

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 27/DB/2021

Kushlanand Tripathi, aged about 50 years, s/o Shri Govind Prasad Tripathi, presently working as Assistant Teacher at Government Junior High School, Dungri Chopra, District Rudra Prayag.

.....Petitioner

vs.

1. The State of Uttarakhand through Secretary, (School Education), Civil Secretariat, Dehradun.
2. Director, Secondary Education, Government of Uttarakhand, Nanoorkheda, Dehradun.
3. Regional Additional Director, Secondary Education, Garhwal Mandal, Pauri.
4. District Education Officer, Rudraprayag.

.....Respondents

Present: Sri Shashank Pandey & Ms. Akanksha Juyal, Advocates,
for the petitioner.
Sri V.P.Devrani, A.P.O., for respondents.

JUDGMENT

DATED: JULY 21, 2022

Justice U.C.Dhyani (Oral)

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

“(i). Issue an order or direction quashing the impugned advertisement dated 06.07.2020 issued by the Respondent No.3 to the extent to the

applicability of amended Rules, 2019, so far as it relates to the petitioner.

(ii) Issue an order or direction commanding/ directing the respondents to allow/ permit the petitioner to participate in the counseling, which is scheduled to be held on 16.03.2021 and 19.03.2021.

(iii) Issue an order or direction commanding/ directing the respondents to allow/ permit the petitioner to complete the selection process as per advertisement dated 19.06.2019 issued by the Respondent No.3, as per Rules, 2014, so far as it relates to the petitioner.

(iv) Issue any other order or direction of any nature in favour of the petitioner, which the Hon'ble Tribunal deems fit and proper in the present facts and circumstances of the case.

(v) Award the cost of claim petition in favour of the petitioner.”

2. Facts necessary for adjudication of present claim petition are as follows:

2.1 The petitioner was initially appointed as Assistant Teacher (Primary School) on 28.12.1990 (Copy: Annexure- A 2) and joined his duties on 01.01.1991 at Primary School, Uttarsu, Block Pokhari, Chamoli. At the time of appointment, the petitioner was Intermediate with BTC Training. He was promoted on 16.09.1993 to the post of Assistant Teacher, Junior High School (Copy: Annexure- A 3). During his service, the petitioner completed his Post Graduation in Hindi as well as Education through private mode.

2.2 Petitioner's services were converted to 'Service under State Government' in view of the provisions of Uttaranchal School Education Act, 2006. The State Govt. made new Rules called, the Uttarakhand Subordinate Educational (Trained Graduates Grade) Service Rules, 2014(hereinafter referred to as Service Rules, 2014) . As per Rule 5 of Service Rules, 2014, 30% of recruitment was to be done by promotion from amongst Headmaster, Govt. Primary School, Assistant Teacher, Junior High School and Assistant Teacher, Govt. Model School. Rule 16(1) of Service Rules, 2014 provides 'criterion for promotion' which was seniority subject to rejection of unfit. Rule 16(3) provides that in case the candidate promoted was not "Trained Graduate", the candidate will have to obtain certificate from Institute established by State Govt. or Degree/ Diploma obtained from Institute/ University recognized by NCTI within 03 years of such promotion.

2.3 On 16.06.2019, an advertisement (Copy: Annexure- A 6) was issued by Respondent No.3, for promotion on the post of Assistant Teacher (L.T. Grade) (trained graduate category) , under the Service Rules, 2014. Petitioner applied under 30% quota in subject Hindi language and in Sanskrit, in General category. But before the promotions could be made, the State Government made an amendment in Rule 16 (3) of the Service Rules, 2014, whereby Rule 16(3) was substituted by the Uttarakhand Subordinate Educational (Trained Graduates Grade) Amendment Service Rules, 2019, and by virtue of Amended Rules, 2019, for promotion under quota of 30%, employee has to be graduate in concerning subject as well as L.T. or B.Ed. from any recognized institute or college.

2.4 Pursuant to the said amendment, Respondent No.3 issued corrigendum dated 06.07.2020 (Copy: Annexure- A 1), whereby advertisement dated 19.06.2019 was amended regarding 30% vacant posts, which were to be filled up by promotion, and are now to be promoted as per amended Rules, 2019.

2.5 According to the advertisement dated 19.06.2019, the petitioner was fully eligible for promotion on the post of Assistant Teacher (L.T. Grade). His name was duly recommended for promotion by the higher authorities and he was also considered to be fit for promotion by figuring his name at Sl. No. 26 in the selection list. The case of the petitioner comes under the old Rules *i.e.*, Service Rules, 2014. In the amended advertisement/ Rules, 2019, the respondents further prepared a list for candidates who are eligible for promotion, in which the name of the petitioner is not shown, depriving of his legitimate rights. This is not only unjust but is also against the service jurisprudence which is settled by catena of judgments.

2.6 Feeling aggrieved, the petitioner filed WPSS No. 401/2021, Kushlanand Tripathi vs. State of Uttarakhand & others before the Hon'ble High Court of Uttarakhand, but the Hon'ble Court refused to entertain the matter on the ground of alternative remedy and the Writ Petition was, therefore, withdrawn with a liberty to the petitioner to file it before the Uttarakhand Public Services Tribunal. Hence, this petition.

