

A SHAKTI PRASAD BHATT ETC. ETC.
v.
THE STATE OF UTTARAKHAND AND ORS. ETC.
(Civil Appeal Nos. 4519-4530 of 2018)

APRIL 26, 2018

B [ARUN MISHRA AND UDAY UMESH LALIT, JJ.]

Service Law – Claim to count past services for the purpose of selection grade, promotional scale and post retiral benefits including pension – Post of Kurk Amins – It was held by High Court of Allahabad on 16.11.1985 in a case that Kurk Amins were government servants holding civil posts and were entitled to be treated in the same way as others in the services of Government of U.P. – This view was confirmed in another judgment of High Court wherein it was held that Kurk Amins appointed on commission basis stood on the same footing as Kurk Amins appointed on regular basis – The said order was upheld by Supreme court in Chandra Prakash case – Thus, Kurk Amins’ status was confirmed by Supreme Court with effect from 1985 as that of the government servant – With effect from 9.11.2000, the erstwhile State of U.P. was bifurcated and U.P. Re-Organisation Act carved out the State of Uttarakhand – Many Kurk Amins including appellants were allocated to the State of Uttarakhand and were absorbed in the Government service of Uttarakhand – The benefit of the judgment rendered by Supreme Court as well as by the High Court of Allahabad was clearly available to the Kurk Amins whose services had been allocated to the State of Uttarakhand and their past service could not have been wiped off for the purposes of grant of selection grade, promotion scale, post retiral benefits including pension etc. as was done by the High Court – The impugned judgment whereby the claim of appellant was denied was not in accordance with law and was against the basic principles of service jurisprudence as merely by the act of bifurcation of the State the incumbents would not lose their services for the purpose of pension and other benefits – The appellants are held entitled to all such relief – Cost of Rs.1 lac imposed on State of Uttarakhand – U.P. Reorganization Act – Costs.

Allowing the appeals, the Court

HELD: 1. It is apparent that the Kurk Amins’ status was confirmed by this Court with effect from 1985 as that of the

government servant. The erstwhile State of U.P. was bifurcated and U.P. Re-Organisation Act carved the State of Uttarakhand out with effect from 9.11.2000. Many Kurk Amins including appellants were allocated to the State of Uttarakhand and were absorbed in the Government service of Uttarakhand. As uncertainty prevailed, Kurk Amins filed writ application before the High Court of Uttarakhand to seek relief with effect from 16.11.1985. Their case was that they should be governed by the decision rendered by this Court earlier in the matter. Single Bench of Uttarakhand High Court allowed the writ petition vide order dated 31.8.2006; against which writ appeal was filed by the State of Uttarakhand was decided by the Division Bench on 14.9.2010.[Paras 13, 14][277-H; 278-A-C]

2. The Division Bench of the High Court had clearly opined that the benefit of *Chandra Prakash Pandey's case* should not be denied to the appellants as they sail on the same boat. However, in para 7 it was observed by the Division Bench that they would be entitled to the consequential benefits with effect from 9th November 2000 and not with effect from 16th November 1985. That would not have meant that their earlier services were to be wiped off; it was only with respect to monetary liability not to be saddled upon the State of Uttarakhand with respect to the period 1985 till the appointed date *i.e.* 9.11.2000. [Paras 15, 16][279-B-D]

3. Once State has been reorganised, the past service of Kurk Amins could not have been wiped off and the benefit of the judgment rendered by this Court as well as by the High Court of Allahabad was clearly available to the said Kurk Amins whose services had been allocated to the State of Uttarakhand. The services rendered in the State of U.P. could not have been wiped off for the purposes of grant of selection grade, promotion scale, post retiral benefits including pension etc. as has been done by the High Court. The judgment is not in accordance with law and just benefit has been taken away for no good reason and is against the basic principles of service jurisprudence and merely by the act of bifurcation of the State the incumbents were not supposed to lose their services for the purpose of pensionary and other benefits. Thus, the past services have to be counted for all purposes and cannot be wiped off including for the purpose of

A **selection grade promotional scale, post retiral benefits and pension. The appellants are held entitled to all such relief as were granted to them by the Single Bench. Let the benefit be extended to all the other similarly situated incumbents also, they should not be dragged to any further litigation. [Para 19][280-D-G]**

B **4. As the action of the State of Uttarakhand was found to be wholly untenable, cost quantified at Rs.1,00,000/- is imposed. [Para 20][280-G]**

State of U.P. & Ors. v. Chandra Prakash Pandey & Ors (2001) 4 SCC 78 : [2001] 2 SCR 506 – relied on

C **Case Law Reference**

[2001] 2 SCR 506 relied on Para 12

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4519-4530 of 2018.

