

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 75/2011

Anand Singh Gusain, S/o Jagat Singh Gusain, Retd. Senior
Horticulture Inspector, R/o Vaishnav Bhawan, Kotiyal Sem, P.O.
Chamoli, District Chamoli, Uttarakhand

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Horticulture and
Food Preservation, Dehradun,
2. District Horticulture Officer, Chamoli,
3. Director Horticulture, Udyan Bhawan, Chaubatiya, Ranikhet,
District Almora,
4. Director Lekha & Haqdari, 23, Laxmi Road, Dehradun.

.....Respondents

AND

CLAIM PETITION NO. 64/2011

Bhuvneshwar Prasad Thapliyal, Retd Senior Horticulture
Inspector R/o Jwalpa Niwas Saraswati Vihar, C-Block, Post
Ajabpurkalan, Dehradun District Dehradun

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Horticulture Food and Preservation, Dehradun,
2. District Horticulture Officer, Chamoli,
3. Director, Horticulture, Udyan Bhawan, Chaubatiya, Ranikhet, District Almora
4. Director, Lekha & Haqdari, 23, Laxmi Road, Dalanwala, Dehradun.

.....Respondents

AND**CLAIM PETITION NO. 60/2012**

Bacchi Ram Purohit, S/o Late Sri Mukundram Purohit, Senior Horticulture Inspector (Retd.) R/o Mukund Sadan, Poold Housing Colony, near Gopeshwar, District Chamoli, Uttarakhand

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Horticulture Food and Preservation, Civil Secretariat, Subhash Road, Dehradun,
2. Director Horticulture, Udyan Bhawan, Chaubatiya, Ranikhet, District Almora, Uttarakhand
3. Director, Lekha & Haqdari, 23, Laxmi Road, Dalanwala, Dehradun
4. District Horticulture Officer, Chamoli,

.....Respondents

AND**CLAIM PETITION NO. 61/2012**

Prem Ballabh Dimri, S/o Late Sri Keshwanand Dimri, R/o Eada Badani Nagar Panchayat, Karnparyag, District Chamoli, Uttarakhand

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Horticulture Food and Preservation, Civil Secretariat, Subhash Road, Dehradun,
2. Director Horticulture, Udyan Bhawan, Chaubatiya, Ranikhet, District Almora, Uttarakhand
3. Director, Lekha & Haqdari, 23, Laxmi Road, Dalanwala, Dehradun
4. District Horticulture Officer, Chamoli,

.....Respondents

Present: Sri H.C.Dobhal, Counsel for the petitioners in Claim petition no. 75/2011 and 64/2011,

Sri L.K.Maithani, Counsel for the petitioners in Claim Petition No. 60/2012 and 61/2012.

Sri Umesh Dhaundiyal, A.P.O. for the respondents.

JUDGMENT

DATE: AUGUST 07, 2014

DELIVERED BY SRI V.K. MAHESHWARI

1. The following question is involved in all the above mentioned petitions, therefore, it is appropriate that all these claim petitions are decided by a common judgment. Hence, these petitions are being decided by the common judgment.

QUESTION:

- i. Whether the petitioners are entitled for the Second Progressive pay scale on completion of 24 years of satisfactory service.

FACTS:

2. All the four petitioners were superannuated on attaining the age of retirement from the post of Senior Horticulture Inspector. During their service tenure, the second progressive pay scale was granted to them on their completion of 24 years of satisfactory service and pay was fixed accordingly.

3. After their retirement, the Director, Lekha & Haqdari raised an objection that the petitioners were not entitled for the second progressive scale as was granted to them. Consequently, the District Horticulture Officer issued an order for recovery of the amount paid to the petitioners consequent to the grant of second progressive pay scale. The petitioners made representations as well as served notice under Section 80 CPC, but of no consequence, hence the petitioners preferred the above mentioned petitions and prayed that the impugned order of recovery be quashed as well as for the direction to the respondents for fixing their pension on the basis of the last pay drawn by them at the time of their retirement.

4. The petitions have been opposed on behalf of the respondents no. 1, 2 and 3 i.e Govt. of Uttarakhand, District, Horticulture Officer and Director Horticulture. The petitioners have also impleaded the Director, Lekha & Haqdari as respondent no. 4 but the petitions have not contested on his behalf. The respondents no. 1, 2 and 3 in their written statement, have stated that the second progressive pay scale were wrongly and mistakenly were

granted to the petitioners and after the retirement of the petitioners, the Director Lekha & Haqdari raised objection regarding the grant of second Progressive Pay Scale. Consequently, the competent authority passed an order of recovery of the amount, which was paid to the petitioners consequent to the grant of second progressive pay scale. It is further stated that the second progressive scale was granted by mistake and the respondents are entitled to rectify the mistake, which has been done in the above noted cases and to recover the amount paid to the petitioners because of this mistake, so the petitions are devoid of merits and are liable to be dismissed.

