

(2019) 05 UK CK 0007
In the Uttarakhand High Court
Case No : Special Appeal No. 87 Of 2011

State Of Uttarakhand & Another	Vs	APPELLANT
Pitamber Datt Pandey & Others		RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 229, 229(2)

Citation : (2019) 05 UK CK 0007

Hon'ble Judges : Ramesh Ranganathan, CJ; Sharad Kumar Sharma, J

Bench : Division Bench

Advocate : Pradeep Joshi, Vinay Kumar

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. A very peculiar situation which has arisen for consideration by this Bench is over the controversy in question with regards to the grant of scale of Rs.3,200-4,900/- to the class IV employees of the High Court of Uttarakhand, as sanctioned and stood enforced by the decision of the State Government itself since at the time of creation of the cadre by virtue of the Government Order issued by the State. After the approval of his Highness the Governor of the State on 02.05.2001 the State issued the Government Order being the Government Order 234/ न्याय अनुभाग 2001. After the grant of the said scale to class IV employees while sanctioning the cadre strength in pursuance to the schedule annexed with Government Order, on creation of the State and the High Court, the State was conscious that the said fixation of scale was exclusively necessary in relation to the class IV employees of the High Court, as it was necessary for their effective functioning. In other words, it could be said that by the aforesaid Government Order dated 02.05.2001, it was an exclusive decision which was taken by the State after the approval of His Highness, The Governor of Uttarakhand, by virtue of which the aforesaid Government Order, the scale was fixed and in fact was rather paid to the class of employees as mentioned in the said Government Order dated 02.05.2001, and in particular, the posts

which were mentioned from S.No.22 to S.No.33 of the said Government Order dated 02.05.2001.

2. As a consequence thereto, the Daftari, Zamadar, Peon, Mali, Farras, Electricians, Sweeper, Carpenter, Chowkidar, Plumber etc., which were referred therein, in the said Government Order dated 05.2001, were being continuously paid the aforesaid scale of Rs.3,200-4,900/- as fixed by the Government Order dated 02.05.2001. On the reorganization of the State and at the stage when the State was considering the aspect pertaining to the sanctioning of cadre strength of the employees of various categories for the High Court. Rather it could be said that the decision dated 02.05.2001 by the State by the Government Order, it was an independent and a conscious decision of the State, taken after considering all the aspects of the matter including its financial implications, which the State would have to bear after the enforcement of the said Government Order in relation to the 451 posts, which were created and sanctioned for group D employees of the High Court of Uttarakhand in the scale of Rs.3,200-4,900/-.

3. It would also be relevant to mention and as would also be apparent from the records that on creation of the State of Uttarakhand and consequently the High Court of Uttarakhand, the procedure for the determination of the cadre strength for the High Court was a task which was vested over by the then Hon'ble Chief Justice, to a committee which was then headed by its Chairman namely Hon'ble Mr. Justice M.C. Jain, constituted for the purposes of determining the need and establishment of the cadre of Class IV employees, with which we are presently concerned. The said committee is said to have submitted a report on 09.03.2001, to the State Government, after its prior approval from the then Hon'ble Chief Justice and thereafter the same was referred to the State Government by the letter of the then Registrar General dated 21.03.2001. It was thereafter only that on the exhaustion of the said process the State Government had issued the Government Order dated 02.05.2001, sanctioning the cadre strength of 451 posts of Class IV, employees as well as the scale, as enumerated therein in the schedule of the said Government Order, i.e. Rs.3,200-4,900/-. After the cadre strength being sanctioned and determined by State, the employees belonging to the Group D posts were appointed by the High Court by the recruitment process under the terms and conditions of the rules as then applicable to them and they were made entitled to be paid with the scale as fixed by the Government Order dated 02.05.2001, and the record shows that about 7 to 70, Group D employees have been directly appointed in the establishment after the enforcement of the Government Order dated 02.05.2001, and under the terms and conditions as contained therein, which obviously included the scale too as settled as per its schedule, which was made payable to them since then.

