

**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. 141/DB/2022

Smt. Munni Rawat, w/o Sri Mahendra Singh Rawat, presently working as Child Development Program Officer, Chakrata, District Dehradun.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Women Empowerment and Child Development, Secretariat, Dehradun.
2. Director, Integrated Child Development Scheme, Uttarakhand, Sector 4D-47, Defence Colony, Dehradun.
3. District Programme Officer, District Dehradun.
4. State of U.P. through Secretary, Social Welfare Department, Lucknow.

..... Respondents

Present: Sri M.C. Pant (*online*) and Sri Abhishek Chamoli, Advocates, for the Petitioner
Sri V.P. Devrani, A.P.O. for the Respondents No. 1 to 3
No representation for the respondent no. 4 despite service of notice

Judgement

Dated: 25th September, 2023

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 01.09.2022 in WPSB No. 353 of 2015, Smt. Munni Rawat vs. State of Uttarakhand and others, which (order) reads as under:

“Petitioner, admittedly, is a public servant. The relief sought in the writ petition relates to the grant of monetary benefits to the petitioner, which is disputed by the respondents.

2. The subject matter of the writ petition squarely falls within the jurisdiction of the Uttarakhand Public Services Tribunal.

3. 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.

4. We request the Tribunal to expedite the hearing of the present petition considering the fact that the same is pending since the year 2015.

5. The writ petition is disposed of accordingly.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 14775/UHC/Service (S/B) 2022 dated 17.10.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 141/DB/2022.

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

“(i) Issue a writ order or direction in the nature of Certiorari to quash the order dated 05-10-2013, passed by respondent no. 2 (Annexure No. 11 of the writ petition).

(ii) Issue a writ order or direction in the nature of mandamus directing the respondents to provide all financial benefits as well as time scale pay scale to the petitioner as per date of joining on the post of Mukhya Sevika as 22-02-1984.

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

(iv) To award the cost of the petition in favour of the petitioner.”

4. Facts giving rise to the petition are as follows:

4.1 The petitioner was initially appointed as an *Anganwadi* worker and after completion of required length of service, she was selected on the post of *Mukhya Sevika* on 24.02.1984 after completion of required length of service under pay scale Rs. 470-735 (copy of office order dated 24.02.1984: Annexure No. 1). Although the order of promotion was issued in favour of the petitioner on 24.02.1984, including several other eligible candidates but because of the fault of respondents, the said promotion order could not be received by the petitioner on time. On the other hand, other incumbents from the same promotion order dated 24.02.1984 were given joining on their promoted posts including the juniors to the petitioner and when this fact came to the knowledge of the petitioner, she submitted her representation(s) requesting the respondents to do the needful in the matter as the situation had disturbed the seniority as well as her date of joining as *Mukhya Sevika*.

4.2 Having taken no steps, respondents maintained silence for a long time and under the circumstances, the petitioner filed writ petition no. 4803/1984 before the Hon'ble High Court of Allahabad, Lucknow Bench (copy of writ petition no. 4803/1984: Annexure No. 2).

4.3 The Hon'ble High Court of Allahabad (Lucknow Bench), after adjudicating the writ petition allowed the same and *vide* judgement and order dated 30.11.1985 directed the respondents to allow the petitioner to join the training which would commence for the post of *Mukhya Sevika* in any of the institution (copy of judgement: Annexure No. 3). Petitioner submitted a copy of judgement and order dated 30.11.1985 to the respondent authorities and the respondents *vide* order dated 06.12.1985 directed the petitioner to join the training programme at National Public Welfare and Child Development Institute, Nirala Nagar, Lucknow (copy Annexure No. 4). Since the delay in petitioner's

joining training programme was caused by the act of the respondents, therefore, petitioner underwent the training programme as per order date 06.12.1985.

4.4 Before taking charge of *Mukhya Sevika*, a training was required which the petitioner underwent after passing the judgement dated 30.11.1985 and subsequent office order dated 06.12.1985. There was no delay on the part of the petitioner for joining the training. After completion of the training, it was the duty of the respondents to obey the orders of Hon'ble Court and to safeguard the professional life of the petitioner by taking appropriate orders for correcting/ rectifying their own mistake so that the seniority and other service benefits be restored to her. Having completed the requisite training programme, petitioner was appointed on the post of *Mukhya Sevika* on 01.03.1986 (copy Annexure no. 5). After joining on the post of *Mukhya Sevika*, petitioner submitted several representations before the respondents with the request to rectify the service records of the petitioner by keeping her seniority undisturbed (copy Annexure No. 6) without yielding success.

