

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT NAINITAL**

Virtual

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 101/NB/DB/2022

Sushil Kumar Saxena, aged about 62 years, s/o Late Shri Bhagwan Swaroop Saxena, r/o Shastri Nagar, Telephone Colony, Bareilly, Uttar Pradesh.

.....Petitioner

vs.

1. State of Uttarakhand through Chief Secretary, Government of Uttarakhand, Dehradun.
2. Director, Intermediate Education, Uttarakhand, Narookhera, Dehradun.
3. Chief Education Officer, Udham Singh Nagar, District Udham Singh Nagar.
4. Chief Treasury Officer, Udham Singh Nagar, District Udham Singh Nagar.

.....Respondents.

Present: Sri Sanjay Bhatt, Advocate for the petitioner.
Sri Kishore Kumar, A.P.O. for the Respondents.

JUDGMENT

DATED: NOVEMBER 01, 2022.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order on 19.09.2022 in WPSB No. 156 of 2021, Sushil Kumar Saxena vs. State of Uttarakhand and others, by which the Writ Petition was transferred to this Tribunal. The order dated 19.09.2022 reads as under:

“The petitioner is a public servant. The surviving relief sought in the writ petition squarely falls for consideration by the Uttarakhand Public Services Tribunal. In respect of second relief, this Court had already taken a view in Special Appeals Nos. 201, 203 and 207 of 2022, decided on 05.07.2022.

2) Accordingly, since the pleadings in the petition are complete, we direct that the complete record of the petition be transferred to the Tribunal. The same should be registered as a claim petition, and be dealt with accordingly.

3) The writ petition stands disposed of.

All pending applications also stands disposed of.”

2. WPSB No. 156 of 2021 is, accordingly, reclassified and renumbered as Claim Petition No. 101/NB/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon’ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as ‘petition’ and petitioner shall be referred to as ‘petitioner’, in the body of the judgment.

3. By means of present petition, petitioner seeks the following reliefs:

“(i) A writ, order or direction in the nature of mandamus commanding the respondents to re-determine and pay the post retiral dues such as arrears of gratuity and commutation and revised monthly pension with penal rate of interest till the date of actual payment, after calculating entire services rendered by the petitioner w.e.f. 29.12.1990 till he demitted the office on 31.03.2020..

(ii) A writ, order or direction in the nature of mandamus declaring section 3(j) and section 4 of the Uttarakhand Retirement Benefits Act, 2018 as well as Regulation of 370 of the U.P. Civil Service Regulation as unconstitutional, illegal and ultravires to the Constitution of India.

(iii) Any other order or direction which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) Award cost of the petition to the present petitioner.”

4. Brief facts, necessary for adjudication of present petition, as stated by the petitioner, are as follows:

4.1 Petitioner was appointed as Assistant Teacher, L.T. Grade in Government High School *vide* order dated 27.11.1990, on *ad-hoc* basis and consequently, he joined service on 29.12.1990. His service was regularized *w.e.f.* 05.03.2002.

4.2 Petitioner was given benefit of selection grade *vide* order dated 24.10.2002, after completion of 10 years' satisfactory service, *w.e.f.* 05.03.2002. Petitioner was also given benefit of promotional pay scale after completion of 22 years of service *vide* order dated 26.04.2016, *w.e.f.* 29.12.2012.

4.3 Petitioner attained the age of superannuation on 01.01.2020. He also utilized the benefit of academic session till 31.03.2020. He retired on 31.03.2020 after completing 30 years of satisfactory service.

4.4 Petitioner's retiral benefits have not been settled properly inasmuch as entire services rendered by him *w.e.f.* 29.12.1990, irrespective of its *ad-hoc* or regular nature, have not been taken into consideration while determining post retiral dues. Initially, in the pension papers of the petitioner, the total length of his service was shown as 29 years, 03 months and 03 days, on the basis of which his monthly pension was fixed as Rs.37,800/-, amount of commutation Rs.14,86,719/- and gratuity was Rs.14,59,458/- (Copy: Annexure- 6). But in the revised pension papers, qualifying service of the petitioner was reduced to 17 years, 09 months and 27 days, thereby declaring 11 years, 02 months and 06 days of service as non-qualifying. (Copy: Annexure-7) and accordingly amount of his retiral benefits was also reduced.

4.5 *Ad-hoc* services rendered by the petitioner are not included in the qualifying services, while other similarly placed persons have been given benefit of such *ad-hoc* services for the purpose of calculation of pension. One Mr. Vijendra Pal Dwivedi filed WPSS No. 3669 of 2018 before Hon'ble High Court, which writ petition was allowed by the Hon'ble Court on 29.07.2019, with a *mandamus* to the respondents to pay full pension to Mr. Vijendra Pal Dwivedi, after including *ad-hoc* services (Copy of order dated 29.07.2019 is enclosed as Annexure: 10 to the petition). Against the order of Hon'ble Court dated 29.07.2019, State Respondents filed Special Appeal No.

