

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL,  
DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 14/SB/2014**

Vedprakash Verma, S/o Late Sri Ganga Ram, R/o Village Chandmari,  
Doiwala, Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, School Education,  
Government of Uttarakhand, Dehradun
2. Additional Director Education, Garhwal Mandal, Pauri,  
Uttarakhand,
3. Chief Education Office, Dehradun,
4. State of Uttar Pradesh through Secretary, School Education,  
Lucknow,

.....Respondents

Present: Sri B.B.Naithani, Counsel  
for the petitioner  
Sri Umesh Dhaundiya, A.P.O.  
for the respondents No. 1, 2 and 3

**JUDGMENT**

**DATE: JANUARY 19, 2016**

**DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

1. The present claim petition has been filed for seeking  
following relief:

- “a) To review the pension payment order dated 28.07.1995 (Annexure No. A-1) and to correctly re-fix the pension as per Rules since 28.07.1995.*
- b) To make payment of arrears of pension arising after re-fixation of pension since 28.07.1995.*
- c) To make payment of interest @ rate of 18 % per annum upto the date of actual date of payment of amount/arrears of pension withheld since 28.07.1995 because of short/lesser payment of pension on account of wrong fixation of pension.*
- 2. To grant any other relief/reliefs which this Hon’ble Tribunal deem fit and proper to pass in consequences of this petition.*
- 3. This Hon’ble Tribunal may be pleased to quash the said order dated 4.7.2015 by which the representation filed by the petitioner has been rejected without application of mind.”*

2. The facts in brief are that the petitioner had retired from the post of Senior Lecturer on 30.06.1991 from Public Inter College, Doiwala, Dehradun which is a Government Aided College. The respondent No. 2 sanctioned pension to the petitioner by issuing Pension Payment Order dated 28.07.1995 at the rate of Rs. 1027 per month (Annexure: A1).

3. Later on the petitioner found that the pension has not been correctly fixed as per his qualifying service for the purpose of pension and the petitioner gave representation to correct the fixation of pension to the respondent No.2 on 15.06.2012 (Annexure: A4). Thereafter, the petitioner gave reminders on 14.08.2012(Annexure: A5), 22.09.2012 (Annexure: A6) and 06.12.2012 (Annexure: A7). The petitioner further reminded to respondents No. 1,2 and 3 through a legal notice on 21.10.2013 (Annexure: A9). The representations of the petitioner were rejected by respondent No. 2 on 03.07.2015. The petitioner has prayed to re-fix the pension correctly and set aside the order dated 03.07.2015.

4. Main contention of the petitioner in the claim petition is that according to Pension Payment Order (PPO) dated 28.07.1995 (Annexure: A1) his qualifying service for the purpose of pension in para 13 of the PPO has been shown as under:

“13- अर्हकारी सेवा की अवधि-

(क) सेवा में कार्यभार ग्रहण करने का दिनांक: 26.7.60

(ख) सेवा निवृत्ति का दिनांक 30.6.91

(ग) पेंशन अर्ह सेवा 30 वर्ष, 11 माह 4 दिन”

The petitioner in his representation dated 15.06.2012 has stated that the qualifying service should be 30 years 11 months and 6 days as 26<sup>th</sup> July and 31<sup>st</sup> July of his year of joining have not been counted in the total period of qualifying service. The petitioner has contended that his pension was wrongly fixed and the amount of Rs. 1027/- per month mentioned in the PPO is not in accordance with total qualifying service shown in the PPO. According to the petitioner, the correct amount of the pension should have been Rs. 1380/- per month.

5. Respondents No. 1, 2 and 3 have opposed the claim petition and it has been stated in their joint written statement that the petitioner's service is in the following three parts:

(i) W.e.f. 26.07.1960 to 04.07.1962- Higher Secondary School, Doiwala, Dehradun

(ii) W.e.f. 5.07.1962 to 31.07.1968- Higher Secondary School, Daichauri, Pauri Garhwal.

(iii) W.e.f. 02.08.1968 to 30.06.1991- Public Inter College, Doiwala, Dehradun.

