

**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. 36/DB/2021

Devendra Singh Pundir, aged about 52 years, s/o Late Shri Matwar Singh Pundir presently posted as Lecturer at Government Inter College, Kharsadi, Devprayag, residing near Government Inter College, Kharsadi, Devprayag, Post Office, Kharsadi, Tehri Garhwal.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary (School Education), Civil Secretariat, Dehradun.
2. Additional Director, Secondary Education, Uttarakhand, Nanoorkheda, Tapovan, Dehradun, Uttarakhand.
3. Chief Education Officer (Incharge), Tehri Garhwal, Narendranagar.

.....Respondents

Present: Sri Shashank Pandey &

Ms. Akansha Juyal, Advocates, for the Petitioner.

Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 16, 2022

Mr. Rajeev Gupta, Vice Chairman (A) (Oral)

This claim petition has been filed seeking the following reliefs:

“i) Issue an order or direction quashing the order dated 17.02.2021 enclosed as Annexure A1 vide which the representation of the petitioner has been rejected.

ii) Issue an order or direction directing the respondents to grant promotional pay scale to the petitioner from 16.09.2018.

iii) 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.

iv) Award the cost of claim petition in favour of the petitioner."

2. Brief facts according to the claim petition, are as below:

2.1 The petitioner was initially appointed as Assistant Teacher (LT) and joined his duties on this post on 17.09.1996. After completing uninterrupted 10 years of service, his pay scale was revised to Rs. 6500-200-10500/-. Accordingly, the petitioner was placed in the revised pay scale of Rs. 9300-34800 with grade pay of Rs. 4800 from September, 2006 onwards in the 6th Pay Commission. On 11.10.2017, the respondent no. 1 issued a Govt. order providing for *adhoc* promotions on the post of Lecturer from the post of Assistant Teacher (LT) and at point no. 5 of this G.O. laid down that the lien of such persons promoted on *adhoc* basis would continue on the post of Assistant Teacher (LT) till the said persons are given substantive appointment and point no. 7 of this G.O. laid down that the said *adhoc* appointment was only a temporary arrangement. In accordance with this G.O., the respondent no. 2 issued an order dated 03.05.2018 vide which the petitioner was given the charge of post of Lecturer on *adhoc* basis. It is pertinent to mention that the order of *adhoc* promotion was passed without holding any DPC nor any recommendation of State Public Service Commission was obtained, which is required for filling the post of Lecturer. The promotion order dated 03.05.2018 also mentioned that such promotion/arrangement was temporary and the persons so promoted would maintain their lien on their substantive posts till the time they are given substantive appointments.

2.2 Respondent no. 1 issued a G.O. dated 06.09.2019, which specified selection grade after 10 years of continuous satisfactory service and promotional pay scale after 12 years of satisfactory service in selection grade. The G.O. further said that such selection grade and promotional pay scale would only be given if there is no promotion during the specified period. The

petitioner was substantively promoted to the post of Lecturer after DPC held in the beginning of 2020 and the recommendation of the Uttarakhand Public Service Commission vide promotion order dated 20.05.2020.

2.3 Because of the *ad hoc* promotion order dated 03.05.2018, the promotional pay scale of the petitioner which fell due on 17.09.2018 was not given to the petitioner. The petitioner made representations for the same which were rejected vide impugned order dated 17.02.2021 (Annexure: A1) by the respondent no. 3 on the ground that since the petitioner has been given *ad hoc* promotion to the post of Lecturer vide order dated 03.05.2018, he cannot be given promotional pay scale according to the G.O. dated 06.09.2019. The respondents have confused *ad hoc* arrangement made by the department to cater to the exigency of service and have treated that arrangement as regular promotion. This is in complete violation of the settled principles of service jurisprudence. Vide this *ad hoc* promotion, the petitioner was neither given any higher pay scale nor given any higher post substantively but was only required to discharge the service as Lecturer as a stop-gap arrangement till the time regular promotions can take place.

Hence, this claim petition.

3. Counter Affidavit has been filed on behalf of the respondents mainly stating that the petitioner was given *ad hoc* promotion on 03.05.2018 which he willingly accepted without any protest and he has never forgone the *ad hoc* promotion given to him on the post of Lecturer. Hence, now the claim petition is barred by the basic principle of Acquiescence and Estoppel. The petitioner would have been eligible for promotional pay scale on 17.09.2018, though it is not applicable to the petitioner as he was given the pay equivalent to that he would have drawn in the promotional pay scale through his *ad hoc* promotion. Sub-para (3) of para 2(Ka) of the G.O. No. 150 dated 06.09.2019 clearly mentions that the benefits of selection pay/promotional pay will be given only if promotion is not given within the stipulated period. As the petitioner has accepted the promotion done vide

order dated 03.05.2018 and taken charge on the post of Lecturer on 08.05.2018 hence, promotional pay scale will not be payable to the petitioner.

3.1 The C.A. further states that the *adhoc* promotion has been done only for interest of students. In *adhoc* promotions also, the pay is fixed to next pay slab of Pay Matrix giving financial parity with the next higher post and the petitioner has been paid the benefits of the post of Lecturer from 08.05.2018. The claim petition has no legal force and liable to be dismissed with costs.

