



सत्यमेव जयते

UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-IV Issue No-4 (October-December, 2013)



High Court of Uttarakhand, Nainital

EDITORIAL BOARD

Hon'ble Mr. Justice Sudhanshu Dhulia

Hon'ble Mr. Justice U. C. Dhyani

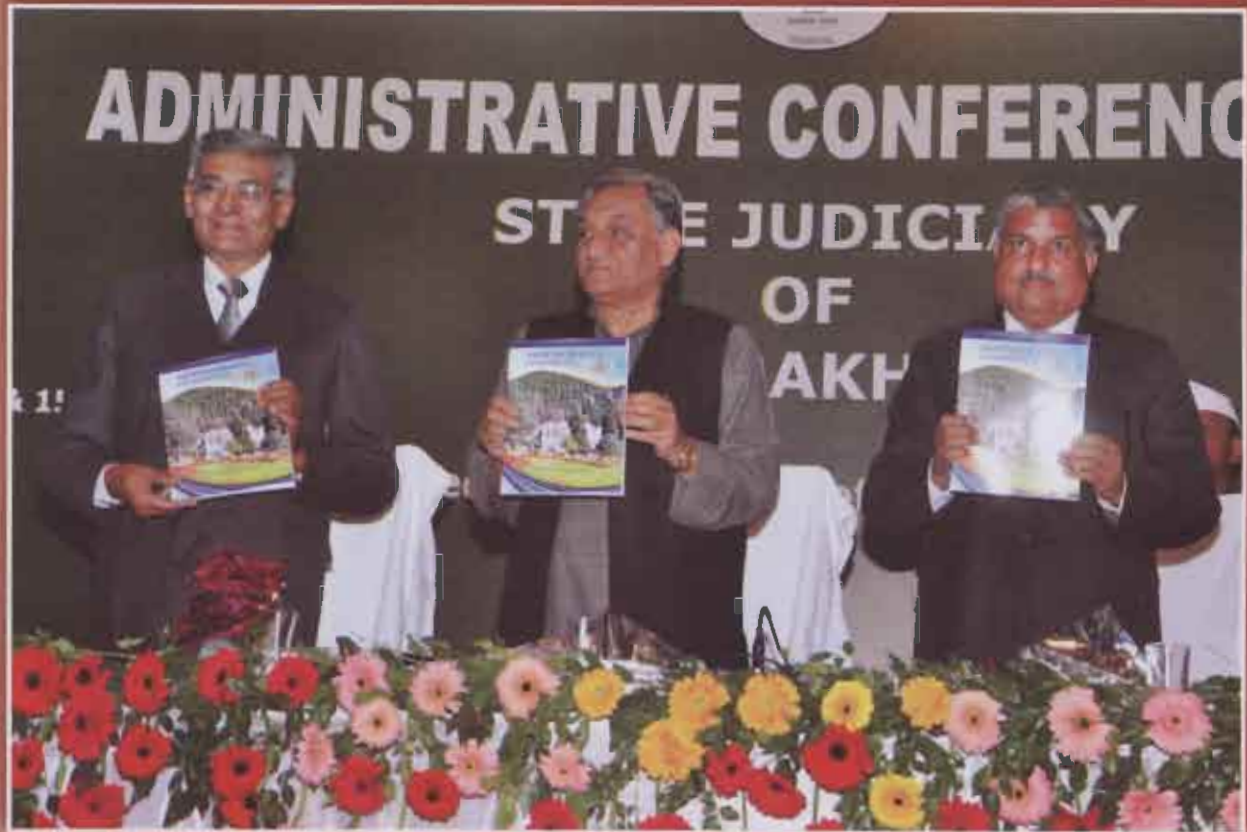
COMPILED BY

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Inaugural Session of the Administrative Conference-2013



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UTTARAKHAND HIGH COURT**LIST OF JUDGES (As on 31st December, 2013)**

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 B. S. Verma	15.07.2004
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

* * * * *



Barin Ghosh



**CHIEF JUSTICE
HIGH COURT OF UTTARAKHAND**

Nainital – 263001

December 23, 2013

MESSAGE

Under the Mission Mode Drive to reduce pendency in our Courts and to achieve 'Five Plus Zero' target-2013, despite huge response from every quarter in this move, we have been able to achieve it partly. It obviously suggests and requires us to concentrate more on speedy disposal of cases.

We are better equipping ourselves day by day to expedite disposal of cases with the facility of computerization and supply of man-power in the District Courts. We have set up our Courts even in small towns at the door steps of people of our State and trying to set up Courts also at least at a distance of each 25 Kms.

