

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 04/NB/SB/2022

1. Shalig Ram Ahirwar, aged about 58 years, s/o Sri Tulsi Ram, presently serving as Fodder Development Officer, Group-I, in the Office of Chief Veterinary Officer, Nainital.
2. Anil Kumar Singh, aged about 53 years, s/o Sri Bindra Singh, presently serving as Fodder Development Officer, ULDB, Shyampur, Rishikesh, P.O. Gumaniwala, Dehradun.

..... Petitioners

vs.

1. State of Uttarakhand through Secretary, Department of Animal Husbandry, Govt. of Uttarakhand, Dehradun.
2. Director, Animal Husbandry, Uttarakhand, Mothorowala, Dehradun.
3. State of U.P., through Secretary, Department of Animal Husbandry and Dairying, Govt. of U.P., Secretariat, Lucknow, Pin-226001.
4. Director, Animal Husbandry, U.P. Badshah Bagh, Lucknow, Pin-226007.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate, for the petitioners
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: MARCH 01, 2024

By means of present claim petition, the petitioner seeks following reliefs:

"A. To set-aside the impugned communication dated 08.08.2019 issued by the Respondent no. 1 (Annexure No. 1 to Compilation-I).

B. To declare the action of the respondents in not granting the benefit of Post Graduation Allowance to the petitioners, despite repeated requests as arbitrary and illegal.

C. To direct the respondents to forthwith sanction and release the amount of Post Graduate Allowance to the petitioners from due date i.e. from the date of initiation appointment of the petitioners i.e. 02.05.1992 and 05.04.1999 respectively, till 31.01.2019.

D. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. Brief facts of the case are that the Petitioner No. 1 namely Sri Shalig Ram Ahirwar, passed his M.Sc. (Agriculture) from recognized University i.e. Bundelkhand University in the year 1990 with First Division marks. Similarly, the Petitioner No. 2 passed his M. Sc. (Agriculture) Degree from V.B.S. Purvanchal University, Jaunpur in the year 1991. The petitioners were having Post Graduation Qualification in the aforesaid years, i.e. before their appointment in the department. Since the petitioners were fully qualified for appointment to the post of Assistant Group-III/Fodder Assistant, as such the Petitioner No. 1 was appointed on the post of Assistant Group-III/Fodder Assistant, after due selection, vide order dated 24.04.1992 in the erstwhile State of U.P. on substantive and regular basis. Similarly, the Petitioner No. 2 was also appointed on the post of Fodder Supervisor under Group-C after due selection vide order dated 30-03-1999 on regular and substantive basis. Thereafter, in view of work and the Petitioner No. 2 was promoted to the next higher post of Fodder Assistant Group-II vide order dated 02.01.2003.

3. It is submitted on behalf of the petitioners that as per the Government Order dated 12-05-1975 as well as the office memo dated 05.07.1989 issued by Finance Department, State of U.P., the employees having Post Graduation qualification in the concerned field, were entitled for Post Graduation allowance. The benefit of the said Government Order was given to various persons by the State of Uttarakhand as well after reorganization of the State. Similarly, the Director, Agriculture vide order dated 09-12-2003 granted same benefit to as many as 10 persons. Since the petitioners were/are also entitled for the aforesaid benefit of Post Graduation Allowance, as the Petitioner No. 1 also submitted a representation on 19-01-2004 to the No. 2 through proper channel requesting for the said benefit. The said representation was duly forwarded by the Chief Veterinary Officer, Nainital to the competent authority vide letter dated 25-08-2004. When no decision whatsoever was taken in the matter, the petitioner again submitted a reminder on 01-08-2005 to the Respondent No. 2 which was duly forwarded by the competent authority. Thereafter, reminders were sent by the petitioners

on 15-12-2005 which was duly forwarded on 27-12-2005. It is submitted that vide office memo dated 05-05-2009, the Respondent No. 2 issued a seniority list of the persons serving in the Fodder of the Department. In the said seniority list also, the P.G. Qualification is duly recorded as per service book.

4. It has been submitted on behalf of the petitioners that the State of Uttarakhand issued a government order on 06-11-2009 regarding the Animal Husbandry Department, in view of the government order dated 05-07-1989. Thereafter, representation was again submitted on 02-02-2011 and 09-02-2011 to the Respondent No. 2. Ultimately the Respondent No. 2 vide letter dated 05-05-2014 forwarded the matter of the petitioners as well to the State Government in the matter. A similarly situated persons namely Sri Vedpal Singh Malik, feeling aggrieved, approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 933 (S/S) of 2010 (Vedpal Singh Malik Vs. State of Uttarakhand and others), a mention of which is made in the aforesaid letter dated 05.05.2014. The aforesaid writ petition was finally heard and decided by the Hon'ble Uttarakhand High Court vide judgment dated 16.03.2018, wherein the action of the Respondents was disapproved and held illegal and arbitrary and a direction was issued to the Respondents to release the Post Graduate Allowance to the petitioners therein along with arrears and interest at the rate of 9% per annum. In this connection a true copy of the judgment dated 16-03- 2018 is enclosed herewith and marked as Annexure No. 21 to the claim petition. In compliance of the aforesaid judgment dated 16-03-2018 the Respondent No. 1 issued an order on 03.10.2018 for complying of the aforesaid judgment, including interest on the arrears. In pursuance of the government order dated 03.10.2018, the Respondent No. 2 issued a consequential order on 09.10.2018.

