



सत्यमेव जयते

**UTTARAKHAND COURT NEWS**  
(A Quarterly Court Magazine)

**Vol.-X Issue No.-III (July to September, 2019)**



**EDITORIAL BOARD**

Hon'ble Mr. Justice Sudhanshu Dhulia

Hon'ble Mr. Justice Alok Singh

Hon'ble Mr. Justice Alok Kumar Verma

**COMPILED BY**

H.S. Bonal, Registrar General, High Court of Uttarakhand  
A Quarterly Newsletter Published by High Court of Uttarakhand, Nainital

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## **UTTARAKHAND HIGH COURT**

### **LIST OF JUDGES (As on 30 September, 2019)**

<b>Sl. No.</b>	<b>Name of the Hon'ble Judge</b>	<b>Date of Appointment</b>
<b>1.</b>	<b>Hon'ble Mr. Justice Ramesh Ranganathan (Chief Justice)</b>	<b>02.11.2018</b>
<b>2.</b>	<b>Hon'ble Mr. Justice Sudhanshu Dhulia</b>	<b>01.11.2008</b>
<b>3.</b>	<b>Hon'ble Mr. Justice Alok Singh</b>	<b>26.02.2013</b>
<b>4.</b>	<b>Hon'ble Mr. Justice Lok Pal Singh</b>	<b>19.05.2017</b>
<b>5.</b>	<b>Hon'ble Mr. Justice Manoj Kumar Tiwari</b>	<b>19.05.2017</b>
<b>6.</b>	<b>Hon'ble Mr. Justice Sharad Kumar Sharma</b>	<b>19.05.2017</b>
<b>7.</b>	<b>Hon'ble Mr. Justice Narayan Singh Dhanik</b>	<b>03.12.2018</b>
<b>8.</b>	<b>Hon'ble Mr. Justice Ramesh Chandra Khulbe</b>	<b>03.12.2018</b>
<b>9.</b>	<b>Hon'ble Mr. Justice Ravindra Maithani</b>	<b>03.12.2018</b>
<b>10.</b>	<b>Hon'ble Mr. Justice Alok Kumar Verma</b>	<b>27.05.2019</b>

\* \* \* \* \*

## Transfers of Judicial Officers

Sl. No.	Name & Designation of the Officer	Place of Transfer	Date of Order
1.	Smt. Niharika Mittal Gupta Civil Judge (Sr. Div.)/ Secretary District Legal Service Authority Nainital	Additional Chief Judicial Magistrate, Nainital.	12.07.2019
2.	Sri Kuldeep Narayan, Civil Judge (Jr. Div.), Dhumakot, District Pauri Garhwal.	Civil Judge (Jr. Div.), Lansdowne, District Pauri Garhwal. He is given additional charge of the Court of Civil Judge (Jr. Div.), Dhumakot, District Pauri Garhwal with a direction to hold the camp Court at Dhumakot for two days in a month.	25.09.2019

\* \* \* \* \*

## Circulars



From,

Registrar General,  
High Court of Uttarakhand,  
Nainital.

To,

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

C.L.No. 06 UHC/Admin.A-1/2012

Date: July 27 2019.

**Subject: Regarding submission of Annual Property Statement.**

Sir,

In continuation of earlier C.L.No.16 UHC/Admin.A/2012, dated December 6<sup>th</sup> 2012 on the subject noted above, I am directed to inform that (i) All the officers will enclose copy of their annual salary statement alongwith their annual property statement and (ii) In column no.8 of statement of movable properties, the officer will show income from salary and income from other sources separately.

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



From,  
Hira Singh Bonal  
Registrar General,  
High Court of Uttarakhand,  
Nainital.

To,  
All the District Judges/  
Principal Judge/Judges, Family Courts,  
State Judiciary, Uttarakhand.

C.L.No.०४ UHC/XVII-3/Ins./2019,      Dated: September ०5, 2019

**Subject: Submission of monthly report regarding the assessment of judgments of the Judicial Officers.**

Sir/Madam,

In continuation of C.L. No. 08/UHC/D.R.(I)/2011 dated: July 20/21, 2011 and C.L. No. 17/UHC/XVII-31/D.R.(I)/2010 dated : May 02, 2014 and in partial modification of C.L. No.14/UHC/XVII-31/D.R.(I)/2010, dated: November 24, 2010, on the subject noted above, I have been directed to request you that from now, instead of sending hard copies of judgments, only the case no., name of the party, date of the judgment and the date, when the judgment is uploaded on the official website of the District Court may be mentioned in the letters, for scrutiny by the Hon'ble Judgment Committee. In no case, hard copy of the judgment be sent to the Hon'ble Court.



You are, further, requested to ensure that all the judgments have been uploaded on the website and are available on the website for perusal.

Further, Principal Judge/Judges, Family Courts are requested to submit soft copies of judgments through e-mail to the High Court.

You are, therefore, informed accordingly.



From,

Hira Singh Bonal  
Registrar General,  
High Court of Uttarakhand,  
Nainital.

To,

All the District Judges/  
Principal Judge/Judges, Family Courts,  
State Judiciary, Uttarakhand.

C.L No. ०७ / XIV-30/Admn. (A)/2019

Dated: September ०५, 2019

**Sub: Prior submission of application to avail the proposed leave.**

Sir/Madam,

In continuation and in partial modification of C.L. No. 03/XIV-2/Admn.(A)/2006 dated : May 16, 2006, I have been directed to request you to ensure that applications by Judicial Officers, for sanctioning of Earned Leave etc., should be submitted at least 20 days prior to the date of commencement of the proposed leave, except in emergency.

You are, therefore, requested that the above direction of the Hon'ble Court be brought to the notice of all concerned, for strict compliance.



