

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 27/DB/2022**

1. Bhagwan Sing Kaintura, aged about 52 years, s/o Sri Bakhtwar Singh, posted as Computer Assistant in the office of Principal Secretary, Law, Uttarakhand Secretariat, Dehradun.
2. Umesh Kumar, aged about 40 years, s/o Late Sri Dhan Singh, posted as Additional Private Secretary in Hon'ble Chief Minister Office.
3. Mohan Singh, aged about 55 years, s/o Late Sri Pratap Singh, posted as A.R.O. in C.M. Office, Section-3, Uttarakhand Secretariat, Dehradun.
4. Natha Singh Rauthan, aged about 58 years, s/o Sri Kunwar Singh, posted as Addl. Private Secretary in the office of Addl. Secretary, G.A.D., Uttarakhand Secretariat, Dehradun.
5. Pradeep Kumar, aged about 59 years, s/o Sri Devi Prasad Patwal, computer Assistant in the office of Agriculture Section-II.
6. Suresh Kumar, aged about 50 years, s/o Sri Ramji Dass, posted as Computer Assistant in the office of Irrigation Department, Section-1.

.....Petitioners.

**VS.**

1. State of Uttarakhand through Chief Secretary, Uttarakhand Government, 4 Subhash Road, Uttarakhand Secretariat, Dehradun.
2. Chief Secretary, Uttarakhand Government, 4 Subhash Road, Uttarakhand Secretariat, Dehradun.
3. Additional Chief Secretary, Secretariat Administrative Department, Uttarakhand, 4 Subhash Road, Uttarakhand Secretariat, Dehradun.
4. Secretary, Secretariat Administrative Department (SAD), Uttarakhand, 4 Subhash Road, Uttarakhand Secretariat, Dehradun.
5. Addl. Secretary, Secretariat Administrative Department- 2 (SAD-2), Uttarakhand, 4 Subhash Road, Uttarakhand Secretariat, Dehradun.
6. Joint Secretary, Secretariat Administrative Department- 2 (SAD-2), Uttarakhand, 4 Subhash Road, Uttarakhand Secretariat, Dehradun.

....Respondents

Present: Sri Deepak Singh, Advocate, for the petitioners  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: NOVEMBER 29, 2022**

**Justice U.C.Dhyani (Oral)**

By means of present claim petition, the petitioners seek the following reliefs:

- a) To modify the Government Order dated 18.09.2019 *vide* which petitioners have been merged in Secretariat and directions be issued to consider the petitioners' merger w.e.f. 30.10.2013, 01.02.2010, 01.02.2010, 08.05.2012, 02.11.2012, 17.04.2012 and 20.03.2012, the dates of petitioners' regularization instead of date of merger order dated 18.09.2019.
- b) To quash the order dated 05.01.2022.
- c) Issue any other, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.
- d) Award the costs to the petitioner.

[*Emphasis supplied*]

2. Facts, giving rise to present claim petition are as follows:

2.1. Petitioners were employees of different departments in the erstwhile State of Uttar Pradesh. When the State of Uttarakhand came into existence on 09.11.2000, there was acute shortage of staff in the Secretariat. Employees of different departments and Corporations were attached to the Secretariat to perform various duties. The Uttaranchal Secretariat Merger Rules for the posts of Personal Assistant, Junior Group Assistant, Assistant Accountant, Typist, Assistant Helper, 2002 (for short, Merger Rules) were framed. Rule 4(2) of the Merger Rules clearly states that all such employees *i.e.* Personal Assistant, Junior Group Assistant, Assistant Accountant, Typist, Assistant Helper, who have been transferred in Secretariat from their

respective departments, will be eligible for merger in Secretariat and similarly all such employees who have not been transferred, but are working in Secretariat, will also be eligible for merger, but from the date of their substantive/ regular appointment in their respective departments.