4. It was thereafter that all of a sudden the State Government by virtue of a unilateral decision dated 29.07.2005 had reduced the pay scale of the Group D employees, as it was already settled by the Government Order dated 02.05.2001. On scrutiny of the said Government Order dated 29.07.2005, which constituted to be the reason for reduction

of the scale it was found that it referred to an order passed by Allahabad High Court, which was based on a judgment rendered by the Hon'ble Apex Court in Civil Appeal No. 6878 of 2004, arising out of a SLP(C) No. 887 of 2004 as reported in 2004 (8) SCC 286 'State of U.P. vs. Section Officers Brotherhood & Others'. The decision impugned in the writ petition was based on the aforesaid ratio as propounded therein, which was exclusively taken in relation to the Class IV employees of the Allahabad High Court, and that the decision was taken in pursuance to the Government Order 39-Ek(2)36(1) न्याय अनुभाग 2005, issued by the State, whereby, by drawing the said ratio as settled in relation to the employees of Allahabad High Court, as to be the basic foundation for passing the Government Order dated 29.07.2005, the Secretary Law, had issued the Government Order addressed to the Registrar General of the High Court, by virtue of which the scale which was already paid to Group D employees in pursuance to the Government Order dated 02.05.2001, was sought to be reduced from Rs.3200-4500 to the scale of Rs.2500-3200/-, on the basis of the decision of Allahabad High Court.

5. It was this Government Order which was put to challenge by the Group D employees of this Court by filing a Writ Petition being Writ Petition No. 1809 of 2007 'Pitamber Datt Pandey & Others vs. State of Uttarakhand & Others. The learned Single Judge of this Court after considering the various aspects into the matter and the ratio as propounded by the Hon'ble Apex Court in various judgments regarding fixation of scale and the effect of its abrupt reduction, the learned Single Judge had allowed the writ petition and quashed the Government Order dated 29.07.2005 and the consequential order dated 24.09.2008, to the extent the Government had refused to accept the recommendations of the High Court regarding grant of pay scale of the class IV employees and consequently a writ of mandamus was issued to give effect to the principal scale as settled down by the Government Order dated 02.05.2001, by virtue of which had fixed the scale of Rs.3,200-4,900/- of Class IV employees of this Court at the time of creation of a cadre after the birth of a separate entity, i.e. the State of Uttarakhand, and its High Court. Thus, the learned Single Judge while allowing the writ petition vide its judgment dated 18.02.2011 had passed the following order:

"Thus in view of the above discussion, the order dated 29.07.2005 (Annexure-10) is quashed and the order dated 24.09.2008 is directed to be quashed only to the extent that the Government has refused to accept the recommendations of the High Court regarding grant of pay scales to the Class IV employees of this Court and thus, the respondents are directed to give effect to the original order dated 2nd May 2001 granting the pay scales Rs.3200-4900 to the Class IV employees of this Court and to grant the arrears to the petitioners from the date the pay scale of Rs.3200-4900 has been withdrawn.

Accordingly, the writ petition is disposed of in the above terms."

6. It was this judgment dated 18.02.2011, which was rendered by the learned Single Judge of this Court in the writ petition was put to challenge in the Special

Appeal, which was preferred by the State before this Court, which was numbered as Special Appeal No. 87 of 2011 'State of Uttarakhand & Others vs. Pitamber Datt Pandey & Others'. The said Special Appeal, after the exchange of pleadings came up for consideration before the Division Bench of this Court and the Division Bench too vide its judgment dated 15.06.2011, had disposed of the appeal. The Division Bench while considering the propriety of the judgment of the learned Single Judge dated 18.02.2011, had considered the scope of the power which has been vested with the Chief Justice of the Court under Article 229 of the Constitution of India. In order to substantiate the propriety of the Division Bench's judgment dated 15.06.2011 a reference to Article 229 of the Constitution of India becomes inevitable, hence, for the purposes of convenience Article 229 of the Constitution of India is quoted hereunder:

"229. Officers and servants and the expenses of High Courts

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the Court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose:

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the Court shall form part of that Fund."