The contention of respondents is that the period from 26.07.1960 to 04.07.1962 and from 05.07.1962 to 31.07.1968 in Higher Secondary School, Doiwala, Dehradun and Higher Secondary School, Dailchauri, Pauri Garhwal respectively (total period- nearly 08 years) cannot be counted as qualifying service for the purpose of

pension because the contribution of provident fund has not been deposited by the petitioner for the said period. Further, the contribution of the management of the school has also not been deposited for the above period. It has further been stated in the joint written statement that for the service of the petitioner from 02.08.1968 to 30.06.1991 in Public Inter College, Doiwala, Dehradun (total period – nearly 23 years), the petitioner had deposited the provident fund contribution and, therefore, as per rules only this period could be taken into consideration for determining the qualifying period for the purpose of calculation of pension and, therefore, pension of the petitioner in the PPO (Rs. 1027/- per month) has been fixed accordingly, which is correct.

6. In spite of service and sufficient opportunity, respondent no. 4 has not filed any written statement and, therefore, it was decided to proceed ex-parte against respondent no.4.

7. That petitioner has also filed rejoinder affidavit and same averments have been reiterated in it which were stated in the claim petition. Additionally, Annexure: A10 and Annexure: A11 have been enclosed to show that the provident fund contribution was deposited by the petitioner for the period from 1960 to 1968.

8. We have heard learned counsel for the petitioner and learned A.P.O. on behalf of respondents No. 1, 2 and 3 and perused all the record including the PPO carefully.

9. Learned counsel for the petitioner and learned A.P.O. argued and stated the same points which were stated in the claim petition and the written statement as described in earlier paragraphs of this order regarding fixation of pension of the petitioner in the PPO dated 28.07.1995 (Annexure: A1).

10. The main issue in the case in hand is that 'qualifying service' for the purpose of determining the pension. We find that the PPO (Annexure: A1) has already determined it as 30 years, 11 months and 4 days. Two more days of July, 1960 must be further added to make it 30 years, 11 months and 6 days to correct a simple arithmetic error.

11. We find it difficult to agree with the contention of the learned A.P.O. on behalf of respondents No. 1, 2 and 3 that a period of nearly 8 years (as described in paragraph 5 of this order) was not counted for determining the "qualifying service" for the purpose of calculation of pension. It is very clear that the PPO (Annexure: A1) itself mentions the 'qualifying service' (as described in paragraph 4 of this order) except arithmetic error of 2 days. The respondents have never changed/modified the 'qualifying service' as mentioned in the PPO. Since the respondents have never attempted to modify the PPO therefore, the 'qualifying service' as stated in the PPO is valid even today (with minor adjustment of 2 days in favour of the petitioner) for the purpose of calculation of pension.

12. After perusal of all the record, we do not find it necessary to go into the 'provident fund contribution' or 'management contribution' issue as the PPO (Annexure: A1) has already determined the 'qualifying service' for pension purpose and the respondents have not changed/modified the PPO at any point of time.

13. Learned APO has also argued the issue of delay in filing the claim petition. We incline to agree with the argument of learned counsel for the petitioner that the cause of action is a continuing cause of action since 1995. Further, the representations of the petitioner have been decided and rejected only on 03.07.2015.

14. Learned APO has also contended that the Tribunal has no jurisdiction to adjudicate upon the employees of the aided schools as

they are not public servant of Uttarakhand Government. We do not agree. The petitioner is a pensioner. Admittedly, he has been receiving pension from the Government of Uttarakhand and, therefore, the case in hand is well within the jurisdiction of the Tribunal.

15. For the reasons stated above, we are of the clear view that the pension of the petitioner must be revised and determined on the basis of 'qualifying service' of 30 years, 11 months and 6 days as is clear from the PPO dated 28.07.1995 (Annexure: A1). The petition is, therefore, deserves to be allowed.

### **ORDER**

The petition, is hereby, allowed. The respondents are directed to refix the pension of the petitioner as per rules calculating it taking the 'qualifying period' as mentioned in the Pension Payment Order dated 28.07.1995 (adding two days to make it 30 years, 11 months and 6 days). The pension thus determined will be enhanced as per rules/policy of the Government of Uttarakhand from time to time. Respondents are also directed to pay the arrears to the petitioner with simple interest at the rate of six percent per annum. The interest will be payable from 15.06.2012, the date, petitioner gave the representation to the respondents. Respondents are also directed to comply with the order within three months from the date of certified copy of this order is presented to the respondent No. 2. No order as to costs.

V.K.MAHESHWARI  
VICE CHAIRMAN (J)

D.K.KOTIA  
VICE CHAIRMAN (A)

*DATE: JANUARY 19, 2016*  
*DEHRADUN*

*KNP*