D From the Judgment and Order dated 11.07.2017 of the High Court of Uttarakhand at Nainital in Special Appeal Nos. 305, 314, 316, 319, 321, 322, 323, 324, 325, 326, 327, 328 of 2017.

V. Shekhar, Sr. Adv., Chander Shekhar Ashri, Shashank Shekhar, Ms. Stuti Naina Karwal, Prithviraj Singh, Advs. for the Appellant.

E Tanmaya Agarwal, Jatinder Kumar Bhatia, Advs. for the Respondents.

The following Judgment of the Court was delivered:

J U D G M E N T

1. Leave granted.

F 2. Application for Intervention/impleadment is allowed.

G 3. The order passed on 11.04.2017 by the Single Bench of the High Court of Uttarakhand at Nainital in W.P. No.2372 of 2015 filed by Uttarakhand Sahakari Sangarh Kurk Amin Parishad, of granting benefit of past services for the purpose of selection grade, promotional scale and post-retiral benefits including pension etc. from due date, has been set aside by the Division Bench, the Single Bench has granted the following relief:

“Accordingly, the present petitions are disposed of in terms of the judgment cited hereinabove. The respondents are directed to

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grant the ACP to the petitioners and to count the past services of the petitioners for the purpose of selection grade, promotional scale and post-retiral benefits including pension etc. from due date within a period of ten weeks from today.” A

4. The facts, in short, indicate that in the year 1978 onwards pursuant to the scheme of UP Government Kurk Amins were appointed for realising outstanding dues of the cooperative societies. Their appointment, salary, service conditions were governed under the scheme. The Government’s earlier decision to pay them on salary basis was withdrawn and they were asked to work on commission basis. Since Kurk Amins did not agree to work on commission basis, their services were dispensed with. B C

5. In the year 1980, the Kurk Amins filed a writ petition before the High Court of Allahabad whose services were terminated or who did not agree to be paid on commission basis.

6. On 16.11.1985, the High Court of Allahabad quashed the order of termination and granted relief by holding that Kurk Amins were Government servants holding civil posts and hence are entitled to be treated in the same way as others in the services of Government of U.P. D

7. In the year 1995 one Chandra Prakash Pandey filed a writ petition seeking a direction to the State Government to place him and others in the regular pay scale, which were being paid to Kurk Amins of Revenue Department. E

8. The Single Bench of the High Court allowed the prayer as contained in the writ petition. Against which, a Special appeal was preferred before the Division Bench of the High Court and the Division Bench on 5.5.1995 affirmed the judgment passed by the Single Bench. F

9. In the year 1996, the U.P. Sahakari Sangarsh Karamchari Sangh filed another Writ Petition. The Division Bench of High Court following the decision rendered in CMWP No.738 of 1980 held that the principle laid down in the aforesaid case also applied to the case of Kurk Amins appointed on the commission basis as they both stood on the same footing. The said decision was challenged before this Court. This Court remitted the matter for fresh consideration of the High Court. G

10. The High Court vide judgment and order dated 22.3.1996 held that Kurk Amins appointed on commission basis were to be treated at par with the Kurk Amins appointed on regular basis. H

A 11. Against the above order Special appeal was preferred before the High Court and the Division Bench on 4.4.1997 affirmed the said decision.

B 12. The decision of the Single Bench dated 22.3.1996 and the Division Bench dated 4.4.1997 were questioned by filing an appeal in this Court. This court decided the matter in *State of U.P. & Ors. vs. Chandra Prakash Pandey & Ors* [2001(4) SCC 78], of which relevant paragraphs are extracted below:

C “4. Thereafter one Chandra Prakash Pandey and others, who are respondents in Civil Appeal Nos. 8467-68 of 1995, filed a writ application before the High Court for a direction to the State to pay regular scale to them as was payable to Kurk Amins of the Revenue Department. The learned Single Judge of the High Court following the judgment rendered by the Division Bench on 16.11.1985 in CMWP No. 738/1980 referred to above allowed the writ application and directed to pay salary and regular scale of pay to the writ petitioners against which order Special Appeal was preferred by the State of Uttar Pradesh before the Division Bench whereas writ petitioner Chandra Prakash Pandey also preferred an appeal against the judgment of the learned Single Judge as no direction was given for fixing their pay and granting arrears. Both the appeals were disposed of by judgment dated 5th May 1995. The appeal preferred by the State was dismissed and the appeal preferred by the writ petitioner was allowed which gave rise to Civil Appeal Nos.8467-68 of 1995.

