

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

Present: Hon'ble Mr. Rajendra Singh

-----Vice Chairman (J)

CLAIM PETITION NO. 63/NB/SB/2023

Yatish Pant, s/o Late Sri Anand Ballabh Pant, r/o Geeta Sadan,
Bhagwanpur Jai Singh, post Katgharia, Haldwani, District Nainital.

..... **Petitioner**

vs.

1. State of Uttarakhand through the Secretary, Agriculture, Govt. of Uttarakhand, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Dehradun.
3. Director, Agriculture, Directorate of Agriculture, Prem Nagar, Dehradun.
4. Joint Director, Agriculture, Kumaon Mandal, Haldwani, District Nainital.
5. Director, Treasury, Pension and Entitlement, Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun.
6. Additional Director, Treasury, Pension and Entitlement, Camp Office, Haldwani.

.....**Respondents**

Present: Sri Tribhuvan Chandra Pandey, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: MAY 03, 2024

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

"I. To issue an order to quash the letter/order No. letter/order No. 438/श्रीकाकोपेहो/आईडीओ-7006938 dated 06.07.2022 issued by the respondent no. 6 whereby the claim of the petitioner to count the ad-hoc service rendered by the petitioner with his regular service for pensionary benefit has been rejected (Annexure no. 1).

II. To issue an order directing the respondent authorities to re-fix the pension of the petitioner by counting the ad-hoc service rendered from 27.05.1986 to 27.07.1996 with his regular service and further

direct to pay all consequential retiral benefits including arrears of gratuity and commutation with penal rate of interest.

III. An order or direction allowing the application with cost.

IV. Any other order or further order or direction which this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case in favour of the applicant."

2. The facts according to the claim petition are briefly, as under:

2.1 The petitioner was appointed as Junior Statistical Inspector on ad-hoc basis vide order dated 16.05.1986, who joined the office of District Magistrate, Almora on 27.05.1986. Considering eight years' continuous service of the petitioner in adhoc post, he was given an increment from 01.03.1995 vide order dated 23.12.1995. The petitioner's services were regularized on the same post vide order dated 27.07.1996. Petitioner was promoted on the post of Additional Statistical Officer Group-I in the pay scale of Rs. 5000-150-8000/- vide order dated 04.01.2005. He was further promoted on the post of Assistant Director, Statistics in the pay scale of Rs. 15600-39100 Grade Pay of Rs. 5400 (revised to Rs. 56100-1,77,500).

2.2 On attaining the age of superannuation, petitioner retired from his service on 30.06.2021 from the post of Assistant Director, Statistics, while working in the office of Joint Director, Agriculture, Kumaon Mandal, Haldwani. After retirement of the petitioner, respondent department did not pay any retiral benefits to the petitioner and raised unwarranted objections that only 25 years' regular service of the petitioner is qualifying service for his pensionary benefits. The respondent without any justification ignored 10 years' 2 months adhoc service of the petitioner, which is qualifying service for the pensionary benefits.

2.3 The petitioner made representation to the respondent no. 6 against the objections on 28.10.2021. The respondent no. 6 had issued an order/letter dated 06.07.2022 that as per the Uttarakhand Retirement Benefits Act, 2018 and Govt. Order No. 60 (Finance Department) dated 05.06.2018, the service rendered by the petitioner in adhoc service is not qualifying service for pension and claim of the petitioner was rejected. On the basis of the letter dated 06.07.2022, the respondent no. 4 fixed the pension of the petitioner on 02.08.2022 only counting the regular service of petitioner since 27.07.1996.

2.4 Learned Counsel for the petitioner submitted that petitioner was appointed against a substantive vacancy on ad-hoc basis and after regularization, he had continuously served the Department and given all admissible benefits since his ad-hoc service. Thus, the total length of service of the petitioner is 35 years, but the respondent authorities have only counted the service of the petitioner since the date of his regularization. In some department of the State, the similarly situated persons have been given the pensionary benefits by counting their ad-hoc service as qualifying service for pension but in the case of the petitioner, the respondent authorities have taken distinct and discriminatory view. In the respondent department, one Shri Bhuwan Chandra Singh who was appointed with the petitioner and never promoted and now getting more pensionary benefits than the petitioner. Similarly, Shri Prabhyash Mandal, Sri Deepak Kumar Rana and Sri Chandan Singh Adhikari have been regularized in the year 2002 and they have been given the benefit of their ad-hoc service and received higher pensionary benefits than the petitioner.

