

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

Through audio conferencing

Present: Hon'ble Mr. Justice U.C.Dhyani  
----- Chairman  
Hon'ble Mr. Rajeev Gupta  
-----Vice Chairman (A)

**CLAIM PETITION NO. 05/NB/DB/2019**

Laxmi Prasad Bahuguna, aged about 40 years s/o Sri Rajendra Prasad Bahuguna, presently working and posted as Reader/ Senior Assistant in the Office of District Consumer Forum, Champawat.

.....Petitioner

**vs.**

1. State of Uttarakhand through Principal Secretary, Food and Civil Supplies and Department of Consumer Affairs, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Registrar/ Appointing Authority, State Consumer Dispute Redressal Commission, Uttarakhand, Dehradun.
3. President/ District Judge, District Consumer Dispute Redressal Forum, Champawat.

.....Respondents.

Present: Sri Vijay Singh, holding brief of  
Sri M.C.Pant, Advocate, for the Petitioner  
Sri Kishor Kumar, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: SEPTEMBER 23, 2021**

**Justice U.C.Dhyani (Oral)**

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

- (a) *To issue an order or direction, declaring the condition mentioned in the impugned order dated 05.10.2018 by given effect to the regularization from the date of issuance of the order,*

*as arbitrary, unconstitutional, violative to Article 14, 16 of the Constitution of India and also to quash the same so far as regularization order is made effective from the date of issuance of the order and also to declare the regularization of the services of the petitioner relate back to his initial date of appointment for all service intents and he is an old entrant in service for all service benefits, including old pension scheme, keeping in view of the fact, as highlighted in the body of the petition, after calling the entire records from the respondents.*

*(b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*(c) Award the cost of the petition in favour of the petitioner."*

2. The genesis of present claim petition relates back to the judgment and order dated 11.07.2018, passed by this Tribunal in Claim Petition No. 17/DB/2018.

3. Instead of narrating the facts again, it will be better, if the entire judgment dated 11.07.2018, passed by this Tribunal in Claim Petition No. 17/DB/2018 is reproduced herein below for understanding the controversy in hand. The judgment reads as under:

"By means of present claim petition, petitioner seeks to declare that he is entitled to be regularized in service under the Uttarakhand Regularization of Ad hoc Appointments (on Posts Outside the Purview of Public Service Commission) Rules, 2002. He also seeks a direction to the respondents to reconsider his regularization under the Rules of 2002 and modify his regularization order dated 06.09.2017 along with all consequential benefits.

2. Brief facts, necessary for adjudication of present claim petition, are as follows:

Petitioner was appointed as Reader in District Consumer Forum, Tehri Garhwal, on *ad hoc* basis, by District Magistrate, Tehri Garhwal, on 27.06.1994. On 24.07.1994, he was transferred to District Consumer Forum, Dehradun. On the basis of an anonymous complaint, petitioner's salary was reduced *vide* order dated 19.10.2006, of Respondent No.2. Petitioner moved representations to the said respondent for regularization and for giving him the benefit of 6<sup>th</sup> Pay Commission. Respondent No. 2 sent the matter to Respondent No.1 for taking action on his representation. Respondent No.1 gave a reply of the same to Respondent No.2. Respondent No.1 also informed Respondent No.2 that *Uma Devi's* case will not come in the way of regularization of the petitioner. Thereafter, correspondence took place

between Respondent No.1 and Respondent No.2. In the meanwhile Regularization Rules, 2011 came into force. Respondent No.2 sought guidance of Respondent No.1, as to which Regularization Rules would apply to the petitioner. Respondent No.1, thereafter, directed Respondent No.2 to regularize the petitioner as per Rule 4(1) of Regularization Rules, 2002. No such decision was taken in the matter. Petitioner moved several representations. He was informed that the matter is under consideration before a Committee. After a long delay, petitioner was informed that his services have been regularized *w.e.f.* 06.09.2017 under the Regularization Rules, 2013, whereas the petitioner, as per pleadings, was entitled to be regularized under the Regularization Rules, 2002. Feeling aggrieved against the same, he has filed present claim petition.