5. Thereafter, the Petitioner No. 2 again submitted a representation on 30-08-2018 to the Respondent No. 2 in the matter through proper channel, which was duly forwarded vide letter dated 06-09-2018. When the same benefit was not granted to the petitioners, the Petitioner No. 1 again submitted a representation on 23.10.2018. The same was duly forwarded vide letter dated 29.10.2018 and 04.12.2018. In this

connection a true copy of the representation dated 23-10-2018 along with forwarding letter dated 04.12.2018 are collectively enclosed herewith and marked as Annexure No. 25 to the Compilation No. II.

6. It is submitted that the reliance placed by Respondent No. 1 upon the office memo dated 23-01-2019 passed by the State of Uttarakhand, is totally misconceived and baseless. A bare perusal of the said office memo dated 23-01-2019 would reveal that the same provides that the said allowances mentioned therein including the P.G. Allowance, shall not be given w.e.f. 01-02-2019. As such the same is only a prospective one and the same has no retrospective effect at all. The Deputy Secretary of Respondent No. 1, who has issued the impugned communication dated 08-08-2019, has no authority at all in the eyes of law to alter/add/delete/insert any condition in the office memo dated 23-01-2019 issued after the approval of the Cabinet that too all the recommendation of Pay Commission, Uttarakhand, 2016. Copy of office memo dated 23-01-2019 is Annexure No. 27 to the claim petition.

7. When no action was taken, the Petitioners again sent various representations in the matter to the Respondent No. 2 as well as Respondent No. 1, which were duly forwarded by the competent authority. Thereafter, the Respondent No. 2 vide letter dated 13.02.2019 again requested the Respondent No. 1 to grant the said allowance to the as well. However, the Respondent No. 1 vide letter dated 08-08-2019 virtually turned down the same by misinterpreting the office memorandum dated 23-01-2019. It is submitted that the action of the Respondents in the matter is totally arbitrary and illegal. The impugned action of the Respondents is clearly in the teeth of law on the point. The petitioners are fully entitled for the aforesaid benefit of P.G. Allowance from due date. The impugned orders are totally illegal and arbitrary which cannot be justified in the eyes of law.

8. The respondents contested the claim petition by filing their Counter Affidavit and have stated that the petitioners have not been allowed the post graduate allowance vide Govt. Letter dated 08.08.2019. In the G.O. No. G-1-927/Das-265-88 dated 05.07.1989, it has been

clarified that the departments, in which the govt. employees are getting postgraduate salary, they will continue to receive post graduate salary. No postgraduate allowance is approved for the employees of fodder cadre of Animal Husbandry Department. Therefore, the facility has not been allowed to them by the Govt., which is appropriate. The appointment of the petitioners as Fodder Assistant Grope-III which has the minimum qualification for recruitment is B.Sc. (Agriculture) and not the M.Sc. (Agriculture). Referring to the G.O. as mentioned in Annexure-6 of the claim petition, the petitioners have demanded Postgraduate allowance. In para of the G.O. dated 05.07.1989, it has been clearly indicated that the govt. servants to whom this facility is currently admissible, have to meet the eligibility criteria as per the conditions and restrictions contained in the office memorandum dated 24th September 1968 and other conditions and restrictions, approval is given to give postgraduate allowance to the holders at the rate mentioned in front of each. It is clear from the above, that the postgraduate allowance is payable only to those govt. servants to whom this facility was available at that time. It has been made clear at point no. 3 of paragraph 2 of the G.O. dated 05.07.1989 that government servant for whose special qualification postgraduate allowance is given, should also be given the work where this special qualification can be utilized. For the reasons, the claim of the petitioners for allowing postgraduate allowance deserves to be rejected.

9. R.A. has been filed on behalf of the petitioner reiterating the averments made in the claim petition.

10. I have heard learned Counsel for the parties and perused the record.

11. At the time of admission, the issue of limitation was left open to be decided at the time of final hearing. The petitioners have challenged the impugned communication dated 08.08.2019. The claim petition has been filed before this Tribunal on 13.01.2022. The delay in filing the claim petition is covered by the judgment of Hon'ble Supreme Court dated 10.01.2022, passed on Misc. Application No. 21 of 2022 in Suo Motu Writ Petition (CIVIL) No(s).03/2020, on account of pandemic Covid-19, by

which the period from 15.03.2020 till 28.02.2022 has been excluded in computing the period of limitation for instituting the proceedings.

12. Learned Counsel for the petitioners submitted that a similarly situated person namely Sri Vedpal Singh Malik, feeling aggrieved, approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 933 (S/S) of 2010 (Vedpal Singh Malik Vs. State of Uttarakhand and others). The aforesaid writ petition was finally heard and decided by the Hon'ble Uttarakhand High Court vide judgment dated 16.03.2018, wherein the action of the Respondents was disapproved and held illegal and arbitrary and a direction was issued to the Respondents to release the Post Graduate Allowance to the petitioners therein along with arrears and interest at the rate of 9% per annum. He submitted that the judgment of Hon'ble High Court has fully been complied with by the respondents and Respondent No. 1 issued an order on 03.10.2018 including interest on the arrears.