## **Notifications**

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

#### **NOTIFICATION**

[Refer to Rule 7(1) of 'Uttarakhand High Court (Designation of Senior Advocates) Rules, 2018']

**No. 194/UHC/Admin. A/2019**

**Dated: July 12, 2019.**

By virtue of the power vesting in the High Court of Uttarakhand under Section 16 of the Advocates Act, 1961 and based upon the decision of Hon'ble High Court of Uttarakhand taken in its meeting held on 11.07.2019, following Advocates are designated as Senior Advocates with immediate effect:

1. Sri K.P. Upadhyaya.
2. Sri Rakesh Thapliyal.
3. Sri M.S. Tyagi.
4. Sri D.S. Patni.
5. Sri G.S. Sandhu.
6. Sri S.K. Posti.

**By order of the Court**

## INSTITUTION, DISPOSAL AND PENDENCY OF CASES

### ➤ HIGH COURT OF UTTARAKHAND (From 01.07.2019 to 30.09.2019)

						<b>Pendency (As on 01.07.2019)</b>		
						<b>Civil Cases</b>	<b>Criminal Cases</b>	<b>Total Pendency</b>
						<b>21367</b>	<b>13016</b>	<b>34383</b>
<b>Institution ( 01.07.2019 to 30.09.2019)</b>			<b>Disposal ( 01.07.2019 to 30.09.2019)</b>			<b>Pendency (As on 30.09.2019)</b>		
<b>Civil Cases</b>	<b>Criminal Cases</b>	<b>Total Institution</b>	<b>Civil Cases</b>	<b>Criminal Cases</b>	<b>Total Disposal</b>	<b>Civil Cases</b>	<b>Criminal Cases</b>	<b>Total Pendency at the end of 30.09.19</b>
<b>3583</b>	<b>3464</b>	<b>7047</b>	<b>3310</b>	<b>4062</b>	<b>7372</b>	<b>21640</b>	<b>12418</b>	<b>34058</b>

## District Courts

(From 01.07.2019 to 30.09.2019)

SL. No	Name of the District	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.19
		Opening Balance as on 01.07.19	Institution from 01.07.19 to 30.09.19	Disposal from 01.07.19 to 30.09.19	Pendency at the end of 30.09.2019	Opening Balance as on 01.07.19	Institution from 01.07.19 to 30.09.19	Disposal from 01.07.19 to 30.09.19	Pendency at the end of 30.09.19	
1.	Almora	348	191	222	317	980	621	838	763	1080
2.	Bageshwar	131	54	69	116	300	681	689	292	408
3.	Chamoli	311	91	93	309	837	428	513	752	1061
4.	Champawat	188	67	72	183	1292	704	1180	816	999
5.	Dehradun	12021	3227	4001	11247	67318	24930	34305	57943	69190
6.	Haridwar	10317	2348	2771	9894	52201	17033	25044	44190	54084
7.	Nainital	2244	485	527	2202	15101	7418	9707	12812	15014
8.	Pauri Garhwal	1031	278	354	955	4236	1337	2815	2758	3713
9.	Pithoragarh	494	128	142	480	1157	1192	1258	1091	1571
10.	Rudraprayag	101	60	62	99	718	247	612	353	452
11.	Tehri Garhwal	331	82	106	307	2008	1037	1555	1490	1797
12.	Udham Singh Nagar	5803	1288	1973	5118	36749	6688	11218	32219	37337
13.	Uttarkashi	515	140	127	528	1121	905	1023	1003	1531
	<b>Total</b>	<b>33835</b>	<b>8439</b>	<b>10519</b>	<b>31755</b>	<b>184018</b>	<b>63221</b>	<b>90757</b>	<b>156482</b>	<b>188237</b>

## Family Courts

(From 01.07.2019 to 30.09.2019)

SL. No	Name of the Family Court	Civil Cases				Criminal Cases				Total Pendency at the end of 30.09.19
		Opening Balance as on 01.07.19	Institution from 01.07.19 to 30.09.19	Disposal from 01.07.19 to 30.09.19	Pendency at the end of 30.09.19	Opening Balance as on 01.07.19	Institution from 01.07.19 to 30.09.19	Disposal from 01.07.19 to 30.09.19	Pendency at the end of 30.09.19	
1.	Almora	66	41	38	69	55	42	23	74	143
2.	Dehradun	1737	467	508	1696	999	237	321	915	2611
3.	Rishikesh	266	75	77	264	214	53	50	217	481
4.	Vikasnagar	118	72	58	132	191	66	52	205	337
5.	Nainital	182	70	53	199	290	54	52	292	491
6.	Haldwani	420	139	89	470	743	130	132	741	1211
7.	Haridwar	759	193	280	672	734	173	189	718	1390
8.	Roorkee	601	229	174	656	698	188	133	753	1409
9.	Laksar	85	97	96	86	101	91	77	115	201
10.	Kotdwar	289	95	103	281	342	79	76	345	626
11.	Pauri Garhwal	90	47	32	105	119	31	56	94	199
12.	Tehri Garhwal	77	31	32	76	42	17	23	36	112
13.	U.S.Nagar	374	172	166	380	540	142	152	530	910
14.	Kashipur	438	147	129	456	454	93	79	468	924
15.	Khatima	173	88	108	153	176	48	29	195	348
	<b>Total</b>	<b>5675</b>	<b>1963</b>	<b>1943</b>	<b>5695</b>	<b>5698</b>	<b>1444</b>	<b>1444</b>	<b>5698</b>	<b>11393</b>

