
(2021) 10 UK CK 0025

In the Uttarakhand High Court

Case No : Special Appeal No. 319 Of 2021

Uttarakhand Transport Corpn. & Others

APPELLANT

Vs

Pawan Kumar And Others

RESPONDENT

Date of Decision : 04-10-2021

Acts Referred:

Citation : (2021) 10 UK CK 0025

Hon'ble Judges : Raghvendra Singh Chauhan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Raghvendra Singh Chauhan, CJ

1. The appellants have challenged the legality of order dated 13.08.2021 passed by the learned Single Judge, in Writ Petition (S/S) No.711 of 2020, whereby the learned Single Judge relying on judgment dated 28.07.2018, passed in Writ Petition (S/S) No. 1275 of 2017, and has directed the appellant-Corporation to grant revised retiral benefits to the petitioners on the basis of the notional benefit given to them, and to pay the arrears of the revised retiral benefits from 01.10.2009.

2. Briefly the facts of the case are that the petitioners were employed by the appellant-Corporation in different capacities such as Booking Clerk, Senior Clerks, Mechanics, Drivers, Carpenter etc. They claim that they retired from their services between 01.01.2006 to 30.09.2009. According to the petitioners, the State of Uttarakhand had accepted the recommendations of the Sixth Pay Commission w.e.f. 01.01.2006. On 17.10.2008, the State had issued a Government Order, wherein the State had agreed to pay the revised pay-scale and D.A., in cash, w.e.f. 01.09.2008, and the arrears of pay-scale w.e.f. 01.01.2006 to 31.08.2008. The said arrears were to be paid in two installments to those employees who retired or were likely to retire in the period of next six months. Furthermore, on 15.10.2009, the Secretary, Transport, issued a

Government Order, wherein the Government Order dated 17.10.2008 was accepted with a modification that the revised pay-scale shall be applicable w.e.f. 01.10.2009 in place of 01.01.2006. It was also accepted by the Government that all the employees of the Corporation shall be paid the benefit of Sixth Pay Commission w.e.f. 01.10.2009.

3. Subsequently, the Government also issued another Government Order dated 02.02.2010, whereby the Government Order dated 15.10.2009 was modified to the extent that the notional pay fixation shall be made w.e.f. 01.10.2006. However, the Government was of the opinion that those who have retired prior to 2009, they shall not be given the benefit of the notional fixation.

4. Since some of the retired employees were aggrieved by the fact that they were not being given the benefit of the notional fixation, and that their retrial benefits have not been re-fixed, they filed a writ petition, namely, Writ Petition (S/S) No. 1271 of 2012, Sri Pawan Kumar and others vs. State of Uttarakhand and others, challenging the apparent discrimination and the denial of the benefit of notional fixation. By order dated 07.07.2014, a learned Single Judge directed the appellant-Corporation to give notional benefits to those employees who had retired between 01.01.2006 and 30.09.2009.

5. Even, subsequently another set of employees had filed a writ petition, namely, Writ Petition (S/S) No.1275 of 2017. The said writ petition was decided by another learned Single Bench of this Court on 20.07.2018. In the said order, the learned Single Judge directed the appellant-Corporation to grant the benefit from 01.10.2009 to those who had retired between 01.01.2006 to 30.09.2009. He further directed that even the arrears of revised retrial benefits which had accrued to the retirees from 01.10.2009 shall be paid.

6. According to the petitioners, the said order was challenged before a learned Coordinate Bench of this Court in Special Appeal No. 693 of 2018. However, by order dated 09.05.2019, the learned Coordinate Bench of this Court dismissed the Special Appeal, and confirmed the order dated 20.07.2018.

7. Since the petitioners were not being granted the benefit of the notional fixation from 01.10.2009, they filed the present writ petition before the learned Single Judge. As mentioned hereinabove, while relying on the judgment dated 20.07.2018, passed in Writ Petition (S/S) No. 1275 of 2017, the learned Single Judge, in the present case, also passed a similar direction to the respondents. Hence, this appeal before this Court.

8. This Court has asked a pointed query to Mr. Ashish Joshi, the learned counsel for the appellant-Corporation, namely whether the petitioners had retired between the period 01.01.2006 to 30.09.2009, or not? To this pointed query, learned counsel has frankly conceded, and in the opinion of this Court rightly so, that the petitioners had, indeed, retired during this interregnum.

9. But, despite this fact, learned counsel pleads that those who have retired prior

to 2009 are not entitled to the benefit of notional fixation. However, the stand being taken by the learned counsel is clearly untenable. For, both in the judgment dated 07.07.2014, and in the judgment dated 20.07.2018, passed by two learned Single Benches of this Court, the appellant-Corporation was directed to give the benefit of the notional fixation to the retirees, who had retired between 01.01.2006 and 30.09.2009. Although the appellant-Corporation had challenged the judgment dated 20.07.2018, before a learned Coordinate Bench, the appellant-Corporation was unsuccessful. Therefore, the order dated 20.07.2018, has achieved finality.

10. A bare perusal of the impugned order passed by the learned Single Judge, in the present case, clearly reveals that the learned Single Judge has relied on the order dated 20.07.2018, an order which had already achieved finality. Therefore, this Court does not find any illegality or perversity in the reasoning of the learned Single Judge.

11. Hence, this Court is of the opinion that the present appeal is devoid of any merit. It is, hereby, dismissed.