

(Virtually)

**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 212(S/B) OF 2015

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 157/NB/DB/2022]

1. Vijay Pal Singh, S/o Sri Mool Chand, presently posted as Block Education Officer, Jaspur, Udham Singh Nagar
2. Kamlesh Kumar Varshney, S/o Late B.L. Varshney, presently posted as District Education Officer (Elementary), Udham Singh Nagar.
3. Uma Dutt Goswami, S/o Sri I.D. Goswami, presently posted as Block Education Officer, Raipur, Dehradun.
4. Smt. Kamla Badwal, W/o Sri L.S. Badwal, presently posted as Expert, State Project Office, Dehradun.
5. Naresh Kumar, S/o Late Mangu Singh, presently posted as Block Education Officer, Sahaspur, Dehradun.
6. Rajvir Singh Savita, S/o Sri Ram Kumar, presently posted as Block Education Officer, Okhalkanda, Nainital.
7. Lacham Singh Danu, S/o Late K.S. Danu, presently posted as District Education Officer (Secondary), Rudraprayag.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, School Education, Uttarakhand Govt., Dehradun.
2. Principal Secretary, Finance, Uttarakhand Govt., Dehradun.
3. Director, Secondary Education, Uttarakhand, Dehradun.

.....Respondents

Present: Sri K.P.Upadhyay, Senior Advocate, assisted by
Sri Hemant Pant, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for Respondents

JUDGMENT

DATED: AUGUST 29, 2023

Justice U.C.Dhyani, Chairman
Sri Rajeev Gupta, Vice Chairman (A)

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 212/2015, Vijay Pal Singh & others vs. State of Uttarakhand and others, on 24.09.2022, as follows:

“2. The reliefs sought in the writ petition are the following:-

“(I) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant to the petitioners the benefit of 1st financial upgradation under the ACP scheme w.e.f. the respective dates as disclosed in para-24 of the writ petition and also to release the arrears of salary with interest.

(II) issue a writ, order or direction in the nature of certiorari calling for the records and quashing the annexure-01 Government Order dated 07th July, 2014 whereby and under the petitioners have been ordered to be treated as substantively appointed Block Education Officer or equivalent thereto in the lower pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/-

(iii) hold and declare that the State Government's decision to absorb / substantively appoint the petitioners on a lower post carrying a lower pay scale is unsustainable in the eyes of law.”

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

4. Considering the fact that the Writ Petition has been pending since 2015, and the pleadings are complete, we direct the Registry to transfer the complete record of this Writ Petition to the Uttarakhand Public Services Tribunal. The Tribunal shall register the same as a Claim Petition, and deal with the same accordingly. Since the Writ Petition has been pending since 2015, we request the Tribunal to expedite the hearing of the Claim Petition, provided the petitioners do not seek any adjournment.

5. The Writ Petition stands disposed of accordingly.”

2. Writ Petition No. 212 (S/B) of 2015 is, accordingly, reclassified and renumbered as Claim Petition No. 157/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. The case of the petitioners is outlined as below:

3.1 Th petitioners were appointed to the posts of Principal, Govt. Intercollege or equivalent thereto in the year 1999. At that time, their service conditions were governed by the U.P. Educational (General Cadre) Service Rules, 1992.

3.2 The Finance Department of the Govt. of Uttarakhand issued a Govt. Order dated 20th December, 2001 whereby the Central pay scale was made applicable to the teachers of the State in terms of the 5th Central Pay Commission and the teachers/principals of primary and secondary schools of the State were granted the same pay scale as was admissible to the teachers working in the Central Govt.. As per the above Govt. order dated 20th December, 2001, the recommendation of the 5th pay commission was made applicable w.e.f. 01st January, 1996, but in respect of the teachers of the State the same was made applicable from 01st July, 2001 with actual benefits. The Govt. Order provided that the pay of the incumbents appointed after 01st January, 1996 would be notionally determined and fixed in terms of the revised pay scale and actual benefits would be given from 01st July, 2001. By the said Govt. Order dated 20th December, 2001 the ordinary pay scale of Rs. 8000-275-13500 as well as the selection pay scale of Rs. 10000-325-15200 corresponding to the post of Principal and equivalent thereto were revised to Rs. 10000-325-15200. Thus the pay scale of the petitioners who were appointed long after 01st January, 1996 in the year 1999 stood revised notionally treating them to have been initially appointed in the pay scale of Rs. 10000-325-15200.

3.3 On 19th October, 2006 the State Govt. in exercise of powers under proviso to Article 309 of the Constitution of India notified the Uttarakhand Educational (General Education Cadre) Service Rules, 2006. Serial no.5 of the appendix to the said Rules dealt with the posts placed in senior pay scale grade-2 namely, the pay scale of Rs. 10000-325-15200. The total number of sanctioned posts in the said senior pay scale grade-2 was 772. The posts of Principal (Govt. Intermediate College/ Govt. Girls Intermediate College), Vice Principal District Institute of Educational Research & Training, Head of Department/ Deputy Director State Council for Educational Research and Training, Deputy Director Head Quarters and Joint Secretary Uttarakhand Board of School Education were placed in the senior pay scale grade-2 of Rs. 10000-325-15200.

3.4 In consonance with the aforesaid rules of 2006 the Govt. of Uttarakhand issued a Govt. Order dated 20th November, 2006 regarding the

revised pay scale of Principal and higher posts. The said Govt. Order reiterated that the pay scale of Rs. 8000-13500 admissible to the Principals was revised to higher pay scale of Rs. 10000-15200 from the date of taking over charge of the said post.

