

STATE OF UTTARAKHAND AND ANR.

A

v.

RAJENDRA SINGH ARYA AND ANR.

(Civil Appeal No. 7597 of 2009)

NOVEMBER 16, 2009

[TARUN CHATTERJEE AND R.M. LODHA, JJ.]

B

Service law: Seniority – Writ petition claiming seniority with all consequential benefits from year of allotment by the Public Service Commission – By impugned order claim allowed by High Court relying upon the decision of another High Court – On appeal by State, held: The decision on the basis of which impugned order was passed has already been overruled – In view of that, the impugned order is set aside and matter is remitted to High Court to decide afresh.

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In Re: Suresh Chandra Sharma and Anr. v. State of Uttaranchal and Ors. (2002) 1 UPLBEC 18; Uttaranchal Forest Rangers Association (Direct Recruits) and Ors. v State of Uttar Pradesh and Ors. (2006) 10 SCC 346, referred to.

E

Case law reference :

(2002) 1 UPLBEC 18 referred to **Para 2**

(2006) 10 SCC 346 referred to **Para 6**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7597 of 2009.

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From the Judgment & Order dated 19.8.2006 of the High Court of Uttaranchal at Nainital in Writ Petitioner No. 258 (SB) of 2006.

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Sunil Kumar Singh, Anuvrat Sharma for the Appellants.

M.N. Krishnamani Avtar Singh, Raj Singh Rana, for the

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A Respondents.

The Judgment of the Court was delivered by

TARUN CHATTERJEE, J. 1. Leave granted.

B 2. This appeal by Special Leave arises from the judgment
and final order dated 19th of August, 2006 passed by the High
Court of Uttaranchal at Nainital in Writ Petition No. 258 (SB) of
2006 whereby the High Court had allowed the Writ Petition of
C the Respondent No.1, relying upon the law laid down by the High
Court of Allahabad, Lucknow Bench in the case of *In Re: Suresh
Chandra Sharma & Anr. vs. State of Uttaranchal & Ors*, [(2002)
1 UPLBEC 18], in which it was held that an incumbent shall be
allowed seniority with all consequential benefits from the year of
allotment by the State Public Service Commission.

D 3. At this stage, be it mentioned that the High Court by its
impugned order, allowing the Writ Petition had observed the
following:

E *“Following the judgment of the Lucknow Bench, this Court
had also disposed of the Writ Petition no. 39(SB)/2005.
Keeping in view of the said observations, we are of the
opinion that the Respondents should be directed to treat
the Petitioner having been promoted substantively as
F Forest Ranger from the year 1987-88 and to give
consequential benefits to him. The Petitioner should be
given seniority accordingly.”*

G 4. Feeling aggrieved, the State of Uttarakhand has come
up in this Court by way of a special leave petition which on grant
of leave was heard in the presence of the learned counsel for
the parties.

H 5. We have heard the learned counsel for the parties and
also examined the impugned order. On a plain reading of the
impugned judgment of the High Court, it is crystal clear that the

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High Court, while allowing the Writ Petition of the Respondent No.1, had only relied on the decision of the Lucknow Bench, In Re: *Suresh Chandra* (Supra) which had held that an incumbent shall be allowed seniority with all consequential benefits from the year of allotment by the State Public Service Commission.

6. This judgment rendered in In Re: *Suresh Chandra* (supra) was challenged by way of a special leave in *Uttaranchal Forest Rangers Association (Direct Recruits) & Ors. v. State of Uttar Pradesh & Ors.* [2006 (10) SCC 346] and the views expressed in the case of *Suresh Chandra* (supra) was upset by this Court by the aforesaid decision. While allowing the appeal of the State of Uttarakhand, this Court had set aside the judgment delivered in *Suresh Chandra* (supra) on which reliance was placed by the High Court in the impugned judgment.

7. That being the position and in view of the fact that the decision on the basis of which the High Court had delivered its judgment has already been overruled, we have no other alternative but to set aside the order and to send the matter on remand to the High Court to decide the same in accordance with law. While deciding the writ petition after remand, it is expected that the High Court will take into consideration the law laid down by this Court in the case of *Uttaranchal Forest Rangers Association* (supra).

8. The impugned order is, therefore, set aside. The High Court is requested to decide the matter keeping in mind the views expressed by this Court in the case of *Uttaranchal Forest Association* (supra) within three months from the date of production of a copy of this order to it.

9. For the reasons aforementioned, this appeal is allowed to the extent indicated above. There shall be no order as to costs.

D.G.

Appeal partly allowed.