



# UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-VII Issue No-3 (July to September, 2016)



**High Court of Uttarakhand, Nainital**

**EDITORIAL BOARD**

Hon'ble Mr. Justice Sudhanshu Dhulia  
Hon'ble Mr. Justice U. C. Dhyani

**COMPILED BY**  
Narendra Dutt, Registrar General, High Court of Uttarakhand

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Hon'ble the Chief Justice along with  
Hon'ble Judges of High Court of Uttarakhand

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**UTTARAKHAND HIGH COURT****LIST OF JUDGES (As on 30<sup>th</sup> September, 2016)**

<b>SL. No.</b>	<b>Name of the Hon'ble Judge</b>	
1.	Hon'ble Mr. Justice K.M. Joseph (Chief Justice)	31.07.2014
2.	Hon'ble Mr. Justice Rajiv Sharma	26.09.2016
3.	Hon'ble Mr. Justice V.K. Bist	01.11.2008
4.	Hon'ble Mr. Justice Sudhanshu Dhulia	01.11.2008
5.	Hon'ble Mr. Justice Alok Singh	26.02.2013
6.	Hon'ble Mr. Justice Servesh Kumar Gupta	21.04.2011
7.	Hon'ble Mr. Justice Umesh Chandra Dhyani	13.09.2011

\* \* \* \* \*



## **Transfer, Promotions & Appointments of Judicial Officers**

S. No.	Name & Designation of the Officer	Place of Posting	Date of Order
1	Sri Heera Singh Bonal Presiding Officer, Food Safety Appellate Tribunal, Dehradun	Dist. & Sessions Judge, Bageshwar	05.07.16
2	Ms Chhavi Bansal Civil Judge (J.D.), Ramnagar, Nainital	Addl. Charge of court of Judicial Magistrate, Ramnagar, Nainital	11.07.16
3	Ms Shweta Rana Chauhan 1 <sup>st</sup> Addl. Civil Judge(J.D.), Nainital	Civil Judge(J.D.), Nainital	11.07.16
4	Ms Neha Kushwaha 1 <sup>st</sup> Addl. Civil Judge(J.D.), Haldwani, Nainital	Civil Judge(J.D.), Haldwani, Nainital	11.07.16
5	Ms Anamika 2 <sup>nd</sup> Addl. Civil Judge(J.D.), Nainital	1 <sup>st</sup> Addl. Civil Judge(J.D.), Nainital	11.07.16
6	Ms Sahista Bano Civil Judge(J.D.), Dhari, Nainital	2 <sup>nd</sup> Addl. Civil Judge(J.D.), Nainital	11.07.16
7	Ms Manju Devi Judicial Magistrate, Ramnagar, Nainital	1 <sup>st</sup> Addl. Civil Judge(J.D.), Haldwani, Nainital	11.07.16
8	Sri Narendra Dutt Registrar (Judicial), High Court of Uttarakhand, Nainital	Registrar General, High Court of Uttarakhand with addl. Charge of Registrar (Vigilance)	29.07.16
9	Sri Rajeev Kumar Khulbey Registrar (Protocol), High Court of Uttarakhand, Nainital	Addl. Charge of Registrar (Inspection)	29.07.16
10	Smt Sujata Singh 1 <sup>st</sup> Addl. Dist. Judge, Nainital	Registrar (Judicial), High Court of Uttarakhand, Nainital	29.07.16
11	Sri Shanker Raj Registrar (Inspection), High Court of Uttarakhand, Nainital	1 <sup>st</sup> Addl. Dist. Judge, Nainital	29.07.16
12	Sri Chandramani Rai Chief Judicial Magistrate, Tehri Garhwal	Addl. Charge of court of Civil Judge (S.D.), Tehri Garhwal	05.08.16
13	Smt Geeta Chauhan Civil Judge(S.D.), Tehri Garhwal	Civil Judge(S.D.), Ramnagar, Nainital	05.08.16
14	Sri Manmohan Singh Chief Judicial Magistrate, Champawat	Chief Judicial Magistrate, Almora	05.08.16
15	Smt Manju Singh Munday Civil Judge(S.D.), Champawat	Chief Judicial Magistrate, Champawat with addl. Charge of Civil Judge(S.D.), Champawat	05.08.16

## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

### ➤ HIGH COURT OF UTTARAKHAND (from 01.07.2016 to 30.09.2016)

						<b>Pendency (As on 01.07.2016)</b>		
						Civil Cases	Criminal Cases	Total Pendency
						20957	9581	30538
<b>Institution (01.07.2016 to 30.09.2016)</b>			<b>Disposal (01.07.2016 to 30.09.2016)</b>			<b>Pendency (As on 30.09.2016)</b>		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 30.06.15
2453	2065	4518	1439	1994	3433	21971	9652	31623

\* \* \* \* \*

➤ **District Courts (From 01.07.2016 to 30.09.2016)**

Sl. No.	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.16
		Opening Balance as on 01.07.16	Institution from 01.07.16 to 30.09.16	Disposal from 01.07.16 to 30.09.16	Pendency at the end of 30.09.16	Opening Balance as on 01.07.16	Institution from 01.07.16 to 30.09.16	Disposal from 01.07.16 to 30.09.16	Pendency at the end of 30.09.16	
1.	Almora	426	172	186	412	773	580	569	784	1196
2.	Bageshwar	100	46	56	90	434	568	645	357	447
3.	Chamoli	232	108	71	269	626	467	473	626	889
4.	Champawat	156	81	85	152	812	1269	1222	859	1011
5.	Dehradun	11201	3000	2842	11359	72995	24842	20842	77035	88394
6.	Haridwar	9545	1509	1596	9458	34123	11267	10591	34799	44257
7.	Nainital	2712	545	594	2663	8297	5366	4814	8849	11512
8.	Pauri Garhwal	1009	188	210	987	2821	1047	1092	2776	3763
9.	Pithoragarh	362	76	85	353	876	893	771	998	1351
10.	Rudraprayag	141	66	65	142	1590	319	405	1504	1646
11.	Tehri Garhwal	420	121	112	429	1514	956	967	1503	1932
12.	U.S. Nagar	5252	1101	1036	5317	24251	7366	6632	24985	30302
13.	Uttarkashi	353	129	129	353	779	483	447	815	1168
	<b>Total</b>	<b>31909</b>	<b>7142</b>	<b>7067</b>	<b>31984</b>	<b>149891</b>	<b>55423</b>	<b>49430</b>	<b>155884</b>	<b>187868</b>