3.5 Vide Govt. Order dated 01st March, 2009 the recommendation of 6th pay commission was made applicable to the teachers/principals working in the primary and secondary educational institutions of the Education Department of the State of Uttarakhand w.e.f. 01st January, 2006. By the said Govt. order dated 1st March, 2009 the pay scale of the post of Principal was upgraded from Rs. 10000-15200 to Rs. 12000-16500. After implementation of the report of the 6th pay commission notionally from 01st January, 2006 and effectively from 01st March, 2009, the pay scale of the post of Principal and equivalent posts was placed in pay band-3 of Rs. 15600-39100 with grade pay of Rs. 7600/- w.e.f. 01-01-2006.

3.6 The above Govt. Order dated 01st March, 2009 was in respect of the members of the Educational Cadre of the department and as a result the officers who were working against the Administrative posts were not getting the benefit of recommendation of the 6th pay commission made applicable in the State of Uttarakhand. In view thereof the anomaly in the pay scale of the officers governed by the same service Rules of 2006 was highlighted and referred to the pay anomaly committee. Subsequently, after taking into account the provisions of the Service Rules of 2006 as well as the recommendation of the pay anomaly committee report, the State Govt. issued a Govt. Order dated 11th March, 2011 thereby granting the upgraded pay scale to the officers of Administrative Cadre of the department as well w.e.f. 01st January, 2006.

3.7 The above Govt. Order dated 11th March, 2011 dealt with the post of Deputy Director (and equivalent posts), Joint Director and Additional Director. The Govt. Order provided that the Deputy Director and equivalent posts would be entitled to upgradation of their pay scale in the pay band-3 carrying the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.8 A perusal of the Govt. Order dated 11th March, 2011 shows that against the post of Deputy Director/equivalent posts it has been mentioned that the said post carried the pay scale of Rs. 10000-15200 on or before 01st January, 2006. It has also been mentioned that the post of Deputy Director/equivalent posts carried the pay scale of Rs. 10000-15200 in terms of the notification no. 317, dated 19th October, 2006 whereby the Service Rules of 2006 were notified. The post of Principal of Govt. Intermediate College/ Govt. Girls Intermediate College was placed in the pay scale of Rs. 10000-15200 alongwith the post of Deputy Director and other equivalent posts.

3.9 By a Govt. Order dated 14th June, 2011 the State Govt. made a declaration regarding the restructuring of the Education Department. After restructuring of the department, 297 posts in the Administrative Cadre of the department were created. The Govt. Order dated 14th June, 2011 shows that 48 posts of Deputy Director/ equivalent posts in the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/- and 97 posts of Block Education Officer/equivalent posts in the pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/- were created.

3.10 By a Govt. Order dated 18th July, 2011, the Secretary, Secondary Education invited options from the Principals / Officers for Academic or Administrative Cadre. The said Govt. Order provided that the posts of Deputy Education Officer, Block Education Officer/equivalent posts, Deputy Director/equivalent posts, Joint Director/equivalent posts, Additional Director/ equivalent posts and the post of Director would be the posts belonging to Administrative Cadre. As submitted above, the post of Block Education Officer and its equivalent posts carry a pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/- whereas the posts of Principal, Deputy Director and equivalent posts carry a pay scale of Rs. 15600-39100 with grade of Rs. 7600/-.

3.11 It is considered very pertinent and significant to point out here that the above Govt. Order dated 18th July, 2011 specifically held out that after exercising option the concerned incumbent would be posted in his cadre in

terms of his status / position as on 01st January, 2006. It may be reiterated that w.e.f. 01-01-2006 petitioners were placed in pay band-3 of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.12 In pursuance of the Govt. Order dated 18th July, 2011 the petitioners exercised their option and opted for Administrative Cadre of the department. After considering the options of the Officers/Principals of the Education Department, the State Govt. issued an office memorandum dated 25th June, 2012 thereby declaring the list of members of Administrative Cadre and Academic Cadre. The petitioners were allotted the Administrative Cadre of the department.

3.13 By a notification dated 20th December, 2013, the Uttarakhand State Educational (Administrative Cadre) Service Rules, 2013 were notified. Rule 5 of the said rules deals with source of recruitment to various posts of the cadre. As per rule 5 (iv), the post of Deputy Director and its equivalent posts are to be filled by promotion through the selection committee from amongst substantively appointed officers who have completed 4 years service on the post mentioned at serial no. 5 of Appendix-A or have completed 10 years service in his/her cadre on the 01st day of the year of recruitment.

3.14 From a bare perusal of the aforesaid Service Rules, it reveals that rule 16 deals with recruitment by promotion and provides that the post of Deputy Director or equivalent thereto is filled by way of promotion on the basis of seniority subject to rejection of unfit. It is evident from Appendix-A that the posts of Block Education Officer or equivalent thereto have been placed at serial no. 5 and carry the pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/-. It is further evident from the Appendix that the posts of Deputy Director and equivalent posts are mentioned at serial no. 4 and the said posts carry the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.15 By the impugned Govt. Order dated 07th July, 2014 the petitioners who were holding on officiating basis the post of Deputy Director or equivalent thereto in the senior pay scale of Rs. 15600-39100 with grade pay

of Rs. 7600/- in terms of the Service Rules of 2006 framed under proviso to Article 309 of the Constitution have been absorbed / adjusted on the post of Block Education Officer or equivalent thereto in the pay scale of Rs. 15600-39100 with lower grade pay of Rs. 6600/-. The Govt. Order dated 07th July, 2014 provides that any order issued earlier on the subject shall stand superseded. The Govt. Order states that the posts mentioned in column-6 against the names of the respective officers shall be treated to be the substantive posts of the said officers. Petitioners figure at serial nos. 124, 51, 102, 110, 119, 116 & 89 of the impugned order dated 07.07.2014.

