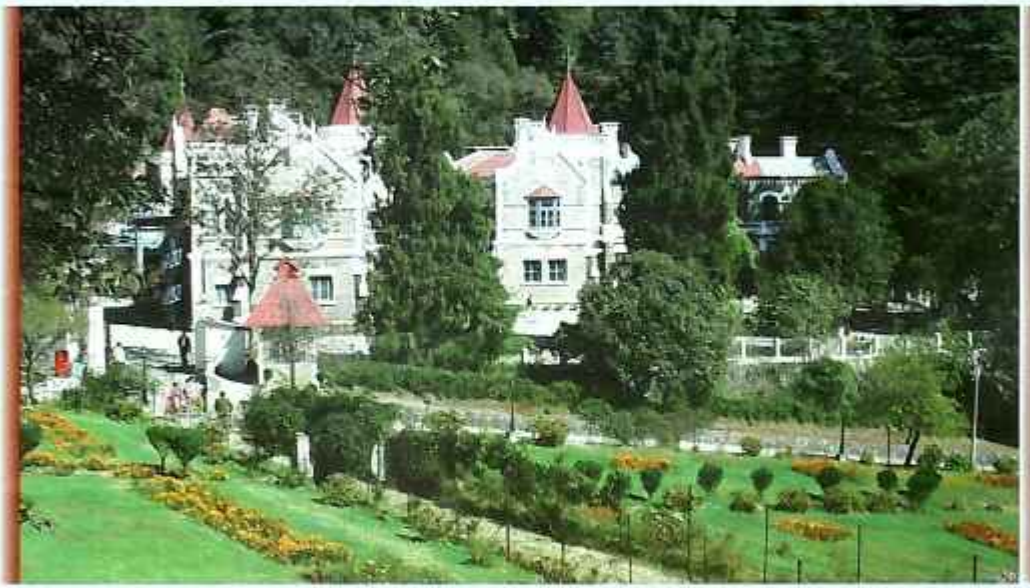
सत्यमेव जयते

# UTTARAKHAND COURT NEWS

(A Quarterly News letter)

Vol-VI Issue No-3 (July to September, 2015)



## High Court of Uttarakhand, Nainital



A quarterly newsletter published by High Court of Uttarakhand, Nainital
Also available on our website : www.highcourtofuttarakhand.gov.in

**Hon'ble Chief Minister of Uttarakhand Mr. Harish Rawat along with Hon'ble the Chief Justice & Hon'ble Judges of High Court of Uttarakhand**

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# UTTARAKHAND HIGH COURT

## LIST OF JUDGES (As on 1st July, 2015)

| SL. No. | Name of the Hon'ble Judge | Date of Appointment |
|---|---|---|
| 1. | Hon'ble Mr. Justice K.M. Joseph (Chief Justice) | 31.07.2014 |
| 2. | Hon'ble Mr. Justice V.K. Bist | 01.11.2008 |
| 3. | Hon'ble Mr. Justice Sudhanshu Dhulia | 01.11.2008 |
| 4. | Hon'ble Mr. Justice Alok Singh | 26.02.2013 |
| 5. | Hon'ble Mr. Justice Servesh Kumar Gupta | 21.04.2011 |
| 6. | Hon'ble Mr. Justice Umesh Chandra Dhyani | 13.09.2011 |

* * * * *

# INSTITUTION, DISPOSAL AND PENDENCY OF CASES

## ➢ HIGH COURT OF UTTARAKHAND (from 01.07.2015 to 30.09.2015)

| | | | | | | Pendency (As on 01.07.2015) | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | Civil Cases | Criminal Cases | Total Pendency |
| | | | | | | 17735 | 7517 | 25252 |
| Institution ( 01.07.2015 to 30.09.2015 | | | Disposal (01.07.2015 to 30.09.2015) | | | Pendency (As on 30.09.2015) | | |
| 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 |
| 2939 | 1794 | 4733 | 2535 | 1053 | 3588 | 18139 | 8258 | 26397 |

* * * * *

## ➢ District Courts (From 01.07.2015 to 30.09.2015)

| Sl. No | Name of the District | Civil Cases | | | | Criminal Cases | | | | Total Pendency at the end of 30.09.15 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Opening Balance as on 01.07.15 | Institution from 01.07.15 to 30.09.15 | Disposal from 01.07.15 to 30.09.15 | Pendency at the end of 30.09.15 | Opening Balance as on 01.07.15 | Institution from 01.07.15 to 30.09.15 | Disposal from 01.07.15 to 30.09.15 | Pendency at the end of 30.09.15 | |
| 1. | Almora | 440 | 169 | 169 | 440 | 726 | 523 | 475 | 774 | 1214 |
| 2. | Bageshwar | 96 | 77 | 96 | 77 | 371 | 296 | 254 | 413 | 490 |
| 3. | Chamoli | 272 | 82 | 95 | 259 | 637 | 425 | 483 | 579 | 838 |
| 4. | Champawat | 161 | 76 | 64 | 173 | 1160 | 423 | 764 | 819 | 992 |
| 5. | Dehradun | 11215 | 2866 | 3311 | 11076 | 53147 | 23651 | 19015 | 57783 | 68859 |
| 6. | Haridwar | 8494 | 1387 | 1189 | 8692 | 32252 | 10194 | 9826 | 32620 | 41312 |
| 7. | Nainital | 2829 | 532 | 577 | 2784 | 6643 | 4394 | 4404 | 6633 | 9417 |
| 8. | Pauri Garhwal | 999 | 255 | 235 | 1019 | 2317 | 926 | 754 | 2489 | 3508 |
| 9. | Pithoragarh | 358 | 90 | 92 | 356 | 1038 | 479 | 685 | 832 | 1188 |
| 10. | Rudraprayag | 150 | 40 | 38 | 152 | 1092 | 955 | 366 | 1681 | 1833 |
| 11. | Tehri Garhwal | 354 | 172 | 136 | 390 | 1173 | 654 | 655 | 1172 | 1562 |
| 12. | U.S.Nagar | 4922 | 1022 | 999 | 4945 | 21987 | 6861 | 6419 | 22429 | 27374 |
| 13. | Uttarkashi | 296 | 106 | 88 | 314 | 702 | 402 | 380 | 724 | 1038 |
| | Total | 30586 | 6874 | 6783 | 30677 | 123245 | 50183 | 44480 | 128948 | 159625 |

