

STATE OF UTTARAKHAND & ANR.

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v.

ARCHANAN SHUKLA & ORS.  
(CIVIL APPEAL NO. 5130 OF 2009)

JULY 20, 2011

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**[MARKANDEY KATJU AND CHANDRAMAULI KR.  
PRASAD, JJ.]**

**SERVICE LAW:**

*Seniority – Employees appointed on ad hoc basis in 1988 – Their services regularised in 2004 – Claim for benefit of service from 1988 to 2004 for the purpose of seniority – Held: Admittedly, the employees were appointed after – selection under the Regularization Rules in the year 2004 – Therefore, they can get seniority only from the year 2004 and not from 1988 – The rule is clear – When there is a conflict between law and equity, it is the law which has to prevail in accordance with the maxim, ‘dura lex sed lex’, which means, ‘the law is hard but is the law’ – Equity can only supplement the law, but it cannot supplant or override it – Uttaranchal Regularization of Ad hoc Appointments (Posts under the Purview of Public Service Commission) Rules, 2002 – r. 7 – Equity – Maxim ‘Dura lex sed lex’.*

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*Raghunath Rai Bareja and Anr. Vs. Punjab National Bank and Ors. 2006 (10) Suppl. SCR 287 = (2007) 2 SCC 230; B. Premanand and Ors. Vs. Mohan Koikal and Ors. (2011) 3 SCR 932 – relied on.*

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**Case Law Reference:**

2006 (10) Suppl. SCR 287 relied on para 7

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(2011) 3 SCR 932 relied on para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5130 of 2009.

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A From the Judgment & Order dated 6.3.2006 of the High Court of Uttaranchal, at Nainital in Writ Petition No. 140 (S/B) of 2005.

WITH

B C.A. No. 1474 of 2007.

L. Nageswara Rao, Rachana Srivastava for the Appellants.

C Jayant Bhushan, Anurag Dubey, Meenesh Dubey (for S.R. Setia), Ajay Kr. Singh (for Shrish Kumar Misra) for the Respondents.

The following Order of the Court was delivered

**ORDER**

D Civil Appeal No. 5130 of 2009

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment and order dated 6th March, 2006 passed by the High Court of Uttarakhand at Nainital in Writ Petition No. 140/2005.

E The facts have been set out in the impugned judgment and hence we are not repeating the same here except wherever necessary.

F The respondents herein were appointed on adhoc officiating post in the year 1988 for a fixed term which was continued They were regularised in the year 2004 under the Uttaranchal Regularization of Ad Hoc Appointments (Posts under the purview of Public Service Commission) Rules, 2002 (for short 'the Rules'). The respondents claimed benefit of their service from 1988 to 2004 for the purpose of seniority and this has been granted by the High Court. Hence, this appeal.

We are afraid, we cannot agree with the view taken by the High Court.

H Rule 7 (1) of the Rules states as under:

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“A person appointed under these rules shall be entitled to seniority only from the date of 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.”

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Admittedly, the respondents were appointed after a selection under the Regularization Rules in the year 2004. Hence, in our view, they can get seniority only from the year 2004 and not from 1988. The rule is clear and hence we cannot debar from the clear meaning of the rule.

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It has been held in *Raghunath Rai Bareja & Another vs. Punjab National Bank & Others* (2007) 2 SCC 230 that when there is a conflict between law and equity, it is the law which has to prevail in accordance with the latin maxim ‘dura lex sed lex’ which means ‘the law is hard but it is the law’. Equity can only supplement the law, but it cannot supplant or override it. This view was followed in Civil Appeal No. 2684 of 2007 titled *B. Premanand & Others vs. Mohan Koikal & Others* decided on 16<sup>th</sup> March, 2011.

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In the present case, Rules 7 is very clear and hence the respondents are not entitled to the benefit of their service from 1988 to 2004 for the purpose of their seniority.

Accordingly, this appeal is allowed and the impugned judgment of the High Court is set aside, Nop costs.

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**Civil Appeal No. 1474 of 2007.**

In view of our order passed today in Civil Appeal, No. 5130 of 2009, this appeal is also allowed and the impugned judgment of the High Court is set aside. No costs

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R.P.

Appeal allowed.