3.16 It has further been provided by the impugned order dated 07th July, 2014 that the officers who have been absorbed on the post higher than the substantive post held by them, will be treated to be holding the higher posts in the officiating capacity. It has been provided that the officers who are working on the present post and are getting higher pay scale but have been absorbed on the lower pay scale of the lower posts will continue to get the present pay scale as their personal pay until they are promoted in the present pay scale.

3.17 The above impugned action of the State Govt. is per se arbitrary and illegal inasmuch as the petitioners who are the direct appointees in the pay scale of Rs.10000-15200 in terms of the 5th pay commission recommendation and receiving the upgraded pay scale of Rs.12000-16500 w.e.f. 1st January, 2006 i.e. the pay scale in pay band-3 of Rs.15600-39100 with grade pay of Rs.7600/- cannot be absorbed on a post carrying a lower grade pay of Rs. 6600/-. The said action of the State Govt. being manifestly contrary to the specific promise held out to the petitioners vide Govt. order dated 18th July, 2011 is not sustainable in view of the doctrine of promissory estoppel. If the State Govt. vide its order dated 18th July, 2011 had not made a representation to the concerned officers of the department that after allocation of the Academic or Administrative cadre the status / position of the officers as on 01.01.2006 shall remain intact, the petitioners would not have opted for the Administrative cadre only for being posted / absorbed against the post of Block Education Officer or equivalent thereto carrying lower grade pay. The result of the impugned order dated 07th July, 2014 is

that the petitioners who were the appointees in the revised pay scale of Rs.10000-15200 w.e.f. the respective dates in the year 1999 have been absorbed on a post carrying same pay scale (i.e. PB-3 15600-39100 GP-6600 as per the 6th CPC). The impugned order dated 7th July, 2014 is, therefore, liable to be quashed and set aside and the petitioners are entitled to be absorbed as per their status on 01.01.2006 as promised by the Govt. order dated 18th July, 2011.

3.18 The second grievance of the petitioners is that despite their entitlement to the 1st financial upgradation in terms of the ACP Scheme of the State Govt., the said benefit has not been extended to them. Petitioners made their individual representations to the Govt for redressal of their grievance. However, the grievance raised by way of their representations was not attended to.

3.19 In order to demonstrate the justification regarding their entitlement to first financial upgradation, the petitioners need to point out the provisions contained in the ACP Scheme. The Govt. of Uttarakhand vide Govt. order no. 872 dated 08th March, 2011 has taken a policy decision to implement the ACP scheme for its employees. The State Govt. decided to implement the ACP scheme w.e.f. 01-01-2006 in the applicable revised pay structure for all categories of Govt. employees/officers in place of the then applicable provision of time pay scale.

3.20 It was provided in the above Govt. Order dated 8th March, 2011 that on a post of direct recruitment on completion of 10 years, 18 years and 26 years of continuous satisfactory service from the date of regular appointment three financial upgradations shall be made admissible. The three financial upgradations are to be made admissible only in the revised pay structure made applicable w.e.f. 01-01-2006. The following provisions of the Govt. order dated 8th March 2011 containing the ACP Scheme need to be brought to the kind notice of this Hon'ble Tribunal –

(1) The aforesaid scheme shall be effective from 01.09.2008 for post holders with pay scales upto Rs. 7500-12000 prior to 01.01.2006, grade pay upto Rs. 4800 in the revised pay band and from 01.01.2006 for post holders

with pay scale Rs.8000-13500, grade pay Rs. 5400 and higher pay band and grade pay.

(2) (i) Under the ACP three financial upgradations shall be made admissible on the basis of regular satisfactory service of 10 years, 18 years and 26 years on a post of direct recruitment subject to the following conditions –

(a) First financial upgradation shall become due on completion of continuous satisfactory regular service of 10 years in the pay scale / equivalent grade pay of a post of direct recruitment.

Provided that in the event of the pay scale/grade pay of a post being upgraded at some point of time, while counting the service period for admissibility of financial upgradation the services rendered in earlier pay scale / grade pay and the upgraded pay scale / grade pay shall be added and the next higher grade pay to the upgraded grade pay shall be admissible.

(b) On completion of continuous satisfactory service of 8 years in the grade pay admissible in the 1st financial upgradation, the 2nd financial upgradation shall become due. Similarly on completion of continuous satisfactory service of 8 years in the grade pay admissible in the 2nd financial upgradation, the 3rd financial upgradation shall become due.

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(iii) The three upgradations as aforesaid shall be due only in the revised pay structure applicable w.e.f. 01.1.2006.

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.....

6- The provision of ACP Shall also be applicable to such academic posts of Govt. institutions who, like the State employees, have earlier been subjected to the provision of time pay scale.

3.21 Subsequent to the above Govt. order dated 08.03.2011, the State Govt. issued several Govt. Orders which were primarily clarificatory in nature. By Govt. Order no. 589, dated 01st July, 2013 also the State Govt. clarified the position relating to the ACP Scheme for the State employees. One of the salient features of the said Govt. Order was that the second financial upgradation on a post of direct recruitment was made admissible

on completion of 16 years of continuous satisfactory service instead of the earlier length of 18 years. The requirement for being entitled to the 1st and 3rd financial upgradation, however, remained unaltered. The following provisions of the above Govt. order dated 1st July, 2013 are considered relevant –

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(1) In place of the present provision of ACP for Govt. employees under which on the basis of continuous and satisfactory service of 10, 18 and 26 years w.e.f. the date of regular appointment on a post of direct recruitment, benefit of 1st, 2nd and 3rd financial upgradations have been made admissible on certain conditions; the benefit of 1st, 2nd and 3rd financial upgradations shall be made admissible on completion of continuous and satisfactory service of 10, 16 and 26 years respectively subject to the following conditions and accordingly para 1 (2) (1) of the Govt. order dated 8th Mach, 2011 and para 2 (2) of the Govt. order no.313/xxvii(7)40(ix)-2011 dated 30th October, 2012 shall be deemed to have been modified –

(a) First financial upgradation shall become due on completion of continuous and satisfactory regular service of 10 years in the pay scale/ equivalent pay band and grade pay of a post of direct recruitment.

