

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

Writ Petition No. 409 (S/B) of 2021

[Reclassified and Renumbered as Claim Petition No. 02/NB/DB/2023]

Dr. Lalit Kumar Singh, aged about 33 years, s/o Sri Ram Prasad,
r/o Ganges, C-103, Omaxe Rivera, Rudrapur, Udham Singh Nagar.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Labour, Uttarakhand Civil Secretariat, 4- Subhash Marg, Dehradun, District Dehradun.
2. Secretary, Finance, Civil Secretariat, Uttarakhand Civil Secretariat, 4- Subhash Marg, Dehradun, District Dehradun.
3. Director, Employees State Insurance Scheme, Labour Medical Services, 22, Survey Chowk, Dehradun, District Dehradun.
4. Chief Medical Officer Incharge, Employees State Insurance Scheme, Labour Medical Services, 22, Survey Chowk, Dehradun, District Dehradun.

..... Respondents

Present: Sri Piyush Tiwari, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O. for the Respondents

Judgement

Dated: 08th August, 2023

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 15.11.2022 in WPSB No. 409 of 2021, Dr. Lalit

Kumar Singh vs. State of Uttarakhand and others, which (order) reads as under:

“Miscellaneous applications (IA Nos.01 of 2021 and 02 of 2021) are allowed, and the counter-affidavit filed by respondent no.1 and the rejoinder-affidavit to the counter affidavit of respondent no.1 are taken on record.

2. Petitioner, admittedly, is a public servant. The reliefs sought in the writ petition are as follows:-

I. Issue a writ order or direction in the nature of mandamus directing the respondent to extend the benefit of the Special Dynamic Assured Career Progression Scheme (SDACP) as introduced vide Government Order dated 14.07.2016 in PMHS Cadre of Medical Health & Family Welfare Department to the petitioner and grant him all consequential benefits.

II. Issue a writ order or direction in the nature of mandamus directing the respondent to waive of the condition of mandatory hard area service while granting the Special Dynamic Career Progression Scheme as no ESIS dispensary is situated in the hard and hilly area of the State as on date.

III. Issue any order or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. The said reliefs squarely fall for consideration within the jurisdiction of the Uttarakhand Public Services Tribunal.

4. Since the pleadings are complete, we direct the Registry to transmit the record of the present writ petition to the Tribunal forthwith to be registered as a claim petition.

5. The writ petition is disposed of accordingly.”

[emphasis supplied]

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 18018/UHC/Service (S/B)/ PST/ Nainital dated 22.11.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 02/NB/DB/2023.

3. Learned Counsel for the petitioner relied upon the judgements rendered by Hon'ble Supreme Court in State of Mizoram and another vs. Mizoram Engineering Service Association, (2004) 6 SCC 2018; Randhir Singh vs. Union of India and others, (1982) 1 SCC 618 and Union of India vs. Dineshan

K.K., (2008) 1 SCC 586; Hon'ble High Court of Uttarakhand in writ petition no. 1192 of 2018, Dr. Vishal Pratap Singh vs. State of Uttarakhand and others; and Hon'ble High Court of Andhra Pradesh in writ petition no. 20146 of 2012, Dr. Arun Kumar Mehta and others vs. Union of India and others; to submit that the petitioner is entitled to the reliefs claimed on the basis of the aforesaid decisions. Reliefs claimed by the petitioner have been highlighted at page no. 2 of the judgement.

4. Counter affidavit has been filed by Sri Pradeep Mohan Nautiyal, Deputy Secretary, Labour Department, Uttarakhand Secretariat, on behalf of respondent no. 1. In para 13 of such C.A., it has been stated that implementation of scheme and its applicability is a matter of policy decision. The Special Dynamic Assured Career Progression Scheme (SDACP) was specifically introduced in the State Medical Health Department with a view to provide adequate medical facilities in the rural/ inaccessible (*durgam*) areas of the State for which the medical officers who opted to serve in medical health centers situated in very inaccessible (*durgam*) areas were extended certain benefits by the said scheme. All the ESIS dispensaries/ hospitals in State are situated in accessible (*sugam*) areas. Presently no dispensary functioning at inaccessible (*durgam*) areas is functioning in Uttarakhand. Since there is no parity between the officers working in accessible (*sugam*) and inaccessible (*durgam*) areas, therefore the demand of DACP on the basis of parity is unreasonable/ untenable and therefore cannot be granted.

5. Rejoinder affidavit thereto has been filed by the petitioner reiterating the facts contained in the petition.

6. Respondent No. 3 has forwarded the matter to respondent no. 1 on 29.03.2019 (Annexure No. 8) for taking a decision. A perusal of Annexure No. 8 would indicate that respondent no. 3 has recommended the case of the petitioner and

Medical Officers of ESIS to respondent no. 1, but no decision has been taken by the respondent no. 1 on it so far.

7. The Tribunal deems it appropriate to direct respondent no. 1 to decide on recommendation of respondent no. 3 dated 29.03.2019 and representation dated 23.05.2021 (Annexure No. 13) of the petitioner by a reasoned and speaking order, in accordance with law, without unreasonable delay, after affording an opportunity of hearing to the petitioner, preferably within 08 weeks of presentation of certified copy of this order. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 08th August, 2023
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RS