## ➢ Family Courts (from 01.07.2015 to 30.09.2015)

| SL. No | Name of the Family Court | Civil Cases | | | | Criminal Cases | | | | Total Pendency at the end of 30.09.15 |
|---|---|---|---|---|---|---|---|---|---|---|
| | | Opening Balance as on 01.07.15 | Institution from 01.07.15 to 30.09.15 | Disposal from 01.07.15 to 30.09.15 | Pendency at the end of 30.09.15 | Opening Balance as on 01.07.15 | Institution from 01.07.15 to 30.09.15 | Disposal from 01.07.15 to 30.09.15 | Pendency at the end of 30.09.15 | |
| 1. | Dehradun | 1459 | 520 | 465 | 1514 | 851 | 360 | 295 | 916 | 2430 |
| 2. | Rishikesh | 144 | 50 | 59 | 135 | 154 | 50 | 41 | 163 | 298 |
| 3. | Nainital | 501 | 73 | 93 | 481 | 608 | 120 | 71 | 657 | 1138 |
| 4. | Hardwar | 623 | 158 | 175 | 606 | 518 | 112 | 105 | 525 | 1131 |
| 5. | Roorkee | 432 | 133 | 132 | 433 | 482 | 126 | 101 | 507 | 940 |
| 6. | Pauri | 211 | 69 | 50 | 230 | 258 | 55 | 49 | 264 | 494 |
| 7. | Udham Singh Nagar | 747 | 244 | 204 | 787 | 748 | 139 | 116 | 771 | 1558 |
| | TOTAL | 4117 | 1247 | 1178 | 4186 | 3619 | 962 | 778 | 3803 | 7989 |

## Circular Letters/ Notifications

**C.L. No. 1 /UHC/XVII-01 /D.R.(I)/2015 Dated: July 1, 2015**

**Sub: Regarding clearance of the bills of the employees by the Drawing & Disbursing Officer in time.**

Sir /Madam,

On the above noted subject, I have been directed to inform you that it has come to the notice of the Court that some of the District Judges are taking unusual time in signing the bills prepared by the Accounts Clerk and as such, the employees are facing unnecessary hardship regarding their valid dues. In this connection, I have been directed to request you to ensure that proper bills are cleared as per rules without any delay as it is the duty of the Drawing and Disbursing Officer to pay the arrears of the employees in time.

Registrar General

**C.L. No: 03 U.H.C./Admin. B/Mobile Phone/ 2012, Dated: 29 July, 2015.**

**Sub: Providing mobile facility to all the Judicial Officers of the rank of District Judges of the State Judiciary, Uttarakhand.**

Sir

In suppression of the earlier C.L.No. 09 U.H.C./Admin.B/2012 dated 17.09.2012 on the subject noted above, I am directed to inform that the Court has been pleased to issue following directions regarding facility of Mobile Phone to all the Judicial Officers of the rank of District Judges of the State Judiciary, Uttarakhand.

1. The Judicial Officers of the rank of District Judges of the State Judiciary, whether they are posted as District Judge or on deputation, are permitted to purchase a hand set for a mobile phone out of the funds of contingency and the cost of the hand set should not exceed Rs. 10,000/-.
2. The life of the mobile phone set will be three years.
3. The Judicial Officer of the rank of District Judge may retain the said mobile phone even on his / her transfer from one place to another.
4. On retirement, the Judicial Officer concerned may have an option to retain the said mobile phone on deposition of an amount equivalent to the amount derived as per the depreciation method provided in the Income Tax Act. However, it is made clear that the depreciated amount shall not be less than 15% of the purchasing amount of the mobile Phone.
5. On completion of three years of the mobile phone set, the concerned Judicial Officer using the mobile phone set may have an option to retain the said mobile phone set on deposition of an amount equivalent to 8% of the purchasing amount of the mobile phone set in the treasury and submission of treasury challan.
6. In case of damage, efforts may be made for its repair, but if the cost of repair is more than 60% of the original cost of the mobile phone set, then steps may be taken for its condemnation and proper disposal by way of public auction or buy-back. However, a certificate by authorized dealer may be necessary as to the repair.

Registrar General

**C.L.No. 04 /XVII-7/Admin.A/2015** **Dated: August 04, 2015.**

**Subject: Regarding casual leave/special casual leave/station leave of judicial officers.**

Sir,

In continuation to the C.L. No. 02/XVII-7/Admin.A/2015 dated 29.07.2015 on the subject noted above, kindly find enclosed herewith the revised proforma for applying casual leave/special casual leave/station leave. Henceforth, all such leave must be applied in the enclosed revised proforma.

**Revised Proforma**

**Application for Casual Leave/Special Casual Leave/ Station Leave**

Name of the applicant (in full).....

- Designation .....
- Place of Posting .....
- Leave required from .....
- Kind of leave .....
- Reason/Purpose of leave .....
- Whether nominated for any Training during this period(Yes/No).....
- Permission for station leave required (Yes/No) .....
- Whether official vehicle to be taken (Yes/No).....
- Number of days of leave .....
- Name of the station to be visited and telephone number of official mobile phone number during leave

  .....

  .....

E-Mail Address .....

Dated..... (Signature of Judicial Officer)

**(For Office use only)**

- ..... days Casual Leave/Special Casual Leaved are due up to.....(date)
- Remarks/Recommendations, if any, .....

Signature of dealing R.O./ARO/Clerk

Signature of dealing Section Officer/Assistant Registrar

Signature of concerned Registrar at High Court

Sanctioned/Not Sanctioned

**Hon'ble the Chief Justice/ Hon'ble Administrative Judge/ Registrar General/ District Judge**

Note: The portion of the above proforma marked as "For office use only" is illustrative in nature. The contents may be changed as per the circumstances.