5. Rejoinder affidavits have also been submitted on behalf of the petitioner reiterating the facts already stated in the main petition, at the same time, it has also been stated that the other employees namely, Laxman Singh Adhikari, Bhagwan Singh Bohra, Kanai Lal Dass, Har Singh Musuini, Gulab Singh Kirmolia, Manmohan Singh, Pooran Singh Bisht and Bindreshwari Prasad Tiwari also retired from the post of Senior Horticulture Inspector and their dues has been paid, while only the petitioners were deprived from pensionary benefits according to their last drawn pay.

6. We had also summoned Sri Bacchi Ram Arya, Assistant Accountant, Directorate of Horticulture as well as Sri Narayan Ram, Senior Administrative Officer and their oral statements were also recorded in Claim Petition No. 75 of 2011, Anand Singh Gosain Vs. State & others. Both Sri Bacchi Ram Arya (CW-1) and Sri Narayan Ram (CW-2)

have stated that the Second Progressive Pay Scale was accrued to the petitioners, which had rightly been granted to them and there is no illegality or irregularity in granting the Second Progressive Pay Scale to the petitioners. They thus made it clear that the objection raised by the Director, Lekha & Haqdari is not tenable.

7. Heard the parties at length and also gone through the record carefully.

8. We have given considerable thought to the objection raised by the Lekha & Haqdari. In fact, the answer of the question posed by ourselves in these petitions depend upon the interpretation of the following Govt. Orders:

i. G.O. Dated 03.09.2001

ii. G.O. No. 345/ वि०अनु० ३ /2001 Dated 22.10.2001

9. Among the above noted Govt. Orders, the G.O. dated 22.10.2001 is crucial, which is available on record as Annexure A-08 in claim petition no. 75 of 2011. The G.O. dated 03.09.2001 is also available on record.

10. The G.O. 03.09.2001 provides as follows:

“(2) (क) उपर्युक्त श्रेणी के पदधारक जिन्हे 24 वर्ष की सेवा पूर्ण करने की तिथि तक सीधी भर्ती के पद के संदर्भ में दो प्रोन्नतीय/अगला वेतनमान अथवा दो पदोन्नतियां अनुमन्य नहीं हुई हों, परन्तु जिन्हें एक पदोन्नति प्राप्त हो चुकी हो और वे सीधी भर्ती के पद पर नियमित हो उनकी 24 वर्ष की संतोषजनक सेवा पूर्ण करने की तिथि अथवा दिनांक 01.03.2000 जो भी बाद में हो, से सीधी भर्ती के

पद के संदर्भ में द्वितीय प्रोन्नति/अगला वेतनमान वयक्तिक रूप से अनुमन्य करा दिया जाय।”

11. The Govt. Order dated 22.10.2001 provides as follows:

“(2) (क) उपर्युक्त श्रेणी के पदधारक जिन्हे 24 वर्ष की सेवा पूर्ण करने की तिथि तक सीधी भर्ती के पद के संदर्भ में दो प्रोन्नती/अगला वेतनमान अथवा दो पदोन्नतियां अनुमन्य नहीं हुई हों, परन्तु जिन्हें एक पदोन्नति प्राप्त हो चुकी हा और वे सीधी भर्ती के पद पर नियमित हो उनकी 24 वर्ष की संतोषजनक सेवा पूर्ण करने की तिथि अथवा दिनांक 01.03. 2000 जो भी बाद में हो, से सीधी भर्ती के पद के संदर्भ में द्वितीय प्रोन्नति/अगला वेतनमान वैयक्तिक रूप से अनुमन्य करा दिया जाय।”

12. The last G.O. makes it clear that any employee who has completed 24 years of service is entitled for the second progressive pay scale irrespective of the fact of his one promotion. On the basis of this interpretation the scale in question has been granted to the petitioners. The main objection on behalf of the respondents is that the petitioners were granted one progressive pay scale and one promotion. As the petitioners have already availed one progressive scale and one promotion. Therefore, they are not entitled for second progressive scale on completion of 24 years of service. But in this regard, the Govt. order dated 22.10.2001 is very clear and it provides that even if any employee had availed one promotion and one progressive scale even than he is entitled for second progressive scale if he had completed 24 years of satisfactory service. In the present

