



सत्यमेव जयते

UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-III Issue No-4 (October-December, 2012)



High Court of Uttarakhand, Nainital

EDITORIAL BOARD

Hon'ble Mr. Justice Prafulla C. Pant
Hon'ble Mr. Justice Sudhanshu Dhulia

COMPILED BY

Ram Singh, Registrar General, High Court of Uttarakhand

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Group photograph of Hon'ble Judges of the Court with Hon'ble the Chief Justice after oath taking ceremony of Hon'ble Mr. Justice Kalyan Jyoti Sengupta on 31.10.2012.



L to R

Hon'ble Mr. Justice Servesh Kumar Gupta, Hon'ble Mr. Justice V.K. Bist, Hon'ble Mr. Justice Prafulla C. Pant,
Hon'ble Mr. Justice Barin Ghosh (Chief Justice), Hon'ble Mr. Justice Kalyan Jyoti Sengupta, Hon'ble Mr. Justice B.S. Verma,
Hon'ble Mr. Justice Sudhanshu Dhulia, Hon'ble Mr. Justice U.C. Dhyani.

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(Chief Justice)

UTTARAKHAND HIGH COURT

LIST OF JUDGES (As on 31st December, 2012)

SL. No.	Name of the Hon'ble Judge	Date of Appointment (Assumed charge in Uttarakhand)
1.	Hon'ble Mr. Justice Barin Ghosh (Chief Justice)	12.08.2010
2.	Hon'ble Mr. Justice Kalyan Jyoti Sengupta	31.10.2012
3.	Hon'ble Mr. Justice Prafulla C. Pant	29.06.2004
4.	Hon'ble Mr. Justice B. S. Verma	15.07.2004
5.	Hon'ble Mr. Justice V.K. Bist	01.11.2008
6.	Hon'ble Mr. Justice Sudhanshu Dhulia	01.11.2008
7.	Hon'ble Mr. Justice Servesh Kumar Gupta	21.04.2011
8.	Hon'ble Mr. Justice Umesh Chandra Dhyani	13.09.2011

* * * * *

**Barin Ghosh**

CHIEF JUSTICE
HIGH COURT OF UTTARAKHAND

Nainital – 263001
 January 03, 2013

MESSAGE

For the year 2012, we had set up a target for ourselves that by the end of 2012, there will be no pending cases in our Courts, which are more than five years old. Despite doing our best, we have not been able to achieve what we targeted. However, there has been a huge response from every quarter and every Judicial Officer has done his best to dispose of old matters, which are pending for five years and more. I am sure, if we work with this spirit, as we have worked in the year 2012, surely in 2013, we will be able to completely decide all matters, which are pending in our Courts for a period of five and more years.

Nine Special Courts for disposal of cases in respect of offences punishable under Section 138 Negotiable Instruments Act are being set up in three Districts, namely, Dehradun, Hardwar and Udham Singh Nagar, which will also certainly ensure speedy disposal of such cases, pending in the aforementioned three districts. Many other steps were also taken to expedite disposal of cases, including mediation, which, undoubtedly, is doing wonders.

Good progress has been made for computerization of our District Courts, which will be completed by 31st March, 2014. The main examination for supply of Ministerial cadre is over, only typing test of successful candidates is to be taken, which has been scheduled in the first fortnight of January, 2013. It is expected that all the vacancies in the said cadre in the District Courts will be supplied soon. With the facility of computerization and supply of man power in the District Courts, it is hoped and expected that the Courts will be better equipped to expedite disposal of cases.

In the beginning of the year, let us once again make a promise to ensure that in the end of the year, there will be no pending cases in our Courts, which are five and more years old.

Good wishes and Happy New Year 2013.

(Barin Ghosh)

TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS

SL.NO.	Name of the Judicial Officer	From	To	Date of Order
1.	Sri Shamsher Ali, 2 nd Additional District & Sessions Judge	Udham Singh Nagar	Additional District & Sessions Judge, Khatima, Distt. Udham Singh Nagar	04-10-2012
2.	Sri Bindyachal Singh, Additional District & Sessions Judge	Khatima	2 nd Additional District & Sessions Judge, Udham Singh Nagar	04-10-2012
3.	Ms. Monika Mittal, Chief Judicial Magistrate	Bageshwar	Civil Judge (Sr. Div.), Udham Singh Nagar	04-10-2012
4.	Sri Naseem Ahmad, Civil Judge (Sr. Div.)	Bageshwar	Chief Judicial Magistrate, Bageshwar	04-10-2012
5.	Ms. Reena Negi, Civil Judge (Sr. Div.),	Udham Singh Nagar	1 st Addl. Civil Judge (Sr. Div.), Udham Singh Nagar	04-10-2012
6.	Sri Surendra Prakash Singh (retired H.J.S.)	-----	Special Judicial Magistrate, Udham Singh Nagar	29-11-2012
7.	Ms. Manju Rani Gupta (retired H.J.S.)	-----	Special Judicial Magistrate, Dehradun	29-11-2012
8.	Sri Dina Nath (retired H.J.S.)	-----	Special Judicial Magistrate, Kotdwar, Distt. Pauri Garhwal	29-11-2012
9.	Sri Seth Shailendra Nath Tandon (retired H.J.S.)	-----	Special Judicial Magistrate, Roorkee, Distt. Hardwar	29-11-2012
10.	Ms. Indu Sharma	-----	2 nd Additional Civil Judge (Jr. Div.), Nainital	21-12-2012
11.	Ms. Seema Dungarkoti	-----	Civil Judge (Jr. Div.), Garur, Distt. Bageshwar	21-12-2012
12.	Ms. Arti Saroha	-----	2 nd Additional Civil Judge (Jr. Div.), Haldwani, Distt. Nainital	21-12-2012
13.	Ms. Neha Qayyum	-----	Judicial Magistrate, Roorkee, Distt. Hardwar	21-12-2012
14.	Smt. Payal Singh	-----	Civil Judge (Jr. Div.), Joshimath, Distt. Chamoli	21-12-2012

* * * * *

INSTITUTION, DISPOSAL AND PENDENCY OF CASES

➤ **HIGH COURT OF UTTARAKHAND (from 01.10.2012 to 31.12.2012)**

						Pendency (At the end of 30.09.2012)		
						Civil Cases	Criminal Cases	Total Pendency
						14178	6242	20420
Institution (01.10.2012 to 31.12.2012)			Disposal (01.10.2012 to 31.12.2012)			Pendency (At the end of 31.12.2012)		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 31.12.12
1976	1487	3463	2224	1472	3696	13930	6257	20187

* * * * *

- (i) All cases relating to trade, commerce and contracts, including
- (ii) Disputes arising out of contracts (including all money contracts)
- (iii) Disputes relating to specific performance;
- (iv) Disputes between suppliers and customers;

➤ District Courts (from 01.10.2012 to 31.12.2012)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.12.12
		Opening Balance as on 01.10.12	Institution from 01.10.12 to 31.12.12	Disposal from 01.10.12 to 31.12.12	Pendency at the end of 31.12.12	Opening Balance as on 01.10.12	Institution from 01.10.12 to 31.12.12	Disposal from 01.10.12 to 31.12.12	Pendency at the end of 31.12.12	
1.	Almora	653	137	145	645	1261	430	506	1185	1830
2.	Bageshwar	113	32	15	130	351	184	177	358	488
3.	Chamoli	424	132	105	451	952	463	458	957	1408
4.	Champawat	154	37	45	146	884	403	383	904	1050
5.	Dehradun	13118	1831	2248	12701	67344	21060	20684	67720	80421
6.	Haridwar	7972	1551	1438	8085	26300	9509	8415	27394	35479
7.	Nainital	2692	833	813	2712	8412	4105	4981	7536	10248
8.	Pauri Garhwal	1146	227	283	1090	1935	844	878	1901	2991
9.	Pithoragarh	323	79	96	306	657	357	325	689	995
10.	Rudraprayag	200	52	46	206	536	421	498	459	665
11.	Tehri Garhwal	425	89	120	394	1040	399	400	1039	1433
12.	U.S.Nagar	4352	833	774	4411	22339	3693	3986	22046	26457
13.	Uttarkashi	337	79	101	315	673	287	245	715	1030
	Total	31909	5912	6229	31592	132684	42155	41936	132903	164495

Circular Letters/ Notifications

(issued recently)

C.L. No. 10 /UHC/Admin. B/XVII-144/2012

Dated: October 3, 2012.

Subject: Recording of Evidence of Witnesses by the Judicial Officers and not by the Peshkars.

On the above noted subject, I have been directed to inform you that the evidence of the witnesses has to be recorded by the Presiding Officers personally as far as possible or the evidence should be recorded on dictation of the Presiding Officer himself/herself by the Reader and the matter should not be delegated exclusively to the Peshkar (Reader). I have also been directed to inform you that it has come to the notice of the Court that sometimes the evidence of the witnesses is recorded by the Peshkar in the absence of the Presiding Officer or the Reader records the evidence of the witnesses while the Presiding Officer does the other work. This practice should be stopped immediately.

You are, therefore, requested to intimate all the Judicial Officers to ensure that they should personally record the evidence of the witnesses as far as possible or the evidence should be recorded on dictation of the Presiding Officer himself/herself by the Reader and the matter should not be delegated exclusively to the Peshkar (Reader).

Registrar General

C.L. No.: 11 /UHC/Admin.B/2012

Dated: October 04, 2012

Subject: Issuance of pamphlets on mediation with summons.

