

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Judgment reserved on 04.08.2021.
Judgment delivered on 27.08.2021

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 70 /DB/2019

1. Lalit Mohan Arya, aged about 54 years, S/o Sri A.R.Arya, r/o 36 Pankaj Vihar, Shimla Road, District Dehradun.
2. Sanjeev Kumar Sharma, aged about 49 years, S/o Sri Krishan Kumar Sharma, r/o Q. No. 4, Type IV, Tourism Colony, Patel Nagar, District Dehradun.
3. Shailesh Pant, aged about 54 years, S/o Sri I.D.Pant, r/o Indraprasth lane I, Upper Nathanpur, District Dehradun.
4. Ravendra Kumar Chauhan, aged about 52 years, S/o Sri Manohar Singh, r/o 82/2, Teg Bahadur Road, District Dehradun.
5. Dhanrendra Singh Payal, aged about 52 years, S/o Sri A.S.Payal, r/o Singal Mandi II, Kargi Road, Near J.P.Plaza, District Dehradun.

.....Petitioners.

vs.

1. State of Uttarakhand through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
2. Laxman Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
3. Omkar Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
4. Virendra Pal Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
5. Kavindra Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
6. Sanjay Singh Tolia, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
7. Mahaveer Singh Chauhan, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
8. Pradeep Kumar Joshi, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
9. Shyam Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

10. Krishan Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
11. Santosh Badoni, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
12. Sunil Singh, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
13. Vikram Singh Yadav, Joint Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
14. Nandan Singh Dungriyal, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
15. Mahima, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
16. Surendra Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
17. Jailal Sharma, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
18. Sompal, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
19. Mahaveer Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
20. Prem Singh Bisht, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
21. Arvind Singh Pangti, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
22. Girdhar Singh Bhakuni, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
23. Vikram Singh Rana, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
24. Rajendra Singh Patiyal, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
25. Dhruv Mohan Singh Rana, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
26. Dev Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
27. Mangal Singh Bisht, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
28. Rajendra Kumar Bhatt, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
29. Girish Chandra Joshi, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
30. Prakash Chandra Joshi, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
31. Ranjeet Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

32. Rajendra Singh Bisht, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
33. Bhupendra Singh Bora, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
34. Govind Singh Bisht, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
35. Ishwari Dutt Pandey, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
36. Chandan Singh Rawat, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
37. Dinesh Chandra Joshi, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
38.[Deleted]
39. Jeewan Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
40. Bijendra Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
41. Devendra Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
42. Nandan Singh Bisht, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
43. Vijay Kumar, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
44. Satyaprakash Singh, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
45. Shiv Swaroop Tripathi, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
46. Mukesh Kumar Rai, Deputy Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
47. Gajendra Singh Kafaliya, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
48. Dharendra Kumar Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
49. Arpan Kumar Raju, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
50. Anil Joshi, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
51. Shivendra Narayan Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
52. Alok Kumar Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
53. Pradeep Mohan Nautiyal, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

54. Anil Kumar Pandey, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
55. Ajeet Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
56. Vivek Kumar Jain, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
57. Rais Ahmed, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
58. Anoop Kumar Mishra, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
59. Sriyut Sriprakash Tiwari, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
60. Akhilesh Mishra, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
61. Reeta Kweera, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
62. Heera Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
63. Ashutosh Shukl, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
64. Deepti Mishra, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
65. Krishan Kumar Shukl, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
66. Pradeep Kumar Shukl, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
67. Shiv Shankar Mishra, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
68. Vyomkesh Dubey, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
69. Sunil Kumar Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
70. Rajnish Jain, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
71. Atul Kumar Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
72. Devendra Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
73. Hanuman Prasad Tiwari, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
74. Shiv Vibhuti Ranjan, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
75. Mahaveer Singh Parmar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
76. Pooran Giri, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

77. Jaswindra Kaur, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
78. Chandra Bahadur, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
79. Mini Joshi, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
80. Jag Jeewan Prakash Beri, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
81. Harish Kumar Sagar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
82. Richa, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
83. Hema Pandey, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
84. Subhash Chandra, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
85. Preeti Tiwari, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
86. Suchi Agarwal, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
87. Deepak Kumar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
88. Jyoti Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
89. Virendra Prasad, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
90. Rajesh Kumar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
91. Lalita Gurunani, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
92. Prem Singh Rana, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
93. Manjula Joshi (Kharkwal), Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
94. Vandana (Khanduri) Dangwal, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
95. Vikas Kumar Srivastava, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
96. Dinesh Yadav, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
97. Mohd. Abdullah Ansari, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
98. Nirmal Kumar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

99. Dinesh Kumar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
100. Prem Prakash Arya, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
101. Manisha Verma, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
102. Dinesh Singh Badwal, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
103. Chiranjil Lal, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
104. Arun Kumar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
105. Deepak Kumar, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
106. Sonia Bharti, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
107. Radha Arya, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
108. Monika Gabryal, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
109. Jyotrimay Tripathi, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
110. Prabha Arya, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
111. Vijay Anju Bharti, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
112. Sudhir Kumar Chaudhari, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
113. Balwant Singh Bhakuni, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
114. Harish Chandra, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
115. Madan Singh, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
116. Harish Singh Bisht, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
117. Pooran Singh Rana, Under Secretary, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
118. Kunwar Singh Sajwan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
119. Trilok Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
120. Ambika Benjwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
121. Anil Kala, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

122. Rajeev Tiwari, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
123. Narendra Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
124. Ratan Lal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
125. Satendra Berman, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
126. Sonia Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
127. Vimla Dhapwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
128. Gokaran Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
129. Rajendra Singh Bonal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
130. Virendra Singh Khandari, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
131. Jagdamba Prasad Makhuri, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
132. Chandra Prakash, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
133. Geeta Sharad, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
134. Dinesh Singh Bhandari, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
135. Padwanti Dharmaktu, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
136. R.K.Pandey, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
137. Basant Vallabh Tiwari, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
138. Sudhir Singh Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
139. Rajendra Singh Jhinkwan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
140. Durga Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
141. Matan Lal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
142. Nagesh Singh Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
143. Sunil Kumar Dobhal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
144. Surat Singh Bisht, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

145. Arjun Singh Napalchyal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
146. Hari Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
147. Madan Mohan Jugran, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
148. Girish Chandra Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
149. Pradeep Kumar, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
150. Surendra Singh Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
151. Kusum Maletha, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
152. Kamlesh Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
153. Sudha Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
154. Meena Pant, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
155. Devendra Prasad, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
156. Shashi Prasad Bhatt, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
157. Riyasat Ali, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
158. Vijay Kumar Naithani, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
159. Mahendra Sing Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
160. Munendra Dutt Semwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
161. Surendra Singh Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
162. M.R.Kukreti, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
163. Rajendra Prasad Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
164. Chiranji Lal Raturi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
165. Surendra Dutt Belwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
166. Surendra Prasad Mishra, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
167. Virendra Singh Chauhan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
168. Mansa Ram Semwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

169. Vipin Chandra Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
170. Vipin Chandra Pant, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
171. Dilip Singh Fraswan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
172. Jyoti Bala, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
173. Ramesh Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
174. Chandan Ram, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
175. Hardayal Budakoti, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
176. Mohan Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
177. Gauri Shankar Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
178. Khilanand, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
179. Karamram, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
180. Kalawati Martolia, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
181. Vikram Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
182. Surendra Singh Chauhan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
183. Pritam Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
184. Gopal Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
185. Nandram Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
186. Ram Singh. Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
187. Ramesh Singh Nitwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
188. Pratap Singh Chauhan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
189. Surendra Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
190. Padam Kumar Verma, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
191. Rajesh Kumar Yadav, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
192. Gajendra Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

193. Ved Prakash Pantwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
194. Sarop Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
195. Kailash Chandra Pandey, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
196. Navratan Singh Tomar, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
197. Rishiram Semwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
198. Virendra Singh Panwar, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
199. Vijay Kumar Mangain, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
200. Bhawani Ram, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
201. Kalam Singh Chauhan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
202. Naval Kishore Ojha, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
203. Bhagwati Prasad Dobhal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
204. Malti Lohani, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
205. Vimal Chandra Bhatt, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
206. Sandeep Sharma, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
207. Om Prakash Semwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
208. Ranjan Qweera, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
209. Arvind Kumar Chandola, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
210. Sanjay Kumar, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
211. Bhuwan Chandra Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
212. Prakash Paliwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
213. Arvind Kumar Diwakar, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
214. Harish Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

215. Tajammul Hussain Khan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
216. Bishan Singh Kunwar, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
217. Manoj Nautiyal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
218. Jai Krishan Badoni, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
219. Kanchan Kumar Pandey, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
220. Vinay Agarwal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
221. Ranveer Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
222. Mohd. Talib Ahmed Khan, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
223. Mohd. Shamim, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
224. Chandra Shekhar Upadhyay, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
225. Rajendra Prasad Dobhal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
226. Pramod Kumar Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
227. Vinod Chandra Tiwari, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
228. Anil Kumar Purohit, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
229. Rashmi Shah, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
230. Vivek Garg, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
231. Pramod Kumar Pant, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
232. Vilas Chandra Godiyal, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
233. Pradeep Papnoi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
234. Narendra Singh Bhandari, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
235. Satya Prakash, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
236. Basant Vallabh Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

237. Devendra Singh Rawat, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
238. Hardeep Chandola, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
239. Deepak Chandra Joshi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
240. Anil Kumar Mandoli, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
241. Gauri Shankar Tyagi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
242. Geeta Bisht, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
243. Atul Kala, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
244. Shyam Singh, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.
245. Pushkar Singh Negi, Section Officer, through Secretary, Secretariat Administration Department, Uttarakhand Secretariat, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey and Sri Sandeep Tiwari, Advocates,
for the Petitioners.
Sri V.P.Devrani, A.P.O., for Respondent No. 1.
Sri L.K.Maithani, Advocate, for Respondents No. 6 & 14.
Sri Aman Rab, Advocate, for Respondents No. 43,47,48,49,
52,53 & 54.
Sri Yogesh Sethi, Advocate, for Respondents No. 59, 60, 62 & 65.