3. Registrar, State Consumer Dispute Redressal Commission, Uttarakhand (Respondent No.2) addressed a letter on 30.12.2010 (Annexure: A 5) to Secretary to the Government, in the Department of Food & Civil Supplies, seeking action on the application for regularization of the petitioner, who was an *ad-hoc* appointee till then, and who was subsequently regularized on 06.09.2017, on the basis of Regularization Rules, 2013.

4. The Government in the Civil Supplies Department sent a reply on 17.11.2011 (Annexure: A 6) to Respondent No.2, clarifying that petitioner's regularization is not covered by the decision of Hon'ble Apex Court in Appeal (Civil) No. 3595-2612 of 1999, State of Karnataka vs. Uma Devi and others. Respondent No. 2 was requested to proceed with the regularization of the petitioner as per Sub-Para (1) of Para 4 of The Regularization Rules, 2002. It was clearly indicated, in Government's letter dated 17.11.2011 that all the benefits arising from the regularization of the petitioner shall be effective from the date the orders are passed.

5. It, therefore, follows that regularization of the petitioner was to be considered, as per Government's letter dated 17.11.2011, as per Para 4(1) of The Regularization Rules, 2002 and benefits arising therefrom, were required to be given from the date of order (to be passed by Respondent No.2). This was not done.

6. In furtherance of letter dated 17.11.2011 (Annexure: A 6), another clarification was sought by the Respondent No.2 from Respondent No.1, as to whether the regularization of the petitioner was to be done as per the Regularization Rules, 2002 or Regularization Rules, 2011 ? It was brought to the notice of Respondent No.1, by Respondent No.2, *vide* letter dated 26.06.2012 (Annexure: A 7), that, on that date, Regularization Rules, 2011 have come into force.

7. This letter too was replied by Respondent No.1 on 21.09.2012 (Annexure: A 9) that regularization of the petitioner was to be done as per Regularization Rules, 2002.

8. In Para 2 of Annexure: A 9, it was clarified by Respondent No.1 that since petitioner was appointed on 27.06.1994 and cut-off date prescribed in

the Regularization Rules, 2002 was 30.06.1998, therefore, Para 4(1) of The Regularization Rules, 2002 is applicable to the petitioner. Simultaneously, it was also clarified that Para 4 of the Regularization Rules, 2011 is also applicable on the petitioner. Therefore, it was directed that, first of all Regularization Rules, 2002 shall be applied on the petitioner. Instead of doing the same, the committee comprising of Respondent No.2 and two other Judicial Officers, opined that since Regularization Rules, 2002 have been repealed by Regularization Rules, 2011, therefore, regularization of the petitioner shall only be considered as per the latter and not the former. The reason assigned for doing so, was that an administrative order cannot override the provisions contained in Rules. Copy of Meeting Committee has been enclosed as Annexure: R-8.

9. As per Annexure: A 9, a direction was given by Respondent No.1 to Respondent No.2 to proceed with the regularization of the petitioner, as per Regularization Rules, 2002, since he was appointed on 27.06.1994 and cut-off date in the Regularization Rules, 2002 was 30.06.1998. Such a direction was given by Respondent No.1 to Respondent No.2 on 21.09.2012, on a query of Respondent No.2 made on 26.06.2012. Much time was consumed in complying with the Government's direction dated 21.09.2012 (Annexure: A 9) on one pretext or another, may be, for valid reasons, or reasons beyond Committee's control. The committee held its meeting on 22.05.2013 (Annexure: R-8). Regularization Rules, 2011 had already come on 21.11.2011, when a direction was given by Respondent No.1 to Respondent No.2, in response to latter's query, on 21.09.2012, it will be presumed that Regularization Rules, 2011 were in the knowledge of Respondent No.1 when directions contained in Annexure: A 9 were given to Respondent No.2. Still, when Respondent No.2 was making queries and seeking guidance of Respondent No.1, on one pretext or another, why the guidance was not sought for the third time ? Had Respondent No.2 not raised query on previous two occasions, which consumed a lot of time, the petitioner, probably, would have been regularized much before the date he was regularized. Probably, he would have been regularized under the Regularization Rules, 2002, even before Regularization Rules, 2011 saw the light of the day. Why did Respondent No.2 wait till Regularization Rules, 2011 came into force, which superseded Regularization Rules, 2002? what is the fault of the petitioner if his regularization was not decided as per Regularization Rules, 2002 well in time? It was not necessary for the petitioner to have applied for granting him the benefit of Regularization Rules, 2002. It was incumbent upon Respondent No.2 to have prepared a list, as per Rules, and consider his regularization. Petitioner must have heaved a sigh of relief by looking at Annexure: A 12 when he was regularized although *w.e.f.* 06.09.2017.

