
(2019) 08 UK CK 0125

In the Uttarakhand High Court

Case No : Special Appeal No. 719, 720, 731, 734 Of 2019

State Of Uttarakhand And Others

APPELLANT

Vs

Chetpal Giri And Others

RESPONDENT

Date of Decision : 19-08-2019

Acts Referred:

Citation : (2019) 08 UK CK 0125

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Pradeep Joshi, Tapan Singh

Final Decision : Disposed Of

Judgement

Ramesh Ranganathan, CJ

1. In all these four Special Appeals, the delay in preferring these appeals are of more than one year. While the delay is of 455 days in preferring Special Appeal No.719 of 2019, the delay is of 386 days in preferring Special Appeal No.720 of 2019; and the delay is of 378 days in preferring Special Appeal No.731 of 2019 and Special Appeal No.734 of 2019.

2. In the affidavits filed in the support of the applications seeking condonation of delay, details are furnished of the correspondence between one department/ official and another which resulted in the delay in preferring these appeals.

3. The orders under appeal were passed, in four writ petitions, at the stage of admission without giving the appellants an opportunity of filing their counter affidavits thereto. In the orders under appeal, the learned Single Judges had directed the respondents to upgrade the pay scale of the petitioner in the light of the Government Order dated 05.10.2015, read in conjunction with the order dated 28.10.2016, within a period of eight weeks from the date of the order.

4. Mr. Pradeep Joshi, learned Standing Counsel for the appellants, would contend that the Government Order dated 05.10.2015 was applicable only to those who

are extended a Grade pay of below Rs.1800/- i.e. for Rs.1300/-, Rs.1400/- and Rs.1650/-; all such employees, holding Group D posts, were directed to be paid one common Grade Pay of Rs. 1800/-; the respondent-writ petitioners were all drawing a Grade pay of Rs.2800/-; the Government Order dated 05.10.2015 is applicable only to those Group-D employees who were drawing a Grade Pay of less than Rs.1800/- per month; despite the Government order dated 05.10.2015 not being made applicable to Group-D employees, who were drawing a Grade Pay of more than Rs.1800/- per month, proceedings dated 28.10.2016 were issued permitting such personnel to draw the higher grade pay applicable to their posts, which is not in terms of the Government order dated 05.10.2015; and it is in such circumstances that the proceedings dated 05.10.2015 were issued to recover the excess amount erroneously paid to the respondent-writ petitioner earlier.

5. On the other hand, Mr. Tapan Singh, learned counsel for the respondent-writ petitioner, would submit that the orders under appeal have been implemented; the petitioners have been extended the Grade Pay of Rs.4200/-; and it would be wholly inequitable to now permit the appellant to recover the said amounts from them.

6. It is evident from the affidavit filed in the Special Appeals, (no opportunity having been given to the appellants to file their counter affidavits in the writ petitions), that the Principal Secretary, Government of Uttarakhand had, by order dated 05.02.2019, informed the Engineer-in-Chief, Irrigation Department that the proceedings dated 03.05.2018 and 01.06.2018 were contrary to the provisions of the Government Order dated 05.10.2015; and notices should be issued to the personnel asking them to show cause why the excess amounts paid to them earlier should not be recovered from their salary. Since none of contentions, now urged before us on behalf of the appellant, were examined by the learned Single Judge, and the writ petitions were disposed of at stage of admission even without counter affidavits being filed by the appellant, we are satisfied that, notwithstanding the delay of more than one year, the appellant should not be non-suited on this ground alone. We must, however, also bear in mind that it would not be appropriate for us, in an intra-Court appeal, to record any finding on merits, since the contentions now urged before us ought to have been examined by the learned Single Judge in the first instance.

7. Suffice it, in such circumstances, to condone the delay in preferring the appeals, set aside the orders under appeal on the ground of violation of principle of natural justice, and restore all the four writ petitions on board. The appellants shall file their counter affidavits, in the writ petitions, within three weeks from today. Till the Writ Petitions are heard and decide afresh, the amounts already paid to the petitioners shall not be recovered. The respondent-writ petitioners shall, however, not be entitled henceforth for payment of the enhanced Grade Pay till the writ petitions are finally heard and decided. It is open to the learned counsel for either parties to request the learned Single Judge to take up the writ

petitions for admission and hearing any day after three weeks from today.

8. All the Special Appeals are, accordingly, disposed of. No costs.