## HIGH COURT OF UTTARAKHAND NAINITAL

## NOTIFICATION

**No. 216 /UHC/Admin.A/2015** **Dated: July 28, 2015.**

In exercise of powers conferred by Sub Section (2) of Section 19 of the Bengal, Agra, and Assam Civil Courts Act, 1887 (Act No. XII of 1887) **[also applicable to the State of Uttarakhand]** read with government of Uttaranchal (Now Uttarakhand) Notification No. 420-Ek (1)/XXXVI (1)/ Nyay Anubhag/2005 dated 07.11.2005, the High Court is pleased to direct that the following 48 Civil Judges (Jr.Div.), posted in the State of Uttarakhand, shall have jurisdiction to try Civil Suits of pecuniary value not exceeding 1.00 Lac.

| | | | |
|---|---|---|---|
| ❖ | Ms. Rinky Sahni | ❖ | Ms. Shivani Pasbola |
| ❖ | Sri Ravi Prakash | ❖ | Sri Shahjad Ahmad Wahid |
| ❖ | Ms. Akata Mishra | ❖ | Sri Rajeev Dhavan |
| ❖ | Sri Mohammad Yaqub | ❖ | Ms. Chhavi Bansal |
| ❖ | Ms. Ritika Semwal | ❖ | Ms. Vibha Yadav |
| ❖ | Sri Sanjay Singh | ❖ | Sri Sayed Gufran |
| ❖ | Ms. Indu Sharma | ❖ | Sri Manoj Kumar Dwivedi |
| ❖ | Ms. Niharika Mittal | ❖ | Sri Harsh Yadav |
| ❖ | Sri Ravi Shanker Mishra | ❖ | Sri Sandip Kumar Tiwari |
| ❖ | Ms. Seema Dungrakoti | ❖ | Ms. Shachi Sharma |
| ❖ | Ms. Sweta Pandey | ❖ | Sri Abhishek Kumar Srivastava |
| ❖ | Ms. Sweta Rana Chauhan | ❖ | Sri Avinash Kumar Srivastava |
| ❖ | Ms. Tricha Rawat | ❖ | Sri Sachin Kumar |
| ❖ | Ms. Lalita Singh | ❖ | Ms. Arti Saroha |
| ❖ | Sri Sanjeev Kumar | ❖ | Ms. Simranjeet Kaur |
| ❖ | Sri Sandeep Singh Bhandari | ❖ | Ms. Shama Nargis |
| ❖ | Ms. Neha Kushawaha | ❖ | Ms. Anita Kumari |
| ❖ | Ms. Neha Qayyum | ❖ | Sri Akram Ali |
| ❖ | Sri Neeraj Kumar | ❖ | Sri Ashok Kumar |
| ❖ | Smt. Payal Singh | ❖ | Ms. Nazish Kaleem |
| ❖ | Ms. Rashmi Goyal | ❖ | Sri Akhilesh Kumar Pandey |
| ❖ | Sri Imran Mohd. Khan | ❖ | Sri Sachin Kumar Pathak |
| ❖ | Ms. Durga | ❖ | Sri Puneet Kumar |
| ❖ | Sri Rajesh Kumar | ❖ | Sri Dayaram |

By Order of the Court,

## Some recent Judgements of Uttarakhand High Court

### Division Bench Judgments

1. In ***Spl. Appl.No. 509/2014, Reckitt Benckiser(India) Ltd vs State of Uttarakhand & othrs with Spl. Appls 510,511,512/2014,*** decided on 06.07.15,the writ petitions were filed challenging the assessment orders & notification issued under Sec 32(12) of Uttarakhand Value Added Tax, Act 2005.The Single Judge has relegated the appellants to alternate forum. Thus Spl. Appls. have been filed before division bench.

   The division bench, while examining the legality of the Notification, held that Notification issued under Sec 32(12) of the Act, is a species of subordinate legislation. The appeallate forum and other statuory authorities cannot examine the legality of the notification issued by the state &only the writ court can examine the validity of the notification. It is also observed that if there was no exraordinary circumstances, there will be no basis for the authorities to invoke its power under S 32(12) of Act. While affirming the judgment of the Single Judge, it is observed that it is open to the appellants to agitate the same before the competent forum.

2. In ***Spl. Appl. No.300/15, Ramlal vs State of Uttarakhand &ors,*** decided on 03.07.15, the appellant challenged the order by which he was suspended & authority also proceeded to appoint Inquiry Officer. Thereafter, Inquiry Officer was asked to serve charge sheet. Aggrieved thereby appellant filed writ petition which was dismissed by the Single Judge. Hence this appeal filed by the appellant.

   The division bench, while allowing the appeal, observed that it is settled law that an Inquiry Officer can be appointed only after the disciplinary authority issues a charge sheet calling upon the deliquent officer to submit his explanation & if it is found necessary you hold an inquiry, only at that stage an Inquiry Officer be appointed. The charge sheet is to be signed by the disciplinary authority, the power of issuing the charge sheet cannot be delegated to the Inquiry Officer. It is held that without issuing the charge sheet& calling for an explanation, an Inquiry Officer could not be appointed and said part of the impugned order could not be sustained. Since

the legal part of impugned order suspending the deliquent was separable from illegal part thereof appointing the Inquiry Officer & directing him to serve charge sheet on deliquent employee, whole order needed not to be quashed. So while sustaining the order of suspension, remaining part of the impugned order appointing Inquiry Officer & directing him to serve charge sheet , was qunshed.

3. In ***Spl. Appl. No. 173/14, Amar Singh Rawat & othrs vs State of Uttarakhand & ors,*** decided on 05.08.15, the writ petitioners are class IV employees of police department. Selection process took place for promotion from class IV posts to class III posts in pursuance of 2004 Rules .The petitioner also participated in the said selection process. On 13.08.13 the Rules were amended and a new factor added that for each year of satisfactory service rendered by candidate, he was given 02 marks. Respondents get benefitted by these amended Rules. The Single Judge allowed the writ petition taking the view that selection process had started under the 2004 Rules and a great measure of selection process had already come to an end, selection process made as per amended Rules is absolutely wrong. The Single Judge quashed the merit list dt 03.09.13 and directed the respondents to declare the result of selected candidates in view of 2004 Rules. So aggrieved by this, the present appeal lies before the bench.

   The question before the bench to be considered is that whether the action of respondent department in awarding 02 marks for work experience for each year of service is correct? The bench observed that in the note, it is not mentioned that the benefit of experience will be given retrospectively. So the note portion of 2013 amended Rules is prospective and benefit of 02 marks was wrongly awarded to appellants. It is also observed that it is settled position of law that amendment in Rules is always prospective except in those cases where it is provided that amendment is retrospective. While dismissing the appeal, the bench is of the view that provision provided in the note will become applicable prospectively i.e. with effect from 2013-14 recruitment year. There fore, the official respondents acted illegally in giving benefit of 02 marks for work experience for each year of service.

4. In ***W P (SB) No.298/15, Vinai Kumar Singh vs State of Uttarakhand & ors,*** decided on 08.09.15, the petitioner challenges the transfer order dt 31.07.15 where he stands transferred

from Minor Irrigation Division U.S. Nagar to Minor Irrigation Almora. Besides it, he further seeks writ of mandamus not to interfere with the peaceful posting in U.S. Nagar.