## **Division Bench Judgments**

1. ***In WP (S/B) No. 270 of 2019, Somprakash vs. State of Uttarakhand and others***, decided on 02.07.2019, the Bench observed that as the presumption is always in favour of the constitutionality of an enactment or a statutory Rule, the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. The burden of proving all the facts, which are requisite for the constitutional invalidity, is thus upon the person who challenges the constitutionality. It is only when there is a clear violation of a constitutional provision beyond reasonable doubt, that the court should declare a statutory provision, be it plenary or subordinate, to be unconstitutional.
2. ***In CRLA No.340 of 2014, Smt. Sarwari Begum and another vs. State of Uttarakhand along with connected matters***, decided on 17.07.2019, the Court observed that even if there is a relationship, it is not a rule of law that evidence of a relative should be discarded, terming it as an interested witness. The truthfulness of the witness has to be evaluated.
3. ***In GA No. 18 of 2018, State of Uttarakhand vs. Visarat and 10 others***, decided on 24.07.2019, the Bench observed that the speedy trial is a part of right under Article 21 of the Constitution of India. It is a part of reasonable, fair and just procedure guaranteed under Article 21. Timely delivery of justice is a part of human rights. The trial should be judicious, fair, transparent and expeditious to ensure to achieve the goal of justice. Therefore, a judgment of acquittal cannot be interfered with unless the assessment of evidence and the conclusion drawn by the trial court are unreasonable, erroneous or perverse and for that purpose the appellate court must examine the reasons on which the order of acquittal was based but without the records, this Court cannot appreciate the evidences.

4. ***In Arbitration Application No. 19 of 2016, M/s Kuldip Singh Sethi and Gagan Goyal vs. Ecole Globale International Girls School along with one connected case***, decided on 30.07.2019, the Bench observed that the subject clause could not be relied upon for seeking a reference to an arbitrator of any dispute arising under the contract. An arbitration agreement was not required to be in any particular form; what was required to be ascertained was whether the parties had agreed that, if any dispute arises between them in respect of the subject-matter of the contract, such dispute shall then be referred to arbitration; such an agreement would spell out an arbitration agreement. One part of the clause cannot be read out of context, ignoring the other part, unless the other part is impossible of performance. An arbitration agreement must contain the broad consensus between the parties that the disputes and differences should be referred to a domestic tribunal. The said domestic tribunal must be an impartial one. A person cannot be a judge of his own cause as justice should not only be done but must be manifestly seen to be done.
5. ***In WPCRL No. 1245 of 2013, Sri Ganga Mandir and others vs. State of Uttarakhand and others***, decided on 05.08.2019, the Bench observed that citizens are entitled to seek directions under Article 226 whereunder the High Court has ample jurisdiction, to issue a writ or direction to the authorities, including the police within the State, to enforce the order of Courts and maintain the rule of law. Police officers are duty bound to render assistance in implementation of the orders of Court, and can be directed to discharge their legal duty of ensuring compliance with court orders.
6. ***In SPA No. 630 of 2019, State of Uttarakhand and another vs. Atal Bihari***, decided on 07.08.2019, the Bench observed that it is well settled that “sufficient cause” has to be construed liberally so as to advance the cause of justice and not the cause of technicalities unless the applicants are guilty of gross negligence or inaction in prosecuting the matter. The true guide is whether the applicants have acted with due diligence. The expression “sufficient cause” cannot be interpreted in an iron frame. The expression “sufficient cause”

is sufficiently elastic for the purpose of a meaningful interpretation. What constitute “sufficient cause” cannot be laid down by hard and fast rules.

7. ***In CRLA No.65 of 2019, Vipin Kumar Panwar @ Bablu vs. State along with two connected matters***, decided on 16.8.2019, the Court observed that in a case based on circumstantial evidence. The motive definitely plays very important role in such cases. The chain of circumstances should be connected in such a manner that it should leave no doubt and the only irresistible conclusion, which may be drawn should indicate that it is the appellants and the appellants alone, who have committed the crime.
  
8. ***In SPA No. 983 of 2018, Pankaj Kumar vs. State of Uttarakhand and others along with nine connected matters***, decided on 20.08.2019, the Bench observed that the vacancies which fell vacant prior to the amendment of the Rules, would be governed by the original rules and not the amended Rules; and vacancies, that arose subsequent to the amendment of the Rules, are required to be filled in accordance with the law existing as on the date when the vacancies arose i.e. the amended Rules. The vacancies, which occurred prior to the amended Rules, would be governed by the earlier Rules and not the amended Rules, would not apply (i) to cases of direct recruitment to the advertised posts. (ii) where the old posts have ceased to exist, and there remains no occasion for proceeding with the recruitment to such non-existing posts pursuant to the earlier advertisement (iii) in cases where there is no statutory duty cast upon the respondents to either prepare a year-wise panel of the eligible candidates or the selected candidates for promotion and (iv) where the Rules are itself repealed. There is no vested right to appointment but only a right to be considered for appointment in accordance with the Rules which prevail on the date on which the consideration takes place. There is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of the law which existed on the date when they arose. That a candidate has a right to be considered in accordance with the terms and conditions set out in the advertisement, as his right crystalises on the date of

publication of the advertisement, and where the advertisement, inviting applications for direct recruitment, expressly states that the selection shall be made in accordance with the existing Rules, selection of candidates, in such a case, must be made in accordance with the then existing Rules. It is also true that merely by submitting an application for a post, pursuant to an advertisement, the applicant does not acquire any vested right for selection. But if he is eligible and is otherwise qualified in accordance with the relevant Rules, and the terms contained in the advertisement, he does acquire a vested right to be considered for selection in accordance with the Rules as they existed on the date of the advertisement. He cannot be deprived of that limited right, on the amendment of Rules, during the pendency of selection unless the amended Rules are retrospective in nature. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for appointment. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. The Government had merely amended and had applied the amended Rules without taking a conscious decision not to fill up the existing vacancies pending amendment of the Rules. Where the Government has taken a valid and conscious decision not to fill the vacancies under the old Rules, keeping in view the facts and circumstances of the case, the principle, that the vacancy prior to the new Rules would be governed by the old Rules, has no application.

