

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, DEHRA DUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.Kotia

----- Vice Chairman (A)

CLAIM PETITIOIN NO 18/DB/2013

1. Dr. Naveen Chandra Tiwari,
2. Dr. Devi Prasad Painuly, Both Lecturer, Ras Shastra Evam Bhaishjya Kalpana, Rajkiya Ayurvedic College and Hospital, Gurukul Kangri, Hardwar

.....Petitioners

VERSUS

1. State of Uttarakhand through Principal Secretary, Ayush Evam Ayush Shiksha, Civil Secretariat, Dehradun,
2. Director General, Ayush, Govt. of Uttarakhand, Dehradun,
3. Principal/Superintendent, Government Ayurvedic College & Hospital, Gurukul Kangri, Hardwar,
4. Dr. Birendra Kumar Tamta, C/o Bhagat Singh Mohalla Santpura, Hunumangarhi, Kankhal, Hardwar presently Lecturer in, Rajkiya Ayurvedic College and Hospital, Gurukul Kangri, Hardwar
5. Uttarakhand Public Service Commission through Secretary, Hardwar

.....Respondents

Present: Sri V.P.Sharma, Counsel
for the petitioners

Sri Umesh Dhaundiyal, A.P.O.
for the respondents no. 1, 2 & 3

Sri B.B.Naithani, Counsel
For the respondent no. 4

JUDGMENT**DATE: MAY 29, 2014****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioners have prayed for quashing the seniority list dated 25.10.2012 and for further direction to the respondents no. 1, to 3 for re-determination of the seniority of the petitioners.

2. The facts in brief are that the petitioners were recruited to the post of Demonstrator on 25.9.1989 and 27.09.1989 respectively in the erstwhile State of U.P. Later on, the post of Demonstrator was directed to be merged with the post of Lecturer vide order of Central Council of Indian Medicines (in short C.C.I.M.) dated 02.09.1991. However, the said order of the C.C.I.M. was not implemented by the State of U.P. though it was implemented to some other States. Non-implementation of the said order was challenged before the Hon'ble High Court of Allahabad, which was later on transferred to the High Court of Uttarakhand after its creation. The said writ petition was decided by the Hon'ble High Court vide its judgment and order dated 25.3.2008 and a direction was issued to the State Govt. for implementation of the order of the C.C.I.M. Mean while the said order was implemented in the State of U.P. In compliance of the order of the Hon'ble High Court, an order was issued by the Govt. of Uttarakhand on 29.12.2008 and all the 9 employees working on that date as demonstrator who had completed 10 years of satisfactory service, were named as Lecturers and a scale of Rs. 8000-13500 was also granted to them and further it was also directed to abolish the cadre of Demonstrator.

3. Later on, private respondent no. 4 was recruited to the post of Lecturer by direct recruitment through Public Service Commission in the pay scale of Rs. 8550-14600. The petitioners are aggrieved by the scale granted to the respondent no. 4 as well as the seniority of the respondent no. 4, who have been placed above the petitioners. The

petitioners have challenged the seniority and pay scale of the private respondent no. 4 on the following grounds:

- i. That the petitioners have been absorbed in the cadre of Lecturer on 29.12.2008,
- ii. That the private respondent no. 4 has been recruited to the post of Lecturer on 08.02.2010 thus, he is junior to the petitioners,
- iii. That the pay scale of Reader has wrongly been granted to the private respondent no. 4.

4. The petitioners had moved a representation against the tentative seniority list, but of no consequence. However, the petitioners had preferred a departmental appeal, but of no avail. Hence this petition.