10. Had petitioner's services been regularized under Regularization Rules, 2002, as per direction dated 17.11.2011 (Annexure: A 6), probably, Regularization Rules, 2011, which became effective from 21.11.2011, would not have come in the way of Respondent No.2 for regularization of the petitioner, in accordance with Regularization Rules, 2002. The Government

insisted, time and again, that petitioner's case be considered as per Para 4(f) of Regularization Rules, 2002, without yielding any result.

11. There is yet another aspect of the case. It has been pointed out that 17 employees, who were working with Respondent No.2 or in District Forums at different places, either on fixed pay or on contract, were regularized on different dates, in the absence of any Regularization Rules. Annexure: A 15 is a copy of such information, gathered under R.T.I., Act, 2005. Since this is not the subject matter of present claim petition, therefore, this Court has no occasion to comment upon such action of Respondent No.2. This Court is only ventilating the grievance of the petitioner that his claim for regularization, despite the fact that he was appointed on *ad hoc* basis much before 17 employees were engaged, has been ignored on flimsy grounds. Whereas, these employees, who were engaged on fixed pay/contract, much after him, were regularized on different dates in the year 2004 (barring one employee, who was regularized in the year 2005), *de hors* Regularization Rules, his claim for regularization, on the basis of Regularization Rules, 2002, was ignored.

12. We gathered an impression, on the basis of submissions of Ld. Counsel for the respondents, that petitioner is not an obedient Government servant and he is prone to commit mischief. Even if such a submission is accepted, on its face value, the fact remains that there is a procedure laid down in law for properly treating such a delinquent and showing him the 'door'. That should not be the basis, in the hind sight, for not giving him the benefit of Regularization Rules, even after the directions of the Government. At present, we are not dealing with the antecedents of the petitioner, for the same is also not the subject matter of adjudication, in present claim petition.

13. When a review DPC is held, such DPC considers promotion of any employee from the date earlier DPC (which is to be reviewed), was held. Instant case of the petitioner, appears to be on similar footing. We are, therefore, inclined to request Respondent 2 to reconsider the case of the petitioner for regularization, as if the proceedings are taking place in 2002, on the analogy of Review D.P.C.

14. *Res ipsa loquitur*. A case for reconsideration of petitioner's matter, for regularization, under Regularization Rules, 2002, is, therefore, made out, subject to his eligibility and availability of vacancy. The matter is remitted, with a request to Respondent No.2, to reconsider petitioner's case for regularization under Regularization Rules, 2002, as per law, untrammelled by any of the observations made by us, in the foregoing paragraphs of this judgment, at an earliest possible but not later than 12 weeks of presentation of certified copy of this order.

15. Observations made in Annexure: R-8, that petitioner's case shall not be considered under Regularization Rules, 2002, is kept in abeyance till fresh decision is taken in the matter."

4. In compliance of the order dated 11.07.2018, Respondent no. 2 issued an order on 05.10.2018 (Copy Annexure: A1), on the basis of the recommendations of the selection committee constituted under the Regularization Rules, 2002. Acceptance to the recommendations of such committee was given by Hon'ble Chairman/HOD on 29.09.2018. After superseding earlier order no. 841 dated 06.09.2017, the petitioner was regularized on the vacant post of Senior Assistant in the pay scale of Rs. 29200-92300, level-5.

