

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

Through Audio Conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 87/NB/DB/2020

Dr. Dinesh Chandra Dhyani, aged about 73 years, s/o Late Sri Rameshwar Sharma, Retired Additional Director, Medical Health and Family Welfare Department, Uttarakhand, presently resident of Plot No. G, Mankapur Compound, Mallital, Nainital, district Nainital.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare Department, Government of Uttarakhand, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.

.....Respondents

Present: Sri Bhagwat Mehra, Advocate, for the Petitioner.
Sri Kishor Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 10, 2021

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner, *inter alia*, seeks to direct the respondents to grant those benefits to the petitioner, which have been given to similarly situated persons *vide* order dated 17.07.2018 (Annexure No. 3), in view of the judgment dated 09.11.2017, passed by the Hon'ble High Court and to give all consequential benefits to him.

2. At the very outset, learned Counsel for the petitioner, Sri Bhagwat Mehra submitted that the controversy in hand has been decided by the Division Bench of Hon'ble High Court of Uttarakhand, while deciding Writ Petition (S/B) No. 333 of 2014, Dr. Ratnesh Kumar & others vs. State of

Uttarakhand & others *with* Writ Petition (S/B) No. 316 of 2015, Dr. Madhwa Nand Joshi vs. State of Uttarakhand & others, on 09.11.2017.

3. Learned A.P.O. fairly conceded that present claim petition can be decided in terms of the decisions rendered by Hon'ble High Court in Dr. Ratnesh Kumar and Dr. Madhawa Nand Joshi (*supra*).

4. It will be quite appropriate for this Tribunal to reproduce relevant paragraphs of Dr. Ratnesh Kumar's decision (*supra*), as below:

"3. Briefly put, the case of the petitioners is as follows:

Petitioners were appointed as Medical Officers in the State of U.P. There is reference to litigation at three stages in regard to the seniority and appointments of Doctors. The first case was with regard to the judgment in the matter of State of U.P. Vs. Dr. H.C. Mathur (SLP No. 13840 of 1992, decided on 24.11.1992). Secondly, it was followed by the decision in the matter of State of U.P. & others Vs. Dr. R.K. Tandon & others reported in (1996) 10 SCC 247. Lastly, there is a decision in the matter of Dr. Chandra Prakash and others Vs. State of U.P. and others reported in (2002) 10 SCC 710. The Hon'ble Supreme Court disposed of Dr. Chandra Prakash's case with the following directions:

"48. We accordingly allow the writ petitions and declare that (1) the writ petitioners are not within the purview of the 1979 Rules; (2) the State Government will fix the seniority of all doctors in the PMHS cadre from the date of the orders of their initial appointment within a period of six weeks from the date of this order and give all consequential benefits including promotions and positions on the basis of such seniority list; and (3) those doctors who were selected in 1972 and 1977-78-79 by PSC and who were not issued any orders of appointment and joined the service on the basis of Tandon case, will be treated as having been appointed on the date that they actually joined the service and their seniority will be counted from that date. There will be no order as to costs."

4. *In short, the case of the petitioners is that they have not been given the benefits in regard to Annexure-17 of WPSB No. 333 of 2014, which we treat as a leading case. We notice paragraph nos. 26 & 29, by which Annexure Nos. 14 & 17 are marked, which read as follows:*

"26. That in order to comply the order of the Supreme Court of India on 02.02.2005 the State of U.P. issued office memo whereby they have

notionally promoted retired medical officers upto the Joint Director cadre and vide order dated 20.05.2005 they have notionally promoted serving medical officers upto the cadre post of Joint Director upto the seniority no. 1347 with effect from 01.01.1986, upto the seniority no. 3220 with effect from 10.05.1990, upto the seniority no. 3528 with effect from 27.04.1995, wherein the name of the petitioners finds places. In the above government order dated 20.05.2005, it has been mentioned that the notional promotion is being made in the pay scale applicable at relevant time. The copy of government order dated 20.05.2005 is being annexed herewith as Annexure No. 14 to the writ petition.