It is further observed that it must be borne in mind that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect.

9. *In WP (S/B) No. 392 of 2017, Sudhir Kumar vs. State of Uttarakhand and others*, decided on 02.09.2019, the Bench observed that an application for review would lie, inter alia, when the order suffers from an error apparent on



the face of the record, and permitting the same to continue would lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed. The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that, once a judgment is signed or pronounced, it should not be altered. Review is not an appeal in disguise. An error, which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court exercising its power of review. In the exercise of the review jurisdiction, it is not permissible for an erroneous decision to be "reheard and corrected". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter alone can be corrected by the exercise of the review jurisdiction. There can be no review unless the Court is satisfied that there exists a material error manifest on the face of the earlier order resulting in miscarriage of justice. An error, which necessitates review, should be something more than a mere error and it must be one which must be manifest on the face of the record. If the error is so apparent that, without further investigation or enquiry, only one conclusion can be drawn in favour of the petitioner, a review will lie. If the issue can be decided just by a perusal of the records, and if it is manifest, it can be set right by reviewing the order. If the judgment/order is vitiated by an apparent error or it is a palpable wrong, and if the error is self evident, review is permissible.

- 10. *In CRLA No. 77 of 2017, Akhil Kumar Aggarwal vs. State of Uttarakhand along with two connected cases***, decided on 02.09.2019, the Bench observed that the Criminal conspiracy is an independent offence. Conspiracy has to be treated as a continuing offence. Any person associating himself with the conspirator shall be held liable as co-conspirator accused. Every error or omission in compliance of the provision of Section 313 the Code of Criminal Procedure, does not necessarily vitiate trial. It would not be enough for the appellants to show that they had not been questioned on a particular

circumstance. They must show that such non- examination has actually and materially prejudiced them and has resulted in the failure of justice.

It is further observed that it is well settled that even if the investigation is improper or defective the rest of the evidence must be scrutinized independently of the impact of it.

11. *In WPPIL No. 71 of 2019, Kuldeep Agarwal vs. State of Uttarakhand and others*, decided on 03.09.2019, the Bench observed that the said resolution, passed by the Kotdwar Bar Association, is against all norms of the Constitution, the statute and professional ethics. It is against the great traditions of the Bar which has always stood up for defending persons accused of a crime. Such a resolution of the Bar Association is null and void, and right-minded lawyers should ignore and defy such a resolution if they want democracy and the rule of law to be upheld in this Country. It is the duty of a lawyer to defend, no matter what the consequences. The anguish of the members of the Kotdwar Bar Association notwithstanding, it is not for them to pronounce upon the guilt or otherwise of the accused even before investigation is completed, a charge-sheet is filed, and the accused is tried in accordance with law. It is only the Criminal Court of Competent jurisdiction which can decide upon the guilt or otherwise of the accused. Whatever the belief of the members of the Kotdwar Bar Association may be, the fundamental postulates of criminal jurisprudence, and the penal laws in India, are primarily based upon certain procedural values which are the right to a fair trial and the presumption of innocence. A person is presumed to be innocent till proven guilty. Presumption of innocence is a human right, as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. In a criminal trial innocence of an accused is presumed, unless there is a statutory presumption against him. The Kotdwar Bar Association was, therefore, not justified in pre-determining the guilt of the accused even before investigation is completed, and in passing such a resolution based on this premise.

12. ***In WP (S/B) No. 558 of 2015, Hukum Singh Negi vs. State of Uttarakhand and others***, decided on 12.09.2019, the Bench observed that Article 14 of the Constitution of India would be applicable only when a discrimination is made out between the persons who are similarly situated and not otherwise.
  
13. ***In A.O. No. 378 of 2019, M/s Dalip Singh Adhikari vs. State and another***, decided on 23.09.2019, the Bench observed that the Arbitration Act is self contained Code. It is special statute. In case of any inconsistency, effect shall be given to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, 2015. It is further observed that in the instant case an appeal against the order passed under Rule 17 of the Arbitration Act has already been challenged under Section 37(2), before a proper forum. The impugned order has been passed by the Commercial Court, under Section 37 (2) of the Arbitration Act. Section 37 sub-section 3 of the Arbitration Act bars second appeal against an order passed under this section. Therefore, the instant appeal is not maintainable.

### **Single Bench Judgments**

1. ***In WP (M/S) No. 2171 of 2007, Union of India vs. State of Uttarakhand and ors.***, decided on 01.07.2019, the Bench observed that those who come by back-door have to go by the same door.
  
2. ***In WP (M/S) No.2794 of 2017, Smt. Savitri Devi Bora and another vs. State of Uttarakhand and others***, decided on 12.07.2019, the Bench observed that a grandson or granddaughter, who claims his/her lineage through mother cannot be denied the benefit of 2% horizontal reservation being a “dependents of freedom fighter”. He/She has to be included amongst the beneficiary and therefore the classification made by the State is not sustainable in the eyes of

law and it has to read after it is compatible with the provisions of Constitution i.e. Article 14 and 15. Consequently, the benefits to grandsons and granddaughters, who claim their lineage through their mother shall also be extended to them.