The bench, while allowing the petition & quashing the impugned order observed that the norms are meant to be observed. Political interference is to be kept at bay but at the same time both in public interest and also in appropriate cases, where interest of justice is required as for instance medical reasons, where the norms may have to be relaxed, it may be open to the authorities to act in terms of norms & relax the requirements. Transfer is an incident of service of every government employee and he cannot raise the argument based on his term under the norms to resist the transfer, which is made bonafide in public interest even if it has effect of cutting down the length of his term at a particular place. In the totality of the circumstances present in this case, the petitioner has been able to make out a case for interference in A 226 of the Constitution on the said ground. Petition allowed by issuing writ of certiorari.

5. In ***Cr. Appl. No.160/13, Vinod Kumar vs State,*** decided on 08.07.15, the appellant assailed his conviction under Sec 302,498 A of IPC &3/4 of D. P. Act. As per prosecution version, the deceased wife was found missing from the house of accused husband on 21.10.07. On 25.10.07 her father lodged FIR. On 26.10.07 body was recovered from a river of rugged hilly area.

The bench, while hearing the case, observed that the cause of death of the deceased was not due to drowning as no water or sand particles were discovered in the wind pipe of the deceased. There was no trace of sand also inside the body of deceased. It was held that the prosecution witnesses could only establish cruelty and demand of dowry and there was no eye witness of the offence of murder and the place of incident, being a rugged hilly area, the deceased might have jumped or had fallen into the river. The bench, while allowing the appeal was of the view that the offence under Sec 302 IPC or ¾ D.P. Act could not be proved, rather the accused was guilty of offence u/S 306 & 498 A IPC.

6. In ***Income Tax Appl. No 37/15, 38/15 &39/15, Commissioner of Income Tax, Dehradun vs Uttarakhand Van Vikas Nigam,*** decided on 13.08.15, the appellant assails the judgment dt 11.03.15 passed by the Income Tax Appellate Tribunal, Delhi bench 'H' New Delhi whereby the

appeals filed by the assessee against assessment orders were allowed on the ground that notice issued under Sec 148 of Income Tax Act was barred by limitation.

The bench, while dismissing the appeal, observed that the language of S 149 & 150 of the Act demonstrates that notice u/s 148 for reassessment shall be issued before the expiry of 04 years from the end of relevant assessment year unless the case falls either cl(b) or cl(c). As per S 150 (1) of the Act, there will be no limitation to issue re-assessment notice u/s 148 of Act,if assessment seems to be required pursuant to any observations made, direction issued by any authority under the Act by way of appeal, reference or revision. Expln. (3) of S 153(3) of Act demonstrate that excluded income of original assessee, can be assessed in the income of third party, if third party was heard by the authority, making observations or issuing direction that excluded income is if third party, therefore shall be excluded from the income of original assessee. The third person whose liability is found by the assessing authorites while making assessment against the original assessee. Such third party has to be heard before fixing the liability. If such third party is heard then only reassessment under S148 r. w. S149 & 150 of Act is permissible. In the present case, assessee was not heard by ITAT, Lucknow bench, therefore, there is no illegality in the order passed by ITAT, Delhi bench 'H' N Delhi.

7. In ***Govt. Appl. No 54/2010, State of Uttarakhand vs Manoj Kumar & othrs,*** decided on 26.08.15, appeal is preferred against the judgment & order on ST No. 364/2007 where the accused were acquitted u/s 304 B r. w. S 34 IPC.

The bench, while dismissing the appeal, observed that for the offence punishable u/s 304 B IPC, death of a woman should be caused by burns or bodily injury or should occur otherwise than under normal circumstances within seven years of her marriage and she should be subjected to cruelty or harassment by her husband or any relative of her husband, or in connection with any demand for dowry. Since, as per the information of doctor, the main cause of death could be the blast of intestinal ulcer and no bodily injury was observed by the doctor during post- mortem examination, therefore the case in hand, does not fall within four corners of S 304 B IPC. So there is no justification or cogent ground to take a contrary view than what was taken by trial judge.

8. In ***Leave to Appl. No. 154/2015 in Govt. Appl. No 108/15,*** decided on 27.08.15, the appeal is filed against the judgment & order passed by Session Judge, Almora where accused was acquitted of the charge under S 302 IPC.

   The bench, while dismissing the appeal, observed that Khagi Ram (deceased) had left the house in the evening of 08.05.13 and his dead body got recovered on 09.05.13 while FIR was registered on 01.06.13 & there is absolutely no explanation as to why FIR lodged with undue delay. There is absolutely no other evidence on record where it can be said that accused was seen going towards the forest area along with deceased or accused was seen coming out from the forest area. It was also held that theory of singular last seen evidence is not sufficient to convict the accused. Suspicion, however strong it may be, cannot be basis of conviction.

9. In ***WP(PIL)No.133/2014, Ram Sewak Sabha vs Dist. Magistrate, Nainital & othrs,*** decided on 02.09.15, petition is filed assailing the order dt 01.09.14 passed by Collector / Dist. Magistrate Nainital seeking writ of mandamus commanding the respondents not to obstruct the animal sacrifice in light of permission granted by Medical Health Officer, Municipal Board, Nainital on 30.08.14.

   The bench observed that writ petition bearing No.73/10 &77/10 were disposed off by division bench of this court vide judgment dt19.12.11 in which the court observed that none can be permitted to sacrifice an animal for the purpose of appeasing gods, as he believes, but sacrifice is permitted only for the purpose of arranging food for the mankind and such sacrifice is to be done in registered slaughter houses/licensed places. Dist. Magistrate Nainital in impugned order dt 01.09.14 held that as per amended bye-laws of Lake development Authority, no temporary or permanent construction can be permitted within 30 metres radius of the Naini Lake therefore establishment of temporary slaughter house on the bank of Naini lake is impermissible. It was held that it is provided in Part IV of the Food Safety and Standards (Licensing and Registration) Regulations, 2011 that ' No Objection Certificate' has to be obtained from local authority before grant of licence for slaughtering any animal. In the present case, no such 'license' or 'No Objection Certificate' was even obtained. While dismissing the petition, the bench reiterated that since bye- laws of Lake Development Authority does not permit any type of construction within

30 m radius of the lake and no permission has been granted under the Regulation of Food Safety and Standards Act; therefore , mandamus sought is not available to the petitioner.

**10.** In ***Cr. Appl. No 195/2010, Krishna Singh & others vs State,*** decided on 30.09.15, the appellant challenged the order & judgment of Session Judge in which they are convicted u/s148,302/149, 307/149 & 506 IPC.