4.5 District Programme Officer, Pauri, on feeling gravity of the situation, forwarded several letters to higher officials with the request to consider the claim of the petitioner sympathetically (copy of letter dated 27.11.1993: Annexure No. 7). Thereafter, *vide* order dated 24.12.2003, petitioner was promoted to the post of Child Development Project Officer, Vikas Nagar Dehradun (copy of order: Annexure No. 8). Respondent Department issued a seniority list of all the employees and the name of the petitioner figured at serial no. 73 in the seniority list, which means that the seniority of the petitioner was rectified and restored by the respondents, but at the same time pecuniary benefits were not given to her (copy of seniority list dated 05.09.1991: Annexure No. 9).

4.6 Petitioner thereafter submitted representation on 19.05.2013 by making a further request to the superior authorities

to grant her the pecuniary benefits of service as per seniority list thus issued (copy of representation dated 29.05.2013: Annexure No. 10). Respondent No. 2, in a very casual manner, illegally rejected the representation of the petitioner *vide* order dated 05.10.2013 (copy Annexure No. 11). Since 2013, petitioner is continuously approaching the higher authorities and each and every time, assurance was given to her providing for all service benefits as per correction of date of joining on the post of *Mukhya Sevika*, but to no avail.

5. **It is the submission of learned Counsel for the petitioner that the juniors to the petitioners have been promoted and allowed the benefits but at the same time despite correcting the seniority and placing her at the appropriate place the benefit of service from the date of initial appointment has not been settled as yet.** The representation preferred by the petitioner has not been decided by a reasoned and speaking order. Although the petitioner requested the respondents to decide her representation and settle her grievances but verbally she was told by the authorities that the matter is under consideration and as subordinate to the authorities, the petitioner had no other option except to believe on the words of the authorities.

6. It is also the submission of learned Counsel for the petitioner that after a period of six months from the date when her representation was returned to her and no action was taken by the respondents, she sent a legal notice through her Counsel and requested for redressal of her grievances (copy of legal notice dated 02.12.2014: Annexure No. 12). Again, a reminder was sent on 25.05.2015 by giving two months' time to the respondents to redress the grievances, but to no avail (copy Annexure No. 13). By way of notice dated 02.12.2014 petitioner requested the respondents to settle legitimate claims by treating her date of appointment as per appointment order dated 08.03.1984 and to

allow her time scale and selection grade, the benefit of A.C.P. w.e.f. 08.03.1984 keeping in view that for the purpose of seniority, her date of appointment was 08.03.1984.

7. It is also the submission of learned Counsel for the petitioner that after correction in date of appointment as 08.03.1984, the petitioner deserves to be given the consequential benefits of time scale and selection grade and benefit of A.C.P. w.e.f. 08.03.1984 keeping in view that for the period of seniority, her date of appointment was 08.03.1984.

8. According to learned Counsel for the petitioner, petitioner's date of appointment has been treated from her date of completion of training i.e. 06.12.1985, which is totally wrong and also against the judgement of Hon'ble High Court. It also amounts to altering the service conditions, which were applicable in the erstwhile State of U.P. which has given seniority by treating her date of appointment as 08.03.1984. The same is in violation of Section 74 of the U.P. Reorganization Act.

9. Petitioner has retired in the month of November, 2015. It is the duty of the respondents to settle her grievances treating her entire length of service for the purpose of pay fixation and other benefits including the pensionary benefits. The delay in filing the petition is bonafide and the cause of action is continuously arising. All the service benefits pursuant to the rectification/ correction of the joining date of the petitioner on the post of *Mukhya Sevika* deserve to be given to the petitioner as junior employees to the petitioner have already been given all the service benefits. Impugned order dated 05.10.2013 is bad in the eyes of law and liable to be set aside.

10. Learned Counsel for the petitioner submitted that impugned order dated 05.10.2013 is bad and is liable to be set aside inasmuch the same has been passed by overlooking the corrected seniority list dated 26.07.1997 (copy Annexure No. 14).