29. That it is submitted that without finalizing the seniority of medical officers working in the State of Uttarakhand on the basis of seniority list dated 05.06.2003 of the State of U.P. vide order dated 31.01.2007 the State of Uttarakhand notionally promoted the petitioner on the cadre post of Joint Director with effect from 01.01.1986, 10.05.1990 and 27.04.1995 and declined to pay the arrears of the salary. Though in the judgment and order dated 04.12.2002 Hon'ble Supreme Court of India had clearly directed the State Government to give all consequential benefits including promotions and positions on the basis of such seniority. But neither State of U.P. nor State of Uttarakhand has extended the benefits of the as per judgment of the Hon'ble Supreme Court of India. The copy of the office memo dated 31.01.2007 is being annexed herewith as Annexure No. 17 to the writ petition."

5. We also deem it necessary to notice paragraph nos. 27 & 28. Same read as under:

"27. That State Government promoted the petitioners notionally, but not given the arrears of salary though theory of no-work-no-pay is not applicable in the case of petitioners as there is no fault on their parts. Even despite pay scale applicable at the relevant time has not been given to the petitioners.

28. That it is submitted though in the part compliance of the judgment and order of the Supreme Court of India the opposite parties notionally promoted the petitioners and other similarly situated medical officers on the cadre post of Joint Director in the pay scale applicable at the relevant time. As per government order dated

29.12.1997 which has been clarified vide government order dated 31.07.2008 the medical officers who have been promoted on and before 01.01.1996 on the cadre post of Joint Direction in the pay scale of s. 3700-5000 are entitle for selection grade of Rs. 4500-5700. But the said pay scale has not been given to the petitioners. The copy of the government order dated 29.12.1997 and 31.07.2008 are being annexed herewith as Annexure No. 15 and 16 to the writ petition.”

6. Subsequently, petitioners have filed applications for amendment of the writ petitions, when they were confronted with the contents of Annexure-17 order. Annexure-17 order purports to provide that, while they were given benefit of notional promotion upto the post of Joint Director, which is to be filled up on the basis of seniority and further post are to be filled up on the basis of merit, they would get the pay and benefit from the day, on which they actually took over the charge. This order was not challenged at the time when they filed the writ petition. It may be noticed that the writ petition was itself filed only in September, 2014. Going by the dates of retirement of the petitioners, it would appear that the last retirement from amongst the petitioners took place in the year 2009.

.....

10. Learned counsel for the petitioners would point out that, contrary to the judgment of the Hon'ble Supreme Court in Dr. Chandra Prakash's case, though, they have been given notional promotion upto the level of Joint Director, they have not been given the consequential benefits including the pay scale, which is appended in Annexure-17 order.

.....

13. We will proceed on the assumption that the judgment of the Hon'ble Apex Court in Dr. Chandra Prakash's case is a judgment in rem. This we do as in the direction given by the Hon'ble Apex Court, the Hon'ble Apex Court has proceeded to direct that the seniority of all the Doctors should be fixed and they should be given only consequential benefits including promotion and position on the basis of such seniority.

.....

16. There is a case of discrimination. The case, in short, is that, even after 2007, while petitioners have not been given the consequential benefits; three others have been given benefits. To the same, the answer is that they were persons, who were party in Appeal No. 3042 of 2010 filed by Dr. Chandra Prakash and others. It is pointed out that, pursuant to the order in Dr. Chandra Prakash's case, on 04.12.2002, an O.M. was passed by the State of Uttar Pradesh finally fixing the seniority of Doctors of P.M.H.S. cadre. Thereafter, vide O.M. dated 02.02.2005, the State of U.P. gave notional promotion to those 1276

Medical Officers, who were entitled as per next below Rule, in which, names of three persons, namely, Dr. Umesh Chandra Srivastava, Dr. Devi Prasad Bahuguna and Dr. Hari Kishan Srivastava figured and they were included and given pay scale w.e.f. 16.03.1979 and notional promotion in the pay scale of Joint Director w.e.f. 01.01.1986. Thereafter, the State of Uttarakhand also issued the O.M. in the year 2007 giving notional promotion to those Medical Officers, who were entitled as next below Rule.

