

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

Present: Sri V. K. Maheshwari

----- Vice-Chairman (J)

&

Sri U. D. Chaube

----- Member (A)

CLAIM PETITION NO. 07/N.B./2012

Dr. Chandra Prakash, S/o Shri Ram Awatar, Associate Professor,
Commerce, Govt. Post Graduate College, Rudrapur, Udham Singh
Nagar.

.....Petitioner

VERSUS

1. State of Uttarakhand, through Chief Secretary, Department of
Higher Education, Civil Secretariat, Govt. of Uttarakhand,
Dehradun,
2. Director/Joint Director of Higher Education, Nawabi Road,
Haldwani,

3. Dr. Manoj Upreti, Lecturer (Commerce), Radhey Hari Govt. P. G. College Kashipur, Udham Singh Nagar,
4. Dr. Suchita Sah Mehta, Lecturer (Zoology), M.B. Govt. P.G. College Haldwani, Nainital,
5. Dr. Padma Singh, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
6. Dr. Ram Avatar Singh, Associate Professor, Govt. P.G. College Pithoragarh,
7. Smt. Nutan Srivastava, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
8. Smt. Aparajita, Associate Professor, Govt. Girls Degree College Haldwani, Nainital,
9. Sri Vishv Mohan Pandey, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
10. Dr. Anil Kumar Dubey, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
11. Smt. Seema Srivastava, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
12. Dr. Nimmi Pant, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
13. Shri Prashant Kumar Singh, Associate Professor, Govt. Degree College New Tehri,
14. Shri Laxmi Narayan Singh, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
15. Dr. Naresh Mohan Chaddha, Associate Professor, Govt. P. G. College Pithoragarh,

16. Sumita Srivastava, Presently, Associate Professor, Govt. Degree College Uttarkashi,
17. Dr. Shyam Bachan, Associate Professor, Govt. P.G. College Khatima, Udham Singh Nagar,
18. Dr. Daksha Joshi, Associate Professor, Govt. Degree College, Gopeshwar,
19. Dr. Girja Shankar Yadav, Associate Professor, Govt. P. G. College Rudrapur,
20. Smt. Preeti Kumari, Lecturer, Govt. Degree College Kotdwar, Pauri Garhwal,
21. Smt. Praveen Jain, Associate Professor, Govt. P. G. College Rudrapur,
22. Dr. Baikunth Nath Pandey, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
23. Shri Pankaj Kumar, Associate Professor, Govt. Degree College Dak Patthar, Dehradun,
24. Shri Yogendra Chandra Singh, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
25. Dr. V. K. Singh, Associate Professor, Govt. P. G. College Ranikhet, Almora,
26. Smt. Kalpana Pant, Associate Professor, Govt. P. G. College Rishikesh, Dehradun,
27. Smt. Prem Lata Kumari, Associate Professor, Govt. Degree College Jai Harikhal,
28. Dr. Shiv Shankar Mishra, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,

29. Dr. Usha Rani, Associate Professor, Govt. P.G. College Rudrapur, Udham Singh Nagar,
30. Dr. Basantika Kashyap, Associate Professor, Govt. P. G. College Rishikesh, Dehradun,
31. Dr. B. B. Tripathi, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
32. Dr. Chhaya Chaturvedi, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
33. Dr. Sangeeta Mishra, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,
34. Dr. Deepa Verma, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
35. Shri Sudhir Kumar Mishra, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
36. Smt. Reeta Sharma, Associate Professor, Govt. P.G. College Khatima, Udham Singh Nagar,
37. Shri P. S. Bisht, Associate Professor, Govt. P.G. College Pithoragarh,
38. Shri S. K. Singh, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
39. Dr. Ram Kumar, Associate Professor, Govt. P.G. College Pithoragarh,
40. Dr. Sangeeta Dubey, Associate Professor, Govt. Girls Degree College Haldwani, Nainital,
41. Km. Nidhi Khanna, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,

42. Dr. R. K. Mishra, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
43. Dr. Sunil Kumar, Associate Professor, Govt. Degree College Jai Harikhal,
44. Dr. Madhulika Pathak, Associate Professor, Govt. Girls Degree College Haldwani, Nainital,
45. Dr. Ajay Kumar Shukla, Associate Professor, Govt. P.G. College Pithoragarh,
46. Dr. Kamla Pant, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
47. Dr. Avadhesh Narayan Singh, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,
48. Dr. Neelam Srivastava, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
49. Shri Anand Prakash Singh, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
50. Dr. Anil Kumar Sharma, Associate Professor, Govt. Degree College Uttarkashi,
51. Shri Santosh Kumar, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
52. Shri Naveen Bhagat, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
53. Dr. Sanjay Kumar, Associate Professor, Govt. Degree College Jai Harikhal,
54. Dr. Geeta Srivastava, Associate Professor, Govt. P.G. College Khatima, Udham Singh Nagar,