JUDGMENT

DATED: AUGUST 27, 2021

Per: Justice U.C.Dhyani

By means of present claim petition, petitioners seek the following reliefs:

- i) Issue an order or direction quashing the impugned order dated 30.04.2019 enclosed as Annexure: A 1, by which the final seniority list dated 17.12.2018 has been set aside.
- ii) Issue an order or direction quashing the impugned order dated 15.07.2015, vide which the seniority of petitioners no.1 to 4 was reduced (Annexure: A2).

- iii) Issue an order or direction quashing the impugned order dated 15.07.2015, vide which the seniority of petitioner no.5 was reduced (Annexure: A 3).
- iv) Issue an order or direction quashing the impugned order dated 15.07.2015, vide which petitioners no. 1 to 4 were reverted/demoted (Annexure: A4).
- v) Issue an order or direction quashing the impugned order dated 15.07.2015, vide which petitioner no. 5 was reverted/demoted (Annexure: A5).
- vi) Issue any other or further order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- vii) To award the cost of the petition in favour of the petitioners and against the respondents.

2. Facts, giving rise to present claim petition, are as follows:

2.1 In the erstwhile State of U.P., in the year 1991, the U.P. Public Service Commission published an advertisement for appointments on the post of Lower Division Assistant/ Upper Division Assistant in the U.P. Secretariat. The examination was conducted in the year 1993 and the result was declared in the year 1996.

2.2 All the petitioners appeared in the written examination and qualified the same for appointment on the post of Upper Division Assistant (UDA). But the names of the petitioners were not included in the cut off merit list of UDA and were placed in the waiting list. Petitioner No. 2 got appointed on the post of Lower Division Assistant(LDA). One Sri Yogendra Kumar Pal, whose name too figured in the waiting list, filed a writ petition No. 32389/1997 in the Hon'ble High Court of Judicature at Allahabad, praying for direction to the State Government to send requisition to U.P. Public Service Commission for calling the names of the wait-list selected candidates, as against the vacancies existing out of the selection process of 1991. The said petition was allowed by Hon'ble Single Judge *vide* judgment dated 09.04.1998 (Copy: Annexure- A 6), with direction to the State Govt. to send requisition to the U.P. Public Service Commission calling for the names of the wait-list selected candidates, against the vacancies which arose as a result of resignation or non-joining of the selected candidates and also directed the State Govt. to do the needful within two months. For non-compliance of judgment and order dated 09.04.1998 passed by Hon'ble Single Judge, a contempt petition was filed before the Hon'ble Allahabad

High Court. The State Govt. filed Special Appeal No. 99 of 1999, State of U.P. vs. Yogendra Kumar Pal & another, praying for staying the judgment and order dated 09.04.1998, passed by Hon'ble Single Judge, but no interim relief was granted.

2.3 Appointment letters were issued by the State Govt. to all the candidates whose names figured in the wait-list selected candidates in the selection list of the year 1991, including the petitioners for appointment on the post of UDA. Petitioners joined the services as UDA in the U.P. Secretariat, against substantive vacancies (arose either on non-joining or resignation of some candidates) on different dates, which has been shown in the table in paragraph 4(e) of the claim petition.

2.4 Petitioners joined their services in pursuance of the appointment letters and continued their services as such. There was a stipulation in the appointment letters that the appointments shall be subject to the final decision of the Writ Petition No. 32389 of 1997, Special Appeal No. 256 of 1998 and Writ Petition No. 7979 of 1998 (Copy: Annexure- A 7, *Colly*). Petitioners were never impleaded as party in the Special Appeal being No. 99 of 1999, filed by the State Govt. before Hon'ble High Court against the judgment passed by Hon'ble Single Judge.

2.5 After creation of State of Uttarakhand on 09.11.2000, the services of the petitioners were allocated to State of Uttarakhand, as opted by them, and since then they are rendering their services in the State of Uttarakhand.

2.6 A tentative seniority list was circulated on 27.02.2004 (Copy: Annexure- A 8) by the Respondent No.1, in which petitioners' names figured at Sl. No. 5,6,11,13 & 64. Objections were sought against the said tentative seniority list, but before disposal of the objections of the petitioners, final seniority list was issued. In the seniority list, petitioners' names were placed as per Rule 5 of the Seniority Rules, 2002, *i.e.* as per the merit list as prepared by the Public Service Commission. On the basis of the said seniority list, petitioners no. 1 to 4 were promoted to the post of Under Secretary *vide* order dated 10.12.2004 and petitioner no.5 was promoted to the post of Section Officer *vide* order dated 13.12.2004 (Copy of promotion orders: Annexure- A 9, *Colly*). After disposal of the petitioners' objections against tentative

seniority list, a final seniority list dated 03.05.2006 (Copy: Annexure- A10) was issued, but the names of the petitioners were still at the same place, as were in the merit list prepared by the Public Service Commission.

2.7 Petitioner No.1 was promoted to the post of Deputy Secretary *vide* order dated 05.05.2006 (Copy: Annexure- A 11), on the basis of seniority list of 2006. A seniority list of UDA was circulated on 06.08.2010 (Copy: Annexure- A12), in which list the petitioners names figured at Sl. Nos. 5,6,11,13 & 34. The said list remained unchallenged. Another seniority list was circulated on 24.10.2011 (Copy: Annexure- A13). In the list circulated on 24.10.2011, surprisingly, the seniority of the petitioners was kept subject to the decision in aforesaid Special Appeal, to which petitioners were not party. Pursuant to this seniority list, petitioners no. 1 to 5 were promoted on 08.09.2008, 14.12.2012, 30.01.2013, 01.12.2013 and 14.12.2012 respectively. Whereas a seniority list can be challenged within six months or one year, the seniority list dated 24.10.2011 (Annexure: A 13) and earlier seniority lists were challenged and altered on 15.07.2015. The basis of alteration in the seniority list was, the order passed by Hon'ble Supreme Court in SLP, based on an agreement between the State of Uttar Pradesh and the employees who were party to that case.

2.8 Special Appeal No. 99/1999 was decided by Hon'ble Allahabad High Court on 30.10.2007 and review petition filed in the Special Appeal was decided on 02.05.2008. The judgment and order dated 09.04.1998, passed by Hon'ble Single Judge was set aside. Copies of orders dated 30.10.2007 & 02.05.2008 are enclosed as Annexure: A 14. The Hon'ble Allahabad High Court did not decide the question whether the appointment of the petitioners was illegal, but (it) only decided the question whether a candidate can seek mandamus directing the commission to make recommendation to the Government to appoint wait-list candidates. Although Hon'ble Court allowed the Appeal and quashed the order passed by Hon'ble Single Judge, but remained silent about the fate of the persons appointed pursuant to the order of Hon'ble Single Judge. The *ratio decidendi* of the judgment and order dated 02.05.2008 passed in the review/recall application also did not utter single word about the legality or illegality of the appointment of the petitioners in that case. However, the petitioners were appointed after

recommendation of Public Service Commission against substantive vacancies, so the judgment passed by Hon'ble Court did not affect the petitioners. The petitioners were neither party to the said Writ Petition and the Special Appeal nor their appointment was subject to the decision of the Special Appeal. The petitioners were allocated to the State of Uttarakhand before the decision of the Special Appeal and the employer of the petitioners also got changed. Their allocation was not a conditional allocation and was not made subject to the decision of the Special Appeal, thus the judgment of Hon'ble Allahabad High Court is not binding upon the petitioners.

2.9 Apart from petitioners, there were 39 more such candidates who were appointed on the post of UDA/LDA in the erstwhile State of U.P. after judgment passed on 09.04.1998 in Writ Petition No. 32389/1997, from the waiting list. Out of these 39 candidates, who remained in the State of Uttar Pradesh, 28 candidates approached the Hon'ble Apex Court by filing SLP No. 14791- 14792 of 2008, challenging the orders passed in the Special Appeal on 30.10.2007 and 02.05.2008. These 28 candidates, who were not party to the Special Appeal before Hon'ble High Court, filed an application along with their SLP for grant of permission to file SLP being non-party to the proceedings in which impugned order was passed and Hon'ble Apex Court granted permission to them for filing third party SLP. But, the petitioners had no occasion to challenge the order passed in the Special Appeal, as they were allocated to the State of Uttarakhand.

2.10 After the allocation and joining services as UDA in State of Uttarakhand, the petitioners got various promotions on different posts, which has been shown in the chart in paragraph 4(dd).

2.11 Only one promotion order for the post of Deputy Secretary/ Under Secretary, except all other promotion orders, contained condition of making the promotion provisionally or promotion will be subject to any condition precedent or contingent depending upon happening or non-happening of any event, which was done with malafide intention and is a nullity, *inter alia* for the reason that the same was not done in the earlier promotion orders.

2.12 On 19.04.2012, the Additional Secretary, State of Uttarakhand issued a show cause notice to the petitioners to clarify whether the petitioners

had also filed SLP before the Hon'ble Supreme Court against the order dated 02.05.2008 passed by the Hon'ble Allahabad High Court. Such show cause notice, which was issued almost after four years of judgment of Hon'ble High Court in the Special Appeal, was absolutely based on misleading facts because the judgment relied upon in the notice was not binding upon the petitioners. There was no occasion for the petitioners to file the SLP. But the petitioners, consequent to the aforesaid show cause notice filed an impleadment application in the pending SLP before the Hon'ble Apex Court. Since the petitioners were not considered by the Hon'ble Apex Court to be a necessary party and not permitted to file the SLP, being already allocated to the State of Uttarakhand prior to the order passed in the Special Appeal, petitioners withdrew the impleadment application. Since the petitioners were not impleaded necessary party to the SLP, therefore, they are not bound by the judgment passed in the said SLP. Copy of order of Hon'ble Apex Court, dismissing the impleadment application is enclosed as Annexure: A 15 to the claim petition. Thereafter the State Government did not take any action pursuant to the said show cause notice and the notice thus stood waived.

2.13 State of Uttar Pradesh submitted an affidavit before the Hon'ble Apex Court stating that all 39 candidates, who were working in the State of Uttar Pradesh, as on that day, were given appointment from the wait-list, will be permitted to continue in the service, but their seniority will be placed just before the last appointed/ directly recruited candidates of the 2001 batch in the State of Uttar Pradesh. The above affidavit was submitted before the Hon'ble Apex Court only in respect of those 39 candidates, including 28 petitioners in the Special Leave to Appeal Petition and 11 others but not for the present petitioners, who were though appointed from the wait-list but were allocated to the State of Uttarakhand and are serving in the State of Uttarakhand. The State of Uttar Pradesh obtained consent of those 39 candidates for their reduction in their seniority and placing them just before the last appointed candidates of 2001 direct recruitment batch appointed in the State of Uttar Pradesh.