13. Learned A.P.O. submitted that no postgraduate allowance is approved for the employees of fodder cadre of Animal Husbandry Department. Therefore, the facility has not been allowed to them by the Govt., which is appropriate. The appointment of the petitioners as Fodder Assistant Grope-III which has the minimum qualification for recruitment is B.Sc. (Agriculture) and not the M.Sc. (Agriculture). The postgraduate allowance is payable only to those govt. servants to whom this facility was available at that time. It has been made clear at point no. 3 of paragraph 2 of the G.O. dated 05.07.1989 that government servant for whose special qualification postgraduate allowance is given, should also be given the work where this special qualification can be utilized.

14. It is admitted that the petitioner No. 1 namely Sri Shalig Ram Ahirwar, passed his M.Sc. (Agriculture) from recognized University i.e. Bundelkhand University in the year 1990. Similarly, the Petitioner No. 2 passed his M. Sc. (Agriculture) Degree from V.B.S. Purvanchal University, Jaunpur in the year 1991. The petitioners were having Post Graduation Qualification in the aforesaid years, i.e. before their appointment in the department. Similarly situated person Sri Vedpal

Singh, having M.Sc. (Agriculture), who feeling aggrieved, approached the Hon'ble High Court by filing Writ Petition No. 933 (S/S) of 2010 (Vedpal Singh Malik Vs. State of Uttarakhand and others). The aforesaid writ petition was finally heard and decided by the Hon'ble Uttarakhand High Court vide judgment dated 16.03.2018. The order of the Hon'ble High Court reads as below:

"The petitioner has done M.Sc. (Agriculture) from the recognized University. He was appointed as Research Assistant (Agriculture) in Animal Husbandry Department. The State Government has issued Government order dated 05.07.1989, whereby a decision has been taken to grant post graduate allowance to the employees working in the Departments (Agriculture, Animal Husbandry, Medical and Primary Education). The petitioner has been appointed in the Department of Animal Husbandry. The employees working in the Department of Animal Husbandry are entitled to get post graduate allowance.

What is to be seen while granting the post graduate allowance, is the Department concerned and not the cadre within the Department.

The decision of the respondents not granting post graduate allowance to the petitioner per se is illegal and arbitrary.

Accordingly, the writ petition is allowed. The impugned order dated 10.08.2009 is quashed and set aside. The respondents are directed to release the post graduate allowance to the petitioner within a period of ten weeks from today alongwith arrear and interest @9% per annum.

Pending application, if any, stands disposed of."

15. The aforesaid directions of Hon'ble High Court have fully been complied with by the respondents and Respondent No. 1 issued an order on 03.10.2018 and the benefit of post graduate allowance including interest on the arrears has been granted to similarly situated person, Sri Vedpal Singh Malik. The claim of the petitioners was turned down vide ambiguous order dated 08.08.2019 by the respondent no. 1 referring to the office memorandum dated 23.01.2019. Perusal of the O.M. dated 23.01.2019, reveals that the allowances have been abolished w.e.f. 01.02.2019. The same is only a prospective one and has no retrospective effect. The petitioners are claiming Postgraduate allowance from the date of initial appointment till 31.01.2019, before the date, such benefit has been abolished i.e. from 01.02.2019, as per the office memorandum of the Finance Department dated 23.01.2019.

16. In compliance of the Hon'ble High Court order dated 16.03.2018, a similarly situated person, namely Sri Vedpal Singh, who was also M.Sc. (Agriculture) from the recognized University. He was also appointed as Research Assistant (Agriculture) in Animal Husbandry Department, has been granted the Postgraduation Allowance by the Govt. The State Government has issued Government order dated 05.07.1989, whereby a decision has been taken to grant post graduate allowance to the employees working in the Departments (**Agriculture, Animal Husbandry, Medical and Primary Education**). The petitioners have been appointed in the Department of Animal Husbandry as similarly situated person Sri Vedpal Singh in the Animal Husbandry Department. The petitioners are also entitled to get benefit of Postgraduate allowance in terms of the judgment of Hon'ble High Court passed in Writ Petition No. 933 (S/S) of 2010, which has fully been complied by the respondents, from the initial date of appointment till 31.01.2019, before the date, such benefit has been abolished i.e. from 01.02.2019. The ambiguous order of the respondents dated 08.08.2019 by which not granting Postgraduate allowance to the petitioners *per se* is illegal and arbitrary.

17. In view of the above, the claim petition is allowed. The impugned order dated 08.08.2019 is hereby set aside. The respondents are directed to sanction and release the amount of Post Graduate Allowance to the petitioners from the date of initial appointment i.e. 02.05.1992 and 05.04.1999 respectively, till 31.01.2019, within a period of three months from the date of presentation of certified copy of this Judgment. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MARCH 01, 2024
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KNP