

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 73/NB/DB/2020

1. Mahesh Chandra Joshi, aged about 66 years, s/o Late Sri Trilochan Joshi, r/o Village and Post Office, Danpur via Rudrapur, District Udham Singh Nagar.
- 1/1. Smt. Rita Rani Joshi, aged about 58 years w/o Late Sri Mahesh Chandra Joshi, r/o Village and Post Office, Danpur via Rudrapur, District Udham Singh Nagar.

.....Petitioner(s)

vs.

1. State of Uttarakhand through Principal Secretary, Department of Higher Education, Government of Uttarakhand, Dehradun.
2. Director, Higher Education, Uttarakhand, Haldwani, District Nainital.

.....Respondents.

Present: Sri Subhash Upadhyay, Advocate for the petitioner.
Sri Kishore Kumar, A.P.O. for the Respondents.

JUDGMENT

DATED: DECEMBER 03, 2021

Per: Justice U.C.Dhyani

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

“(i) To pass an order setting aside the impugned order dated 23.09.2020.

(ii) To pass an order directing the respondents to consider the claim of the petitioner for grant of grade pay of Rs.8000/- Rs.9000/- on completing five years and three years of service respectively from the year 2004.

(iii). To award the cost of the petition in favour of the petitioner.”

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

2.1. Sole petitioner (since deceased) had filed present claim petition. His Legal Representative (wife) is now pursuing the claim petition. Petitioner had challenged order dated 23.09.2020 (Annexure: A-1) whereby representation of the petitioner was dismissed by Respondent No. 1 for grant of grade pay of Rs. 8,000/-(Selection grade) and grade pay Rs.9,000/- (for associate grade pay scale). Petitioner approached Hon'ble High Court for redressal of his legitimate grants from time to time. The benefits which were denied to him were, later on, given with the intervention of Hon'ble High Court.

2.2 He was promoted to the post of Librarian only after filing the Writ Petition No. 31259/1999 and Writ Petition No. 55006/1999 before Hon'ble High Court of Judicature at Allahabad. Writ Petition No. 55006/1999 was transferred to Hon'ble High Court of Uttarakhand and renumbered as Writ Petition No. 603 of 2002(SB), which was allowed on 21.06.2006. The said order dated 21.06.2006 was challenged in Special Appeal No. 137/2006, which was decided on 01.12.2009. The same has, therefore, attained finality.

2.3 Although the petitioner was granted promotion *vide* order dated 28.05.2010 to the post of Librarian from 01.04.1998, but proper pay scale of Rs.8,000-13,500/- was denied to him on the ground that he was not having qualification of Librarian as per G.O. dated 29.02.1996. By the said G.O., the State of U.P. had decided to provide the UGC pay scale to the Librarian and other non-teaching staff. The G.O. was taken into consideration by the Hon'ble High Court while deciding the Writ Petition No. 603 of 2002(SB) and Special Appeal No. 137 of 2006.

2.4 On 28.05.2010, the petitioner was placed in the lower pay scale of Librarian on the ground of not having the qualification of the post of Librarian. The said order was challenged by filing representation to the State Government. On 17.07.2014, grade pay scale of Librarian was granted to the petitioner *w.e.f.* 01.04.1998 and grade pay scale of Rs.8,000-13,500/- was given to him, which was earlier denied.

2.5. Petitioner completed the Refresher and Orientation Course and demanded the grade pay of Rs.7,000/- *w.e.f.* 01.04.2004, grade pay of Rs.8,000/- *w.e.f.* 01.04.2009 and grade pay of Rs.9,000/- *w.e.f.* 01.04.2012 in view of G.O. dated 06.12.2001 of the Ministry of Human Resources Development, Govt. of India. Again, *vide* order dated 08.06.2017, the petitioner was given the pay scale of Rs.15,600-39,100/-, grade pay Rs.7,000/- *w.e.f.* 20.11.2014, whereby it resulted in denial of further grade pay of Rs.8,000/- and Rs.9,000/- to him *w.e.f.* 01.04.2009 and 01.04.2012.

2.6. Petitioner submitted his representation to Respondent No.2, who, *vide* order dated 03.07.2017 rejected his representation. The said order dated 03.07.2017 was challenged in WPSB No. 587 of 2017. Hon'ble High Court *vide* order dated 01.11.2018 directed the State Govt. to take a decision strictly as per law. The In-charge Secretary, Education, *vide* order dated 24.10.2019 modified the earlier G.O. dated 08.06.2017 and petitioner was provided pay scale of Rs.15,600-39,100/- grade pay Rs.7,000/- under the UGC Career Advancement Scheme *w.e.f.* 01.04.2004.