2.14 Hon'ble Apex Court disposed of the SLP *vide* its judgment and order dated 03.02.2014(Copy: Annexure A 16). It was made clear in the judgment that the order was only in respect of 28 petitioners in the Special Leave to

Appeal Petition and 11 others working in the State of U.P. Thus the order passed by the Division Bench of Hon'ble Allahabad High Court stood nullified or modified to that extent.

2.15 Although the judgments passed by Hon'ble Apex Court and Hon'ble Allahabad High Court were only in respect of the 39 candidates and the petitioners were not at all bound by these judgments, but the State of Uttarakhand again issued a tentative seniority list dated 12.05.2015, in respect of employees of Uttarakhand Secretariat, in the light of Hon'ble Apex Court's decision rendered in the SLP, Yogendra Kumar vs. State of U.P., wherein the seniority of 39 candidates in the State of Uttar Pradesh was directed to be placed just before the last appointed candidates of 2001 direct recruitment batch, whose joining date was 16.03.2005, and objections were invited on the same. (Copy of Office Memorandum dated 12.05.2015 is enclosed as: Annexure- A17). Petitioners submitted their representations against said tentative seniority list stating therein that the judgment rendered by Hon'ble Apex Court has no binding effect on the petitioners. They were unconditionally allocated to the State of Uttarakhand and the State of Uttar Pradesh ceased to have any power in respect of the petitioners from the appointed date. Petitioners also relied upon various provisions of the U.P. Reorganization Act, 2000 in support of their contention. The petitioners pray that the judgment rendered by Hon'ble Apex Court pertains to only those 39 candidates who were then serving in the State of Uttar Pradesh and the said judgment is not binding upon the petitioner. The Secretary, Secretariat Administration Department, having personal vengeance against the petitioners, ignoring all the provisions of law and orders passed an unreasoned and non-speaking order and directed reduction of seniority of the petitioners and placed the petitioners much below in the seniority list *vide* order dated 15.07.2015 bearing Nos. 1506/XXXI(2)/2014-90(vivid)/2011 and 1507/XXXI(2)/2014-90(vivid)/2011 (Copies: Annexure- A 2 and A 4).

2.16 Consequent to the order dated 15.07.2015, the petitioners were reverted from the post of Joint/Deputy /Under Secretary to the post of Section Officer by passing a separate order No. 1786/XXXI(1)/2015-17 Pad/2014 dated 15.07.2015. Both the orders were passed on the same day which shows the biased state of mind and malafide intention of the respondents. Prior to

passing of the order dated 15.07.2015, the Secretary, SAD gave statement on two occasions in the newspaper that the petitioners have been reverted to the post of Section Officer. (Copies of orders are enclosed as Annexure: A 3 and A 4 to the claim petition). As per Sections 73 and 74 of the U.P. Reorganization Act, 2000, after petitioners' joining their services in State of Uttarakhand, their services are now under the control of State of Uttarakhand and without getting prior approval of the Central Govt., no order varying the conditions of services of the petitioners could be passed. Petitioners were unconditionally allocated to State of Uttarakhand and subsequent promotions were also given by the State of Uttarakhand, which too were unconditional, therefore, the said original condition stood waived and subsequent events have no bearing on the appointment of the petitioners and on the terms and conditions of their services. All those direct appointees of 2001 batch, who were directed to be placed above the 39 candidates by Hon'ble Apex Court, were not allocated to the State of Uttarakhand so the petitioners' seniority *inter se* those 2001 direct appointees is not concerned for the purpose of determining the seniority of the petitioners in the State of Uttarakhand. The petitioners joined the services of the State of Uttarakhand on 09.11.2000 and placing the petitioners in the seniority below the persons appointed in the State of Uttar Pradesh will be wholly arbitrary and will amount to infringement of the legal rights of the petitioners.

2.17 Another order No.1787/XXXI(1)/ko.T.-25.2015 dated 15.07.2015 has been passed by the Secretary, SAD, State of Uttarakhand whereby ex-cadre posts of Officer on Special Duty (OSD) in the Chief Minister's personal staff have been created and the petitioners have been directed to join on the said post. Although the pay scale of the ex-cadre post and posts on which petitioners were working on the date of passing of the impugned order is equal, but the ex-cadre post exists at the wish of the Hon'ble Chief Minister and could be terminated at any time and in such a situation the petitioners will have to join on the reverted post of Section officer. Petitioners are separated from their own cadre.

2.18 Petitioners approached Hon'ble High Court against the order dated 15.07.2015 by filing five separate writ petitions. Hon'ble High Court vide order dated 24.07.2015 did not grant stay to the petitioners. After denial of

grant of interim relief, petitioners approached Hon'ble Apex Court, who, *vide* order dated 11.12.2015 requested the High Court of Uttarakhand for early hearing of petitioners' pending writ petitions.

2.19 39 persons who are said to be bound by the judgment of Hon'ble Allahabad High Court, are working on the same post on which they were appointed and even after their placement on a lower rank in the seniority list, they are not going to get any reduction in the rank.

2.20 Consequent to the order passed by Secretary, SAD, Uttarakhand, the petitioners have been directed to be placed in the seniority list considering their appointment date as 16.03.2005, as a result of which the petitioners have been placed below in the seniority to those candidates who were appointed in 2004 batch in the State of Uttarakhand itself and to those candidates who were appointed in the State of Uttar Pradesh as LDA and allocated to the State of Uttarakhand as LDA and Typist and were junior to the petitioners in the State of U.P. Petitioners have been placed below in the seniority to other candidates also who were working in various other departments and their services were merged with the services of Secretariat Department, ignoring the Rules of merger. As per Merger Rules, 2002, the employees which have been merged in the Secretariat Cadre, were to be placed below in seniority to the existing employees of the Secretariat Cadre, which has not been done in the instant case. The petitioners are considered on the post of Section Officer on 09.11.2000, which is a Secretariat Cadre post, but the candidates working in various other departments, whose services have been merged in the Secretariat Department, have been placed above the petitioners in seniority.

2.21 Opinion of Law Department was sought on the above issue, to which Law Department opined that all the petitioners were not party before the Hon'ble Apex Court in the SLP bearing No. 14296-14297/ 2008 Yogendra Kumar Pal and others vs. State of Uttar Pradesh and others, therefore, the judgment and order passed by the Hon'ble Apex Court is not applicable on them according to the principles of natural justice and also said that the judgment passed by Hon'ble Apex Court is a judgment *in personam* and not judgment *in rem*. (Copy: Annexure- A 18).

2.22 Pursuant to the opinion of Law Department, respondents and petitioners agreed to an amicable settlement. Petitioners agreed to withdraw the writ petitions pending before Hon'ble High Court, if they were given seniority after the joining of 1999 batch. *Vide* letter dated 15.11.2016, respondents directed the petitioners to submit their affidavits in pursuance to the compromise with Secretariat Administration Department regarding withdrawal of their petitions after attaining requisite seniority after the joining of 1999 batch. (Copy of letter dated 15.11.2016: Annexure- A 19). All the petitioners submitted their affidavits, as per above mentioned conditions (Copy: Annexure- A20).

2.23 In legal opinion, sought from the then Advocate General, *vide* noting of the office of Chief Minister dated 25.01.2017, it was opined that the petitioners cannot be placed below the persons appointed in 2004-05 batch, as the same would be contrary to the provisions contained in Sections 74 and 75 of the U.P. Reorganization Act, 2000. (Copy of legal opinion: Annexure- A 21).

2.24 Hon'ble Chief Minister's and Additional Chief Secretary's consent was also taken on this issue. All those employees who were opposing the aforesaid issue were also called on 08.06.2017 for discussion. Aggrieved parties were heard on 03.05.2017, 07.06.2017 and 08.06.2017.

2.25 On 10.09.2018, a tentative seniority list was issued. In paragraph 2 of the said tentative list it was clearly stated that the petitioners have agreed to withdraw their writ petitions on the basis of compromise entered into between the Government and the employees, where these employees have agreed to be placed after the joining of 1999 batch and further to withdraw their pending writ petitions before the Hon'ble High Court of Uttarakhand. (Copy of tentative seniority list: Annexure: A 22). The petitioners withdrew their writ petitions on 03.12.2018 (Copy: Annexure- A 23) in the light of Office Memorandum dated 10.09.2018. Since the withdrawal of writ petitions was in the light of agreement/ compromise between the petitioners and the State Govt., therefore, after the withdrawal of the petitions by the petitioners, the Govt. was estopped from taking a different stand.

2.26 The final seniority list was issued on 17.12.2018 by Respondent No.1, after deciding objections raised by about 59 employees and the seniority of the petitioners, as fixed in the tentative seniority list, was made final. On 07.03.2019, without any rhyme or reason, a meeting of Secretary, SAD, petitioners and other affected parties was called. Surprisingly, *vide* order dated 30.04.2019 (Copy: Annexure- A 1), the final seniority list dated 17.12.2018 was set aside and the list dated 15.07.2015 was revived. Petitioners gave a representation to the Chief Secretary, State of Uttarakhand, against the notice dated 07.03.2019, stating therein that there is no provision in rules for hearing against the final seniority list and after the objections of the persons concerned have already been decided.

2.27 The impugned order dated 30.04.2019 has been passed in violation of all the procedures established in service jurisprudence and the respondents have committed breach of principle of natural justice and has abused its powers. The conduct of the respondents is violative of Articles 14 and 21 of the Constitution of India, according to the petitioners.

2.28 The petitioners approached the Hon'ble High Court of Uttarakhand by filing Writ Petition No. WPSB 187 of 2019. Hon'ble High Court *vide* order dated 15.05.2019 (Copy: Annexure- A 24) dismissed the writ petition on the ground of alternate remedy.

COUNTER VERSION

3. Separate Counter Affidavits/ Written Statements have been filed on behalf of Respondent No.1, Respondents No. 6-14, Respondents No. 43,47,48,49,52,53 & 54 and Respondents Nos. 59, 60, 62 & 65.