5. **The order was made effective from the date of issuance of the order i.e. 05.10.2018, which (date) is in the teeth of present claim petition.**

6. Sri Vijay Singh, holding brief of Sri M.C.Pant, learned Counsel for the petitioner relied upon a judgment rendered by the Hon'ble High Court of Uttarakhand on 11.07.2019 in Special Appeal No. 571 of 2019, State of Uttarakhand and another vs. Prakash Lal, to argue that similar benefit, which was granted to the respondent of Special Appeal No. 571/2019 should be given to the petitioner of present claim petition.

7. Sri Kishor Kumar, learned A.P.O. fairly conceded that the controversy in hand is squarely covered by the decision rendered by the Hon'ble High Court on 11.07.2019 in Special Appeal No. 571/2019, State of Uttarakhand and another vs. Prakash Lal.

8. It will be useful to reproduce paras no. 15, 17, 18 and 19 of the judgment rendered in Prakash Lal's decision (*supra*) herein below for convenience:

*"15. Even if the respondent-writ petitioner is held not to be senior to those nine employees regularized between February, 1984 and November, 1985, on the premise that he did not work from April, 1983 to December, 1987, he is nevertheless entitled to be treated on par with the tenth candidate, who was appointed as a daily-wager only on 11.02.1991, and was regularized in service vide proceedings dated 17.09.2003. Consequently, the respondent-writ petitioner's services shall be held to have been regularized, in terms of*

the order under appeal, from 17.09.2003 when a person junior to him was regularized in service.

17. We are, however, satisfied that the learned Single Judge ought not to have directed the appellants to pay the respondent-writ petitioner all consequential benefits from the date his juniors were regularized, as that would require the appellants to pay him his regular pay-sales from that day, and for arrears of salary and other benefits till he retired from service in December, 2018. A similar question fell for consideration in Prem Ram vs. Managing Director, Uttarakhand Pev Jal and Nirman Nigam, Dehradun and others (order in Civil Appeal No. 4474 of 2015 dated 15.05.2015), wherein the Supreme Court found no impediment in directing regularization of the services of the employee, on the analogy of his juniors, with effect from the date his juniors were regularized, and for the release of all retiral benefits in favour of the employee on that basis by treating him to be in continuous service till the date of his superannuation. The Supreme Court made it clear that the said direction did not entitle the employee to claim any amount towards arrears of salary based on such regularization.

18. In the light of the judgment of the Supreme Court in Prem Ram, the respondent-writ petitioner is undoubtedly entitled to be regularized in service with effect from 17.09.2003, from which date his junior was regularized, and to be placed in the regular pay-scales from 17.09.2003 till he retired in December, 2018. The respondent writ petitioner shall not only be extended the regular pay-scales from 17.09.2003 but he shall also be granted notional increments from that date till he retired from service, and shall be paid his retiral benefits on such notional fitment, however without being extended arrears of the differential salary for the period from 17.09.2003 till he retired from service in December, 2018.

19. The order under appeal is modified to that limited extent, and the special appeal is disposed of accordingly. However, in the circumstances, without costs.”

[Emphasis supplied]

9. Supplementary affidavit has been filed on behalf of petitioner to show that employees junior to the petitioner have been regularized in the year 2004. The petitioner has obtained certain documents under RTI Act on 14.03.2020, (which have been filed as Annexure no. A1 to the Supplementary Affidavit), showing names, designations, dates of appointment and dates of regularization of other employees, who are working in the State Consumer Redressal Commission, as under:

Sri Saurabh Singh, who was engaged temporarily as Assistant Accountant on fixed pay of Rs. 4000/- per month vide order dated 11.02.2003, was regularized on 11.10.2004 in the pay scale of Rs. 4000-6000.

Sri Yashwant Singh Kandari, who was engaged temporarily on contract basis as Stenographer on fixed pay of Rs. 4000/- per month *vide* order dated 12.10.2004, was given regular pay scale of Rs. Rs. 4000-6000/- *vide* order dated 24.12.2004.

Km. Vandana Joshi, who was engaged temporarily as Nazir on fixed pay of Rs.3050/- per month *vide* order dated 12.10.2004, was given regular pay scale of Rs. 4000-6000/- *vide* order dated 24.12.2004.

