

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. (S) 10806 OF 2017  
[Arising out of Special Leave Petition  
(Civil) No.7434 of 2016]

HABIB KHAN ...APPELLANT(S)

VERSUS

STATE OF UTTARAKHAND  
& ORS. ...RESPONDENT(S)

WITH

CIVIL APPEAL NO. (S) 10805 OF 2017  
[Arising out of Special Leave Petition  
(Civil) No.11725 of 2015]

CIVIL APPEAL NO. (S) 10807 OF 2017  
[Arising out of Special Leave Petition  
(Civil) No.9991 of 2016]

ORDER

1. Delay condoned in Special Leave Petition (Civil) No.11725 of 2015.
2. Leave granted in all the Special Leave Petitions.
3. The period of service rendered by the appellants was directed to be counted

for computing 'qualifying service' for purposes of pension by the State Public Service Tribunal. Writ Petition No.24 of 2007 filed by the State against the said order was dismissed. The petition for special leave to appeal filed by the State against the order of dismissal of the Writ Petition was also dismissed by this Court. In between, a Full Bench of the Uttarakhand High Court took the view that the period of work-charged service cannot be counted for computation of the period of 'qualifying service'. On the basis of the aforesaid decision of the Full-Bench of the Uttarakhand High Court, review of the order dismissing Writ Petition No.24 of 2007 was sought which was allowed by order dated 27<sup>th</sup> July, 2012. The said order dated 27<sup>th</sup> July, 2012 was challenged before this Court and was dismissed as withdrawn. In the meantime, on the basis of the order passed

in the review petition the matter was re-heard and the High Court by order dated 26<sup>th</sup> May, 2015 held that the period of work-charged service cannot be counted for reckoning of the period of 'qualifying service'. While the order dated 26<sup>th</sup> May, 2015 is the subject matter of challenge in appeal arising out of Special Leave Petition (Civil) No.7434 of 2016 and in appeal arising out of Special Leave Petition (Civil) No.9991 of 2016, the order of the Full Bench is the subject matter of challenge in appeal arising out of Special Leave Petition (Civil) No.11725 of 2015.

4. Having recalled the facts germane to a consideration of the case, the question of law arising may now be adverted to.

5. The aforesaid question is no longer *res integra* in view of the facts enumerated

herein after.

The relevant provisions under which the period of work-charged service is not to be counted for computation of 'qualifying service' in the State of Uttarakhand is Rule 370 of the Civil Service Regulations which is extracted below:

"370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without interruption by confirmation in the same or any other post shall qualify except-

i) periods of temporary or officiating service in a non-pensionable establishment,

ii) periods of service in a work-charged establishment, and

(iii) periods of service in a post paid from contingencies."

6. The *pari materia* provision contained in Rule 3.17(ii) of the Punjab Civil Services Rules had been struck down by a Full Bench decision of the Punjab and

Haryana High Court in Kesar Chand vs. State of Punjab and ors.<sup>1</sup> The challenge by the State against the aforesaid decision of the Full Bench of the Punjab and Haryana High Court was negatived by this Court. The matter came up for consideration before this Court, once again, in the case of Punjab State Electricity Board and anr. vs. Narata Singh and anr.<sup>2</sup>. While dealing with the said question this Court in paragraph 25 of the report held that the Full Bench decision of the Punjab and Haryana High Court was perfectly justified in striking down Rule 3.17(ii) of the Punjab Civil Services Rules resulting in obliteration of the distinction made in the said Rules between 'temporary and officiating service' and 'work-charged service'. On the said basis, this Court took the view that the period of work-charged service should be

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1988 (5) SLR 27

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(2010) 4 SCC 317

reckoned for purposes of computation of 'qualifying service' for grant of pension.

7. As already observed, the provisions of Rule 370 of the Civil Service Regulations applicable to the State of Uttarakhand are *pari materia* with the provisions of Rule 3.17(ii) of the Punjab Civil Services Rules, discussed above. If that is so, we do not see as to why the period of service rendered on work-charged basis by the appellants should not be counted for purposes of computation of 'qualifying service' for grant of pension. The *pari materia* provisions of Rule 3.17(ii) of the Punjab Civil Services Rules having been interpreted and understood in the above manner by this Court in Narata Singh (supra) we do not find any room for taking any other view except to hold that the appellants are entitled to reckon the period of work-charged service for purposes

of computation of 'qualifying service' for grant of pension. We order accordingly; allow these appeals and set aside the impugned orders passed by the High Court.

8. All necessary and consequential benefit in terms of the present order will be paid and granted by the State to the appellants forthwith and without any delay.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(NAVIN SINHA)

NEW DELHI  
AUGUST 23, 2017

ITEM NO.2

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 11725/2015  
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 06-01-2011  
IN WP NO. 284/2004 PASSED BY THE HIGH COURT OF UTTARAKHAND AT  
NAINITAL)

HABIB KHAN

PETITIONER(S)

VERSUS

THE STATE OF UTTARANCHAL NOW UTTARAKHAND  
& ORS.

RESPONDENT(S)

(FOR CONDONATION OF DELAY IN FILING ON IA 3/2015  
FOR CONDONATION OF DELAY IN REFILEING ON IA 4/2015  
FOR [PERMISSION TO FILE ANNEXURES] ON IA 6/2015)

WITH

SLP(C) NO. 9991/2016 (X)

SLP(C) NO. 7434/2016 (X)

Date : 23-08-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI

HON'BLE MR. JUSTICE NAVIN SINHA

For parties (s)

Mr. Sanpreet Singh Ajmani, Adv.

Mr. Manohar Pratap, Adv.

Mr. Aneesh Sharma, Adv.

Ms. Aastha Vashistha, Adv.

Mr. Ajit Sharma, AOR

Mr. Sanpreet Singh Ajmani, Adv.

Mr. Aneesh Sharma, Adv.

Mr. Manohar Pratap, Adv.

Mr. Peeyush Bhatia, Adv.

Ms. Aastha Vashistha, Adv.

Ms. Manju Jetley, AOR

Ms. Bhuvneshwari Pathak, Adv.

Ms. Shilpi Satyapriya Satyam, Adv.

Mr. Rahul Kaushik, AOR

Mr. Ashutosh Kumar Sharma, Adv.  
Mr. Jatinder Kumar Bhatia, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Delay condoned in Special Leave Petition (Civil)  
No.11725 of 2015.

Leave granted in all the Special Leave  
Petitions.

The appeals are allowed in terms of the signed  
order.

[VINOD LAKHINA]  
AR-cum-PS

[ASHA SONI]  
BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]