4. Common facts and grounds which have been taken on behalf of the respondents, in their C.As., are-

4.1 The seniority list of 2018, as mentioned by the petitioners, is not the original final list, but the list issued in 2011, issued under some conditions, as amended in 2015, is the final seniority list. Not only the appointment letters but the recommendations made to the SAD, U.P. of the present petitioners along with other 39 candidates, working in the Secretariat of U.P. were made under the condition of the final judgment of Writ Petition No. 32389/1997

and Special Appeal No. 99/1999, which were finally decided in SLP No. 14791-92/2008 on 03.02.2014. It was the duty of present petitioners to become party in the above litigations, if they wanted some alternate remedy.

4.2 The vacancies had already been fulfilled and exhausted on the joining and resignation of the employees selected via the merit list. The matter was dealt with by Hon'ble Allahabad High Court in its order dated 02.05.2008, passed in the recall application No. 265023/2007. SAD, U.P. issued appointment letters after the lapse of prescribed one year waiting period. When the petitioners were allocated to the State of Uttarakhand, then the conditions stipulated in their appointment letters stood carried forward to their employment with the State of Uttarakhand, as per the principles laid down in Section 55 of the U.P. Reorganization Act, 2000. Provisions of Section 74 of the U.P. Reorganization Act, 2000 are being erroneously applied by the petitioners. Section 74 speaks about the conditions of service being varied after the date of appointment to their disadvantage, but in the present case the conditions of service are not being varied but a stipulation which was already in the contract at the time of appointment is being brought into effect. The petitioners did not object to the stipulation inspite of being aware of the same, and mere allocation will not absolve them from the stipulations in their appointment conditions. Though the State of U.P. lost all the rights to vary the terms of service but such power was passed on to the State of Uttarakhand after their allocation to the State as per Section 55 of the U.P. Reorganization Act, 2000. As per the Reorganization Act, the employment of the petitioners was not confirmed until 2009 and thus any position of the petitioners in the seniority list will be considered tentative and would not, in any sense, confirm their seniority. The employment of the petitioners was subject to the decision of Writ Petition No. 32389/1997, Writ Petition No. 7979/1998 and Special Appeal No. 256/1998 and thus the appeal to these matters was still pending before Hon'ble High Court of Allahabad until 2007 and further, a recall petition was filed in this case which was decided in 2008, which led to quashing of order passed by the Single Bench of the Hon'ble Allahabad High Court on 09.04.1998, which order of the Hon'ble Court meant that the employment of the petitioners became *non est in the eyes of law*, as the order quashed by the Hon'ble High Court was the one that directed the State to employ present petitioners. Since the

employment of the petitioners was subject to the decision of Writ Petition No. 32389/1997, Writ Petition No. 7979/1998 and Special Appeal No. 256/1998, so any position of seniority given to the petitioners could be revoked or modified in accordance with the Court's order. Further, since the employment of the petitioners was not confirmed until 2009 by the Central Govt. in accordance with the provisions of the U.P. Reorganization Act, therefore, any promotion given to them would be considered tentative until 2009. The petitioners have challenged the seniority list in their claim petition, which was circulated in 2011, was amended in 2015 and confirmed in 2019.

4.3 Counter version is that the Hon'ble Court in its judgment clearly specified that a wait list candidate cannot seek a writ of mandamus enforcing his right to recommendation and thus cannot ask the Govt. to appoint him. Hon'ble Allahabad High Court (DB) set aside the order of Hon'ble Single Judge, which rendered the employment of the petitioners *non est* in the eye of law. Further, even if the petitioners were not a party to the proceedings before Hon'ble High Court and Hon'ble Supreme Court, the same is of no consequence. Petitioners were not issued appointment letters by the State of Uttarakhand, as they were not appointed but only allocated to the State of Uttarakhand. The matter was finalized by Hon'ble High Court of Allahabad in the year 2008. Petitioners were finally allocated to Uttarakhand in August, 2009. Since the employment of the petitioners was not confirmed until 2009 by the Central Government, therefore, the promotion given to them was tentative until 2009. After confirmation of petitioners in 2009 by the Central Government, seniority list was circulated in 2011, which was amended in 2015 and confirmed in 2019, which has been challenged by the petitioners in the present claim petition. Petitioners have not been given any promotion after the judgment of Hon'ble Supreme Court in 2014 and Hon'ble Allahabad High Court in 2008. Show-cause notices were served upon the petitioners only to ascertain whether they were party to the SLP pending before the Hon'ble Supreme Court or not. The petitioners will be bound by the judgment of Division Bench of Hon'ble High Court of Allahabad on 02.05.2008, as the judgment set aside the order passed by the Single Bench of Hon'ble Court in 1997, by which the appointment of the petitioners was made. The petitioners, on their own volition have withdrawn the impleadment application and the same was not disposed of on merits. Govt. of Uttarakhand on compassionate

grounds did not terminate the services of the petitioners and continued their services by placing them, similar to their counterparts in State of U.P., only because they had served the Government for nearly a decade. Seniority of the petitioners was corrected in accordance with the principles laid down by Hon'ble Apex Court in its order dated 03.02.2014, Yogendra Kumar Pal vs. State of U.P. and S.P.O. No. 14296/14297/2008, which puts them on equal footing with their counterparts in U.P., who were also given appointment letters on the order of the Single Bench of Hon'ble Allahabad High Court on 09.04.1997. Section 55 of the U.P. Reorganization Act, 2000 clearly specifies that if erstwhile State of U.P. made any contract exercising its executive power, then all the rights and liabilities arising out of it shall pass on to the successor State.

4.4 After seeking the opinion of the Law Department, a committee was convened to look into the matter on 07.03.2019. After hearing the petitioners, the committee, in its minutes cited the decision of the Hon'ble Allahabad High Court in 2008, and confirmed that the appointment of the petitioners had become *non est* in the eye of law. The committee also recorded that considering humanitarian aspects, the petitioners would be placed in seniority in tandem with their counterparts in the State of U.P. and thus their seniority will be determined from 16.03.2005. (Copy of minutes of meeting: Annexure-CA-2).

4.5 In the settlement, made between the petitioners and the respondents in 2015, there was no regard to the opinions of private respondents. Against such compromise, objections were raised by the private respondents to the SAD, copy of which has been filed as Annexure: CA-3. Private respondents have also stated that the petitioners used their political connections to facilitate the consent of the Chief Secretary and thus the Hon'ble Chief Minister.

4.6 Seniority list dated 10.09.2018 was never published and circulated, because the same was in contradiction to the principles laid down in the judgment of Hon'ble Apex Court in 2014. Non-circulation of such seniority list can clearly be ascertained by looking at the noting of the Secretariat (Annexure: CA-4 to the counter affidavit). Petitioners will suffer no

irreparable loss and injury as they are allowed to work in the Secretariat and are receiving full govt. benefits like all their counterparts.

5. Rejoinder Affidavits have been filed on behalf of the petitioners against the C.As. filed by respondent no.1, respondents no. 47,49,52,54 and respondents no. 43, 48 and 53.

6. Written submissions have been filed by Sri Shashank Pandey, Ld. Counsel for the petitioner; Ld. A.P.O., on behalf of Respondent No.1; Sri L.K.Maithani, Ld. Counsel for Respondents No. 6-14 and Sri Yogesh Sethi, Ld. Counsel for Respondents Nos. 59, 60, 62 & 65. They also advanced oral arguments at length. Sri Aman Rab, Advocate, for Respondents No. 43,47,48,49,52,53 & 54 argued orally on behalf of his clients.

DISCUSSION

ENTRY OF THE PETITIONERS IN SERVICE

7. Entry of the petitioners was *via* judgment dated 09.04.1998 passed in Civil Misc. Writ Petition No. 32389 of 1997 (Annexure: A-6) in which the Single Judge of Hon'ble High court of Judicature at Allahabad directed that the State Govt. should send requisition to the Commission calling for the names of the wait listed selected candidates as against the vacancies which arose as a result of resignation or otherwise of the selected candidates. The requisition was to be sent by the State Govt. within a period of two months and the State Public Service Commission was directed to send the list of wait-listed candidates in order of merit, as against the requisition.

The said judgment was set aside by Division Bench of Hon'ble Allahabad High Court *vide* judgment dated 30.10.2007 in Special Appeal No. 99 of 1999 (Annexure: A14).

RIGHTS OF WAIT-LISTED CANDIDATES

8. Division Bench of Hon'ble Allahabad High Court in Special Appeal No. 99/1999, State of U.P. vs. Yogendra Kumar Pal, has elaborately dealt with the rights of wait-listed candidates. Some of the important extracts are as under:

“In our view, the controversy involved in this matter is squarely covered by our judgment dated 8.2.2007 in the case of U.P. Public Service Commission, Allahabad and another vs. State of U.P. and another, 2007(5) ADJ 280 (DB). The right of wait list candidate was considered by this Court and in para-15 of the judgment it was held ‘A wait list candidate does not have any indefeasible right to get appointment merely for the reason that his name finds place in the wait list.’ This Court in taking the aforesaid view relied upon the decision in Ved Prakash Tripathi vs. State of U.P., 2001(1) ESC 317 and Surinder Singh and others vs. State of Punjab and another, (1997) 8 SCC 488 and held that even a select list candidate has no indefeasible right to claim appointment. In para-31 of the judgment in U.P. Public Service Commission, Allahabad and another (*supra*) this Court has further held as under:

"Moreover, even in the case of a select list candidate, the law is well settled that such a candidate has no indefeasible right to claim appointment merely for the reason that his name is included in the select list as the State is under no legal duty to fill up all or any of the vacancy and it can always be left vacant or unfilled for a valid reason."

This Bench relied upon the decision of the Hon'ble Apex Court in Shankarsan Dash v. Union of India, AIR 1991 SC 1612 and State of U.P. and others vs. Raj Kumar Sharma and others, 2006(3) SCC 330 and in para-39 of the judgment in U.P. Public Service Commission, Allahabad and another (*supra*) has held as under:

"Thus, a wait list candidate cannot seek a writ of mandamus enforcing his right to claim appointment by seeking a direction to the Commission to make recommendation of his name from the waiting list and the Government is not obliged to appoint him consequently unless it is substantiated by a statutory provision."