2.2 In the years 2002-2006, in order to meet out the shortage of staff, in addition to the above mentioned employees, the Govt. of Uttarakhand also appointed various persons on the posts of Personal Assistant, Junior Group Assistant, Assistant Accountant, Typist, Assistant Helper, on *ad-hoc* basis. These employees, appointed on *ad-hoc* basis, were regularized in 2014 under the Regularization Rules, 2013, and such employees pursuant to regularization, are availing seniority from the date of regularization order. A list of such employees has been given in Para 5 of the claim petition.

2.3 The petitioners filed representation before the respondents in between 2002 to 2006, to either give them *ad-hoc* appointment or regular appointment or to merge them in Secretariat so that they can also get their seniority from the date of merger or regular appointment. Such correspondence has been brought on record as Annexures No. 6 & 7 to the claim petition.

2.4 The Govt., in the years 2002, 2003 and 2008, in compliance of Merger Rules, 2002 (as amended in 2003 and 2008) and specifically under Rule 4(2) of the Merger Rules, merged such regular employees of various departments who were brought on attachment from their respective Departments or Corporations. Such employees, who were *ad-hoc*, daily wager, contractual and were attached to Secretariat, were not merged with the Secretariat on the ground that they were not regular employees of their respective department. Hence, they cannot be merged with the Secretariat.

2.5 On 10.03.2008, there was service-transfer of 67 Group-C employees in the Secretariat, who were attached to the Secretariat just like the petitioners, but the services of the petitioners were not transferred to the Secretariat. All those employees, who were service-transferred, became eligible for merger from the date of service-transfer *i.e.* 10.03.2008 and all those 67 employees got their seniority from the date of their service-transfer. All these 67 employees were regular employees in their respective

departments, but there was no bar in the service-transfer. *Had services of the petitioners been transferred to the Secretariat, they would also have become eligible for merger from the date of service-transfer or from the date of regularization in their respective department.* The respondents had assured that as and when the petitioners will become regular employees in their respective department, they will be merged with the Secretariat immediately.

2.6 Between the years 2002 to 2014, petitioners kept on working in Secretariat as per Rules. Their salary was continued to be paid by their respective Departments and Corporations and not by the Secretariat, but the Annual Confidential Reports were recorded by the officers of the Secretariat under whom the petitioners were working.

2.7 Finally, the petitioners were regularized in their respective departments on 30.10.2013, 01.02.2010, 08.05.2012, 02.11.2012, 17.04.2012 and 20.03.2012 under Regularization Rules, 2011 (Copy enclosed as Annexure: 8). Immediately after their regularization, the petitioners filed various representations. The then Hon'ble Chief Minister gave certain directions to the Secretary, Secretariat Administration Department (SAD) on 24.01.2014, details of which have been given by the petitioners in Para 13 of the claim petition. In the year 2014 itself, the Hon'ble Ministers recommended the case of the petitioners for their merger to the then Hon'ble Chief Minister. The then Hon'ble Finance Minister also recommended their case for merger. Opinion of the Law Department was sought. Law Department gave its opinion, which has been referred to in Para 17 of the claim petition and copy of such opinion has been enclosed as Annexure: 13 of the claim petition. The then Chief Secretary sought approval for service-transfer of all such employees who were attached to the Secretariat before December, 2005. Extract of the notings has been given by the petitioner in Para 18 of the claim petition and copy is enclosed as Annexure-14. Despite the approval of Hon'ble Chief Minister, no transfer of petitioners was done by the respondents. In December, 2016, the Secretary, SAD, initiated the process for merger/ service-transfer of the petitioners. He passed an order on 03.01.2017. Extract of his noting has been given by the petitioners in Para 20 of the claim petition and copy of the same is enclosed as Annexure-16.

2.8 In April, 2017, the Addl. Chief Secretary, also initiated the process of merger/ service-transfer of the petitioners. The Chief Secretary strongly recommended the case of the petitioners for merger/ service-transfer on 23.08.2017. Details of such note have been given in Para 22 of the claim petition and copy of the same is enclosed as Anneuxre-18. As per direction dated 26.12.2018 of the Hon'ble Cabinet, a committee was constituted for merger of the petitioners. In last meeting dated 26.03.2019, some recommendations were made, details of which have been given in Para 23 of the claim petition and copy of the same is enclosed as Anneuxre-19. On 18.09.2019, Govt. Order for merger of the petitioners' services in Secretariat was issued.