F 8. In all these appeals preferred by the State of Uttar Pradesh, Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the State, has assailed the judgments on the ground that Kurk Amins appointed for realisation of outstanding dues of cooperative societies could not have been treated to be Government servants and the High Court was not justified in holding that they held civil posts under the State of Uttar Pradesh as the Kurk Amins were appointed under a scheme framed by the Registrar of Cooperative Societies for recovery of outstanding dues of the cooperative societies. On the other hand, Mr. R.K. Jain, learned senior counsel appearing on behalf of the respondents, submitted that neither in Civil Appeal Nos.8467-68 of 1995 nor in Civil Appeal No. 6075 of 1997 in which separate detailed judgments have been rendered

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by the High Court, any counter affidavit was filed on behalf of the State before the High Court inasmuch as even after remand of the matter by this Court no affidavit in opposition was filed on behalf of the State. It has been further submitted that the so-called scheme, which is the basis of submission of the State before this Court, was not brought on the record either before the High Court or before this Court and the same has been produced during the course of argument as such it should not be taken into consideration. It has been further submitted that for deciding the question as to whether there was relationship of master and servant between the Kurk Amins appointed for realisation of outstanding dues of cooperative societies and the State, there would be host of circumstances which have to be considered for determining the same and such a question whether a person or class of persons is servant of the State, which is a question of fact, has been decided in the present case by the High Court after considering the various ingredients which are required under law for coming to a conclusion that the respondents were holding a civil post and they were Government servant, but the State has failed to challenge the said statements of facts, in the judgments.

9. Undisputedly, the decision of the Allahabad High Court that the Kurk Amins, appointed on salary basis for realisation of dues of co-operative societies, held civil posts and became Government servant has attained finality as its correctness has not been challenged by the State of Uttar Pradesh by bringing the matter to this Court, rather the same got approval of this Court while remanding the matter to the High Court for considering the question whether cases of Kurk Amins appointed on commission basis stand on the same footing as that of Kurk Amins appointed on salary basis in whose cases it was declared that they held civil posts and would be entitled to the same salary as is payable to Kurk Amins of Revenue Department.

16. In view of the foregoing discussions, we do not find any infirmity in the judgments rendered by the High Court so as to be interfered with by this Court.”

13. It is apparent that the Kurk Amins’ status was confirmed by this Court with effect from 1985 as that of the government servant.

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- A 14. The erstwhile State of U.P. was bifurcated and U.P. Re-
Organisation Act carved the State of Uttarakhand out with effect from
9.11.2000. Many Kurk Amins including appellants were allocated to the
State of Uttarakhand and were absorbed in the Government service of
Uttarakhand. As uncertainty prevailed, Kurk Amins filed writ application
B before the High Court of Uttarakhand to seek relief with effect from
16.11.1985. Their case was that they should be governed by the decision
rendered by this Court earlier in the matter. Single Bench of Uttarakhand
High Court allowed the writ petition vide order dated 31.8.2006; against
which writ appeal was filed by the State of Uttarakhand was decided by
the Division Bench on 14.9.2010, following is the operative portion of
C the order passed by the Division Bench:
- D “5. The contentions of the State of Uttarakhand, as above, may
or may not be correct. We are, however, not in a position to go
into that aspect of the matter, in view of the law laid down by the
High Court at Allahabad, which law became the law enforceable,
in so far as, the State of Uttarakhand is concerned, upon its
creation. It was well within the competence of the State of
Uttarakhand to make such law in order to avoid the law so made
by the High Court at Allahabad, which became applicable to the
State of Uttarakhand, but the fact remains that the State of
Uttarakhand did not make any such law, the fact that the Hon’ble
E Supreme court has declared the status of cooperative Kurk Amins
as that of Government Servant, in confirmation of the law declared
by the High Court at Allahabad, is not in dispute. But for the
creation of the State of Uttarakhand, the members of the Petitioner,
who were working in the State of Uttar Pradesh before bifurcation
F of the said State and continued to work in the bifurcated State of
Uttarakhand at the same place they were working before
bifurcation, would have had the advantage of the said judgment
of the Hon’ble Supreme Court, rendered in the case of State of
U.P. and Others vs. Chandra Prakash Pandey and others. Only
G because the State was bifurcated, to which they had no role to
play, they would be deprived of such advantage is not
comprehensible to us. We, under those circumstances, cannot
deprive the members of the Petitioner of the benefit or advantage
of the said judgment, nor we can avoid to follow the ratio of the
said judgment.
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7. We, accordingly conclude the matter and, as such, refuse to interfere with the judgment and order under appeal, except the effect that the consequential benefits which the members of the petitioner can have pursuant to the said judgment and order, will be from 9th November 2000 and not w.e.f. 16th November 1985, as had been directed by the Judgment and order under Appeal. The appeal is accordingly, disposed of.”