In view of the aforesaid law laid down in U.P. Public Service Commission, Allahabad and another (*supra*), we are of the view that the direction issued by the Hon'ble Single Judge *vide* judgment under appeal cannot sustain. The special appeal succeeds and is hereby allowed. The impugned judgment dated 9.4.1998 passed in Civil Misc. Writ Petition No.32389 of 1997 is hereby set-aside and consequently the writ petition of the petitioner-respondent is dismissed."

[Emphasis supplied]

RECALL APPLICATION IN INTRA-COURT APPEAL

9. The petitioner filed application for seeking recall of judgment dated 30.10.2007 whereby the Special Appeal No. 99 of 1999 was allowed and the judgment of Hon'ble Single Judge was reversed, as also the writ petition of the petitioner was dismissed.

10. *Vide* detailed judgment dated 02.05.2008, Hon'ble Allahabad High Court, relying upon a catena of decisions, did not find any reason to recall or

modify judgment dated 30.10.2007. Some of the important paragraphs are extracted here under:

7. The Commission published an advertisement on 21.12.1991 notifying recruitment of Upper/Lower Division Assistants (hereinafter referred to as "UDA" and "LDA" respectively) in U.P. Secretariat as well as in the Commission and termed as "Public Service Commission Upper/Lower Division Assistant and U.P. Secretariat Upper/Lower Division Assistant Examination, 1991" (hereinafter referred to as "1991 Examination"). The number of vacancies advertised therein were as under:

.....

8. The recruitment consisted of a written test wherein the petitioner participated and the result of the said examination was declared by the Commission on 31.1.1996. 260 candidates were declared successful for the post of UDA and 280 were declared successful for the post of LDA. The said list of selected candidates did not include the roll no. of the petitioner. Contending that against 260 vacancies of UDA, 19 selected candidates did not join the service and, therefore, those vacancies ought to have been filled in by the appellant and the Commission from the wait list, the petitioner approached this Court by means of writ petition no. 32389 of 1997. He said that the last selected candidate in the list of UDA has secured 305 marks and the petitioner has secured 304 marks and, therefore, he being the wait-list candidate ought to have been recommended and appointed against the 19 unfilled vacancies which remained vacant due to non joining of selected candidates. However, the prayer as couched in the writ petition by the petitioner did not confine itself for the vacancies which remained unfilled due to non joining of selected candidates, but, instead, it also sought a writ of mandamus commanding the authorities concerned to fill in all the vacancies which occurred due to resignation of the candidates etc. during the period of one year from the date of declaration of select list. The relief sought by the petitioner in the writ petition is reproduced as under :

"i) Issue a writ, order or direction in the nature of mandamus commanding the opp. Party no. 1 to sent requisition to the Commission for sending the name of the candidates included in the waiting list for all the vacancies occurred due to resignation of the candidates from the post of U.D.A. during the period of one year and the opp. party no. 2 may be commanded through a writ of mandamus to recommend the names of the candidates included in the waiting list prepared on the basis of the selection made in pursuance to the advertisement dated 21-12-91 (Annexure-2 to the writ petition) within some stipulated period prior to expiry of the period of one year as this Hon'ble Court may considers fit and proper.

ii) Issue a writ, order or direction in the nature of mandamus commanding the opp. Parties to compute the period of one year from the date of final recommendation sent by the Commission for appointment of the candidates to the State Government on the existing 260 vacancies for which the present selection has been made.

lii) issue any other writ, order or direction or to pass such other and further order as this Hon'ble Court may deem fit, just and proper in the present case.

iv) Award the cost of petition to the petitioner."

12. The writ petition was heard and allowed by the Hon'ble Single Judge vide judgment dated 9.4.1998. It was held that the Commission admittedly made some recommendations against the vacancies which remained unfilled due to non joining of the selected candidates. In addition thereto, 2 candidates for the post of UDA and 5 for the post of LDA were recommended against the vacancies for which candidature of selected candidates was rescinded due to non submission of requisite testimonials. However, it proceeded further and held that the vacancies which have occurred as a result of resignation or otherwise of selected candidates after they joined the service during the period of one year from the date of selection, such vacancies are also liable to be filled in from amongst the wait-listed candidates and for taking the said view, it placed reliance on Abdul Wasim & another Vs. Collector, Budaun & others 1997 (2) ESC 1011 and Dr. Arvind Kumar Vs. State of U.P. & others 1987 UPLBEC 1006 and, accordingly, issued a mandamus to the State Government as well as Commission to fill in such vacancies from the wait list of the candidates in order of merit.

13. Aggrieved by the aforesaid judgment, intra Court appeal was preferred by the State of U.P. Initially, this Court stayed the judgment in appeal vide order dated 8.6.1998, extended by order dated 15.6.1998 but thereafter the Division Bench while admitting the appeal passed following order on 14.7.1998 :
 "We are not satisfied that this is a fit case for grant of stay of operation of the impugned judgment. However, it is made clear that any appointment made in pursuance of the impugned judgment will be subject to the result of the appeal and it shall be stated in the appointment order issued henceforth."

14. Since the judgment was not stayed, the petitioner insisted upon the State Government to send requisition as per the direction issued by Hon'ble Single Judge so that the Commission may make further recommendations and appointments be made accordingly. When the State Government did not proceed, it appears that a Contempt Petition No. 1216 of 2000 was also preferred. The State Government ultimately took action as directed by the Hon'ble Single Judge and as a result thereof, the petitioner and some other persons were appointed in the year 2000.

15. Learned counsel for the petitioner contended that since he has been appointed and has been working in the Secretariat of State of U.P. for the last 8 years, therefore, even if on the legal question, the judgment of the Hon'ble Single Judge is not sustainable, yet this Court can protect the interest of the petitioner as otherwise it would cause irreparable loss and injury to him, who is now overage and cannot get any appointment elsewhere. Therefore, it is argued that even if the intra Court appeal of the State Government has rightly been allowed, yet at least the appointment of the petitioner made in 2000 pursuant to the judgment of the Hon'ble Single Judge should be protected as was done by the Apex Court in S. Renuka and others Vs. State of A.P. & another 2002 (5) SCC 195 and H.C. Puttaswami & others Vs. Chief Justice of Karnataka High Court 1991 (Supp.) (2) SCC 421.

17. In the meantime, since the Hon'ble Single Judge decided the writ petition of the petitioner vide judgment dated 9.4.1998, directing the State Government to call for further names against the vacancies which occurred during the subsistence of select list on account of resignation of the candidates after joining, the State Government sent a letter dated 27.11.1998 informing the Commission that despite of its recommendations made vide letters dated 20.12.1997 and 19.5.1998, still 4 selected candidates have not joined on the post of UDA and within

one year, i.e., from 24.4.1996 to 23.4.1997, 4 persons who joined on the post of UDA were subsequently relieved for joining elsewhere and, therefore, against their resultant vacancies also, as per the judgment dated 9.4.1998, the Commission should make recommendation and thus requisitioned 8 names from the wait list. Pursuant to the letter dated 27.11.1998, the Commission vide letter dated 23.12.1998 recommended names of 6 candidates. It appears that thereafter the petitioner made representation on 19.12.1998 to the State Government submitting that the period of one year would commence from 20.12.1997 and, therefore, the select list would have to continue for one year, i.e., upto 19.12.1998 and all the vacancies which occurred due to resignation upto 19.12.1998 were liable to be filled in from the wait-list of 1991 Examination. It further appears that the State Government agreeing to the said representation sent a further letter dated 20.2.1999 informing the Commission that upto 19.12.1998, 37 UDAs have resigned after appointment and joining the post and, therefore, 37 names from the wait-list of 1991 Examination be sent as per the judgment dated 9.4.1998. The Commission, however, vide its letter dated 14.5.1999 sent a list of 41 candidates for appointment to the post of UDA pursuant to the said letter dated 20.2.1999 of the State Government which included the name of the petitioner also.

18. It is interesting to note that though the aforesaid recommendation was said to be made in view of the judgment dated 9.4.1998 passed by this Court in writ petition no. 32389 of 1997, yet in the aforesaid letter of the Commission, in para-2, it was mentioned that the aforesaid recommendation is subject to the final decision of the High Court in writ petition no. 32389 of 1997, though it was already decided on 9.4.1998 and in fact in May 1999 Special Appeal was pending wherein an order had already been passed on 14.7.1998 directing that the appointment, if any, made pursuant to the judgment, impugned in the intra Court appeal, would be subject to the result of the appeal and this fact shall be stated in the appointment orders issued. However, it is in these circumstances and pursuant to the aforesaid recommendation that the applicant-respondent no. 1 was appointed on the post of UDA.

19. From the above facts, the situation which emerges undisputedly is that the appointment of the petitioner during the pendency of this appeal was not unconditional but on a categorical condition that the same would be subject to the result of the appeal and, therefore, for the mere fact that the petitioner has continued to work for about 8 years during the pendency of the appeal, we do not find any reason to make the said condition redundant. Moreover, the claim of the petitioner is not against the unfilled vacancies in the same selection on account of non joining of selected candidates but it is entirely based against those vacancies which resulted due to resignation of selected candidates i.e., those who after appointment, joined their services, worked for sometime, and, thereafter, resigned from service for various reasons namely, since they got appointment in some other better service or otherwise.

20. The number of posts of UDA advertised in 1991 Examination were 240 in the Secretariat and 17 in Public Service Commission. It is not disputed that 17 vacancies in the Commission got filled in by the candidates who were selected in the aforesaid examination and there is no claim with respect to any such vacancy of UDA in the Commission. The entire claim is in respect to the post of UDA in the Secretariat. There, it appears that besides 240 vacancies, which were advertised, the State Government and the Commission also proceeded to fill in 9 vacancies which were requisitioned to the Commission after the advertisement, i.e., vide State Government's letter dated 4.3.1993. It is

not disputed, and, at least there is nothing on record to show that the advertisement was modified or any addends was published by the Commission increasing the number of vacancies of UDA in the Secretariat from 240 to 249.