2.9 Being aggrieved with the date of merger (18.09.2019), the petitioners filed various representations to Hon'ble Chief Minister and the respondents to change the date of their merger from 18.09.2019 to the date of their regularization, but representations of the petitioners were rejected for the reasons given in Para 26 of the claim petition. Feeling aggrieved, petitioners have filed present claim petition, grounds of which have been given in Paras 27 to 30 of the claim petition also.

2.10 Various documents have been filed by the petitioners in support of their claim petition.

3. W.S. has been filed on behalf of Respondents No. 2 to 5. C.A. has been filed by Sri Mahavir Singh, Joint Secretary, SAD, Respondent No.6.

3.1 It has been pleaded in Para 8 of the W.S. that petitioners cannot claim parity with other employees, as has been mentioned in the claim petition. Reliance has been placed upon Notification dated 10.03.2008 (Annexure: CA-4).

3.2 Paragraphs 11,12,13, 18 & 19 of the W.S. are important in the context of the challenge to the claim petition by the respondents. Such paragraphs read as below:

“11.....The case of the petitioners was different from the other employees because when they were attached with the Secretariat services they were not substantially appointed rather they were working on adhoc/daily wages/contractual basis and hence did no fulfill the eligibility criteria for

merger as per Merger Rules of 2002 or Merger (Amendment) Rules, 2008. Rule 4(1) of Merger Rules of 2002 clearly provided that the employees who are substantially appointed with the State offices Corporations/Autonomous bodies and have been attached with the Secretariat shall be merged as per the standards laid down by the appointing authority. Since the petitioners did not fulfill the standards laid down by the appointing authority therefore, their merger was not considered at that relevant point in time. Copy of Merger (7th Amendment) Rules, 2008 is being marked and filed as Annexure No. CA-3 to this affidavit.

12. It is stated that in the year 2008, all those employees who were substantially appointed in various State offices/ Corporations/ Autonomous bodies and were attached with the Secretariat *w.e.f* 23.12.2001 to 31.12.2005, were duly merged with the Secretariat in accordance with the Merger (7<sup>th</sup>Amendment) Rules, 2008. 67 employees about whom the petitioners have mentioned in the instant paragraph are those employees who had been substantially appointed in their parent department unlike the petitioners. Further these 67 employees have not been merged *w.e.f* the date of their appointment in their parent department in fact, they have been service transferred to the Secretariat on 10.03.2008 and only thereafter they have been merged in the Secretariat *w.e.f* 22.10.2008. The case of 67 employees is completely different from the petitioners and therefore the petitioners cannot claim parity with the said employees. Copy of office order dated 10.03.2008 and Copy of office order dated 22.10.2008 are being marked and filed as Annexure No. CA-4 and CA-5 respectively to this affidavit.

13. It is stated that as per the merger policy it was mandatory for the employees to be regularized first. After their regularization, they were later merged in the Secretariat vide office order dated 18.09.2019 as per the provisions of Merger (Amendment) Rules, 2019. It is imperative to state that merger is always done as per the standards laid down by the appointing authority. In view of the aforesaid policy, decision was taken in the meeting held on 02.08.2019, that all the employees who have been regularized in view the Regularization Rules, 2011 shall be merged in the Secretariat. It was no where provided that the said merger has to be done *w.e.f* the date of regularization. In fact, in clause 10 of the MoM (Memorandum of Meeting) it was categorically laid down that the employee who is eligible for the merger had to submit his consent letter, option was also given in such employees to stay with his parent department The answering respondents have never given assurance to the petitioners that they shall be merged *w.e.f* their date of regularization, it is wrong to state that the answering respondents have made any such statement as alleged by the petitioners in the instant paragraph Copy of MoM dated 02.08.2019 is being marked and filed as Annexure No CA-6 to this affidavit.