With regard to the aforesaid subject, Hon'ble Court has directed that in order to promote mediation activities in the State of Uttarakhand, pamphlets on mediation published by Uttarakhand State Legal Services Authority, Nainital be issued alongwith each summon being issued in freshly instituted cases of the following categories of cases:-

- (i) All cases relating to trade, commerce and contracts, including
- Disputes arising out of contracts (including all money claims);
 - Disputes relating to specific performance;
 - Disputes between suppliers and customers;

- Disputes between bankers and customers;
 - Disputes between developers/builders and customers;
 - Disputes between landlords and tenants/licensor and licensees;
 - Disputes between insurer and insured;
- (ii) All cases arising from strained or soured relationships, including
- disputes relating to matrimonial causes, maintenance, custody of children;
 - disputes relating to partition/division among family members/coparceners/co-owners; and
 - disputes relating to partnership among partners.
- (iii) All cases where there is a need for continuation of the pre-existing relationship in spite of the disputes, including
- disputes between neighbors (relating to easementary rights, encroachments, nuisance, etc.);
 - disputes between employers and employees;
 - disputes among members of societies/associations/apartment owners' associations;
- (iv) All cases relating to tortuous liability, including
- claims for compensation in motor accidents/other accidents; and
- (v) All consumer disputes, including
- disputes where a trader/supplier/manufacturer/service provider is keen to maintain his business/professional reputation and credibility or product popularity.
- (vi) Cases relating U/s 138 Negotiable Instrument Act.

You are, therefore, directed to bring the aforesaid direction into the knowledge of all judicial officers subordinate to you in your district and ensure strict compliance of the directions.

Registrar General

C.L. No. 12/UHC/Admin.A/2012

Dated: October 18, 2012.

Subject: Nomination of Administrative Judge(s).

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

1. Hon'ble Mr. Justice Prafulla C. Pant - Dehradun, Hardwar and Nainital.
2. Hon'ble Mr. Justice B. S. Verma - Rudrapryag and Udham Singh Nagar.
3. Hon'ble Mr. Justice V.K. Bist - Bageshwar and Pithoragarh.
4. Hon'ble Mr. Justice S. Dhulia - Tehri Garhwal and Uttarkashi.
5. Hon'ble Mr. Justice S.K. Gupta - Chamoli and Pauri Garhwal.
6. Hon'ble Mr. Justice U.C. Dhyani - Almora and Champawat.

You are therefore, informed accordingly.

Registrar General

C.L. No.: 13 /UHC/XVII-38/D.R. (I)/ 2012

Dated: October 18 , 2012.

Subject: Regarding matters pertaining to persons suffering from any disability, Children and Senior Citizens.

In continuation of previous Circular Letters on the aforesaid subject, I am directed to issue following directions of the Hon'ble Court for compliance.

1. A humanitarian approach be adopted while dealing with cases involving differently-abled citizens, Juveniles in conflict with law and Senior Citizens.
2. Priority for hearing and disposal be given in cases involving persons suffering from Cerebral Palsy or any disability as defined in "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".
3. Priority should also be given to cases involving Juveniles in conflict with law and cases relating to Senior Citizens.
4. When a differently-abled person, a Children and a Senior Citizen is required to attend the court for any work, their work should be given priority.
5. Evidence of a person suffering from any kind of disability, of a Child and of a Senior Citizen should be recorded on the same day and he/she should not be made to wait.
6. If the witness/witnesses suffering from any disability, a Child or Senior Citizen is/are present in the court for evidence in any case and the Presiding Officer is on leave, the District & Sessions Judge will withdraw the case in the morning and will transfer the case to other competent court, whose Presiding Officer is present. The transferee court will record the evidence of such witnesses on the same day.

Therefore, you are requested to bring the above directions of the Hon'ble Court to the knowledge of all the Judicial Officers working in your judgship for strict compliance.

Registrar General

C.L. No. 14/ UHC/Admin.A/2012

Dated: November 29, 2012.

Subject: Nomination of Administrative Judge(s).

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

- | | | | |
|----|--------------------------------------|---|-----------------------------------|
| 1. | Hon'ble Mr. Justice K.J. Sengupta | - | Nainital. |
| 2. | Hon'ble Mr. Justice Prafulla C. Pant | - | Dehradun and Hardwar. |
| 3. | Hon'ble Mr. Justice B. S. Verma | - | Rudrapryag and Udham Singh Nagar. |
| 4. | Hon'ble Mr. Justice V.K. Bist | - | Bageshwar and Pithoragarh. |
| 5. | Hon'ble Mr. Justice S. Dhulia | - | Tehri Garhwal and Uttarkashi. |
| 6. | Hon'ble Mr. Justice S.K. Gupta | - | Chamoli and Pauri Garhwal. |
| 7. | Hon'ble Mr. Justice U.C. Dhyani | - | Almora and Champawat. |

You are therefore, informed accordingly.