5. The petition has been opposed on behalf of the respondent's no. 1, 2, 3 and 4. The respondent no. 5, Uttarakhand Public Service Commission did not appear or file any Counter Affidavit. In the W.S. filed on behalf of the respondent's no. 1, 2 and 3, it has been stated that the petitioners were initially appointed on the post of Demonstrator for a limited period of three years, but vide order dated 27.08.1992; the petitioners were permitted to continue the service. In pursuance of the orders dated 02.05.1991 issued by the C.C.I.M, the petitioners were merged in the cadre of Lecturer vide order of the State Govt. dated 29.12.2008, but before the absorption/merger of the petitioners in the cadre of Lecturer, an advertisement had already been issued for the direct recruitment of Lecturers in compliance of the requisition sent by the Govt. to the Public Service Commission. The said advertisement was issued in the year of 2005 and the private respondent no. 4 was appointed after his selection against those vacancies. The inter-se seniority of the petitioners and the respondent no. 4 has been determined in compliance of the order no. 903/XXXX/2011-68-2010 dated 25.10.2012. It is further stated that the scale of Rs. 8550/- has been granted to the private respondent no. 4 as he Post Graduate which

admissible to lecturer who is qualified upto the post graduation while the scale of the Lecturers is only Rs. 8000-13500. Moreover, the State Govt. has granted the pay scale of Rs. 8550-14600 to all those lecturers who are recruited directly in accordance with the order issued in Jan, 2009. Thus, the seniority and the scale of pay have rightly been granted to the respondent no. 4 and it requires no change.

6. A separate written statement has been filed on behalf of the private respondent no. 4 and it has been stated that the petitioners were initially appointed to the post of Demonstrator for a limited period of three years in the pay scale of Rs. 625-30-835-EB-30-925-35-1065-EB-35-1240 vide order No. 3629/Education/625/89 dated 15.9.1989.

7. The answering respondent no. 4 has been appointed by direct recruitment through Public Service Commission in the year of 2010 in the pay scale of Rs. 8550-275-14600(revised to Rs. 15600-39100+ grade pay of Rs. 6600). He was appointed in Government Ayurvedic College, Gurukul Kangri, Hardwar in the department of Rash Sashta and Bhaishjya Kalpana.

8. It is stated further that in undivided State of U.P., the service conditions of the Teachers/Lecturers in Ayurvedic Colleges were governed by the U.P. State Ayurvedic and Unani Colleges Teachers Service Rules, 1990, which were also adapted by the State of Uttarakhand after its creation. However, in the year of 2011, the State of Uttarakhand has framed new rules named as Uttarakhand Ayush (Ayurvedic College Teachers) Service Rules, 2011. The petitioners have never been governed by these service rules. They do not even possess the required minimum qualification prescribed for the post of Lecturer. The petitioners are qualified only up to a BAMS.

9. That the C.C.I.M., New Delhi has decided to re-designate the post of Demonstrator vide its order dated 02.05.1991 and it was mentioned that the Demonstrators shall be re-designated as Lecturers

and the existing posts of Lecturers shall be re-designated as Senior Lecturers. The post of Demonstrator shall stand abolished. There will be no change in the duties and duties of the Demonstrator shall be performed by re-designated Lecturers. The private respondent no. 4 has been directly appointed against the existing post of Lecturer which is designated as Senior Lecturer, thus there are different cadres/class of Lecturers. The private respondent no. 4 is senior Lecturer while, the petitioners are simply Lecturers and the seniority of both the cadres have been determined separately. The petitioners cannot claim seniority against the private respondent no. 4. It has further been stated the newly designated post of Lecturer is ex-cadre post. It is also stated that the private respondent no. 4 being in the grade of senior Lecturer has been awarded higher pay scale of Rs. 8550-275-14600 (Revised to Rs. 15600-39100 with grade pay of Rs. 6600). While the petitioners have already been granted ordinary scale of Lecturer i.e. Rs. 8000-13500. Thus the petitioners are definitely junior to the private respondent no 4 and they have rightly been placed below him in the seniority list. The petition is devoid of merit and is liable to be dismissed.

