

(2018) 07 UK CK 0116

In the Uttarakhand High Court

Case No : Special Appeal No. 203 of 2018, 204 of 2018, 205 of 2018

State of Uttarakhand and others

APPELLANT

Vs

Aishwarya Shah and others

RESPONDENT

Date of Decision : 23-07-2018

Acts Referred:

Citation : (2018) 07 UK CK 0116

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Vikas Pande, Subhash Upadhyay

Final Decision : Disposed Off

Judgement

K.M. JOSEPH, C.J. (Oral)

SHARAD KUMAR SHARMA, J.

1. There is delay of 320 days in filing Special Appeal No. 203 of 2015; delay of 320 days in filing Special Appeal No. 204 of 2018 and delay of 316

days in filing Special Appeal No. 205 of 2018. Heard Mr. Vikas Pande, learned Standing Counsel on behalf of the State/appellants and Mr. Subhash

Upadhyay, learned counsel on behalf of the respondents/writ petitioners. In the circumstances, after hearing learned counsel for the parties, we are of

the view that the Application for Condonation of delay is to be allowed. Accordingly, the Delay Condonation Application will stand allowed and the

delay caused in filing all these Special Appeals will stand condoned.

2. We also took up these appeals for hearing on the consent of the parties.

3. Appellants are the respondents in the writ petition. These appeals are lodged against the judgments of the learned Single Judge in three separate

writ petitions, but since they raise common questions, we are deciding all these appeals by this common judgment. We take Special Appeal No. 203 of

2018 as the leading case, which is lodged against the judgment in Writ Petition (S/S) No. 944 of 2016. Therein, the reliefs sought by the writ petitioner

are as follows:

â??I. Issue a writ order or direction in the nature of certiorari calling for the record and quashing the impugned order dated 25-02-2016 passed by the

respondents, by which the rightful claim of the petitioner for the pay scale of Rs. 5000-8000 (revised pay scale of Rs.9300-34800, Grade pay Rs.4200)

has been denied. (annexure no. 14)

II. Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to grant the pay scale of Rs. Rs.5000-8000

(revised pay scale of Rs.9300-34800, Grade pay Rs.4200) to the petitioner w.e.f. 26-12-2008 i.e. from the date of his joining as Surveyor, as the

persons holding the lower post (Draftsmen) in the department and the counterparts in the forest department are getting the aforesaid pay scale and

grade pay since long and release the arrears of the same with admissible interest.â??

4. In short, the case of the writ petitioners would appear to be that they are working as Surveyors in the Geology and Mining Department and they are

being discriminated against in the matter of pay scale vis-Ã -vis their counterparts, namely, Surveyors working in the Forest Department. It is,

INTERÂ ALIA, the case of the writ petitioners that the Director of Geology and Mining Department has already recommended their case for being

treated at par with the Surveyors working in the Forest Department. The pay scale of the Surveyors working in the Forest Department is 9300-34800

with Grade Pay of Rs. 4200, whereas the pay scale of the writ petitioners working as Surveyors in the Mining and Geology Department is Rs. 5200-

20200 with Grade Pay of Rs.2400.Â Â Â Â Â Â The representations of the writ petitioners came to be rejected. The learned Single Judge, by the

impugned judgment, has found, INTER ALIA, that the fact of the matter is that qualification of the writ petitioner serving in the Geology and Mining

Department and Surveyors serving in the Forest Department is the same. Further, the learned Single Judge notes that the scope of judicial review in

parity matters is limited and if there is arbitrariness, the same can be looked into

by the Court. Reference is further made to the tabular format

(Annexure No. 11 to the writ petition) of qualification, mode of recruitment and duties being discharged by the Surveyors working in the two

departments in question. The case of the writ petitioner has been recommended by the Director to the Additional Secretary on 03.12.2015 is

another observation made. Thereafter, the learned Single Judge proceeded to observe as follows:

Prima facie, the duties and responsibilities discharged by the petitioner as well as by his counterparts in the Forest Department are almost the same.

Equals cannot be treated unequally. The petitioner and the Surveyors serving in the Forest Department are the employees of the State Government.

The State Government should maintain parity in releasing the pay scale when the qualification mode of recruitment and duties are the same.

Accordingly, the writ petition is allowed. Annexure No. 14 dated 25.02.2016 is quashed and set aside. Respondents are directed to consider the case

of the petitioner for release of pay scale of Rs. 5000-8000 from the due date within a period of ten weeks from today.

5. Mr. Vikas Pande, learned Standing Counsel on behalf of the appellants would take us to the tabular chart. He would submit that there is difference

in the qualifications to be appointed as Surveyor in the Geology and Mining Department as compared to the qualifications to be appointed as Surveyor

in the Forest Department. He would also submit that actually the nature of work of a Surveyor working in the Forest Department and the nature of

work of a Surveyor working in the Geology and Mining Department is not the same.

6. Mr. Subhash Upadhyay, learned counsel on behalf of the writ petitioners would point out that as far as the impugned order dated 25.02.2016 in the

writ petition being quashed is concerned, a perusal of the same would show that only reference is made to a report of the Samta Samiti of 1989 that

mere similarity in the nomenclature should not result in equal pay being vouchsafed for the employees. Even at the time when the said impugned order

was passed, he does submit that the recommendations made in favour by competent authorities were already there, but they have not been considered

in the impugned order. In the first place, we must note that the appellants have not filed any counter affidavit controverting the allegations made in the

writ petition. Secondly, we notice that the learned Single Judge by the judgment under challenge in Appeal has not directed the granting of the benefits, which is one of the reliefs sought for by the writ petitioners. The learned Single Judge has quashed, no doubt, the order dated 25.02.2016 rejecting the representation. As far as the order quashing the order rejecting the representation is concerned, we notice that essentially in the order, reference is only made to the views of the Samta Samiti report that mere similarity in nomenclature will not be decisive factor as to whether the work, which is being done by the Surveyors in the two departments in question, is similar. What are the qualifications and other relevant factors essential for consideration of parity in scale have not been gone into by the Government while rejecting the representation. We must also note that there are recommendations made by the Director, Geology and Mining Department, to which the writ petitioners belong, recommending their case and it is there that the Tabular Chart has been put in place.

7. It is brought to our notice by Mr. Subhash Upadhyay, learned counsel that, in fact, even the Law Department has taken the view that no special appeal is necessary to be preferred against impugned judgment dated 20.04.2017.

8. Having regard to the circumstances of this case, we do not think that we need to set aside the direction given by the impugned judgment dated 20.04.2017 to consider the case of the writ petitioners. But at the same time, we only wish to make it clear that as far as the finding given by the learned Single Judge that the qualifications of the Surveyors working in the Geology and Mining Department and the Surveyors working the Forest Department are the same, that cannot be sustained, in view of the order where it contains a direction, which is to consider the matter. Accordingly, we set aside the same and we direct that the Government will look into both the recommendations wherein the qualifications are mentioned and also the actual qualifications, which are prescribed for both the posts under law and consider the matter after making a proper study regards the nature of the work being performed by the Surveyors in both the Departments; the qualifications prescribed and any other relevant factor as per law, in accordance with law.

9. Subject to the aforesaid modification, the appeals will stand disposed of. A

decision, as aforesaid, will be taken in accordance with law within a period of six weeks from the date of production of a certified copy of this judgment before the first appellant.

10. All the pending applications stand disposed of accordingly. There will be no order as to costs.