7. If the ambit of powers as constitutionally conferred to the Chief Justice of the Court is taken into consideration in the light of the provisions contained under Article 229, it is the Chief Justice exclusively who can exercise the powers for fixation of a scale, salary, allowances, leave, pension etc. of its employees, which may if so required under the proviso to sub-clause (2) of Article 229 of the Constitution of India be approved by the Governor of the State.

8. On the face of the Government Order dated 02.05.2001, it was made on the recommendations which was made by the Committee headed by the Justice M.C. Jain as its Chairman, which was constituted by the Hon'ble Chief Justice for the

said purpose, it was sent for an approval to the State, and on its presentation before His Highness the Governor, it was he who had granted the sanction to the cadre of employees, its strength and the said scale was made payable to the Group D employees of the High Court.

9. In that eventuality, it could be said that the decision taken by virtue of the Government Order dated 02.05.2001, was well within the scope and the powers of the Hon'ble Chief Justice as conferred by Article 229 of the Constitution of India and the same could not have been reduced by virtue of the subsequent impugned Government Order dated 29.07.2005 and that too in the light of the judgment, which was exclusively related to the Group D employees of the State of Uttar Pradesh, i.e. of the High Court of Allahabad.

10. The judgment of the Division Bench was challenged by the State before the Hon'ble Apex Court by preferring an SLP, which was later on after the grant of leave was registered as Civil Appeal No. 6304 of 2013 "State of Uttarakhand & Another vs. Pitamber Datt Pandey & Others". The said appeal on its consideration before the Hon'ble Apex Court by the judgment dated 29.08.2018 was disposed of, on the basis of the impression which was created by the State Government before the Hon'ble Apex Court that the High Court has taken a decision to withdraw the aforesaid scale and a reference in that regard has already been made to the State in pursuance to a letter written by the Registrar General on 22.07.2013. It was in this context that since the Registrar General has written a letter on 22.07.2013, and since the State Government has given a partial approval of the proposal sent by the letter dated 05.01.2006, by the High Court of Uttarakhand, the matter was remanded back to the High Court for its fresh consideration. As a consequence of the aforesaid judgment, the Special Appeal No. 87 of 2011, i.e. the present special appeal, once again revived back for its reconsideration before the Division Bench against the judgment of the learned Single Judge dated 18.02.2011.

1. After passing of the judgment by the Hon'ble Apex Court, the matter was placed before the Division Bench of this Court on 15.06.2011, the matter was once again placed before the Division Bench for its reconsideration. Ultimately, the matter was taken up on 11.2018 and a statement was made on his own volition by the Standing Counsel representing the appellant, that they do not want to press the appeal. Accordingly, the appeal was dismissed as not pressed by the Division Bench of this Court by the judgment dated 1.11.2018. It was after the dismissal of the special appeal as, 'not pressed' by the Standing Counsel a recall application was filed by the Standing Counsel on 28.11.2018, wherein, various reasons were assigned by the Standing Counsel, including one of the prime reason assigned for recall was that no such statement was ever given by the Standing Counsel for not pressing the special appeal as recorded in the judgment of the Division Bench of this Court as rendered on 1.11.2018.

12. In paragraph 11 & 12 of the affidavit filed in support of the recall application the Standing Counsel had pleaded that the appellants have not given any

instructions to the State counsel for not to press the special appeal and neither the counsel appearing for the State had made any such submission, this fact is pleaded in paragraph 12 of the application, it was also pleaded that Mr. Pradeep Joshi, Standing Counsel that he was willing and ready to give his personal affidavit in that regard, that he had not made any such statement.

Paragraph 11 and 12 are quoted hereunder:

"11. That it is humbly submitted that the appellants have not given instructions to the State Counsel to not press the Special Appeal and neither the counsel appearing in the matter had submitted for not pressing the Appeal, as informed by the Counsel himself to the appellants.

12. That as per the information, the counsel appearing on behalf of the Appellants namely Sri Pradeep Joshi, Standing Counsel is willing and ready to give his personal affidavit to the effect that he has not given statement for not pressing the Appeal, if need arises."