## ➤ Family Courts (from 01.07.2016 to 30.9.2016)

SL. No	Name of the Family Court	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.16
		Opening Balance as on 01.07.16	Institution from 01.07.16 to 30.09.16	Disposal from 01.07.16 to 30.09.16	Pendency at the end of 30.09.16	Opening Balance as on 01.07.16	Institution from 01.07.16 to 30.09.16	Disposal from 01.07.16 to 30.09.16	Pendency at the end of 30.09.16	
1.	Dehradun	1617	493	489	1621	914	189	231	872	2493
2.	Rishikesh	184	66	47	192	168	49	33	184	376
3.	Nainital	467	96	92	471	714	138	88	764	1235
4.	Hardwar	635	183	170	648	555	107	133	529	1177
5.	Roorkee	454	130	115	469	516	120	81	555	1024
6.	Pauri	237	53	49	241	277	56	51	282	523
7.	Udham Singh Nagar	752	257	233	776	794	138	129	803	1579
	<b>TOTAL</b>	<b>4346</b>	<b>1267</b>	<b>1195</b>	<b>4418</b>	<b>3938</b>	<b>797</b>	<b>746</b>	<b>3989</b>	<b>8407</b>

## **CIRCULAR LETTERS/ NOTIFICATIONS**

### **HIGH COURT OF UTTARAKHAND, NAINITAL**

From

Registrar General,  
High Court of Uttarakhand, Nainital.

To

1. All the District Judges, Subordinate to High Court of Uttarakhand.
2. Secretary Law-cum-L.R., Government of Uttarakhand, Dehradun.
3. Principal Secretary Legislative & Parliamentary Affairs, Government of Uttarakhand, Dehradun.
4. Director, Uttarakhand Judicial And Legal Academy, Bhowali, Distt. Nainital.
5. Chairman, Commercial Tax Tribunal, F-6, Nehru Colony, Hardwar Road, Dehradun.
6. Chairman, State Transport Appellate Tribunal, 3/5 A, Race Course, Near Rinku Medicose, Dehradun.
7. Secretary, Lokayukt, 3/3, Industrial Area, Patel Nagar, Dehradun.
8. Principal Judge, Family Court, Dehradun and Judges, Family Court, Hardwar, Nainital, Pauri Garhwal & Udham Singh Nagar.
9. Registrar, State Consumer Disputes Redressal Commission, Uttarakhand, House No.176, Ajabpur Kalan, Near Spring Hills School, Mothrowala Road, Dehradun, 248415.
10. Member-Secretary, Uttarakhand State Legal Services Authority, Nainital.
11. Presiding Officer, Industrial Tribunal-cum-Labour Court, Haldwani, Distt. Nainital.
12. Presiding Officer, Labour Courts, Dehradun, Hardwar and Kashipur, Distt. Udham Singh Nagar.
13. Presiding Officer, Food Safety Appellate Tribunal, Dehradun and Haldwani, District Nainital.
14. Registrar, Public Service Tribunal, Uttarakhand, Dehradun.
15. Chairman, Uttarakhand Co-operative Tribunal, Dehradun.
16. Registrar-cum-Secretary, State Level Police Complaint Authority, Dehradun.
17. Additional Secretary (law), Public Service Commission, Gurukul Kangari, Hardwar.

C.L. No. 06 /UHC/Admin.A/2016

Dated: July 21<sup>st</sup>, 2016

**Subject: Nomination of Hon'ble Judge-Incharge to look after the matters related to Labour Court and Labour Tribunal.**

Sir,

On the subject noted above, I am to inform that Hon'ble the Chief Justice is pleased to nominate Hon'ble Mr. Justice V.K. Bist as Judge-Incharge to look after the matters related to Labour Court and Labour Tribunal with immediate effect.

You are therefore, informed accordingly.

(Registrar General)

Dated: July 21<sup>st</sup>, 2016.

From

Registrar General,  
High Court of Uttarakhand,  
Nainital.

To

1. All the District Judges, Subordinate to High Court of Uttarakhand.
2. Secretary Law-cum-L.R., Government of Uttarakhand, Dehradun.
3. Principal Secretary Legislative & Parliamentary Affairs, Government of Uttarakhand, Dehradun.
4. Director, Uttarakhand Judicial And Legal Academy, Bhowali, Distt. Nainital.
5. Chairman, Commercial Tax Tribunal, F-6, Nehru Colony, Hardwar Road, Dehradun.
6. Chairman, State Transport Appellate Tribunal, 3/5 A, Race Course, Near Rinku Medicose, Dehradun.
7. Secretary, Lokayukt, 3/3, Industrial Area, Patel Nagar, Dehradun.
8. Principal Judge, Family Court, Dehradun and Judges, Family Court, Hardwar, Nainital, Pauri Garhwal & Udham Singh Nagar.
9. Registrar, State Consumer Disputes Redressal Commission, Uttarakhand, House No.176, Ajabpur Kalan, Near Spring Hills School, Mothrowala Road, Dehradun, 248415.
10. Member-Secretary, Uttarakhand State Legal Services Authority, Nainital.
11. Presiding Officer, Industrial Tribunal-cum-Labour Court, Haldwani, Distt. Nainital.
12. Presiding Officer, Labour Courts, Dehradun, Hardwar and Kashipur, Distt. Udham Singh Nagar.
13. Registrar, Public Service Tribunal, Uttarakhand, Dehradun.
14. Chairman, Uttarakhand Co-operative Tribunal, Dehradun.
15. Registrar-cum-Secretary, State Level Police Complaint Authority, Dehradun.