3. ***In WP (M/S) No. 891 of 2016, Nawab Khan vs. Union of India and others along with connected matters***, decided on 12.07.2019, the Bench observed that gratuity is a right of an employee which he gets after his superannuation or his heirs get after his death or retirement or any such contingency as given in Section 4 of the Act, and it is for gratuitous service which an employee has put in. It is the right of an employee, not a bounty. The law on payment of gratuity is primarily a labour beneficial, or an employee beneficial legislation. It has therefore to be read and interpreted with a purposive interpretation. What has to be seen by the Court is the purpose behind the legislation. When both a narrow as well as wide definition can be adopted to a term or phrase the wide interpretation should be adopted, so that the legislation achieves its purpose. Payment of gratuity is to be given as per the Payment of Gratuity Act, 1972. The maximum limit which has been fixed under sub-section (3) of Section 4 of the Act is the one which is to be notified by the Central Government.
4. ***In CRLR No. 276 of 2018, Dr. (Mrs.) Sushma Das and others vs. State of Uttarakhand***, decided on 19.07.2019, the Bench observed that if a special procedure is prescribed under a special enactment, then the procedure as laid down under the special law has to be followed and not the one as prescribed under the Code of Criminal Procedure.
5. ***In WP(M/S) No. 122 of 2013, Sharda Exports vs. Commissioner of Income Tax, Dehraun and other along with connected cases***, decided on 19.07.2019, the Bench observed that the Assessing Officer may assess or reassess such income, which he has reason to believe, has escaped assessment and also any other income chargeable to tax which has escaped assessment and which

comes to his notice subsequently in the course of the proceedings under the section, but only under certain limitations.

6. ***In CRLR No. 252 of 2019, Commercial Toyota through its General Manager Sales Sri Abhinav Khosla vs. State and another***, decided on 31.07.2019, the Bench observed that filing of an affidavit in support of Section 156(3) application is curable.
7. ***In C-482 No. 640 of 2014, Sahenavaz and others vs. State of Uttarakhand and another***, decided on 31.07.2019, the Bench observed that inherent jurisdiction though wide should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice. While exercising jurisdiction under this section, the Court does not function as a Court of Appeal or Revision.
8. ***In CRJA No. 39 of 2019, Manoj Raj vs. State of Uttarakhand***, decided on 01.08.2019, the Bench observed that right to appeal against conviction is a statutory right and convict cannot be left remediless in view of his ignorance of law or on account of having no funds to prefer the appeal and has issued following directions:-
  - (i) All the trial Magistrates, Chief Judicial Magistrates, Session Judges, Additional Session Judges, Special Judges are hereby directed to look into those cases where conviction is made against the persons, who are being represented through Amicus Curiae and at the time of providing free copy of the judgment to the convict, shall apprise the convict that he has a statutory right of appeal against order of conviction in a particular court and limitation to file appeal should also be explained. They shall also apprise that if accused-convict wish to present his petition of appeal through jail, he may present petition of appeal and copy of the conviction order to the Officer Superintendent of the Jail, who in turn shall forward such petition along with

copy of the order to the proper Appellate Court, so the convict may be aware of his legal right to present the petition of appeal through Superintendent of the jail.

- (ii) All the Superintendent of the jails, in whose jails convicts are brought after order of conviction, shall apprise the convict that he has a right to present petition of appeal before the Appellate Authority and the convict may submit petition of appeal to him, so he may forward his appeal along with copy of the judgment to the proper Appellate Court. The Superintendent of the jail shall also record this fact in jail diary that he has appraised the convict in regard to his legal right to present petition of appeal. In case, convict is not willing to challenge the order of conviction, the Superintendent of Jail shall record this fact also in the diary and shall obtain signature/ thumb impression of the convict and further take two witnesses to this effect from the jail and shall communicate this fact to the District Magistrate concern immediately.
- (iii) District Magistrates, in whose area the trial is held, on receipt of copy of conviction order by the Sessions Judge or a Chief Judicial Magistrate, shall inform the convict who is languishing in jail about his right to prefer petition of appeal through Superintendent of jail. District Magistrates shall also try to find out close relatives of the convict and inform them in regard to the order of conviction and if they wish to prefer an appeal on behalf of the convict, but are unable to engage lawyer, District Magistrate shall apprise them about free legal services, so appeal can be presented on behalf of the convict through State Legal Service Authority or District Legal Service Authority as the case may be.

9. ***In CRLR No. 173 of 2016, Asha Devi vs. State and another***, decided on 06.08.2019, the Bench observed that the appeal under the proviso to Section 372 of Cr.P.C., since it has been held out to be an absolute legal right vested with the victim as per dictum of Hon'ble Apex Court, it cannot be eclipsed

by attracting the pre-conditions contained under sub-Section (5) of Section 378 of Cr.P.C. for filing of an application for leave to appeal, is an appeal preferred against judgment of acquittal. Since an appeal against an acquittal has been contemplated in relation to all the judgments of acquittal which are rendered after the incorporation of the proviso to Section 372 of Cr.P.C. as made with effect from 31<sup>st</sup> December 2009, any appeal, which is preferred under Section 372 of Cr.P.C. would not require an application for leave to appeal.

10. ***In C-482 No. 567 of 2014, Harsh Raj Chadha and another vs. State and another***, decided on 09-08-2019, the Court observed that where a dispute is essentially of a civil nature is given a cloak of criminal offence, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of Court.
  
11. ***In CLR No. 81 of 2012, M/s New Engineering Enterprises vs. Indian Overseas Bank and others***, decided on 27.08.2019, the Bench observed that the period of four months as mandated under the Act to submit the award is statutory period and it is only the court, who can enlarge that period. It means that the court by enlarging the time has only permitted the Arbitrator to submit the award within the extended period and not thereafter. The revisional jurisdiction exercised by the High Court under Section 115 of the Code of Civil Procedure is strictly conditioned by clauses (a) to (c) thereof, and should be applied only in those cases, where a subordinate court appears to have exercised a jurisdiction not vested in it by law; or failed to exercise a jurisdiction so vested; or acted in exercise of its jurisdiction illegally or with material irregularity. In other words, such revisional jurisdiction may be invoked on the ground of refusal to exercise jurisdiction vested in the subordinate court or assumption of jurisdiction which the Court does not possess or on the ground that the court has acted illegally or with material irregularity in the exercise of its jurisdiction. The jurisdiction under Section 115 of the Code is akin to the

jurisdiction as guaranteed upon this Court under Article 227 of the Constitution of India. Revisional jurisdiction under Section 115 of the Code is not to correct the mistake of fact and to substitute its own findings by the revisional court.