11. Various documents have been filed in support of the claim petition. A reference of those documents shall be given as and when required during the course of discussion.

12. The respondents have contested the petition. Counter affidavit has been filed on behalf of respondent no. 3. Smt. Kshama Bahuguna, Child Development Project Officer, Dehradun, has filed counter affidavit (on behalf of respondent no. 3). According to the C.A., thus filed, the order of Hon'ble High Court of Judicature at Allahabad dated 30.11.1985 only directed that the petitioner be given training for the post of *Mukhya Sevika*. This does not mean that the petitioner be appointed from 22.02.1984 (true copy order dated 30.11.1985: Annexure No. CA2). In compliance of the order dated 30.11.1985 of Hon'ble High Court of Judicature at Allahabad, the petitioner was allowed to participate in the training programme from 06.12.1985 and therefore, the petitioner's date of joining would be treated as 06.12.1985 (copy Annexure No. CA3).

12.1 *Vide* order dated 05.10.2013, the representation of the petitioner was rejected. It was mentioned that as the petitioner's date of appointment is 06.12.1985 and all the benefits due to the petitioner after such date have been given to her, therefore, she does not deserve to be granted further benefits. **The petitioner wants to take the advantage of the period when the petitioner has not actually worked and therefore, the petitioner is not entitled to any relief.**

12.2 Petitioner's date of appointment is 06.12.1985 when she was allowed to participate in the training and her name has rightly been placed in the seniority list. It has been denied in para 16 of such C.A. that junior to the petitioner has been granted promotion. It has been stated that promotions were granted according to seniority (copy of order dated 05.10.2013: Annexure No. CA4). The representation of the petitioner has rightly been decided on

05.10.2013. The petition has been filed belatedly and should be dismissed on this ground alone and also on merits as well.

13. Relevant documents have been filed in support of such C.A.

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

15. The documents, which have been filed on behalf of the petitioner, reveal the following:

15.1 The petitioner was appointed as *Mukhya Sevika* (supervisor), *Bal Vikas Pariyojana*, vide order dated 24.02.1984 (Annexure No. 1). According to the enclosure appended to this order, name of the petitioner has been shown at serial no. 7 (as Ms. Munni Bisht, d/o Sri Anand Singh Bisht, Kaleshwar Road, Anand Bhawan, Garhwal). It has been indicated in Annexure No. 1 that the employees will report for training in Literacy House, Kanpur Road, Lucknow, by the forenoon of 08.03.1984 and the duration of the training will be three months. **Such date on which the participant will report for training will be the actual date of his/her joining.** He/she will be entitled to salary only from such date. As has been mentioned earlier, petitioner has been shown at serial no. 7 of the list enclosed with the notification/ order dated 24.02.1984.

15.2 Copy of writ petition which the petitioner filed before the Hon'ble High Court Judicature at Allahabad, Lucknow Bench, has been brought on record as Annexure No. 2. In such writ petition under Article 226 of the Constitution of India, the petitioner prayed for the following:

"1- That a writ, direction or order be issued in the nature of mandamus commanding the opposite parties to post the petitioner as regular Mukhya Sevika in pursuance of her selection and appointment dated 24-2-1984 contained in annexure no. 2 treating her in service as Mukhya Sevika.

2- That another writ, direction or order be issued In the nature of mandamus commanding the opposite parties to pay the full past salary as compensation to the petitioner for the post of Mukhya Sevika and her seniority be given according to the merit list prepared by opposite party no. 2 consequent to the appointment order dated 24-2-1984 contained in annexure no. 2 and she may be sent for training course for Mukhya Sevikas.

3- Such other relief may be awarded to the petitioner to which she may be deemed entitled.

4- Cost of the writ petition be awarded to the petitioner against the opposite parties.”

Various documents were filed by the petitioner along with her writ petition.