C.L. No. 07

/UHC/Admin.A/2016

Dated: September 26, 2016

**Subject:**        **Nomination of Administrative Judge(s).**

Sir,

In suppression of earlier Circular Letters on the subject noted above, I have to inform that Hon'ble the Chief Justice is pleased to nominate the following Hon'ble Judges as the Administrative Judge Incharge of the district(s) shown against their names in the list given below with immediate effect.

- |  |  |
|--|--|
| 1. Hon'ble Mr. Justice Rajiv Sharma      | - Deharadun and Tehri Garhwal                |
| 2. Hon'ble Mr. Justice V.K. Bist         | - Hardwar and Nainital                       |
| 3. Hon'ble Mr. Justice Sudhanshu Dhullia | - Rudraprayag & Udham Singh Nagar            |
| 4. Hon'ble Mr. Justice S.K. Gupta        | - Chamoli, Pauri Garhwal & Uttarkashi.       |
| 5. Hon'ble Mr. Justice U.C. Dhyani       | - Almora, Bageshwar, Champawat & Pithoragarh |

(Registrar General)

Dated: September 26, 2016.



## Some Recent Judgments of Uttarakhand High Court

### Division Bench Judgments

1. In *Special Appeal No.183/2016; Dharmendra vs. State of Uttarakhand and others*, decided on 04.07.2016, the petitioner filed writ petition seeking to quash the FIR lodged against him under Section 406, 420, 467, 468 and 471 of IPC. The Single Judge of the Court disposed of the writ petition holding that no interference was called for at that stage. The appellant would be at liberty to appear before the Court below and in case appellant moves an application for bail, the Court shall consider the same, as far as possible, on the same day itself in accordance with law. The petitioners challenged the said order by filing the Special Appeal.

The bench, while dismissing the appeal, pointed out that the appeal would not be maintainable as the order passed is one which is passed in the exercise of criminal jurisdiction. No special appeal lies against the order passed in criminal jurisdiction.

2. In *Writ Petition No.42/2016 (S/B), Dr. Anil Kumar Gautam vs. State of Uttarakhand and others*, decided on 11.07.2016, and advertisement dated 18.08.2015 issued for appointment on the post of Principal, providing that the essential qualification and experience for appointment would be prescribed by AICT. The AICT, vide regulation dated 22.01.2010, provided necessary qualification for the post of professor and principal to be Master's Degree in the relevant branch and Ph.d (or equivalent) in appropriate discipline. The petitioner, who had degree of B.Tech and Ph.d. Applied for the said post, but his candidature was rejected on the ground that he had no master's degree. The petitioner filed writ petition, challenging the said decision stating that vide clarification dated 04.01.2016, the AICT had notified necessary qualification for the post of Professor and Principal to be Ph.d with first class Bachelors degree in appropriate branch.

The bench, while dismissing the petition, hold that in the present case, the advertisement published on 18.08.2015 and last date for the receipt of the application was 15.09.2015. The qualification ordinarily must be determined with reference to the last date provided for making an application. On the last date, i.e. 15.09.2015, the prescribed qualification for the post of Principal was master's degree with Ph.d. It clearly shows that the petitioner was not qualified to be appointed as Principal as he did not possess M.Tech in the concerned subject. As there being no ambiguity in the said provision, the petitioner was not qualified on that date for the said post. The clarification issued on 04.01.2016 by AICT can have only prospective operation.

3. In *Writ Petition (Crl) No.513/2015, Iqbal Singh vs. State of Uttarakhand and others*, decided on 28.07.2016, the petitioner lodged FIR against police personnel including the Circle Officer and Chowki Incharge stating that the petitioner's son was taken by the police from his house to Police Chowki and from there to the police station where he was murdered by the accused persons in police custody. As per post mortem report, 11 ante-mortem injuries found to be caused on the dead body which were suggestive of assault. The investigation was initiated by Civil Police, later on, the case was transferred to CBCID. The petitioner filed writ petition seeking transfer of the case for investigation to CBI and to provide him police protection. In the meantime, the CBCID had already submitted charge-sheet after investigation for offences under Sections 304, 330, 348/34 IPC, the accused had already been suspended and police protection provided to the petitioner.

The bench, while partly allowed the petition, observed that it is not a case of enmity between the family of the petitioner or deceased with the accused person. The Court could not find anything which could prima-facie suggest that the investigation was influenced by interested person and or that the investigation was no done in accordance with the law. It is further held that merely because the accused were police officers/police personnel, the matter could not be referred for further investigation to CBI. Considering the fact that since the petitioner's allegation is against police officials, it is directed that necessary protection be provided to the petitioner and his family members till the trial is over.

4. In *Writ Petition No.73/2014 (S/B), Dhurat Singh vs. State of Uttarakhand and others*, decided on 09.08.2016, the petitioner was appointed as daily wage employee in forest department in the year 1995. In response to the advertisement for appointment of Forest Guard, petitioner submitted his application, got selected and was given appointment. Minimum education qualification for the Forest Guard was High School or equivalent and petitioner had passed Adhikari Pariksha from Gurukul Viswavidyalaya Vrindawan, Mathura in the year 2005, which was recognized by the State Government to be equivalent to High School Examination. After issuing show cause notice to the petitioner, the department cancelled his appointment vide order dated 25.09.2013 on the ground that Adhikari Pariksha had been de-recognised by the State Government vide order dated 27.08.2007 and the said Pariksha was not equivalent to High School Examination. The petitioner has challenged the said order by filing writ petition. It was considered that there were two conflicting decisions of the Single Judges of High Court on this matter viz. judgment dated 03.07.2007 in *Vimal Gyan Jyoti Higher Secondary School vs. State of Uttarakhand*, and Judgement dated 16.07.2013 in case of *Bharat Singh Rana vs. State of Uttarakhand*. So the matter was referred to Division Bench.