4. Rejoinder Affidavit has been filed on behalf of the petitioner denying the averments of the Counter Affidavit mainly stating the following:

Because of the *adhoc* promotion order dated 03.05.2018, the promotional pay scale of the petitioner which would have fallen due on 17.09.2018 was not given to the petitioner. The petitioner has never received the financial benefits that he is rightfully entitled to receive since the respondents have treated the *adhoc* arrangement as regular promotion and the same is in violation of settled principles of service jurisprudence that promotions can either be to a higher scale or a higher post.

5. Supplementary affidavit has been filed by the petitioner stating that the argument advanced by learned Counsel for the respondents that the petitioner has already been given financial upgradation along with *adhoc* promotion *vide* order dated 03.05.2018 and his grade pay has been increased from Rs. 4600 to Rs. 4800 is wrong as according to the copy of service book of the petitioner filed as Annexure SA-1 to this supplementary affidavit, the grade pay of the petitioner was already Rs. 4800 since September 2006 when he was given selection grade. This affidavit further states that the peers of the petitioner who were not given *adhoc* promotion as they were juniors to the petitioner having been appointed in the year 1999 have been given benefit of promotional pay scale and have already been given grade pay of

Rs. 5400/- whereas, the petitioner is still languishing in the grade pay of Rs. 4800/-.

6. We have heard learned Counsel for the parties and perused the record.

7. It is clear that the petitioner was getting grade pay of Rs. 4800 in the selection pay scale since September 2006, which is also the initial grade pay of the post of Lecturer. Had he not been promoted on *adhoc* basis vide order dated 03.05.2018, he would have got the promotional pay scale of grade pay of Rs. 5400 after completion of 22 years of service *i.e.* on 17.09.2018 according to the G.O. dated 06.09.2019. The *adhoc* promotion given to him has been interpreted to his detriment by denying him the promotional pay scale of grade pay of Rs. 5400 according to sub para (3) of para 2(Ka) of the G.O. dated 06.09.2019 and subsequently, when he has been regularly promoted as Lecturer also his grade pay has remained as Rs. 4800 only which is the normal pay scale of the post of Lecturer. Had his *adhoc* promotion been done after 17.09.2018, he would have been given the promotional pay scale of grade pay Rs. 5400/- which he would have retained even after *adhoc* promotion as Lecturer and further promotion as Lecturer as has been the case with his juniors who have been given the promotional pay scale of grade pay of Rs. 5400/-. Learned A.P.O. argues that sub-para (3) of para 2(Ka) of the G.O. dated 06.09.2019 has to be strictly adhered to and promotion according to this sub-para includes *adhoc* promotion also. Learned Counsel for the petitioner argues that the *adhoc* promotion made according to the G.O. dated 11.10.2017 was a purely temporary and stop-gap arrangement according to sub-para (7) of the para 2 of this G.O. and according to sub-para (5) of para 2 of this G.O., the lien on the post of Assistant Teacher (LT) shall be maintained till the substantive appointment is granted on the post of Lecturer. Sub-para (6) of para 2 of this G.O. states that the period of *adhoc* appointment shall not be counted towards seniority. This clearly shows that even after the *adhoc* promotion vide order dated 03.05.2018, the petitioner remained substantively appointed on the post of

Assistant Teacher (LT) and the G.O. dated 06.09.2019 clearly provides that Assistant Teacher (LT) shall get promotional pay scale of grade pay of Rs. 5400/- after 22 years of service. Therefore, the petitioner is entitled to the promotional pay scale of grade pay of Rs. 5400/- from 17.09.2018 onwards and sub-para (3) of para 2(Ka) of this G.O. which states that the benefits of selection pay scale/promotional pay scale shall be given only when promotion is not made in the specified period relates to only the regular promotion and not a purely temporary and stop-gap type of *ad hoc* promotion.

8. The Tribunal observes that at the time of consideration of the promotional pay scale which fell due on 17.09.2018, the petitioner was substantively appointed on the post of Assistant Teacher (LT) and accordingly the promotional pay scale with grade pay of Rs. 5400/- should have been provided to him as has been given to other similarly situated teachers who were junior to the petitioner and were not given *ad hoc* promotion in between. Sub-para (3) of para 2(Ka) of the G.O. dated 06.09.2019 talks about 'promotion' and it cannot be deemed to include *ad hoc* promotion which is purely temporary and done as stop-gap arrangement while the lien is retained on the lower post. The G.O. has to be interpreted in the proper spirit. Literally reading the Matrix given in para-1 of this G.O. dated 06.09.2019 in which various categories of teachers and their normal pay scales/ selection pay scales/promotional pay scales have been specified, the various posts specified therein have to be read as posts of substantive appointments and according to the same, the petitioner was on the substantive post of Assistant Teacher (LT), who should have been given the promotional pay scale of grade pay Rs. 5400 on 17.09.2018 and sub-para (3) of para 2(Ka) of this G.O. does not come in the way of such grant of promotional pay scale to him as he had not been promoted in between (*ad hoc* promotion on purely temporary and stop-gap arrangement basis cannot be literally read as promotion). The petitioner's promotion to the post of Lecturer was done subsequently *vide* promotion order dated 20.05.2020.

9. In view of the above, the claim petition succeeds and the impugned order dated 17.02.2021 (Annexure: A1 to the claim petition) is set aside as regards the rejection of representation of the petitioner and the respondents are directed to grant promotional pay scale of grade pay Rs. 5400 to the petitioner from 17.09.2018. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: AUGUST 16, 2022
DEHRADUN.

KNP