

(2019) 02 UK CK 0080

Uttarakhand High Court

Case No: Special Appeal No. 95 Of 2019, Delay Condonation Application No. 1530 Of 2019

State Of Uttarakhand
And Another

APPELLANT

Vs

Usha Devi And
Another

RESPONDENT

Date of Decision: Feb. 28, 2019

Hon'ble Judges: Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench: Division Bench

Advocate: A.K. Bisht

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, CJ

1. For the reasons stated, in the accompanying affidavit, the delay of 232 days in preferring the appeal is condoned.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No. 1066 of 2009 dated 24.05.2018. The

husband of the respondent-writ petitioner no. 1, one Mr. Arjun Singh, was appointed as a Skilled Worker (Welding) on 18.02.1986. The Government

institution, where he was working as a Skilled Worker (Welding), was closed and he was posted at the Government Polytechnic, Uttarkashi on

26.09.1993. He died on 28.01.2009. The respondents-writ petitioners were not paid family pension, after the death of Mr. Arjun Singh on 28.01.2009,

purportedly on the ground that he was not a regular employee.

3. In the order under appeal, the learned Single Judge held that Mr. Arjun Singh was appointed initially on a regular basis and, when he was absorbed

in the Government Polytechnic, Uttarkashi, he was a permanent employee; there was no occasion for regularization of the services of Mr. Arjun

Singh after his transfer to the Government Polytechnic, Uttarkashi vide letter dated 26.09.1993; and the services rendered by Mr. Arjun Singh w.e.f.

18.02.1986 should be treated as qualifying service for the purpose of promotional pay-scale, as well as for pensionary benefits. The writ petition was

allowed, and the appellants herein were directed to consider the case of the husband of respondent-writ petitioner no. 1 for release of promotional

pay-scale by counting his qualifying service w.e.f. 18.02.1986 till his death, and also to pay them family pension within 10 weeks.

4. It is not in dispute that Mr. Arjun Singh was appointed as a Skilled Worker (Welding) on 18.02.1986 in a Government institution. The learned Single

Judge was, therefore, justified in observing that, since Mr. Arjun Singh was appointed in a Government institution, the mere fact that the said institution

was closed and he was transferred to the Government Polytechnic, Uttarkashi on 26.09.1993, would not result in his ceasing to be a regular

government employee.

5. The appellants' claim that Mr. Arjun Singh was posted at Government Polytechnic, Uttarkashi, even without a regular vacancy being available

thereat, and he must therefore be held not to be a regular employee, does not merit acceptance. A permanent government servant does not cease to

be a regular government servant, on his being posted elsewhere, consequent on the Government institution where he worked earlier being closed.

6. While Mr. A.K. Bisht, learned Standing Counsel for the appellants, would refer to the order of appointment of Mr. Arjun Singh dated 18.02.1986 to

contend that Mr. Arjun Singh was appointed only on a temporary, and not on a regular, basis, the counter affidavit filed by the appellants in the writ

petition does not state that Mr. Arjun Singh continued to be a temporary employee when the Government institution, where he worked earlier, was

closed, and when he was posted at the Government Polytechnic, Uttarkashi on 26.09.1993.

7. In the absence of a specific averment in this regard in the counter affidavit, filed by the appellants in the writ petition, we see no reason to take a

view contrary to that of the learned Single Judge that, when Mr. Arjun Singh was posted at the Government Polytechnic, Uttarkashi on 26.09.1993, he was a regular Government servant. Consequently, a permanent Government servant cannot again be treated as having been appointed on a temporary basis at the new place of posting.

8. In the facts and circumstances of the present case, the learned Single Judge was justified in directing the appellants to release the promotional pay-

scale of Mr. Arjun Singh, treating his services as regular from 18.02.1986 onwards, and to pay family pension to the respondents-writ petitioners.

9. Interference in an intra-Court appeal would be justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

10. The appeal fails and is, accordingly, dismissed both on the grounds of delay and merits. No costs.