15.3 A document has been filed as Annexure No. 1 *colly* to show that she was directed to appear before the interview board for the post of *Mukhya Sevika* on 31.12.1983 at Gokhale Marg, Lucknow. Her address has been shown as Kumari Munni Bisht, Garhwal. She has been sent letter to report for training at Literacy House, Kanpur Road, Lucknow on 08.03.1984 for training, the duration of which was three months. Such letter was issued on 24.02.1984. Her name has been shown at serial no. 7 in the list enclosed with such letter. In all, there are names of 46 selectees out of which the petitioner was at serial no. 7. The petitioner filed a letter before the Hon'ble High Court Judicature at Allahabad to show that she wrote to Director, Harijan and Social Welfare Officer, Kalyan Bhawan, Lucknow on 20.03.1984 to inform that she has not received the selction letter for the post of *Mukhya Sevika* in Bal Vikas Pariyojana. She wrote that the letter has not been received by her inasmuch as her residential address has not been correctly mentioned in the office order. She has mentioned that her correct address is: Kumari Munni Bisht, Anand Bhawan, Kaleshwar Road, Lansdowne, Garhwal whereas her address in the appointment letter has wrongly been shown as: Kumari Munni Bisht, Anand Bhawan, Kaleshwar Road, Kotdwar, Garhwal. The difference is of Lansdowne and Kotdwar. Whereas her home town was Lansdowne, it has wrongly been mentioned as Kotdwar in the appointment letter. Then again she wrote a letter on 18.07.1985 to

the Hon'ble Minister. Govt. of Uttar Pradesh, that since she did not receive her letter because of wrong address therefore, she has not been called for training. She categorically stated in her letter dated 18.07.1985, which is addressed to the Hon'ble Minister, Govt. of U.P. that she did not receive the letter for selection as *Mukhya Sevika* and therefore, she did not join the training. She filed a representation to the Directorate. She was given assurance that she will be given the opportunity to participate in the next training programme, therefore, she should be called to participate in the forthcoming training programme for *Mukhya Sevikas* in the respondent department.

15.4 In the petition filed by one Smt. Suman Pandey (not the petitioner), the Hon'ble High Court Judicature at Allahabad, Lucknow Bench, *vide* order dated 07.08.1985 directed as under:

“List this petition for orders after the expiry of two weeks. In the meantime, the petitioner shall be allowed to join training in any of the institutions mentioned in Annexure No. 12.”

15.5 The Hon'ble High Court of Judicature at Allahabad *vide* order dated 30.11.1985 disposed of the application for stay in Writ Petition No. 4803/1985 as under:

“No counter affidavit to this application has been filed. There appears no good ground for not accepting the averments made by the petitioners were so when Annexure No. 2 and 2A to the writ petition indicate that letter was sent to the petitioner on incorrect address. The opposite parties are directed to allow the petitioner to join the Training which will now commence for the post of *Mukhya Sevika* in any of the institutions.

Copy of this order may be issued today on payment of necessary charges.”

15.6 In such order dated 30.11.1985, it has been observed that **“there appears no good ground for not accepting the averments made by the petitioner to indicate that letter was sent to the petitioner on incorrect address. The opposite parties are directed to allow the petitioner to join the training which now commence for the post of *Mukhya Sevikas* in any**

of the institution mentioned in Annexure No. 9 of the writ petition.” In compliance of the order dated 30.11.1985 passed by the Hon’ble High Court of Judicature at Allahabad in Writ Petition No. 4803/1985, Munni Bisht vs. State of Uttar Pradesh and others, the petitioner was given orders to go for training of *Mukhya Sevika* by Sri D.P. Singh, Additional Director, Harijan and Social Welfare (*vide* order dated 06.12.1985). Thereafter, the petitioner was given appointment as *Mukhya Sevika* in Bal Vikas Pariyojana, Jaunpur, Tehri Garhwal, in pay scale of Rs. 470-735/- (as *Mukhya Sevika*). It was mentioned in the order dated 01.03.1986 (Annexure No. 5) that she joined the training center in the forenoon of 06.12.1985. The orders were signed by Sri D.C. Lakha, Director, Harijan and Social Welfare.

15.7 The petitioner moved a representation on 27.11.1993 for correcting her seniority in the seniority list. In such letter, she categorically said that since letter dated 24.02.1984 was not sent to her correct residential address therefore, she could not participate in the training between 05.12.1985 to 03.03.1986. She therefore, requested to correct her seniority in the seniority list. District Programme Officer *vide* letter dated 27.11.1993 wrote to Deputy Director, Child Welfare Directorate, to restore her seniority from the date she joined the department for the first time. In office memorandum dated 24.12.2003 (Annexure No. 12), her name has been shown at serial no. 12. *Vide* such office memorandum, she was promoted as *Mukhya Sevika* in the pay scale of Rs. 5000-150-8000/-.

