

## HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

WP S/S No. 1662/2003

Ganesh Dutt Pathak

& others

vs

Kumaon Mandal Vikas

Nigam Ltd. & others

Approved for reporting

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~~Not approved for reporting~~

Date of decision 31.8.2006

Initial of Judge

**Reserved**

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

Writ Petition No. 1662 of 2003 (SS)

1. Ganesh Datt Pathak s/o Sri Dharma Nand Pathak
  2. Pan Singh Negi s/o Sri Joga Singh
  3. Kishan Singh s/o Sri Narayan Singh
  4. Mangal Singh s/o Sri Madho Singh
  5. Om Prakash s/o Sri Pani Ram
  6. Bachhi Singh s/o Sri Bhawan Singh
  7. Kundan Singh s/o Sri Man Singh
  8. Puran Singh Mehta s/o Sri Khushal Singh
  9. Pitamber Datt Joshi s/o Sri Narain Dutt
  10. Mahendra Singh s/o Lal Singh
  11. Arun Kumar Mehta s/o Sri Purshottam Das
  12. Dev Nath Goswami s/o Sri Godhan Nath
  13. Bishan Singh s/o Sri Dharam Singh
  14. Kishan Ram s/o Sri Dhani Ram
  15. Navin Chandra S/o Sri Hari Ram
  16. Bahadur Singh s/o Sri Chandan Singh
  17. Kalu Ram s/o Sri Bhawani Ram
  18. Bhuwan Chandra Pant s/o Sri P.B. Pant
- All Drivers posted in Kumaon Mandal Vikas Nigam,  
Oak Park House Mallital, Nainital..... **Petitioners**

Versus

1. Kumaon Mandal Vikas Nigam Ltd; Oak Park House  
Mallital, Nainital through its Managing Director
  2. Chairman, Board of Direction Kumaon Mandal Vikas  
Nigam, Oak Park House, Mallital, Nainital
  3. Secretary Bureau of Public Enterprises Uttaranchal,  
Dehradun.
  4. State of Uttaranchal through Secretary Tourism  
Department, Uttaranchal
  5. Secretary Finance Department, Uttaranchal
- ..... **Respondents.**

Sri Manoj Tiwari, Advocate for the petitioners  
Standing Counsel for the respondents no.3 & 4, Sri U.K. Uniyal, Sr. Advocate assisted  
by Sri Sobhit Saharia for respondents no. 1 & 2.

Dated: August 31, 2006

**Hon'ble Rajesh Tandon, J.**

Heard Sri Manoj Tiwari counsel for the petitioners and standing Counsel for the respondents.

By the present writ petition, the petitioners have prayed for a writ of certiorari the order dated 24.7.2004 passed by the Additional Secretary, Tourism Department, Government of Uttaranchal.

Briefly stated the Kumaon Mandal Vikas Nigam Ltd. is a Government Company incorporated by the State Government under Companies Act. The petitioners were appointed on the posts of Driver in Kumaon Mandal Vikas Nigam Ltd. in different years and they are continuously serving on the said posts. The Board of Directors of Kumaon Mandal Vikas Nigam Ltd. has framed General Rules for regulating the service conditions of its employees. The drivers serving in Kumaon Mandal Vikas Nigam Ltd. were granted revised pay scale of 950-1500 with effect from 1.1.1986 in accordance with recommendations of IV Pay Commission. The drivers serving in the State Government Departments were given selection grade pay scale of 1175-1625. Accordingly, the petitioners were also awarded selection grade scale of 1175-1625. Pursuant to the recommendations of Fifth Pay Commission, the pay scales of different categories of posts have been revised in Kumaon Mandal Vikas Nigam with effect from 1.1.1996. The drivers serving in the Nigam were granted pay scale of 3050-4590. However, no corresponding pay scale has been fixed for the pay scale of 1175-1625. The petitioners made a representation to the Board of Directors, Managing Director and other authorities of

the Kumaon Mandal Vikas Nigam and requested to revise the time scale of the drivers in the Nigam. Subsequently the Managing Director issued a letter on 26.4.2003 to the Secretary Tourism Department, Government of Uttaranchal, wherein it has been specifically stated that the demand of the petitioners is justified and the Government was requested to grant selection grade pay scale of 1200-2040 to the drivers of the Nigam. The Managing Director, Kumaon Mandal Vikas Nigam Ltd; issued letter dated 27.7.2002 to the Government of Uttaranchal recommended selection grade pay scale of 4000-6000 to the drivers of the Nigam.