55. Dr. Yogesh Kumar Sharma, Associate Professor, Govt. P.G. College Rudrapur, Udham Singh Nagar,
56. Smt. Anupama Tiwari, Associate Professor, Govt. P.G. College Kashipur, Udham Singh Nagar,
57. Dr. Preeti Dwivedi, Associate Professor, Govt. P.G. College Kashipur, Udham Singh Nagar,
58. Dr. S. P. Sati, Associate Professor, Govt. Degree College Doiwala, Dehradun,
59. Hari Om Prakash Singh, Associate Professor, Govt. P.G. College Khatima, Udham Singh Nagar,
60. Dr. Vidyadhar Pandey, Associate Professor, Govt. Degree College Rishikesh, Dehradun,
61. Dr. Manoj Upreti, Associate Professor, Govt. P.G. College Kashipur, Udham Singh Nagar,
62. Dr. Shalini Shukla, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,
63. Dr. Akhilesh Kumar Shukla, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,
64. Dr. Shiraj Mohammad, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
65. Dr. Pushpa Devi, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
66. Sanjay Kumar, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
67. Mahendra Yadav, Associate Professor, Govt. P. G. College Berinag, Pithoragarh,

68. Arun Kumar Singh, Associate Professor, Govt. Degree College New Tehri,
69. Mritunjay Kumar Sinha, Associate Professor, Govt. Degree College Jai Hari Khal,
70. Dr. Anjala Durgapal, Associate Professor, Govt. M. B. P. G. College Haldwani, Nainital,
71. Ram Narayan Pandey, Associate Professor, Govt. Degree College Narayannagar, Pithoragarh,
72. Dr. Vinay Kumar, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
73. Dr. Manoj Agarwal, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
74. Dr. R. D. Singh, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
75. Dr. Dinesh Kumar Shukla, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
76. Dr. Shushil Kumar, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
77. Dr. Vijay Prakash, Associate Professor, Govt. Degree College Rishikesh, Dehradun,
78. Dr. Muralidhar Kushavaha, Associate Professor, Govt. P. G. College Uttarkashi,
79. Dr. M. Ayub Ansari, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
80. Dr. Madhukesh Gupta, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,

81. Dr. Anjali Punera, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
82. Indrajeet Singh, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
83. Dr. Ram Sumer Yadav, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
84. D. N. Tiwari, Associate Professor, Govt. Degree College Doiwala, Dehradun,
85. Dr. Rakesh Kumar, Associate Professor, Govt. P. G. College Pithoragarh,
86. Dr. Hem Lata Mishra, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
87. Dr. Preeti Agnihotri, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
88. Dr. Lalit Mohan Tiwari, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
89. Dr. Kanchan Lata Sinha, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,
90. Dr. Mahesh Kumar, Associate Professor, Govt. P.G. College Bageshwar,
91. Dr. Atul Joshi, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
92. Dr. Satya Prakash, Associate Professor, Govt. P.G. College Lohaghat, Champawat,
93. Dr. S. K. S. Yadav, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,

94. Ravi Prakash, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
95. Pankaj Kant Singhal, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
96. Rakesh Kumar Pandey, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
97. Nimisha Saravahi, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
98. Anita Tomar, Associate Professor, Govt. Degree College Dakpatthar, Dehradun,
99. Dr. Vandana Tiwari, Associate Professor, Govt. Degree College Rishikesh, Dehradun,
100. Dr. Prabhat Dwivedi, Associate Professor, Govt. Degree College Dakpatthar, Dehradun,
101. Smt. Vidya Rai, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
102. Dr. Brijesh Kumar Pandey, Associate Professor, Govt. Mahila Degree College, Haldwani, Nainital,
103. Dr. Ram Surat, Associate Professor, Govt. Degree College Jai Harikhal,
104. Dr. Devmani Tripathi, Associate Professor, Govt. Degree College Rishikesh, Dehradun,
105. A. K. Maurya, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
106. Harish Singh Nayal, Associate Professor, Govt. P. G. College Ranikhet, Almora,

