

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

Through video Conferencing

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**ORDER**

ON

INTERIM RELIEF APPLICATION

IN

**CLAIM PETITION NO. 59/NB/DB/2021**

Navin Chandra Mathpal & others

Vs.

State of Uttarakhand & others

Present: Sri Kailash Chandra Tiwari, Advocate for the petitioners  
Sri Kishor Kumar, A.P.O., for the Respondents no. 1 to 4  
Sri S.S.Yadav, Advocate for the Respondents no. 5 to 9.

**DATED: SEPTEMBER 02, 2021**

**Rajeev Gupta, Vice Chairman (A)**

The petitioners are aggrieved by the orders of respondent No. 1 and respondent No. 2 dated 13.7.2021 and 23.07.2021 respectively whereby respondent No. 1 has denied to fix the seniority of the petitioners from the date of their regularization *i.e.* 01.10.1990 and have not acted upon the amended seniority list prepared earlier on 20.09.2019 which was prepared on the basis of orders of Hon'ble Courts. The earlier seniority list of the year 2005 was prepared on the basis of the petitioners' regularization order dated 28.12.1999 which has already been struck down by Hon'ble High Court and Hon'ble Apex Court. In this list, the petitioners were not treated as having been regularized from 01.10.1990. The official respondents are again acting on this seniority list of 2005 and the respondent no. 2 has issued a list of promotions of Head Masters on the basis of this seniority list. The department is again going to issue another promotion list on the basis of this seniority list of 2005. The petitioners have requested that the respondent

no. 2 may be restrained to issue any further promotion order on the basis of this seniority list during the pendency of the claim petition.

2. We have heard the learned Counsel for the parties and perused the relevant record.

3. The relevant extract of the Hon'ble High Court's order dated 03.01.2019 is reproduced below:

*"29. While the petitioners have no doubt sought the benefit of being extended seniority w.e.f. 01.10.1990, we see no reason to grant them such a relief in this writ petition, as that would necessitate this Court having to adjudicate upon the inter-se seniority between the petitioners on the one hand and the private respondents/intervenors on the other. Suffice it, therefore, to permit the petitioners herein to make a representation to the State Government with regards their claim for seniority, consequent upon the order now passed by us treating their services to have been regularized w.e.f. 01.10.1990. On any such representation being made, the Government of Uttarakhand shall, after giving all those affected a reasonable opportunity of being heard, take a decision, regarding revision of the seniority list, in accordance with law. We make it clear that we have not expressed any opinion on the petitioners' claim of seniority, over and above the private respondents/intervenors with effect from 1.10.1990.*

*30. All the writ petitions are disposed of declaring that, in terms of G.O. dated 21.11.1995, as construed by the learned Single Judge of this Court in Civil Writ Petition (S/B) No. 162 of 2002 dated 28.10.2004 and as affirmed by the Supreme Court in Civil Appeal No. 3396 of 2006 dated 20.04.2011, the services of the petitioners herein stood regularized w.e.f. 01.10.1990. No costs."*

4. Pursuant to the above orders of the Hon'ble High Court, *vide* order dated 30.08.2019 of the Additional Director (Secondary Education, Kumaon Division, Nainital), the date of regularization of the petitioners was amended as 01.10.1990 in place of the earlier regularization date of 31.12.1999 and it was mentioned in this order that the seniority will be fixed from the amended date of regularization.

5. Smt. Premlata Baudai and 5 others approached this Tribunal in Claim Petition No. 41/NB/DB/2019 in which by way of interim prayer, they requested to stay the effect and operation of the orders dated 30.08.2019, 31.08.2019 and 11.09.2019 passed by the respondents and to direct the respondents not to disturb the already settled seniority in the year 2005.