The bench, while allowing the petition, observed that the certificate of Adhikari Pariksha issued by Gurukul Vishwavidyalaya Vrindawan Mathura, prior to 2007, would be treated as equivalent to Higher School Examination of U.P Board and Uttarakhand Board till 27.08.2007 and the petitioner, who had passed Adhikari Pariksha in the year 2005, was eligible for the appointment on the post of Forest Guard. The judgment dated 03.07.2007 of the Court given in case of *Vimal Gyan Jyoti, Higher Secondary School, Rudrapur vs. State of Uttarakhand* was upheld.

5. In *Writ Petition (S/B) No.470/2015, Brijesh Kumar Jain and others vs. State of Uttarakhand and others* decided on 09.08.2016, the petitioners and the party respondents are employees of the Uttarakhand Peyjal Nigam. The party respondents have been given promotion which, according to the petitioners is accelerated promotions in terms of Section 3 (7) of UP Public Services (Reservation for Scheduled Caste and Scheduled Tribes and other backward classes) Act, 1994. The basis of petitioner's case is the judgment passed by Hon'ble Apex Court on 27.04.2012 in which the Apex Court proceeded to declare Section 3 (7) of the Act and Rule 8A of the Rules as *ultra vires* as they ran counter to the dictum in *Nagaraj vs. Union of India (2006) 8 SCC 212*. It was further ordered that any promotion given on the dictum in *Indira Sahni vs. Union of India 1992 Supl. (3) SCC 217* and without the aid or assistance of Section 3(7) and Rule 8A shall remain undisturbed. The Apex Court passed interim order dated 20.08.2015 in the contempt petition, so the petitioner seeking relief in the form of writ of mandamus directing the respondents to take appropriate steps in the light of Apex Court's Judgment dated 27.04.2012 and interim order dated 20.08.2015.

The bench, while dismissing the petition, held that for a issuance of writ of mandamus, there must be existence of a legal right with the petitioner and a corresponding public duty on the part of answering respondent. Mandamus may be issued, where, for instance, a statutory authority, which has to exercise its discretion independently, under dictation does not take into consideration the relevant consideration, or is guided by irrelevant considerations and the Courts may direct performance of a discretion in a proper and lawful manner. However, the Courts may not direct the exercise of discretion in a particular manner unless it is covered by the dictum in *Jagannathan's case (1986) 2 SCC 679*, where the court may direct passing of the order which the authority should have passed. It was further held that the further requirement is that the person seeking a writ of mandamus must make a demand. As noticed in *(2013) 5 SCC 470*, the demand must be clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Either there must be actual rejection of the demand, be it in words or by conduct, or there may be delay in performing the duty, which may



entitle a party to approach the court. The demand may also be dispensed with when it is an empty formality, as and when it is obvious that the respondents would ignore the demand. So when there is a right and a legal duty, mandamus must issue in an over-simplification of a complex issue, as it, without considering that the true scope of writ jurisdiction is one geared to produce justice. As a present case, the promotions of the party respondents have not been challenged by the petitioner. So the court cannot be called upon to decide the validity of their promotions in absence of any challenge to their promotions or to render a ruling regarding their becoming liable to be reverted. It is also noticed that there is no demand made as such to the Chairman.

6. In *Writ Petition (PIL) No.21/2016, Narendra Singh Rana vs. State of Uttarakhand and others*, with writ petition no. 154/2014 and 133/2016, decided on 04.08.2016, the petitioners challenged the notification issued purporting to notify Village Panchayat Nanakmata as Nagar Panchayat located in U.S. Nagar. In other petition, the petitioner challenges the notification notifying Village Panchayat Satpuli as Nagar Panchayat. It was contended by the petitioners that they were not given opportunity of personal hearing on the objections submitted by them under Section 4 of U.P. Municipalities Act.

The bench, while dismissing the petition, held that there is no provision in law providing opportunity of hearing on the objections received under Section 4 of U.P. Municipalities Act before notifying the village Panchayat as Nagar Panchayat and in view of provisions of Sections 3 and 4 of the said Act, if the notification under Section 3 of the Act is issued after considering the objections received under Section 4 thereof, the notification cannot be challenged on the ground that no personal hearing was given to the objectors or that the decision on their objections was not communicated to them. As regards to the criteria fixed by G.O. dated 10.09.1986, the Bench observed the G.O. dealt with the situation occurring before the 73<sup>rd</sup> amendment in constitution, but after the 73<sup>rd</sup> amendment in the year 1994, the situation has gone radical change and now the criteria for notifying areas as Nagar Panchayat are inverted in Article 243-Q of the constitution held also in Section 3 of U.P. Municipalities Act. In the present case, the notification under Section 3 was issued after considering the objections received under Section 4 of the said Act. The petition dismissed with the direction to the Government that in future it must give reasonable time to the person concerned to raise objections or to give suggestion under Section 4 of the Act instead of giving a short notice of seven days, as on given in the case in hand. The government should apply its mind on the objections or suggestions, so received before issuing notification under Section 3 of the Act.

7. In *Special Appeal No.644/2015, Dr. Vinod Kumar Chauhan vs. Dr. Ved Prakash Tyagi and others*, with other special appeal, decided on 12.07.2016, the Uttarakhand Board of Indian Medicine refused to renew the petitioner's registration as Member of the Board of Indian Medicine and consequently, the Board cancelled the petitioner's registration vide order dated 09.05.2013, petitioner challenged the said order by filing the appeal under Section 43 of the U.P. Medicine Act which was dismissed. Petitioner filed writ petition seeking writ of certiorari quashing the said order and also certain other reliefs. The Single Judge allowed the writ petition and granted other reliefs to the petitioner, hence the special appeal.