Provided that in the event of the pay scale / pay band and grade pay of a post being upgraded at some point of time, while counting the service period for admissibility of financial upgradation the services rendered in earlier pay scale / pay band and grade pay and the upgraded pay scale / pay band and grade pay shall be added and the next higher grade pay to the upgraded grade pay shall be admissible.

(b) Second financial upgradation shall become due w.e.f. the date of completion of 6 years’ continuous and satisfactory service in the admissible grade pay in the 1st financial upgradation or a total of 16 years of continuous and satisfactory service, whichever is earlier.

.....

(c) Third financial upgradation shall be payable w.e.f. the date of completion of 10 years’ continuous and satisfactory service in the

admissible grade pay in the 2nd financial upgradation or 26 years of total continuous and satisfactory service, whichever is earlier,.....

3.22 From the Govt. orders relating to the ACP Scheme it is obvious that for getting financial upgradation on a post all post holders who have completed the prescribed length of satisfactory service are entitled for that financial upgradation irrespective of their seniority. As submitted earlier, the petitioners were initially appointed in the year 1999 in the pay scale of Rs. 10000-15200 (corresponding revised scale in 6th CPC 15600-39100, PB-3, GP-6600) and after the State Govt. implemented the 6th pay commission report they have been given the upgraded pay scale in pay band-3 Rs. 15600-39100 with grade pay of Rs. 7600/- w.e.f. 1st January, 2006. The Rules of 2006 have also recognized the petitioners as the officers in the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.23 It is the assertion of the petitioners that they had been working on the same post for over 10 years without any financial upgradation. The petitioners fulfil the requirements for entitlement to the 1st financial upgradation from the due dates in the year 2009. As per the ACP Scheme the petitioners are entitled to be given the 1st financial upgradation to the grade pay of Rs. 8700/- in pay band-4 Rs. 37400-67000 on completing 10 years of continuous satisfactory service. The said financial upgradation has become due to the petitioners w.e.f. 30.03.2009, 24.05.2009, 11.05.2009, 06.04.2009, 09.04.2009, 01.05.2009 and 30.03.2009 respectively.

4. Separate identical Counter Affidavits have been filed on behalf of the respondents no. 1 and 2, which mainly state the following:

4.1 The petitioners were selected by the Uttar Pradesh Service Commission by holding a common selection examination in accordance to Uttar Pradesh Educational (General Education Cadre) Service Rule, 1992 for various equivalent posts, namely, District Basic Education Officer, Assistant District Inspector of Schools, Assistant Deputy Director Education, Deputy Secretary & Additional Deputy Secretary Regional Office, UP Board of Secondary Education etc. in the pay scale of Rs. 2200-

4000 (revised to Rs. 8000-13500 again revised to Rs. 15600-39100 with grade pay of Rs. 5400) and incidentally appointed as Principals in Government Inter Colleges in their first posting in the year 1999.

4.2 On the basis of the recommendation of the 5th Pay Commission w.e.f. 1.1.1996 the Principal's pay scale was revised in the pay scale of Rs. 8000-13500 actually w.e.f. 01.7.2001 and notionally w.e.f. 1.1.1996 or from the date of appointment. However, for giving parity to the teaching cadre of the State with that of Central Government, the Finance Department issued a Government Order dated 20.12.2001 and the petitioners were given upgraded pay scale of Rs.10000-15200. Thereafter, on accepting the recommendation of 6th Pay Commission the pay scale of petitioners were revised in the scale of Rs.15600-39100 with grade pay of Rs. 6600 vide G.O. no. 395 dated 17.10.2008. Again vide G.O. no. 74 dated 1.3.2009 for giving parity to the teaching cadre of the State with that of Central Government the pay scale of the petitioners was upgraded in the scale of Rs.15600-39100 with grade pay of Rs. 7600. However, it is relevant to state here that the pay scale of others selected in other equivalent posts remained in the scale of Rs.15600-39100 with grade pay of Rs. 5400 or Rs. 6600.

4.3 The revision of pay scale of post of principal of the petitioners is being produced herein in a tabular form:-

S.no.	Post	Pay Scale Applicable as per 4 th Pay Commission w.e.f. 01.01.1986	Pay Scale Applicable as per 5 th Pay Commission w.e.f. 01.01.1996		Pay Scale applicable as per 6 th Pay Commission w.e.f. 01.01.2006		
			By the State Government	As per Central Government upgraded pay scale	By the State		As per Central Government upgraded pay scale
1.	2.	3.	4.	5.	6.	7.	8.
1.	Principal	Rs.2200-4000	Rs.8000-13500	Rs.10000-15200	Rs.15600-39100 Grade Pay Rs.5400	Rs.15600-39100 Grade Pay Rs.6600	Rs.15600-39100 Grade Pay Rs.7600

From above it is clear that as per common selection in terms of Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 the pay scale of other equivalent posts remained as per column 3, 4, 6 & 7. However,

the post of principal was given financial upgradation as per column 5 & 8 at different times as per the pay scale made applicable to Central Government Teachers.

