



2025:UHC:2940-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

**HON'BLE JUSTICE SRI MANOJ KUMAR TIWARI AND
HON'BLE JUSTICE SRI ASHISH NAITHANI**

Delay Condonation Application (CLMA/6500/2017)

In

Special Appeal No. 295 of 2017

National Institute of Visually Handicapped
and others

-Appellants

Versus

A.K. Dua and others

--Respondents

Presence:-

Mr. Arvind Vashisth, Senior Advocate assisted by Ms. Monika Pant,
Advocate for the appellants.

No representation for the respondents

The Court made the following:

JUDGMENT: (per Hon'ble Justice Sri Manoj Kumar Tiwari)

1. There is delay of 51 days in filing this intra-Court appeal. Reasons furnished in the delay condonation application are sufficient to condone the delay in filing the appeal. Accordingly, Delay Condonation Application (CLMA/6500/2017) is allowed and the delay in filing the Appeal is condoned.

2. This intra-court appeal is directed against the judgment and order dated 16.03.2017, passed by learned Single Judge in Writ Petition (S/S) No. 1575 of 2007. The impugned judgment is reproduced below for ready reference:

“The petitioners have approached this Court seeking release of new pay scale on the basis of recommendations of 5th Pay Commission w.e.f. 01.01.1996.

This Court had directed the petitioners to make a representation. The representation was decided by the employer. The petitioners were released pay scale w.e.f. 18.12.2002 instead of 01.01.1996.

The issue raised in this petition is no more res integra in view of the judgment rendered by the Division Bench of this Court in SPA No.265 of 2012 decided on 01.08.2013.



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The Hon'ble Delhi High Court has also decided the similar issue in CW No.3242 of 1996 on 03.03.2000.

Petitioners were also entitled to get pay scale w.e.f. 01.01.1996 instead of 18.12.2002.

There should be uniformity in the release of pay scale on the basis of recommendation of 5th Pay Commission.

Accordingly, the present petition is allowed. The respondents are directed to implement the recommendations of 5th Pay Commission w.e.f. 01.01.1996 instead of 18.12.2002. The arrears etc. shall be paid within a period of 12 weeks from today."

3. National Institute for the Visually Handicapped (employer), has challenged the judgment rendered by learned Single Judge mainly on the ground that the relief granted to the writ petitioners by learned Single Judge, is not as per the judgment rendered by Division Bench of this Court in Special Appeal No. 265 of 2012; although it is mentioned in the impugned judgment that the controversy stand decided by the said judgment.

4. Learned Senior Counsel for the appellants has produced in Court judgment dated 01.08.2013 passed in Special Appeal No. 265 of 2012, which is taken on record. Operative portion of said judgment is reproduced below for ready reference:

"2. We, accordingly, allow the appeal, set aside the judgment and order under appeal and, at the same time, allow the writ petition by directing the National Institute for the Visually Handicapped to give benefit of the 5th Pay Commission to the appellants and also direct the Central Government to provide necessary fund to National Institute for the Visually Handicapped to meet its obligations pursuant to this order. It is made clear that while giving such benefit, the said Institute and the Central Government will ensure grant thereof with effect from 28th July, 2003, i.e. the date on which the others got the same benefit."

5. Based on the judgment rendered in Special Appeal No. 265 of 2012, learned Senior Counsel for the appellants submits that coordinate Bench of this Court, in said judgment, had directed to give benefit of 5th Pay



Commission to the employees of National Institute for the Visually Handicapped only from 28.07.2003; while the writ petitioners (respondents herein) were given benefit of pay revision in terms of recommendations of 5th Pay Commission w.e.f. 18.12.2002. Thus, he submits that reliance upon judgment rendered in Special Appeal No. 265 of 2012, for issuing a direction to pay benefit of 5th Pay Commission to the writ petitioners with effect from 01.01.1996, is unsustainable.

6. Learned Senior Counsel for the appellants further submits that National Institute for the Visually Handicapped is a Society registered under Societies Registration Act and the competent authority in National Institute for the Visually Handicapped had taken a decision, having regard to the precarious financial condition of the Institute, to grant benefit of 5th pay revision to its employees, including teachers with effect from 18.12.2002, which benefit was extended to the writ petitioners as well. He submits that writ petitioners cannot claim revised pay scale from a date anterior to the date from which other similarly situate employees of National Institute for the Visually Handicapped were given such benefit.

7. He further submits that the decision taken by competent authority to grant benefit of pay revision to employees of National Institute for the Visually Handicapped from 18.12.2002 was also not put to challenge in the writ petition, therefore, the direction issued by learned Single Judge to implement recommendation of 5th Pay Commission with effect from 01.01.1996, is unsustainable.



8. We find substance in the said submission. Since all the employees of National Institute for the Visually Handicapped have been paid benefit of pay revision pursuant to 5th Pay Commission report only from 18.12.2002, therefore, writ petitioners cannot claim any special treatment. Had it been a case of discrimination where others were paid benefit of pay revision from 01.01.1996, while writ petitioners were paid such benefit from some later date, then learned writ court would be justified in interfering in the matter and directing the authorities to pay benefit of pay revision from 01.01.1996.

9. Since it is not the case here and coordinate Bench of this Court in Special Appeal No. 265 of 2012 had directed for giving benefit of 5th Pay Commission only from 28.07.2003, therefore, reliance by learned Single Judge on the said judgment for directing to pay revised scale from 01.01.1996, is also misplaced.

10. Thus, the impugned judgment cannot be sustained in the eyes of law. We, accordingly, set aside the impugned judgment and allow the Special Appeal. The employees (writ petitioners) shall be entitled to benefit of 5th Pay Commission w.e.f. 18.12.2002. The arrears of salary, if not already paid to writ petitioners, shall be paid within two months from today.

MANOJ KUMAR TIWARI, J.

ASHISH NAITHANI, J.

Dt: 23rd April, 2025
Mahinder