

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

**THE HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND**

THE HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (S/B) NO. 394 OF 2021

1ST MAY, 2023

Between:

Lalit Mohan Arya & others Petitioners

and

State of Uttarakhand & others Respondents

Counsel for the petitioners : Mr. A.S. Rawat, learned Senior Counsel assisted by Mr. Sandeep Tiwari, learned counsel

Counsel for the respondents : Mr. C.S. Rawat, learned Chief Standing Counsel with Mr. Pradeep Joshi, learned Additional Chief Standing Counsel and Mr. Gajendra Tripathi, learned Brief Holder for the State / respondent No. 1

: Mr. Aman Rab and Mr. Shiv Pande,
learned counsel for respondent
Nos. 54, 67 and 74

The Court made the following:

ORDER: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard learned counsels at some length.

2. It appears that the petitioners were appointed to the post of Upper Division Assistant (UDA) in the year 1999, in pursuance of the orders passed by learned Single Judge of the Allahabad High Court, while they

were in the wait-list. The appointments were granted by the State of Uttar Pradesh. The appointments were subject to outcome of the appeal pending before the Allahabad High Court, at the instance of the State of Uttar Pradesh. It appears that the Division Bench of the Allahabad High Court allowed the appeal preferred by the State. The appeal was allowed on 30.07.2007, and the review preferred by the respondents before the Division Bench of the Allahabad High Court, i.e., the original writ petitioners, was also dismissed on 02.05.2008. On creation of the State of Uttarakhand on 09.11.2000, from the erstwhile State of Uttar Pradesh, the petitioners opted to serve in the State of Uttarakhand.

3. Despite the judgment of the Division Bench of the Allahabad High Court dated 30.07.2007, and even after the dismissal of the review on 02.05.2008, no steps were taken by the State of Uttarakhand against the interest of the petitioners - to either remove them from service, or to downgrade their seniority.

4. It further appears that the writ petitioners before the Allahabad High Court approached the Supreme Court. There were 39 persons whose interests

were affected before the Supreme Court, which did not include the petitioners. All the 39 persons were serving the State of Uttar Pradesh.

5. Pertinently, the application for impleadment filed by the petitioners herein before the Supreme Court was rejected, meaning thereby, that the Supreme Court was of the opinion that the present petitioners had no concern with the *lis* pending before the Supreme Court, and that their rights were not called in question, or were not likely to be affected by the judgment of the Supreme Court.

6. Thereafter, before the Supreme Court, the State of Uttar Pradesh took a stand that the seniority of the 39 persons, who were appointed in pursuance of the directions issued by the learned Single Judge, which eventually was set aside, should be fixed after the last batch was recruited in the year 2005. Only after the said stand of the State of Uttar Pradesh was accepted by the Supreme Court (we may note that the Supreme Court did not pronounce on the rights of the appellants / original writ petitioners before it), the State of Uttarakhand sought to adopt the same formula for

fixation of the seniority of the petitioners, by downgrading the same, first time in July 2015.

7. In the meantime, the petitioners' seniority from the date of their initial appointment in the year 1999 was recognized, and even acted upon, inasmuch as, they were granted three promotions – the first being in 2004, and the second and third being in 2007 and 2008. Thus, even after the judgment of the Division Bench of the Allahabad High Court dated 30.07.2007, the State of Uttarakhand continued to recognize the petitioners as senior, while counting their initial date of appointment in the year 1999, and on that basis granted promotions to the petitioners.

8. *Prima facie*, it appears to us, that after the creation of the State of Uttarakhand, the continuation of the petitioners with their initial seniority from the date of their induction into the service in the State of Uttar Pradesh, estopps the State from subsequently altering their seniority, particularly, when their cases were not pending for consideration before the Supreme Court. Long settled seniority could not have been disturbed by the State.

9. Mr. Rawat seeks a short adjournment to get ready with his submissions.
10. At his request, list the matter on 17.05.2023.
11. It shall be open to learned counsels to file their respective synopsis, not exceeding three pages each.
12. Interim orders to continue till further orders.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 1st MAY, 2023
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