4.4 The contention of the petitioners that inspite of working as Principal since 1999 and having completed more than 10 years of service in the same post are entitled for benefit of first ACP is misconceived in as much as the petitioners have already received revised pay scale and financial upgradation as per Central Government teachers and there being no stagnation in terms of financial benefits are not entitled for the benefit of First ACP. Regarding the entitlement of grade pay of Rs. 8700 it is stated that the post of petitioners (Principal) earlier being a direct recruitment post, as per Uttarakhand Educational (General Education Cadre) Service Rules, 2006 is now a promotional post from Deputy Principal, as such, the petitioners were treated to be Class-1 officer in the senior scale category-II of Rs.15600-39100 in grade pay of Rs. 6600 (part-7 Rule 24 (2)5), 2006 Rules). In view of the aforesaid the status of the petitioners having been changed from Class-II to Class-1 officer in grade pay of Rs. 6600 they are not entitled for the benefit of first ACP, hence, the question of payment of grade pay of Rs. 8700 does not arise.

4.5 Regarding placing the petitioners in the grade pay of Rs. 6600 vide Government Order dated 7.7.2014 it is stated that the petitioners were getting grade pay of Rs.7600 in terms of parity with Central Government teachers as they were functioning as Principals. The petitioners after having opted and allotted administrative cadre have been rightly placed in the equivalent post namely Block Education Officer in the pay scale of Rs.15600-39100 with grade of Rs. 6600/-. Therefore, the contention of the petitioners that they have been placed in a lower grade pay is misconceived. It is pertinent to submit here that an employee cannot be granted promotional or higher pay scale merely on the basis that the post in which he was posted has been upgraded in terms of pay scale while others who were selected through same process but were incidentally posted to different posts, the pay scale of which have not been upgraded were getting different lower pay. Therefore petitioners can only get higher pay, at most for the period they

worked on the upgraded posts. In this case the petitioners have been given upgraded pay as a personal pay, as its evident from the order dated 07-07-2014. The Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 were applicable at the time when the petitioners got selected and appointed. Under these Rules, certain posts were grouped together. Post of Principal was one of them, the other posts being that of Additional District Basic Education officer, Additional District Inspector of School and Others. All these posts were having pay scale of Rs. 2200-4000, revised pay scale of Rs. 8000-13500, again revised pay scale of Rs. 15600-39100 with grade pay Rs. 5400 as of now). The pay scale of the post of Principal was upgraded from time to time while pay of other posts didn't change. Through the same selection process, incidentally the petitioners got posting as Principal for some point of time, while others got posting in other posts in the group of posts. On upgradation of the pay scale of the post of Principal, the persons who incidentally got posting as principal cannot get extra benefit of pay upgradation. At the most they can get higher pay for the period they were working as principals and when they get other posting, they should return to their original pay scale. On getting adjusted to the administrative cadre posts, which they themselves opted, they have been adjusted to the promotional post and pay scale, over and above that, their upgraded pay was protected as personal pay.

5. Rejoinder Affidavit has been filed on behalf of the petitioners to the above Counter Affidavits mainly stating the following:

5.1 The petitioners' pay scale / grade pay having not been enhanced for over 10 years from their initial appointment, the ACP scheme which is applicable to all Govt employees is also applicable to them. The respondents have not been able to demonstrate that after the pay scale of the post of Principal or equivalent thereto was revised w.e.f. 01.01.1996 (Rs. 15,600-39,100 with grade pay of Rs.76,00/-), there was any revision in the pay scale of the said post held by the petitioners. It is not disputed that the petitioners were appointed subsequent to 01.01.1996 and therefore it is obvious that no revision has been made in respect of their pay scale right since their appointment. The contention of respondents that the Govt order dated

08.03.2011 pertaining to ACP scheme is not applicable to the teaching cadre is misconceived and contrary to record. A perusal of the relevant Govt orders relating to the ACP scheme shows that the same have made no such pronouncement.

5.2 No justification has been furnished by the respondents for placing the petitioners in a lower pay scale / grade pay. The contention that the petitioners have been placed in a lower pay scale/ grade pay because the pay of others has not been upgraded cannot be sustained in the eye of law. The earlier pay revision w.e.f. 01.01.1996 in harmony with the Central Govt employees made by the State Govt was by way of a well considered policy decision. There is no dispute that the petitioners were appointed under the Uttar Pradesh Educational (General Educational Cadre) Service Rules, 1992. However, what the respondents have conveniently overlooked is the fact that the pay scale of the petitioners who were appointed long after 01.01.1996 was subsequently revised in pay scale of Rs. 15,600-39,100 with grade pay of Rs.7600/- w.e.f. the said date and thus the petitioners are the appointees in the said pay scale / grade pay right since their initial appointment. The averment that the pay scale of only Primary, Secondary Teachers and Principals was upgraded in the grade pay of Rs. 7600 and pay scale of other equivalent posts was not upgraded is of no consequence. The petitioners having rightly and consciously been given the grade pay of Rs. 7600, cannot abruptly be brought down to the grade pay of Rs 6600 on the misconceived ground that the other post holders have not been given the same benefit. In fact the petitioners are not concerned with the other employees / post holders who stand on a different footing.

5.3 In the Counter Affidavits, it has not been explained by the respondents as to why the ACP scheme could not be applicable to the petitioners. It has also not been demonstrated in the counter affidavits, that after having been appointed to a post, any promotion was given to the petitioners or any financial up-gradation was given to them. The petitioners having already acquired their legal right were entitled to be posted against the appropriate posts befitting their pay scale/grade pay they were already in. However, the respondents by the impugned order have chosen to absorb

the petitioners against the post carrying lower pay scale / grade pay. The said action cannot be permitted to sustain in law.