Besides our regular Courts, mediation would be one of the best, amongst other alternative dispute resolution methods, to resolve the disputes to the full and final satisfaction of the parties with concrete effects. It would save cost and time both. For this purpose we have set up mediation centres in each of our districts as well as in the High Court. Lok Adalats are also being organized from time to time for this purpose. An Administrative Conference of all the Judicial Officers in the State was organized on 14th & 15th December, 2013 to sensitize them for speedy and effective disposal of cases and also to resolve their service related issues, which were in fact resolved to some extent. State Government is also concentrating on reducing unnecessary litigation, by not pressing matters for trivial issues.

Like in previous years, this year too, our every effort will be to have zero pendency of more than five years' old cases in our Courts by the end of the year, for which I solicit all out co-operation from all concerned.

Good wishes and Happy New Year 2014..

(Barin Ghosh)

TRANSFERS, PROMOTIONS & APPOINTMENTS OF JUDICIAL OFFICERS

SL.NO.	Name of the Judicial Officer	From	To	Date of Order
1.	Sri Sikand Kumar Tyagi, 1st Additional District and Sessions Judge, Udham Singh Nagar	Udham Singh Nagar	District & Sessions Judge, Tehri	31-12-2013
2.	Sri Anuj Kumar Sangal, Registrar (Protocol), High Court of Uttarakhand at Nainital	Nainital	Additional District and Sessions Judge, Vikasnagar, District: Dehradun	23-12-2013
3.	Sri Bindhayachal Singh, 2nd Additional District and Sessions Judge, Udham Singh Nagar	Udham Singh Nagar	1st Additional District & Sessions Judge, Udham Singh Nagar	23-12-2013
4.	Ms. Neena Aggarwal, 3rd Additional District and Sessions Judge, Udham Singh Nagar	Udham Singh Nagar	2nd Additional District & Sessions Judge, Udham Singh Nagar	23-12-2013
5.	Ms. Neelam Ratra, 4th Additional District and Sessions Judge, Udham Singh Nagar	Udham Singh Nagar	3rd Additional District and Sessions Judge, Udham Singh Nagar	23-12-2013
6.	Ms. Anjushree Juyal, Additional Chief Judicial Magistrate (Railway), Haldwani, District-Nainital	Nainital	Civil Judge (Sr. Division), Haldwani, District- Nainital	01-11-2013
7.	Ms. Deepali Sharma, Civil Judge (Sr.Division), Haldwani, District- Nainital	Nainital	Additional Chief Judicial Magistrate. (with additional charge of Additional Chief Judicial Magistrate(Railway), Haldwani, District- Nainital	01-11-2013
8.	Ms. Rajni Shukla, Additional Chief Judicial Magistrate	Nainital	Civil Judge (Sr. Division), New Tehri	01-11-2013
9.	Sri. Sachin Kumar, Civil Judge (Junior Division), Pratap Nagar, District- Tehri Garhwal	Tehri Garhwal	Civil Judge (Junior Division), Kirti Nagar, District-Tehri Garhwal	17-12-2013

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INSTITUTION, DISPOSAL AND PENDENCY OF CASES

➤ HIGH COURT OF UTTARAKHAND (from 01.10.2013 to 31.12.2013)

						Pendency (At the end of 30.09.2013)		
						Civil Cases	Criminal cases	Total Pendency
						14826	5046	19872
Institution (01.10.2013 to 31.12.2013)			Disposal (01.10.2013 to 31.12.2013)			Pendency (At the end of 31.12.2013)		
Civil Cases	Criminal Cases	Total Institution	Civil Cases	Criminal Cases	Total Disposal	Civil Cases	Criminal Cases	Total Pendency at the end of 31.12.13
2227	1741	3968	1784	1370	3154	15269	5417	20686

➤ **District Courts (from 01.10.2013 to 31.12.2013)**

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 31.12.13
		Opening Balance as on 01.10.13	Institution from 01.10.13 to 31.12.13	Disposal from 01.10.13 to 31.12.13	Pendency at the end of 31.12.13	Opening Balance as on 01.10.13	Institution from 01.10.13 to 31.12.13	Disposal from 01.10.13 to 31.12.13	Pendency at the end of 31.12.13	
1.	<i>Almora</i>	606	146	163	589	989	444	391	1042	1631
2.	Bageshwar	134	26	37	123	385	176	222	339	462
3.	Chamoli	413	81	112	382	885	279	365	799	1181
4.	Champawat	186	41	51	176	1024	411	347	1088	1264
5.	Dehradun	12412	2631	3217	11826	68603	21032	34630	55005	66831
6.	Haridwar	8008	1278	1372	7914	29814	9335	9867	29282	37196
7.	Nainital	2726	864	946	2644	7675	2409	2576	7508	10152
8.	Pauri Garhwal	937	169	173	933	2211	675	717	2169	3102
9.	Pithoragarh	315	97	73	339	643	311	290	664	1003
10.	Rudraprayag	135	24	28	131	391	188	247	332	463
11.	Tehri Garhwal	382	104	106	380	960	369	391	938	1318
12.	U.S.Nagar	4500	776	603	4673	22885	4503	5072	22316	26989
13.	Uttarkashi	333	57	90	300	815	271	324	762	1062
	Total	31087	6294	6971	30410	137280	40403	55439	122244	152654