The bench, while partly allowing the appeals held that in the writ petition, the petitioner not only challenged the orders of the Appellate Authority, but sought other reliefs also which was granted to him and the Special Appeal was not barred under Rule 5 of Chapter VIII of the Rules of the Court. Explanation to Section 141 C P C excludes proceeding under Article 226 of the Constitution from the procedure prescribed C P C, yet it is settled law that the High Court may always invoke the principles thereof in appropriate cases. It was further observed that in view of the scheme of State Act, 1939 and the Central Act, 1970, registration of a doctor has to be done with only one State Board, which would also mean that a person cannot be registered with two or more State Boards at a time. However, the registration may be transferred from one State Board to another vide due process.

### **Single Bench Judgment**

1. In *Writ Petition (M/S) No. 2370/2016, Executive Engineer Maneri Bhali and others vs. Avtar Singh* decided on 07.09.2016, the petitioner/State sought a writ in the nature of Certiorari quashing the award dated 26.8.11 passed by Labour Court whereby the Labour Court held the termination of workman/respondent as illegal and directed that he shall be treated in service and is entitled to service related benefits after the date of his termination.

The bench, while dismissing the petition on the ground of laches, held that the award was passed by Labour Court on 26.8.2011. The petitioner has not mentioned the date when the award was published and when the copy of award was received by its representatives, the date, when permission was not obtained has also not been mentioned in the writ petition. In such circumstances, it is not possible for the Court to ignore huge delay of five years. Delay, whether it is short or long must be explained in proper manner. The petitioner is duty bound to explain the reasons for delay. In this case, it is inordinate delay of five years and delay has not been explained at all. It is not a case where liberal view can be taken for ignoring long delay.

2. In *Writ Petition (S/S) No.912/2016, Khemraj Semwal vs. State of Uttarakhand and others* with another connected petitions, decided on 15.7.2016, an advertisement dated 23.2.2014 issued for appointment of Assistant Teacher in Government Higher Secondary School in which last date for submission of publication was 13.01.2014, the candidates were required to have qualified TET prior to the date of advertisement. The petitioner, who has not qualified TET before the date of advertisement, but had qualified the same before the declaration of result of the selection process filed writ petition claiming that they should also be considered for appointment.

The bench, while deciding the petition, observed that since the petitioner did not have qualified TET before the date of advertisement (though some of them had qualified the said test after the date of advertisement, but before the last date of submitting the application), they did not fulfill the mandatory qualification of having qualified TET before the date of advertisement. It was further held that the mandatory condition of having qualified TET could not be relaxed as that would be in complete violation of the right of children to free Compulsory Education Act as well as the notification dated 23.08.2010 of NCTE, as amended from time to time, but the teachers who are imparting education in Physical Education, Art Education, Home Science etc., the minimum qualification as existing earlier would continue to be enforced till the minimum eligibility criteria for them as well as laid down by NCTE. So far, TET is not a mandatory qualification for the teachers who are imparting education in arts with includes education of music.

3. In *Writ Petition (S/S) No.1093/2016, Alok Parmar and others vs. State of Uttarkhand and others*, with writ petition (S/S) No.1241/2016 decided on 10.8.2016, the petitioners challenged the creation of 'Guest Teachers' by the government which alleged *de horse* the rules and regulations and the service condition of the teachers in government school. Such teachers were initially appointed to teach in Government Secondary as well as Intermediate School in short terms vacancies, but during the course of time, they have also started teaching in regular substantive vacancy as well. The petitioners challenged the entire matter of appointment claiming that they are the once who are qualified for appointing as Assistant Teacher (LT-Grade), but as the substantive posts are being occupied by these Guest Teachers, no appointment can be made in these posts.

The bench, while allowing the petition, observed that there is absolutely no doubt that the procedure is being adopted by the Government for appointment of Guest Teacher in violation of Rules. In view of the above, the scheme of Guest Teachers in government school is declared to be violative of Article 14 of the Constitution of India. Consequently, G.O. dated 13.4.2016 and



other subsequent orders pertaining to appointment and relating to Guest Teachers are hereby quashed and set aside. A mandamus is further issued to the Secretary, School Education, Government of Uttarakhand as well Director Secondary Education Uttarkhand, Dehradun to forthwith initiate the process of selection for all the existing vacancies of Assistant Teachers as well as of the Lecturers. It is further made clear that apart from regular vacancies they must prepare a waiting list as well which must have a life of at least one year, so that recourse may not be taken of another selection process immediately.

4. In *A.O. No.210/2010, Nattha Singh and others vs. Oriental Insurance Company Ltd. and others*, with A.O. No.187/2010, decided on 9.8.2016, the offending truck hit the deceased's motorcycle and the deceased succumbed to the injuries sustained by them. As a truck was duly insured, but the Tribunal fastened the liability to pay compensation on the driver of the truck on the ground that the driver of the truck had no effective licence to drive heavy transport vehicle.

The bench, while allowing the appeal, observed that in the present case, the original driving licence was issued to the driver in Imphal to drive motorcycle/LMV/Autorickshaw and thereafter, the same authority of Imphal had made the license effective to drive the heavy transport vehicles and after producing the said licence before the licensing authority of U.S. Nagar of Uttarakhand, a new license was issued to the said driver and the new licence was also effective to drive heavy transport vehicles.

5. In *AO No.42/2012, United India Insurance Co. Ltd. Vs. Sunil Kumar Gupta and others, with AO No.49/2012* decided on 30.9.2016, the accident occurred when the government bus, insured with Oriental Insurance Co. Ltd., dashed with the truck which was under the cover of United India Insurance Company Ltd. A passenger, 28 years of age injured. His right arm was amputated in order to save his life. The injured was Physics Teacher in PGT Scale in government recognized school. The Tribunal fastened the liability apportioned 50%-50% upon both the insurance companies.

