2026 INSC 1194

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1614 OF 2011

STATE OF UTTARAKHAND
THR. CHIEF SECRETARY
AND OTHERS **...APPELLANTS**

VERSUS

M.C. BHANDARI AND ANOTHER **...RESPONDENTS**

WITH

CIVIL APPEAL NO. 1615 OF 2011

J U D G M E N T

N.V. ANJARIA, J.

Both these Appeals, preferred by the State of Uttarakhand, involve similar facts and identical issues. Therefore, they are treated simultaneously for disposal by this common judgment.

2. Civil Appeal No.1614 of 2011 is directed against judgment and order dated 15.04.2010 passed by the High Court of Uttarakhand[1] in Writ Petition No.182 (SB) of 2008,

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Reason:

[1] **Hereinafter, "High Court"**

whereas the other Civil Appeal No.1615 of 2011 addresses the challenge to the judgment and order of even date passed in Writ Petition No. 181 (SB) of 2008.

2.1 Before the High Court, the original petitioners-respondent No.1 herein in each case prayed to declare Regulation 7(2) of the Uttarakhand Public Service Commission (Conditions of Service) Regulations, 2004[2] as unconstitutional and *ultra vires* Articles 14, 16 and 318 of the Constitution. It was next prayed to set aside order passed by the Finance Officer, Uttarakhand Government as well as the consequential order passed by the Secretary, Public Service Commission, by which the pension of the original petitioners in both the cases was ordered to be deducted from the admissible salary of Chairman and, as the case may be, the Member, of the Uttarakhand Public Service Commission[3].

2.2 The third prayer was to direct the respondents to restore and fix the pay of the original petitioners without deducting their pension from the date of their appointment

[2] **Hereinafter, "Uttarakhand Public Service Commission Regulations"**
[3] **Hereinafter, "Uttarakhand PSC"**

as the Chairman or, as the case may be, the Member of Uttarakhand PSC in accordance with Regulation 7(1) of the Uttarakhand Public Service Commission Regulations. It was prayed for a direction against the respondents to pay the amount of salary of the original petitioners.

2.3 The High Court, allowing the writ petitions, declared Regulation 7(2) of the Uttarakhand Public Service Commission Regulations to be *ultra vires* the provisions of Article 14 read with Article 39(d) of the Constitution. Order dated 16.09.2008 impugned before the High Court whereby it was provided to deduct the pension from the salary of the original petitioners, came to be set aside. It was further directed that in case any deduction was made from the emoluments payable to the original petitioners as Chairman or, as the case may be, the Member of the Uttarakhand PSC on the basis of the aforementioned communication dated 16.09.2008 under Regulation 7(2) of the Uttarakhand Public Service Commission Regulations, the same shall be reimbursed.

3. Tracing the relevant facts from Civil Appeal No.1614 of 2011 treating the same to be the lead appeal, respondent No.1 herein – original petitioner Lieutenant General (Retired) Mr. M.C. Bhandari, retired from the post of Lieutenant General in the Indian Army with effect from 30.08.2006 upon attaining the age of superannuation. After retirement, he came to be appointed by the appellant-State as Chairman of the Uttarakhand PSC by order dated 03.11.2006. He assumed his duties of the post of Chairman with effect from 24.11.2006.

3.1 The salary of the said petitioner came to be fixed for the post of Chairman, Uttarakhand PSC at basic pay of Rs.26,000/- together with admissible allowances. The order of pay fixation contained a note that the pension payable to him on account of his previous services as Lieutenant General would be deducted from the salary payable for the post of Chairman. By order dated 19.12.2006, the Finance Controller, Uttarakhand PSC accordingly fixed the salary of the said original petitioner as Chairman of the Uttarakhand PSC after deducting Rs.17,627/-, the amount of pension drawn by him.

3.1.1 The aggrieved petitioner submitted a representation dated 13.06.2007 asking for redetermination of his remuneration as Chairman of the Uttarakhand PSC, contending that the pension earned by him for his previous services in the armed forces constituted a vested right for him and that it bore no nexus to the office of the Chairman of the Uttarakhand PSC. It was his contention that the amount of pension, therefore, could not have been deducted from his salary payable for the post of Chairman. The representation came to be turned down by the appellant-State on 30.06.2007.