18. The reasoning given is completely legal and valid and deserves to be upheld. As has been stated above that the petitioners were not merged earlier in the year 2002, 2003 and 2008 because although they were attached with the Secretariat but they did not full till the eligibility criteria laid down in the Merger Rules of 2002 and Merger (7 Amendment) Rules, 2008 as they were not regularized Later they were regularized as per the Regularization Rules of 2011 and vide office order dated 18.09.2019, they were merged in

Secretariat Service as per the provisions of Merger (Amendment) Rules, 2010. Since the Merger Rules did not contain any provision of merging the regularized employees w.e.f. their date of regularization therefore in absence of any such provision, the petitioners were rightly merged *w.e.f.* the date of order of the merger and not from the date of their regularization.

19. It is stated that after the regularization of the petitioners as per Regularization Rules, 2011, their matter of merger was considered from time to time. Finally a Cabinet Meeting was held on 26.12.2018, wherein decision was taken that a committee be formed to decide the case of merger of all the employees who were temporarily working with State offices/Corporations/Autonomous bodies and have been attached with the Secretariat prior to 31.12.2005 and all those regular employees who have been attached in the Secretariat between 01.01.2006 to 31.12.2010. In furtherance of the aforesaid direction, *vide* order dated 12.07.2019 consent was given by the Hon'ble Cabinet to promulgate Merger (Amendment) Rules, 2019 and finally *vide* notification dated 18.07.2019 the aforesaid rules were notified. In view of the aforesaid the petitioners were duly merged after obtaining their consent, hence at this stage the petitioners cannot challenge the dates of merger, Copy of Cabinet decision dated 26.12.2018 and Copy of Cabinet decision dated 12.07.2019 to promulgate Merger (Amendment) Rules, 2019 are being marked and filed as Annexure No. CA-7 and CA-8 respectively to this affidavit.”

*[Emphasis supplied]*

3.3 Various documents have been filed, on behalf of respondents, in support of the averments made in the W.S./C.A.

3.4 In a nutshell, according to the respondents, the services of those employees with whom the petitioners claim parity, were merged by the SAD, whereas the petitioners were regularized by their parent departments.

4. Rejoinder Affidavit has been filed on behalf of petitioners reiterating the facts and grounds taken in the claim petition along with a document to show that similarly placed employees who were regularized and merged in the SAD in the year 2014 have been promoted twice, whereas the petitioners are yet to get any promotion.

5. Hon'ble Apex Court and Hon'ble High Courts, in catena of decisions, have observed that State is largest employer in our Country. Discontentment and dissatisfaction in employees arising from intentional omissions and inactions of the State is bound to generate multifold litigation between the two. In discharge of its normal duties and proper functioning, the State is expected to act fairly in such matters. To prevent litigation,

particularly unnecessary litigation, is bounden duty of the State. Various facets of this duty cast an obligation upon the State and its various departments and unlike a private employer it must grant relief to its employees, which they are entitled to get in law or under rules. Default on the part of the State results in waste of public money, public time and unnecessarily burdens the functioning of the court. State cannot be allowed to take immutable stands and its instructions or directions always should tilt in favour of reason and fairness.

6. Articles 141 and 142 of the Constitution of India make the judgment of the Apex Court binding on all courts. All authorities including the State must implement the orders effectively in comity to the law of the land. The constitutional mandate imposes an obligation on the State to ensure enforceability throughout the boundary of India of the orders passed by the Apex Court. Attempts to by-pass and circumvent the orders of the Court could never achieve any object of the State. On the contrary, it would certainly introduce an element of discontentment and frustration in its employees. In a large society like ours, the steps taken on behalf of the State to eliminate unnecessary litigation is essence of proper administration.

7. State has pervasive obligations to discharge in relation to maintaining its expected standards of employer-employee relationship. As already noticed, one of the important facets of such obligations is to be reasonable and fair in granting service benefit to its employees in accordance with service rules and the principles enunciated on pronouncement of judgments by the Courts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary the State to require each one of its employees to approach the Courts of law for grant of relief which the State ought to grant to the employees in normal course of administration.

8. Hon'ble Supreme Court has held, in number of decisions that *per se* discrimination should be avoided. Undesirable situation emerging in the same cadre particularly where large number of employees are working in big establishments should also be avoided.