Registrar General

C.L. No. 15 / UHC/Admin. A/2012

Dated: December 5, 2012.

Subject: Regarding Comprehensive Medical Check-up of All Judicial Officers.

In continuation to C.L. No. 16/UHC/Admn.A-33/2010 dated 09.12.2010, on the subject noted above, I am directed to inform that Medical Check-up as per the directions contained in the said Circular Letter may be got done from higher centers also, if there is no proper medical facility available at the concerned District Hospital.

It is therefore, requested to bring the above directions of the Court to the notice of all the Judicial Officers working under your administrative control.

Registrar General

C.L. No. 16/UHC/Admin. A/2012**Dated: December 6, 2012.****Subject: Regarding submission of Annual Property Statement.**

On the subject noted above, I am directed to inform that before submission of annual property statement, each Judicial Officer must prepare his/her annual property statement carefully in order to avoid future problems & embarrassment.

It is therefore, requested to bring the above directions of the Court to the notice of all the Judicial Officers working under your administrative control.

Registrar General**C.L. No. 17/ UHC/Admin. A/2012****Dated: December 6, 2012.****Subject: Conduct of Judicial Officers and manner of recording A.C.R.(s).**

On the subject noted above, I am directed to intimate following resolutions passed in the Administrative Conference dated 12.05.2012 and approved by the Court:

1. District Judge must act as friend, philosopher and guide for all young judicial officers.
2. The conduct of judicial officers whether inside the Court or outside the Court is important and is observed. The judicial officers should not indulge in such acts, which exposes them to disciplinary proceedings or to any sort of enquiry or to any sort of criticism by the society. The conduct must be guarded and must conform to the norms of judicial service.
3. The junior judicial officers are advised to behave in a proper manner as per the norms of judicial service and if judicial officers still behave in a manner which is not suitable, the conduct of such judicial officers must be reflected in their ACR. The comments in the ACR must be given in a scientific manner giving clear indication as to what is being written and why it is being written. The judicial officers working hard must be appreciated and be encouraged and at the same time, the District Judge must report about such judicial officers who do not work or avoid work. The conduct of a judicial officer outside the Court having ramification must be reported.

4. Subordinate judicial officers must not visit the High Court for pursuing matters relating to their transfer or other representations. Any grievance or representation of the judicial officers should be submitted to the High Court in writing through the District Judge. If, called by the High Court then, only they should come to the High Court.
5. Judicial officers should not call the Judges of the High Court directly on their phones. In case of emergency, matter should be reported to the District Judge and if, District Judge is not available, then to the Registrar General of the Court.

It is therefore, requested to bring the above directions of the Court to the notice of all the Judicial Officers working under your administrative control for strict compliance.

Registrar General

C.L. No. 18/ U.H.C./Admin. B/ 2012

Dated: 11th December, 2012.

Subject: Regarding infrastructure development and maintenance of residential and non-residential buildings of State Judiciary.

On the subject noted above, it is submitted that various grants under 13th Finance Commission and Centrally Sponsored Schemes are being provided for the infrastructure development of the Judiciary. For the repair and maintenance also, estimates are being received from the District Judges time to time. For an estimate of less than Rs. 5 lacs, budget is usually allocated by the High Court, whereas large estimates are forwarded to the State Government.

There is no fixed date, by which such estimates should be submitted to the High Court. Due to this irregular flow of demands, many times it happens that budget is allocated for less urgent demands at that time, in preference to more urgent demands that arise later. Sometimes, more urgent demands accumulate by the end of financial year, due to late submission of estimates.

Therefore, it is to bring to your notice that any such demand in connection of your judgeship should be submitted to the High Court by 1st of September each year, so that all the demands be put at one time and allotment may be done in order of urgency. A note showing the urgency of such work may also be appended.

You are, therefore, requested to do the needful in this regard.

Registrar General

* * * * *

NOTIFICATION**No. 231 /UHC/Admin. B/Misc./2012****Dated: 17 October, 2012.**

In exercise of powers conferred by Article 227(2) of the Constitution of India, the High Court of Uttarakhand, Nainital with the approval of the Governor of Uttarakhand, is pleased to make the following amendments in Rule 585 of General Rules (Civil), 1957 (as applicable to State of Uttarakhand).