Circular Letters/ Notifications

(issued recently)

➤ **C.L. No.13/UHC/Admin.A/2013 Dated:December 26 , 2013**

Subject: Recess during Civil Court's vacation

Sir,

In supersession of earlier Circular Letter No. 03/UHC/Admin. A/2009 dated 04/07/2009 on the subject cited above, I am directed to inform as under:

- The facility of 14 days recess during summer/winter vacation, as the case may be, shall be available to all the serving judicial officers of Higher Judicial Services cadre doing judicial work, irrespective of their place of posting.
- The facility of 10 days recess during summer/winter vacation, as the case may be, shall be available to all the serving judicial officers of the cadre of Civil Judge (Junior Division) and Civil Judge (Senior Division) doing judicial work, irrespective of their place of posting.
- To avail the facility of recess, as aforesaid, proposals shall be determined by the respective District Judges/Principal Judge/Judges Family Courts in a manner that urgent work, bail, remand work etc. should not suffer.
- Proposal of recess with regard to officers of Higher Judicial Services cadre will be approved by Hon'ble Court and that of Civil Judge (Junior Division) & Civil Judge (Senior Division) cadre by the respective District Judges/Principal Judge/Judge Family Court.
- Officers posted in other administrative departments and doing judicial work will avail the recess period in summer/winter vacation, as the case may be, from their concerned Head of the Department.
- The facility of recess will not be available to retired reappointed judicial officers.

Yours faithfully,

(D.P. Gairola)

The State Government issued Government Order no. 385/XXXVI(1)/2013-6 Ek (2)/ 06 T.C. dated 13-12-2013 and Government Order no. 385(1)/XXXVI(1)/2013-6 Ek (2)/ 06 T.C. dated 13-12-2013 order dated 20-12-2013, by which certain allowances admissible to the Judicial Officers were revised. The details are:

1. Magazine allowance: revised to Rs. 250/- per month for two magazines instead of present Rs. 50/- per month for two magazines.
2. Robe Allowance: revised to Rs. Rs. 12,000/- per judicial officer in every two years.
3. Motor vehicle fuel compensatory allowance: Revised to 100 litres of petrol/ diesel for all judicial officers in each district.
4. Dress washing allowance: Revised to Rs. 1000/- per month.
5. Outlying Court Allowance: Revised to Rs. 1500/- per month.
6. Furnishing of Drawing Room: Revised to Rs. 75,000/- in every six years to each judicial officer.

Some Recent Judgments of Uttarakhand High Court

Full Bench Judgment

1. In criminal misc. writ petition no. 1177 of 2012; Mohd. Safi vs State of Uttarakhand; decided on 4.12.2013, the Hon'ble Full Bench considered the question as to whether history sheet can be open not only when a person who is a habitual criminal or abettors of such criminal, but also in a case where he is "likely to become" such. The Hon'ble Court after relying various judgments of Hon'ble Apex Court and provisions of law held in para no. 22 that "this Court is of the considered view, after going through the provisions of Police Regulation and another provision of law that though in a given case a history-sheet can be opened against a person who is likely to become a criminal such as one contemplated under Regulation 228, yet before a history-sheet is opened in such a case, the police authorities must have "objective criteria" before them, in order to reach that conclusion, some perceptible material on which such a conclusion could be based, such as given in Regulation 240(1) of the Police Regulations. These "objective criteria" must be reflected in the reports which should be as a result of an inquiry or finding of the police and not just based on the conjectures and surmises of the police authorities."

Division Bench Judgments

1. In Criminal Jail Appeal no. 46 of 2010; Rajesh vs State of Uttarakhand; decided on 9.10.2013, it was held that a confessional statement made by accused before magistrate and not retracted when he was asked about it in his 313 Cr.P.C statement, is admissible in evidence and the court may rely upon, if it is voluntarily given. It is always open to the court to convict an accused on his confession itself, if he has not retracted the same at an early stage. In case of retraction, some corroboration to the confessional statement is required before convicting an accused person on such a statement.
2. In Govt. Appeal no. 31 of 2009; State of Uttarakhand vs Bahadur Singh; decided on 13.11.2013, it has been held that the prosecution case will fail if the F.I.R has been lodged after two days of incident, there is no disclosure as to which accused was armed with which

weapon and even after allegations of severe injuries, the complainant rode a horse on the next day to go to a doctor.