6. After hearing arguments of learned Counsel for the parties at some length, this Tribunal passed the following order on 02.05.2023:

“Heard arguments of learned Counsel for the parties at some length.

The Tribunal would like clarifications on the following points:

- (i) The version of the respondent-department is that the teaching cadre is not covered by the A.C.P. scheme because in the case of teaching cadre, they are already given upgraded scales namely selection scale and promotion scale as parity with Central Govt. teachers. Had the petitioners not opted for the administrative side, they would have continued as Principals of the Inter Colleges. In any case, in 2009, when the option for administrative side had not been asked, they were absolutely at par with the other Principals of Inter Colleges. It is understandable that the other similarly placed Principals of Inter Colleges have not been given the 1st A.C.P. of grade pay Rs. 8700/-. The department may affirm the same.*
- (ii) The petitioners were absorbed on the post of Block Education Officer which carries the grade pay of Rs. 6600/- and the balance of the grade pay of Rs. 7600/-, which they were already getting as Principals, was given as personal pay to them to make up the difference between the two grade pays. Had the petitioners at the time of their selection in 1999 been kept on the administrative posts, then what would have been the posts and further financial upgradations admissible to them?*
- (iii) The respondent-department may also clarify, in detail, that why they are denying A.C.P.s to teaching cadre when the same is not specifically prohibited in the Govt. Orders relating to A.C.P.*

Parties may file the desired information through affidavit within two weeks. Copies of this order may be provided to the learned Counsel for the parties today itself. Registry may also send a copy of this order to the respondents.”

7. Learned A.P.O. informed in the hearing on 20.06.2023 that he had provided copy of this Tribunal’s order dated 02.05.2023 to the department and even after telephonically reminding the department, no instructions have been received from the department. Learned Counsel for the petitioner pleaded that in such situation, opportunity to the respondents for filing reply be closed. Then, the learned Counsel for the parties were heard at length. Subsequently, written submissions on behalf of the petitioners have been filed on 26.06.2023, whose further contentions are reproduced as below:

“24. As submitted earlier, in order to get the 1st financial upgradation, the employee must have completed 10 years of service and must not have got any promotion in his existing post. In the instant case the petitioners have worked for more than 10 years on a pay scale/post without any promotion. The case of the respondents in their counter affidavit, in short, is that the petitioners have been given the benefit of pay revision and financial upgradation and therefore the benefit of 1st financial upgradation is not admissible to them.

25. The contention of the respondents being totally contrary to the provisions contained in the Govt. orders relating to the ACP Scheme is without any substance and merit inasmuch as the Govt. orders referred to hereinabove are self-explanatory insofar as the entitlements to the financial upgradations are concerned. The contention of the respondents is belied and annulled by proviso to sub clause (a) of clause (2)(i) of the Govt. order dated 8th march, 2011 which states that in the event of the pay scale/grade pay of a post being upgraded at some point of time, while counting the service period for admissibility of financial upgradation the services rendered in earlier pay scale / grade pay and the upgraded pay scale / grade pay shall be added and the next higher grade pay to the upgraded grade pay shall be admissible. It is noteworthy that while clarifying the provisions relating to ACP Scheme the State Govt. has reiterated the said proviso in Govt. order no.589/XXVII(7)40(IX)/2011 dated 1st July, 2013 under clause (2)(1)(a). The contention of the respondents that the ACP Scheme is not applicable to the petitioners is further contradicted by the specific provision contained under clause 6 of the Govt. order dated 08th March, 2011.

26. It may be submitted at this juncture that even in absence of the aforesaid proviso contained in the Govt. orders relating to the ACP Scheme, the claim of the petitioners regarding their entitlement to the 1st financial upgradation would also have been justified. In that contingency the case law would have come to the rescue of the petitioners. A Constitution Bench of the Hon’ble Supreme Court in Lalit Mohan Deb’s case, (1973) 3 SCC 862 while dealing with the concepts of ‘promotion’ and ‘upgradation’ held as under in para 7:-

7”

It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

27. In Bharat Sanchar Nigam Ltd. Vs. R. Santha Kumari Velusamy, (2011) 9 SCC 510, the Hon’ble Apex Court after considering a number of earlier judgments including the one referred to above, laid down the following principles relating to ‘promotion’ and ‘upgradation’-

29. (i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both-that is advancement to a higher position and advancement to a higher pay scale-are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service,

will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation.

28. With the help of case law referred to above, the petitioners would have been entitled to the 1st upgradation even if the proviso to clause (2)(1)(ka) in the Govt. orders relating to the ACP was not there. However, in the instant case the proviso to Clause (2)(1)(ka) contained in the Govt. order dated 8th March, 2011 and 1st July, 2013 clarifies that the petitioners would be entitled to the benefit of 1st financial upgradation on completion of 10 years on same post and pay scale. It may be pointed out here that the petitioners were given the responsibilities of posts in the Administrative cadre only in officiating capacity and there was no promotion granted to them even after coming into force of the 2013 Rules. It is submitted that the petitioners' entitlement to the 1st financial upgradation had become due in the year 2009 in terms of the 2006 Rules. The petitioners have specifically pleaded in para 34 of the writ petition that the proviso to clause 2 (1)(ka) of the Govt. Order dated 08th March, 2011 clarifies that in the event of the pay scale/pay band and grade pay of any post being upgraded at some point of time, while computing the length of service for the purpose of grant of financial upgradation, the services rendered in the earlier pay scale/pay band and grade pay and also the services rendered in upgraded pay scale/pay band and grade pay shall be added and the next higher grade pay than the upgraded grade pay shall be made applicable. However, in their counter affidavit the respondents have not dealt with the said specific contention of the petitioners.