107. Ashutosh Tripathi, Associate Professor, Govt. P. G. College Ranikhet, Almora,
108. Dr. Nagendra Dwivedi, Associate Professor, Govt. Degree College Bazpur, Udham Singh Nagar,
109. Aabha Agrawal, Associate Professor, Govt. P. G. College Kahipur, Udham Singh Nagar,
110. Suresh Chandra Mamgai, Associate Professor, Govt. Degree College Uttarkashi,
111. Ashutosh Sharan, Associate Professor, Govt. Degree College Laksar, Haridwar,
112. Smt. Poonam Pathak, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
113. Dr. Mritunjai Kumar, Associate Professor, Govt. Degree College Kotdwar, Pauri Garhwal,
114. Dr. Ram Katiyar, Associate Professor, Govt. Degree College Gopeshwar, Chamoli,
115. Dr. Girish Chandra Pant, Associate Professor, Govt. P. G. College Pithoragarh,
116. Dinesh Chandra, Associate Professor, Govt. Degree College Uttarkashi,
117. Dr. Adhir Kumar, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
118. Dr. Meeta Shukla, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
119. Vinod Kumar Gupta, Associate Professor, Govt. Degree College New Tehri,

120. Dr. Ved Prakash, Associate Professor, Govt. Degree College Jai Harikhal,
121. Dr. Chhaya Rani, Associate Professor, through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
122. Dr. Nandini Singh, Associate Professor through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
123. Dr. Sanjeev Mehrotra, Associate Professor, Govt. P. G. College Ramnagar, Nainital,
124. Dr. Dinesh Sharma, Associate Professor through Director, Higher Education, Uttarakhand, Haldwani, Nainital,
125. Smt. Reeta Sachan, Associate Professor, Govt. P. G. College Kashipur Udham Singh Nagar,
126. Smt. Anupama Tewari, Associate Professor, Govt. P. G. College Kashipur Udham Singh Nagar,
127. Dr. Dinesh Pratap Singh, Associate Professor, Govt. Degree College Doiwala, Dehradun,
128. Dr. Smt. Santosh Verma, Associate Professor, Govt. Degree College New Tehri,
129. Dr. Smt. Usha Yadav, Associate Professor, Govt. P. G. College Khatima, Udham Singh Nagar,
130. Dr. Amita Chaurasiya, Associate Professor, Govt. P. G. College Kashipur, Udham Singh Nagar,
131. Prem Chandra, Associate Professor, Govt. Degree College Talwad,
132. Dr. Rajendra Singh, Associate Professor, Govt. P. G. College Rudrapur, Udham Singh Nagar,

133. Dr. Kamad Kumar, Associate Professor, Govt. P.G. College
Ramnagar, Nainital,

134. Dr. Ranjan Kumar Gupta, Associate Professor, Govt. Degree
College Rishikesh, Dehradun.

.....Respondents

Present: Sri K.N. Joshi, Advocate for the petitioner
Sri V.P. Devrani, A.P.O for the respondent Nos.
1 & 2
None for the private respondent Nos. 3 to
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JUDGMENT

DATE : 04-06-2015

DELIVERED BY SRI V. K. MAHESHWARI, VICE-CHAIRMAN (J)

In this claim petition, the petitioner has sought the relief of re- determination of his seniority.

2. The facts as have been narrated in the petition are that the petitioner was selected for the post of Lecturer (Commerce), Higher Education in a special drive for recruitment of O.B.Cs through Uttar Pradesh Public Service Commission on 24.09.1997. Consequently, appointment letter was issued by the concerned authority on 21.08.1998. The petitioner had, thereafter, joined on the post of Lecturer (Commerce) in the Government Post Graduate College, Rudrapur, District Udham Singh Nagar on 11.09.1998.

Since then, he has been serving continuously and regularly on the said post.

3. It is further stated that in the year 1998, an advertisement was also made for the special recruitment of Lecturers for the Hill Sub-Cadre meant for the hill areas in the erstwhile State of Uttar Pradesh which has become part of Uttarakhand after its creation. The petitioner had also applied for the said post and was also selected, but as the petitioner had already joined on the basis of selection made earlier, the petitioner did not join in the Hill Sub-Cadre. It is further stated that after creation of the State of Uttarakhand, the petitioner continued to serve in the State of Uttarakhand. It is further stated that first seniority list of the Lecturers working in the State of Uttarakhand was issued in the year 2003 and thereafter, seniority lists were issued again on 27-07-2009 and 14-10-2011. In all these lists, the petitioner has been shown to have been appointed against the vacancies in Hill Sub-Cadre which is totally wrong as the petitioner had never joined against any vacancy in Hill Sub-Cadre. It is further stated that his name has not been shown at the proper place in the seniority lists as he is placed treating him to have been appointed in Hill Sub cadre. In fact, his seniority should have been reckoned from the date of his initial appointment which has not been done. The petitioner had made several representations on 07-07-2009, 10-07-2009, 29-01-2011 and 27-08-2011, but all his representations have