3.1.2 The said petitioner filed a writ petition before the High Court challenging Regulation 7(2) of the Uttarakhand Public Service Commission Regulations on the ground that it was violative of Article 14 of the Constitution and that the orders whereby the amount of pension was deducted from salary for the post of Chairman, Uttarakhand PSC were liable to be set aside as illegal.

3.2 In the other case, original petitioner Sohan Lal was a Provincial Civil Service Officer and retired from the post of

Additional Secretary, Government of Uttarakhand, with effect from 20.07.2006 by accepting voluntary retirement. Thereupon, the Government of Uttarakhand issued a letter of appointment on the very day, appointing him as a Member of the Uttarakhand PSC, of which post, he took charge on 22.07.2006. His salary was fixed at the Basic Pay of Rs.22,500/-. At the time of his retirement, the pension fixed was Rs.11,025/-, which came to be deducted to arrive at a final amount of salary payable to him for the post of Member. This original petitioner also filed a writ petition with similar prayers and identical contentions.

3.3 The Government of Uttarakhand issued an Office Memorandum dated 16.09.2008. By the said Office Memorandum, it was clarified that in accordance with the determination made by the Governor, when an officer of the Central Government or the State Government assumes office as a Chairman or a Member of the Uttarakhand PSC after retirement, the pension payable immediately prior to his assumption of office of the Chairman or Member, except disability pension or injury pension, was liable to be

deducted from the basic pay admissible to the post of Chairman or, as the case may be, the Member.

3.3.1 The petitioners were conveyed that salary payable to them was correctly fixed after deducting the amount of pension from his basic pay payable to them as Chairman or Member, as the case may be, and that the Governor had determined the same as per Regulation 7(2) of the Uttarakhand Public Service Commission Regulations.

3.4 In the context of above common operative facts, the central question arises to be addressed is, upon the appointment of the original petitioners as the Chairman and the Member respectively of the Uttarakhand PSC, whether they are entitled to receive the salary added by the amount of pension which was receivable by them in respect of the post held before their retirement; whether the State of Uttarakhand was justified in law in fixing the salary of the said Government servants appointed on the above posts after their retirement by withholding the amount of pension during the tenure of the appointed posts, by applying

Regulation 7(1) read with Regulation 7(2) of the Uttarakhand Public Service Commission Regulations?

3.5 The High Court, while allowing the writ petitions of both the original petitioners, held that Regulation 7(2) of the Uttarakhand Public Service Commission Regulations was *ultra vires* Article 14 read with Article 39(d) of the Constitution and granted relief as prayed for by them. In pursuance, the State of Uttarakhand is before this Court by way of the present civil appeals by special leave.

3.6 In allowing the writ petitions, the High Court rested on the decision of the Punjab and Haryana High Court in **Ram Phal Singh vs. State of Haryana in Civil Writ Petition No.15159 of 1996**, decided on 08.09.2004, in which Regulation 6(2) of the Haryana Public Service Commission (Conditions of Service) Regulations, 1973 was under consideration. That Regulation also provided for the deduction of pension payable to Government servant on account of services rendered by him under the Government before retirement, from the salary payable in respect of his appointment post-retirement. The High Court took the view

that, though not *pari materia* to Regulation 7(2) of the Regulations in the instant case, Regulation 6(2) in that case was similar in this effect and operation as it contemplated deduction of pension from the salary payable to the retired government servant appointed after retirement to another post.

3.7 The High Court in the impugned judgment did not accept the contention of the original petitioners that the salary fixed by deduction of pension amounted to variation in the service conditions, in violation of Proviso to Article 318 of the Constitution. The High Court found favour with the submission that Regulation 7(2) of the Uttarakhand Public Service Commission Regulations operated in breach of the principle of "equal pay for equal work", thus was *ultra vires* Article 14 of the Constitution,

3.7.1 In paragraph 9 of the impugned judgment, the following reasons were supplied by the High Court,

> "There can be no doubt whatsoever that pensionery emoluments payable to the petitioner were in lieu of the service rendered by him with the Indian Army. The same is, therefore, unrelatable to the service rendered by the petitioner as a Chairman of the Uttarakhand Public Service Commission."