26. In State of Punjab vs. Raghbir Chand Sharma, AIR 2001 SC 2900, the Apex Court clearly held that once a selected candidate joins the post, the select list against that vacancy stands exhausted and no one can claim from the said panel appointment either in the vacancy arising on account of resignation of the said person or any other vacancy arising subsequently during the period the select list would have been operated. The select list against the vacancies notified seized to exist having outlive its utility and cannot be used even against vacancies which may arise on account of resignation of the person appointed from the said panel”

[Emphasis supplied]

IMPLEADMENT IN SLP

11. In the impleadment application, filed in SLP Civil Nos. 14296-14297/2008 (Annexure: A 15) arising out of judgment dated 30.10.2007 passed in Special Appeal No. 99/1999, Hon’ble Apex Court on 30.04.2013 passed the following order:

“Ld. Counsel for the applicant(s) seeks permission of this Court to withdraw the application(s) for impleadment with a liberty to file special leave petition.

Permission to withdraw the application(s) for impleadment is granted. The application(s) for impleadment are disposed of as withdrawn.

However, we are not inclined to grant permission to file special leave petition.”

ORDERS IN SLP

12. In the selfsame Petitions for Special Leave to Appeal (C) Nos. 14296-14297/2008, following orders were passed by Hon’ble Apex Court on 03.02.2014:

“Leave granted.

Learned counsel for the rival parties do not dispute that the appellants appointed against vacancies which were never filled up, consequent upon the selection made by the respondent, will be governed by the judgment rendered by this Court in State of J& K vs. Sat pal (Civil Appeal Nos.938-939 of 2013 arising out of SLP (C) No. 31591-31592 of 2012) decided on 5th February, 2013. Ordered accordingly.

An additional affidavit dated 27.08.2013, has been filed on behalf of the State of U.P.-Respondent No.1.

Paragraphs 7 and 8 of the afore-stated affidavit is being extracted hereunder:

“7. That upon deliberation of the facts, especially in deference to the oral observations of this Hon’ble Court and further keeping in view the humanitarian

aspects attached and the dependents of the persons who have continued in service on the basis of the order of the High Court, a view was taken in the said meeting that they may be considered to be allowed to remain in service but keeping in view of the implications with respect to different batches of the employees having joined on different dates in their regular appointments, the seniority of these petitioners including the others who are similarly placed (total 39), shall have to be considered after 16.03.2005, the date on which last 2001 batch of direct recruitment has taken place.

8. That the said view to place them in seniority from 16.03.2005 have been taken in view of the fact that three batches of direct recruitment (i.e. 1995 batch, 1999 batch and 2001 batch) have joined and the last joining took place on 16.03.2005. These 28 petitioners herein (claimants) and other 11 who are not party to these proceedings, shall have to be placed before the said last appointee in view of the fact that it will become very difficult to reschedule and manage the seniority list. Even if the said efforts would be made, then that will create multiple causes of action for innumerable litigations by different parties claiming to be affected by the said rescheduling of the existing seniority list.”

It was acknowledged by the Ld. Counsel representing the State of U.P., during the course of hearing, that the position expressed in paragraphs 7 and 8 relates to such of the appellants who have been appointed against vacancies which were filled up in the first instance, but thereafter, became available again.

Ld. Counsel for the appellant states that he has no objection to the disposal of the instant appeals, in respect of the remaining appellants, in terms of the offer made by the State of U.P., as has been recorded in paragraphs 7 and 8 of the additional affidavit.

In view of the above, the instant appeals, with the consent of the parties, are disposed of in the aforesaid terms.”

[Emphasis supplied]

PENDING WRIT PETITION AT NAINITAL

13. Law Department opined (Annexure: A 18.) that the amicable settlement between the parties may be filed in Writ Petition No. 274/2015, which was pending before Hon’ble High Court of Uttarakhand and the writ petition filed by the petitioners may be withdrawn. Ld. Advocate General agreed with the opinion of Law Department (Annexure: A 21).

WITHDRAWAL OF WRIT PETITION

14. *Vide* order dated 03.12.2018, petitioner Sri Lalit Mohan Arya was permitted to withdraw his writ petition on submission made on his behalf that since an order has been passed on 10.09.2018 by the Secretary, Secretariat Administration, therefore, petitioner be permitted to withdraw the writ petition. (Annexure: A- 23).

15. Seniority list dated 17.12.2018 was quashed by the respondent department by passing an order on 30.04.2019, which was challenged before Hon'ble High Court of Uttarakhand by filing WPSB No. 187/19, L.M.Arya and others vs. State and others. The writ petition was dismissed on the ground of alternate remedy *vide* order dated 15.05.2019 (Annexure: A -24). The petitioners have, accordingly, filed present claim petition before this Tribunal.

FACTS AND APPLICABLE LAW REVISITED

16. To recapitulate the facts of the claim petition and orders passed by Hon'ble Apex Court and Hon'ble High Court, which have direct bearing on the fate of instant claim petition, State Public Service Commission of the erstwhile State of U.P. issued an advertisement on 21.12.1991 for the recruitment of UDA(240 posts) & LDA(91posts); for this advertisement, an exam was held in September, 1993 and the final select list was declared on 31.01.1996; the petitioners no. 1 to 4 were in the wait-list of the UDA and petitioner no. 5 was in the wait-list in the LDA category. Many candidates in the final select list left the service or preferred not to join the service within one year of the declaration of the select list issued by the UP PSC. Thereafter, one waitlisted candidate, namely, Sri Yogendra Kumar Pal filed a writ petition in the Hon'ble High Court of Allahabad for filling up these posts from the wait listed candidates. WP No. 32389/1997 Yogendra Kumar Pal Singh vs. State of U.P. was heard by Hon'ble Single Bench, the decision to which came on 09.04.1998. Pursuant to order of Hon'ble Single Judge, wait-listed candidates, including the petitioners, were allotted the vacant posts and were, accordingly, appointed to the said post contingent on the final adjudication of the case, (which was ultimately decided by Hon'ble Apex Court). State of U.P. filed Intra-Court appeal against the decision of Division Bench of the Hon'ble High Court. Special Appeal No. 99/1999 was decided on 30.10.2007 (Annexure: A-6). Sri Yogendra Kumar Pal filed SLP before Hon'ble Apex Court. In SLP No. 14296-14297-2008 (Annexure: A-16), the **Hon'ble Apex Court *vide* order dated 03.02.2014 held that the wait-listed candidates who filled the vacancies in accordance with the order of Hon'ble Single Judge, dated 09.04.1998 will be, as an outcome of this case, be junior to three batches of 1995 batch, 1999 batch and 2001 batch.** Hence, a seniority list was circulated on 12.05.2015, in which the seniority of the petitioners was

reduced and they were kept below the Batches of 1995,1999 and 2001. **After due consideration of relevant rules, a final list was issued on 07.03.2019.** Petitioners, then approached Hon'ble High Court of Uttarakhand by filing WPSB No. 187/2019, challenging the final seniority list dated 07.03.2019, which was dismissed on the ground of alternate remedy. **Hon'ble Apex Court, in its order, has held that 16.03.2005 shall be the date of reckoning for the purposes of counting seniority of the petitioners.** Such specific date, i.e. 16.03.2005, declared by Hon'ble Apex court for fixation of seniority of the petitioners, cannot be altered by any other court or authority.

17. In Civil Misc. Writ Petition No. 32389/1997, Yogendra Kumar Pal vs. State of U.P. and others, Hon'ble Allahabad High Court *vide* judgment and order dated 09.04.1998, directed the State of U.P. to send requisition to the Commission calling for the names for the wait-list candidates as against the vacancies which arose as a result of resignation or otherwise of the selected candidates. When State of U.P. challenged the said judgment dated 09.04.1997 in Special Appeal No. 99/1999, State of U.P. vs. Yogendra Kumar Pal, Division Bench of Hon'ble Allahabad High Court on 30.10.2007 although, initially granted interim stay, but subsequently refused stay on the impugned judgment but **made it clear that any appointment in pursuance of the impugned judgment will be subject to the result of Special Appeal and it shall be stated in the appointment orders issued henceforth.** The appointment of the petitioners was conditional and subject to the decision of Special Appeal. The Special Appeal was allowed *vide* judgment and order dated 30.10.2007 relying upon UPPSC vs. State of U.P. and another, 2007 (5) ADJ 280 (DB); Ved Prakash Tripathi vs. State of U.P., 2001 (1) ESC 317; Surindra Singha and other vs. State of Punjab and another, (1997) 8 SCC 488, wherein it was held that the wait listed candidate does not have any indefeasible right to get appointment merely for the reason tht his name finds place in the wait list. Since Hon'ble High Court of Allahabad *vide* judgment and order dated 30.10.2007 set aside the judgment dated 09.04.1998 passed in Civil Misc. Writ Petition No. 32389 of 1997 and dismissed the Writ Petition of Yogendra Kumar Pal and appointment of the petitioners in the service was on the basis of judgment dated 09.04.1998, therefore, after quashing of the said judgment and dismissal of writ petition of Yogendra Kumar Pal, petitioners of present claim petition also appear to have lost the ground. It is a settled law that once

the selection process is complete and appointments are made, then any vacancy arising due to the resignation of selected/appointed persons could not be counted for that selection year and will be carried forward to next year. Special Appeal No. 99/1999 was allowed by the Hon'ble Allahabad High Court *vide* judgment dated 30.10.2007, whereby judgment dated 09.04.1998 was quashed. *Vide* judgment dated 02.05.2008, Hon'ble High Court rejected the recall application of Yogendra Kumar Pal. In paragraphs 31, 32, 33 and 34 of the judgment, Hon'ble High Court continued to observe as below:

[kindly see earlier observations, in para 10 of this decision]

“31. Thus, all the 240 candidates against the advertised vacancies were allotted to the Department, i.e., Government *vide* the aforesaid four letters. The last one of which is dated 2.4.1997. Therefore, the period of one year, in our view, would commence, in any case, latest with effect from 2.4.1997. The subsequent letters and recommendations sent by the Commission cannot and shall not extend the commencement of the period of select list in any manner. The claim of the petitioner to treat commencement of one year from the letter dated 20.12.1997, whereby 13 more names were recommended by the Commission is incorrect and contrary to the aforesaid provision. Also, nothing has been brought before us to show that the reckoning point of one year's period of select list should be considered by the authorities by taking even such letters of the Commission which make recommendation beyond the number of vacancies advertised after making recommendation of the candidates equal to the number of vacancies advertised even subsequent event like non joining of candidates and additional recommendation as a result thereof will not provide any extension to the commencement of one year period of select list. The personal Department of the Government also in our view incorrectly opined that for the purpose of counting one year validity period of the select list, the commencement should be from the letter dated 20.12.1997. The number of total names recommended to the Government by the Commission would come to 260 if we take letter dated 20.12.1997 also into consideration, though, admittedly, only 240 vacancies were advertised. Therefore, by any stretch of imagination, and by any application or even extra stretching of various Government Orders, as referred to above, we are not in a position to bring in the petitioner in any manner to have any sort of claim for appointment pursuant to the selection in question. Thus, it cannot be said that the petitioner could have been appointed pursuant to the aforesaid selection. As we have already held, not only the judgment of the Hon'ble Single Judge was not sustainable in law, but even the State Government, it appears, extended the benefit of the said judgment by even twisting and enlarging it to an extent to which it was not permissible at all, and, thereby made large number of appointments from the wait list against fresh vacancies. We are informed that about 37 further appointments were made including the petitioner on the pretext of complying the judgment of the Hon'ble Single Judge. This exercise smacks of some kind of involvement of somebody somewhere and

cannot be said to be a valid and bona fide exercise of power by the authorities of the appellant.