15.8 *Vide* letter dated 05.12.1991 issued on behalf of the Director, Child Welfare, which was addressed to all the *Mukhya Sevikas*, a tentative seniority list was issued. Objections on such tentative seniority list were invited. Last such date for filing the objections was 31.01.1992. In the merit list of the *Mukhya Sevikas*, the name of the petitioner has been mentioned at serial no. 73.

15.9 In her representation dated 29.05.2013 (Annexure No. 10), the petitioner wrote to the Director, I.C.D.S., Uttarakhand, that **although considering her date of joining as 08.03.1984, she has been rightly placed at serial no. 73 and thereby, she has been given seniority but she has not been given pecuniary benefits w.e.f. such date i.e. 08.03.1984. She, therefore, prayed that she be given time scale, A.C.P. w.e.f. 08.03.1984 (Annexure No. 10). Such representation of the petitioner was rejected vide letter dated 05.10.2013. Director, I.C.D.S., in her letter dated 05.10.2013, which was addressed to District Programme Officer, Bal Vikas, Dehradun, it was mentioned that she joined the department for the first time on 06.12.1985 and therefore, it was not possible to grant her pecuniary benefits w.e.f. 08.03.1984.**

15.10 It may be noted here that the decision taken by the Director, I.C.D.S., appears contrary to the decision given by the Hon'ble High Court of Allahabad, Lucknow Bench, in writ petition no. 4803/1984 on 30.11.1985. She was given seniority by the respondent department w.e.f. 08.03.1984 but ironically she was not given financial benefits/ pecuniary benefits w.e.f. such date. What was her fault when she did not receive the appointment letter well on time? Apparently it was the mistake of the respondent department who sent the letter at the wrong address. Her hometown was Lansdowne but mistakenly her hometown was shown to be Kotdwar. How could she receive the appointment letter if she was living in Lansdowne and the appointment letter was sent to her at Kotdwar? The Hon'ble High Court of Allahabad, Lucknow Bench, was pleased to intervene in the matter, allow her writ petition and permitted her to join the training center. Had she been given letter at the correct address, she would have joined the training well on time and she would have been given seniority along with consequential benefits w.e.f. 08.03.1984. It is wrong on the part of the respondent department to consider that her date of joining in the respondent department is 06.12.1985. On paper,

technically it may sound good that the petitioner, after completing the training programme, joined the respondent department on 06.12.1985 and the service record must have depicted the same. But one may consider the circumstances, which she has continuously been agitating that she was not sent the letter at her correct residential address, which resulted in her not joining the training center well on time. Had she received the appointment letter well on time, she would definitely have joined the training center soon after receiving such letter. There was no need for her to approach the Hon'ble High Court, which directed the respondent department to send her for training. There is no fault of the petitioner. The fault lies with the respondent department. Why the letter was sent to her at the wrong address? Because of writing 'Kotdwar' in place of 'Lansdowne', she was deprived of receiving her appointment letter on time. She had to approach to Hon'ble High Court Judicature at Allahabad, filed writ petition there, got the desired relief, joined the training center and the respondent department restored her seniority but the petitioner should also have been given consequential benefits arising out of restoration of her seniority w.e.f. 08.03.1984.

16. The petitioner is therefore, entitled to consequential benefits w.e.f. 08.03.1984, as prayed for by her in present petition.

17. It does not lie in the mouth of the respondent department to say that since the petitioner has not worked between 08.03.1984 and 06.12.1985, therefore, she is not entitled to the pecuniary benefits. It does not behove well for the respondent department to say so, considering the peculiar facts of the case.

18. Learned A.P.O. vehemently argued that the petitioner is not only not entitled to the financial benefits, as also time scale as per date of joining on the post of *Mukhya Sevika* as 22.02.1984, but he also submitted that the petition is highly belated and no such direction can be given to State of U.P. Learned A.P.O. has

relied upon the decision rendered by the Hon'ble Supreme Court in State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583 and by the Hon'ble High Court of Uttarakhand in WPSB No. 102/2017, Dr. Kamaljeet Singh and another vs. State of Uttarakhand and others.

