employees and, on completion of 18 years of service on 19.09.2009, the petitioners were paid the grade-pay of Rs. 2400/- w.e.f. 19.09.2009.

4. By Government Order dated 22.12.2011, the pay-scales of the petitioners were upgraded and the Managing Director of the Corporation forwarded the said Government Order, to all Regional Managers vide his letter dated 27.12.2011, for necessary implementation thereof; employees of the Corporation were allowed the benefits of the Seventh Pay Commission w.e.f. 01.01.2016 pursuant to the Government Order dated 22.09.2017.

However, the Secretary, Finance, Uttarakhand Government is said to have raised several objections, in his audit report dated 05.02.2019, pursuant to which the Managing Director of the Corporation forwarded the said audit report to all General Managers and Regional Managers vide proceedings dated 14.02.2019.

5. A learned Single Judge of this Court, by his order in Writ Petition (S/S) No. 479 of 2019 dated 12.03.2019, observed that recovery of the excess amount, if any, paid to the petitioners, was yet to be made from them; and Mrs. Seema Sah, learned Standing Counsel, had submitted that recovery order would be passed only after hearing the petitioners. In the light of the submission made by the learned Standing Counsel, the learned Single Judge

was of the view that the petitioners did not suffer any legal injury, and dismissed the writ petition as premature. He, however, granted liberty to the petitioners to challenge the order passed by the Secretary, Finance dated 05.02.2019.

6. In the meanwhile, the Managing Director of the Corporation, by his letter dated 06.03.2019, sought permission of the Government to pay the petitioners' salary, as was being paid to them earlier. It is the petitioners' grievance that their grade-pay of Rs. 5400/- was reduced to Rs.

2400/- vide proceedings dated 06.03.2019; among the six petitioners, the fifth petitioner alone was issued a notice, and not the other five; the fifth

petitioner had submitted his reply thereto; and by a bald order dated 06.03.2019, and without assigning any reasons, his representation was rejected as

not maintainable, though the fifth petitioner had submitted an elaborate reply in support of his contention that his grade-pay should not be reduced.

7. The fact that no notice was issued to the other petitioners (apart from the fifth petitioner) has not been disputed by Mrs. Seema Sah, learned

Standing Counsel for the Corporation, who would submit that a general notice was issued to all the employees. As the Corporation seeks to reduce the

grade-pay of the petitioners from Rs. 5400/- to Rs. 2400/-, any such reduction could only have been made after they were put on notice calling upon

them to show cause why their grade-pay should not be reduced, thereafter giving them an opportunity of being heard, and to then take action in

accordance with law after a reasoned order is passed.

8. Since the impugned order dated 06.03.2019, reducing the petitioners' grade-pay from Rs. 5400/- to Rs. 2400/-, is in violation of the principles of

natural justice, the said order is quashed. In so far as petitioners 1 to 4 and 6 are concerned, the respondent-officials are permitted to issue a show-

cause notice afresh, give them a reasonable opportunity of submitting their reply to the said show cause notice, pass a reasoned order dealing with the

contentions urged by the petitioners in their reply to the show cause notice, and thereafter, if need be, take action in accordance with law.

9. In so far as the fifth petitioner is concerned, since he was already put on notice and was given an opportunity of submitting his reply to the show

cause notice, suffice it to quash the impugned order dated 06.03.2019, and direct the respondent-Corporation to pass an order assigning reasons as to

why the Corporation is of the view that the objections raised by the fifth petitioner, to the show cause notice, are not valid.

10. Needless to state that, since the impugned order dated 06.03.2019 is quashed, the petitioners would be entitled to be paid the grade-pay which they were drawing prior to the said order. Such benefit shall continue to be extended to the petitioners till a fresh order, in accordance with law, is passed by the respondent-Corporation.

11. Both Special Appeal No. 368 of 2019 and Writ Petition (S/S) No. 667 of 2019 are, accordingly, disposed of. No costs.