
(2018) 08 UK CK 0241

In the Uttarakhand High Court

Case No : Special Appeal No. 624, 625 Of 2018

Raghuveer Singh And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 16-08-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2018) 08 UK CK 0241

Hon'ble Judges : Rajiv Sharma, J; Manoj Kumar Tiwari, J

Bench : Division Bench

Advocate : Lalit Samant, Beena Pande, Paresh Tripathi

Final Decision : Allowed

Judgement

Rajiv Sharma, J

1. This Special Appeal is directed against the judgment dated 18.06.2018 rendered by the learned Single Judge in Writ Petition (S/S) No. 1628 of 2018.

2. Key facts necessary for adjudication of this Appeal are that the appellant had filed Writ Petition (S/S) No. 1626 of 2016 assailing the order dated

1st November, 2010, whereby the service rendered by the appellant in the work charge establishment has not been counted towards the pension. The

writ petition was dismissed on the ground of delay and laches.

3. The right to get pension is a continuous right. The employee gets the right on every first day of month. This Court as well as Honâ??ble Supreme

Court has already held that the work charge period is to be counted for the purpose of pension.

4. Learned Chief Standing Counsel appearing on behalf of the State / respondent nos. 1 to 3 Mr. Paresh Tripathi has vehemently argued that in view

of the Uttarakhand Retirement Benefits Act, writ petition is not maintainable.

5. It is settled law that the Act would apply prospectively, and vested and acquired rights cannot be taken away.

6. Honâ??ble Supreme Court in the case of Chairman, Railway Board vs. C.R. Rangadhamaiah reported in (1997) 6 SCC Page has held as follows:

â??20. It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the

ground of retroactivity as being violative of Articles 14 and 16 of the Constitution of India, but a rule which seeks to reverse from an anterior date a

benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution

to the extent it operates retrospectively.

24. In may of these decisions the expression â??vested rightsâ? or â??accrued rightsâ? have been used while striking down the impugned provisions

which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of

the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with

effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an

amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is

arbitrary, discriminatory and vioaltive of the rights guaranteed under Articles 14 and 16 of the Constitution of India. We are unable to hold that these

decisions are not in consonance with the decision in Roshan Lal Tandon AIR 1967 SC 1889, B.S. Yadav AIR 1969 SC 118 and Raman Lal Keshav

Lal Soni (1983) 2 SCC 33.â??

7. The Special Appeal is, accordingly, allowed. The judgment of the learned Single Judge is set aside. The respondents are directed to count the period

of service rendered by the petitioner in the work charge establishment towards pensionary / retiral benefits within a period of ten weeks from today.