2.5 Ad-hoc services rendered by the petitioner are not included in the qualifying services, while other similarly placed persons have been given benefit of such ad-hoc services for the purpose of calculation of pension. One Mr. Vijendra Pal Dwivedi filed WPSS No. 3669 of 2018 before Hon'ble High Court, which writ petition was allowed by the Hon'ble Court on 29.07.2019, with a mandamus to the respondents to pay full pension to Mr. Vijendra Pal Dwivedi, after including ad-hoc services (Copy of order dated 29.07.2019 is enclosed as Annexure: 09 to the claim petition). Against the order of Hon'ble Court dated 29.07.2019, State Respondents filed Special Appeal No. 100 of 2020 & other Special Appeals, which were dismissed on 04.08.2020. Thereafter, State of Uttarakhand filed SLP No. 18806 of 2021 before Hon'ble Supreme Court, which has also been dismissed vide order dated 20.05.2022.

3. C.A./W.S. has been filed on behalf of respondents no. 5 & 6. It is submitted in the C.A./W.S. that the petitioner rendered regular service from 27.07.1996 to 30.06.2021, which comes to 25 years' qualifying service for the purpose of calculation of pension and other retiral dues. Petitioner's retiral benefits have been determined in view of the Section 4 of the Uttarakhand Retirement Benefits Act, 2018.

4. C.A./W.S. has been filed on behalf of respondents no. 1, 3 and 4, stating therein that as per the Uttarakhand Retirement Benefits Act, 2018, the adhoc services of the petitioner are not qualifying service for the purpose of pension. The petition is devoid of merits and is liable to be dismissed.

5. R.A. has also been filed by the petitioner against the C.A./W.S. filed on behalf of the respondents, reiterating the same facts as have been mentioned in the claim petition.

6. I have heard learned Counsel for the parties and perused the material available on record.

7. It is the submission of Ld. Counsel for the petitioner that the matter is squarely covered by the decision rendered by Hon'ble High Court in WPSS No. 2159 of 2018, Govind Ram Arya vs. State of Uttarakhand & others, on 28.09.2020, which reads as under:

“.....

Having considered the submission of learned counsel for the parties and having perused the judgment dated 29.07.2019 passed in WPSS No.3669 of 2018, this Court is satisfied that the case of the petitioner is squarely covered by the judgment dated 29.07.2019. Accordingly, the writ petition is allowed. The impugned order dated 05.06.2018 is quashed. The respondents/ competent authority is directed to re-fix the pension of the petitioner after counting the service rendered by him on ad-hoc basis and respondents shall also pay all consequential benefits after re-fixation of his pension.

Pending applications stand disposed of accordingly.”

8. It will also be appropriate to reproduce the decision rendered by Hon'ble High Court in WPSS No.3669 of 2018, Vijendra Pal Dwivedi v. State of Uttarakhand and others, dated 29.07.2019, as below:

“.....

Perusal of the averment made in the counter affidavit would reveal that the services rendered by other similar situated persons have been counted for grant of the benefit of pension whereof in the case of the petitioner, same principle has not been followed. Perusal of the averment made in the counter affidavit as well as rejoinder affidavit would further reveal that the service rendered by petitioner on ad-hoc basis between the period from 05.04.1991 to 08.05.2002 has not been counted at the time of fixation of his pension and subsequently, the pension of the petitioner was assumed Rs. 41,650/- but surprisingly his pension was reduced to Rs. 33,320/-. Perusal of

the counter affidavit would further reveal that services of the similarly appointed lecturers, who were appointed on adhoc basis for the benefit of pension and other consequential benefits have been counted whereof the petitioner has been discriminated for the same benefit, therefore, action of respondents in non-granting the benefit to the petitioner is discriminatory in nature.

It is settled position in law that all the employees, who are similarly situated should be treated equally and such a classification for the purpose of grant of pension and other service benefit is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off-date for extension of benefits especially pensionary benefits. The Hon'ble Apex Court in the case of Secretary, Minor Irrigation Department and others vs. Narendra Kumar Tripathi reported in (2015) 11 SCC 80 has held that determination of seniority of service rendered on ad-hoc basis be considered equally. Since, the petitioner was appointed against a substantive vacancy on adhoc basis and after regularization had continuously served the Department.