13. Surprisingly, both the paragraphs which were a question of fact, which was otherwise required to be pleaded on the grounds of the personal knowledge of the counsel himself who had made the statement, are shown in the affidavit in support to it, to have been pleaded on the basis of the legal advice in the affidavit filed in support of the recall application.

14. However, we may not be much concerned as far as the said statement is concerned as made in the affidavit sworn in the manner as to be based on legal advice. However, later on the order sheet reveals that on the revival of the proceedings after the judgment rendered by the Hon'ble Apex Court and after filing of the recall application dated 01.11.2018, on number of times opportunity was granted to the Standing Counsel to place on record the so called subsequent events, which was pleaded by State before the Hon'ble Apex Court, prior to remanding the matter with regards to the aspect of the issue/controversy pertaining to the approval of the rules. Relevant portion of the judgment of the Hon'ble Apex Court dated 29.08.2018 is quoted hereunder:

"It has been brought to our notice that the proposal given by the High Court on 05.01.2006 has since been withdrawn by the High Court. The withdrawal took place some time on 22.07.2013 and thereafter it appears that fresh rules have been framed by the High Court.

In view of these subsequent developments which have changed the complete complexion of the case decided by the High Court, we are of the view that it would be appropriate if the impugned judgment and order passed by the High Court is set aside and the matter is remanded to the High Court for fresh consideration on merits."

15. Despite the order dated 07.01.2019, no such information stood forthcoming from the Standing Counsel. Consequently, as a last opportunity, was granted by this Bench to the Standing Counsel to provide necessary information on

01.03.2019. On 01.03.2019 this Court had passed the following directions in paragraph 5 of the said order, which is quoted hereunder:

"5. We have been repeatedly asking Sri Pradeep Joshi, learned Standing Counsel for the State of Uttarakhand, to place before us a copy of the alleged withdrawal letter dated 22.07.2013 (withdrawing the proposal given by the High Court on 05.01.2006), as also the fresh Rules said to have been framed by the High Court. Despite, several opportunities having been given, neither of these two documents have been placed for our perusal."

16. In compliance thereto, the Standing Counsel has filed an affidavit on 18.03.2019, which is now being taken up into consideration. This Court considering it to be appropriate that in order to avoid any unnecessary complication, which has emanated from the statement made by the Standing Counsel, withdrawing the appeal, the appeal itself is being considered on its own merits.

17. We are of the considered view that, for the reasons given there was no necessity for the State Government to pass the impugned Government Order dated 29.07.2005 impugned in the writ petition reducing the scale of Class IV employees as fixed while sanction by the cadre, as fixed by the Government Order dated 02.05.2001 by the State Government for the following reasons:

(i) Prior to the decision of the State Government taken by the Government Order dated 02.05.2001, the then Chief Justice had constituted a committee chaired by Justice M.C. Jain, it is the said committee which has submitted the report before the State Government after determining the cadre strength required by the newly created High Court of Uttarakhand.

(ii) The decision taken by the committee headed by Justice M.C. Jain, which was constituted by the Hon'ble Chief Justice, would fall to be a decision within the ambit of Article 229 of the Constitution of India. Hence, there was no anomaly in the recommendations sent by Registry to the State Government for approval of the cadre and the scale of the respective cadres.

(iii) It was based on the said consideration of the report submitted by the committee on 19.03.2001, that the State Government had unilaterally on their own volition had passed the Government Order, fixing the scale of Group D employees of High Court as Rs.3,200-4,900/- by the Government Order dated 02.05.2001.

(iv) The decision taken by the Government Order dated 02.05.2001 was made on the recommendation of the committee's report which stood approved by the Governor under the proviso to sub article (2) of Article 229 of the Constitution of India.

(v) The decision by way of Government Order dated 02.05.2001, was an exclusive and independent decision taken by the State Government fixing the cadre strength and the scale of Group D employees of the High Court considering

the aspect of the efficiency and work which was required to be discharged by them.