9. Settled principle is that the State should avoid discrimination in grant of service benefits to the member of the same cadre identically situated. The State must show its grace and in fact carry out its implicit duty to grant benefit to the other members of the cadre.

10. Mechanical functioning must be substituted by reasonable and purposeful approach. State is expected to grant the same relief to the petitioners at its level in all fairness. Such an approach would not only further the object of healthy employer-employee relationship but would also take away unnecessary burden of the Court arising from such frivolous litigation. It will be legitimate expectancy on the part of the employee that he would be given the same relief which his co-employee similarly situated has been granted. Denial of justice is violation of basic rule of law on the part of respondent department.

11. In Para 5 of the decision rendered by Hon'ble Punjab & Haryana High Court (Division Bench) in Civil Writ Petition No.15712/1997, Satyapal Singh and others vs. State of Haryana and another , which decision has been cited in the 'opinion' of the Law Department of Govt. of Uttarakhand, it has been observed that, ".....the State Govt. should have itself granted the same relief to other similarly situated persons though they may not have come to the Court. The State Govt. should under such circumstances apply the law itself to the similarly situated persons instead of forcing any individual or a Union to resort to unnecessary litigation as law is already settled and only the same has to be applied to the facts of a particular case. ....The respondents as a welfare State should rather see to it that the litigation in the Courts is minimized. After this Court or the Apex Court lays down the law, it should see to it that similarly situated persons automatically get the same relief without resorting to litigation."

12. It may be noted here that the decisions of *Satbir Singh vs. State of Haryana*, (P&H)(DB), 2002 (2) SCT 354 & *Civil Writ Petition No.15712/1997, Satyapal Singh and others vs. State of Haryana and another*, were cited by the Law Department of the Govt. of Uttarakhand when the Administrative Department sought the opinion of the Law Department. Normally the Administrative Department should abide by the advice of Law

Department. They can differ, only when there are cogent reasons for taking a different stand.

13. In the claim petition supported by the affidavit, it has categorically been stated by the petitioners that petitioners were employees of different departments in the erstwhile State of Uttar Pradesh. When the State of Uttarakhand came into existence on 09.11.2000, there was acute shortage of staff in the Secretariat. Employees of different departments and Corporations were attached to the Secretariat to perform various duties. In the years 2002-2006, in order to meet out the shortage of staff, in addition to the above mentioned employees, the Govt. of Uttarakhand also appointed various persons on the posts of Personal Assistant, Junior Group Assistant, Assistant Accountant, Typist, Assistant Helper, on *ad-hoc* basis. These employees, appointed on *ad-hoc* basis, were regularized in 2014 under the Regularization Rules, 2013, and such employees pursuant to regularization, are availing seniority from the date of regularization order. The petitioners filed representation before the respondents in between 2002 to 2006, to either give them *ad-hoc* appointment or regular appointment or to merge them in Secretariat so that they can also get their seniority from the date of merger or regular appointment. The Govt., in the years 2002, 2003 and 2008, in compliance of Merger Rules, 2002 (as amended in 2003 and 2008) and specifically under Rule 4(2) of the Merger Rules, merged such regular employees of various departments who were brought on attachment from their respective Departments or Corporations. Such employees, who were *ad-hoc*, daily wager, contractual and were attached to Secretariat, were not merged with the Secretariat on the ground that they were not regular employees of their respective departments. Hence, they cannot be merged with the Secretariat.