The bench, while dismissing the appeal, observed that even the salary certificate issued under the signature of principal has not been got proved, the injured youth lost his right arm and employed as a Physics Teacher in PGT scale, such scale cannot be inferred to the lesser than that what was written by the Principal on the latter head of such institution under his signature, therefore, the court will certainly value such certificate to accept the same. Regarding disability certificate it was observed that the certificate need not to be proved as implicitly expressed under Section 74 of Evidence Act. It is further observed that the whole human body and its each and



every external and internal part invaluable and even awarding of the compensation would not satisfy the loss in the mental agony as well as physical sufferance which the injured has been constrained to undergo for the rest of the life.

6. In *AO No.256/2009, Rampal Singh and another vs. Smt. Govindi and others* decided on 29.9.2016, a private vehicle Indica met with an accident causing death of person, who was travelling therein as passenger. The owner and the driver of the car stated in their W.S that deceased was not in the car, but he was walking on the road with his brother in drunken state and he was accidentally hit by the car. The owner of the driver of the car did not enter into witness box. The claim tribunal directed the insurer of the car to make payment with liberty to recover the same from the vehicle's owner.

The bench, while dismissing the appeal, held that the private vehicle was not meant for carrying hire passengers and even assuming that the owner thereof had not permitted the driver to pick up hire passengers, it was difficult to deny his vicarious liability for his driver's fault.

7. In *Criminal Writ Petition No.912/2016, Pradeep Kumar vs. State of Uttarakhand and others* decided on 27.7.2016, the Deputy Education Officer lodged an FIR against the petitioner, a teacher, under Sections 467, 468, 471 and 420 of IPC. On the allegations that he got his appointment on the basis of fake document which was found forged on verification. The petitioner filed writ petition seeking stay of arrest.

The bench, while dismissing the writ petition, held that since a combine reading of the allegations levelled against the petitioner carries punishment of more than seven years, therefore, the petitioner is not entitled for grant of interim protection from arrest and otherwise also the accused petitioner is alleged to have committed forgery in his certificate and succeeded in getting job of Assistant Teacher on the basis of said fake document. The nature and gravity of the acquisition therefore, suggest that the petitioner should not be granted protection from arrest.

8. In *Writ petition (M/S) No.1860/2016, Harjender Singh@ Billa vs. Harvansh Lal* decided on 13.7.2016, the petitioner sought to cross examine the witnesses, whose affidavits have already been exchanged in a case filed before the Prescribed Authority under Section 21(1) (A) of U.P. Urban Buildings Regulation of Letting, Rent and Eviction Act, 1972.

The bench, while dismissing the writ petition, observed that the power has been given to the Prescribed Authority under the law to direct production of the deponent for cross examination, if it is necessary. The necessity for cross examination depends upon the facts and

circumstances of each case and cross examination cannot be permitted as a general rule. It was further held that the veracity of averments made in the affidavits can be tested by cross examination, but unless it is established that the veracity of facts stated in the affidavits is necessarily to be tested by cross examination, the party must give reasons as to which particular facts and under what circumstances and reasons such cross examination is necessary. In the context of each P.A. case, the purpose of enacting U.P. Act No.13/1972 has to be taken into account, while permitting the party to cross examine the deponent of an affidavit.

9. In *Writ petition (Crl.) No.967/2016, Girdharil Sahu vs. State of Uttarakhand and others*, decided on 4.8.2016, An FIR lodged against the petitioner under Section 420, 467, 468, 471 and 506 IPC. The petitioner filed a petition for stay of his arrest. On perusal of FIR offences under Section 420 and 506 IPC were made out besides civil remedies.

The bench, while disposing the petition, pointed out that the petitioner was entitled for the relief sought on the basis of law laid down by Hon'ble Apex Court in the case of *Arnesb Kumar* reported in (2014) 8 SCC 273. It was further held that it could not said that the petitioner could not at all be arrested but before making the arrest, the IO should satisfy himself that the arrest was necessary for one or more purposes envisaged by Sub Clause (A) to (E) of Sub Section (1) Section 41 of the Code and if no such material would be available the petitioner should be arrested. It was also observed that regarding stay of arrest, provisions regarding anticipatory bail are not applicable in Uttarakhand but one can file a criminal writ petition for obtaining stay of arrest during the investigation.

10. In *Crl. Misc. Appl. No.873/2016, Smt. Nidhi Singh and others vs. State of Uttarakhand and others* decided on 03.8.2016, the applicants seeking to quash the charge-sheet under Section 420, 467, 468, 471, 506, 504, 120-B and 342 IPC. It was contended that the applicants/accused prepared a forged Will of her father and filed the same in the Court knowingly that the same was forged.

The bench, while dismissing the application, held that the foundation of criminal offence was laid against the applicants. So, the criminal proceedings should not be quashed. It was further held that jurisdiction under Section 482 Cr. P.C. should not be exercised stifle or scuttle the legitimate prosecution. The inherent jurisdiction under Section 482 Cr. P.C. has to be exercised sparingly carefully and with cautious and only such exercise is justified by the test specifically laid in Section 482 Cr. P.C. itself.

## **Major Events & Initiatives**

1. **Independence Day Celebration:** On 15<sup>th</sup> August, 2016, Independence Day was celebrated in High Court premises with great enthusiasm. On this occasion, national flag was hoisted by Hon'ble Mr Justice V.K. Bist. Hon'ble Mr Justice S. Dhulia & Hon'ble Mr. Justice S. K. Gupta graced the occasion. Advocates, Officers & officials of Registry were also present.
2. **Hon'ble Mr. Justice Rajiv Sharma** assumed charge of office of Judge of Uttarakhand High Court on 26<sup>th</sup> September, 2016 vide Notification No. K-11017/50/2016-US-II, dated 15.09.16 issued by Government of India, Ministry of Law & Justice.

