

**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. 03 (S/B) of 2021

[Reclassified and Renumbered as Claim Petition No. 97/NB/DB/2022]

Bharat Bhushan Awasthi, aged about 45 years, s/o Sri Harish Chandra Awasthi, presently posted as Associate Professor, Dental Department, Dr. Sushila Tiwari Government Medical College, Haldwani, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Principal Secretary, Medical Education, Government of Uttarakhand, Dehradun.
2. Director, Medical Education, Uttarakhand, 107 Chandra Nagar, Dehradun, Uttarakhand.
3. Principal, Government Medical College, Haldwani, Nainital.

..... Respondents

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

Judgement

Dated: 10th August, 2023

Mr. Rajeev Gupta, Vice Chairman (A) (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 16.09.2022 in WPSB No. 03 of 2021, Bharat

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

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

I. Issue writ, order or direction in the nature of certiorari to quash the impugned letter/ dated 10.01.2020 issued by Deputy Secretary, Government of Uttarakhand wherein the claim of the petitioner seeking benefit of past services rendered by him in Government Community Health Centre has been rejected.

II. Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the claim of the petitioner for inclusion of his past services rendered as Dental Surgeon in Government Community Health Centre on pensionable post between 29.01.2003 to 20.08.2008 and consequently pay all the service benefits including benefit under old pension scheme by activating the GPF Account allotted to the petitioner.

III. Issue any other order or direction which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case”.

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

3. Considering the fact that writ petition is pending since the year 2020-21, and the counter-affidavit has been filed on behalf of respondent no.3, we direct the Registry to transmit the record of the present writ petition to the Tribunal forthwith to be registered as a claim petition.

4. The writ petition is disposed of accordingly.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 13519/UHC/Service (S/B) 2022 dated 21.09.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as claim petition no. 97/NB/DB/2022.

3. Counter affidavits have been filed on behalf of respondents no. 1, 2 & 3 separately. Rejoinder affidavits thereto have also been filed by the petitioner.

4. After hearing learned Counsel for the parties, the Tribunal arrives at the following conclusions:

5.1 The services rendered by the petitioner in the Medical and Health Department from 29.01.2003 to 20.10.2008 were covered under the Old Pension Scheme. After his joining the Forest Hospital Trust, his services are to be treated as Govt. service after the provincialisation of the Forest Hospital Trust according to G.O. dated 07.07.2015 (Annexure No. 11 to the petition).

5.2 Had the petitioner joined the Govt. service in 2008, he would not have been covered under the Old Pension Scheme but under the New Pension Scheme. If his past services from 2003 to 2008 are added to the same, he becomes eligible for the Old Pension Scheme. The contention of the learned Counsel for the petitioner is that his resignation letter dated 16.10.2008 from the earlier Govt. service after joining Forest Hospital Trust was accepted on 30.11.2010 and in between, his lien continued in the earlier Govt. department and after the provincialisation of the Forest Hospital Trust *vide* G.O. dated 30.04.2010, his services in the Forest Hospital Trust are again to be counted as Govt. service. Therefore, there is continuity of his service in the Govt. from 2003 onwards and as such the old services should be added to the present services to enable him to avail the benefit of Old Pension Scheme.

5.3 Learned A.P.O. has argued that the resignation has been accepted by order dated 30.11.2010 *w.e.f.* 20.10.2008 and therefore, his lien in the Medical and Health Department cannot be said to be continued after 20.10.2008. It would have been different if the petitioner had withdrawn his resignation before 30.11.2010; then probably his lien would have continued in the department.

5.4 The impugned order dated 10.01.2020 (Annexure No. 15 to the petition) states that since the State Govt. had accepted the resignation of the petitioner on 30.11.2010 since 20.10.2008, the occasion to add his previous service in the present service stands closed. After acceptance of the resignation, the addition of the

past service to the next service is not possible as the same is not provided in the relevant service rules.

5.5 The Tribunal observes that the Uttarakhand Retirement Benefits (Amendment) Rules, 2015 (Annexure No. 9 to the petition) provide that employees, who have been newly appointed on or after 01.10.2005 but before this date they were employed in Uttarakhand Govt. or Central Govt. or Union Territories or other State Govt. and were covered under the Old Pension Scheme and where there is no interruption between their old Govt. service and new Govt. service, then such employees will be covered under Old Pension Scheme, if they had applied for the new service through proper channel and the competent authority had given permission for the same and if for some administrative reason or technical requirement, such employee had to resign from his post and the authority accepting the resignation has certified that such resignation was given with due permission for administrative reason or for fulfillment of some technical requirement to take charge of the new post.

5.6 The Tribunal observes that there was technical requirement for the petitioner to resign from the earlier Govt. post to join the post of Forest Hospital Trust and under the above Uttarakhand Retirement Benefits (Amendment) Rules, 2015, even in the case of resignation from earlier service to join the new service, the benefit of Old Pension Scheme is admissible subject to fulfillment of certain conditions.

6. In view of the above, the Tribunal observes that submission of the resignation from the earlier Govt. post and its acceptance was a technical requirement and the fact that such resignation has been accepted from the due date should not come in the way of the department for consideration of the continuation of the past Govt. services of the petitioner with his present Govt. services. The impugned order dated 10.01.2020 is therefore, quashed and the respondents are directed to reconsider the case

of the petitioner in the light of the above discussion, without unreasonable delay on presentation of certified copy of this order.

7. The petition is accordingly disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 10th August, 2023
DEHRADUN
RS