32. Be that as it may, from the facts as we have analyzed, it is evident that the petitioner had no claim at all in any manner to get appointment pursuant to the judgment of the Hon'ble Single Judge against the vacancies advertised in the aforesaid selection. Thus, his appointment during the pendency of this appeal in the purported compliance of the judgment of the Hon'ble Single Judge was clearly made wholly illegally and by enlarging the scope of judgment of Hon'ble Single Judge to an extent which was not permissible at all. It, thus, would not confer any right, legal, equitable or otherwise upon him which can be protected as has been prayed by him.

33. Now, we come to next aspect of the matter that since the petitioner has been appointed during the pendency of this appeal and despite of an interim order passed by this Court that the appointment, if any, shall be subject to the result of the appeal, should this Court pass an order, and, more so, can this Court pass any order protecting the aforesaid appointment of the petitioner, though the judgment of the Hon'ble Single Judge, pursuant whereto the said appointment was made, has been set aside in the appeal, having been found unsustainable in law. The learned counsel for the petitioner, in support of the aforesaid submission, has relied upon the Apex Court judgments in S. Renuka (supra) and H.C. Puttaswami (supra). We find that the judgment in S. Renuka (supra) does not help the petitioner in any manner inasmuch the petitioners were not appointed therein and the request of the petitioners that they may be appointed against ex cadre post was also turned down by the Apex Court. In H.C. Puttaswami (supra), the Court passed the order in view of the statement made by the learned Advocate General of the State observing that precedents apart the circumstances of the case justify an humanitarian approach as is evident from para 16 of the judgment, which is reproduced as under:

"16. The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy. We also take note of the fact that the writ petitioners also would be appointed in the High Court as stated by learned Advocate General of the State."

34. Apparently, the directions of the Apex Court are referable to its power under Article 142 of the Constitution. However, this Court while exercising its power under Article 226 of the Constitution is bound to act strictly in accordance with law and even justice and equity must be within the four corners of law. The Apex Court has held that the High Court should not decide the matters on sentiments and sympathy, ignoring rule of law. Where a person has no right to get appointment on the post or

vacancy, which has to be filled in as per the statutory rules, equity, sympathy or sentiments cannot be imported to protect an appointment made by the authorities ignoring rule of law. The principle of equity in a case of this nature will have no role to play. In *Maruti Udyog Ltd. vs. Ram Lal* 2005 (2) SCC 638, the Apex Court held that the Court cannot interpret the provisions of an Act ignoring the binding decisions of the Court only by way of sympathy to the workman concerned. In *Teri Oat Estates (P) Ltd vs. U.T. Chandigarh* 2004 (2) SCC 130, it was held that ".....Sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right." The Apex Court also referred to Farewell, L.J. in *Latham vs. Richard Johnson & Nephew Ltd.* 1913 1 KB 398 observing "We must be very careful not to allow our sympathy with the infant plaintiff to affect our judgment. Sentiment is a dangerous will o' the wisp to take as a guide in the search for legal principles." In *Ramakrishna Kamat vs. State of Karnataka* 2003 (3) SCC 374, the Court observed "While being sympathetic to the persons who come before the Court the Courts cannot at the same time be unsympathetic to the large number of eligible persons waiting for a long time in a long queue seeking employment." In *Ashok Kumar Sonkar vs. Union of India* 2007 (4) SCC 54, the Court held that if an appointment is illegal, it is non est. in the eyes of law rendering the appointment to be a nullity and further held "The appointment, therefore, was illegal and in that view of the matter, it would be wholly improper for us to invoke our equity jurisdiction." Recently, in *Uttar Haryana Bijli Vitran Nigam Ltd. & others vs. Surji Devi* 2008 (2) SCC 310 the Court held "Sentiments and sympathy alone cannot be a ground for taking a view different from what is permissible in law." The Apex Court in *U.B. Gadhe & others vs. G.M. Gujrat Ambuja Cement Pvt. Ltd.* JT 2007 (11) SC 425 strongly commented against the direction issued by the Court bereft of logic and legality and said "The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability." In *State of M.P. & others vs. Sanjay Kumar Pathak & others* JT 2007 (12) SC 219, the Court observed "ordinarily the writ court should not in absence of any legal right act on the basis of sympathy alone." Even a Constitution Bench of the Apex Court in *Secretary, State of Karnataka vs. Uma Devi & others* 2006 (4) SCC 1 referred to the aforesaid observations made in *Teri Oat Estates* (supra) and *Latham vs. Richard Johnson* (supra) and took the view that even Article 142 would not be exercised by the Court on misplaced sympathy. In view of the aforesaid binding decision and also the law laid down by the Constitution Bench of the Apex Court, we do not find it expedient to accept the contention of the learned counsel for the petitioner that since he has been appointed during the pendency of the appeal and has worked for about 8 years, therefore, even if the judgment of the Hon'ble Single

Judge is set aside, his appointment should be protected. Once the judgment of the Hon'ble Single Judge has been set aside, all consequential steps taken pursuant to the said judgment would also become non est. and cannot be protected as that would be against the rule of law and the well known principle that "act of Court shall prejudice none (auctus curiae neminem gravabit)" (See : South Eastern Coalfields Ltd. vs. State of M.P. and others 2003 (8) SCC 648) and this Court under Article 226 of the Constitution would not pass an order, which would amount to permitting the authorities to act in the breach of rule of law."

[Emphasis supplied]

18. After the judgment dated 30.10.2007 and 02.05.2008 of Hon'ble High Court of Judicature at Allahabad, Respondent No. 1 retained the services of the petitioners on humanitarian ground and placed the petitioners in seniority list after 16.03.2005, as was granted by the State of U.P. to its officers. Petitioners were borne conditionally in the service by way of judgment dated 09.04.1998 passed in Civil Misc. Writ Petition No. 32389/1997, Yogendra Kumar Pal. The Division Bench *vide* order dated 30.10.2007, set aside the judgment dated 09.04.1998, therefore, the judgment of Hon'ble High Court of Judicature at Allahabad shall be applicable to the petitioners also, even if they were not party to the writ petition and special appeal. Principles of law remain the same. Their services will be governed by the same judgment. Petitioners' case to the case of their counterparts/colleagues in U.P. is similar, therefore, they will be governed by the same law. One cannot postulate the existence of petitioners in the absence of the decision of Hon'ble Single Judge of Allahabad High Court. The consequences which follow thereafter should be deemed to have been followed in the case of the petitioners also. Even in the absence of deemed applicability, the same principles, as laid down in the petition of U.P. employees, shall follow in respect of the petitioners. In other words, the entry of the petitioners was through the judgment of Hon'ble Single Judge, which judgment was set aside by Division Bench of the Hon'ble Court, which has shown exit door to the wait-listed candidates. Petitioners were among those wait-listed candidates. Impleadment application was dismissed and permission to file SLP was also denied, therefore, the petitioners cannot plead that since they were not party to the proceedings before Hon'ble Allahabad High Court, as such, said judgments are not applicable on them. In fact, they entered into the service

only on account of the judgment of Hon'ble Single Judge. Had Hon'ble Single Judge not passed such an order, the petitioners would not have been there. Their appointment was subject to the decision of Special Appeal, which was dismissed. Legally, the petitioners also lose their case, but on humanitarian ground, they were retained in service, *sans* seniority. Rejection of impleadment application and refusal of the permission to file SLP, proves to be the last nail in the coffin of petitioners' case. Their plea that since they were not party to the proceedings before Hon'ble High Court, therefore, those judgments are not applicable to them, cannot be accepted on the very face of it, largely because it is on account of the judgment of Single Bench of Hon'ble Allahabad High Court that the petitioners entered into the service. Special Appeal filed against the order of Hon'ble Single Judge was allowed, to which the services of the petitioners were subjected, and therefore, they have no case. Finally, when the Hon'ble Apex Court did not grant them permission for impleadment and to file SLP, we do not think that any other Court can revisit the orders passed by Hon'ble Apex Court. Respondent State, on humanitarian score, placed them *at par* with their counterparts in the State of U.P., who had accepted the terms of settlement with the Govt., before Hon'ble Supreme Court.

19. Further, in para 5 of the impleadment application filed by the petitioners before Hon'ble Supreme Court in SLP No. 787/2009, the following was stated:

“That it is submitted in the present application for impleadment, the applicants are similarly situated and entitled to be treated at par with petitioner Yogendra Kumar Pal.”

[Emphasis supplied]

20 Petitioners claimed parity with Yogendra Kumar Pal in the impleadment application and, therefore, now it does not lie in their mouth to plead that the matter of Sri Yogendra Kumar Pal has nothing to do with them. The order of Hon'ble Apex Court on impleadment application and not granting permission to the petitioners to file SLP, puts the controversy at rest.

21. Petitioner in their impleadment application, supported by an affidavit, have stated on oath that they are well acquainted with the facts of

the case and now they are pretending to be naïve as to what happened before Hon'ble Supreme Court.