19. Petitioner was appointed by I.C.D.S., U.P., Lucknow, as *Mukhya Sevika* on 24.02.1984. The respondent department did not send the appointment letter to her at the correct address, therefore, she had to approach Hon'ble High Court of Judicature at Allahabad (Lucknow Bench) for redressal of her grievances. Her writ petition was allowed. Before approaching the Hon'ble High Court, she came to know through her colleagues that she has been appointed as *Mukhya Sevika*. When the petitioner obtained orders from the Hon'ble High Court, I.C.D.S., U.P., Lucknow, *vide* order dated 06.12.1985 sent her for training. After completing her training, she was posted in Bal Vikas Pariyojana, Jaunpur, Tehri Garhwal, *vide* order dated 01.03.1986. She continued to be posted there till December, 2003, on the post of *Mukhya Sevika*. Director, I.C.D.S., Uttarakhand, promoted her as *Bal Vikas Pariyojana Adhikari* considering that she was appointed in 1984. The petitioner continued to remain posted as *Bal Vikas Pariyojana Adhikari* since 2004. **When I.C.D.S., U.P., Lucknow, published and circulated final seniority list, she was shown to be appointed on 08.03.1984. She was appropriately placed in the final seniority list. In this way, she was although appropriately placed in the final seniority list but she was not given pecuniary benefits since 08.03.1984, her date of appointment.** She is entitled to pecuniary service benefits including time scale and A.C.P. *w.e.f.* 08.03.1984.

20. Director, I.C.D.S., Uttarakhand, *vide* letter dated 05.10.2013 (Annexure No. 11) mentions 06.12.1984 as the date when the petitioner gave her first joining in the service book. It was, therefore, mentioned in the letter of Director, I.C.D.S.,

Uttarakhand, which letter has been addressed to District Programme Officer, Child Development Dehradun, that it is not possible to give her service benefits *w.e.f.* 08.03.1984.

21. It is the duty of the respondent department to correctly mention the facts in the service book. It was with the intervention of the Hon'ble High Court Judicature at Allahabad, Lucknow Bench, that the petitioner was sent on training. This Tribunal has observed earlier that the fault lay with the respondent department. She might have been sent letter by the respondent department, but since her correct address was not mentioned, therefore, she could not receive the appointment letter and therefore, she had to approach the Hon'ble High Court Judicature at Allahabad, Lucknow Bench, for redressal of her grievances. It was only with the intervention of the Hon'ble Court that the petitioner was sent for training. The petitioner suffered on account of negligence of the respondent department. She was sent for training late and therefore, it was not her fault if she gave joining in the respondent department late. The fault lies squarely with the respondent department. Moreover, when her seniority has been restored, how can the respondent department deny related or consequential service benefits to her?

22. Learned A.P.O. submitted that since the petitioner did not work for the intervening period, therefore, she is not entitled to pecuniary benefits or the service benefits. This Tribunal is unable to agree with such submission of learned A.P.O. because the petitioner did not work only because she was not permitted to work. She was permitted to work only after sending her for training by the Hon'ble High Court and there was no carelessness or negligence on the part of the petitioner in joining her new assignment late. The petitioner cannot be blamed for the same. She was ready to render service. Her bonafide is reflected from the fact that when she got the information from her colleagues that she has been given appointment and she has not received the

appointment letter, she approached the Hon'ble High Court and the Hon'ble Court was pleased to send her for training. Only after the completion of training, she was given appointment. **It may be noted here again that the seniority has been restored to the petitioner but service related benefits has not been given to her.**

23. The seniority was restored to her by the respondent department in Uttarakhand so it does not lie in the mouth of the respondent department in Uttarakhand to say that they have no jurisdiction to give service related benefits to the petitioner.

24. Learned A.P.O. submitted, as has been mentioned above that the petitioner is not entitled to any relief and if at all she is held to be entitled to such relief, the same has to be given by the State of Uttar Pradesh and not Uttarakhand. We are again unable to agree with such submission of learned A.P.O. For ready reference, we would like to reproduce some paragraphs of the judgement rendered by the Hon'ble Supreme Court in State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583 and by Hon'ble High Court of Uttarakhand in WPSB No. 102/2017, Dr. Kamaljeet Singh and another vs. State of Uttarakhand and others, in the subsequent paragraphs of the judgement.