Existing Rule	Amended Rule
<p>Rule 585. Fees allowable on taxation in suits and appeals from decrees:- In all suits or appeals from decrees, heard and decided on contest, the fee allowable on taxation shall be as follows:</p> <ul style="list-style-type: none"> (i) if the valuation does not exceed Rs. 50/-; Rs. 10; (ii) if the valuation exceeds Rs. 50/-, but does not exceed Rs. 150/-; Rs. 20/-; (iii) if the valuation exceeds Rs. 150/-, but does not exceed Rs. 250/-; Rs. 30/-; (iv) if the valuation exceeds Rs. 250/-, but does not exceed Rs. 350/-; Rs. 40/-; (v) if the valuation exceeds Rs. 350/-, but does not exceed Rs. 500/-; Rs. 50/-; (vi) if the valuation exceeds Rs. 500/-, but does not exceed Rs. 750/-; Rs. 70/-; (vii) if the valuation exceeds Rs. 750/-, but does not exceed Rs. 1000/-; Rs. 100/-; (viii) if the valuation exceeds Rs. 1000/-, but does not exceed Rs. 5,000/-; Rs. 100/- plus 10 percent of the valuation above Rs. 5,000/-; (ix) if the valuation exceeds Rs. 5,000/-, but does not exceed Rs. 20,000/-; Rs. 500/- plus 5 percent of the valuation above Rs. 5,000/-; (x) if the valuation exceeds Rs. 20,000/-, but does not exceed Rs. 50,000/-; Rs. 1,250/- plus 2.5 percent of the valuation above Rs. 20,000/-; 	<p>Rule 585. Fees allowable on taxation in suits and appeals from decrees:- In all suits or appeals from decrees, heard and decided on contest, the fee allowable on taxation shall be as follows:</p> <ul style="list-style-type: none"> (i) if the valuation of the suit is up to Rs. 5,000/-; then Rs. 500/-; (ii) if the valuation exceeds Rs. 5,000/-, but does not exceed Rs. 20,000/-; Rs. 500/- plus 5 percent of the valuation above Rs. 5,000/-; (iii) if the valuation exceeds Rs. 20,000/-, but does not exceed Rs. 50,000/-; Rs. 1,250/- plus 2.5 percent of the valuation above Rs. 20,000/-;

(xi) if the valuation exceeds Rs. 50,000/-, but does not exceed Rs. 1,00,000/-; Rs. 2,000/- plus 1 percent of the valuation above Rs. 50,000/-;	(iv) if the valuation exceeds Rs. 50,000/-, but does not exceed Rs. 1,00,000/-; Rs. 2,000/- plus 1 percent of the valuation above Rs. 50,000/-;
(xii) if the valuation exceeds Rs. 1,00,000/-; Rs. 2,500/- plus 1/2 percent of the valuation above Rs. 1,00,000/-;	(v) if the valuation exceed Rs. 1,00,000/-; Rs. 2,500/- plus 1/2 percent of the valuation above Rs. 1,00,000/-.

These amendments will come into force with immediate effect.

Registrar General

Some Recent Judgments of Uttarakhand High Court

DIVISION BENCH JUDGMENTS:

1. A Division Bench in *Smt. Renu vs. Rakesh Kannoja* (First Appeal No. 66 of 2006), allowed the appeal preferred by the petitioner-wife for relief of divorce on the ground of cruelty as provided under Section 13(1) (ia) of the Hindu Marriage Act, 1955, observing that the law has no standard by which cruelty is measured. Sometimes single act of violence may by itself be of such a grievous and inexcusable nature to satisfy the test of cruelty. On the other hand, isolated acts of assault committed on the spur of moment and on some real or fancied provocation may not amount to cruel treatment. The Bench observed that paramount consideration in determining whether the conduct of the respondent amounts to cruelty or not?, is the fact which gives rise to a reasonable apprehension of such a danger to her life in the mind of the petitioner. Actual intention on the part of one spouse to injure the other may not be an essential factor.
2. On 16th October, 2012, a Division Bench in *Babu Lal Arora vs. State of Uttarakhand* (Criminal Appeal No. 363 of 2004), while dismissing the appeal preferred by the appellant-accused, observed that ours is the accusatorial and not the inquisitorial criminal justice system. The father and brother of the first victim, as also the accused, knew it fully well under the legal advice tendered to them and therefore, they adopted the peculiar mode of 'admission and avoidance' to save the accused and also to save informant's skin from the charge of scrupulously avoiding to identify the named accused. The Bench observed that same was impermissible under the Law.

The Bench further observed that the Court cannot shut its eyes to the realities like the present ghastly crime and it should make an endeavour to evaluate the evidence on record. It is the duty of the trial judge or the appellate judge to scan the evidence and test it on the anvil of human conduct and reach to a conclusion whether the evidence brought on record, even if the witnesses had turned hostile, is sufficient to bring home the commission of the crime?

Further on defective investigation, the Bench observed that in defective investigation, the only requirement is that of observing extra precaution by the courts while evaluating evidence.

3. On 27th November, 2012, a Division Bench in *State of Uttaranchal vs. Jagmohan Singh and others* (Government Appeal No. 220 of 2005), while dismissed the Government Appeal against the order of acquittal recorded by the trial court, reiterated that the confessional statement recorded under section 164 Cr.P.C. is not a substantive piece of evidence. The Bench observed that it was not ensured before the recording of statement that the accused were actually sent to the jail on the previous day and they were coming from the jail. It should be ensured that the accused were free from the influence of police before making of confessional statement. The Bench observed that it must be ensured that the confessional statements are voluntary and accused are not under pressure.

