
(2018) 12 UK CK 0093

In the Uttarakhand High Court

Case No : Writ Petition (WPSS) No. 4045, 4046, 4048 Of 2018

**Om Prakash Ghansiyal & Others @APPELLANT@Hash State Of
Uttarakhand And Others**

Date of Decision : 05-12-2018

Acts Referred:

Citation : (2018) 12 UK CK 0093

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Ganga Singh Negi, S.K. Mishra, Seema Sah

Final Decision : Disposed Off

Judgement

Sharad Kumar Sharma, J

1. With the consent of the parties, this bunch of writ petitions, is being disposed of together.

2. The precise case of the petitioners is that the petitioners plead that they were appointed on the post of Secretary, Primary Agriculture Cooperative

Societies in the District Pauri by the Secretary, District Administrative Committee, District Cooperative Bank Limited, Garhwal, Kodwar. The

petitioners worked with the Society and they were superannuated from the post of Cadre Secretary, Cooperative Societies Ltd. Bironkhal /

Syusibangar, Block Bironkahl, District Pauri Garhwal. On 24.02.2011, an order was passed by the respondents regarding the enforcement of the

benefit of leave encashment and gratuity to the Cadre Secretary of the Cooperative Societies and an order, in this regard, was ultimately issued on

24.02.2011 by the Registrar, Cooperative Societies, Uttarakhand, thereby, implementing the benefits of payment of leave encashment and gratuity

w.e.f. 1st November, 2011 for the post of cadre Secretaries. It was, thereafter,

the Registrar, Cooperative Societies, has issued an order on 4th March, 2015, whereby, the benefits of the ACP, on completion of 10 years, 16 years and 26 years of satisfactory services was also extended to the Cadre Secretary of the Primary Agriculture Cooperative Societies. The said benefit as extended by the order of the Registrar dated 4th March, 2015, it was, in fact, made effective w.e.f. 1st January, 2015. By virtue of which, the benefit was said to be made payable w.e.f. 01.01.2011 in place of 01.01.2015. Based on the letter hence issued by the Registrar, the respondent Nos. 3 and 4 had written a letter on 26th September, 2016, with regard to the payment of the grade pay to the Cadre Secretaries. It directed for the immediate payment of leave encashment and gratuity to the Cadre Secretary to the Primary Agricultural Cooperative Societies, the direction was also issued by the Assistant Registrar, Cooperative Societies on 29th May, 2015, to all the Secretaries / General Manager, District Cooperative Societies to ensure the enforcement of the order dated 24th February, 2011, extending the benefit of leave encashment and gratuity to all the retired Cadre Secretary and an order dated 4th March, 2015 issued by the Registrar extending the benefit of the ACP to the Cadre Secretary. When the same was not given to the petitioners, they contend that they had submitted several representations on a number of occasions, but it has heeded no result. Hence, the petitioners have filed the present writ petitions.

3. The contention of the learned counsel for the petitioners is that in view of the letter of the Registrar, Cooperative Societies dated 4th March, 2015 and 26th September, 2016, the petitioners would also be entitled for the payment of the benefits of the leave encashment and gratuity and the revision in their scale by the grant of grade pay of Rs.4200/- as well as the benefit payable under 3rd A.C.P. on completion of 26 years of service.

4. In support of his contention, the petitioners submit that for the identical relief, a writ petition came up for consideration before this Court, being Writ Petition No. 551 of 2018 (S/S), Avdhesh Singh Rawat Vs. State of Uttarakhand and others and connected matters, which were decided by the Coordinate Bench of this Court on 25th May, 2018, based on the directions, which have been issued by the decision of the Division Bench judgment, rendered in Special Appeal No. 202 of 2017, State of Uttarakhand and others Vs. Dharmanand Uniyal and others and other connected matters, as

adjudicated on 4th September, 2017. Hence, the petitioners claim parity based on the said judgment.

5. The judgment of the Division Bench, as rendered in the Bunch of Special Appeals with the leading Special Appeal No. 202 of 2017, State of

Uttarakhand and others Vs. Dharmanand Uniyal and others, which was preferred by the State being aggrieved against the judgment rendered by

Single Judge in Writ Petition No. 1903 of 2016.

The Special Appeal, thus, preferred by the State, has been partly modified with the following directions :

30. Learned CSC would have contention that Rules were made at the time when State was undivided in the year 1976. In newly carved out State

of Uttarakhand there may be thousands such employees and State cannot be directed to shoulder the responsibility particularly when as in these cases

the problem arises on account of cooperative institutions, which are private institution not doing enough work to generate sufficient income.

31. We must make it clear that Rules would not show that State is as such bound to make available money ordinarily to pay employees under the

Rules. Manner of payment is provided in Rule 15 read with Rule 19 but appellant no. 3 in this case is Member Secretary of the District Administrative

Committee and Registrar who is the second appellant both cannot absolve themselves from their responsibility.

32. Learned counsel for the writ petitioners drew our attention to the resolution / communication dated 24.02.2011 where reference is made as to how

gratuity and leave encashment will be calculated.

33. It may be true that communication dated 24.02.2011 detailed about grant of benefit of gratuity at the time of superannuation. It provides for the

method of calculating the gratuity but question is who should pay it. It is addressed to Member Secretary of the District Administrative Committee.

Having regard to the fact that it relates to the earlier years, we think that interest of justice would be sub served, if we direct the appellant no. 2 to

consider the case of the writ petitioners, having regard to the conspectus of the Act, Rules and also observations which we have made. A decision will

be taken within three months from the date of production of certified copy of this judgment. He must ensure that petitioners are paid amount that is

legally due to them.

6. It is not in dispute rather admitted by the respondents that the controversy raised in the present Writ Petitions stands settled in terms of the Division

Bench judgment rendered on 4th September, 2017 in the aforesaid Appeals.

7. Consequently, the Writ Petitions, too, would stand disposed of exclusively in terms of the judgment of the Division Bench dated 4th September,

2017, passed in Special Appeal No. 202 of 2017, State of Uttarakhand and others Vs. Dharmanand Uniyal and others and other connected matters.

The judgment dated 4th September, 2017 would constitute to be the part of today's judgment.

8. Subject to the above observations, the Writ Petitions stand disposed of.