(vi) Constitutionally as on the date of the recommendation by the High Court, to the State Government for determining the cadre strength and fixing the scale of employees on the date of the decision dated 02.05.2001, fixing the scale the High Court of Uttarakhand, had acquired its independent constitutional status and acquired the status of being an independent entity and the Hon'ble Chief Justice thus appointed had an exclusive power vested in him by Article 229 of the Constitution of India and which ought not to be influenced by any decision or order rendered by any other High Court of the country or any judgment passed in relation to the other High Court of the country.

(vii) The reason which has been assigned in passing the impugned order was the decision rendered by the Hon'ble Apex Court in relation to the Group D employees of the Allahabad High Court, we are of the considered view that the said decision cannot be borrowed and made applicable for the purposes of passing the impugned Government Order dated 29.07.2005, as the decision reported in 2004 (8) SCC 286 'State of U.P. vs. Section Officers Brotherhood' would have its applicability only in relation to the employees of High Court of State of Uttar Pradesh and the employees of the High Court of Allahabad and the same will have no bearing or its applicability on the independent entity of the State of Uttarakhand and its High Court, which are constitutionally independent body having separate legal entity.

(viii) Even otherwise also if the judgment as referred above in the matters of 'State of U.P. vs. Section Officers Brotherhood' is taken into consideration particularly in the light of the reference of the controversy narrated in paragraph 31 of the said judgment, it was dealing with the situation where Chief Justice has acted on a representation of an employee and had granted a higher scale. It was this decision of the Hon'ble Chief Justice, which was under consideration in the aforesaid judgment, paragraph 31 of which is quoted hereunder:

"In this case, the Chief Justice merely forwarded the representation of the Respondents dated 15th March, 1994 for grant of a higher scale of pay with effect from 1.1.1986 directing the Registry to forward the same to the State Government with recommendations to consider the same on the ground of parity. Such forwarding of recommendations to the State Government did not involve any application of mind on the part of the Chief Justice as was required under Article 229 of the Constitution of India. The Chief Justice on his own did not arrive at any decision that the jobs performed by the concerned officers were comparable to their counterparts in the Central Secretariat or Delhi High Court. No rule was framed fixing the terms and conditions of service or the scale of pay for different categories of the employees of the High Court. Only because in the forwarding letter, the State Government was asked to consider the demand of the concerned officers favourably, the same by itself would not mean that the requirements of Article 229 of the Constitution stood complied with. Unless the

Chief Justice of the High Court exercises his constitutional power or acts on the basis of the recommendations of a committee constituted by him for the purpose of fixation of scale of pay and laying down other conditions of service; only forwarding of a representation to the State Government to consider the same favourably without anything more would not amount to exercise of the constitutional jurisdiction under Article 229 of the Constitution."

(ix) It was altogether based on a different footing and the background and had no relevance as far as the present case is concerned where the decision of fixation of scale of Group D employees of the High Court of Uttarakhand was based on a decision of the Committee constituted by the Hon'ble Chief Justice under Article 229 of the Constitution of India and was based upon an exclusive and independent decision taken by the State Government, while creating the cadre of employees for the High Court. Hence, the applicability of the said judgment reported in 2004 (8) SCC 286 'State of U.P. vs. Section Officers Brotherhood & Others' has wrongly been attracted while passing the impugned order as the powers of the Chief Justice of the High Court of Uttarakhand, is exclusive and independent to the powers of the Chief Justice of Allahabad High Court in the light of the provisions contained under Article 229 of the Constitution of India and it is altogether an independent decision taken in that regard by the State Government itself.

(x) Even otherwise also principally if a scale of an employee has been fixed by an independent decision of the State, after considering the impact of the provisions contained under sub-clause (2) of the Article 229 of the Constitution of India, the same cannot be reduced by a unilateral decision, and that too based on a decision which was otherwise not applicable so far it relates to the Group D employees of the High Court of Uttarakhand, more particularly, when it was exclusively dealing with the conditions of the employees of the Allahabad High Court, which would not be applicable in the instant case.

18. In these circumstances we do not find any merit in the special appeal and the same is, accordingly, dismissed.

19. However, there would be no order as to cost.