SINGLE BENCH JUDGMENTS:

4. On 1st October, 2012, a Single Judge Bench in *Col. P.R. Bahuguna vs. State of U.P. and another* (F.A. No. 108 of 1991), while taking recourse of Section 16 of the Court Fees Act, directed that court fee paid by the appellant be returned back, since the compromise in the present appeal has been arrived at before the Lok Adalat, as such, in view of the provisions of Section 21 of the Legal Service Authorities Act, 1987, the court fee in the appeal is liable to be refunded.
5. On 1st October, 2012, a Single Judge Bench in *Bhagirath Rai vs. State of Uttarakhand and others* [Writ Petition (Criminal) No. 855 of 2012], dismissed the writ petition filed for releasing the vehicle involved in an offence under Wild Life (Protection) Act, 1972, observing that after accused confessed guilt before a Forest Officer, he should have referred the matter with all relevant papers to the Magistrate for passing appropriate orders of conviction and sentence and also for confiscation of the incriminating articles. The Bench referred the pronouncement of Hon'ble Apex Court in **Principal Chief Conservator of Forest vs. J.K. Johnson, AIR 2012 SC 61.**

6. On 9th October, 2012, a Single Judge Bench in *Union of India through CWE (Hills), Dehradun vs. M/s Shring Construction Company Pvt. Ltd., Dehradun*, rejected the contention of appellant that objections against the arbitral award were filed within the time after excluding the time, when objections bonafide filed before the High court, although the same ought to be filed before the District Judge. Following the judgment of the Apex Court in *State of Goa vs. Western Builders [(2006) 6 SCC 239]* and *Union of India vs. Popular Construction Company [AIR 2001 Supreme Court 4010]*, it was held that even after giving benefit of Section 14 of the Limitation Act, there was no justification to condone further delay in filing the objection under Section 5 of the Limitation Act and the objections filed were barred by limitation.
7. On 10th October, 2012, a Single Judge Bench in *Rai Bahadur Narayan Sugar Mills Ltd., Laksar, District Haridwar vs. State of Uttarakhand and others* (Writ Petition No. 1552 of 2007 (M/S)), while allowing the writ petition for restoration of license for establishment of a distillery, which was cancelled by the respondents on non-existent grounds, observed that the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor but when the State Government decides to grant such right and privilege to others, it cannot escape the rigour of Article 14 and act arbitrarily.

The Bench further observed that the State is required to comply with the equality clause while granting exclusive right or privilege of manufacturing or selling liquor. The State cannot make discrimination by limiting the number of distilleries on the ground that it will reduce the production of alcohol. The Court found that on the one hand, the number of distilleries has remained the same but the production has not reduced, and on the other hand, the production of alcohol has increased five times. Keeping the number of distilleries to a minimum and allowing these distilleries to increase their production indicates that the State is creating a monopoly either in itself or in the agency created by it and, such monopoly being created for a few distilleries, is patently arbitrary. The action of the respondents in this regard cannot be sustained.

8. On 8th November, 2012, a Single Judge Bench in *The New India Assurance Co. Ltd. vs. Smt. Kuntesh and another* (Appeal from Order No. 158 of 2009), considered the substantial question that when does the amount falls due under workman's compensation Act on the death of workman in accident during the course of his employment, on the date of accident or on the date of adjudication? The Bench following the proposition of law pronounced by Hon'ble Apex Court in *Oriental*

Insurance Co. Ltd. vs. Siby George and others, Civil Appeal No. 5669 of 2012 decided on 31.07.2012, observed that the relevant date for the determination of the rate of compensation is the date of accident and not the date of adjudication of the claim.

9. On 3rd December, 2012, a Single Judge Bench in *State of Uttar Pradesh (now State of Uttarkhand) vs. Anand Mani and another* (Criminal Government Appeal No. 1612 of 2001) (old no. 1291 of 2000), allowing the appeal against acquittal of accused (husband) under Section 498A, 304B IPC, set-aside the contention of Ld. Amicus Curiae that according to the statement of Investigating Officer, deceased told in the hospital to the doctor that she caught fire accidentally and as such on the basis of such dying declaration, the prosecution story was rightly disbelieved. The Bench observed that though the statement made by the deceased as to the cause of his or her death made to someone is admissible under Section 32 of the Indian Evidence Act, 1872, but such witness to whom it was made should have deposed in the court that the statement was made before him. In the instant case, the statement relied by the defence was hear-say of the hear-say evidence. Moreover, in defence no evidence was adduced to rebut the presumption as provided under Section 113B of Indian Evidence Act, 1872.
10. On 4th December, 2012, a Single Judge Bench in *Vikram Singh Negi vs. District Magistrate, Chamoli and another*, set-aside the contention of appellant, a temporary driver, that U.P. Temporary Government Servants (Termination of Service) Rules, 1975 are not applicable in his case, as he was not holding any civil post and observed that Section 3 of the said rules provides that this shall apply to all persons holding a civil post in connection with the affairs of the State and who are under the rule-making control of the Governor, but who do not hold a lien on any permanent post, as such the definition of temporary service completely fit to the petitioner's status as employee.