3. Sri Mahaveer Singh Bisht, Additional Director, Secondary Education, Garhwal Mandal, Pauri, Uttarakhand has filed Counter Affidavit on behalf of respondents. It is the submission of respondents that *vide* Order

No. 933 dated 23.12.2019, the Service Rules, 2014 were amended, under which the promotions were to be made. By virtue of the said amendment, the eligibility criteria in Rule 16(3) was changed and for the purpose of promotion, B.Ed. degree or a degree from a recognized University was the mandatory requirement. Thus, in accordance with the amendment made in the Rules, the petitioner got disqualified to apply for the said promotion and his name was rightly removed from consideration for promotion, as he did not possess the requisite qualification, *i.e.*, B.Ed. degree. Therefore, the petitioner has no claim to challenge the selection process, as the claim petition has no legal substance and same is liable to be dismissed.

4. Rejoinder Affidavit has also been filed by the petitioner, reiterating the same averments as are mentioned in the claim petition.

5. At the very outset, Ld. Counsel for the petitioner submitted that the present claim petition is squarely covered by the decisions rendered by Hon'ble High Court in WPSB No. 139 of 2021, Bhupal Singh Chanyal and others vs. State of Uttarakhand and others with connected writ petition and WPSS No. 825 of 2020, Umesh Chandra Upreti vs. State of Uttarakhand and others.

6. The order dated 17.05.2022 passed in WPSS No. 825 of 2020, Umesh Chandra Upreti (*supra*) was corrected by the Hon'ble High Court *vide* order dated 23.06.2022, laying down that the expression "10% departmental quota" as laid down in Para 4 of the said order be read as "30% departmental quota."

7. Ld. A.P.O. vehemently opposed the submissions made by Ld. Counsel for the petitioner. As per Rule 8 of the Uttarakhand Subordinate Educational (Trained Graduate Grade) Service Rules, 2014, minimum qualification for Assistant Teacher [L.T. Grade (Language) Hindi] is- (i) Graduation with Sanskrit as one of the subject in Intermediate or Graduation, (ii) L.T. Diploma/ B.Ed. or (iii) 04 years' (B.A. Ed.) integrated course with Sanskrit as one of the subject in Graduation. As per Rule 16(1) of the Service Rules of 2014, if the candidate promoted was not "trained graduate" then he/she has to obtain B.Ed. degree certificate from the Institution established by the State Government within three years from the date of promotion.

8. When the respondents invited applications on 13.06.2019 for filling up 30% posts under the above category, the petitioner also applied for Assistant Teacher (L.T. Grade, Hindi).

9. Under Article 309 of the Constitution of India, the Governor, on 23.12.2019 amended the Rules of 2014 and made B.Ed. compulsory. During the interregnum of the recruitment process, before holding DPC, approval of the Commission and issuance of the promotion orders, the promotional Rules were amended and at the time of amendment of the Rules, the DPC proceeding was not finalized. It is submission of Ld. A.P.O. that, once the Rules have been amended, Hon'ble Tribunal cannot issue direction on the repealed Rules and if the petitioner is aggrieved with the amendment of the Rules, he should approach the Hon'ble High Court for his grievance. It is the prerogative of the State to decide the criteria/ qualification to maintain efficiency in public employment.

10. The substance of petitioner's case has been noted by us in Paras 2.3 to 2.5 of the judgment. The substance of respondents' case has been noted by the Tribunal in Para 3 of the judgment. Respondents' case is that, during the interregnum of the recruitment process, before holding DPC, approval of the Commission and notification of the promotions, the Promotional Rules were amended. Thus, the admitted case of the respondents is that the Promotional Rules were amended during the interregnum of the recruitment process. In the estimation of this Tribunal, the same cannot be done in view of the decisions rendered by Hon'ble High Court in Umesh Chandra Upreti (*supra*) and Bhupal Singh Chanyal(*supra*).

11. To draw analogy, it will be appropriate to reproduce the relevant paragraphs of the decision rendered by Hon'ble High Court in WPSB No. 139 of 2021, Bhupal Singh Chanyal and others vs. State of Uttarakhand and others herein below for convenience:

“2. By filing this writ petition, the petitioners being head master of primary school being aspirant to the post of Assistant Teacher L.T. (Physical Education) has prayed for the following relief:-

- i. To declare the impugned rule no. 8(1) (vi)(2) of Uttarakhand Subordinate Education (Trained Graduate Category) (Amendment) Service Rules, 2019 as ineffective to the extent of petitioner's

promotion and further be declared as applicable prospectively. (Annexure no. 1 to this petition).

ii. Issue a writ, order or direction in the nature of Certiorari quashing the impugned advertisement no./Sevain3Ka(2)/Araj./2073-74/2020-21 dated 17.07.2020 issued by the respondent no. 3, by which the respondent no. 3 has amended the advertisement dated 20.06.2019 to the extent of petitioners promotion is concerned. (Annexure no. 1 to this petition).

iii. Issue a writ, order or direction in the nature of Mandamus directing the respondents to consider the candidature of petitioners for their promotion on the post of Assistant Teacher L.T. (Physical Education) as per the conditions mentioned in advertisement dated 20.06.2019, else the petitioners shall suffer irreparable loss and injury and the same cannot be compensated by any means.

