
(2023) 11 UK CK 0145

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1841, 1842, 1846 Of 2022??????????

Nawal Kishore Verma & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 29-11-2023

Acts Referred:

Citation : (2023) 11 UK CK 0145

Hon'ble Judges : Pankaj Purohit, J

Bench : Single Bench

Advocate : Gopal K. Verma, Kailash Chandra, Rajat Joshi, Sushil Vashistha

Final Decision : Allowed

Judgement

Pankaj Purohit, J

1. Since all these writ petitions involve the same controversy, therefore, all are being decided by this common judgment. For the purpose of brevity, the facts of Writ Petition (S/S) No.1846 of 2022, "Nawal Kishore Verma vs. State of Uttarakhand & others", are taken for consideration of the controversy.

2. By means of this writ petition, the petitioner has sought indulgence of this Court for a direction to the respondents to grant the entire amount of gratuity of the petitioner from the date of his superannuation, i.e. 30.06.2003 till the date of actual payment, and the interest is also claimed on the amount of said gratuity @10% per annum from the date of superannuation of the petitioner till the date of actual payment.

3. The facts of the case, shorn of unnecessary detail, are that the petitioner was appointed as an Assistant Teacher (LT Grade) (Physics) with respondent no.4- Uday Raj Hindu Inter College, Kashipur, District Udham Singh Nagar (hereinafter referred to as the "Institution"). It is pertinent to mention that the said institution is a private aided institution in the grant-in-aid with the respondent-State. The respondent- Department invited options from the teachers regarding

their date of retirement on superannuation at the age of 58 years or 60 years, and the petitioner had given option of his retirement on superannuation at the age of 60 years.

4. The petitioner retired on superannuation at the age of 60 years on 30.06.2003 from the said institution after satisfactory service. All the retiral dues of the petitioner were paid by the respondents, but for the gratuity, which according to the petitioner, he was entitled to get. The petitioner made several requests, both oral and in writing, to the respondents to release the gratuity, but the same has not been paid constraining the petitioner to approach this Court by filing the present writ petition in the year 2022.

5. The respondent- State filed its counter-affidavit, and in the said counter-affidavit, it has been stated that pursuant to the Government Order No.4026/12-08-400 (19)/84, dated 19th December, 1984, the options were invited from the teachers who have been appointed prior to 01.01.1984 as to whether they wish to retire on attaining the age of 58 years, or 60 years in a prescribed format.

6. It is the case of the respondent- State that those who had given option of retirement age of 58 years were entitled for benefit of pension, family pension, general provident fund and gratuity in accordance with the aforesaid Government Order. It is the further case of the respondent-State that the employees who were appointed prior to 01.01.1984, and had given option for retirement at the age of 60 years, shall not be entitled to the benefit of gratuity.

7. It is also the case of the respondent-State, as per the counter-affidavit, that by virtue of Government Order No.17-xxvii (7)अ.आ./2005, dated 25th September, 2005, only those teachers who were due to retire on 30.06.2005, and had submitted their option for retirement at the age of 58 years, such teachers will now be retired at the age of 60 years on superannuation, and they shall be paid gratuity. Since the petitioner retired prior to 30.06.2005, he will not be entitled to get the benefit of gratuity in view of the aforesaid Government Order dated 25th September, 2005.

8. Heard learned counsel for the parties.

9. It is submitted by learned counsel for the petitioner that the aforesaid controversy regarding the payment of gratuity to such teachers, who have initially exercised their option for retirement on superannuation at the age of 60 years, would be entitled to get the gratuity, irrespective of the fact as to whether they have exercised their option for retirement at the age of 58 years or 60 years, has been set to rest by the judgment of a Co-ordinate Bench of this Court dated 01.11.2017, passed in Writ Petition No.395 of 2017 (M/S), "G.B. Pant University vs. Appellate Authority & others" and batch of writ petitions.

