

(2011) 09 UK CK 0044

In the Uttarakhand High Court

Case No : Writ Petition No. (SS) 91 of 2011

Prashant Kumar Sharma and Others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2012) 1 UC 541

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : B.M. Pingal, for the Appellant; N.P. Sah for the State of Uttarakhand, for the Respondent

Judgement

Hon'ble Sudhanshu Dhulia, J.—Heard Mr. B. M. Pingal. Advocate for the petitioners and Mr. N. P. Sah. Standing Counsel for the State of Uttarakhand. The petitioners were the candidates for the post of Fire Man in Uttarakhand Fire Department. An advertisement was issued calling application from eligible candidates on 11.5.2006. The petitioners responded to the said advertisement. Consequently, they qualified in the written examination and subsequently in the physical test and were finally selected as per the advertisement dated 11.5.2006. The petitioners were to complete a period of ""training" as well as period of "intensive training", and thereafter they were to be sent to their respective districts for practical training. Petitioners completed 16 days" training which was general in nature along with other recruits of civil police and other police department. Thereafter they did an intensive training from 1.1.2008 to 31.1.2008. After completing this training, each petitioner was sent for their practical training to these districts. They completed practical training. All the same, the petitioners are getting salary only from 1.4.2009 onwards. The period on which they were doing their practical training at the district centers, has been taken as part of the training or intensive training and for this only "stipend" is given to these petitioners. It is this, which is presently challenged by the petitioners, as they demand a salary and not just stipend for this "practical

training".

2. According to the petitioners, they have completed their training as well as intensive training. They are the members of Fire Department after this and are liable to be given salary for the same and not stipend. In other words, from 1.4.2008 onwards they are liable to be given salary which has been given after a period of one month training.

3. The respondents on the other hand have relied upon the terms and conditions of the advertisement stating that the practical training would be a part of the intensive training that since the practical training is part of the intensive training they are liable to be given only stipend and not salary- This is rebutted by the petitioners. The petitioners relied upon Rule 6 of the Uttar Pradesh Fire Service Act, 1944 (from hereinafter referred to as "1944 Act"). Rule 6 of 1944 Act reads as under: -

6. Certificate to the member of the Fire Service.- Every member of the Fire Service shall receive upon appointment a certificate in the form prescribed in the Schedule annexed to this Act under the seal of the Inspector General of Police or such other officer as he may authorize, by virtue of which the person holding such certificate shall be deemed to be vested with the powers, functions and privileges of a member of the U.P. Fire Service. Such certificate shall cease to have effect whenever the person named therein ceases for any reason, to be a member of the U.P. Fire Service, and on his ceasing to be such a member, shall be forthwith surrendered by him to any officer empowered to receive the same.

During any term of suspension the powers, functions and privileges vested in any member of the U.P. Fire Service shall be in abeyance, but he will continue to be subject to the same responsibilities, discipline and penalties and to the same authorities if he had not been suspended.

4. The petitioners contend that this certificate as contemplated under Rule 6 were given to them from 31-3-2008 and since 31.3.2008 they are member of the services as contemplated under the rules and a member of service is liable to be given regular salary and not a stipend. 31.3.2008, is the date, according to the petitioners when they completed their training and thereafter were sent to different districts.

5. This Court is in total agreement with the contention of the petitioners. The petitioners after their training, obtained certificate under the Rules and though they cannot refuse any further training which their departments prescribe and they are liable to be undergone by them. This training will only be as a member of service and such a member is liable to be given salary and not just stipend. The petitioners have also relied upon a decision of a learned Single Judge which by and large on the same issue where the additional training even after the initial training was completed after a considerable period and was given stipend and not regular salary. The learned Single Judge in Writ Petition No.(S/S)161 of 2010 has held this to be unfair as were liable to be given regular salary after

completing service. This decision of the learned Single Judge has been upheld in a special appeal being Special Appeal No. 214 of 2010 as well in State of Uttarakhand & others Vs. Constable (M) Deepak Joshi & others.

6. The writ petition therefore succeeds. Respondents are directed to give them salary for the period from 14.12.2009 to 31.3.2009 after deducting the amount of stipend paid for the said period. Needful be done as expeditiously as possible but definitely within a period of 8 weeks from the date a certified copy of this order is produced before them. No order as to costs.