

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

**CLAIM PETITION NO. 115/NB/SB/2022**

Smt. Rekha Pandey, aged about 62 years, w/o Late Sri Jagdish Chandra Pandey,  
r/o Cart Road Chungi Tallital, Nainital.

.....Petitioner

**Vs.**

1. State of Uttarakhand through Principal Secretary, Urban Development, Dehradun.
2. Director Lekha Parkisha (Audit) Uttarakhand, State Election Commission Complex Mussoorie Bye Pass Road, Dehradun.
3. District Audit Officer, Local Bodies Audit Nainital Cum State Internal Audit Hari Niwas, Middle Ayarpata Mallital, Nainital.
4. Executive Officer, Municipal Board, Nainital.
5. Commissioner/Additional Director Local Bodies, Kumaon Region, Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate for the petitioner

Sri Kishore Kumar, A.P.O., for the Respondents No. 1,2,3 & 5

Sri K.K.Tiwari, Advocate for Respondent no. 4

**JUDGMENT**

**DATED: JUNE 30, 2023**

This claim petition has been filed seeking the following reliefs:

*I. To issue order or direction appropriate in nature by directing the respondents to correct the monthly pension of the petitioner as per her last pay drawn i.e. Rs. 39,663/- and give her correct monthly pension in tune of Rs. 16950/- + Dearness Allowance and further direct the respondents to correct the amount of Gratuity on the basis of last drawn salary i.e. Rs. 39,663/- which comes to Rs.4,96482/- alongwith interest as per Gratuity Act for delayed payment and also pay the arrears of pension or pass any other order direction which this Hon'ble court may deem and proper under the facts and circumstances stated in the body of the claim petition.*

*(ii) To issue order or direction suitable in nature by declaring the observation of the respondent no.2 in letter dated 31-08-2021 as illegal, unjust and arbitrary and quash the same and direct*

*the respondent no.2 to correct the grade pay of Rs.2800 in place of Rs. 2400 and thereafter revised the pension of the petitioner alongwith all consequential benefits.*

*ii) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. Counter Affidavits have been filed by the respondents to which Rejoinder Affidavit has been filed by the claim petitioner.

3. The facts in brief of the claim petition are that the husband of the petitioner was a regular employee of the respondent no. 4 and was died during his service on 06-05-1999. The petitioner was M.A. in Sociology and also had B.Ed. degree (Siksha Vishrad) and on the basis of her educational qualification applied under Dying in Harness Rules 1975 and the respondent no 3 vide order no. 666 (IX)/371 dated 27-05-1999 on Class IV post in the pay Scale of Rs 2550-50-2660-60-3200. The respondents have given assurance that pursuant to the qualification of the petitioner they will adjust her on the post of Assistant Teacher in schools run by them in future when vacancy arises. The Chairman Nagar Palika Parishad Nainital vide letter dated 16-02-2008 promoted the petitioner on the post of Assistant Teacher in Pay Scale of Rs. 3050-75-3950-80-4950. The petitioner having no option again accepted the promotion on the post of Assistant Teacher w.e.f. 16-02-2008 and not claimed the same benefit from July 2000. Thereafter the petitioner pursuant to the order dated 16-02-2008 discharged the duties of Assistant Teacher and continuously worked as Assistant Teacher. The respondent no.4 vide its letter dated 18.06.2019 directed the petitioner to take the charge of then retiring head mistress Mrs. Sarita Gangola with immediate effect till further orders. The petitioner attains the age of superannuation in the month of November 2020 and the respondent no.3 vide its letter dated 21-11-2020 given the session benefit to the petitioner upto 31.03.2021 in accordance with G.O. No. 329/XXIV-2 10-9(11)-2008 dated 08-04-2011 of the Government of Uttarakhand. After the superannuation of the petitioner i.e. 30-11-2020 the respondent no 4 has sent the pension papers of the petitioner to the respondent no.2 and requested him to complete the formalities so that the petitioner may be