3.7.2 In the same paragraph, the High Court further stated that,

> "As such, there being neither any reduction in hours of service, nor the responsibilities vested in him in the capacity of Chairman of the Public Service Commission. His emoluments as Chairman of the Public Service Commission were originally determined under Regulation 7 (1) of the 2004 Regulations at Rs.26,000/- per mensem. Since the petitioner was rendering all the duties and responsibilities of the post of Chairman of the Uttarakhand Public Service Commission, there could have been no deduction in his emoluments."

3.7.3 It was further observed,

> "A deduction based on factors alien to the principle of "equal pay for equal work" would be violative of the provisions of Article 14 read with Article 39 (d) of the Constitution of India. Deduction from the salary of Rs. 26,000/-, of the amount of pensionery emoluments earned by the petitioner, in lieu of service rendered by him with the Indian Army, in our view, has no nexus to the duties and responsibilities vested in the petitioner, as Chairman of the Public Service Commission, and as such, must be deemed to be contrary to the principle of "equal pay for equal work" and in complete derogation thereof."

4. Heard learned counsel Mr. Abhishek Atrey for the appellants and learned Senior Counsel Mr. Harshvir Pratap Sharma as well as learned counsel Mr. Rohan Thawani for the respective respondents.

5. Article 318 of the Constitution empowers the Governor of the State to frame regulations. It provides that in the case of Union Commission or a Joint Commission, the President and, in the case of a State Commission, the Governor of the State may by regulations determine the number of members of the Commission and conditions of their service. The Governor of the State may by regulations make provision in respect of the number of members of the staff of the Commission and their conditions of service. The proviso to Article says that the conditions of service of a member of a Public Service Commission shall not be varied to his disadvantage after his appointment.

5.1 In exercise of the powers conferred under Article 318 of the Constitution, the Uttarakhand Public Service Commission Regulations are framed, which were notified on 16.12.2004. Regulation 7 of the said Regulations, which govern the fixation of salary of the Chairman and Members of the Uttarakhand PSC, reads as under,

> "7(1) There shall be paid to the Chairman a salary of Rs. 26,000 (Twenty Six Thousand) per mensem and to each of the other members a salary of Rs. 22,500 (Twenty Two Thousand Five Hundred) per month.

> 7(2) If a Chairman or a Member at the time of the appointment as such is retired Government servant, the Governor shall determine, whether his service pension shall be held in abeyance and if so whether wholly or in part; or in the alternative, whether the pay fixed by this regulation shall be reduced by an amount not exceeding the amount of such service pension, including such pension of it as may have been commuted, if the service pension is allowed to be drawn in full."

5.2 Upon appointment of the original petitioners as Chairman and Member respectively of the Uttarakhand PSC, the Uttarakhand Public Service Commission Regulations which were in force were applied. Under Regulation 7(1), basic pay was fixed at Rs.26,000/- per month and Rs.22,500/- per month respectively of the petitioner-appointees for the post of Chairman and Member. In terms of sub-regulation (2) of Regulation 7, the pension amount to be withdrawn by them at the time of retirement as government servants came to be deducted and ordered to be kept in abeyance.

5.3 In other words, while fixing the salary upon appointment after retirement, the principle of "pay minus pension" was applied in determining the amount of salary. It was stated on behalf of the appellant-State that the said

norm of "pay minus pension" has been consistently applied in respect of the retired Government servants who are appointed post-superannuation to the Constitutional posts, including on the posts in the Uttarakhand PSC. The fixation of salary in both cases was on the basis of "pay minus pension" immediately on the appointment in terms of Regulation 7(2) of the Regulations. It was suggestive of the fact that the authorities clearly intended to apply such norms in accordance with Regulation 7(2) prevalent and applicable to the original petitioners.