3. In Writ Petition no. 347 of 2013; *Dr. Lata Sharma vs Mahila Post Graduate college, Sati Kund, Kankhal Hardwar and others*; decided on 22.11.2013, it has been held that the petitioner has no locus to challenge the aforesaid advertisement since vacancies of the post of lecturers have now been advertised for filling the same on permanent basis in accordance with the guidelines of University Grants Commission and other applicable rules. She cannot be granted the relief prayed for by her merely because she has been working in the said college on contract basis.
4. In criminal appeal no. 186 of 2011; *Mahesh Singh vs State of Uttarakhand*; decided on 29.11.2013, it has been held that where the incident occurred all of a sudden and there was no premeditation on the part of the accused and the accused was not having any previous enmity with the deceased and due to heated arguments the accused got enraged and all of a sudden gave blow of axe on the head of the victim, who died immediately, it cannot be said that the accused intended to kill the deceased. Accordingly the accused was convicted under Section 304 part II I.P.C.
5. In Criminal Appeal no. 186 of 2009; *Yamin vs State of Uttarakhand*; decided on 18.12.2013, it has been held that where a crowd of assailants who are members of an unlawful assembly proceed to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly and only some of them were enough to kill the deceased and to assault another injured victim. In such a case, it would be unreasonable to accept that because the other weapons carried by the members of the unlawful assembly were not used, the entire prosecution story itself should be rejected. Appreciation of evidence in such a complex case is no doubt a difficult task; but criminal Courts have to do their best in dealing with such

cases and to appreciate the evidence carefully and decide which part of it is true and which is not.

6. In First Appeal No. 123 of 2012; Sunil Kumar Saini vs Smt. Meena Saini; decided on 30.12.2013, it has been held that where there was misrepresentation at the time of marriage as to the business of the prospective husband and as to the parents of the prospective husband, in such circumstances the marriage was annulled by a decree of divorce.
7. In Special Appeal No. 360 of 2012; Triveni Chandra Pandey vs State of Uttarakhand; decided on 26.11.2013, a condition as to the mandatory requirement that only such candidates will be eligible for the post in a district who have permanent residence in that particular district, in other words there home district was under challenge and the Hon'ble Court in para 16 has held that we are of the view that the State cannot discriminate among its citizens, interalia, on the basis of residence or place of birth. This power has been given to the Parliament to make any special law prescribing any criteria of residence in a State. Further even the Parliament has been given power only to fix the residence in a State meaning thereby even the Parliament does not have power to fix the criteria of a District or a Tehsil or Panchayat or Village of that area. In the present case the State has fixed the residence as a criteria for appointment, which fixed residence in a district, is clearly in violative of Article 16(2) of the Constitution of India.

Single Bench Judgments

1. The Hon'ble Single bench in Ram Prasad Vs. Prescribed Authority & Anr.; writ petition no. 2496 of 2001 decided on 09-09-2013 has held that landlord has a legitimate right to expand his business to enhance the status of his family members. The tenant has to make sincere efforts to search for alternate accommodation. The court cannot direct the landlord to do a particular business or imagine that he could profitably do a particular business rather than the business he proposes to start. The length of tenancy of the tenant in a given circumstances ought not to have weighed with the Court.
2. The Hon'ble Single bench in Smt. Sarla Devi Vs. District Judge, Rudraprayag & Ors.; writ petition no. 1341 of 2005 has held that the appellate court while exercising the power in

misc. appeal is limited to the extent of examining the correctness of the order and it has no power to decide the suit itself on the basis of any compromise application.

3. The Hon'ble Single bench in *M/s Niranjana Das Prem Kumar and Another Vs Naveen Gupta*; writ petition no. 1248 of 2013, has held that application moved by co-landlord for release of property under Section 21(1)(a) of the Act No. 13 of 1972 without impleading other co-landlord, is maintainable.
4. The Hon'ble Single bench in *Dev Singh Vs Govind Singh*; writ petition (m/s) no. 5648 of 2001 has held that where the main relief is resettlement of boundary dispute and correct the revenue record, the case is cognizable by revenue court.
5. In Criminal appeal No. 356 of 2003; *Bittu @ Manoj Vs State of Uttarakhand*, decided on 11-11-2013, it has been held that the prosecution has failed to prove that the accused on 30.10.1996, when Sangeeta, aged 17 years; studying in Class-X in Girls College, Satikund, Kankhal and had gone for her study, the accused abducted her with the intent that she may be compelled to marry against her wish for the reasons enumerating firstly, that accordingly to the medical report, at the time of alleged incident, the girl was above than 18 years of age, thus she is treated major. Secondly, according to prosecutrix on the date of incident the accused met with her at a bookseller's shop, he took her at his sister's house, from where they proceeded to Hardwar bus station, and boarding in a bus, they reached Delhi bus station, from where they boarded in a bus, heading to Jammu and reached Jammu next day. Thereafter, they travelled to Katra, where they stayed in a hotel for 7-8 days. From Katra, they reached Vaishno Devi Temple. From Vaishno Devi, they travelled Paliakalan, District Lakhimpur Khiri, where in a separate house; they lived for three to four months. She then reached Kutchery (Court), Paliakalan. From Paliakalan, she was taken to Bareilly and they stayed overnight at bus station, Bareilly. From Bareilly, they finally reached Haridwar. In the said places, neither did the prosecutrix made protest against the kidnappers, nor did she screamed or resisted in order to get rid of the clutches of the accused. The said places cannot be said to be the deserted, rather these places are densely populated, but Sangeeta missed every opportunity. Suffice it to say that the prosecutrix was a consenting party, otherwise she would have protested. Considering all the facets of the case, it is found that victim was quite