The bench after hearing the arguments opined that even PW1,PW2&PW4 are relatives of deceased, they have all given the ocular version and their testimony cannot be discarded just on the ground of minor discrepancies and incongruities. It is also germane to note that these are village witnesses belonging to hilly areas who could be examined in the court, due to the delay tactics on the part of accused persons, they all have deposed in corroborative manner the entire facts and sequence of incident that happened on such sensitive moments. The knife used in the incident was also recovered at the instance of Deewan Singh (A3); memo of such recovery is Ex Ka-6 and signature thereon has not been denied by this accused while being examined in the court u/s 313 CrPC. Blood soaked clothes & soil of the spot ratifies the presence of human blood. The bench, while dismissing the appeal, observed that there is formidable evidence available on record to hold all these appellants guilty for the offences. & there is no reason to interfere with the same. The appeal is bereft of any merit.

**Single Bench Judgments**

1. In ***Cr. W P No. 224/2015, Dr Rajesh Kumar Gupta vs State of Uttarakhand & others,*** decided on 23.07.15, the petitioner challenged the validity of Rule 66 & Rule 67A of the NDPS Act on the grounds of their being ultra vires to the Constitution of India, after a gap of almost 10 years since the commencement of trial.

As regards to the violation of A 14 of the Constitution of India, the bench observed that it is well settled position of law that State under A 14 as well as under A 19(6) of the Constitution can create a monopoly in its favour, to the exclusion of all private individuals. Secondly when it does so, it need not justify this act by way of empirical data or statistics, as it is presumed in law that this distinction is in public interest. Rule 66 of NDPS Act exempts local hospitals, charitable hospitals and such hospitals running on 'voluntary subscription' while Rule 67 A of Act exempts

use of psychotropic substances by Govt. laboratory or any 'research institution' if it is for scientific or analytical requirements. Trade practice or any kind of dealings in narcotics & psychotropic substances are rightly treated by State as 'special category' and it is in public interest that there must be a stringent legislative and administrative control on these items. Treating narcotics & pychotropic substances, as a separate class, the classification made in Rules is reasonable. It is also held that the challenge to the constitutional validity of an enactment is at the hands of an individual who is presently facing a criminal trial on serious charges of possessing psychotropic substances in violation of law.

As regards to violation of A 19 (1) (g) of the Constitution of India, the bench observed that State has a right to create a monopoly in its favour under clause 6(ii) of A 19 of Constitution of India, if it so chooses. Since Act itself totally prohibits any person inter alia from possessing any psychotropic substances, except when it is for medical or scientific purpose to the extent provided by provisions of the Act. The psychotropic substances found in possession of petitioner is restricted which is only permissible if it is as per Rules. Evidently the petitioner do not fall in any of the permissible categories under R 66(2) of NDPS Act. As Rule 67A is concerned, this provision is only for such person performing medical or scientific functions who are authorised to keep the psychotropic substance and they are one who have to keep records in Form 'S' .However once the petitioner is not authorised to keep psychotropic substances under law, there is no question of petitioner keeping records of such psychotropic substances. The bench , while dismissing the writ, finally came to the conclusion that both Rules 66 & 67 A prohibit the petitioner, a private individual, to keep or possess psychotropic substances. The restriction is in public interest & not violation to the Constitution of India.

2. In ***W P (S/S) No 1234/13 Pandev Bhatt vs State of Uttarakhand & othrs,*** decided on 23.07.15 & other writ petitions, the petitioners claim pension after their retirement from Govt. Transport Corporation known as Uttarakhand Transport Corpn. Ltd herein after referred as State Corpn. The pension benefit is being denied to them on the ground that none of the petitioners were working on a pensionable post.

The bench, while hearing the matter, observed that the status of U P Govt. Employees initially in the Corpn. was on deputation and they were later absorbed in the Corpn. None of the petitioners who were recruited in the Corpn. were entitled for pension but were entitled for

contributory pension under Contributory Pension Scheme. Only such employees were liable to pensionary benefits who were working earlier to their absorption on permanent gazetted or non-gazetted posts in U P Roadways establishment as provided in Para 1 of G.O. Dt 29.10.1960. The petitioners have not been able to show that they were working on pensionable posts. No worthwhile evidence has been placed before this court that any of the petitioners were permanent employees of the 'U P Roadways' was entitled for pension. It is also observed that petitioners have already taken posts retirements benefit including CPF, can they now turn around and say that what they have already received was not enough and they need to get pension as well. In view of this court at this stage the pensioners cannot be permitted to turn around and contend that they should be given pension. The petitioners were working on such non- pensionable posts is an admitted fact. While dismissing the writ petitions, the bench reiterated that all government posts are not pensionable posts. There are pensionable as well as non- pensionable posts. Normally a non- pensionable post has a provision of what is known as Contributory Provident Fund (CPF). All the petitioners which are presently before the court are covered under this scheme(CPF). They have been regularly contributing from the salary under this scheme and at the time of their retirement each one of them has received this amount called CPF. It is too late in the day to undo what has already been done Petitioner's case fails both on law as well as on equity.

3. In ***Cr. Misc. No. 807/2015, Manoj Singh @ Manwar Singh vs State of Uttarakhand & othrs,*** decided on 26.08.15, the facts of the case are that an FIR lodged against the applicant by Resp. No. 3 who is father of one Ms Rekha Resp. No 2 under S 363/366 of IPC and S ¾ of Protection of Children from Sexual Offences Act. It is alleged that the applicant had abducted the daughter of resp. no 3 but subsequently it is revealed that resp no 2 had actually eloped with the applicant as they both were studying in the same college and were in love. After investigation, police filed charge sheet against applicant & the court took cognizance. Hence the applicant is before court under S 482 CrPC. It is also learnt that on last occasion , Resp no. 3 present before Court & gave the statement that he does not want to press the charges against applicant. Meanwhile, applicant & resp. no.2 have also married. This fact is also admitted by the counsels of Resp. no 2 & 3. It is also observed by the bench that it is admitted fact that applicant & resp. no 2 had eloped when she was only a few months short of attaining her majority. After attaining the age of majority , the applicant & resp. no 2 have married.

The bench while disposing the matter, observed that no fruitful purpose will be solved in keeping this matter pending before this court. The present proceedings are absolutely futile as both the parties have entered into a compromise.

