
(2011) 06 UK CK 0057

In the Uttarakhand High Court

Case No : Special Appeal No. 87 of 2011

State of Uttarakhand and Another

APPELLANT

Vs

Pitamber Datt Pandey and Others

RESPONDENT

Date of Decision : 15-06-2011

Acts Referred:

Constitution of India, 1950 — Article 229

Citation : (2011) 06 UK CK 0057

Hon'ble Judges : Barin Ghosh, C.J.;Serves Kumar Gupta, J

Bench : Division Bench

Judgement

Barin Ghosh, C.J.—Heard learned Counsel for the parties on the application for condonation of delay.

2. Being satisfied with the reasons, furnished in the application for condonation of delay, we condone the delay in preferring the appeal.

3. By consent of the parties, the appeal is taken up for hearing.

4. Heard learned Counsel for the parties.

5. The facts of the case, to which there appears to be no dispute, are that the Class IV employees of the Allahabad High Court were receiving salary in the pay scale of 2550-3200 until before 1998. In the year 1998, the Hon'ble Allahabad High court rendered a judgment and, accordingly, enhanced the scale of salary payable to Class IV employees of Allahabad High court to ` 3200-4900. On 9.11.2000, the State of Uttar Pradesh was re-organised, whereupon carving out a part thereof, the State of Uttarakhand was created. For the State of Uttarakhand, it became necessary to establish a High Court. High Court of Uttarakhand was established on 9.11.2000. At that stage i.e. as on 9.11.2000, no rule under Article 229 of the Constitution of India was framed for the employees of the Uttarakhand High Court. Class IV employees of the High Court at Uttarakhand were, accordingly, brought from the subordinate judiciary of the State of Uttarakhand. Subsequent thereto, steps were taken to determine the

number and class of employees required to be employed in the High Court of Uttarakhand, when Hon''ble Chief Justice of the High Court made a recommendation. While making the recommendation, it was clearly indicated that the Hon''ble Chief Justice is also proposing to pay to the employees, thus determined, salary in certain specified scales. For Class IV employees, the scale of pay that was recommended was ` 3200-4900. The Hon''ble Chief Justice, while making the said recommendation, categorically stated that the said recommendation is based on the pattern as was then prevalent in the High Court at Allahabad. The State Government concurred to the said recommendation. The mandate of Article 229 of the Constitution, thus, stood completely complied with. Accordingly, posts were created and people appointed by the Hon''ble Chief Justice in those posts started getting their salaries in the scales mentioned in the said recommendation. All the Class IV employees engaged by the Hon''ble Chief Justice started getting their pay in the scale of ` 3200-4900. Subsequent thereto, sometime in the year 2004, the Hon''ble Supreme Court set aside the said judgment of the Hon''ble Allahabad High court, which paved the way of reduction of the pay scale of the Class IV employees of Allahabad High Court from ` 3200-4900 to ` 2550-3200 and in consequence thereof, since after the said judgment was rendered by the Hon''ble Supreme Court, the Class IV employees of Allahabad High Court started getting salaries in the scale of ` 2550-3200. This information was supplied by the Registrar, Allahabad High Court to the Law Secretary of the State of Uttarakhand. The Law Secretary, Uttarakhand, thereupon, on the instructions of the State Government, approached the Hon''ble Chief Justice, High Court at Uttarakhand, through the Registrar General thereof, for the purpose of bringing to the notice of the Hon''ble Chief Justice of Uttarakhand High Court the said development. The Hon''ble Chief Justice of Uttarakhand High Court, through the Registrar General, authorised the Government to do the necessary in the background of what has been stated above. The State Government thereupon, by the Government Order dated 29.7.2005, reduced the pay scale of Class IV employees of the High Court of Uttarakhand from ` 3200-4900 to ` 2550-3200.

6. The said action on the part of the State Government, in the circumstances mentioned above, was an outcome of a conscious decision taken by the Chief Justice of the High Court and the State Government, as is the requirement of Article 229 of the Constitution of India. This action was assailed in the writ petition, which has been allowed, by the judgment and order under appeal, principally on the ground that the action complained of was that of the State Government and was not a combined action of the Chief Justice and the State Government, as is the requirement of Article 229 of the Constitution, and that the action of the State Government, in view of the subsequent recommendation made by the Chief Justice, is arbitrary and that there was no just reason for not concurring to the subsequent recommendation of the Chief Justice that the pay scale of the Class IV employees of the High Court should be ` 3200-4900 and also that paucity of funds is no ground to deny legitimate claim.

7. Since we have held that the action of reduction of the pay scale was an action under Article 229 of the Constitution and, accordingly, the same was a joint action of the Hon"ble Chief Justice and the State Government, we are unable to uphold the judgment and order under appeal.

8. However, the most important legal question, which cropped up in the writ petition, appears to have had not been highlighted, and as a result, the learned Single Judge, who dealt with the writ petition, had no occasion to deal with the same.

9. It appears to be the contention of the State Government that the scale of pay of Class IV employees of the Allahabad High Court was enhanced by the judgment rendered by the Allahabad High Court, and inasmuch as the said judgment stood set aside by the Hon"ble Supreme Court, the right to receive enhanced pay scale was interfered with and, accordingly, Class IV employees of the Allahabad High Court started receiving the reduced pay scale. It appears to be the contention that the higher pay scale was given in that background, and when it was judicially adjudged that the Class IV employees of Allahabad High Court are not entitled to higher pay scale, a decision was taken to give the correct pay scale to the Class IV employees of the High Court at Uttarakhand. This may be or may not be a good reason, but the question is, could the Chief Justice and the State Government, in exercise of their power under Article 229 of the Constitution of India, reduce the pay they had promised to pay to the employees of the High Court while exercising similar power on earlier occasion under Article 229 of the Constitution? The answer will be "no", inasmuch as the Constitution of India itself provides that only when financial emergency has been proclaimed, salaries can be reduced, which, in other words, makes it clear that in any other circumstances, salary cannot be reduced. Therefore, even in exercise of power under Article 229 of the Constitution of India, the salary, already promised and paid in exercise of power under Article 229 of the Constitution of India, cannot be reduced.

10. That being the situation, we only uphold the ordering portion of the judgment and order under appeal to the extent it quashed the order dated 29th July, 2005.

11. This disposes of the appeal.