

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.370 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.371 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.372 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.379 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.381 of 2022 with I.A. No.1 of 2022 (Delay Condonation Appl.) In SPA No.426 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.444 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.463 of 2022 with I.A. No.2 of 2022 (Delay Condonation Appl.) In SPA No.464 of 2022 with I.A. No.1 of 2023 (Delay Condonation Appl.) In SPA No. 41 of 2023 <u>Hon'ble Manoj Kumar Tiwari, A.C.J.</u> <u>Hon'ble Vivek Bharti Sharma, J.</u> Mr. P.C. Bisht, Additional C.S.C. for the State of Uttarakhand/appellants. Mr. Tapan Singh, Advocate for the respondent. 2. Reasons indicated in the affidavit(s) filed in support of delay condonation application(s) are sufficient to condone the delay. Accordingly, the delay condonation application(s) are allowed and the delay in filing the Special Appeals are condoned.

		3. These Intra Court Appeals have been filed by the State challenging the common judgment dated 08.07.2022 rendered in WPSS No.503 of 2018 and other connected petitions. By the impugned judgment, Departmental Authorities were directed to give upgraded pay scale in terms of Government Order dated 05.10.2015 and consequential Office Memorandum dated 28.10.2016 to writ petitioners. Operative portion of the impugned judgment is reproduced below: “18. In that view of the matter, the writ petitions are allowed, and a writ of mandamus is issued to the respondents, to extend the similar benefit of the upgraded pay scale to the petitioners, as enforced by the Government Order No. 377 dated 15th October 2015, and the consequential Office Memorandum No. 363 dated 28th October 2016, which has been enforced after the judgement rendered in Writ Petition (S/S) No. 1968 of 2014, Surendar Giri and others Vs. State of Uttarakhand and others, as decided on 31st May 2018, particularly, when the respondents themselves, on their own volition, they have already extended the benefit by an Order dated 28th July 2018, as such, the petitioners would too fall within the zone for consideration for the grant of upgraded pay scale in the light of the decision taken on 28th July 2018, and merely pendency of an SLP, will not create any bar or legal embargo, as such. Hence, while allowing of the writ petitions, and directing the respondents to determine the upgradation of the pay scale of the petitioners under the Government Orders, already referred to above, it is hope and trusted, that the respondents would provide the upgraded pay scale to the petitioners, within a period of two months from the date of production of the certified copy of this judgement.” 4. Since common questions of law and fact are involved in these writ petitions, therefore they were heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Special Appeal No.370 of 2022 alone are being considered
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		and discussed. 5. Learned Additional Chief Standing Counsel appearing for the appellants/State of Uttarakhand submits that writ petitioners relied upon a Government Order issued on 05.10.2015, which is enclosed as Annexure no. 1 to the writ petition and learned Single Judge has allowed their claim by holding that writ petitioners are entitled to get benefit of said Government Order. He, however, submits that in the impugned judgment, date of Government Order is wrongly mentioned as 15.10.2015, which has to be read as 05.10.2015. 6. Mr. Tapan Singh, learned counsel appearing for respondents concedes that the date of Government Order is wrongly mentioned in the impugned judgment which has to be read as 05.10.2015. 7. Learned Additional C.S.C. submits that Government Order dated 05.10.2015 was issued pursuant to decision taken in 27th Meeting of Pay Anomalies Committee held on 25.06.2015, wherein it was decided that such Group 'D' employees, who are getting salary in the Grade Pay of ₹1300/- ₹1400/- ₹1650/- shall be given Grade Pay of ₹1800 with immediate effect. He further submits that in terms of Government order dated 05.10.2015, Grade Pay of ₹1800 was to be given to all such Group 'D' employees whose Grade Pay was less than ₹1800 as on 05.10.2015. He further submitted that since the writ petitioners (respondents herein) were getting Grade Pay of ₹2800 on 05.10.2015, therefore, they were not entitled to get benefit of Government Order dated 05.10.2015, as it was not retrospective, but was made applicable prospectively. He thus submits that learned Single Judge erred in completely overlooking this vital aspect and
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		directed the Departmental Authorities to give benefit of Government Order dated 05.10.2015 to all persons, who had filed the writ petition even though they were getting grade pay of more than ₹1800 as on 05.10.2015. He further submits that in the letter dated 28.10.2016, Chief Engineer clearly mentioned that the Government Order dated 05.10.2015 is applicable only prospectively; therefore, benefit of said Government Order is to be given only from the date of issuance of Government Order. However, learned Single Judge erred in not appreciating the import of the expression “prospectively” used in para 2 of the letter dated 28.10.2016. He further submitted that Superintending Engineer, Tube-well Circle had misinterpreted the Government Order by holding that benefit of Government Order dated 05.10.2015 is applicable retrospectively from 01.01.2006, however, the Chief Engineer, who holds superior position, in his letter dated 28.10.2016 had made it clear that said Government Order is applicable prospectively. 8. This Court finds force in the submission made by learned State Counsel. The Government Order dated 05.10.2015 is not retrospective and it provides that such Group ‘D’ employees, who are getting Grade Pay of less than ₹1800 shall be given Grade Pay of ₹1800 from the date of issuance of Government Order i.e. 05.10.2015. Since the writ petitioners (respondents herein) were getting Grade Pay of ₹2800, before enforcement of Government Order dated 05.10.2015, therefore, they are not entitled to get any benefit of the said Government Order in view of clear stipulation made in the Government Order and its benefit cannot be given retrospectively from 01.01.2006.
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			9. The Chief Engineer (Mechanical) in para 2 of his letter dated 28.10.2016 has rightly stated that benefit of Government Order dated 05.10.2015 would be available to employees of Irrigation Workshop from 05.10.2015 or date of actual promotion, whichever is later. The view to the contrary taken by learned Single Judge is, thus, unsustainable. 10. Learned counsel for respondents submits that some employees of Irrigation Workshop are getting higher Grade Pay in terms of letter dated 28.10.2016 issued by Superintending Engineer, Irrigation Workshop, therefore, his clients are also entitled to parity with them in the matter of Grade Pay. 11. We are not impressed by the said submission. The Pay Scales and Grade Pay payable to State employees are decided by the State Government. Officers of State Departments have to act strictly as per the decision taken by State Government. If some Group 'D' employees are given higher Grade Pay by Departmental Officers by misinterpreting a Government Order, that cannot be made a ground for claiming similar benefit by others, as it would amount to claiming negative equality, which is not permissible. 12. For the aforesaid reasons, the special appeals are allowed. The impugned judgment dated 08.07.2022, passed by learned Single Judge in WPSS No. 583 of 2018 & other connected matters, are set aside. (Vivek Bharti Sharma, J.) (Manoj Kumar Tiwari, A.C.J.) 19.12.2023 <i>Arpan</i>
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