

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition (S/S) No. 584 of 2012**

ASI (M) Vinod Singh & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

**With
Writ Petition (S/S) No. 585 of 2012**

ASI (M) Pawan Bora & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

**With
Writ Petition (S/S) No. 586 of 2012**

ASI (M) Bhaskar Sanwal & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

**With
Writ Petition (S/S) No. 587 of 2012**

ASI (M) Rajesh Kumar & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

**With
Writ Petition (S/S) No. 588 of 2012**

ASI (M) Pradeep Kukreti & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

**With
Writ Petition (S/S) No. 1317 of 2012**

Constable 2470 Anil Arya & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

**With
Writ Petition (S/S) No. 1382 of 2012**

ASI (M) Chandan Singh Bisht & others ... Petitioners
Vs
State of Uttarakhand & others ... Respondents

Mr. K.K. Tiwari, Advocate, present for the petitioners.
Mr. Paresh Tripathi, Additional C.S.C. with Mr. R.C. Arya, Standing Counsel, present for the State of Uttarakhand

Hon'ble Kalyan Jyoti Sengupta, J. (Oral)

These writ petitions have challenged a Government order dated 14.03.2012 by which the Government has decided to give benefit of 6th Pay Commission recommendation to the writ petitioners' w.e.f. 12.12.2011 not from 1st January 2006.

The petitioners in all the writ petitions are members of Provincial Armed Constabulary. They are holding various posts as such, discharging duties in various capacities, namely, Assistant Sub-Inspectors, Head Constables and Constables. They have stated in these petitions in chorus that hostile discrimination has been meted out by issuing above order by the State Government, as other employees in other Departments as well as other employees in the Police Department have already been given benefits of the 6th Pay Commission w.e.f. 01.01.2006, whereas these petitioners have been deprived of such benefit w.e.f. 01.01.2006.

It is further stated that recommendations of 6th Pay Commission has been accepted by the Government and implemented. After accepting recommendation of 6th Pay Commission the Government can not decide otherwise. In this context, I have seen the counter affidavit filed by the State and I notice the basic fact of acceptance of recommendation of the 6th Pay Commission Report has not been denied. In my view, after acceptance of this Report, the State/respondent cannot take different stand, according to their choice and wishes. It is true that recommendations of any Report submitted by the Commission were not binding and it was always open for the Government either to reject or to accept it. In this case, in the counter affidavit, it is stated that after acceptance, the State

Government finds that there is an anomaly; therefore, they have sent the matter to Anomaly Committee. I think that after acceptance of the 6th Pay Commission Report this is not legally permissible. More so, it appears from the statements and averments made in the writ petition as well as in the counter affidavit those recommendations of the Commission have been accepted and it has already been implemented to the cases of other employees of the State Government w.e.f. 01.01.2006 and even other employees of State police department.

Learned counsel for the petitioners says that this is worst form of discriminatory treatment without any valid or lawful reason and further arbitrary action also as pick and choose policy is adopted. I find force in his submission, and there is no reason or warrant to deny benefit retrospectively to these petitioners, as the same benefit have been given to other employees of the Government.

The learned counsel for the State submits if this benefit is given to these employees then the State Government has to bear the huge financial burden which is not possible to do. I think such plea is after thought, as at the time of acceptance of the recommendation of the Commission, financial burden issue must have been thought of or considered. There is no explanation as to why the Government did not feel any financial burden to give benefit to other employees, whereas such burden is felt while applying recommendations to these petitioners. Such plea is not simply tenable in the eye of law, therefore, I overrule the same.

Accordingly, I hold that the impugned order is wholly unconstitutional, as it cannot stand to the scrutiny under Article 14 of the Constitution of India. Article 14 of the

Constitution of India ensures the equality and this test for application of the equality has been fulfilled by the petitioners. Accordingly, I quash the impugned order. I, therefore, direct the Government to give benefit of the 6th Pay Commission to the writ petitioners' w.e.f. 01.01.2006. I am not unmindful of the fact that if the benefit is given from 1st January, 2006 to the petitioners at a time the Government will have to pay huge amount of arrears in one go. Considering the submission of the learned counsel for the State, I direct the Government to prepare a scheme for making payment of arrears in terms of this order, by way of installment or otherwise. I think that these arrears amount shall be paid off by any method within a span of three years from the date of receipt of the order.

Accordingly, the writ petitions are allowed.

There will be no order as to costs.

(K.J. Sengupta, J.)

15.03.2013

ASWAL