

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6121-6122 OF 2014
(@ Special Leave Petition (C) Nos. 13967-13968/2011)

STATE OF UTTARAKHAND & ORS. .. APPELLANTS
VERSUS
KHUSHAL SINGH PATWAL & ORS. .. RESPONDENTS

O R D E R

Leave granted.

The first respondent, a Deputy Forest Ranger, was
suspended from service by Divisional Forest Officer,
Garhwal Forest Division vide Forest Order No. 85/16

dated 2.5.1986 on the report of Tehsildar, Pauri dated
30.4.1986 that he was arrested for committing murder of one
Surendra Dutt Chamoli on 29.4.1986. The first respondent
was put under suspension on 2.5.1986. After being put
under suspension, he was given the subsistence allowance
till 14.7.1986. The employer allowed the first respondent
to retire on 30.06.1989. Be it stated, from 30.04.1986,
the first respondent was not paid subsistence allowance but

Signature Not Verified

was allowed to retire on 30.06.1989.

Digitally signed by
Naveen Kumar
Date: 2014.07.16
12:41:07 IST
Reason:

After first respondent was convicted on 24.10.1989,
Conservator of Forest, Garhwal Division, U.P., Pauri passed

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an order of dismissal on 21.8.1993 with retrospective
effect from 2.5.1986, the date he was put under suspension.

After visited with the order of dismissal, the first respondent approached the Uttaranchal Public Services Tribunal, which allowed the claim of the respondent in entirety. Thereafter the appellant herein preferred Writ Petition (S/B) No. 336 of 2005 and the Division Bench of the High Court of Uttarakhand directed that the writ petitioner would be entitled to all pensionary benefits till the date of conviction and passed the following order:

"We were told by the learned counsel for the State of Uttar Pradesh that Central Civil Service (Pension) Rules, 1972 or Rules akin thereto govern pension payable to the respondent. In terms thereof, future good conduct is an implied condition for every grant of pension. Even after grant of pension under the Rules, if the pensioner is convicted, his pension may be withheld or withdrawn wholly or in part, temporarily or permanently. Inasmuch as pension was not given to the respondent despite he having retired upon attaining the age of superannuation on being permitted to do so, it appears that the State of Uttar Pradesh did not exercise power under the appropriate pension Rules. While therefore acknowledging that the respondent became entitled to pension on and from the date of his superannuation until the date of his conviction we modify the order of the Tribunal impugned in the Writ Petition No. 336(SB) of 2005 by directing the State of Uttar Pradesh to forthwith but not later than three months from today sanction and grant pension to the respondent on and from the date of his superannuation with liberty to pass such appropriate order as it may deem fit and proper, to be effective from 24.10.1989 i.e. the date the respondent was convicted, pertaining to such

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pension to be paid to the respondent."

The aforesaid order is the subject matter of challenge in this appeal by special leave.

We have heard Mr. Rahul Verma, learned AAG for the Appellant-State and Mr. R. Balasubramanian, learned counsel for the respondents.

First, we shall advert to the question of passing of order of dismissal with retrospective affect. Recently, this Court in State Bank of Patiala Vs. Ram Niwas Bansal

(2014) 3 JT 545 has opined that such a retrospective order of dismissal in these type of cases cannot be passed.

In view of the aforesaid pronouncement, the authority could not have passed the order of dismissal with retrospective effect. However, at this juncture, we must take note of Rule 351 of U.P. Civil Service Regulation, 1976 (for short "Regulations"), which reads as follows:-

"351. Future conduct is an implied condition of every grant of pension. The State Government..... reserve to themselves the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct."

In our considered opinion, the said Rule applies to

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the present case inasmuch as the respondent was convicted under Section 302 I.P.C. by the Trial Court which has been affirmed by the High Court. However, the fact remains that the Department retired him on attaining the age of superannuation. He was not continuing in service nor was he suspended. Under these circumstances, we are inclined to hold that he will be entitled to pensionary benefits from the date of retirement till the date of conviction.

The controversy does not rest here. We have already stated that the respondent was put under suspension on 2.5.1986 and was granted subsistence allowance till 14.7.1986. Thereafter for no manifest reason, he was not paid the subsistence allowance and order of retirement was passed on 30.6.1989. We are disposed to think that unless the respondent would have been reinstated, he could not have been retired from service. As we find, there is no order indicating that the said period would be treated as suspension. In view of the aforesaid, we direct that the respondent would be entitled to the full salary for the

period commencing 15.07.1986 to 30.6.1989.

In view of the aforesaid, the pension for the period which has been stipulated herein above and the salary component as indicated herein before shall be computed and granted to the first respondent within a period of two months hence.

Thus, the appeals are accordingly disposed of. There shall be no order as to costs.

.....J.
(DIPAK MISRA)

.....J.
(V. GOPALA GOWDA)

NEW DELHI
JULY 08, 2014

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ITEM NO.13 COURT NO.9 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 13967-13968/2011

(Arising out of impugned final judgment and order dated 04/10/2010 in WP No. 336/2005, and WP No. 56/2005 passed by the High Court Of Uttarakhand At Nainital)

STATE OF UTTARAKHAND & ORS. Petitioner(s)

VERSUS

KHUSHAL SINGH PATWAL & ORS. Respondent(s)

Date : 08/07/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Rahul Verma, AAG
Mr. Anuvrat Sharma ,Adv.

For Respondent(s) Mr. R. Balasubramanian, Adv.
Ms. Rekha Pandey, Adv.
Mr. Rohitash S. Nagar, Adv.
Mr. Sudarshan Singh Rawat ,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

Appeals are disposed of in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)