10. Two rejoinder affidavits have been filed on behalf of the petitioners and some more documents were also filed with the rejoinder affidavit. Apart from the rejoinder affidavit, some documents have also been filed on behalf of the petitioners with the applications on 07.10.2013 and 06.11.2013.

11. We have heard both the parties at length and perused the material available on record carefully.

12. The following facts are admitted to both the parties:-

- i. That the petitioners were initially appointed to the post of Demonstrator,

- ii. That the post of Demonstrator has been abolished and the officials who were working on the post of Demonstrator have been merged in the cadre of Lecturer in pursuance of the order of C.C.I.M dated 02.5.1991,
- iii. That the petitioners have also been merged in the cadre of Lecturer vide order of Govt. of Uttarakhand dated 29.12.2008 (Copy Annexure-A-8),
- iv. That the private respondent no.4, Dr. Birendra Kumar has been appointed on the post of Lecturer through direct recruitment vide Govt. Order dated 08.02.2010.

13. The contention of the petitioners is that as they have been merged in the cadre of Lecturer prior to the recruitment of the private respondent no. 4, Dr. Birendra Kumar so, they are senior to him and they have been illegally placed below in the seniority list. It has also been contended on behalf of the petitioners that the respondent no. 4 has illegally been given the higher scale of Rs. 8550/-. On the other hand, both these contentions have been refuted on behalf of the respondents and it has been stated that the petitioners being Demonstrator have simply been re-designated as Lecturer. The cadre of Demonstrator has been abolished. The petitioners do not possess the required minimum qualification prescribed for the Lecturer. Therefore, the petitioners cannot claim seniority as against the private respondent no. 4, Dr. Birendra Kumar. It has further been stated that the private respondent no. 4 being postgraduate is entitled for the scale of Rs. 8550/- and thus, the said scale has rightly been granted to the private respondent no. 4. It is also contended that the post of lecturer comes within the purview of Public Service Commission, and petitioners have been made lecturers without consultation of P.S.C. therefore, the petitioners cannot be equated with the private Respondent No.4. In support of these contentions the Ld. Counsel for the respondents relies upon the following cases:-

- i. Bhajan Singh Vs. State of Uttarakhand, 2014 (1) RSJ 527

- ii. Yadvinder Singh Virk & others vs. State of Haryana & others, 2013(139)FLR 297
- iii. State of Gujarat & others vs. Arvind kumar T.Tiwari, 2013(1) RSJ 576.
- iv. Ram Sadan Yadava & another vs. State of U.P. & others ,2013 (137) FLR 45.
- v. Hukum Chand Gupta vs. Director General I.C.A.R. & others, 2013 (136) FLR 1.
- vi. Bhupendra Nath Hazarika & Another vs. State Assam & others 2013 (2)SCC 516
- vii. B.Thirumal vs.Ananda Shiv Kumar & others 2014 (140) FLR 966.

We have gone through carefully in the above noted cases. In fact, the ratio dealt in all the above mentioned cases is relating to the appointment and in cases, where the appointment was found illegal or de-hors the rules, was not extended any benefit. But, in the case in hand the appointment or merger of the petitioners in the cadre of Lecturers is not in question. The petitioners have been merged in the cadre of Lecturer in accordance with the direction of the concerned council and in pursuance of the judgment of the Hon'ble High Court of Uttarakhand. Therefore, it cannot be said that the appointment or the merger of the petitioner in the cadre of Lecturer is illegal or de-hors the rules, even the non consultation of Public Service Commission will not have any effect. Had the respondent No.4 been aggrieved by the absorption or merger of the petitioners in the cadre of lecturers, he should have challenged the merger of the petitioners, which has not been done, therefore now it is not open to this Tribunal to consider the matter of merger of the petitioners in the cadre of lecturers. As regards the deficiency of the petitioners, if any, in the requisite qualification for the lecturers is concerned, it is also not relevant as this question is also not open for us to consider in this claim petition. Under the above circumstances, the Respondent No.4 is not entitled to claim any benefit

on the basis of the cases cited on his behalf as the question of appointment or merger of the petitioners is not in question in this claim petition before us. In the present petition the petitioners have claimed seniority, so we have to deal with the question of seniority only. As regards the merger of the petitioners is concerned, the position is settled at present in this regard. Therefore, the contention raised on behalf of respondent No.4 has no force.