100 of 2020, which was dismissed on 04.08.2020 (Copy of order dated 04.08.2020 is enclosed as Annexure: 11 to the petition).

4.6. Petitioner was informed that in view of provisions of Uttarakhand Retirement Benefits Act, 2018, he is not entitled to receive the post retiral benefits by including his *ad-hoc* services.

5. Sri Ramesh Chandra Arya, Chief Education Officer, Udham Singh Nagar, has filed Counter Affidavit on behalf of Respondent No.3. It is submitted in the C.A./W.S. that the petitioner rendered regular service from 05.03.2002 to 31.12.2019, which comes to 17 years 09 months and 27 days' qualifying service for the purpose of calculation of pension and other retiral dues. Petitioner's retiral benefits have been determined in view of the Section 4 of the Uttarakhand Retirement Benefits Act, 2018 .

6. Sri Jubak Mohan Saxena, Treasury Officer, Udham Singh Nagar, has filed Counter Affidavit on behalf of Respondent No.4, stating therein that the Uttarakhand Retirement Benefits Act, 2018, does not violate any fundamental right guaranteed by Part-III of the Constitution or any other Constitutional right. Pension, gratuity and commutation amount has already been paid to the petitioner as per prescribed Rules and Regulations, therefore, the petition is devoid of merits and is liable to be dismissed.

7. It is the submission of Ld. Counsel for the petitioner that the matter is squarely covered by the decision rendered by Hon'ble High Court in Special Appeals No. 201, 203 and 207 of 2022 on 05.07.2022, which reads as under:

“SPA Nos.201, 203 and 207 of 2022

All these three appeals are directed against the common judgment rendered by a learned Single Judge of this Court in a batch of writ petitions, including WPSS No.2436 of 2019, Lalit Mohan Pandey v. State of Uttarakhand and others, dated 20.12.2019. The appellant had also preferred a review application which has also been dismissed by the learned Single Judge on 6.9.2021.

A special appeal preferred against the same judgment, being Special appeal No.467 of 2021 (State of Uttarakhand and others v. Kedar Ram Arya) arising out of WPSS No.1235 of 2020, has already been dismissed by this Court on 2.3.2022.

It appears that the appellant also preferred Special Leave to Appeal Nos.4958- 4959 of 2022 to assail the final judgment as well as the order under review, which has been dismissed by the Supreme Court on 25.3.2022 with liberty to the appellant to prefer an appeal before the Division Bench against the judgment in writ proceedings.

As noticed above, this Court has already dismissed the appeal from the same impugned judgment in Special Appeal No.467 of 2021. Following the said decision, these appeals are also dismissed.

Pending application, if any, stands disposed of.”

8. It will also be appropriate to reproduce the decision rendered by Hon’ble Court in WPSS No.3669 of 2018, Vijendra Pal Dwivedi v. State of Uttarakhand and others, dated 29.07.2019, as below:

“Mr. Sanjay Bhatt, Advocate for the petitioner.

Mr. Atul Bahguna, Brief Holder for the State.

By means of the present writ petition, petitioner has prayed for the following relief:

“(i) To issue a writ, order or direction in the nature of mandamus commanding the respondents to re-fix the pension of petitioner as per last pay drawn by him on the basis of Rs. 83,3000/- and consequently release all the post retiral benefits including arrears of gratuity and commutation with penal rate of interest.”

Brief facts of the case are that the petitioner was initially appointed on ad-hoc basis on the post Lecturer (L.T. Grade). On 05.04.1991, the services of the petitioner were regularized on 09.05.2002 and thereafter he worked as regular employee from 09.05.2002 till the date of his retirement i.e. 31.03.2018.

It is contended that on 09.05.2002 services of the petitioner was regularized along with other similarly placed persons and he was also given service benefits. It is further contended that in the pension papers, the date of retirement of petitioner was shown as 30.06.2017, whereas the petitioner demitted office on 31.03.2018. It is further contended that the petitioner completed 60 years of age on 20.06.2017 and was due for retirement on 30.06.2017 but he was given the benefit of Academic Session, therefore, he retired from services on 31.03.2018. After his retirement his pension was fixed at Rs. 41,650/-. Thereafter, the pension of the petitioner has been re-fixed and the pension amount has been reduced as Rs. 33,320/- instead of Rs. 41,650/-. Feeling aggrieved, petitioner has filed present writ petition.

Heard learned counsel for the parties and perused the material available on record.