mature and accompanied with the accused by her own volition. Thirdly, the doctor did not find any sign of injury on any part of the body of the victim, which is impossible in the case of forceful commission of rape. Thus, suffice it to say that the prosecutrix was a consenting party and it cannot be said that the accused abducted her with the intent that she may be compelled to marry against her will. Fourthly, which is vitally important, the positive photographs (paper no. 40Ka/1 & 2) utterly elicit the gesture and posture of the images, which espouse the affection of the visages in the photographs, produced by the accused in his defence. Besides it, the marriage agreement dated 15.11.1996 (paper no. 39Ka/1 &2) executed before the Notary public, Lakhimpur Khiri, illustrates that the marriage in between Sangeeta-aged 25 years and Naveen Kumar-aged 30 years, whose photographs are appended in this agreement, was solemnized on 21.10.1996 at Vaishno Devi Temple, on their own volition. Therefore, this Court is of the view that the trial Court has erred in law in convicting the accused/appellant under Section 366 I.P.C.

6. In Criminal Misc. Application No. 1258 of 2013; Satish Kumar vs State of Uttarakhand and others; decided on 28-11-2013 it has been held that the police have wrongly kept the girl in the concerned Police Station is concerned. Though the girl, who is present in the Court today, also stated before me that she by her own wish went with the lady constable, but even then, the police should have obtained necessary orders from the concerned Magistrate. The concerned Police official should not have kept the girl in the Police Station without obtaining the order from the concerned Magistrate. In my view, this action is totally illegal. The concerned Police official is warned to be careful in future.

7. In Criminal appeal No. 299 of 2004; Sonu @ Pradeep vs State of Uttarakhand; decided on 06-12-2013, it has been held that it is true that medical report does not fully support the case of the prosecution as vagina was found intact and no injury was found on private parts of the victim. If facts are seen in totality, then it comes out that it is a case of rape. The victim, who at the time of giving statement was 8 years old, gave her statement and her statement is fully supported by the Forensic Science Laboratory Report. Therefore, the testimony of the victim is found trustworthy. For commission of rape full penetration or full intercourse is not necessary. Small penetration is sufficient for commission of this crime. It is a case where doctor has opined that no definite opinion could be given about commission of rape but

testimony of the prosecutrix, in a case of rape, directly alleging the accused for committing rape on her, cannot be disbelieved or ignored.

8. In Writ Petition (M/S) no. 1218 of 2013; Deepak Builders Vs. State of Uttarakhand; decided on 3.10.2013, it has been held that the essential conditions in a tender can only be relaxed if it is in public interest and the principles as laid down by Hon'ble Supreme Court in B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and others reported in (2006) 11 Supreme Court Cases 548 must be taken into account.
9. In Criminal Jail Appeal no. 32 of 2012; Bhagat Singh vs State of Uttarakhand; decided on 26.11.2013, it was found that though the medical report of the victim in a rape case showed presence of spermatozoa but the pathological examination of the semen of accused showed absence of spermatozoa. Accordingly the Hon'ble Court held that reasonable doubt always belongs to the accused. This has not been given to him in this case. Human nature and human psychology is such that it would never fail to baffle us, such as the prosecution story in the present case. What can, however, never be in doubt is clear scientific evidence. Spermatozoa, or lack of it, makes all the difference as it has in the present case. This Court is of a considered view that under these circumstances a benefit of doubt should have been given to the accused.
10. In Writ Petition (S/S) no. 1074 of 2006; Bhuwan Chandra vs Assistant General Manager and another; decided on. 24.12.2013, it has been held that it is settled position of law that compassionate appointment is granted to meet the sudden crisis on account of death of breadwinner while in service. While considering the claim for compassionate appointment, financial condition of family of deceased employee must be taken into consideration. The object to grant compassionate appointment is to provide immediate help to the dependents of deceased employee, so that they may not die in starvation. Where the employer had paid Rs. 1.50 lac on account of death of petitioner's father to meet the sudden crises occurred in the family on account of sudden death of petitioners father and the claim was made after almost 12 years of death of petitioners father, the claim for compassionate appointment was rightly rejected.