4. In ***W P No. 1393(MS) of 2015, Gurvinder Singh vs Dist. Magistrate U.S. Nagar,*** decided on 01.07.15, the petitioner challenged the order of Dist. Magistrate U.S. Nagar as well as order of Divisional Commr. Kumaon Nainital, whereby application moved by petitioner u/s 13 of Arms Act seeking arms licence for revolver/pistol was dismissed by Dist Magistrate on the ground that petitioner has absolutely no danger to his life, as reported by police & appeal arising therefrom was dismissed by Div. Commr. Kumaon.

The bench observed that bare perusal of S 13 of the Act would demonstrate that the Dist. Magistrate may grant firearm licence for non- prohibited firearms while S 14 would demonstrate that licencing authority shall refuse to grant licence in respect of prohibited arms & may also refuse to grant licence for non-prohibited weapon if licencing authority has reason to believe that acquiring , having in possession or carrying any arms is prohibited. The combined reading of S 13 & 14 of the Act demonstrate that ordinarily licencing authority shall not refuse to grant any licence to any person merely on the ground that such person does not own or possess sufficient property; licencing authority shall refuse to grant licence if applicant is below 21 years of age or is of sound mind or has been convicted and sentenced for the offence involving vilence and moral turpitude for the period of 05 years after the expiration of the sentence or shall not issue the arms licence in favour of the person, who has been asked to furnish bond to maintain public peace during the period of bond or when the licencing authority is of opinion that grant of licence would be against the public peace & security. Meaning thereby, if none of the grounds for refusing the licence is available, ordinarily, the licence has to be granted. In the present case , the petitioner is not found man of unsound mind or below the age of 21 years. Therefore, refusal of the non-prohibited arm licence to the petitioner on the ground that there is no material to suggest that hu has any apprehension of life seems to be beyond the scope of S 13 &14 of the Act. Consequently, the petition is allowed & impugned order quashed.

5 In ***W P No.1195(MS) of 2015, Sushila & othrs vs Dist. Judge & othrs along with two other petitions,*** decided on 13.07.15, the mother of present petitioners moved three applications u/s 21 of UP Act No13 of 1972 seeking eviction of tenants from three different tenanted portions on the

ground of bonafide need. The prescribed authority observed that landlord is in possession of 09 rooms so landlord did not require tenanted portion for bonafide need. Since the building is not in dilapidated condition therefore does not demolition and reconstruction. Appeal preferred against that order which was dismissed by Dist. Judge.

The bench observed that if cl(a) & (b) of S 21(1) read together the only conclusion would be that landlord may seek release of the building u/s 21(1)(a) on the ground that tenanted building is bonafide required either in its existing form or after demolition and new construction for occupation by himself or any member of his family while release of building u/s 21(1)(b) can be sought by the landlord on the ground that building is in dilapidated condition that requires demolition and new construction. In the present case, the main case of petitioner was under S 21(1) (a) of Act saying her family is consisting of 13 members and she will demolish the building in existing form and shall reconstuct it to fulfill her present existing need. The bench, while allowing the petition, held that in the present case, both the courts below have failed to observe as to how many family members of the family of the landlord are residing at Mussorie &as to how all the family members can be accomodated in the space available with the landlords. Both the courts below did not consider every adult member may require separate bed room and how many rooms are required by petitioner. So the matter be remanded to Appellate Court to decide the appeal afresh with the direction that Appellate Court shall hold the spot inspection personally to find out as to how many vacant rooms are in possession of landlord.

6 In ***W P No. 504/2013(M/S), M/S Dabur India Ltd vs Raspinder Singh,*** decided on 23.07.15, the petitioner challenged the judgment of Labour Court, Kashipur whereby dismissal of the respondent/workman was held to be illegal and it is directed that respondent be reinstated along with entire back wages. It is also learnt that respondent /workman was placed under suspension on 26.09.15 for the alleged theft and respondent /workman confessed his guilt in his own handwriting.

The bench observed that there is no dispute that workman himself in his own handwriting has confessed his guilt and tendered his apology with the undertaking that in future, he would not repeat the same offence. It is settled position of law that admission/ confession is the best evidence against the person making admission / confession and it is for the person, who has made the confession to explain as to why he has made the admission/ confession and as to

whether admission was made the by his under duress & coercion. In the present case, respondent/ workman has not produced any witness to say that he has made confession under duress/confession. Bald allegation that confession was made by him under duress or coercion is not sufficient to ignore the confession made by the respondent/workman. While allowing the petition, the bench held that judgment passed by labour court does not sustain in the eye of law. So impugned judgment & award is hereby quashed.

7 In ***W P No 1857(MS) of 2015, Suraj Sharma & others vs State of Uttarakhand,*** decided on 29.07.15, the petition is preferred stating that 43 acres of land of village Raiwala, Dehradun belonging to Mr B. B. Sharma as declared surplus land, should be alloted to petitioner u/s 27 of U P Imposition of ceiling on Land Holdings Act, 1960.

The bench observed that as per sub section (1) of S 27 of the Act, surplus land has to be handed over to Gram Sabha fore the public community purposes. If Gram Sabha is having land for public community purposes measuring 15 acres, the as per Sub section (2) of S27 of Act, surplus land has to be used for public purposes. If any land remains, after fulfilling the objects of sub section (1) & (2) of S27 of Act then such land may be available for allotment u/s 198 of U P Z A L R Act. As in the present petition there nowhere stated that Gram Sabha of village Raiwala is having 15 acres of land for public community purposes as required u/s 27 (1) of Act nor it is stated that surplus land , in question, is not required for public purposes. It is also not mentioned that whether application were invited u/s 198 of UPZALR Act for allotment of land or petitioner have even applied u/s 198 of UPZALR Act. It is further held that writ of mandamus can be issued only to enforce legal rights already existing in favour of the petitioner or commanding the authorities to do something, which they are supposed to do under legal obligations. Since petitioners failed to demonstrate their legal rights to get the land alloted so no mandamus seems to justified in favour of petitioners. Consequently, the writ petition fails & dismissed *in limine.*

8 In ***W P No 366/2015, Graphic Era Educational Society vs State of Uttarakhand & ors,*** decided on 31.08.15, the petitioner challenged the G. O. No 103(1)XXXVII(9)/2014 / Stamp /31/2009 dt 06.06.14 issued by Resp. No 1 whereby the petitioner was directed to show cause as to why proceeding u/s 47-A of the Stamp Act should not be initiated against petitioner & as to why petitioner should not be asked to pay the deficit stamp duty along with penalty.