been dismissed without considering these in proper perspective and the petitioner has been treated to have been selected against the vacancy in Hill Sub-Cadre. It is further stated that the respondent no. 4 Dr. Suchita Sah Mehta, Lecturer (Zoology) was selected against the vacancy in the Hill Sub-Cadre and joined on 04-01-1999. The respondents illegally and arbitrarily have shown her to be senior to the petitioner, ignoring the fact that the petitioner was selected earlier and had also joined on 11.09.1998. It is further stated that the respondent nos. 5 to 134 are also junior to the petitioner. Thus, it is prayed that the petitioner be placed at Serial No. 175 instead of at Sl. No. 309, i.e., above Dr. Suchita Sah Mehta respondent No. 4 in the seniority list and the seniority list dated 14-10-2011 be rectified to that extent.

4. Initially, the petitioner had challenged the seniority list before the Hon'ble High Court of Uttarakhand at Nainital which was dismissed on the ground of availability of the alternative remedy before this Tribunal. Hence this petition.

5. Petition has been opposed on behalf of the respondent nos. 1 & 2 i.e. State of Uttarakhand and Director/Joint Director of Higher Education, Uttarakhand and it has been admitted that the petitioner was selected through Public Service Commission, Uttar Pradesh to the post of Lecturer (Commerce) and was appointed in Govt. P.G. College, Rudrapur as Lecturer (Commerce) vide its

Order No. 883/सत्तर-5-98-70 (167)/97 dated 21 August, 1998 and he had joined on the said post on 11-09-1998.

6. It has further been stated that petitioner had also applied for the post of lecturer in Hill Sub-Cadre and was also selected and appointment letter No. 4419/सत्तर-5-98-70 (65)/98 dated 14 December, 1998 was also issued. The petitioner was asked to join as Lecturer (Commerce) in Govt. P. G. College, Rudrapur, but the petitioner did not join against that order.

7. It has further been stated that the petitioner continued to be a lecturer of plain cadre and had never been a member of Hill Sub-Cadre. After creation of the State of Uttarakhand, the Lecturers/Teachers and Principals belonging to Hill Sub-Cadre were merged in the cadre of newly created State whereas the Teachers/Principals belonging to plain cadre and working in the State of Uttarakhand were relieved for State of Uttar Pradesh. Accordingly, the appointment of the petitioner was in plain cadre but has not been relieved so far to the State of Uttar Pradesh. As he belongs to the plain cadre, his name should not have appeared in the seniority list in the State of Uttarakhand.

8. It has further been stated that in order to examine the matter, a three Members' Committee was constituted by the Directorate of Higher Education (Uttarakhand) and the said Committee had

submitted its recommendation on 15-01-2013. Committee in its report stated that only those teachers who were in Hill Sub-Cadre in the State of Uttar Pradesh have been included in the seniority list. Committee also found that the name of the petitioner has been included in the list of Teachers/Principals of Hill Sub-Cadre prepared in the erstwhile State of Uttar Pradesh despite his appointment being for general cadre. In view of the said controversy, the Committee recommended to seek clarification from the State of Uttar Pradesh as to how the name of the petitioner has been included in the cadre of Hill Sub-Cadre. The Committee further recommended that an official be sent to the Directorate of Higher Education, Uttar Pradesh, Allahabad for the said clarification. Therefore, Assistant Director was sent to Directorate of Higher Education, Allahabad for seeking the said information but no information was made available to him. The matter was also taken up with the concerned Secretary, State of Uttar Pradesh, but nothing has been done till date and as soon as controversy is resolved suitable action will be taken.

9. Petition has not been opposed on behalf of any of the private respondents.

10. No rejoinder affidavit has been filed by the petitioner.

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

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

(A) that the petitioner was selected for the post of Lecturer (Commerce) by Public Service Commission, Uttar Pradesh in a special drive for recruitment of Lecturer in O.B.C. quota in the year 1997-98 and appointment letter was issued to him on 21-8-1998 (copy of the appointment letter has been filed as Annexure 1). On the basis of aforesaid appointment letter the petitioner had joined on 11-09-1998 on the post of Lecturer (Commerce) in Govt. P. G. College, Rudrapur, District Udham Singh Nagar (copy of charge certificate has been as Annexure 3).