petitions, the petitioners were promoted in 1983 and thereafter the second promotional pay scale were granted to them on completion of their service for 24 years on that posts. It is admitted that on promoted post, no promotion was given to them and they have completed 24 years of service on that post only. Therefore, in view of the provisions contained in the G.O. Dated 22.10.2001, we are of the opinion that the petitioners are entitled for the second progressive scale which was rightly granted to them and there is no irregularity in granting pay scale in question. Apart from above view, the department of Horticulture is also of the opinion that the pay scale was rightly granted to the petitioners. In this regard, the statements of Bacchi Ram Arya and Narayan Ram are relevant, which has categorically stated that the pay scale was rightly granted to the petitioners. Apart from the statement, a letter written by the Director, Horticulture to concerned Secretary dated 09.01.2012. The relevant extract reads as under:

“इस संदर्भ में उत्तराखण्ड शासन, कृषि विपरण अनुभाग-1 के शासनादेश सं0-899/XII-1/2009-1(212)/2009, दिनांक 30.11.2009 (छायाप्रति संलग्न) में एक ही पद पर की गयी 24 वर्ष की सेवा पर द्वितीय प्रोन्नत वेतनमान/अगला वेतनमान के संबंध में निर्णय लिया गया है कि “समयमान वेतनमान सम्बन्धि उत्तराखण्ड शासन, वित्त विभाग (सामान्य) अनुभाग के शासनादेश सं0 1014/01 वित्त /2001, दिनांक 12.03.2001 के साथ संलग्न उत्तर प्रदेश शासन वित्त आयोग (अनुभाग-2) के शासनादेश संख्या-2 560/दस-45 (एम), 99 दिनांक 02.12.2000 के द्वारा एक पद पर की गयी सेवा के संबंध में प्रतिपादित सुसंगत नियमों/नियम 1-(4) में निहित व्यवस्था के अधीन समयमान वेतनमान के अर्न्तगत आलाच्य अवधि की सेवा पूर्ण करने पर द्वितीय प्रान्त

वेतनमान/अगला प्रोन्नत वेतनमान वैयक्तिक रूप से स्वीकृत किये जाने में कोई आपत्ति नहीं है।” साथ ही उत्तराखण्ड शासन वित्त –(वे0आ0–सा0नि0)–7 अनुभाग के कार्यालय ज्ञाप सं0 16/XXVII(7)सू0का0अधि0/2009 दिनांक 16.02.2009 में यह निर्णय दिया गया है कि शासनादेश सं 1014/01 वित्त/2001, दिनांक 12.03.2001 के साथ संलग्न शासनादेश सं0 वे0आ0 2–560/दस–45 (एम) 99, दिनांक 02.12.200 के नियम 1–(4) एवं नियम 4(2) में कोई भी संशाधन नहीं किया गया है (संलग्न–2)

अतः शासन से अनुरोध है कि उक्तानुसार कृषि विभाग की भांति हो इस विभाग में वैयक्तिक रूप से स्वीकृत किये जाने हेतु स्वीकृति प्रदान करने की कीजिएगा।”

13. Thus, even the Department of Horticulture asserts that the pay scale was rightly granted to the petitioners.

14. Apart from the above facts, another aspect is also important and it has been contended that the similarly situated persons were granted the similar scale of pay and no objections were raised. The objection has raised in case of the petitioners only. The name of these persons has been mentioned in the rejoinder affidavit filed by Anand Singh Gusain in Claim Petition No. 75/2011. Apart from the assertion, relevant documents have also been filed on behalf of the petitioners, which reveal that the similarly situated persons were granted the similar scale of pay and their pension was also determined accordingly. On the basis of parity, the petitioners are also entitled for the pay scale in question.

15. Thus, the answer of the question caused by ourselves is in affirmative and hold that the petitioners were entitled for the second progressive scale of pay, which was

rightly granted to them, so the impugned orders of recovery of the amount paid to the petitioners in consequence of the grant of the second progressive scale cannot be sustained and thus liable to be quashed. The petitioners are also entitled for determination of their pension on the basis of the pay drawn by them as last. All the above mentioned petitions deserve to be disposed of accordingly without any order as to the costs.

ORDER

All these claim petitions are allowed. The impugned orders of recovery passed in each case are hereby quashed. In case of any recovery of any amount already made, shall be refunded to respective petitioners. It is further directed to the respondents that the pension and other retiral benefits be determined on the basis of pay drawn by each petitioner as last. This judgment be complied with within a period of four months from today. No order as to the costs. The original copy of the judgment shall be placed on the record of petition no. 75/2011, whereas, the certified copies shall be placed on the record of every other petitions.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: AUGUST 07, 2014
DEHRADUN

KNP