29. It may not be out of place to submit here that a similar controversy has earlier been decided by a Division Bench of the Hon'ble Delhi High Court vide its judgment dated 12.10.2022 in WP(C) 5106/2016 S.K. Saraswat & Ors, Vs. Chief Secretary, Govt. of National Capital Territory of Delhi & Ors. Before coming to the judgment of the Hon'ble Delhi High Court, the background proceedings culminating in the said judgment need to be brought to the kind notice of this Hon'ble Tribunal.

30. An OA was filed before the Hon'ble Central Administrative Tribunal, Delhi by 55 applicants, who were directly recruited Principals of senior secondary schools under Directorate of Education, Government of National Capital Territory of Delhi, inter alia, for the 1st financial upgradation in PB-4 Rs.37400-67000 with grade pay of Rs. 8700 w.e.f. the date of eligibility. The Principals in the State of Delhi, like the present petitioners herein, were also working in PB-3 Rs.15600-39100 GP -7600 and their claim was for the grade pay of Rs.8700 in PB-4 Rs. 37400-67000. The department denied the claim of the Principals in Delhi contending that the promotional posts of Principal in the hierarchy namely, Education Officer and Deputy Director are also in the same pay scale and grade pay as that of the Principal and therefore the applicants before the CAT would not be entitled to the grade pay admissible to higher post than the promotional post. The said contention of the department was, however, rejected by the Hon'ble CAT. The Hon'ble CAT also relied upon the

following relevant portion of the judgment of Hon'ble Delhi High Court in WP(C) No.3420/2014 (R.S. Sengor and Ors, Vs. Union of India and Ors.)

"10. The question would be whether the hierarchy contemplated by the MACPS is the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of a MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4,800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

31. The Hon'ble CAT vide its judgment and order dated 27.02.2015 decided the OA filed by the Principals in the State of Delhi and quashed and set aside the Delhi Govt.'s decision of not granting financial upgradation as envisaged in the MACP to the Principals. The Hon'ble CAT directed the department to grant the 1st financial upgradation under MACP to the Principals in the grade pay of Rs.8700 in PB-4 from the date of their entitlement as per the rules. However, it was added that the applicants/Principals will draw salary in new grade pay from the date of the judgment without arrears. A copy of the judgment and order dated 27.02.2015 of the Hon'ble CAT is being annexed as Annexure-1.

32. While the department challenged the aforesaid judgment dated 27.02.2015 of the Hon'ble CAT before the Hon'ble Delhi High Court, the applicants therein i.e. Principals filed a review petition before the Hon'ble CAT with a prayer to grant the salary with interests w.e.f. the date of their entitlement.

33. The writ petition filed by the department against the judgment dated 27.02.2015 of the Hon'ble CAT was dismissed by the Hon'ble Delhi High Court vide its judgment and order dated 09.05.2016 in WP no.9266/2015. The Delhi Govt. filed an SLP No.6860/2017 before the Hon'ble Supreme Court against the judgment and order dated 09.05.2016 of the Hon'ble Delhi High Court. The said SLP filed by the Delhi Govt. was dismissed by the Hon'ble Supreme Court vide its order dated 03.08.2022. A copy of the order dated 03.08.2022 passed by the Hon'ble Supreme Court in Delhi Govt.'s SLP is being annexed as Annexure-2.

34. In the meantime, the Principals in the State of Delhi had also filed writ petition (C) 5106/2016 against the judgment and order dated 27.02.2015 passed by the Hon'ble CAT in the OA and also the subsequent order dated 06.05.2016 rejecting the review petition against the said judgment. The Principals were aggrieved by the judgment and order dated 27.02.2015 of the Hon'ble CAT to the limited extent that the Hon'ble CAT had directed that the applicants/Principals be granted 1st financial of graduation under the MACPS from the date of their entitlement, however, they would draw salary in the new grade pay from the date of the order of the Tribunal i.e. 27.02.2015.

35. The Division Bench of the Hon'ble Delhi High Court vide its judgment and order dated 12.10.2022 allowed the writ petition filed by the Principals and held that the Hon'ble CAT's order dated 27.02.2015 to the limited extent that it holds that the petitioners would draw salary in the new grade pay from the date of the said order without arrears was not sustainable. The Hon'ble Delhi High Court accordingly set aside the judgment dated 27.02.2015 of the Hon'ble CAT and directed that the petitioners therein would be entitled to draw salary in the new grade pay from the date of the implementation of the scheme or their respective entitlement, whichever was later alongwith arrears and interest as admissible in law. The Hon'ble Delhi High Court further directed that the exercise of computation and disbursal of arrears be completed within a period of eight weeks from the date of the judgment. A copy of the judgment and order dated 12.10.2022 of Division Bench of the Hon'ble Delhi High Court is being annexed as Annexure-3.

36. In the present case before this Hon'ble Tribunal the case of the petitioners stands on a better footing than that of the Principals in the State of Delhi inasmuch as in Delhi the pay scale and grade pay of the two promotional posts in the hierarchy of Principal namely, Education Officer and Deputy Director was also in the same PB-3, Rs.15600-39100 with GP 7600. Despite the said provision in the service rules the benefit of 1st financial upgradation was extended to the Principals and they were held to be entitled to the grade pay of Rs. 8700 in the higher PB-4 Rs.37400-67000 w.e.f. the date of their entitlement with interest. In the instant case before this Hon'ble Tribunal the provisions of the ACP Scheme are quite clear and unambiguous.