3. Counter Affidavits/ Written Statements have been filed on behalf of respondents. According to W.Ss./C.As., petitioner Sri Mahesh Chandra Joshi (Since deceased) was appointed on the post of Assistant Librarian on 21.03.1983 at MB PG college, Haldwani. When the petitioner was appointed, he was holding the qualification of certificate course in Library Science along with B.A. degree. He too obtained the degree of B.Lib while being in service. The petitioner was promoted to the post of Librarian on 01.04.1998 in compliance of Hon'ble High Court's order dated 01.12.2009, passed in Special Appeal No. 137/2006. Petitioner was given promotion under UGC pay scale as he was entitled for promotion under the criteria laid down by UGC for the upward movement from AGP Rs.6000/- to Rs.7000/-, from Rs.7000/- to Rs.8000/- and Rs.8000/- to Rs.9000/-, subject to fulfillment of eligibility conditions laid down by UGC. One has to fulfill criteria for Academic Performance Index (API) and other eligibility conditions, apart from the length of service for promotion. Relevant page of appendix dated 31.12.2008 of MHRD has been brought on record as Annexure: CA-2 to the counter affidavit.

3.1. After fulfilling the conditions of one orientation course and two refresher courses, on the basis of recommendation of Career Advancement Scheme (CAS) Screening Committee, the petitioner was given senior scale with AGP of Rs.7000/- *w.e.f.* 20.11.2014, which was amended to 01.04.2004 *vide* order dated 24.10.2019 of In-Charge Secretary.

3.2. Petitioner is putting the claim for Associate Grade Pay (AGP) of Rs.8000/- (selection grade) and AGP of Rs.9000/- (associate pay scale) through this claim petition. It is pertinent to note here that Career Advancement under UGC Regulations is not merely based on span of service. Rather fulfillment of Academic Performance Index and other eligibility criteria of publications and other academic and extension activities are mandatory, which are not fulfilled by the petitioner. Screening Committee of CAS, therefore, could not recommend his name for selection grade and associate pay grade. For consideration of CAS, as per UGC Regulations 2010, one has to be in active service, but in the instant case, the petitioner has retired on 30.04.2015. The petitioner does not fulfill the API and other UGC criteria and is also not on active role of service as per provisions and existing norms, therefore, he could not be given the benefit of promotion to the post of selection grade Rs.8000/- and associate grade pay Rs.9000/-.

3.3. In para 12 of the C.A. of Respondent No.1, it has been admitted that although petitioner's name was not in the list of promotion, yet in compliance of the order dated 01.12.2009 of Hon'ble High Court passed in Special Appeal No. 137/2006, petitioner was promoted to the post of Librarian *w.e.f.* 01.04.1998 by Director, Higher Education. Further, in para 14 of the C.A. it has been stated that in compliance of order dated 21.06.2006 of Hon'ble High Court, passed in WPSB No. 603/2002, the petitioner was promoted from Assistant Librarian to the post of Librarian as per G.O. dated 29.02.1996 of Govt. of U.P. Claim of the petitioner is baseless and not sustainable as per existing rules and laws, as per C.A.

4. Rejoinder Affidavit has been filed, in response to the C.A. of Respondent No.1, by legal representative (wife) of the petitioner. When the deponent filed substitution application, she was arrayed as petitioner No.1/1 in the claim petition.

4.1. In the rejoinder affidavit, the L.R. of the petitioner has stated that the plea of the Director, Higher Education Department, that the petitioner was not entitled for promotion as Librarian, was negated by Hon'ble High Court in Special Appeal. The petitioner was promoted to the post of Librarian, as per the direction of Hon'ble Court, but he was illegally denied the pay scale of Rs.8000-13500/-, which was the UGC pay scale. The said anomaly was, later on, rectified by the State Govt. and the petitioner was given pay scale of Rs.8000-13500/- *w.e.f.* 01.04.1998 *vide* order dated 17.07.2014. Petitioner was entitled for further pay scale, but the same was denied on flimsy ground that he was not having the requisite qualification. The said stand of the Govt. is misconceived, as the petitioner had completed the orientation course and refresher courses after seeking permission from the respondent authority and was granted grade pay of Rs.7000/- on the basis of the said qualification.