17. *It is also pointed out that Dr. Umesh Chandra Srivastava and Dr. Devi Prasad Bahuguna, in fact, filed writ petition in the year 2004 in the High Court of Allahabad and Dr. Hari Kishan Srivastava filed a separate writ petition, in which the State of Uttarakhand was made party and certain directions were issued on the same and finally they also approached the Hon'ble Apex Court preferring S.L.P. No. 3042 of 2010 and that is how they were given the benefit. These are all the submissions, which were made at the bar.*

18. *Incidentally, we may also notice that the Hon'ble Apex Court in the matter of State of U.P. and others vs. Dr. B.B.S. Rathore, has held as follows:*

“However, we make it clear that with regard to others, who have not been granted arrears of salary and have not moved before any other Court of law or this Court, we have not expressed any opinion. They cannot claim benefit automatically in view of the order passed in these cases. Their case may be determined individually on the merit of each case.”

19. *No doubt, it could be argued that what the Hon'ble Apex Court intended was that nobody would automatically get the benefit of that judgment and each case would have to be decided on merits.*

.....

21. *Finally, there is a complaint from the petitioners in regard to benefit under the order dated 31.01.2007. The pay scale, which is already mentioned in Annexure-17, is not fixed for the purpose of giving the pensionary benefit.*

22. *We would think that this is a matter, which must be looked into. Accordingly, while we decline the other reliefs sought in the writ petitions, we direct that the first respondent will look into the complaint of the petitioners that the pay scale of Joint Director, which is mentioned in Annexure-17 order, has not been fixed for the purpose of pension. A decision will be taken in this regard within a period of two months from the date of production of a certified copy of this judgment. The decision will be taken on Annexure-20 representation limited to the above aspect only.*

23. *The writ petitions, are accordingly, disposed of.”*

5. Since the facts and relief sought for by the petitioner, in the instant claim petition, is squarely covered by the decisions, rendered by Hon'ble High Court of Uttarakhand in Dr. Ratnesh Kumar and Dr. Madhwa Nand Joshi (*supra*), therefore, present claim petition is decided in terms of Writ Petition (S/B) No. 333 of 2014, Dr. Ratnesh Kumar & others vs. State of Uttarakhand & others *with* Writ Petition (S/B) No. 316 of 2015, Dr. Madhwa Nand Joshi vs. State of Uttarakhand & others, decided on 09.11.2017.

6. It is pointed out by learned Counsel for the petitioner that the Govt. has already taken a decision on the representations of Dr. Ratnesh Kumar and Dr. Madhwa Nand Joshi, *vide* G.O. No. 1143/XXVIII-2/18-09(63)2014 dated 17.07.2018.

7. It is also pointed out by learned Counsel for the petitioner that *vide* G.O. No. 1257/XXVIII-1/19-02(460)2004 dated 10.10.2018, the Under Secretary to the Govt. has raised certain queries and has desired Director General, Medical, Health and Family Welfare to furnish certain informations to the Govt. in respect of 7 Medical Officers, including the petitioner, whose name figures at Sl. No. 5, in the box of such letter.

8. **Claim petition is, accordingly disposed of, in terms of Writ Petition (S/B) No. 333 of 2014, Dr. Ratnesh Kumar & others vs. State of Uttarakhand & others *with* Writ Petition (S/B) No. 316 of 2015, Dr. Madhwa Nand Joshi vs. State of Uttarakhand & others, decided on 09.11.2017, by directing the first respondent, to take decision into the grievance of the petitioner, within a reasonable time, but not later than 8 weeks from the date of production of certified copy of this judgment along with representation.**

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 10, 2021
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