11. In Criminal Jail Appeal no. 20 of 2012; Pooran Singh Vs. State of Uttarakhand; decided on 22.10.2013, it was held that malkhana register and sample seal are important link evidence in a case pertaining to recovery of narcotic substances and in the absence of important link evidence, prosecution story became highly doubtful.
12. In Writ Petition no. 1392 of 2013; Dharam Ram vs State of Uttarakhand; decided on 30.10.2013, it was held after relying upon various Hon'ble Supreme Court judgments that the law of suspension is that when an appointing authority proceeds to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and order of suspension should not be passed in a routine or automatic manner. It is not necessary to place a Government employee under suspension in every case where disciplinary proceedings are contemplated.

Appointing authority must be satisfied that continuance of the employee in the same post or at the same station may cause a reasonable apprehension that it will influence or prejudice the enquiry and the disciplinary proceedings. It should always be kept in mind by the appointing authority that though suspension is not a punishment, however, it visits the employee with serious civil consequences and loss of reputation and prestige. Therefore, an order of suspension should not be passed lightly, casually or without proper application of mind. Order of suspension need not contain the recital of the reasons which has resulted into the passing of the suspension order. If the suspension order is questioned before a Court of law, the appointing authority must show before the Court of law that before passing the suspension order the case of the delinquent employee was considered properly and suspension order was found to be desirable in the peculiar facts and circumstances of the case considering the gravity of the misconduct or continuance of the officer in the office may likely to influence the proceedings. If the appointing authority or the disciplinary authority fails to show that the grounds of suspension were considered before passing the suspension order, the suspension order so passed is liable to be quashed. If there is nothing to show that the petitioner was in a position to temper with documentary evidence which can be read against him, than the suspension of petitioner is undesirable and unjustified.

13. In Writ Petition (M/S) no. 2265 of 2012; Arun Kumar vs. State of Uttarakhand; decided on 12.11.2013, it has been held that there is a vast difference between encroacher (trespasser) and unauthorized occupant. If initial entry is lawful in the capacity of licensee or lessee, then of course after expiry of period of lease or license, possession becomes unauthorized. However, if entry itself is per se illegal, then occupant shall be encroacher (trespasser). As per the policy, free hold rights may be conferred in favour of unauthorized occupant i.e. who has occupied nazul land as a lessee or licensee but it does not stipulate that free hold right can be conferred in favour of the encroacher (trespasser). Therefore, grant of free hold rights in favour of the encroacher cannot be accepted. If State and Municipality are willing to dispose of Nazul land, same can only be permitted by way of open auction so that appropriate cost thereof may be received. No private negotiation would be permissible. Petitioners and private respondents, in that event, shall be at liberty to participate in tender process / auction. State Government and Municipality are expected to protect and save Nazul land.
14. In Writ Petition (S/S) no. 994 of 2006; Lokesh Kumar vs State of Uttaranchal; decided on 20.11.2013, it was held that the pendency of a criminal case/proceeding is different from suppressing the information of such pendency. The case pending against a person might not involve moral turpitude but suppressing of this information itself amounts to moral turpitude. Since petitioner made misrepresentation and suppressed the important fact about the registration of the criminal case against him, therefore, it would amount to getting employment by playing fraud on the State. Consequently, appointment so obtained by petitioner was rightly revoked and petitioner was rightly dismissed from the service by the competent authority.
15. In Writ Petition (S/S) no. 1235 of 2010; Basanti Rautela Vs. Uttarakhand Public Service Commission and another; decided on 23.12.2013, it has been held that this Court has no hesitation to hold that process of recruitment starts with enlistment, acceptance, selection and approval for appointment. In the further opinion of this Court, recruitment process starts with the submission of application form, therefore, the condition No. 11 of the advertisement, even if read with Rule 8, could be understood to mean that on the date process of recruitment starts i.e. the last date of submission of application form, candidate must possess requisite qualification.

16. In Civil Revision no. 143 of 2013; Shamshad Ahmad and others Vs. Mussoorie Dehradun Development Authority and others; decided on 28.12.2013, it was held that proviso was added in Rule 17 of Order 6 C.P.C. to avoid unnecessary delay in the disposal of the suit. Proviso indicates that parties should be vigilant at the time of filling of original pleadings so that all the necessary facts must be brought before the Court. Proviso is a check and barrier so that none of the party may take up afterthought story with ulterior motive to keep the lis pending. In the further opinion of this Court, proviso is directive in nature and should not be treated as complete ban. If delay and due diligence is properly explained and amendment seems to be just and proper for the fair adjudication of the case, it would be open to the courts to allow the same. Other party can be compensated by way of payment of cost. Hyper-technical approach should be avoided to do complete and fair justice.
17. In Criminal Misc. Application No. 277 of 2009; Sultan Singh Rawat Vs. State of Uttarakhand; decided on 02.09.2013, it has been held that if any person is put to trial and is exonerated of the charge leveled against him, it cannot always be said that the person was defamed at the instance of informant/complainant, unless and until, the trial court gives a specific finding to this effect.
18. In Criminal Misc. Application no. 883 of 2009; R.D. Sharma Vs. State of Uttarakhand and another; decided on 30.09.2013, it has been held after relying on the judgment of Hon'ble Supreme Court delivered in Raj Kumar Khurana Vs. State of (NCT of Delhi) and another, 2009 (6) SCC 72 that where the cheque presented to the bank for payment was returned with remarks "reported lost" the offence under Section 138 of Negotiable Instruments Act, 1881 is not made out.
19. In Criminal Misc. Application no. 170 of 2010; Praveen and others Vs. State of Uttarakhand and another; decided on 29.10.2013, it has been held that where allegations are general and sweeping in nature and where the accused were part and parcel of separate house hold and leaving separately from the family of estranged couple and were not expected to interfere in there familial affairs, offence under Sections 323, 504, 506 and 498A of IPC and 3/4 Dowry Prohibition Act is not made out.

