

(2006) 03 UK CK 0046

In the Uttarakhand High Court

Case No : Special Appeal No's. 22, 45, 114 to 116 and 118 to 121 of 2004 and 20, 21, 66 and 95 of 2005

State of Uttaranchal and Others

APPELLANT

Vs

Pushkar Bhatt and Others

RESPONDENT

Date of Decision : 04-03-2006

Acts Referred:

Constitution of India, 1950 — Article 141

Citation : (2006) 2 UC 1206

Hon'ble Judges : P.C. Verma, J;B.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The controversy involved in all these writ petitions is one and the same, hence they all are being disposed of by this common judgment.

2. All these Special Appeals have been filed by the State of Uttaranchal impugning the judgment and order passed by the learned Single Judge.

3. Brief facts of the case-giving rise to the special appeals are that the Respondents in all these appeals were appointed on daily wage basis in the establishment of Appellants on the posts of Mate/Beldar and thereafter they were appointed in the work charge establishment. It was alleged by the Appellant / Respondents that since those employees were not regularly appointed employees, hence they were not entitled for the regular salary to be paid for such regular appointed employees unless and until their services were not regularized. The present appeal has been filed against the judgment and order of learned Single Judge by which he has disposed of the writ petitions in the following terms:

Consequently, the Government Order dated 26-08-1999 so far as it relates to the imposition of ceiling on dearness allowances requires reconsideration by the Respondents in view of the observations made above as well as in view of the

Government Order dated 01-01-2000 issued by the State of U.P. deleting paragraph 668 as mentioned above.

In the meantime, Respondents are directed to pay salary to the Petitioners ignoring the ceiling prescribed in view of the order of Division Bench dated 10-05-2002.

4. We have heard learned Counsel for the parties and perused the entire evidence on record.

5. In so far as the Government Order dated 26-08-1999 is concerned, by this Government Order after the amendment, the ceiling has been imposed increasing the limit and by the Government Order dated 01-01-2000, the provision relating to appointment of work charge employees and their payment contained in financial handbook has been deleted by the State of U.P. itself. Since both the above Government Orders have been passed prior to the appointing date, therefore, they are in force in the State of Uttaranchal also and accordingly the ceiling is imposed on the Dearness Allowance in terms of the Government Order dated 26-08-1999.

6. The Respondent / Petitioners have challenged the imposition of ceiling on dearness by the Government Order on various grounds including the ground that no ceiling can be fixed on the dearness allowance as it is paid on the basis of price index. The learned Single Judge has not adverted on the main ground and has issued the direction to the State Government to reconsider the Government Order dated 26-08-1999 so far as it relates to the imposition of ceiling on clearness allowances. It has further been directed that till the reconsideration is not done, the salary shall be paid to the Petitioners/Respondents ignoring the ceiling limit in view of the Division Bench order dated 10-05-2002, which is the interim order. No reason has been assigned to depend on the interim order while disposing of the writ petition finally. In other words, the validity of the imposition of ceiling has not been gone into.

7. The question relating to payment of clearness allowance for the first time was settled by the Hon''ble Apex Court in 1962 in the case of Hindusthan Motors Workers Union v. Hindustan Motors Ltd. and Anr. (1962) 2 LLJ 352. In this case, the Apex Court in Para-8 has held as under:

The whole purpose of dearness allowance being to neutralize a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on rise in the cost of living and a decrease on a fall in the cost of living.

8. The above judgment was passed by Hon''ble Three Judges and this judgment has been followed by Four Judges Bench in the year 1963 in the case of The Hindustan Times Ltd., New Delhi Vs. Their Workmen, Page 1332. The Apex Court has referred the aforesaid dictum of the Supreme Court and confirmed the same and held that dearness allowance shall be paid on a sliding scale and it may

increase or decrease as increase or decrease in cost of living.

9. Sri K.P. Upadhyaya, learned standing counsel submitted that the work charge employees are not entitled for payment of dearness allowance in view of the law laid down by the Hon''ble Apex Court in the case of State of Orissa and Others Vs. Balaram Sahu and Others, etc. etc., and in the case of State of U.P. and Ors. v. Putti Lal 2002 3 AWC 2375 (S.C.). The facts and circumstances of these cases are entirely different than that of the facts and circumstances in the present case. The judgments cited by learned standing counsel are relating to payment of minimum of pay scale over which the Hon''ble Apex Court has stated that no allowance shall be payable while in the present case, the Government has decided to pay the dearness allowance. In fact it is being paid but by Government Order dated 26-08-1999, a ceiling limit has been imposed. Hence, the argument of learned standing counsel cannot be sustained and Is hereby rejected.

10. In view of the logic and concept for payment of dearness allowance as laid down by the Hon''ble Apex Court quoted above, no ceiling limit can be fixed on the dearness allowance and since the Government has taken a decision to pay the dearness allowance to the work charge employees, then it cannot fix a ceiling limit thereon. Thus, the Government Order dated 26-08-1999 fixing the ceiling limit is contrary to the law laid down by the Hon''ble Apex Court which is law of the land under Article 141 of the Constitution of India and cannot be sustained.

11. Thus, the Government Order dated 26-08-1999 is hereby quashed. The Special Appeals are dismissed. Consequently, the writ petitions are allowed. However, it is made clear that the Petitioners / Respondents shall not be paid regular salary but they shall be paid wages on the work charge basis and the full dearness allowance thereon ignoring the ceiling.