6. It appears that as the representation dated 13.06.2007 came to be made by the original petitioners after getting appointment in the year 2006, seeking refixation of the salary without deduction of pension, the authorities proceeded to undertake the exercise of obtaining special orders of the Governor under Regulation 7(2), and to consider as to whether the request for not deducting the pension from the salary could be acceded to. In exercise of powers vested under Regulation 7(2) of the Uttarakhand Public Service Commission Regulations, Office Memorandum dated 16.09.2008 came to be issued

clarifying that when a retired Central Government or a State Government officer is appointed as a Chairman or a Member of the Uttarakhand PSC, the basic pension shall be deducted from the salary payable as the Chairman or, as the case may be, the Member.

6.1 The said Office Memorandum, which came to be set aside by the High Court, is extracted hereinbelow,

> Government of Uttarakhand
> Department of Personnel - 2
> 742/XXX(2)/2008
> Dehradun dated 16/09/2008
>
> OFFICE MEMORANDUM
>
> In pursuance of Regulation 7(2) of Uttranchal Public Service Commission (condition of service) Regulations 2004, which provides that "If a Chairman or a Member at the time of his employment as such is retired public servant the Governor will determine whether his service pension shall be held in abeyance and if so whether fully or in part ; or in alternative whether the pay fix by this regulation shall be reduced by an amount not exceeding the amount of such service pension including such pension of it as may have been commuted , if the service pension is allowed to be drawn in full". The Governor is pleased to determined that salary of Chairman or Member shall be fixed in respect of such officers of Government of India or of state government who assumes the post of Chairman or Member in Uttrakhand Public Service Commission consequent upon their superannuation, the pension due to them just before assuming charge (except pension for injury and disability) shall be reduced from the basic pay as payable to them as a Chairman or a

Member. . . . . The amount prior to_____ salary shall be reduced but Chairman/Member will have option for dearness allowance on commuted salary of Public Service Commission or dearness salary on pension of previous service. If Chairman/Member opts for dearness salary on the previous pension, in such situation dearness allowance on the said salary, to that extent should be reduced

2. The aforesaid order shall be treated to have been enforced with effect from the date of issuance of the notification dated 16/12/2004 in pursuance of Regulation 7(2) of Uttranchal Public Service Commission (condition of service) Regulations 2004, notified by virtue of notification no.1947/XXX-2/2004 dated 16/12/2004.

3. This Order is being issued with the concurrence of Finance Department vide their d.o. Letter No.1117/XXVII(7)/2008 Dated 12/09/2008

Sd/
Chandra Shekhar Bhatt

742/XXX(2)/2008
Even Dated
Copy forwarded to following for information and necessary action :-

1. Secretary PSC Haridwar
2. Accountant General Uttaranchal
3. Chief Account Officer Haridwar
4. Finance Officer IRLA Check Uttarakharid
5. All Principal Secretaries/ Secretaries Uttranchal
6. Secretary to his Excellency Governor
7. Secretary to Chief Minister
8. Concerned Guard File

By order
Chandra Shekhar Bhatt
(Additional Secretary)

6.2 The appellant-State further pointed out from the extracts of the Civil Service Regulations, which were filed as part of documents, that is, paragraph 526 which deals with the situation where a person previously holding a military post obtains an employment on a civil post after having been granted military pension. It would be noticed that clause (b) of paragraph 526 contemplates deduction of pay by the amount of pension.

6.2.1 The said paragraph 526 reads as under,

> **526.** (a) when a person formerly in military service obtains employment in the civil department after having been granted a military pension he shall continue to draw his military pension, but the authority competent to fix the pay and allowance of the post in which he is re-employed shall have in fixing his pay and allowances in the post in which he is re-employed, the power to take into account the amount of pension, including such portion of it as may have been commuted.
>
> (b) A military officer, departmental officer, warrant or non-commissioned officer or soldier who is granted a pension under military rules while he is in civil employ, shall draw such pension while he is in civil employ, but the authority competent to fix the pay and allowances of the post in civil employ, may with effect from the date from which the pension is granted, reduce such pay and allowances with reference to such officer or soldier by any amount not exceeding the amount of such pension.