22. Although Hon'ble Supreme Court permitted the petitioners to withdraw the impleadment application, but did not grant them permission for impleadment and liberty to file SLP, therefore, the doors stood closed for the petitioners.

23. It also does not lie in the mouth of the petitioners to say that since the previous seniority list has not been challenged, therefore, the same has attained finality. The appointment of the petitioners itself was conditional, if anything was done pursuant to the orders of Hon'ble Courts, the same is binding on them. Further, a seniority list which might although have been prepared on the office file, but was neither circulated nor published (*Annexure: CA-4 to CA of R 47, 49,52 & 54*), cannot be treated to have come into existence. Moreover, there was no basis for preparing such list which was never circulated or published. Even if any list was circulated, which was contrary to law, the same has no basis.

24. **Should the petitioners be permitted to resile from their own stand before Hon'ble Supreme Court? In our humble opinion, the petitioners of present claim petition are estopped from doing so. All the questions which have been raised by petitioners in present claim petition, have already been replied either by the Division Bench in Special Appeal or by the Division Bench in Recall application and by Hon'ble Supreme Court while refusing permission to the petitioners to file SLP, permitting them to withdraw impleadment application and deciding Yogendra Pal's SLP.**

25. A plea has been taken by the petitioners in the claim petition that as per Merger Rules, 2002, the employees who have been merged in the Secretariat Cadre were to be placed below in seniority to the existing employees of the Secretariat Cadre, which has not been done in the instant case. It may be noted here that the challenge thrown in present claim petition is to the seniority of the private respondents, and not of those who might have been benefited as a consequence of Merger Rules, 2002. In case the petitioners want to stake their claim of seniority on the basis of these Rules, they may do so, if they are so advised, before the State Govt., who shall

pass a reasoned order on the same, after hearing the petitioners and beneficiaries of merger.

UTTAR PRADESH REORGANIZATION ACT, 2000

26. Ld. Counsel for the petitioners argued that the conditions of service applicable immediately before the appointed day, should not be varied to the disadvantage of the petitioners except with the previous approval of the Central Govt., as per Section 74 of the U.P. Reorganization, 2000. In all humility, this Tribunal is unable to accept such contention of the petitioners, inasmuch as the petitioners entered U.P. Secretariat with the intervention of the Court and their inter se seniority was settled only under the orders of the Court. They were retained in service under the orders of the State Govt.. Similar treatment was given to their counterparts in the State of U.P.. They would swim or sink together. All of them entered the service under the orders of Single Judge of Hon'ble Allahabad High Court. Hon'ble Division Bench made their appointment subject to decision of special appeal. When special appeal was allowed, then the cancellation of appointment of the petitioners was a foregone conclusion, but they were retained in service on humanitarian ground. Petitioners' counterparts filed the affidavit before Hon'ble Apex Court, who passed an order for their placement in the seniority list. Petitioners moved application for impleadment, without getting success. They also moved for filing separate SLP, which prayer was denied by Hon'ble Apex Court. Therefore, there is, no application of Section 74 of the U.P. Reorganization Act, 2000.

PARADOXICAL STANDS

27. In such a situation, what this Tribunal can do? No innovation is possible. The Tribunal is bound by the decisions of Hon'ble High Court of Judicature at Allahabad and Hon'ble Supreme Court. The Tribunal could, for the purposes of innovation, visualize the plight of the petitioners. They might feel, what is their fault, if they were given appointment under the directions of the Court.*[Reply: actus curiae neminem gravabit]* . They approached the Court; their writ petition was allowed by Hon'ble Single Judge; they were given appointment; State preferred special appeal; no interim stay was

granted; their appointment was made subject to decision of special appeal; State succeeded in Intra-Court appeal, which was followed by recall application by the petitioners, which failed; petitioners' colleagues who remained in U.P. filed SLP, which settled the issue of seniority; petitioners' prayer for impleadment and permission to file SLP failed; seniority list was prepared by the State of Uttarakhand obviously, as per the orders passed by Hon'ble Supreme Court in respect of their counterparts in U.P.; purportedly a seniority list was prepared earlier, which was never circulated or published; seniority list was issued as per Rules, which is under challenge in present claim petition. Petitioners faced legal rigmarole for nothing, hence, their plight.

28. Counter version may be, that this was their *fait accompli*. They knew it fully well that wait-list candidates have no legal right *ignorantia law non excusat*. This legal principle is not laid for the first time. It is an established law. Even if wait-list candidates were granted relief by Hon'ble Single Judge, they should have visualized the harsh reality, as to what was in store for them. Then happened the inevitable. In decision after decision, then petitioners or their counterparts faced reverses. The writing was on the wall. While Sri Yogendra Kumar Pal and his colleagues felt contended by filing affidavit before the Hon'ble Apex Court and accepted lowering of their seniority, the petitioners, who were prepared to swim with their counterparts in U.P., are not prepared to sink with them or to reconcile the position, as was accepted by those in U.P., who were given appointment with the petitioners in the similar manner. All were wait-list candidates. Petitioners are now fighting for their rights in the successor State of Uttarakhand, for which there is no legal basis. Sometimes stretching the things beyond proportion, proves counterproductive. Litigation helps anybody only to a certain extent. Not beyond that.

RECONCILING THE IRRECONCILABLE

29. Passion *versus* reason. Imagination *versus* reality. Nerve *versus* judgment. Whereas the petitioners are harping upon passion, imagination and nerve, their counterparts in State of U.P. realized, sooner than later, that it will be wiser to go with reason, reality and judgment. The Tribunal feels that

whereas petitioners' counterparts in U.P. must have 'conditioned' their mind by now, dissatisfied petitioners are still running from pillar to post, in the hope of mirage.

30. The decision of *State of Orissa vs. Sudhansu Sekhar Mishra and others*, AIR 1968 SC 647, has been cited by Sri Shashank Pandey, Advocate, in support of petitioners' case. In the said decision, it was observed that 'a decision is only an authority for what it actually decides. What is of the essence in a decision is its *ratio* and not every observation found therein nor what logically follows from various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.' The Tribunal, is not relying upon the decisions of Hon'ble Allahabad High Court in bits and pieces. A judgment is read in its totality. The Tribunal is reading it as a whole. When two decisions of Hon'ble Allahabad High Court and decision of Hon'ble Apex Court are read and applied, they upset the case of the petitioners. We have given the reasons in the body of this judgment as to why the petitioners are governed by those decisions. The decisions of Hon'ble Allahabad High Court and Hon'ble Apex Court are not only applicable to the petitioners, they govern their destiny also. Here, the very decisions of the Hon'ble Courts are applicable to the petitioners. The official respondents, while issuing the orders, which are under challenge in present claim petition, have relied upon the decisions of Hon'ble Allahabad High Court and Hon'ble Supreme Court, in their correct perspective. There is no scope for interference in well-reasoned orders.

31. Sri Shashank Pandey, Ld. Counsel for the petitioners also laid emphasis on the observations of Hon'ble Apex Court quoted in *Sudhansu Sekhar Mishra's* decision (*supra*), that a case is only an authority for what it actually decides. This Tribunal has noted above that the decisions of Hon'ble Allahabad High Court and Hon'ble Supreme Court are not only authorities in respect of petitioners' case, they also govern the fate of the petitioners, who have admitted in para 5 of the impleadment application before Hon'ble Supreme Court that "the applicants are similarly situated and entitled to be treated *at par* with petitioner Sri Yogendra Pal."

32. Sri Shashank Pandey, Ld. Counsel for the petitioner also relied upon a decision rendered by Hon'ble High Court of Uttarakhand on

28.11.2013 in WPSB No. 156 of 2012, Nitin Upadhyay and another vs. State of Uttarakhand and others, to argue that the appointments of the petitioners have not been challenged and pronounced as illegal. Without putting the petitioners to further embarrassment, this Tribunal must bring para 32 of the judgment in Recall Application to the notice of the petitioners that their appointment during the pendency of Appeal in the purported compliance of the judgment of the Hon'ble Single Judge was clearly made wholly illegally and by enlarging the scope of judgment of Hon'ble Single Judge to an extent which was not permissible at all. It, thus, would not confer any right, legal, equitable or otherwise upon them which can be protected. "Should this Court pass any order, protecting the aforesaid appointment of the petitioners, though the judgment of Hon'ble Single Judge, pursuant whereto said appointment was made, has been set aside in the appeal having been found unsustainable in law." In para 16 of the decision, it was observed that "if appointment is illegal, it is *non est* in the eye of law rendering the appointment to be a nullity.....the appointment, therefore, was illegal and in that view of the matter, it would be wholly improper for us to invoke our equity jurisdiction." While issuing the orders impugned, Government of Uttarakhand appropriately applied the decisions of Hon'ble Allahabad High Court and Hon'ble Apex Court, leaving no scope for taking a different view.

CONCLUDING REMARKS

33. There are certain settled judicial principles, governing the working of any Tribunal or Court. Anything which has been settled by the Hon'ble Apex Court, cannot be unsettled or modified by the authorities below, even if the relief is couched in different language and even if the relief is ancillary one to the main relief, which was before the Hon'ble Supreme Court. Binding precedents are to be adhered to by all and sundry in a country, like ours, which is governed by rule of law. Precedents are for maintaining judicial discipline, which require that the philosophy underlying the judgments of Hon'ble Apex Court or superior Courts must be respected and applied. Those who are interested in knowing the strength or weakness of the petitioners' case *qua* private respondents, they are advised to read the Division Bench decisions of Hon'ble Allahabad High Court (including the

one in Recall application) along with the decisions of Hon'ble Apex Court, and then they would not be required to read this judgment.

34. The Tribunal feels that there is no scope to innovate any doctrine. Rather, it should follow and insist upon the petitioners to follow what has been decided by the Hon'ble Apex Court. The impugned Office Memorandum dated 30.04.2019 (Annexure: A-1) and other Office Memoranda dated 15.07.2015 (Annexures: A-2 to A-5) do not call for any interference. Petitioners are not entitled to any relief.

ORDER

35. The claim petition, therefore, fails and is dismissed. In the circumstances, there shall be no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 27, 2021
DEHRADUN

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