The bench observed that S 154(4)(3)(a) of UP ZALR Act would reveal that a person, society or corporate body may be permitted to purchase agricultural land for the purpose like medical or health and purposes other than the agriculture and horticulture. In the present case, petitioner was permitted to purchase the agricultural land with the stipulation that after purchase of the agricultural land, same shall be used for medical purposes. It means, on the date of purchase, nature of the land was agricultural. While disposing the petition, the bench held that since market value and nature of the property purchased on the date of execution of sale deed has to be taken into consideration for the purpose of assessing the market value of the property and GOs referred in the impugned GO dt 06.06.14 also suggest in the same line, therefore impugned GO does not stand in the scrutiny of law.

9. In ***W P No 2226(MS) of 2015, Ambrish Kumar Agarwal vs Thakur Dass, decided on 08.09.15,*** the petitioner/defendent /tenant challenged the judgment & order passed by JSCC/Cl. Judge(SD) Haldwani in JSCC Suit whereby the application moved by defdt/tenant/petitioner for rejecting the plaint was rejected. So the real question involve is that whether plaint should be rrejected under O VII R11(e) CPC because Plaintiff has failed to carry the amendment in the duplicate copy of the plaint.

The bench observed that if O VII R 11(e) r. w. O4 R 1 & OVI R18 CPC, than the only interpretation would be that if plaint is not filed in duplicate and Plaintiff has failed to file duplicate copy of the plaint within such extended time, as the court directs, court may reject the plaint for non- compliance of OIV R1CPC since filing of plaint without duplicate copy shall not be deemed to be duly instituted. In the event of allowing amendment in the plaint, amendment has to be carried out in the original copy of the plaint as well as in the duplicate copy of plaint within such time as stipulated by the order as envisaged in O VI R 18. If the amendment is not carried out in the duplicate copy of the plaint, it will not be fatal to the plaint. This defect is curable and it can be cured within such time, as fixed by court by exercising powers under OVI R 18 CPC. While dismissing the petition, the bench direct that trial court shall grant reasonable time to the Plaintiff to carry out the amendment in duplicate copy of the plaint as required under O VI R18 CPC.

10. In ***W P (S/S) No. 1031/15, Mahipal Singh vs State of Uttarakhand & ors and 29 other petitions,*** decided on 18.08.15, the petitioners were initially appointed as Asst. Teachers in

Junior Basic Schools in Dist. Bageshwar. It was realised by Dist. Education Officer (Basic) that none of the teachers inclined the service in the remote areas so an advt. Published on 13.08.11 that teachers who accept to render their services in remote areas will get early / outturn promotion. All these petitioners responded & they are given out of turn promotion and were sent to schools in remote areas. The above step of Dist. Edn. Officer annoyed a no. of teachers who though senior in list but had been quite a junior position as against petitioners & their resentment was led to file writ petition in the court. The bench of High Court disposed off the said petition asking writ petitioners to remain present before Dist. Edn. Officer(Basic) and directed the officer to remain present to hear their grievance. Thereafter, the officer cancilled the promotion order of all these petitioners and ordered recovery of pay and other allowances which they received against promotional post. Feeling aggrieved, they all have approached court in way of above petition.

The bench while hearing the petition , observed that the promotional exercise can be initiated subject to Rules of 1981, as adopted by the State, and the seniority of teachers is to be determined strictly in accordance with Rules of 2002 and no other method can be introduced by any authority, howsoever high he may be dehoring such rules. The advt. dt 13.08.11 was contrary to rules applicable for promotions. So cancellation of all these promotions is quite valid. While disposing the petition; the bench directed the Dist. Edn. Officer (Basic) to make seniority list afresh strictly in accordance with the Rules of 2002 and then he is at liberty to initiate the proceedings of promotion as well as transfer in order to ensure that imparting education may not suffer in the remote areas. Any other list vis-a-vis to the seniority of such teachers prepared at the whims of such officer is hereby quashed.

11. In ***W P (M/S) No. 689/15, Smt Rama Devi & othrs vs Sri Mahendra Pal & othrs,*** decided on 15.09.15, by means of this petition ,the petitioner challenged the impugned order dt. 17.05.10 passed by Asst. Collector, Haldwani in Revenue Suit as well as order passed by Addl. Commr. Kumaoun Divn. in revision. The dispute between the parties pertains to an agricultural land of around more than 100 bighas situated in village Bhawan Singh Nawad, Lalkuan, Nainital.

The bench , while hearing the matter, observed that in the question of family settlement, there is celebrated judgment of Hon'ble Apex Court rendered in *Kale & othrs vs Director of*

*Consolidation & othrs 1976(2) Revenue Decisions 69.* It is further held that following propositions must be essential for a family settlement –

(i) the family settlement must be bonafide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between various members of the family.

(ii) the said settlement must be voluntary and should not be induced by fraud, coercion or undue influence

(iii) such family arrangement may be even oral in which case no registration is necessary

(iv) it is well settled that registration would be necessary only if the terms of family arrangement are reduced into writing. , but distinction should be made between a document containing the terms or recitals of family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made. In such case memorandum itself does not fall with in S 17(2) of Registration Act & therefore not compulsorily registrable.

(v) the members who may be parties to family arrangement must have antecedent title, claim or interest even a possible claim in the property, which is acknowledged by the parties to the settlement.

A family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same.

The bench reiterated that the existence of family settlement is further established by the conduct of the parties therein. Finally, it is held that the court has no hesitation to hold in favour of the existence of a family settlement among the parties which is persisting uptill the day. The petition hereby allowed *ex consequenti* with the result that orders of Asst. Collector, Haldwani & order of Addl. Commr. Kumoan Divn. are hereby set aside.

**12.** In ***W P No. 372/2015(S/S) , Rajesh Kumar Yadav vs State of Uttarakhand & ors,*** decided on 31.08.15, the petitioner assailed the order of his termination dt 15.01.15 passed on the enquiry report and sought issuance of writ in nature of certiorari quashing both of them. He also prayed for writ of mandamus commanding respondent to reinstate him with all consequential benefits on

his post of Asst. Teacher L.T Grade. The petitioner selected on the basis of quality marks secured by him & after that his testimonials was verified by the Pricipal of such college. It is alleged against petitioner that he had attained job through fabricated testimonials & to that effect, an enquiry was conducted. As regards to fabrication & forging testimonials a criminal case has been registered against petitioner and Station House Officer was sent to Lucknow for verification of these testimonials, who submitted a final report finding no substance in the allegations.