12. ***In WP (M/S) No. 1913 of 2012, M/s India Glycols Limited vs. State of Uttarakhand along with connected matter***, decided on 30.08.2019, the Bench observed that though the State has no power to impose tax on industrial alcohol, it has power to regulate the same. The State Government can therefore charge a fee on industrial alcohol on *quid pro quo* basis as well as for regulation purposes i.e. where it incurs expenses in regulation of industrial alcohol, to prevent its misuse.
  
13. ***In WP (M/S) No. 3017 of 2018, Smt. Geeta Singh and another vs. Smt. Prabhavati Devi and others***, decided on 30.08.2019, the Court observed that where a recorded tenure-holder having a prima facie title and in possession files suit in the civil court for cancellation of sale deed having been obtained on the ground of fraud or impersonation cannot be directed to file a suit for declaration in the Revenue Court, the reason being that in such a case, prima facie, the title of the recorded tenure-holder is not under cloud. He does not require declaration of his title to the land. The position would be different where a person not being a recorded tenure-holder seeks cancellation of sale deed by filing a suit in the civil court on the ground of fraud or impersonation. There necessarily the plaintiff is required to seek a declaration of his title and, therefore, he may be directed to approach the Revenue Court, as the sale deed being void has to be ignored for giving him relief for declaration and possession. The bar of Section 331 of Zamindari Abolition and Land Reforms Act, 1950, against jurisdiction of Civil Court is not applicable in case of a recorded tenure holder having prima-facie title in his favour seeking cancellation of a sale-deed.



14. ***In A.O. No.70 of 2019, Namrata Sen vs. Captain Saurabh Chauhan***, decided on 05.09.2019, the Bench observed that Power under Article 227 of the Constitution of India is superintendent in nature and can be exercised by the court to keep the subordinate courts and Tribunals in its meets and bounds to stop the foul play and to avoid miscarriage of justice.
  
15. ***In FA No. 61 of 2016, Nupur Singh @ Nupur Chauhan and another vs. Smt. Shalini Rana and others***, decided on 12.09.2019, the Bench observed that before the court reads the photocopy as a secondary evidence in terms of Section 63 of the Evidence Act, what has first to be seen by the court is whether the circumstances exist which may enable a party to lead secondary evidence. These circumstances are given under Section 65 of the Evidence Act.
  
16. ***In WP(M/S) No. 573 of 2019, Smt. Kalpana vs. Mohd. Sarfaraj***, decided on 12.09.2019, the Bench observed that the revisional jurisdiction does not empower the revisional court to re-appreciate the evidence on record. Revisional jurisdiction is confined only to the extent to correct the wrong exercise of jurisdiction if the finding is manifestly contrary to evidence or so palpably wrong that if allowed to stand, would result in grave injustice to a party, whereof the appellate jurisdiction is akin to the power of trial judge / Prescribed Authority, as in an appeal the entire matter is to be scrutinized / re-appreciated by the appellate court on facts and law. The main difference between the appellate and revisional jurisdiction is that exercise of revisional jurisdiction is confined to the questions of jurisdiction, while in a first appeal the Court is free to decide all questions of law and fact which arises in the case. In the exercise of its revisional jurisdiction the High Court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts for those of the subordinate court. No doubt, the review court cannot exercise its jurisdiction as a regular court, but when the mistake is apparent on the record, the review court should not decline to exercise its jurisdiction to correct the error apparent on the face of record.

It is further observed that when the Statute provides that things should be done in a particular manner, the same should be done in that manner alone and not otherwise.

17. ***In Crl. Appeal No. 143 of 2005, Harish Chandra vs. State of Uttarakhand along with connected cases***, decided on 13.09.2019, the Bench observed that the object of Section 50(1), NDPS Act is to check the misuse of power, to avoid harm to innocent persons and to minimize the allegations of planting. In order to prevent abuse of the provisions of the NDPS Act, which confer wide powers on the empowered officers, the safeguards provided by the legislature have to be observed strictly. The communication of the right as envisaged under Section 50 of the N.D.P.S. Act has to be clear and unambiguous. The accused must be made aware of the existence of such right. If the contraband is not disposed of as per the provisions of Section 52(A) during trial, the accused is entitled for acquittal. Inventory has to be prepared as per the mandate of Section 52(A) of the NDPS.
18. ***In Criminal Writ Petition No. 157 of 2015, Jokhu Ram Gupta vs. Principal Secretary, Suraj Avam \Bhrstachar Unmulan Jan Seva (Vigilance) Section, Govt. Of Uttarakhand, Dehradun and another***, decided on 26.09.2019, the Bench observed that as per Section 19 of the Prevention of Corruption Act, 1988, before taking cognizance, it is necessary that a sanction must be issued as per the clauses (a), (b), (c) and (d) of Section 19 as the case may be.
19. ***In C-482 No. 492 of 2010, Rakesh Arora and another vs. M/s Hindustan Sales Haldwani***, decided on 27.09.2019, the Bench observed that for taking the cognizance under the Act, the mandatory requirement under Section 142 of the Act are to be followed. In case where offence is committed by a Firm, it is not only drawer of the cheque but the person responsible in the Firm may also be held responsible. In the instant case, notice has been served upon the Firm. The Firm as well as the person incharge of the Firm, at the relevant time, are definitely responsible and notice to Firm covers notice to all.