6.3 It is pertinent to mention that the Union Public Service Commission (Members) Amendment Regulations, 2007, brought into effect by notification dated 01.05.2007 provide that while dealing with the aspect of pay in its Proviso contemplated a similar provision as in Regulation 7(2) *inter alia* that if a person who, immediately before the date of assuming office as the Chairman, or as the case may be, the Member, was in receipt of, or, being eligible so to do, had elected to draw, a pension other than a disability or wound pension in respect of any previous service under the Union of India or Government of a State, his salary in respect of service as the Chairman or, as the case may be, a Member shall be reduced, by the amount of that pension.

7. Adverting again to Regulation 7(2), which came to be held *ultra vires* by the High Court, what is provided in Regulation 7(2) in express terms is that the pension of a Chairman or, as the case may be, a Member at the time of retirement of the government servant shall be kept in abeyance and that the Governor may determine accordingly. What necessarily implies is that the amount of pension is provided to be deducted to be withheld from the salary

payable for the post of Chairman or, as the case may be, the Member.

7.1 While the deduction of pension by way of keeping it abeyance does not amount to variation in the conditions of service under the Proviso to Article 318 of the Constitution, as rightly held by the High Court, it is to be noticed that the deduction of the part of pension, which was receivable by the original petitioners for their previously held posts as Government servants would remain effective only during the tenure of the Chairman or, as the case may be, of the Member of the Uttarakhand PSC. The pension benefit to the said extent is kept in abeyance and is deferred to be paid after they leave their office as Chairman or Member, as the case may be.

7.2 At the end of the tenure of the Chairman or, as the case may be, the Member, the entitlement to pension which was kept in abeyance would revive and the petitioners-respondent No.1 herein would get the pension deducted during the tenure of their chairmanship or membership of the Uttarakhand PSC. In other words, there is no

withdrawing of the pension, it is only the withholding during the period when the posts of the Chairman or, as the case may be, the Member of the Uttarakhand PSC is held. There was no withdrawing of the pension.

7.3 The concept of "equal pay for equal work" has no pertinence or relevance to be applied on this score. The question of breach of doctrine of equal pay for equal work does not arise. The High Court wholly misdirected itself in reasoning that the principle of "equal pay for equal work" was violated and resultantly Regulation 7(2) was *ultra vires* Articles 14 and 39(d) of the Constitution. In no way, thus, the provision of Regulation 7(2), its application and operation to the cases like that of the original petitioners could be said to be *ultra vires*.

8. The decision of this Court in in **Gurmesh Prakash Bishnoi vs. State of Haryana and Others**[4] is an answer to the issue. The facts in that case were akin to the case in hand. The appellant in that case was appointed as a Member of the Haryana Public Service Commission with effect from

[4] **(1998) 5 SCC 260**

04.03.1980 and continued on the post till 28.08.1984, when he was appointed as Chairman of the Commission. He remained on the post of the Chairman for a period of 6 years, up to 27.08.1990. He was granted pension at the rate of Rs.1800/- per month for his services as Chairman of the Haryan Public Service Commission.

8.1 The appellant contended that, in addition to the aforesaid pension, he was also entitled to pension in respect of his services as a Member of the Haryana Public Service Commission for a period of 4 years 5 months and 24 days. What was applicable was Regulation 9-A (1) of the Haryana Public Service Commission (Conditions of Service) Regulations, 1972, which reads as under,

> "9-A (1) Subject to the provisions of these regulations, every person, who, on or after the 1st day of November, 1966, ceases to hold the office of the Chairman or the Member, shall, with effect from the 1st December, 1973 or the date of his ceasing to hold the office, whichever is later, be entitled to pension for his life at the rate of two hundred rupees per month for each completed year of service as the Chairman or the Member, as the case may be, rendered after the 31st day of October, 1966, subject to a maximum of eight hundred and fifty rupees and seven hundred and fifty rupees per month respectively:
>
> Provided further that no pension shall be payable during the period for which … the Member may,

> after his retirement as such hold office as ... the Chairman of HPSC or of any other State Public Service Commission."