(B) that the petitioner had also applied for the post of Lecturer (Commerce) in the Hill Sub-Cadre and he was selected and appointment letter was issued to him on 14-12-1998 but the petitioner did not join against this selection.

(C) that the petitioner after joining in Govt. P. G. College Rudrapur, District Udham Singh Nagar on 11-9-1998 has been continuing on the said post even after the creation of State of Uttarakhand.

13. It is further admitted that the name of the petitioner has been placed below the members of Hill Sub-Cadre in the seniority list after creation of the State of Uttarakhand which is under challenge.

14. Now, the question is, as to whether the petitioner is entitled for seniority from the date of his initial appointment or he should be placed below the members of Hill Sub-Cadre in the seniority list. In this regard, it is relevant to mention that the petitioner was selected and appointed in the plain cadre and was appointed in Govt. P. G. College, Rudrapur, District Udham Singh Nagar and since then he is serving there.

15. Till date, he has not been relieved for the State of Uttar Pradesh. It is also clear from the version of the respondents that the matter of the petitioner was taken up at the Secretary level, but nothing has been finally done. Though we are not touching the question of allocation as it is not within the purview of the jurisdiction, but the position as on today is that the petitioner is continuously working in the State of Uttarakhand and his name has also been included in various seniority lists issued in the year 2003, 2009 and 2011, therefore, the petitioner will be deemed to be a member of the cadre in the State of Uttarakhand, so long as his name appears in the seniority lists of the State of Uttarakhand and he is in service in the State of Uttarakhand. It is also evident from the record that the appointment of the petitioner was in accordance with the rules and was substantive in nature.

16. Under the above circumstances, the question remains as to at what place the seniority of the petitioner be fixed. The respondents have fixed the seniority of the petitioner below the Lecturers who were appointed against the vacancies in Hill Sub-Cadre. In this regard, the decision on the representation of the petitioner passed by the Director, Higher Education which is communicated vide the letter dated 28-02-2011 is relevant ((copy Annexure 7). The relevant portion of the letter is quoted as under:-

“डा० चन्द्र प्रकाश का चयन लोक सेवा आयोग, उत्तर प्रदेश, इलाहाबाद द्वारा सूचना दिनांक 30.4.1998 के माध्यम से पर्वतीय उप संवर्ग के तहत किया गया था। उत्तर प्रदेश राज्य के अ०शा० पत्र संख्या-1156/दिनांक 03 जुलाई, 2003 के अनुसार उत्तरांचल राज्य में कार्यरत पर्वतीय उपसंवर्ग के प्राचार्यों एवं प्रवक्ताओं की सूची में डा० चन्द्र प्रकाश का नाम क्रमांक 179 पर अंकित हैं। सामान्य संवर्ग के उत्तराखंड राज्य में कार्यरत उत्तर प्रदेश शासन द्वारा तत्समय उपलब्ध करायी गयी सूची में डा० चन्द्र प्रकाश का नाम अंकित नहीं हैं। यहाँ यह अवगत कराना भी समीचीन होगा कि प्राचार्य, राजकीय स्नातकोत्तर महाविद्यालय, रुद्रपुर के पत्रांक-08/विकल्प/2002-03 दिनांक 12.06.2002 में स्पष्ट उल्लेख किया गया है कि डा० चन्द्र प्रकाश, प्रवक्ता वाणिज्य द्वारा उत्तर प्रदेश राज्य हेतु विकल्प महाविद्यालय से निदेशालय, उच्च शिक्षा, उ०प्र०, इलाहाबाद को अग्रसारित किये गये हैं। स्पष्टतः डा० चन्द्र प्रकाश को यह ज्ञात है कि वे पर्वतीय उपसंवर्ग के तहत ही कार्यरत थे अन्यथा उत्तर प्रदेश राज्य हेतु इनके विकल्प परिवर्तन का प्रश्न ही नहीं उठता और न एतद् इनके आवेदन को महाविद्यालय से उच्च शिक्षा निदेशालय, उ०प्र०, इलाहाबाद को अग्रसारित किया जाता।

इस प्रकार वरिष्ठता सूची में इनकी वरिष्ठता का निर्धारण पर्वतीय उपसंवर्ग के तहत किये गये चयन में इनकी मैरिट क्रमांक के आधार पर किया गया है।”