25. Hon'ble Apex Court, in the decision of Umakant Joshi (*supra*), has observed as below:

“1. Whether the Uttarakhand High Court could ordain promotion of respondent No.1 – Umakant Joshi to the post of General Manager with effect from 16.11.1989, i.e., prior to formation of the State of Uttaranchal (now known as the State of Uttarakhand) with the direction that he shall be considered for promotion to the higher posts with effect from the dates persons junior to him were promoted is the question which arises for consideration in these appeals, one of which has been filed by the State of Uttarakhand and the Director of Industries, Dehradun and the other two have been filed by Sudhir Chandra Nautiyal (hereinafter described as, 'Appellant No.1') and Surendra Singh Rawat (hereinafter described as, 'Appellant No.2') respectively against order dated 4.6.2010 passed by the Division Bench of that High Court in Writ Petition No.324 of 2008.

9. S/Shri J.L. Gupta and Subodh Markandeya, learned senior counsel appearing for appellant Nos. 1 and 2 and Ms. Rachana Srivastava, learned counsel appearing for the State of Uttarakhand argued that the impugned order is liable to be set aside because while granting relief to respondent No.1, the High Court completely ignored that he was guilty of laches and that the persons who were going to be adversely affected by retrospective promotion of respondent No.1 had not been impleaded as party respondents. Learned counsel further argued that the Uttarakhand High Court did not have the jurisdiction to direct promotion of respondent No.1 to Class-I post with effect from a date prior to formation of the new State and even the Allahabad High Court could not have issued a mandamus for promotion of respondent No.1 de hors his service record. Learned counsel emphasized that in exercise of power under Article 226 of the Constitution, the High Court cannot, except in exceptional circumstances, issue direction for promotion of an officer/official and the case of respondent No.1 did not fall in that category. Ms. Srivastava pointed out that even though Shri R.K. Khare was junior to respondent No.1 in the seniority list of Class-II officers, his promotion to Class-I post with effect from 16.11.1989 did not give a cause to respondent No.1 to seek intervention of the Uttarakhand High Court for promotion with effect from that date because till then, he continued to be an employee of the State of Uttar Pradesh.

11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No.1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No.1.

12. In view of the above, we hold that the writ petition filed by respondent No.1 in 2008 in the Uttarakhand High Court claiming retrospective promotion to Class-I post with effect from 16.11.1989 was misconceived and the High Court committed jurisdictional error by issuing direction for his promotion to the post of General

Manager with effect from 16.11.1989 and for consideration of his case for promotion to the higher posts with effect from the date of promotion of his so called juniors.

14. However, it is made clear that this Court has not expressed any opinion on the merits of the entitlement of respondent No.1 to claim promotion to Class-I post with retrospective effect and, if so advised, he may avail appropriate remedy by filing a petition in the Allahabad High Court. It is also made clear that we have not expressed any opinion on the legality or otherwise of order dated 17.1.2005 issued by the Government of Uttarakhand regarding the order of punishment passed against respondent No.1 and the writ petition, if any, pending before the Uttarakhand High Court against that order shall be decided without being influenced by the proceedings of these appeals.”

[emphasis supplied]

26. In Writ Petition No. (S/B) No. 102 of 2017, Dr. Kamaljeet Singh and another versus State of Uttarakhand and others, decided by the Hon'ble High Court at Nainital on 08.03.2018, the order of the State of Uttarakhand to absorb a Homeopathic Doctor (who was respondent No. 3 in the Writ Petition) *w.e.f.* 28.10.1992 was challenged. Relevant paragraphs No. 11,12,18, 19 and 20 of the judgment are quoted herein below for convenience:-

“11. From the aforesaid statements of law contained in paragraph nos. 11 and 12 of the judgment of the Hon'ble Apex Court (Umakant Joshi case), **we can deduce two principles, as laid down by the Hon'ble Apex Court.** Firstly, in respect to any rights that the persons, who are allocated or working after the creation of the State of Uttarakhand is concerned, which relates to the period anterior to the date of the creation of the State of Uttarakhand, the proper and competent authority would be the State of Uttar Pradesh. The State of Uttarakhand could not have the authority to deal with such a matter. **Secondly, in relation to any such complaint, the proper forum to ventilate the grievance would be the High Court of Allahabad or the Tribunal created under the law passed by the State of Uttar Pradesh.**

12. Noticing this as the state of the law and applying it to the facts of this case, without going into any other aspect, which is projected by Mr. Rajendra Dobhal, learned senior counsel for the petitioners, we would think that the impugned order cannot be sustained. By the impugned order, the State of Uttarakhand has purported to give the benefit of absorption to the third respondent with reference to a date, which is clearly anterior to the date of the creation of the State of Uttarakhand. If at all this could have been done, it could have been done only by the State of Uttar Pradesh. On this short ground, the writ petition is only to be allowed.

