

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 297 OF 2023

11TH SEPTEMBER, 2023

Managing Director Kumaon Mandal & another Appellants.
Versus

Jiwan Singh Rawat & another Respondents.

Counsel for the Appellants : Mr. Sandeep Kothari, learned counsel.

Counsel for the Respondent No.1 : Mr. K.K. Verma, learned counsel.

Counsel for the Respondent No.2 : Mr. J.C. Pande, learned Standing Counsel.

The Court made the following:

JUDGMENT: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

The appellants have preferred the present special appeal to assail the order dated 09.01.2020, passed by the learned Single Judge, in Writ Petition (S/S) No.2375 of 2019. The impugned order is short, and reads as follows:-

*"Mr. Krishan Kumar Verma, Advocate for the petitioner.
Mr. Tej Singh Bisht, Dy. A.G. with Mr. Virendra Singh Rawat, Brief Holder for the State.*

Mr. Akshay Latwal, Advocate holding brief of Mr. N.S. Pundir, Advocate for respondent nos.2 & 3.

By means of the writ petition, petitioner has prayed for the following reliefs:-

"(i) Issue a writ, order or direction in the nature mandamus commanding the respondents to pay the remaining amount of enhanced gratuity to the petitioner in accordance with G.O. dated 30.12.2016 and 30.05.2019 (annexure-1 to the writ petition)

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the arrears of VII Pay Commission to the petitioner w.e.f.

01.01.2016 to 31.12.2017 in accordance with G.O. dated 11.6.2019 (Annexure- 2 to the writ petition)”

In the counter-affidavit filed on behalf of respondent nos.2 & 3, it has been stated that vide Government order dated 30.05.2019, the State Government has enhanced the gratuity of the Government employees from Rs.10 lacs to Rs.20 lacs and in paragraph- 4 of the said G.O. it has been specifically mentioned that the Corporation will pay the enhanced gratuity from their own sources. It is also stated that it is admitted fact that the financial condition of the Kumaon Mandal Vikas Nigam is not sound. As such the decision was taken by the Managing Director vide its letter dated 28.6.2019 that due to the poor financial condition of the Kumaon Mandal Vikas Nigam the arrear of the Sixth Pay Commission will be paid to the employees in installments and according to their date of retirement. In paragraph no.5 of the said counter affidavit, it is also stated that the post retiral benefits i.e. gratuity benefit, G.I.S., leave encashment (1st installment), leave encashment (2nd installment), D.A. Arrears & Arrear of the 6th Pay Commission has already been paid to the petitioner.

Learned counsel for the parties would submit that the writ petition be disposed of in view of the averments made in paragraph nos.4 & 5 of the aforementioned counter affidavit.

Considering the facts and circumstances that has been brought on record as well as in view of the averments made in paragraph nos. 4 & 5 of the counter affidavit filed on behalf of respondent nos. 2 & 3, the respondent nos. 2 & 3/ Corporation is directed to pay the amount of enhanced gratuity to the petitioner expeditiously.”

2. The aforesaid extract would show that the order passed by the learned Single Judge is in the nature of a consent order. In our view, the said order cannot be assailed by the appellants after having consented to the reliefs sought by the respondent- writ petitioner.

3. Mr. Kothari submits that due to financial stringency, the KMVN- appellant is not able to comply with the order.
4. That, in our view, cannot be a reason to assail the order. If, at all, that may be the reason for the appellant, to seek more time for compliance of the impugned order.
5. We, therefore, do not find any merit in this appeal, and the same is, accordingly, dismissed.
6. Since we have considered the present appeal on its merits, we are not going into the aspect of delay in filing the same, which is to the extent of 438 days.
7. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 11th September, 2023

NISHANT