20. In Criminal Misc. Application no. 622 of 2010; Narad Joshi Vs. State of Uttarakhand; decided on 18.11.2013, it has been held that in view of the unreported judgment of Hon'ble Apex Court in State of Uttar Pradesh Vs. Mustakeen and others, criminal appeal no. 283-287 of 2002 decided on 22.02.2002 the custody, even interim, of the seized cattle cannot be given to the accused persons so long as the matter is under trial.

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Contd. from page 9:

➤ **Family Courts (from 01.10.2013 to 31.12.2013)**

SL. No	Name of the Family Court	Civil Cases				Criminal Cases				Total Pendency at the end of 31.12.13
		Opening Balance as on 01.10.13	Institution from 01.10.13 to 31.12.13	Disposal from 01.10.13 to 31.12.13	Pendency at the end of 31.12.13	Opening Balance as on 01.10.13	Institution from 01.10.13 to 31.12.13	Disposal from 01.10.13 to 31.12.13	Pendency at the end of 31.12.13	
1.	<i>Dehradun</i>	1322	495	470	1347	818	411	438	791	2138
2.	Rishikesh	132	31	28	135	121	24	30	115	250
3.	Nainital	392	73	104	361	452	98	77	473	834
4.	Hardwar	551	136	151	536	421	102	87	436	972
5.	Roorkee	364	97	31	430	297	67	18	346	776
6.	Pauri	226	56	63	219	190	61	47	204	423
7.	Udham Singh Nagar	548	144	110	582	542	90	76	556	1138
	TOTAL	3535	1032	957	3610	2841	853	773	2921	6531

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MAJOR EVENTS AND INITIATIVES

❖ Administrative Conference of State Judiciary:

The Administrative Conference, 2013 was inaugurated by Hon'ble the Chief Minister, Sh. Vijay Bahuguna, Hon'ble Sh. Justice Barin Ghosh, Chief Justice of High Court of Uttarakhand and Hon'ble Sh. Justice B.S. Verma, Senior Judge of High Court of Uttarakhand in the benign presence of all the Hon'ble Judges of High Court of Uttarakhand, invited guests and dignitaries and all the participating Judicial Officers.

- ❖ In the inaugural session, the welcome address was made by Sh. D.P. Gairola, Registrar General of High Court in which he welcomed the Hon'ble dignitaries on the dais and off the dais and also all the participating Judicial Officers. In the welcome address, the Registrar General informed about the necessity of the Administrative Conference and also the expectations of the Hon'ble High Court from the Judicial Officers.
- ❖ Hon'ble Sh. Justice B.S. Verma in his address welcomed the Hon'ble Chief Minister and informed about various issues which the State Judiciary is currently facing and also about the various issues which will be taken up in the Administrative Conference. He gave his best wishes for the successful Conference.
- ❖ Hon'ble the Chief Justice in his address briefly informed about the necessity of this Administrative Conference and also the duties and responsibilities of a Judicial Officer.
- ❖ Hon'ble the Chief Minister in his address as Chief Guest requested all the Judicial Officers not to be swayed away by the media reports pertaining to various judicial matters and criminal matters pending before the courts or in which investigation is going on. He advised the Judicial Officers not to be influenced by the media trial. He also advised the Judicial Officers that each Judicial Officer should keep on improving his legal knowledge and the judicial officer should read books and law journals on various upcoming subjects of law, such as trade and commerce, arbitration, constitutional law etc. He assured that the State Government is committed to support the judiciary in every way in the State of Uttarakhand and the State Government will provide all the necessary facilities including rich library to the judicial

officers. On this occasion the Hon'ble Chief Minister announced enhancement of various allowances, such as robe allowance, dress wash allowance, outlying court allowance, petrol/diesel allowance etc.