8.1.1 This Court thus addressed the question as to whether a person, who has acted both as a Member and subsequently as a Chairman, will be entitled to pension only on the basis of his services as a Chairman or he will also be entitled to a separate pension on the basis of his services as a Member of the Haryana Public Service Commission?

8.1.2 This Court observed that, in the Union Public Service Commission (Members) Regulations, 1969, there existed an express provision in Explanation (II) to Regulation 9 providing that when the total service for pension is rendered by a person, partly as a Member and partly as a Chairman, the pension admissible to such person shall be the aggregate of the pension calculated separately for each such term as a Member and as a Chairman. It was noted by the Court that in the Haryana Public Services Commission (Regulations), 1972 there was no such provision.

8.1.3 Explaining the effect of Rule 9 of the Haryana Public Services Commission 1972 Regulations, this Court observed,

> "However, the proviso to Rule 9-A throws some light on the manner in which the pension is to be calculated. Under the proviso, when a member of the Haryana Public Service Commission retires as a member, he would be entitled to a pension as a member. However, it he thereafter holds office (inter alia) as the Chairman of the Haryana Public Service Commission, he will not get any pension during the period for which he holds office as a Chairman. There is an embargo on his receiving pension as a member during the period he functions as a Chairman. Once he ceases to function as a Chairman the embargo is lifted and he would be entitled to get pension as a member for the period during which he served as a member of the Haryana Public Service Commission. This of course, will be subject to the ceiling prescribed under Regulation 9-A. At the same time as the Chairman of the Haryana Public Service Commission, for the period of service rendered by him as Chairman, he would also get pension at the rate prescribed under Regulation 9-A subject to the maximum."
>
> (Para 6)

8.1.4 Thus, this Court stated that embargo would operate under Rule 9-A of the Regulations on receiving pension by the appellant as a member during the period he functioned as a Chairman, further clarifying that such embargo would stand lifted and the entitlement to get pension as a member

for the period during which the appointee served as a Member of the Commission, would arise.

9. A faint attempt was made on behalf of the original petitioners that the determination of the Governor under Regulation 7(2) that the pension would be liable to be deducted from the salary to be paid for the post of Chairman or, as the case may be, Member, was subsequent to their appointment. It was sought to be submitted that when Regulation 7(2) could not have been operated without necessary orders or determination by the Governor and that in any case since the Office Memorandum was issued on 16.09.2008 upon Governor's determination, it could not have been retrospectively applied.

9.1 The above contention has no legs to stand. When the original petitioners appointed as Chairman and Member, respectively, of the Uttarakhand PSC, admittedly, the Uttarakhand Public Service Commission Regulations were in force and Regulation 7 was applicable. The salary of the original petitioners for the post of Chairman or Member, as the case may be, of the Uttarakhand PSC, were determined

in accordance with the providence of Regulation 7(1) read with Regulation 7(2) of the Uttarakhand Public Service Commission Regulations. The respondent No.1-original petitioners accepted the post.

9.2 An attentive reading of language of sub-regulation (2) of Regulation 7 would manifest that the Governor has empowered to determine the issue whether the service pension of the Chairman or, as the case may be, the Member, of the Uttarakhand PSC, shall be kept in abeyance and whether the pay fixed by this Regulation shall be reduced by the amount of such service pension. The decision of the Governor determining that the pension would be liable to be deducted to be kept in abeyance is taken in consonance with the said sub-regulation (2) of Regulation 7. There is nothing to suggest that such decision of the Governor should be taken simultaneously upon appointment of the Chairman or, as the case may be, the Member, or that it should be before appointment. It is never the suggestion in the Regulation that pay minus pension could not be fixed pending the decision of the Governor.