Learned counsel for the petitioner would submit that the petitioner has not been paid complete post retiral benefit because his services on ad-hoc basis

have not been counted on fixation of his pension. He would further submit that in paragraph no.21 of the writ petition, the petitioner has also mentioned the name of other similarly placed persons who have been given benefit of ad-hoc services, while calculating their pension whereof the similar treatment has not been given to the petitioner. He would further submit that the petitioner has been discriminated by not granting the same benefit to him.

Learned counsel for the respondents would submit that the petitioner was appointed on ad hoc basis on 05.04.1991 and the services of the petitioner was regularized on 09.05.2002. He would further submit that the petitioner remained on ad-hoc basis since 05.09.1991 to 08.05.2002 and thereafter worked as regular employee from 09.05.2002 till the date of his retirement i.e. 31.03.2018, therefore, the authority concerned has rightly reduced the pension amount of the petitioner. He would further submit that the pension and other retiral benefits have been sanctioned to the petitioner as per the provisions of Government Order dated 05.06.2018 and the increment during the session benefit was not admissible to the petitioner.

Perusal of the averment made in the counter affidavit would reveal that the services rendered by other similarly situated persons have been counted for grant of the benefit of pension whereof in the case of the petitioner, same principle has not been followed. Perusal of the averment made in the counter affidavit as well as rejoinder affidavit would further reveal that the service rendered by petitioner on ad-hoc basis between the period from 05.04.1991 to 08.05.2002 has not been counted at the time of fixation of his pension and subsequently, the pension of the petitioner was assumed Rs. 41,650/- but surprisingly his pension was reduced to Rs. 33,320/-. Perusal of the counter affidavit would further reveal that services of the similarly appointed lecturers, who were appointed on adhoc basis for the benefit of pension and other consequential benefits have been counted whereof the petitioner has been discriminated for the same benefit, therefore, action of respondents in non-granting the benefit to the petitioner is discriminatory in nature.

It is settled position in law that all the employees, who are similarly situated should be treated equally and such a classification for the purpose of grant of pension and other service benefit is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off-date for extension of benefits especially pensionary benefits. The Hon'ble Apex Court in the case of Secretary, Minor Irrigation Department and others vs. Narendra Kumar Tripathi reported in (2015) 11 SCC 80 has held that determination of seniority of service rendered on ad-hoc basis be considered

equally. Since, the petitioner was appointed against a substantive vacancy on adhoc basis and after regularization had continuously served the Department.

In view of the above, the writ petition is allowed. Respondent/competent authority is directed to re-fix the pension of the petitioner after counting the service rendered by him on adhoc basis and respondent shall also pay all the consequential benefit after re-fixation of his pension.

No order as to costs.”

[Emphasis supplied]

9. It will also be apposite to reproduce the decision rendered in WPSS No.2436 of 2019, Lalit Mohan Pandey v. State of Uttarakhand and others, dated 20.12.2019, as below:

“All these petitions were decided by this Court by a common judgment dated 20.12.2019. It is as hereunder:-

“Since the controversy involved in aforesaid petitions is same, therefore, the same are being disposed of by this common judgment and order.

2. By means of aforementioned writ petitions, the petitioners are seeking a writ of mandamus commanding and directing the respondents to re-fix the pension of the petitioners as per last pay drawn and shall pay all retiral benefits including arrears of gratuity and commutation with penal rate of interest.

3. After arguing the writ petitions at some length, learned counsel for the petitioners would submit that the case of the petitioners is squarely covered by the judgment dated 29.07.2019 passed by this Court in WPSS No. 3669 of 2018.

4. Learned Deputy Advocate General does not oppose the said statement made by learned counsel for the petitioners.

5. Having considered the submission of learned counsel for the parties and having perused the judgment dated 29.07.2019 passed in WPSS No. 3669 of 2018, this Court is satisfied that the case of the petitioners is squarely covered by the judgment dated 29.07.2019. Accordingly, all the writ petitions are disposed of with a direction to the respondents/competent authority to re-fix the pension of the petitioners after counting the service rendered by them on ad-hoc basis and respondents shall also pay all consequential benefits after re-fixation of their pension.

6. Pending applications, if any, stand disposed of.

7. No order as to costs.

8. All pending applications stand disposed of accordingly.”

[Emphasis supplied]

10. This Tribunal is of the opinion that the case of the petitioner is squarely covered by the aforesaid decisions of the Hon'ble High Court. Ld. A.P.O. does not dispute the applicability of the ratio of these decisions to the facts of present petition.

11. The petition is, accordingly, disposed of with a direction to the Respondent Department to re-fix the retiral dues of the petitioner after counting the service rendered by him on *ad-hoc* basis and respondents shall pay the additional amount due to him without unreasonable delay. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 01, 2022
DEHRADUN

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