## **Major Events & Initiatives**

- 1. Independence Day Celebration:-** On 15<sup>th</sup> August, 2019, Independence day was celebrated in the High Court premises with great enthusiasm. On this occasion, National flag was hoisted by Justice Sudhanshu Dhulia, Senior Judge, Justice Alok Singh, Justice Lok Pal Singh, Justice Manoj Kumar Tiwari, Justice N.S. Dhanik, Justice Ramesh Chandra Khulbe, Justice Sharad Kumar Sharma, Justice Ravindra Maithani and Justice Alok Kumar Verma, graced the occasion. Officers, Officials of Registry, Advocates were also present to mark the occasion.

## **Programmes attended by Hon'ble Judges ( From July 2019 to September , 2019)**

- 1.** Hon'ble Mr. Justice Manoj Kumar Tiwari visited Guwahati to attend Judicial Conclave on “**Challenges Facing the Indian Judiciary, Road Map for the Future**” on 21.09.2019. He has further visited National Judicial Academy, Bhopal to attend workshop for High Court Justices on Good Sense Services Tax during the period 28.09.2019 to 29.09.2019.

**ACTIVITIES OF SLSA FOR THE MONTHS OF JULY TO SEPTEMBER,**  
**2019**  
**NATIONAL LOK ADALAT**

As per directions of National Legal Services Authority and under the valuable guidance of Hon'ble the Executive Chairman, Uttarakhand State Legal Services Authority, two National Lok Adalats were organized in the State of Uttarakhand from Tehsil Level to High Court Level in all the Courts and Quasi Judicial Authorities on 13.07.2019 and 14.09.2019. In these National Lok Adalats, apart from the money recovery cases, civil and criminal cases, the matters pertaining to Labour disputes, revenue disputes, land acquisition act, family disputes, MACT, NI Act, water and electricity and all such matters which can be settled amicably were taken up.

In these National Lok Adalats, a total number of 26918 cases were taken up and out of them 8118 cases were settled amicably. Amount to the tune of Rs. 50,11,83,574 was also settled.

**LEGAL AWARENESS ON COMMEMORATIVE DAYS**

Between the months of July, 2019 to September, 2019, the World Population Day, World Hepatitis Day, World Senior Citizen Day, International Literacy Day and World Suicide Prevention Day were observed throughout the State. During these occasions, 745 special legal literacy and awareness camps were organized, wherein 25472 people got benefited.

**Special Campaign Under NALSA (Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace) Scheme, 2015**

A survey/research work was conducted by the team of PLVs including Panel Lawyer, Members of NGOs and Social Workers etc. throughout the State of Uttarakhand under the NALSA (Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace) Scheme, 2015.

After the aforesaid survey/research work, recently a campaign namely **SANKALP: NASHA MUKT DEVBHOOMI**” has been launched by the Hon’ble Patron-in-Chief, Uttarakhand SLSA, Nainital in the benign presence of Hon’ble the Executive Chairman, UKSLSA, Nainital and Hon’ble the Chairman High Court Legal Services Committee . The Chief Secretary of Govt. of Uttarakhand, Director General of Police Uttarakhand, Member Secretary, UKSLSA, and other senior officers of Government and Police were also present in the aforesaid launching event. A booklet on the Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace has also been released by the Hon’ble Patron-in-Chief, UKSLSA, Nainital.

In the said event total approx. 300 Para Legal Volunteers, Panel Lawyers Police Officers, Social Workers and Law Students were participated.

### **ACTIVITIES ON LEGAL LITERACY AND AWARENESS**

1. During the month of September, 2019, a three days (06.09.2019 to 08.09.2019) Legal Literacy-cum-Medical Camp was organized by the Uttarakhand SLSA in Nandashtami Mela, wherein medical and health-check-up of the public/common mass was done with the help of District Medical and Health Department, Nainital. A Blood Donation camp was also organized on this occasion. Apart from this, with the active support of the NGO namely; “THE HANS CULTURAL CENTRE”, wheel chairs, hearing kits, crutches, back pain belts, spectacles etc. were also distributed to the public free of cost in the said event. A Blood Donation camp was also organized. A Book Stall was also set up in the said event. Further, different social welfare related certificates were also distributed to the entitled persons with the help of District Social Welfare Department, Nainital during this campaign. Approximately **592** persons attended these campaign.
  
2. A sensitization workshop on “Criminal Justice Administration” was organized at ONGC Auditorium, Dehradun, on 29 September, 2019, under the joint auspices of UJALA and Uttarakhand State Legal Services Authority. The purpose of the said workshop was to make all stakeholders aware about various aspects of Criminal Justice Administration e.g. early

access to justice at pre-arrest and remand stages, transformation of criminal justice towards justice to victim, role of service providers in expeditious justice delivery etc.

The workshop was inaugurated by Hon'ble the Chief Justice, High Court of Uttarakhand and Hon'ble Judges of High Court of Uttarakhand. Distinguished Speakers and Officers of UJALA & UKSLSA also graced the event by their presence as guest.

In the said workshop, approx.180 Judicial Officers of Garhwal Division, approx. 140 Government Counsels & Advocates and Assistant Prosecution officers/Penal Lawyers and law students from different colleges participated.