## **Programmes attended by Hon'ble Judges( From July –September)**

1. Hon'ble Mr Justice V. K. Bist visited (a) New Delhi to attend the Regional Round Table Conference on Strengthening, restoration and rehabilitation of children under Juvenile Justice System during the period from 30<sup>th</sup> to 31<sup>st</sup> July, 2016 (b) New Delhi to attend National Consultation on Juvenile Justice issues during the period from 3<sup>rd</sup> to 4<sup>th</sup> September, 2016.
2. Hon'ble Mr. Justice Sudhanshu Dhulia visited Allahabad to attend a conference on "Scanning & Digitisation of Judicial Records" on 6<sup>th</sup> August, 2016.
3. Hon'ble Mr. Justice S.K. Gupta visited (a) Jaipur to attend the First Regional Conference on Sensitization of Family Court matters on 9<sup>th</sup> July, 2016 (b) National Judicial Academy, Bhopal to attend "Annual National Conference on Economic Crimes "during the period from 3<sup>rd</sup> to 4<sup>th</sup> September, 2016.

## **ACTIVITIES OF SLSA IN THE MONTHS OF JULY TO SEPTEMBER, 2016**

### **ADR CENTRE AT HIGH COURT PREMISES**

On 23.7.2016, the ADR Building at High Court premises, Nainital was inaugurated by the kind hands of Hon'ble Patron-in-Chief, Uttarakhand SLSA in the benign presence of Hon'ble Executive Chairman, UKSLSA and other Hon'ble Judges of the High Court. During the said occasion, the Member Secretary and Officer on Special Duty, UKSLSA, Registrars of the High Court and Advocates were also present. Now, the office of Uttarakhand State Legal Services Authority is functional at the said building.

### **ENTITLEMENT OF HIV/AIDS EFFECTED PERSONS IN LEGAL AID**

Vide notification No. XXXVI(1)/2016-51/2016 dated 30.9.2016 of the Law Department of Government of Uttarakhand, the HIV/AIDS effected persons had also been included in the category of entitlement for necessary legal aid.

### **MONTHLY NATIONAL LOK ADALATS**

As per directions of National Legal Services Authority and under the valuable guidance of Hon'ble the Executive Chairman, Uttarakhand State Legal Services Authority, three Monthly National Lok Adalats were organized in different Courts of the State of Uttarakhand. In the months of July, 2016, total 2699 cases relating to electricity, water, telephone and public utility disputes were taken up and out of them 180 cases were decided amicably and Rs. 24,28,100/- was settled. In the monthly National Lok Adalat organized in the month of August 2016, total 5305 cases under Section 138 of Negotiable Instrument Act, recovery suits etc. were taken up and 610 cases were decided and Rs. 4,72,21,692/- was settled. In the month of September 2016, out of 3782 cases of criminal compoundable nature were taken up, 322 cases were settled and an amount to the tune of Rs. 32,94,830/- was settled.



**LEGAL LITERACY AND AWARENESS DRIVE AT STATE LEVEL**

In order to propagate legal awareness and to make the people aware about the legal aid services and activities being run by the legal services institutions, the Uttarakhand State Legal Services Authority put up a stall during the 'Harela Fair' at Bhimtal, District-Nainital from 16.7.2016 to 21.7.2016. The Member Secretary as well as Officer on Special Duty, Uttarakhand State Legal Services Authority sensitised the common people about the schemes and activities of legal services institutions. Total 339 persons visited the stall and got benefited. Also 339 sets of 46 booklets of Saral Kanooni Gyan Mala series were also distributed to the people.

On the occasion of Nandastami Mela, the Uttarakhand State Legal Services Authority in coordination with District Legal Services Authority installed a stall at Flat Ground, Nainital from 07.09.2016 to 11.09.2016. People visiting the stall were informed about the importance of common laws relating to their day-to-day life and their legal rights. A total number of 2965 persons were benefited and 5,965 books on various subjects of law were distributed.

**LEGAL AWARENESS ON COMMEMORATIVE DAYS**

Between the months of July, 2016 to September, 2016, the World Population Day, World Hepatitis Day and International Literacy Day were observed throughout the State. During these occasions, 38 special legal literacy and awareness camps were organized wherein 2300 people got benefited.

Also, the people at large were made aware about the seven schemes launched by National Legal Services Authority, by all the District Legal Services Authorities by organizing legal awareness camps, programmes and seminars.

## STATISTICAL INFORMATION

### STATEMENT SHOWING THE PROGRESS OF LOK ADALATS HELD IN THE STATE OF UTTARAKHAND

**DURING THE PERIOD FROM JULY TO SEPTEMBER**

S. No.	Name of DLSA's	No. of Lok Adalats Held	No. of Cases Taken up	No. of Cases Disposed off	Compensation Awarded	Amount Realized As Fine (in Rs.)	No. of Persons Benefited in Lok Adalat
01	ALMORA	03	343	38	36,11,826=00	18,000=00	38
02	BAGESHWER	06	421	143	33,47,845=00	24,250=00	143
03	CHAMOLI	03	406	59	11,55,647=00	-	59
04	CHAMPAWAT	03	78	04	2,40,821=00	-	04
05	DEHRADUN	06	4765	1325	93,76,008=00	19,03,915=00	1539
06	HARDWAR	06	8438	1232	66,51,295=00	7,20,900=00	1239
07	NAINITAL	04	2182	330	86,85,649=00	9,20,057=00	330
08	PAURI GARHWAL	03	623	123	13,59,137=00	1,58,250=00	123
09	PITHORAGARH	06	736	164	9,65,480=00	8,14,310=00	175
10	RUDRAPARYAG	03	88	24	7,43,896=00	2,450=00	24
11	TEHRI GARHWAL	03	1291	91	15,59,826=00	4,700=00	96
12	U.S. NAGAR	06	3407	630	1,59,80,526=00	8,71,800=00	634
13	UTTARKASHI	06	1427	162	25,30,685=00	76,200=00	187
	<b>TOTAL :-</b>	<b>58</b>	<b>24205</b>	<b>4325</b>	<b>5,62,08,641=00</b>	<b>55,14,832=00</b>	<b>4591</b>