9.3 In any view, the Office Memorandum dated 16.09.2008 came to be issued reflecting the decision of the Government. The submission that the decision was retrospectively applied is misconceived in law. In the circumstances, it cannot be said that there is an element of retrospectivity, at the best, the Office Memorandum reflecting the decision operated retroactively.

9.4 If the cases of the original petitioners were to be accepted and the salary could be determined by adding the pension receivable by them at the time of their retirement from the previous government service, it would have led to absurd consequences. The total amount in such eventuality would exceed the actual salary payable for the post and perhaps would become more than the salary of the highest post. Therefore, by no stretch of logic, it could have been contended that in the amount of salary, the pension portion was liable to be added, and the admissible salary was required to be fixed accordingly.

10. In any case, since the contention was raised alleging the irregularity in the determination by the Governor under

Regulation 7(2) and the consequential issuance of Office Memorandum dated 16.09.2008, the Court required the appellant-State to produce the file noting reflecting the process. The record of Notings reveal that the Joint Secretary, Personnel Department forwarded a letter dated 29.05.2007 to the competent authority to the State Government for considering the issue to arrive at a decision regarding fixation of salary of the Chairman of the Uttarakhand PSC and deduction of pension therefrom.

10.1 An opinion was expressed that such deduction was in accordance with the applicable Regulations. The Finance Department also expressed the view that the deduction of pension apart from the salary was consistent with the practice followed, finally advising that the Chairman's pay should be fixed by deducting his basic pension from the prescribed salary. A proposal was routed for obtaining approval of the Governor under Regulation 7(2) which finally culminated into the decision reflected in the Office Memorandum dated 16.09.2008. Therefore, the contention on behalf of the original petitioners on this count is entirely meritless. The decision was duly taken under Regulation

7(2) and was legally applied in the case of the original petitioners.

11. There is yet another aspect, of no least importance in law. There is no gainsaying that when the original petitioners came to be appointed on the post of Chairman or Member, as the case may be, of the Uttarakhand PSC, the Regulations were already notified, they operated and were applicable to the case of the original petitioners. The original petitioners could not disclaim the knowledge about the applicability of these Regulations and the service conditions attached to the post of Chairman or, as the case may be, the Member, on which posts they have been appointed after their retirement.

11.1 Both of them accepted the post with knowledge about the currency and applicability of the said Regulations. Having accepted the appointment to the respective posts with open eyes and knowledge and having assumed the office with consciousness that Uttarakhand Public Service Commission Regulations were applicable, it was not permissible for them to claim a different chord about the

applicability of the Uttarakhand Public Service Commission Regulations and cannot fall them in question about their applicability. Both the original petitioners were estopped in law from disputing the applicability of the said Regulations and the fixation of their salary in accordance therewith.

12. One who participates in a game, cannot later challenge the rules of the game. It is well-settled by several judgments of this Court that a candidate, who participates in the selection process or a student who undergoes the examination is not entitled to subsequently question the norms and rules regarding conduct of the process of recruitment or the examination. Similarly, a Government servant or an employee, who accepts the post cannot afterwards be permitted to resile from or to agitate in respect of the service conditions and the service regulations attached to the post which he accepted.

12.1 The appointment of the original petitioners was made in the year 2006. They enjoyed the benefits of the post and consumed the tenure for a period of more than two years. They raised challenge to the applicability of

Regulation 7(2) only thereafter which was at the fag end of the tenure. The principle of acquiescence would operate so as not to permit the original petitioners to raise the challenge.

13. For all the foregoing reasons and discussion, the High Court committed a manifest error in declaring Regulation 7(2) of the Uttarakhand Public Service Commission Regulations *ultra vires* and granting relief to the original petitioners. The impugned judgments and orders dated 15.04.2010 passed in Writ Petition No.182 (SB) of 2008 and Writ Petition No.181 (SB) of 2008 are not sustainable in law. They are set aside.

14. The present appeals are allowed.

Any interlocutory application, if pending, shall cease to survive in view of the disposal of the appeal.

.....J.
[S.V.N. BHATTI]

.....J.
[N.V. ANJARIA]

NEW DELHI;
NOVEMBER 04, 2026.