## STATISTICAL INFORMATION

### Statement showing the progress of Lok Adalats held in the State of Uttarakhand for the period from July, 2019 to September, 2019

Sl. No.	Name of DLSA's	No. of Lok Adalats Held	No. of Cases Taken up	No. of Cases Disposed off	Compensation/ Settlement Amount	Amount Realized As Fine (in Rs.)	No. of Persons Benefited in Lok Adalat
01	ALMORA	02	546	43	68,34,343	-	43
02	BAGESHWER	03	157	83	33,40,078	1,34,400	83
03	CHAMOLI	02	56	34	18,21,000	1,00,000	34
04	CHAMPAWAT	03	515	315	7,44,750	2,24,900	315
05	DEHRADUN	07	17732	11470	2,15,36,723	24,80,955	11532
06	HARDWAR	03	5197	3020	2,44,79,235	1,64,650	3020
07	NAINITAL	04	5822	918	64,69,268	10,02,020	918
08	PAURI GARHWAL	04	1447	935	99,43,008	3,75,550	935
09	PITHORAGARH	05	294	191	48,62,347	1,60,900	191
10	RUDRAPARYAG	03	152	54	17,35,127	2,700	55
11	TEHRI GARHWAL	06	1762	776	56,62,274	6,52,590	776
12	UDHAM SINGH NAGAR	04	8228	2872	2,96,07,871	28,20,350	2872
13	UTTARKASHI	02	125	99	69,28,235	-	99
14	HCSLC, NAINITAL	02	803	162	10,42,12,336	-	162
15	UKSLSA,NTL	-	-	-	-	-	-
	<b>TOTAL :-</b>	<b>50</b>	<b>42836</b>	<b>20972</b>	<b>22,81,76,595</b>	<b>81,19,015</b>	<b>21035</b>



**Statement showing the progress of Camps organized in the State of  
Uttarakhand for the period from July, 2019 to September, 2019**

<b>Sl. No.</b>	<b>Name of DLSA's</b>	<b>No. of Camps Organized</b>	<b>No. of Persons Benefited in Camps</b>
01	ALMORA	46	8802
02	BAGESHWER	68	2268
03	CHAMOLI	250	12020
04	CHAMPAWAT	151	10661
05	DEHRADUN	107	8295
06	HARDWAR	154	6501
07	NAINITAL	190	12495
08	PAURI GARHWAL	159	6391
09	PITHORAGARH	258	15367
10	RUDRAPARYAG	43	3105
11	TEHRI GARHWAL	67	3169
12	UDHAM SINGH NAGAR	106	20733
13	UTTARKASHI	725	6239
14	HCLSC, Nainital	-	-
15	UKSLSA, Nainital	01	592
	<b>Total</b>	<b>2325</b>	<b>116638</b>

**Statement showing the progress of Legal Aid and Advice/Counseling provided in the State of Uttarakhand for the period from July, 2019 to September, 2019**

Sl. No.	Name of DLSA's	No. of Persons Benefited through Legal Aid & Advice	
		Legal Aid	Legal Advice/ Counseling
01	ALMORA	19	12
02	BAGESHWER	23	-
03	CHAMOLI	19	32
04	CHAMPAWAT	07	-
05	DEHRADUN	166	04
06	HARDWAR	101	-
07	NAINITAL	39	08
08	PAURI GARHWAL	39	46
09	PITHORAGARH	21	05
10	RUDRAPARYAG	07	02
11	TEHRI GARHWAL	36	16
12	UDHAM SINGH NAGAR	134	30
13	UTTARKASHI	16	18
14	H.C.L.S.C., N.T.L.	159	-
15	U.K. S.L.S.A., N.T.L.	-	28
	<b>TOTAL</b>	<b>786</b>	<b>201</b>

**UTTARAKHAND JUDICIAL AND LEGAL ACADEMY, BHOWALI, NAINITAL****Training Programmes held in the Month of  
July to September, 2019**

<b>Sl. No.</b>	<b>Name of Training Programmes/ Workshops</b>	<b>Duration</b>
1.	Workshop on Role of Tehsildar and Naib-Tehsildar in Criminal Justice Administration under Revenue Police	04.07.2019 & 05.07.2019 (Thursday & Friday)(two days)
2.	Joint Workshop on 'Protection of Children from Sexual Offences Act, 2012' for Judges, Doctors and SPs/DSPs of the State	11.07.2019 & 12.07.2019 (Thursday & Friday) (two days)
3.	Foundation Training Programme for Newly Recruited Civil Judges (J.D.) 2016 Batch(3rd phase of Institutional Training)	22.07.2019 to 05.10.2019 (Two and half Months)
4.	Training for District Government Counsels /Additional District Government Counsels/Assistant District Government Counsels (Civil)	25.07.2019 & 26.07.2019 (Thursday & Friday) (two days)
5.	Special Training Programme for DLSA Secretaries (full fledged) of the State	09.08.2019 (Friday) (for one day)
6.	Training for Newly Appointed Assistant Prosecuting Officers (APOs) of the State	26.08.2019 to 25.09.2019 (one month)
7.	Workshop on various provisions of the Competition Act, 2002 for Civil Judges (J.D.) 2016 Batch & newly appointed APOs of the State	13.09.2019 (Friday)
8.	One day Workshop on Administration of Criminal Justice for Judicial Officers, Govt. Advocates and Prosecutors, Police officers etc. at ONGC Auditorium, Dehradun	29.09.2019(Sunday) (for one day)

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Hon'ble Mr. Justice Sudhanshu Dhulia, Senior Judge, hoisting the National flag on 15<sup>th</sup> August, 2019 on the occasion of Independence Day.



Hon'ble the Chief Justice of High Court of Uttarakhand on the occasion of valedictory function of the foundation training programme of Civil Judges (J.D.), 2016 Batch.



Joint Workshop on 'Protection of Children from Sexual Offences Act, 2012' for Judges, Doctors and SPs/DSPs of the State on 11.07.2019 and 12.07.2019.



Special Training Programme for DLSA Secretaries (full fledged) of the State on 09.08.2019



Training for District Government Counsels /Additional District Government Counsels/Assistant District Government Counsels (Civil) on 25.07.2019 & 26.07.2019