10. It is further informed that the said decision was challenged unsuccessfully upto the Hon'ble Apex Court. It is submitted by the learned counsel for the petitioner that the Government Order dated 19th December, 1984, relied upon

by the respondents, is not applicable to the case of the petitioner, as the petitioner is a teacher and is not a non-teaching staff, while from the bare perusal of the aforesaid Government Order, it is reflected that the said Government Order is meant for non-teaching staff working in the Agricultural Universities.

11. It is further submitted by the learned counsel for the petitioner that the aforesaid Government Order is issued with respect to the non-teaching staff of the Agricultural Universities of the State, and for that reason too, the said Government Order cannot be pressed into service to deprive the petitioner of his gratuity.

12. Learned counsel for the petitioner further submitted that the Government Order dated 25th September, 2005 set out a date which speaks that the said Government Order will be applicable to teachers who retired on superannuation on 30.06.2005. It is strenuously submitted by learned counsel for the petitioner that a pragmatic meaning shall be given to the said Government Order, which may be read as applicable to all teachers, who retired on or before 30.06.2005, and there is no logic to fix the cut-off date as on 30.06.2005 only.

13. Per contra, learned State Counsel fairly submits that so far as the Government Order dated 19th December, 1984 is concerned, the said Government Order appears to have been passed in respect of retiral dues of the non-teaching staff of the Agricultural Universities. But, to the object, which has been raised by the State in counter-affidavit, on the strength of the Government Order dated 25th September, 2005, it is argued vehemently that the said Government Order will be applicable only to those teachers, whose date of retirement is 30.06.2005, and the benefit of gratuity can only be applicable/admissible to such teachers who retired on 30.06.2005.

14. I have perused the writ petition, the Government Orders relied upon by the respondent- State, and the judgment dated 01.11.2017, passed by the Co-ordinate Bench of this Court in Writ Petition No.395 of 2017 and other connected writ petitions.

15. The writ petition deserves to be allowed for the reason that the aforesaid controversy as to whether a person is entitled to gratuity irrespective of the fact whether he retired at the age of 58 years or at the age of 60 years, after exercising his option for such retirement, has been set to rest by the aforesaid judgment, which was affirmed by the Hon'ble Apex Court, and further the date of retirement, which is fixed by the Government Order dated 25th September, 2005, as 30.06.2005, is quite unreasonable and from the tone and tenor of the aforesaid Government Order, it transpires that the benefit of said Government Order will be applicable to all those teachers who retired prior to 30.06.2005.

16. There is yet another aspect of the Government Order dated 25th September, 2005. The Condition 1- of the Government Order is quoted below.

17. From perusal of the Government Order dated 25th September, 2005, it is reflected that it has two pre-conditions for its applicability- (one) teachers whose date of superannuation was 30.06.2005 and (two) who had earlier given their option for retirement at the age of 58 years.

18. But in the case in hand, the petitioner had given his option for retirement at the age of 60 years. This Government Order was issued only to facilitate those teachers who had given their option for retirement at the age of 58 years. In this view of the matter too, the Government Order would not come to help the respondent. Moreover, by this Government Order gratuity was made admissible to those who had earlier exercised the retirement option of 58 years and they shall be retired on superannuation at the age of 60 years.

19. Since the petitioners in all the writ petitions retired prior to 30.06.2005, i.e. petitioner in Writ Petition (S/S) No.1346 of 2022, on 30.06.2003, petitioner in Writ Petition (S/S) No. 1841 of 2022, on 30.06.2004 and the petitioner in Writ Petition (S/S) No.1842 of 2022, on 30.06.2001 respectively, and exercised retirement option for retirement at the age of 60 years, they are entitled to get gratuity.

20. Accordingly, all the writ petitions are allowed. The respondents are directed to release the gratuity admissible to the petitioner(s) forthwith, not later than two months from today. The gratuity shall carry interest @6% per annum.

21. Pending application, if any, also stands disposed of.