3. The facts of the case are not disputed. The petitioners are working as per the Uttarakhand Subordinate Education (Trained Graduate Category) Rules 2014 (hereinafter referred to as the Service Rules 2014). They were entitled to be considered for the promotion to the post of Assistant Teacher L.T. (Physical Education). Such promotion shall be taken out as per Rule 8 of Service Rule 2014. The qualification prescribed is:-

1. Graduate degree from any of the University established by law in India.

2. Having diploma in physical education (D.P.Ed/ B.P.Ed/ Vyayam Ratan from any National or Government recognized training institute/ college/ University established by law.

4. However, on 23.12.2019 an amendment was brought to this rule and by virtue of such amendment, effective from 23.12.2019, the education qualification was changed from the above two and the comparative chart is given below:

(vi) (1) Graduate degree from any University established by law in India.	vi)(1) Graduate degree from any University established by law in India.
(2) D.P. Ed diploma/Vyayam Ratan from any Government or government recognized training institute/college or degree of B.P. Ed from a University established by law. Or (1) Four year integrated course of B.P.Ed with Physical education B.P.E. from any University established by law in India	(2) Graduate of at least one year in Physical Education (B.P.Ed) [or its equivalent] from any institution recognized from National Council for Teachers Education

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.”

[Emphasis supplied]

12. In an identical Writ Petition (S/S) No. 825 of 2020 Umesh Chandra Uptreti vs. State of Uttarakhand and others, the Hon'ble Court observed as under:

“2. Since common questions of law and fact are involved in these writ petitions, therefore are being taken up together and are being decided by this common judgment. However, for the sake of brevity, facts of WPSS No. 825 of 2020 alone are being considered.

3. Petitioner was appointed as Assistant Teacher, Government Primary School in the year 1996. He was subsequently promoted as Assistant Teacher, Government Junior High School in the year 2010. Under the relevant Recruitment Rules, framed in 2014, petitioner was eligible for promotion to the post of Assistant Teacher, L.T. Grade under 10% departmental quota. However, by virtue of an amendment made in the Rules in 2019, petitioner became ineligible.

4. Respondent no. 3 had invited applications for promotion under 10% departmental quota, by an advertisement dated 20.06.2019. Petitioner participated in the selection held pursuant to said advertisement, however, 2014 Rules were amended in 2019 after initiation of promotion exercise and requirement of possessing B.Ed./L.T. qualification was introduced for promotion under 10% departmental quota.

5. Since petitioner does not possess B.Ed./L.T. qualification, therefore, he approached this Court contending that Rules framed subsequent to initiation of selection process, cannot govern ongoing selection process. The reliefs claimed in the writ petition are as follows:-

“i) Issue a writ order or direction in the nature of certiorari to quash impugned advertisement dated 17-7-2020 to the extent applicability of

amending Rules 2019 so far it relates to the petitioner and quash any other consequential order if any.

ii) Issue a writ order or direction in the nature of mandamus directing to the respondents to complete selection process as per advertisement dated 20-6-2019 under the Rules 2014 so far it relates to the petitioner.”

6. A co-ordinate Bench of this Court permitted the petitioner to appear in counseling with the condition that the result of counseling shall be kept in a sealed cover, which shall not be opened without leave of this Court.

7. Mr. Lalit Samant, learned counsel for the petitioners submits that it is settled law that rules of the game cannot be changed mid-way and the selection process has to be completed as per the service rules, which were applicable on the date of commencement of promotion exercise. He, however, submits that the promotion exercise was commenced on 20.06.2019 when advertisement was issued by respondent no.3; while, the requirement of having B.Ed./L.T. was introduced by amending the Rules in the month of December, 2019. Thus, according to him, the amended Service Rules cannot be made applicable to the promotion exercise, which commenced in the month of June, 2019. He, however, submits that a Division Bench of this Court has dealt with identical question in Writ Petition (S/B) No. 139 of 2021. Perusal of the said judgment reveals that the question before Division Bench was whether the amendment made in the Rules subsequent to commencement of selection process can be pressed into service for treating a person ineligible for promotion, who was otherwise eligible. Paragraph nos. 5 & 6 of the said judgment are reproduced 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.”

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.”

[Emphasis supplied]

13. We have, therefore, no hesitation in coming to the conclusion that the facts of the present claim petition are squarely covered by the decision rendered by Hon’ble High Court in Bhupal Singh’s case (*supra*). The present claim petition should, therefore, be decided in terms of the aforesaid decision.

14. **In view of the above, the claim petition is disposed of by directing the respondents to give promotion to the petitioner, if he is found suitable, as per the Rules prevalent before the amendment that came into force on 23.12.2019. In the circumstances, no order as to costs.**

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 21, 2022
DEHRADUN

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