14. Now the question arises whether the petitioners are entitled to seniority against the respondent No.4. In this regard, it is undisputed that the respondent No.4 was recruited subsequent to the petitioners. The petitioners' were merged in the cadre of Lecturer on 29.12.2008 whereas the respondent No.4 Dr. Virendra Kumar Tamta was appointed by direct recruitment on 29.12.2008. Thereafter, all the above parties are holding the post of Lecturer. Therefore, the petitioners are entitled for seniority as against the private respondent no 4 as they have been merged earlier in the cadre. It is further important to mention that in the similarly situated case of Dr. Suchi Mitra, she has been placed in the seniority list as per the date of recruitment. She was also recruited directly to the post of Lecturer but she has not been given seniority as against the petitioners who have been merged in the cadre of Lectures. Dr. Suchi Mitra had also challenged the seniority before the Hon'ble High Court and in pursuance of the direction of the Hon'ble High Court, the representation of Dr. Suchi Mitra, was decided by the respondent no 1 but the seniority was not changed and she was found to have rightly been placed in the seniority list below the petitioners. In this regard the order passed by the State Govt. on the representation of Dr. Suchi Mitra, dated 31.1.2014, has been filed on behalf of petitioner as Annexure-14. As the similarly situated persons have been placed below the petitioners, therefore, the respondent No.4 cannot be placed above the petitioners. In this regard, it has also been contended on behalf of respondent No.4 that the matter of Dr. Suchi Mitra is not

relevant in the present petition, but we are not convinced with this argument. It has also been contended by Respondent No.4 that despite the merger of the demonstrators in the cadre of lecturer, the petitioners have to carry the duty of the demonstrator only and they do not come in the teaching cadre whereas directly recruited lecturers come in the teaching cadre and therefore there are two separate cadres and petitioners cannot claim seniority against respondent No.4. But the seniority list in question reveals that the petitioners and the private respondent No.4 have been placed in one cadre, so we are not inclined to distinguish the cadre on the ground of nature of their work. Had there been any difference in the cadre, it should have been done by the State Govt., which has not been done. Once the petitioners and the private respondent no 4 have been placed in one cadre, it is not proper to place them on different footing. It will amount the violation of fundamental right of equality before law as has been embodied under article 14 of constitution of India. So the contention of respondent no.4 has no force. It is also not proper to displace the seniority of the petitioners on the ground that the respondent no 4 has been granted higher scale of pay. On the basis of above discussion, we are of the considered opinion that the petitioners are entitled for seniority as against respondent No.4.

15. The petitioners have also challenged the pay scale sanctioned to the respondent No.4 which is higher in comparison to that of the petitioners. The higher pay scale has been granted by the Govt. and there are no grounds for interference in the pay scale sanctioned by the Government. In fact, burden lies upon the petitioners to make out any ground for interfering in the matter of pay scale but they miserably failed in it, therefore, we are not inclined to interfere in the pay scales of the Respondent No.4.

16. On the basis of the above discussion, we reach to conclusion that the petitioners are entitled seniority as against the respondent

No.4 and the seniority list in question requires modification to that extent but there are no ground for interference in the pay scale of Respondent No.4 thus, the petition deserves to be allowed partly.

ORDER

The petition is partly allowed. The Respondent No.2 & 3 are directed to place the petitioners above the private Respondent No.4 and to modify the impugned seniority list accordingly within a period of four month from today. The relief of pay scale is hereby declined. No order as to costs.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: MAY 29, 2014
DEHRADUN.

KNP