The above decision reveals that the petitioner has been treated to be a member of Hill Sub-Cadre whereas we have clearly mentioned that the petitioner was appointed in general cadre and he had never reported his joining as a member of Hill Sub-Cadre, therefore, treating the petitioner to be a member of Hill Sub-Cadre and determination of his seniority in accordance with that cannot be held justified. Thus, the petitioner has never been a member of Hill Sub-Cadre; therefore, his seniority cannot and should not be determined in Hill Sub-Cadre. In fact, the seniority of the petitioner should have been determined from the date of his substantive appointment from which date he has been continuously in service irrespective of allocation of plain cadre or hill cadre. It has not been made clear by the respondents as to how the petitioner was treated to be a member of the Hill Sub- Cadre. In this context, it has also been contended on behalf of the respondents that the petitioner should have been relieved for the State of Uttar Pradesh as he belongs to plain cadre. But this contention of the respondents bears no force as the petitioner is still continuously serving in the State of Uttarakhand and his name has been included in the seniority list in the State of Uttarakhand. So it is not proper to contend again and again that the petitioner belongs to general or plain cadre. It is also important to mention

that the State itself is not clear about the position of the petitioner. In this regards the paragraph of the counter of the respondents is worth mentioning, which reads as follows:-

“7. That regarding the contents of paras 4 (6) to 4 (9) of the Claim Petition, it is stated in order to examine the matter a three Member Committee was constituted by the Directorate of Higher Education, Uttarakhand and the said Committee submitted its recommendations/report on 15 Jan., 2013. The Committee in its said report dated 15-01-2013 stated that the seniority list of teachers in Higher Education Department includes the names of only those teachers who belong to Hill Sub-Cadre in erstwhile Uttar Pradesh. The Committee also found that the name of the petitioner is included in the list of teachers/principals of Hill Sub-Cadre prepared in erstwhile Uttar Pradesh despite his appointment being for general cadre. In view of the said controversy, the Committee recommended that a clarification should be sought from Uttar Pradesh Govt. as how the name of the petitioner has been included in the list of teachers of Hill Cadre. The Committee also recommended that an official should be sent to the Directorate of Higher Education of Uttar Pradesh, Allahabad to obtain desired information. Accordingly, one Assistant Director was sent to Directorate of Higher Education, Allahabad to enquire into the matter, but no information could be made available by them in the

matter. It is also stated in this connection, that the matter has also been taken up with the Secretary, Higher Education, Uttar Pradesh vide letter dated 16 Feb 2013. It is also pertinent to mention that in the interest of justice it will be proper to arrive at a decision only after the completion of investigation.”

Thus, it becomes abundantly clear that the answering respondents are not finally in a position to clarify the position of the petitioner. The actual position emerges from the facts available on the record that the petitioner was appointed against the substantive post on 21.08.1998 after observing the prescribed procedure and rules. Since then, he is serving at the same post continuously. The petitioner has never reported his joining as a member of the Hill Sub-Cadre. So, the determination of his seniority on the basis of selection for the post of Lecturer in Hill Sub-Cadre cannot be held justified in any circumstance. It is settled principle of service jurisprudence that seniority of any employee is to be reckoned from the date of his substantive appointment and there is no justification for de-recognition of the length of service rendered by the petitioner. Hence, so long as the petitioner is deemed to be an incumbent of State of Uttarakhand his seniority is to be reckoned from the date of substantive appointment. As we have mentioned earlier that we are not going into the question of allocation of State Cadre to the petitioner as to

whether he should be finally treated to be a member of Uttarakhand State Cadre or he should be finally treated to be a member of Uttar Pradesh State Cadre but so long as the petitioner remains serving in the State cadre of Uttarakhand, his seniority of service cannot be put to such disadvantage which has been challenged in this petition. So, the seniority of the petitioner should be fixed from date of his substantive appointment. Therefore, the present seniority list cannot be sustained and it requires modification to that extent. The petition, therefore, deserves to be allowed.

ORDER

The petition is hereby allowed. The respondent nos. 1 & 2 are directed to re-determine the seniority of the petitioner treating him to have been appointed on 21-08-1998. The seniority list be modified to that extent within a period 4 months from today. The petitioner shall also be entitled consequential benefits, if any as per rules. No order as to costs.

Sd/-

U.D. CHAUBE
MEMBER (A)

Sd/-

V.K.MAHESHWARI
VICE-CHAIRMAN (J)

DATE : 04-06-2015

B.K.