5. Respondents have not challenged the order passed by Hon'ble Court in Special Appeal, and yet continue to reiterate their stand, which has been negated by the Hon'ble High Court. Once the petitioner was promoted to the post of Librarian and was granted pay scale (of Librarian), then he seems to be entitled for further up-gradation of the pay scale.

6. The claim of the petitioner is based upon the fact that, once the UGC pay scale of Librarian was given *w.e.f.* 01.04.1998, then he was entitled for grade of Rs.7000/- after completing 06 years of service *w.e.f.* 01.04.2004 and for grant of grade pay of Rs.8000/- *w.e.f.* 01.04.2009, after completing 05 years of service and further for grade pay of Rs.9000/- *w.e.f.* 01.04.2012. The fact that the petitioner had completed orientation course and refresher courses, has not been denied by the respondents. It would, therefore, be wrong to say that the petitioner was not having requisite qualification. The petitioner has been provided grade pay of Rs.7000/- *w.e.f.* 01.04.2004, which was earlier given *w.e.f.* 20.11.2014. Now the claim for further grade pay of Rs.8000/- *w.e.f.* 01.04.2009 and for grade pay of Rs.9000/- *w.e.f.* 01.04.2012, was to be considered, which has been denied by the respondents. Once the respondents have given grade pay of Rs.7000/- as per UGC Regulation *w.e.f.* 01.04.2004, then further grade pay

of Rs.8000/- and Rs.9000/- should not be denied on the same set of qualification.

7. Ld. Counsel for the petitioner submitted that the grade pay of Rs.7,000/- was earlier granted to the petitioner *w.e.f.* 20.11.2014. Thus his grievance was partly redressed by the intervention of Hon'ble Court and grade pay of Rs.7,000/-, which he was demanding *w.e.f.* 01.04.2004, was given to him. Although the grade pay of Rs.7,000/- was granted *w.e.f.* 01.04.2004 but subsequent grade pay of Rs.8,000/- *w.e.f.* 01.04.2009 (after completion of 5 years' service) and grade pay of Rs.9,000/- *w.e.f.* 01.04.2012 (after completion of 8 years' service) were not provided to him. *Vide* impugned order dated 23.09.2020, the claim of the petitioner has been rejected by misconstruing Clause 7 of the G.O. dated 06.12.2001. The words "good record in teaching" have been replaced by "good academic record".

8. Ld. Counsel for the petitioner further submitted that the stand of the respondents that the petitioner was not qualified to be promoted to the post of Librarian, was rejected by the Hon'ble High Court. Moreover, as per UGC Regulations, the petitioner was provided grade pay of Rs.7,000/- on the basis of the same qualification, therefore, further grade pay cannot be denied to him on the basis of such qualification which he possessed.

9. Ld. Counsel for the petitioner relied upon the decision of Hon'ble Apex Court in *M.S.Mudhol vs. S.T.Hallazkar, (1993) 3 SCC 591*, to argue that the lack of qualification, if any, at the time of initial recruitment, cannot be looked into at a distant time.

10. In the decision of *M.S.Mudhol (supra)*, Hon'ble Supreme Court has observed as under:

"6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection

committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be iniquitous to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.

8. However, we must make it clear that in the present case the 2nd respondent, Director of Education had committed a clear error of law in approving the academic qualifications of the 1st respondent when he was not so qualified. As pointed out above, the interpretation placed by him and the other respondents on the requisite educational qualifications was not correct and the appointments made on the basis of such misinterpretation are liable to be quashed as being illegal. Let this be noted for future guidance.

9. In the circumstances, we decline to interfere with the appointment of the 1st respondent and dismiss the petition. There will be no order as to costs."

11. In the present case, admittedly, the claim of the petitioner for the post of Librarian was accepted by Hon'ble High Court, on the basis of qualification, which the petitioner possessed. Grade pay Rs.7,000/- was granted to him as per UGC Regulations, therefore, denial of further grade pay after completing requisite length of service on the ground of lack of qualification should not come in the way of the petitioner (since deceased) to get his legitimate claim of grade pay of Rs.8,000/- and 9,000/-.