37. In view of what has been submitted hereinabove, it is most respectfully submitted that the petitioners be granted the benefit of 1st financial upgradation in PB-4 Rs.37400-67000 with grade pay Rs.8700 w.e.f. their date of entitlement and arrears of salary be paid to them with interest of at least 6%. It is further submitted that the two petitioners who have retired during the pendency of the present claim petition be given the additional retiral dues with interest after making re-fixation of their pension.

Additional Facts

During the pendency of the claim petition the 2nd petitioner Kamlesh Kumar Varshney and the 3rd petitioner Uma Dutt Goswami have retired from service. By an order dated 19.04.2022 the 2nd petitioner Kamlesh Kumar Varshney was notionally promoted w.e.f. 29.04.2014 as Joint Secretary, Uttarakhand Vidyalayi Shiksha Parishad, Ramnagar. The 4th petitioner Smt. Kamla Badwal and the 6th petitioner Rajvir Singh Savita have been promoted vide an order dated 30.11.2022 as Deputy Director/equivalent post from pay matrix Rs. 67700-208700 Level-11 to pay matrix Rs.78800-209200 Level-12. However, it is submitted that the said promotions w.e.f. 29.04.2014 (notional) and 30.11.2022 have no bearing on the merits of the present claim petition inasmuch as the said promotions have been granted treating the promotee petitioners in PB-3 Rs.15600-39100 GP-6600 wherein they were directly appointed in the year 1999."

8. The Tribunal observes the following:

(i) There is no response of the respondent department to the clarification sought by this Tribunal in its order dated 02.05.2023 which has been reproduced in para 6 of this judgment. In the hearing of 20.06.2023, the Tribunal asked the learned Counsel for the petitioners whether the other similarly placed Principals of Inter Colleges have been granted the first ACP of Grade Pay Rs. 8700/- and if not, have they demanded the same and what has been the result thereof. Learned Counsel for the petitioners also has not provided any information on this point. The Tribunal again holds that in 2009, the petitioners were working like other Principals of Inter Colleges and the consideration of granting first ACP of Grade Pay Rs. 8700/- should be similar for all of them. In the absence of the response of the department, and no further light thrown by the petitioners on this aspect and their request to close further opportunity to respondents to file reply in this regard, the Tribunal is unable to give a final adjudication in the matter and can only direct that if other similarly placed Principals of Inter Colleges have been granted the first ACP of Grade Pay Rs. 8700/-, the petitioners be also granted the same, notwithstanding the fact that they have subsequently moved to the administrative side. If the other similarly placed Principals have not been granted the first ACP of Grade Pay Rs. 8700/-, then such demands from those Principals might have been rejected by the department and it is also possible that litigation might also have gone on in this regard. After taking the same into consideration and taking into account the various contentions of the petitioners as mentioned in the body of this judgment, the respondent no. 1 is directed to pass a detailed reasoned and speaking order, after consultation with the finance department, about the admissibility or non-admissibility of the first ACP of Grade Pay of Rs. 8700/- to the petitioners in 2009, within a period of three months of presentation of certified copy of this order.

(ii) Regarding the absorption of the petitioners in the administrative side on a post of lower grade pay, the petitioners' contention is that their Grade Pay of Rs. 7600/- as Principals was made effective from the dates of their initial appointments and as such, they should be absorbed against the

posts like Deputy Director, on administrative side which have Grade Pay of Rs. 7600/-. The contention of the respondents is that the petitioners along with others were selected through common selection for a Group of various equivalent posts and it was only incidental that they were posted as Principals while others got different posts. On the basis of parity with Central Govt. teachers, the pay scales of the Principals were far more upgraded while pay scales of other posts did not get similarly enhanced. Parity with other similar administrative posts for which common examination was conducted according to the Service Rules of 1992 is to be seen while absorbing the petitioners on the administrative side and the higher pay that they were getting as Principal has been protected as personal pay while absorbing the petitioners on the post of Block Education Officer with Grade Pay of Rs. 6600/-. A perusal of Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992, which has been filed as Annexure no. 2 to the petition, shows that the post of Principal, Inter College has been kept at sl. No. 46 of the Appendix-A thereof, while the post of Deputy Director is at sl. No. 18 in this Appendix-A. According to these Service Rules, the pay scale of the petitioners at the time of appointment was Rs. 2200-4000, while the pay scale of the Deputy Director was Rs. 3000-4750/-. Merely because the pay scales of the Principals got more enhancement and at the time of their absorption, their Grade Pay was Rs. 7600/- which was equivalent to the Grade Pay of the post of Deputy Director, they cannot be absorbed substantively on the post of Deputy Director and equivalence on other aspects with the posts of administrative side has also to be taken into account. A perusal of the Uttarakhand State Educational (Administrative Cadre) Service Rules, 2013 shows that the post of Deputy Director is the next promotional post from the post of Block Education Officer on which the petitioners have been absorbed while according to the Services Rules of 1992, the post of Deputy Director was the second promotional post from the post of Principal. According to the petitioners' own averments, while demanding 1st ACP, they are saying that they have not got any promotion since their initial appointment then how they can claim to be absorbed on the further promotional post of Deputy Director on the basis of their similar pay scale/Grade Pay alone. The

respondents have given proper justification for placing the petitioners after their absorption on administrative side in Grade Pay of Rs. 6600/-. Vide the impugned order dated 07.07.2014, the petitioners have been ordered to be adjusted against the post of Block Education Officer or equivalent thereto. The Tribunal, therefore, holds that no injustice has been caused to the petitioners by their absorption on the post of Block Education Officer or equivalent thereto with Grade Pay of Rs. 6600/- and protecting the higher pay, that they were getting as Principal, as personal pay and no reliefs can be provided to the petitioners on this account.

09. The petition is disposed of with the above directions/ observations. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATE: AUGUST 29, 2023
DEHRADUN

VM/KNP