

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6132 OF 2008

STATE OF UTTARANCHAL & ORS. . . APPELLANTS

VERSUS

M.S. CHAUHAN & ORS. . . RESPONDENTS

WITH

CIVIL APPEAL NO. 6129/2008

CIVIL APPEAL NO. 6131/2008

CIVIL APPEAL NO. 6130/2008

O R D E R

Regard being had to the commonality of issue involved in these appeals, they were heard together and disposed of by a common order. For the sake of clarity, we shall advert to the facts in Civil Appeal No. 6132/2008.

The respondents were initially appointed as Lecturers on ad-hoc basis. As per the terms of the appointment, they were to continue till the posts were regularly filled up. While they were continuing on ad-hoc basis, they were visited with orders of termination and eventually the controversy travelled to the High Court in W.P.No. 14637/98 wherein the Division Bench, vide order dated 12.5.1998 passed the following order:

"As an interim measure and without prejudice to the rights and contentions of the parties, it is ordered that the petitioners will continue to discharge their duties as ad-hoc lecturers in the institution and they will not be substituted by any other ad-hoc lecturers without leave of this Court. If the services of any of the petitioners have been terminated, he shall be taken as continuing in service from the date of this order."

As is evident, the respondents continued on the post of Lecturer. In the meantime, there was bifurcation of the State of Uttar Pradesh and it was bifurcated to State of U.P. and State of Uttarakhand (presently State of Uttarakhand). After the bifurcation, the State of Uttarakhand brought out set of Rules, namely, The Uttarakhand Regularisation of Ad-hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 2002 ('the Rules' for short). Rule 4 deals with regularisation of ad-hoc appointment. It reads as follows:

4.Regularization of ad hoc appointments - (1) Any person who -

(i) was directly appointed on ad hoc basis before June 30, 1998 and is continuing in the service as such on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of ad hoc appointment; and

(iii) has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in

accordance with the relevant rules or orders.

Rule 7 that deals with seniority is as follows:

"7. Seniority - (1) A person appointed under these rules shall be entitled to seniority only from the date or order of appointment after selection in accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules or as the case may be, the regular prescribed procedure, prior in the appointment of such person under these rules.

(2) If two or more persons are appointed together their seniority inter se shall be determined in the order of appointment.

We have referred to these two Rules as Ms. Rachna Srivastava, learned counsel for the appellant would submit that the status of regular employees has accrued to the respondents on the basis of the aforesaid Rule with effect from 03.07.2003 and, therefore, they are entitled to get the benefit of the revision of pay scale as per the Fifth Pay Commission from that date.

Be it stated, the State Government has extended the said benefit to them from the date of regularisation, but did not think it appropriate to extend the same for the prior period. The aforesaid grievance led the respondents to prefer a Writ Petition No. 145(S/B) of 2004 before the High Court. The Division Bench of the High Court, taking note of the fact that the selection of ad-hoc posts were

made in accordance with Rules, directed as follows:

"Therefore, in our opinion, the petitioners are entitled for payment of difference of arrears of salary on the basis of Government order dated 16.2.1999 revising the pay scale w.e.f. 1.1.1996 as they were in service at the time of issuance of the Government order and they were appointed after the cut off date given in the said government order and their services have already been regularised."

It is submitted by Ms. Rachna Srivastava, learned counsel for the State that the recommendations of the 5th Pay Commission does not cover the ad-hoc employees but only takes in its compass the regular employees. Mr. Singh, learned senior counsel, per contra, would submit that the part-time Lecturers were extended the said benefit in the State of U.P. At this juncture, we are obliged to state that the recommendations of the 5th Pay Commission, as it appears, was neither brought before the High Court nor it has been filed before us.

In our considered opinion whether the respondents would be entitled to the benefit of the 5th Pay Commission would be governed by the recommendations of the Pay Commission. If the category of the respondents are covered, inevitably they would be entitled to the said benefit and if they are not, they shall not be covered. The opinion expressed by the High Court on the foundation that the respondents were selected following a particular

procedure is absolutely inconsequential for the purpose of grant of benefit of 5th Pay Commission.

In view of our aforesaid analysis, the appeals are allowed, the judgment and order passed by the High Court are set aside and the matters are remitted to the High Court to pass appropriate order in accordance with law regard being had to the observations made hereinabove. Liberty is granted to file the recommendations of the 5th Pay Commission. The High Court is requested to dispose of the writ petition within a period of six months, if possible. There shall be no order as to costs.

.....J.
(DIPAK MISRA)

.....J.
(UDAY UMESH LALIT)

NEW DELHI
SEPTEMBER 17, 2014

ITEM NO.103

COURT NO.8

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No(s). 6132/2008

STATE OF UTTARANCHAL & ORS.

Appellant(s)

VERSUS

M.S. CHAUHAN & ORS.

Respondent(s)

(With interim relief and office report)

WITH C.A. No. 6129/2008 (With Interim Relief and Office Report)

C.A. No. 6131/2008 (With Interim Relief and Office Report)

C.A. No. 6130/2008 (With Interim Relief and Office Report)

Date : 17/09/2014 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALITFor Appellant(s) Ms. Rachana Srivastava, Adv.
Mr. Utkarsh Sharma, Adv.For Respondent(s) Mr. S.R. Singh, Sr. Adv.
Mr. D.N. Dubey, Adv.
Mr. Ujjawal Pandey, Adv.
Mr. Ravindra S. Garia, Adv.

Mr. Rajiv Mehta, Adv.

Ms. Abha R. Sharma, Adv.

M/s Manoj Swarup & Co.

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

Appeals are allowed in terms of the signed order.

(NAVEEN KUMAR)
COURT MASTER(RENUKA SADANA)
COURT MASTER

(Signed order is placed on the file)