The respondents have filed counter affidavit. It has been admitted by the respondents that Kumaon Mandal Vikas Nigam is an undertaking of State Government. It has also been admitted that there is parity of pay scales in most of the posts in State Government and Kumaon Mandal Vikas Nigam. The respondents have also mentioned that on the recommendation of Vth Pay Commission no revised pay scale has been recommended against the pay scale of 1175-1625.

State of U.P. issued G.O. dated 7.8.1991, where by sanction was granted for payment of selection Grade of pay to the employees of Kumaon Mandal Vikas Nigam ltd. In that G.O. the Drivers were granted selection grade scale 1175-1625 after completing 10 years of service. Pursuant to that G.O. petitioners are getting selection grade pay scale of 1175-1625. The recommendation of 5<sup>th</sup> Pay Commission was made applicable to the employees of Kumaon Mandal Vikas Nigam vide G.O. dated 2.6.2002. The initial pay scale applicable to the Drivers was 950-1500 against which pay scale of 3050-4590 was recommended by the 5<sup>th</sup> Pay Commission. The Controversy

arose when no mention was made regarding revised pay scale corresponding to the pay scale of 1175-1625.

In Table 'A' of Revised Pay scale recommended by the 5<sup>th</sup> Pay Commission at Serial no. 5 pay scale 975-25-1150-EB-30-1660 but thereafter at serial no. 6 pay scale 1200-30-1560-EB-40-2040 has been mentioned against which corresponding revised pay scale 4000-100-6000 has been given. In Table 'B' there is also no mention of pay scale 1175-1625.

Rule 22 (ii) (a) of U.P. Fundamental Rules contains in Financial Hand Book Vol. II (Part 2 to 4 ) deals with the fixation of pay. The said rule is quote below:

*(ii)(a) When the appointment to the new post does not involve such assumption of duties and responsibilities of greater importance, he shall draw as initial pay, the stage of the time-scale which is equal to his pay in respect of the old post held by him on regular basis, or if there is no such stage, the stage next above his pay in respect of the old post held by him on regular basis:*

*Provided that where the minimum pay of the time-scale of the new post is higher than his pay in respect o the post held by him regularly he shall draw that minimum as the initial pay:*

*Provided further that in a case where pay is fixed at the same stage, he shall continue to draw that pay until such time as he would have received an increment in the time-scale of the old post, in cases where pay is fixed at the higher stage, he shall get his next increment on completion of the period when an increment is earned in the time-scale of the new post."*

Thus this Rule provides that after pay revision pay of an employee shall be fixed either at the revised pay scale and in the absence of any revised pay scale in the next higher revised pay scale.

Following G.O. dated 2.12.2000 provides time scale and the mode of fixation of pay in the time scale. The relevant extract of the G.O. is quoted as under:

**foRr ¼osru vk;ksx½ vuqHkkx &2,  
'kklukns'k la[k;k &os0vk0**

**2&560@nl&45¼,e½&99] fnukad 2  
fnIEcj 2000**

Isok esa

leLr izeq[k lfpo] mRrjizns'k 'kklu] leLr foHkkxk/;{k ,oa izeq[k dk;kZyk/;{k mRrj izns'k

**fo"k;% osru lfeFr ¼1997&99½ dh laLrqfr;ks ij fy;s  
x;s fu.kZ;kuqlkj jkT; deZpkfj;ksa ds fy, le;eku  
osrueku dh Lohd`frA**

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¼5½ mi;qZDr izLrj &1¼4½ ds vUrZxr oS;fDrd :lk ls Lohd`r f}rh; izksUurh;@vxys osrueku esa IEcfU/kr vf/kdkfj;ksa deZpkfj;ksa dk osru izFke oS;fDrd izksUurh;@vxys osrueku esa izklr osru Lrj ds vxys mPp izdze ij fu/kkZfjr fd;k tk;sxkA