The bench while considering all the facts & circumstances of ther case, opined that as far as the legality of submission of the charge sheet as against the verification of testimonials done earlier at the level of Dty. Inspector General. Inspector General & investigating Officer himself, the career of the petitioner cannot be kept in abeyance for eternity. The petition is allowed and the termination order as well as enquiry report are hereby quashed. Resp. No 3 Addl. Director of Edn. Kumaon , Nainital is enjoined to permit the petitioner to take charge of post of Asst. Teacher L. T. Grade as quickly as possible but not later than 02 weeks from the date a certified copy of order is received. Since petitioner remained out of service, so no pecuniary benefits be conferred on him for that period.

13. In ***Second Appl. No 77/2015, decided on 07.07.15, Mamraj Singh vs General Manager (P&A), BHEL, Ranipur & othrs,*** the appellant filed a suit against defdts for realisation of sum of Rs 28948.79/- in the court of Civil Judge(S.D), Haridwar which was decreed. Thereafter Appellate Court set aside the order & hold that among other things the suit was barred by limitation.. The present appeal is against said impugned order. The issue before the bench is whether A 70 or A 24 of Limitation Act is applicable or not?

The bench, while dismissing the appeal at the stage of admission itself, observed that the facts of present case revealed that it was not an instance of deposition or pawn. Even if the word 'movable property' includes money for purpose of its A 70, the same was neither deposited nor pawned & therefore A 70 would not applicable. Limitation would begin to run from the date the money was received as per A 24 of the Schedule.

14. In ***Cr. Misc. Appln .No. 680/2011, Girish Chandra Tripathi vs State of Uttarakhand & othrs,*** decided on 28.07.15, applicant by means of S 482 CrPC seeks to quash the impugned charge sheet & cognizance order passed by ACJM Roorkee, Haridwar.

The bench relying on the guidelines given by Hon'ble Supreme Court in *Amit Kapoor vs Ramesh Chandra & anthr, (2013)1 SCC(Cri.) 986*, held that the factual controversy need not be gone into by the court while exercising jurisdiction u/s 482 CrPC. Whether such offence was committed by applicant or not, has to be examined by the trial court. It is also observed that inherent jurisdiction under S482 CrPC has to be exercised sparingly, carefully & with caution & only when such exercise is justified by the tests specifically laid in the section itself. While dismissing the application, the Court is if view that no interference is called for in the proceedings of court below in exercise of its inherent jurisdiction.

15. In ***Cr Appl. No 284/2003, Balam Singh vs State of Uttaranchal*** , decided on 11.08.15, appellant filed the appeal against the conviction u/s 306 & 498-A IPC.

The bench, while allowing the appeal,observed that although, the allegation of cruelty against the victim has been alleged, but does not inspire confidence on the basis of above evidence. There is no iota of evidence that the husband or his relative subjected the victim to cruelty .It can safely be concluded that the prosecution has not been able to prove the charge u/ s 306 & 498-A of IPC beyond a shadow of reasonable doubt.

16. In ***Second Appl. No 18/2015, Tehri Hydro Development Corpn.Ltd Tehri through its Manager vs M/S Jai Prakash Industries , Ltd,*** decided on 25.08.15, there is delay of 1917 days in filing the restoration application. An application was filed for condoning of delay in filing the restoration application.

The bench, while allowing the appeal, observed that the expression 'sufficient cause' has not been defined. It means a cause which is beyond control of the party invoking the aid of the Act. The test, whether or not a case is sufficient, is to see whether it is a bonafide cause, in as much as, nothing shall be taken to be done bonafide or in good faith which is not done with due care and attention. Subject to the above test, the words 'sufficient cause' should receive liberal construction so as to advance substantial justice. When no negligence nor inaction nor want of bonafide is imputable to a party for the delay in filing a remedy, it would constitute a sufficient cause. A pedantic approach should not be there. It should be applied pragmatically. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in justice being denied to him because of non-deliberate delay.

## Major Events & Initiatives

1. **Training Programme on Ubuntu- Linux Operating System:** A two-day training programme on Ubuntu Linux Operating System & CIS Software was held in the library hall of High Court from 08.08.15 to 09.08.15. Master Trainers as well as officers of Nainital Judgeship & officers posted at High Court of Uttarakhand & State Legal Service Authority(SLSA) participated in it.

2. **Independence Day Celebration**: On 15th August, 2015, 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, Senior Judge of High Court. Hon'ble Mr Justice S. Dhulia, Hon'ble Mr Justice S. K. Gupta & Hon'ble Mr Justice U.C. Dhyani graced the occasion. Advocates, Officers & officials of Registry were also present .

3. **C.M's visit to High Court of Uttarakhand:** On 18.09.15, Hon'ble the Chief Minister of Uttarakhand Mr Harish Rawat visited the High Court of Uttarakhand & met Hon'ble the Chief Justice & Hon'ble Judges of High Court. An official lunch was hosted by the High Court in the honour of Hon'ble Chief Minister. After that , a level- two meeting was held between Hon'ble the Chief Minister & Hon'ble the Chief Justice regarding the infrastructure & manpower in High Court & subordinate Courts of Uttarakhand State. "The Chief Minister also laid the foundation stone of New Lawyers" Chambers at Glenthorn in High Court premises.

# UTTARAKHAND JUDICIAL AND LEGAL ACADEMY, BHOWALI, NAINITAL

## Training Programmes held in the month of July - September, 2015:-

| S. No. | Name of Training Programmes/ Workshops | Duration |
|---|---|---|
| 1 | Workshop on emerging trends in cyber law and Crimes for CJM's/Judicial Magistrates (for two days) (2nd phase) | 03 & 04 July, 2015 (Friday & Saturday) |
| 2 | Training Programme for Direct/Promotee Judicial Offficers HJS from Uttarakhand Judicial Service | 15 July, 2015 to 15 October, 2015 **(on going)** |

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**WORKSHOP ON 'EMERGING TRENDS IN CYBER LAW AND CRIMES' FOR CHIEFJUDICIAL MAGISTRATES/ ADDL. CHIEF JUDICIAL MAGISTRATES/ JUDICIAL MAGISTRATES**

**On 03 & 04 July, 2015**

**FOUNDATION TRAINING PROGRAMME FOR HIGHER JUDICIAL SERVICE OFFICERS (PROMOTED IN THE CADRE OF HJS 2014 - BATCH FROM UTTARAKHAND JUDICIAL SERVICE)**

**Duration : 01 Month**
**(From 15.09.2015 to 15.10.2015)**

Himalaya