

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

Present: Hon'ble Mr. Rajendra Singh
----- Vice Chairman (J)
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

CLAIM PETITION NO. 76/NB/DB/2021

1. Smt. Janki Chuphal, aged about 51 years, w/o Sri B.S. Chuphal, Serving as Assistant Teacher in Govt. Junior School Hupuli Munshyari, District Pithoragarh.
2. Smt. Hema Pandey, aged about 50 years w/o Sri Mohan Chandra Pandey, serving as Assistant Teacher in Govt. Junior School Jalana Neel Pahari, Dhari, District Nainital.
3. Smt. Manju Joshi, aged about 50 years, w/o Sri Kaushlesh Kumar Joshi, serving as Assistant Teacher in Govt. Junior School, Kanarkakha Dhari, District Nainital.
4. Smt. Khashti Bawari aged about 54 years w/o Mahesh Chandra Bawari, Serving as Assistant Teacher in Govt. Junior School Sanana Kotabag, District Nainital.
5. Smt. Damyanti Pandey, aged about 54 years, w/o Sri Gopal Dutt Pandey, serving as Assistant Teacher in Govt. Junior High School, Bajani, Dharchula, District Pithoragarh.
6. Smt. Janki Bisht, aged about 48 years, w/o Sri Gopal Singh Bisht, serving as Assistant Teacher in Govt. Inter College, Khumati, Dharchula, district Pithoragarh.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, School Education, Secretariat, Dehradun.
2. Director, School Education, Nanoorkhera, Dehradun.
3. Additional Director, School Education, Kumaon Mandal, Nainital.

.....Respondents

Present: Sri Lalit Samant, Advocate for the Petitioners
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT**DATED: JUNE 16, 2022****Mr. Rajeev Gupta, Vice Chairman (A) (Oral)**

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

“(i) To set-aside/quashed the impugned circular/ advertisement dated 17.07.2020 to the extent, applicability of amending rules 2019 so far it relates to the petitioners passed by respondent no. 3 (Annexure no. 1) of the claim petition.

(ii) To declare Uttarakhand Subordinate Education (Trained Graduate Category) (Amendment) Service Rules, 2019 as ineffective to the extent of petitioners promotion and further be declared applicable prospectively.

(iii) To direct the respondents to consider the candidature of the petitioners for their promotion on the post of Assistant Teacher L.T. Hindi, Science respectively after conducting counselling as per rules 2014.

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

(v) Award cost of petition.”

2. An application has been moved on behalf of the petitioners along with affidavit of petitioner no. 1 stating that the petitioners have challenged the impugned advertisement dated 17.07.2020 to the extent of applicability of amending Rules 2019 so far as it relates to the petitioners and further direction has been sought to declare the Uttarakhand Subordinate Education (Trained Graduate Category) (Amendment) Service Rules to be applicable prospectively. In compliance of the interim order dated 15.11.2021 of this Tribunal, the respondent no. 3 had provisionally permitted the petitioners to participate in the promotional process. However, the result of the petitioners has been kept in sealed cover envelop. On 17.05.2022, the Hon’ble High Court has decided W.P. No. 825(S/S) of 2020, Umesh Chandra Upreti vs. State of Uttarakhand & others along with other connected writ petitions in terms of judgment dated 21.03.2022 passed in Writ Petition(S/B) No. 139 of 2021 holding that the

amendment made in service rules notified on 23.12.2019 cannot be made applicable to the promotion exercise, which commenced in the month of June, 2019. The Hon'ble High Court further directed the respondents to declare the petitioners' result and if found suitable to give promotion to the petitioners, as per rules which prevailed before 23.12.2019. Copies of above judgments have also been filed along with this affidavit.

3. Heard learned Counsel for the parties, who agree that the case of the petitioners is squarely covered by the above judgments of the Hon'ble High Court and plead that the present claim petition be also decided accordingly.

4. The Tribunal after perusing the above judgments of Hon'ble High Court finds that the case of the claim petitioners is squarely covered by these judgments. Paras 5, 6, 7 & 8 of the judgment dated 21.03.2022 of the Hon'ble High Court passed in Writ Petition (S/B) No. 139 of 2021 alongwith another connected writ petition, are reproduced herein below:

"5. Thus, it is contended by the learned counsel for the petitioner that when the petitioners entered in service, they were guided by 2014 Rule. Even when the department took a decision to give promotion, an advertisement was issued. They were qualified. But by virtue of the amendment dated 23.12.2019 which is prospective in nature they become ineligible for the post.

6. We are of the opinion that the Service (Amendment) Rule 2014 is not retrospective in effect and the rules are supposed to come into force at once i.e. on 23.12.2019, it cannot be made applicable to the petitioners while considering their case for promotion. It is also brought to our notice that pursuant to the order passed by this Court on 22.03.2021/02.08.2021, the petitioners were called for counselling for the post of Assistant Teacher L.T. (Physical Education) and as per the submission of the learned counsel for the petitioners they have been selected but promotional post have not been allotted because of the pendency of the writ application. However, the learned Standing Counsel do not have instructions regarding the same.

7. In that view of the matter, we dispose of both the writ applications directing the respondents to give promotion to the petitioners if they have been found suitable as per rules which

prevailed before the amendment that came into force on 23.12.2019.

8. With such observations the writ petitions are disposed of. The order to be complied with within 45 days from the date of production of certified copy of the same.”

5. Paras 8 & 9 of the judgment dated 17.05.2022 of Hon’ble High Court, passed Writ Petition (S/S) No. 825 of 2020, Umesh Chandra Upreti vs. State of Uttarakhand & others alongwith other connected writ petitions are excerpted as below:

“8. I am in respectful agreement with the view taken by Division Bench of this Court in the aforesaid judgment. The amendment made in Service Rules notified on 23.12.2019, cannot be made applicable to the promotion exercise, which commenced in the month of June, 2019.

9. In such view of the matter, writ petition is also decided in terms of judgment dated 21.03.2022 passed in Writ Petition (S/B) No. 139 of 2021. Since result of petitioners is kept in a sealed cover, pursuant to order of this Court, therefore, the concerned respondent is directed to declare the petitioners’ result and if found suitable, Competent Authority shall give promotion to the petitioners, as per Rules, which prevailed before 23.12.2019.”

6. The case of the present claim petitioners is squarely covered by the above judgments. The Tribunal accordingly directs the respondents to give promotion to the petitioners, if they are found suitable as per Rules prevailing before the amendment, which came into force on 23.12.2019. If the result of the petitioners is kept in the sealed cover, the same be declared. These orders be complied with within a period of 45 days from the date of production of certified copy of this judgment.

7. The claim petition is accordingly disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: JUNE 16, 2022
DEHRADUN
KNP