- ❖ The vote of thanks was delivered by the District Judge, Dehradun who thanked all the Hon'ble dignitaries present on the dais or off the dais and also thanked all the participating judicial officers, the authorities of ONGC, FRI, IGNTA for their assistance and cooperation in holding this conference.

In the Administrative Conference-2013, issues such as disposal of old cases, day to day problems faced by the Judicial Officer in the administration of Justice particularly in the disposal of old cases, effective Administrative control and supervision of District Judge over Subordinate Judicial Officers and offices, administrative and Judicial problems – views by each District Judge representing his/her district and by officers on deputation and future prospective – Vision statement for Uttarakhand were taken up for deliberations and various resolutions providing guidance to Judicial Officers, pertaining to Court management, conduct of Judicial Officers, etc. were passed. The Administrative conference concluded in the afternoon of 15th December, 2013. The resolutions were circulated to all the Judicial Officers for information and compliance.

- ❖ **Felicitation of five Judicial Officers of the state of Uttarakhand for their contribution as Master Trainers in the Ubuntu-Linux Operating System training for all Judicial Officers of the state of Uttarakhand:** As a part of the exercise of Change-Management, all the Judicial Officers in the State of Uttarakhand were trained in Ubuntu-Linux Operating System. The said training was conducted by five Judicial Officers as Master Trainers in Ubuntu-Linux Operating System. The Judicial Officers, namely, Sri. Manish Mishra, Ms. Deepali Sharma, Sri. Anirudh Bhatt, Ms. Pratibha Tiwari and Sri. Sudhir Kumar Singh were felicitated by Hon'ble the Chief Justice and Hon'ble Sri. Justice B. S. Verma, Senior Judge and Chairman, Computer Committee, High Court of Uttarakhand by presenting them the certificate issued by Hon'ble e-Committee, Supreme Court of India, New Delhi. The presentation was held on 14th December, 2013 at Dehradun.

- ❖ **Recruitment in H.J.S cadre under Direct recruitment & limited competitive source:**
Complying the mandate of Hon'ble Supreme Court regarding expeditious filling-up of vacancies in all the cadres of subordinate judiciary, process of recruitment in H.J.S. Cadre under direct recruitment quota from Bar was initiated for remaining one seat. Examination for the said one seat was taken on 26 and 27th October, 2013. Besides, direct recruitment quota, process was initiated for filling up the vacancies in Higher Judicial Service Cadre from the source of limited competitive examination. Examination was held on 26th October, 2013. The result was uploaded on the website of High Court on 18-12-2013. No candidate qualified in the written examination for direct recruitment. Whereas, only two candidates (Judicial Officers) qualified in the limited competitive examination.

- ❖ **National Lok Adalat:** On 23-11-2013, National Lok Adalat was organized at High Court of Uttarakhand under aegis of National Legal Services Authority and Uttarakhand State Legal Services Authority. The inaugural Session was attended by Hon'ble Sri. Justice B. S. Verma, Senior Judge and Executive Chairman, Uttarakhand State Legal Services Authority, Hon'ble Sri Justice V. K. Bist, Judge and Chairperson, High Court Legal Services Committee and Hon'ble Sri. Justice U. C. Dhyani, Judge, High Court of Uttarakhand. In the said National Lok Adalat, 506 cases of different nature were taken up and 36 cases of different nature were disposed of by way of compromise at National Lok Adalat.

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MAJOR ACTIVITIES OF UJALA

- ❖ **Inauguration of Foundation Training Programme for newly appointed Judicial Officers in the cadre of Higher Judicial Service:** The foundation training programme for newly appointed HJS officers commenced from 01-11-2013 with the inauguration. The foundation course is for three months and will conclude on 31-01-2014.
- ❖ **“Uttarakhand Darshan” by trainee officers in the cadre of Civil Judge (Junior Division):** The trainee officers in the cadre of Civil Judge (Junior Division)-2011 batch went on “Uttarakhand Darshan” as a part of their training programme. The trainee officers visited each and every district of the state and also even the remote areas of the state so as to gain firsthand knowledge and experience about the life, culture and geographical conditions of the State.
- ❖ The third and last phase of foundation training programme of Civil Judge (Junior Division)-2011 batch got completed with valediction function held on 28-12-2013. The trainee officers gave a marvelous presentation of various cultural events such as solo songs, group songs, folk dances, etc.. At the valediction function, the Hon’ble Chief Justice handed over the award of best trainee officer in various fields.
- ❖ **Meeting of Governing Council:** Meeting of Governing Council of Uttarakhand Judicial & Legal Academy was held at High Court of Uttarakhand in December, 2013. The meeting was chaired by Hon’ble Mr. Justice Barin Ghosh, Chief Justice of High Court of Uttarakhand and Patron-in-Chief. Various decisions with regard to preparation of Action Plan for the financial year 2013-14, training, Research work, infrastructure, etc. were taken in the meeting.

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