18. Therefore, we find no merit in the contentions of Mr. B.N. Molakhi, learned counsel for the third respondent or of Mr. Pradeep

Joshi, learned Standing Counsel for the State/respondent nos. 1 and 2. Accordingly, the conclusion is inevitable that sans authority, the impugned order has been passed by the State of Uttarakhand. On this short ground only, we interfere with the impugned order.

19. Accordingly, the writ petition is allowed. The impugned order dated 20.01.2017 giving benefit of absorption to the third respondent and that too with financial benefits cannot be sustained and the same will stand quashed. There will be no order as to cost.

20. We, however, make it clear that we have not gone into various other contentions, which have been raised by the parties.”

[emphasis supplied]

27. She was promoted on the post of *Bal Vikas Pariyojana Adhikari* under the orders of Director, I.C.D.S., Uttarakhand, considering her to be an appointee of 1984 batch. She was working as *Bal Vikas Pariyojana Adhikari* since January, 2004. The final seniority list was published by the Director, I.C.D.S., Uttar Pradesh, Lucknow. Her date of appointment was rightly mentioned as 08.03.1984. In this way, her seniority was restored but no pecuniary service related benefits were given to her. **It is not a case in which the appointment or the promotion has to be given by the State of Uttar Pradesh. It is also not a case in which the seniority list has to be finalized by the State of Uttarakhand. Her seniority has already been restored. Director, I.C.D.S., Uttarakhand, also promoted her as *Bal Vikas Pariyojana Adhikari*. Her seniority has also been determined.** The only thing which requires to be done in the instant case is the pay fixation of the petitioner. The petitioner was last posted when she retired, within the jurisdiction of I.C.D.S, Uttarakhand and therefore, the pay fixation has to be done by the State of Uttarakhand and not by the State of U.P. in the above noted circumstances. In other words, had there been a question of appointment or promotion or determining the seniority of the petitioner, the respondents would have said that the same has to be determined by the State of Uttar Pradesh, but in the instant

case, the State of Uttar Pradesh has already determined the seniority of the petitioner. **The only thing which requires to be done now is correct pay fixation of the petitioner which can only be done by the State of Uttarakhand, and not by the State of Uttar Pradesh.** The Tribunal is, therefore, of the opinion that the respondents cannot be given the benefit of the aforesaid rulings, namely Umakant Joshi (*supra*) and Dr. Kamaljeet Singh (*supra*).

28. Financial Rules also provide that a person or an employee should not get lesser salary than his or her junior in the cadre. In the instant case, although petitioner's seniority has been restored, her grievance for placing her at the right place in the seniority list has been redressed but the problem is that she has not been given service related benefits (pecuniary benefits) as per placement of her name in the seniority list. It may be stated, at the cost of repetition, that the entire problem arose because the respondent department did not inform her about her appointment at the correct address. She did not receive the appointment letter and therefore, she joined the training center only after obtaining orders from the Hon'ble High Court and that was precisely the reason that she joined late, which has created the whole problem. She has been denied pecuniary benefits only on account of the fact that she joined late, for which the petitioner was not, at all, responsible. The respondent department alone was responsible for petitioner's nightmare.

28. The irresistible conclusion would, therefore, be that interference is called for in the order dated 05.10.2013, passed by respondent no. 2 (Annexure No. 11 of the petition). Impugned order dated 05.10.2013, passed by respondent no. 2 (Annexure No. 11 of the petition) is, accordingly, set aside. Respondents are directed to provide all financial benefits as well as time scale etc. to the petitioner as prayed for by her in the petition, as discussed above.

29. The petition thus stands disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 25th September, 2023
DEHRADUN
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