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15. Thus, it is apparent that the Division Bench of the High Court had clearly opined that the benefit of Chandra Prakash Pandey's case (*Supra*) should not be denied to the appellants as they sail on the same boat. However, in para 7 it was observed by the Division Bench that they would be entitled to the consequential benefits with effect from 9th November 2000 and not with effect from 16th November 1985.

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16. That would not have meant that their earlier services were to be wiped off; it was only with respect to monetary liability not to be saddled upon the State of Uttarakhand with respect to the period 1985 till the appointed date *i.e.* 9.11.2000.

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17. A fresh Writ Petition was filed bearing W.P. No.2372 of 2015 by the State of Uttarakhand Sahakari Sangarh Kurk Amin Parishad, the same was allowed in the light of the decision of this court in Chandra Prakash Pandey's case (*Supra*), the operative portion of which has already been quoted in the beginning.

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18. The State filed an appeal against the said decision before the High Court. The Division Bench of the High Court by the impugned order dated 11.07.2018 reversed the decision. The relevant portion of the order is extracted hereunder:

“29. The upshot of the above discussion is that the appeals have to be allowed and the judgment of the learned Single Judge is set aside and modified in the following way:

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The direction of the learned Single Judge in the impugned judgment to count the past services of the petitioners for the purposes of selection grade, promotional scale and post retiral benefits including pension etc. from the due date will stand clarified as meaning that the past services of the petitioners for the purposes of selection grade, promotional scale and post retiral benefits including pension will be counted from 09.11.2000 and not from any anterior period, as was the claim of the petitioners.

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30. We further clarify that the matter will be considered for the purpose of counting the past services from 09.11.2000 for the

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A purpose of selection grade and promotional scale and a decision will be taken within a period of six weeks from the date of production of a certified copy of this judgment.

31. As regards the grant of ACP in the writ petitions, where ACP was claimed by the writ petitioners, as we have noted, we direct that the appellants will consider the case of each of the writ petitioners, who have raised such a claim in the writ petitions for grant of ACP, and take a decision in accordance with law within a period of six weeks from the date of production of a certified copy of this judgment and the said decision will be communicated to the writ petitioners. If the writ petitioners are found ineligible, the reasons for the same and the material relied on for denying the ACP will also be indicated in the orders.”

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19. In our considered opinion, once State has been reorganised, the past service of Kurk Amins could not have been wiped off and the benefit of the judgment rendered by this Court as well as by the High Court of Allahabad was clearly available to the said Kurk Amins whose services had been allocated to the State of Uttrakhand. The services rendered in the State of U.P. could not have been wiped off for the purposes of grant of selection grade, promotion scale, post retiral benefits including pension etc. as has been done by the High Court. The judgment is not in accordance with law and just benefit has been taken away for no good reason and is against the basic principles of service jurisprudence and merely by the act of bifurcation of the State the incumbents were not supposed to lose their services for the purpose of pensionary and other benefits. Thus, the past services have to be counted for all purposes and cannot be wiped off including for the purpose of selection grade and promotional scale, post retiral benefits and pension. The appellants are held entitled to all such relief as were granted to them by the Single Bench. Let the benefit be extended to all the other similarly situated incumbents also, they should not be dragged to any further litigation.

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20. Though the learned counsel appearing for the State of Uttrakhand made serious attempt to salvage the situation but he was not able to do so. As the action of the State of Uttrakhand has been found to be wholly untenable, we impose the cost quantified at Rs.1,00,000/-.

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21. The order passed by the Division Bench is set aside. The appeals are allowed.

H Devika Gujral

Appeals allowed.