6. The extract of this Tribunal's order dated 16.10.2019 in the above claim petition is reproduced as below:

*"It has been submitted that vide order dated 03.01.2019 passed by the Hon'ble High Court in Writ Petition No. 1008 (S/S) of 2014, the Hon'ble High Court itself declined to grant the benefit of extended seniority w.e.f. 01.10.1990 to the petitioners to that petition (private respondents in this petition). Those petitioners were allowed to submit their representation to the State Government for their claim of seniority and Government was required to decide their representation after giving reasonable opportunity of hearing to all the affected parties and thereafter to take a decision regarding revision of seniority list as per law.*

*Learned Counsel for the petitioners have submitted that the respondents in their order dated 30.08.2019 had recorded that "Ukt Viniyamitikan Sanshodhit Tithi Se Hee Sambandhit Shikshakon Kee Jyeshthta Nirdharit Hogi" and they have decided the date of seniority without hearing them.*

*To the extent, that date of regularization was fixed 01.10.1990 as per column No. 7, this court finds no illegality, as it had been written as per the decision of the Hon'ble Court already made. But in the order dated 30.08.2019 mentioning the fact that "the seniority of concerned teachers will be determined as per such amended date of regularization" is not as per the order of the court, as it was mentioned, without hearing the affected parties.*

*Learned Counsel for the petitioners rightly raised an objection that without giving opportunity of hearing to them (who are affected parties), as per the order of the Hon'ble High Court, direction/order about the fixation of seniority as per the date of regularization, is not proper.*

*We find that above finding about fixation of seniority as per the date of regularization recording in the order dated 30.08.2019, is not in consonance with the orders passed by the Hon'ble High Court, because before deciding the seniority, reasonable opportunity of hearing was not given to the affected concerned parties. Obviously, the petitioners are affected parties.*

*Hence, in such circumstances, till the next date of hearing the respondents are restrained from relying upon the above part of order dated 30.08.2019, and they are also directed not to act upon this part of above order for deciding the seniority from amended date, without hearing the petitioners."*

7. This Tribunal vide its order dated 10.12.2019 in the above claim petition extended the stay order granted on 16.10.2019 stating that respondents will be

having right to proceed further after hearing the petitioners and the affected parties, as per the orders of the Hon'ble High Court.

8. Pursuant to the above orders, the Govt. invited representations from all concerned and *vide* impugned order dated 13.07.2021 (Annexure no. A1) have held that pensionary and retiral benefits can be given from the date of *ad hoc* appointment but seniority cannot be given from the date of *ad hoc* appointment. Finding no justification for giving seniority from 01.10.1990, the date of regularization, all the representations were accordingly disposed of. *Vide* order dated 23.07.2021 (Annexure no. A2), the Director, Secondary Education has issued promotion orders of 303 persons to the post of Head Master stating that these promotions shall be subject to orders passed in certain writ petitions in the Hon'ble High Court. It has also been mentioned that these promotions are being made as per the seniority of the feeding cadre, however, on confirmation of different facts in the original record and on being found beyond the last promoted person in the seniority list, the promotions of the concerned shall be cancelled and they will be reverted to the old posts held by them.

9. In claim petition No. 41/NB/DB/2019, the above orders dated 13.07.2021 and 23.07.2021 passed by the Govt./respondent department, do not appear to have been filed and further arguments are yet to take place. However, the respondent department has gone ahead with the promotions on the basis of the earlier seniority list of 2005.

10. In the present claim petition, the private respondents have objected to the interim relief justifying the G.O. dated 13.07.2021 (Annexure no. A1) based on various rulings of Hon'ble Courts. They have asserted that the petitioners' case is not only illegal for the determination of seniority from the date, 01.10.1990 but that their regularization since 01.10.1990 is also illegal against the existing rules of regularization framed under Article 309 of the Constitution of India. The claim petitioners have not challenged their regularization order of 1999 and without challenging that order which was passed as per Regularization Rules 1979/1989 and Regularization Rules dated 05.07.2002 and 07.08.2002 and Govt. Order dated 26.12.2001 they are creating pressure. They have not brought proper facts before courts and they are claiming for seniority to be placed above the teachers appointed substantively on the recommendation of Public Service Commission.

11. In view of the above noted facts and rival contentions, we feel and accordingly direct, in the interest of justice, that further promotions, if any, on the basis of the seniority list of 2005 shall be subject to the final decision of the present claim petition.

12. The interim relief application is, accordingly, disposed of.

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: SEPTEMBER 02, 2021*  
*DEHRADUN*  
*KNP*