¼6½ izFke vFkok f}rh; oS;fDrd izksUurh;@vxys osrueku esa ;fn fdlh le; fcUnq ij fdlh vf/kdkjh@deZpkjh dk osru mls dze'k% in ds lk/kkj.k osrueku vFkok izFke oS;fDrd izksUurh;@vxys osrueku esa vuqeu; osru Lrj dh rqyuk esa

de ;k cjkj gks ;s rks dze'k% izFke izksUurh;@vxys  
osrueku vFkok nwljs oS;fDrd izksUurh;@vxys osrueku]  
tSlh Hkh fLFkfr gks] esa mldk osru ,sls osruLrj ds vxys  
izdze ij iqfu/kkZfjr dj fn;k tk;sA bl izdkj osru  
iquZfu/kkZj.k ds QyLo:lk izFke rFkk f}rh; oS;fDrd  
izksUurh;@vxys osrueku esa vxyh osruo`f}] osru  
iquZfu/kkZj.k dh frfFk ls 12 ekg dh vgZdkjh lsok ds  
mijkUr ns; gksxhA

Thus the persons who were getting pay scale of 1175-1625  
are entitled to get next higher pay scale mentioned in Table 'A'  
i.e. 4000-100-6000.

The Board of Directors of Kumaon Mandal Vikas Nigam  
also proposed selection grade scale of 400-100-6000 to the  
Drivers employed in the Nigam. The minutes of meetings  
mentioned in the letter of Managing Director dated 26.4.2003  
are quoted below:

dk;Zokgh

funs'kd e.My }kjk izLrko dk voyksdu fd;k  
x;k vkSj O;Dr fd;k x;k fd 'kklu }kjk izpe  
osru vk;ksx dh laLrqfr;kW

as le;c} osrueku 1175&1625  
esa dk;Zjr okgu pkydksa ds la'kksf/kr  
osrueku dk mYys[k ugha fd;k x;k gS mDr  
rkfydkvksa esa bl osrueku ds uhps  
1025&1720 o Åij osrueku ds uhps 1025-  
&1720 ds osrueku dk la'kksf/kr osrueku  
fn;k x;k gSA 1175&1625 ds osrueku dk

LySo u gksus ds dkj.k fu;ekuqlkj rkfydk  
esa vafdr blIs Åij ds osrueku dk la'kksf/kr  
osrueku gh ns; gksxkA vr% funsa'kd  
e.My }kjk fu.kZ; fy; x;k fd  
1200&30&1560&EB& 40&2040 dk  
la'kksf/kr osrueku 4000&100&6000  
vuqeU; djus gsrq laUnfHkZr fd;k tk;A bl  
gsarq izcU/k funs'kd dks vf/kd`r fd;k x;k A

Thus after resolution of the Board of Directors it was incumbent upon the respondents to grant revised selection grade scale of 4000-100-6000 to the petitioners.

In U.P. Jal Nigam time scale of 4000-6000 has been given to the Drivers vide Office order dated 8.10.2001, annexure-11 to the writ petition. Similarly drivers working in Uttaranchal Van Vikas Nigam were granted revised selection grade of 4000-100-6000 vide letter dated 20.4.2002 copy of which is annexure-12 to the writ petition. Both corporations are undertakings of the State Government and thus on the ground of parity the petitioners are entitled to revised selection grade scale of 4000-100-6000. Thus in these facts and circumstances, the view taken by the additional Secretary, State of Uttaranchal vide letter dated 24<sup>th</sup> July 2004 addressed to the Managing Director, Kumaon Mandal Vikas Nigam cannot be upheld.

In view of above, a writ of certiorari is issued quashing the letter-dated 24.7.2004 issued by the Additional Secretary, Tourism Department, Government of Uttaranchal.

Further a writ of mandamus is issued directing the respondents to consider the grant of revised selection grade



scale of 4000-100-6000 to the petitioners, since the date selection grade is admissible to each of the petitioners.

Accordingly, writ petition is allowed. No order as to costs.

Dated: August 31, 2006

**Rajesh Tandon, J.**

\*Dhyani