12. The stand of the respondents that the petitioner no. 1 was not qualified for promotion to the post of Librarian, was rejected by the Hon'ble High Court. Moreover, as per the UGC Regulation, the petitioner no. 1 was provided the grade pay of Rs. 7000/ on the basis of same qualification, as

such, further grade pay cannot be denied to him on the same qualification, which he possessed

13. To recapitulate, when the petitioner (since deceased) approached Hon'ble High Court for redressal of his grievances, he was granted promotion to the post of Librarian *w.e.f.* 01.04.1998, but he was denied proper pay scale and was placed in the lower pay scale of Rs.6500-10500/- on the ground that he was not having the qualification of Librarian, as per G.O. dated 29.02.1996. At the relevant point of time, petitioner was entitled to the pay scale of Librarian, *i.e.* Rs.8000-13500/- *w.e.f.* 01.04.1998. By G.O. dated 29.02.1996, the State Govt. of U.P. decided to provide the UGC pay scale of Librarian, Deputy Librarian and Assistant Librarian. The Director, Higher Education, on the basis of G.O. dated 29.02.1996 had pleaded that the petitioner was not entitled for promotion as Librarian. **However, the said stand was negated by the Hon'ble High Court while deciding the Writ Petition and Special Appeal.** As such, although the petitioner was promoted as Librarian, but he was denied the pay scale of Rs.8000-13500/-, which was UGC pay scale. The said anomaly was, later on, rectified by the State Govt. and the petitioner was given pay scale of Rs.8000-13500/- *w.e.f.* 01.04.1998 *vide* order dated 17.07.2014. The petitioner was entitled for further pay scale, but the same was also denied to him on the ground that he was not having the requisite qualification. **It has been averred in the R.A. and has also been submitted by Ld. Counsel for the petitioner that the petitioner had completed the orientation course and refresher courses after seeking permission from the respondent authorities and he (petitioner) was granted grade pay of Rs.7000/- on the basis of said qualification.**

14. It may be noted here that the respondents have not challenged the order passed by Hon'ble High Court in Writ Petition and Special Appeal. **Once the petitioner was promoted to the post of Librarian and granted the pay scale of the said post, then he was entitled for further up-gradation of the said post.** Respondent authorities cannot be permitted to take different stands, in the sense that, on the one hand, they are accepting the promotion granted to the petitioner and on the other, are contesting the claim petition on the ground that he was not having the qualification as laid down by the UGC Regulations.

15. The claim petition is based on the facts that once the UGC pay scale of Librarian was given to him *w.e.f.* 01.04.1998, then he was entitled for the grade pay of Rs.7000/- after completing 06 years of service *w.e.f.* 01.04.2004, and for the grant of grade pay of Rs.8000/- *w.e.f.* 01.04.2009 after completing 05 years of service and further, for the grade pay of Rs.9000/- *w.e.f.* 01.04.2012. **Since the fact that the petitioner had completed the orientation course and refresher course has not been denied by the respondents, therefore, it does not lie in the mouth of the respondents to say that the petitioner was not having the requisite qualification.**

16. In pursuance of order dated 01.11.2018, passed by Hon'ble High Court in WPSB No. 585/2017, earlier G.O. dated 08.04.2017 was modified and the petitioner was given the pay scale of Rs.15600-39100/- grade pay Rs.7000/- under the UGC Career Advancement Scheme *w.e.f.* 01.04.2004, which was earlier given to him *w.e.f.* 20.11.2014, therefore, petitioner has a case for consideration under the UGC Career Advancement Scheme.

17. **Once the petitioner was given grade pay Rs.7000/- *w.e.f.* 01.04.2004, which was earlier given *w.e.f.* 20.11.2014, therefore, there is a case for considering the petitioner for granting further grade pay of Rs.8000/- *w.e.f.* 01.04.2009 and for grade pay Rs.9000/- *w.e.f.* 01.04.2012. Once the respondents have granted grade pay Rs.7000/- as per UGC Regulations *w.e.f.* 01.04.2004, then how could further grade pay of Rs.8000/- and Rs.9000/- be denied to the petitioner on the same set of qualification ?**

18. The claim petition is, accordingly, allowed. Respondents are directed to consider the claim of the petitioner for grant of grade pay of Rs.8000/- and Rs.9000/- on completing 05 years and further 03 years of service respectively after 01.04.2004.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: DECEMBER 03, 2021
DEHRADUN.

VM