paid her retrial dues. The respondent no.4 alongwith his correspondence submitted the last drawn salary certificate in which the Grade Pay of Rs 2800 is mentioned. The respondent no.2 vide its letter 1291/XV-2(9) observed that since the post of Assistant Teacher is not mentioned in the G.O. No. 758 dated 12-06-2015 therefore the petitioner will be paid retrial dues on the grade Pay of Rs.2400 only and also calculated the amount of monthly pension in tune of Rs. 16650- with D.A. and calculated the amount of Gratuity in tune of Rs. 4,09091/-

The respondent no.2 in its letter dated 31-08-2021 has arbitrarily mentioned that in pursuant to the G.O. No, 758 dated 12-06-2015 the post of Assistant Teacher is abolished in the Municipal Boards thus the petitioner who was retired from the post of Assistant Teacher is not eligible for the grade pay of Rs. 2800. The aforesaid fact is totally wrong and misconceived because the respondent no.2 while allowing the pension benefits to two retired employees namely Km. Chandra Pandey who retired in 2018 and Mrs. Sarita Sah Gangola who retired in the year of 2019 not mentioned the aforesaid G.O. of 2015 despite the fact that the aforesaid teachers were retired much after the enforcement of the abovementioned G.O., thus the action of the respondent no.2 by not allowing the petitioner the grade of Rs.2800 is step motherly treatment and also amounts to gross discrimination.

Learned Counsel for the petitioner submitted that as per last drawn salary of the petitioner, the monthly pension will Come to Rs 16950/- + Variable Dearness Allowance and the amount of Gratuity will come in tune of Rs. 4,96,482/- but the respondents on their whims and fancies have calculated the monthly pension of the petitioner in tune of Rs. 16650+ D.A and further calculated the gratuity in tune of Rs.4,09091/- by reducing the grade pay from Rs. 2800 to Rs. 2400 on the pretext of there being no post of Assistant Teacher in restructured cadre of Municipal Board Under the G.O. No. 758 dated 12.06.2015 whereas the petitioner was promoted on the post of Assistant Teacher on 16.02.2008. He prayed that the respondent no. 2 to recalculate the pension and gratuity of the petitioner on her last

drawn salary with Grade pay of Rs. 2800/- and to pay the arrears of the pension and gratuity. In this regard the petitioner submitted her representation to the respondents on 09.07.2022 but till date the respondents have not paid any heed or attention to the genuine grievances of the petitioner and due to which the petitioner is suffering financial loss. Learned Counsel for the respondent no. 4 submitted that the petitioner was promoted on the post of Assistant Teacher w.e.f. 16.02.2008 in the pay scale of Rs. 3050-4950 whereas Km. Chandra Pandey was appointed on the post of Assistant Teacher w.e.f. 01.07.1998 in the pay scale of Rs. 3050-4950 and Smt. Sarita Sah Gangola was promoted on the post of Assistant Teacher w.e.f. 06.05.1997 in the pay scale of Rs. 3050-4950 therefore, there is no comparison between all of them and the present petitioner is not legally eligible to get the pension which was sanctioned to Smt. Sarita Sah Gangola and Km. Chandra Pandey.

4. After hearing learned Counsel for the parties at some length, the Tribunal feels it proper that the petitioner may make a detailed fresh representation along with all relevant papers to the respondent no. 2 within a period of three weeks, stating her grievances and the respondent no. 2 may take suitable decision on the same by passing a speaking and reasoned order within a period of two months thereafter.

5. Order accordingly.

6. The petitioner may make a fresh representation to the respondent no. 2 as above with the certified copy of this order within a period of three weeks from today and the respondent no. 2 may take suitable decision on the same by passing a speaking and reasoned order within a period of two months thereafter. No order as to costs.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

*DATE: JUNE 30, 2023*  
*DEHRADUN*  
*KNP*