On exercise of power of termination of service, the Bench observed that this power has to be exercised not to satisfy the personal desire or whims and it has to be applied in objective manner and in the interest of administration. The Bench also illustratively mentioned the situations in which administrative necessity can be perceived. The Bench also observed that the element of bias, arbitrariness and whims cannot be established by direct proof. This will appear from the chain of events and facts and circumstances of each case.

11. On 12th December, 2012, a Single Judge Bench in *Markandey Prasad Chamoli vs. State and others* (Writ Petition No. 258 of 2006 (S/S), allowing the writ petition against the punishment

awarded to the petitioner in a disciplinary proceeding, observed that the punishment has to be imposed in proportionate to the alleged misconduct. The rule of proportionalism has now become part of Article 14 of the Constitution of India. The Bench further observed that in the instant case, unauthorized absence cannot visit the extreme punishment and directed the disciplinary authority to consider the question of quantum of punishment which is befitting and proportionate to the alleged misconduct.

12. On 12th December, 2012, a Single Judge Bench in *Amit Singh Yadav vs. State of Uttarakhand and others* (Writ Petition No. 2564 of 2012 (M/S)) directed to grant a provisional O.B.C certificate to the petitioner as an interim measure on complying the requirements as laid down in the judgment of this Court passed in *Ajay Kumar vs. State of Uttarakhand (Writ Petition No. 124 of 2011)*, wherein it has been held that denial of the caste certificate on the ground that the applicant has not been able to furnish proof for "Mool Niwas" is wholly incorrect approach and it has been held that if a person is able to show that on the appointed day i.e. on 9.11.2000 he was residing in the territory of Uttarakhand then he should be deemed to have sufficient proof of the fact that he is a permanent resident as well as the bona fide resident of the State of Uttarakhand and, therefore, he should be entitled to get the caste certificate, if he belongs to that caste.
13. On 13th December, 2012, a Single Judge Bench in *Raju vs. State of Uttarakhand* (Criminal Jail Appeal No. 61 of 2012), rejected the contention of Ld. Amicus Curiae that statement of victim, who is about 12 years of age, cannot be read in evidence as no oath was administered to her, and observed that Proviso to Section 4 of Oaths Act, 1969, does not require administering oath to a witness aged up to the age of twelve years. Apart from this, the Bench referred Section 7 of the Oaths Act, which provides that no omission to take any oath or making affirmation shall invalidate any proceeding or render inadmissible any evidence. The Bench reiterated the judgment of *Bhagat Singh vs. State of U.P. 2009 NCC 537, 2009 (1) UC 224* and observed that only caution required to be taken is that such evidence which is recorded without administering oath to a witness aged more than 12 years, must be credible or must be corroborated from other evidence or record.

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MAJOR EVENTS AND INITIATIVES

- ❖ **Transfer of Hon'ble Mr. Justice Tarun Agarwala:** Pursuant to Notification issued by the Government of India, Ministry of Law & Justice (Department of Justice), Hon'ble Mr. Justice Tarun Agarwala has been transferred to High Court of Judicature at Allahabad. His lordship assumed charge of office of Judge of the High Court of Allahabad on 17.10.2012.
- ❖ **Oath ceremony of Hon'ble Mr. Justice Kalyan Jyoti Sengupta:** Pursuant to Notification No. K.II017/11/2012-US.11 dated 18.10.2012 issued by the Government of India, Ministry of Law & Justice (Department of Justice), Hon'ble Mr. Justice Kalyan Jyoti Sengupta has assumed charge of office of Judge of the Uttarakhand High Court on 31st October, 2012.
- ❖ **Visit of Hon'ble Judges to NJA, Bhopal:** National Judicial Academy at Bhopal has organized a National Conference of High Court Judges on Public Law from 08.12.2012 to 09.12.2012. Hon'ble Mr. Justice Sudhanshu Dhulia has participated in the said conference on behalf of High Court of Uttarakhand. In another Conference on Administration of Criminal Justice: "Issues and Challenges", organized by the NJA at Chandigarh from 23.11.2012 to 25.11.2012, Hon'ble Mr. Justice Servesh Kumar Gupta participated along with 10 judicial officers.
- ❖ **Laying of Foundation Stone of ADR centre at Kotdwar and High Court premises:** Resolution of disputes through alternative dispute resolution method is gaining momentum day by day. 13th Finance Commission has allocated sufficient budget to develop infrastructural facilities, so that this alternate branch of Courts may flourish side by side to cater need of litigant public. In this regard, after Hardwar, Udham Singh Nagar, Uttarkashi and Tehri garhwal, foundation stone of ADR centre has been laid at Kotdwar, district Pauri Garhwal on 22nd of December, 2012. In the High Court premises at Nainital, foundation stone of ADR centre has been laid by Hon'ble the Chief Justice Sri Barin Ghosh on 26th of December, 2012.
- ❖ **Visit of Additional Registrar to South Africa:** Additional Registrar of the High Court of Uttarakhand and Member-Secretary of Uttarakhand State Legal Services Authority Sri Kanwar Amninder Singh visited South Africa with a delegation of Ministry of Law & Justice, Government of India and U.N.D.P. from 14th October, 2012 to 19th October, 2012 to study the Legal Aid and Legal Empowerment in South Africa. The said delegation was headed by Hon'ble Acting Chief Justice of High Court of Andhra Pradesh Sri Pinaki Chandra Ghose (as he then was).