13.1 On 10.03.2008, there was service-transfer of 67 Group-C employees in the Secretariat, who were attached to the Secretariat just like the petitioners, but the services of the petitioners were not transferred to the Secretariat. All those employees, who were 'service-transferred', became eligible for merger from the date of service-transfer *i.e.* 10.03.2008 and all those 67 employees got their seniority from the date of their service-transfer. All these 67 employees were regular employees in their respective

departments, but there was no bar in the service-transfer. *Had services of the petitioners were transferred to the Secretariat, they would also have become eligible for merger from the date of service-transfer or from the date of regularization in their respective department.* The respondents had assured that as and when the petitioners will become regular employees in their respective departments, they will immediately be merged with the Secretariat. Finally, the petitioners were regularized in their respective departments and after their regularization, the petitioners filed various representations. The then Hon'ble Chief Minister gave certain directions to the Secretary, Secretariat Administration Department (SAD) on 24.01.2014. In the year 2014 itself, the Hon'ble Ministers recommended the case of the petitioners for their merger to the then Hon'ble Chief Minister. The then Hon'ble Finance Minister also recommended their case for merger. Opinion of the Law Department was sought. Law Department gave its opinion. Despite the approval of Hon'ble Chief Minister, no service transfer of petitioners was done by the respondents. In December, 2016, the Secretary, SAD, initiated the process of merger/ service-transfer of the petitioners. He passed an order on 03.01.2017. The Chief Secretary strongly recommended the case of the petitioners for merger/ service-transfer on 23.08.2017. As per direction dated 26.12.2018 of the Hon'ble Cabinet, a committee was constituted for merger of the petitioners. On 18.09.2019, Govt. Order for merger of the petitioners' services in Secretariat was issued.

13.2 Being aggrieved with the date of merger (18.09.2019), the petitioners filed various representations to Hon'ble Chief Minister and the respondents to change the date of their merger from 18.09.2019 to the date of their regularization, but representations of the petitioners were rejected.

14. The stand taken by the petitioners has although been contested by the respondent-department by filing W.S./C.A., but it has no legs to stand, in view of various decisions of the Hon'ble Constitutional Courts that similarly situated persons should get the same relief.

15. Ld. A.P.O. opposed the claim petition with vehemence. He submitted that the petitioners and those with whom they claim parity, are not similarly situated, inasmuch as when the petitioners were attached to the

Secretariat, they were not substantially appointed, rather they were working on ad hoc/daily wages/contractual basis and hence did not fulfill the eligibility criteria for merger as per Merger Rules of 2002 or Merger (Amendment) Rules, 2008. Rule 4(1) of Merger Rules of 2002 clearly provided that the employees who are substantially appointed with the State offices/Corporations/Autonomous bodies and have been attached to the Secretariat shall be merged as per the standards laid down by the appointing authority. Since the petitioners did not fulfill the standards laid down by the appointing authority therefore, their merger was not considered at that relevant point in time. In the year 2008, all those employees who were substantially appointed in various State offices/ Corporations/ Autonomous bodies and were attached with the Secretariat *w.e.f* 23.12.2001 to 31.12.2005, were duly merged with the Secretariat in accordance with the Merger (7<sup>th</sup> Amendment) Rules, 2008. 67 employees of whom the petitioners have given reference in their claim petition, are those employees who had been substantially appointed in their parent department, unlike the petitioners. The case of 67 employees is completely different from the petitioners and therefore the petitioners cannot claim parity with those employees. As per the merger policy, it was mandatory for the employees to be regularized first. After their regularization, they were later merged in the Secretariat *vide* office order dated 18.09.2019 as per the provisions of Merger (Amendment) Rules, 2019.

16. Ld. Counsel for the petitioners replied that the petitioners have clearly been regularized under the Regularization Rules of 2011. Petitioners were eligible for merger from the date of their regularization in their respective departments, which was in the years 2010, 2011, 2012, 2013. Petitioners filed representations for the same and there were directions to start the process by several Hon'ble Ministers and this aspect has not been denied by the respondents in their W.S.

17. Petitioners have been running from pillar to post for getting similar treatment which was given to similarly situated employees of the SAD. Creating a distinction between the petitioners and those (similarly situated) employees, on the ground that those ad-hoc employees were of SAD, they were regularized earlier and, therefore, they were merged in

Secretariat service on an early date, amounts to artificial distinction and hence, discrimination between the petitioners and those employees. The fact that the petitioners were regularized subsequently by their parent departments, whereas the other persons were regularized earlier by SAD, creates no substantial difference. The petitioners as well as the other employees were working together in the Secretariat and no discrimination can be meted out to the petitioners if their services were regularized by their parent departments subsequently. It is not a natural classification. It amounts to artificial distinction, which is not permissible under Articles 14 and 16 of the Constitution of India.