Sri Laxman Singh, who was engaged temporarily as Clerk on fixed pay of Rs. 3050 per month on 11.02.2003, was regularized on 11.10.2004 in the pay scale of Rs. 3050-4590.

Sri Jagdish Prasad Chaudhary, who was engaged temporarily as Nazir on fixed pay of Rs. 3050 per month *vide* order dated 01.04.2003, was regularized on 11.10.2004 in the pay scale of Rs. 3050-4590.

Sri Kuldeep Singh, who was engaged temporarily as Clerk on fixed pay of Rs. 3050/- per month *vide* order dated 23.09.2003, was regularized on 12.10.2004 in the pay scale of Rs. 3050-4590/-

Sri Shailendra Singh, who was engaged temporarily as Clerk on fixed pay of Rs. 3050/- per month *vide* order dated 01.04.2003, was regularized on 12.10.2004 in the pay scale of Rs. 3050-4590/-

Km. Anusuya, who was engaged temporarily as Clerk on fixed pay of Rs. 3050/- per month *vide* order dated 01.04.2003, was regularized on 14.10.2004 in the pay scale of Rs. 3050-4590/-

Smt. Kusumlata Rawat, who was engaged as Clerk on fixed pay of Rs. 3050/- per month *vide* order dated 11.02.2003, was regularized on 14.10.2004, in the pay scale of Rs. 3050-4590/-

Sri Jaypal Singh Negi, who was engaged as Clerk on fixed pay of Rs. 3050/- per month *vide* order dated 11.02.2003, was regularized on 18.10.2004, in the pay scale of Rs. 3050-4590/-.

Sri Hanuman Prasad, who was engaged temporarily on contract basis as Clerk on fixed pay of Rs. 3050/- per month *vide* order dated 12.10.2004, was given regular pay scale of Rs. Rs. 3050-4590/- *vide* order dated 24.12.2004.

Sri Dinesh Singh, who was engaged temporarily as Staff Car Driver on fixed pay of Rs. 3050 per month *vide* order dated 01.04.2003, was regularized on 11.10.2004 in the pay scale of Rs. 3050-4590.

Sri Bharat Singh, who was engaged temporarily as Orderly on fixed pay of Rs. 3050 per month *vide* order dated 27.12.2002 was regularized on 11.10.2004 in the pay scale of Rs. 2550-3200.

Sri Radha Krishn Shukla, who was engaged temporarily as Orderly on fixed pay of Rs. 3050 per month *vide* order dated 27.12.2002, was regularized on 11.10.2004 in the pay scale of Rs. 2550-3200.

Sri Ashok Kumar, who was engaged temporarily as Peon on fixed pay of Rs. 2550 per month *vide* order dated 27.12.2002, was regularized on 11.10.2004 in the pay scale of Rs. 2550-3200/-.

Sri Brahm Prakash Pandey, who was engaged temporarily as Peon on fixed pay of Rs. 2550/- per month *vide* order dated 09.04.2003, was regularized on 18.10.2004 in the pay scale of Rs. 2550-3200/-



Sri Dalip Kumar, who was engaged temporarily as Peon on fixed pay of Rs. 2550/- per month *vide* order dated 11.02.2003, was regularized on 27.04.2005, in the pay scale of Rs. 2550-3200/-.

10. Petitioner, who was working in the respondent department from a date which was much earlier to those who were regularized in the year 2004, has been regularized in the year 2017, although under the Regularization Rules of 2002, but with prospective effect.

11. All the employees working in State Consumer Dispute Redressal Commission were on fixed pay and were regularized under the directions of the then Hon'ble Chairman in the year 2004. The reasoning given is although attributable to the language of the Rules, but runs contrary to the *ratio* of Prem Ram and Prakash Lal's decisions (*supra*). Hence, petitioner is entitled to regularization of his services with effect from the date, the next employee engaged after him was regularized. Date of regularization which is under challenge in this claim petition therefore, stands modified to this extent.

12. Present claim petition is, accordingly, decided in terms of para 17 of the decision rendered by the Hon'ble High Court in Prakash Lal's decision (*Supra*), as above.

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

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

*DATE: SEPTEMBER 23, 2021*  
*DEHRADUN*  
KNP