- ❖ **Recruitment of Ministerial Staff in subordinate judiciary:** To overcome the paucity of ministerial staff in subordinate judiciary, High Court of Uttarakhand is in process to fill-up all the vacancies of clerical and stenographers in the subordinate courts. The recruitment process is being conducted through Uttarakhand Board of Technical Education. Written examination has been conducted on 28.10.2012 and after the declaration of result of written examination; type & shorthand examination is scheduled from 05.01.2013 to 10.01.2013 in the High Court premises.

MAJOR ACTIVITIES OF UJALA

- ❖ **Specialized Training Course on “Law Relating to Protection of the Wild Life”:** On initiative of Hon’ble the Chief Justice, special workshops are being organized by the Academy to sensitize the judicial officers on various aspects of law pertaining to wild life, so that judicial officers may be equipped with up-to-date knowledge on laws governing wild life. Two phases of such special workshops have been organized during the last quarter and the 3rd phase of such workshop has been organized from 5th to 7th October, 2012. In the 3rd phase, total 25 judicial magistrates across the State participated in the workshop.
- ❖ **Workshops for District Government Counsels (Criminal):** To update the legal knowledge on various aspect of criminal law, a five day workshop from 16th to 20th October, 2012 has been organized by the Academy for Additional/Deputy/Assistant District Government Counsels (Criminal) working in different districts of Uttarakhand. Total 15 counsels participated in the workshop.
- ❖ **Foundation Training Programme for Newly Appointed Civil Judges (Junior Division):** Pursuant to Government Notification No. 1511/XXX-1-2012-28 (1) 11 dated 28.09.2012, 28 newly recruited candidates were appointed and posted as Civil Judges (Junior Division)/Judicial Magistrates in different districts of the State of Uttarakhand. These 28 judicial officers after joining in their respective districts, reported to the Academy for their Foundation Training Programme. These trainee officers will be imparted one year foundation training including practical training in the districts. At present they are undergoing their Academy training from 22nd October, 2012 onwards and this will be continued till 11th of January, 2013.

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Hon'ble the Chief Justice Sri Barin Ghosh (Right) administered the oath of office to Hon'ble Mr. Justice Kalyan Jyoti Sengupta on 31.10.2012.

Group photograph of 28 Newly recruited Civil Judges (Junior Division)/Judicial Magistrates undergoing Foundation Training at Uttarakhand Judicial and Legal Academy at Bhowali (Nainital)



(L. to R)

- I Row** : Ms. Sweta Rana Chauhan, Ms. Tricha Rawat, Ms. Sachi Sharma, Ms. Ritika Semwal, Ms. Niharika, Sri S. M. D. Danish (Addl. Director), Sri R.D. Paliwal (Director), Hon'ble Sri Justice Prafulla C. Pant, Judge, High Court of Uttarakhand, Sri M.M. Sultan (Addl. Director), Sri Ambika Pant (Joint Director), Ms. Vibha Yadav, Ms. Shama Nargis, Ms. Lalita Singh, Ms. Anita Kumari.
- II Row** : Sri Sandeep Kumar Tiwari, Sri Ravi Shankar Mishra, Sri Abbishek Kumar Srivastava, Sri Neeraj Kumar, Sri Sanjay Singh, Sri Harsh Yadav, Ms. Chhavi Bansal, Ms. Neha Kushwaha, Ms. Simranjeet Kaur, Ms. Sweta Pandey.
- III Row** : Sri Sanjeev Kumar, Sri Manoj Kumar Dwivedi, Sri Sayyad Gufran, Sri Avinash Kumar Srivastava, Sri Ashok Kumar, Sri Sachin Kumar, Sri Akram Ali, Sri Vivek, Sri Sandeep Singh Bhandari.