18. Not only the petitioners and the other employees, who were working together in the Secretariat, but the public representatives have regularly been agitating the grievance of the petitioners. It is a different matter that the employees of SAD got their merger before the petitioners could facilitate their merger in SAD. Same work was being taken from both the classes, coming from similar sources and in the similar manner. Their status was not different from each other. Their identity remains the same.

Johan W.V. Goethe said, *"I am what I am, so take me as I am!"* According to Shakespeare, *"What is in a name? A rose by any other name would smell as sweet" (as rose)!* Essential qualities and fundamental characteristics of an entity matters the most and not the name by which a person is addressed. It has further been pointed out that those employees who were appointed in Secretariat on *ad-hoc* basis in the year 2002-2006 and were regularized under the Regularization Rules of 2013, became senior to the petitioners after getting two promotions. The petitioners were regularized under the Regularization Rules of 2011. Whereas the petitioners did not get any promotion, those employees, who were regularized under the Regularization Rules 2013, which is under challenge before the Hon'ble High Court in WPSB No. 616/2018, Narendra Singh vs. State of Uttarakhand and others, have been given two promotions, subject to final decision of the Hon'ble Court.

19. The employees, who were attached to the Secretariat, after the creation of State of Uttarakhand, between the years 2002-2006, were merged in the Secretariat. Those employees, who were regular or permanent

employees in the year 2002, were merged in the Secretariat by virtue of Rule 4(1) of Merger Rules, 2002. Those temporary employees, who could not be merged in the Secretariat, continued to serve there (in Secretariat). Since petitioners were not regular/ permanent employees in their parent departments, they did not fulfill the conditions under rule 4(1) of the Merger Rules, 2002, therefore, petitioners were not merged in the Secretariat. Petitioners continued to work in Secretariat under the expectation that they will be regularized and made permanent. Petitioners' services were regularized, in their parent departments in the years 2012 and 2013 under the Regularization Rules, 2011. When the petitioners were regularized under the Regularization Rules, 2011, they became eligible for merger in the Secretariat under Rule 4(1) of the Merger Rules, 2002. Several representations were given by the petitioners for their merger in the Secretariat. Advisory Departments also gave opinion for merger of the petitioners. Petitioners were finally merged in the Secretariat on 18.09.2019, but in the process, seven years were consumed by SAD, as a consequence of which, seniority and promotion of the petitioners are adversely affected. Hon'ble Cabinet took a decision on 18.07.2019 (Copy: Annexure- CA 1) for the merger of the petitioners. Hon'ble Cabinet, in its meeting dated 02.08.2019 (Copy: Annexure- CA 6) nowhere decided that the merger will be effective from the said date. In spite of that, SAD issued Office Order No. 1818, dated 18.09.2019 for merger of the petitioners in the Secretariat from the said date. Contrary to it, those employees, who were working in the Secretariat on *ad-hoc*/ temporary basis, since 2006 and were regularized under the Regularization Rules 2013, on which there is stay from Hon'ble High Court, were merged in the Secretariat with immediate effect. These employees have been given two promotions, whereas the petitioners, who are attached to Secretariat and are working there since 2000 and were regularized under the Regularization Rules of 2011, have been denied seniority/ promotion because of lackadaisical approach of the respondents. Prayer of the petitioners for modification of Office Order No. 1818 dated 18.09.2019, for modifying the date of regularization as the date of merger is justified. The respondents should be directed to consider the prayer of the petitioner. Order accordingly.

20. The claim petition is allowed. Respondents are directed to modify the Govt. Order dated 18.09.2019 and to consider the merger of the petitioners *w.e.f.* the dates of their regularization instead of 18.09.2019. Order dated 05.01.2022, *vide* which the representations of the petitioners were rejected, is hereby set aside *qua* the petitioners. No order as to costs.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: NOVEMBER 29, 2022*  
*DEHRADUN*

*VM*