**STATEMENT SHOWING THE PROGRESS OF CAMPS ORGANIZED IN THE  
STATE OF UTTARAKHAND FOR**

**THE PERIOD FROM JULY, 2016 TO SEPTEMBER, 2016**

S. No.	Name of DLSA's	No. of Camps Organized	No. of Persons Benefited in Camps
01	ALMORA	20	3985
02	BAGESHWER	33	3313
03	CHAMOLI	20	2538
04	CHAMPAWAT	15	2554
05	DEHRADUN	39	4712
06	HARDWAR	54	8652
07	NAINITAL	15	3285
08	PAURI GARHWAL	36	5499
09	PITHORAGARH	11	1727
10	RUDRAPARYAG	16	1622
11	TEHRI GARHWAL	22	3105
12	U.S. NAGAR	25	5058
13	UTTARKASHI	18	2700
14	U.K. S.L.S.A., NAINITAL	02	3304
	<b>TOTAL :-</b>	<b>326</b>	<b>52054</b>

**STATEMENT SHOWING THE PROGRESS OF LEGAL AID AND  
ADVICE/COUNSELING  
PROVIDED IN THE STATE OF UTTARAKHAND  
FOR THE PERIOD FROM JULY, 2016 TO SEPTEMBER, 2016**

S. No.	Name of DLSA's	No. of Persons Benefited through Legal Aid & Advice	
		Legal Aid	Legal Advice/ Counseling
01	ALMORA	26	01
02	BAGESHWER	21	-
03	CHAMOLI	22	10
04	CHAMPAWAT	03	-
05	DEHRADUN	133	06
06	HARDWAR	98	05
07	NAINITAL	31	12
08	PAURI GARHWAL	12	36
09	PITHORAGARH	08	02
10	RUDRAPARYAG	11	-
11	TEHRI GARHWAL	13	03
12	U.S. NAGAR	76	-
13	UTTARKASHI	11	02
14	H.C.L.S.C., N.T.L.	08	06
15	U.K. S.L.S.A., N.T.L.	13	26
	<b>TOTAL :-</b>	<b>486</b>	<b>109</b>



## UTTARAKHAND JUDICIAL AND LEGAL ACADEMY, BHOWALI, NAINITAL

### Training Programmes held in the month of July, August and September, 2016 :-

S. No.	Name of Training Programmes/ Workshops	Duration
1.	Workshop for CJM/ACJM/Judicial Magistrates on 'Protection of Women from Domestic Violence, Act & Rules' (1 <sup>st</sup> phase)	25 July & 26 July, 2016 (Monday & Tuesday) (for two days)
2.	One day Orientation Programme on Child Adoption under the Juvenile Justice Act, 2015 for the Officers of H.J.S. Cadre including DJ's, ADJ's dealing with Adoption matters and Judicial Officers posted in the Family Courts	30 July, 2016 (Saturday) (for one day)
3.	Foundation Training Programme for Newly Recruited Civil Judges (J.D.) 2014 Batch (1 <sup>st</sup> phase of Institutional Training) (Including One day Training Programme of Referral Judges for Mediation)	02 August, 2016 to 17 October, 2016 (two and half months)
4.	Workshop on issues relating to Juvenile Justice under the Juvenile Justice (Care & Protection of Children) Act, 2000 & Rules for Principal Magistrates, Juvenile Justice Boards posted in the various districts of State	29 & 30 August, 2016 (Monday & Tuesday) (for two days)
5.	Workshop for CJM/ACJM/Judicial Magistrates on 'Protection of Women from Domestic Violence Act, 2005 & Rules, 2006' (2 <sup>nd</sup> phase)	05 & 06 September, 2016 (Monday & Tuesday) (for two days)

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**UTTARAKHAND JUDICIAL AND LEGAL ACADEMY, BHOWALI, NAINITAL**  
**Workshop for Chief Judicial Magistrates/ Addl. Chief Judicial Magistrates/ Judicial Magistrates on "Protection of Women from Domestic Violence Act, 2005 & Rules, 2006"**  
**Duration: 2 Days (on 25 & 26 July, 2016)**



**ONE DAY ORIENTATION PROGRAMME ON "CHILD ADOPTION UNDER THE JUVENILE JUSTICE ACT, 2015" FOR THE JUDICIAL OFFICERS DEALING WITH ADOPTION CASES (1st phase)**  
**Duration: 1 Day (30 July, 2016)**



**FOUNDATION TRAINING PROGRAMME FOR NEWLY APPOINTED CIVIL JUDGES (Jr.Div.) BATCH- 2014 (1st Phase)**  
**Duration : 02 August, 2016 to 17 October, 2016**



**WORKSHOPS ON ISSUES RELATING TO JUVENILE JUSTICE UNDER THE "JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT, 2015" FOR PRINCIPAL MAGISTRATES, JUVENILE JUSTICE BOARDS POSTED IN THE VARIOUS DISTRICTS OF STATE**  
**Duration : 2 days (on 29 & 30 August, 2016)**



**WORKSHOP FOR CHIEF JUDICIAL MAGISTRATES/ADDL. CHIEF JUDICIAL MAGISTRATES/JUDICIAL MAGISTRATES ON "PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 & RULES, 2006" (2ND PHASE)**  
**Duration: 2 Days (on 05 & 06 September, 2016)**



**WORKSHOP ON ISSUES RELATING TO JUVENILE JUSTICE UNDER THE "Juvenile Justice (Care & Protection of Children) Act, 2015" for Principal Magistrates, Juvenile Justice Boards.**  
**On Date: 29 August & 30 August, 2016**