In view of the above, the writ petition is allowed. Respondent/competent authority is directed to re-fix the pension of the petitioner after counting the service rendered by him on adhoc basis and respondent shall also pay all the consequential benefit after re-fixation of his pension.”

9. It will also be relevant to reproduce the decision rendered in Special Appeal No. 129 of 2021, State of Uttarakhand and others vs. Govind Ram Arya, dated 05.04.2021, as below:

“The State has challenged the legality of the order dated 28.09.2020, passed by a learned Single Judge, in Writ Petition (S/S) No. 2159 of 2018, whereby the learned Single Judge has directed the State to re-fix the pension of the petitioner, after counting the service rendered by him on ad hoc basis. The learned Single Judge has also directed the respondents to pay all consequential benefits to the petitioner after re-fixation of his pension.

2. *For the sake of convenience, the parties shall be referred to as arrayed in the writ petition.*

3. *Briefly the facts of the case are that in 1984, the petitioner was appointed as a Fitter in Khadi and Gramodhyog Board, Woolpatti, Almora, Uttar Pradesh. On 04.05.1988, on the basis of the Selection Committee's recommendation, the petitioner was appointed on the post of Production Manager / Incharge (a Class-III post) in the pay-scale of Rs. 515-860. The said selection was on ad hoc basis. The petitioner joined the said post on 17.05.1988. With creation of the State of Uttarakhand on 09.11.2000, the petitioner's services were transferred to Uttarakhand on 02.12.2000, along with 164 employees of the Industries Department. The petitioner was placed at Serial No. 90 of the Allotment List. He continued to function as a Production Manager/Incharge Udhog Centre, Almora. Subsequently, by order dated 18.04.2006, the petitioner's services were regularized on the post of Production Manager with effect from 05.07.2002 in the pay*

scale of Rs. 4500-7000. After completing twenty-nine years of service, the petitioner retired from the service on 31.05.2017.

4. Having retired on 02.11.2017, the petitioner sent a representation to the Chief Treasury Officer, Almora requesting him to grant him the benefit of the ad hoc service rendered by him, and to combine the same with his regular service before calculating his pension. By letter dated 10.10.2017, the Additional Director, Industries, Uttarakhand, also recommended that for the purposes of calculating the petitioner's pension, his entire service career from 17.05.1988 to 31.05.2017 should be taken into account. Furthermore, by letter dated 19/20.01.2018, the Chief Treasury Officer, Almora, the respondent No. 7, wrote to the General Manager, District Udhog Kendra, Almora, to decide the petitioner's matter regarding grant of pensionary benefits on the basis of the letter dated 11.01.2018 issued by the Director, Treasury, Pension and Entitlement. Again on 06.02.2018, the Director, Industries, sent a letter to the Director, Treasury, Pension and Entitlement, clearly stating that the petitioner's entire service from 17.05.1988 onwards should be counted for the pensionary benefits. But by letter dated 05.06.2018, the Secretary, Finance, Uttarakhand, informed the Director, Treasury, Pension and Entitlement, Uttarakhand, the respondent No.8, that the petitioner is not entitled to have his ad hoc services calculated for the purpose of calculating the pensionary benefits. On the basis of the said letter, on 19.06.2018, the Director, Treasury, Pension and Entitlement, Uttarkhand, the respondent No. 8, informed the Director, Industries, that the petitioner's ad hoc service could not be included for the purpose of calculating the pensionary / retiral benefits.

5. Since the petitioner was aggrieved by the letters dated 05.06.2018 and 19.06.2018, he filed a writ petition before the learned Single Judge. The learned Single Judge allowed the writ petition, in the aforementioned terms, by the order dated 28.09.2020.

6. According to the impugned order dated 28.09.2020, the Deputy Advocate General conceded the fact that the issue whether the petitioner would be entitled to have his ad hoc service included for the purpose of calculating his pensionary / retiral benefits, or not, was settled by this Court by its judgment dated 29.07.2019 in Writ Petition (S/S) No. 3669 of 2018, Vijendra Pal Dwivedi vs. State of Uttarakhand. In the said case, this Court noticed the fact that similarly situated persons, i.e. other lecturers, who were appointed, their ad hoc services were counted for the purpose of calculating pension and other consequential benefits. However, the said benefit was denied to the petitioner therein. Therefore, this Court directed that the benefit of including the ad hoc service could not be denied to the petitioner therein. On the basis of the said judgment, the learned Single Judge, in the present case, directed the respondents to re-fix the petitioner's pension after counting the service rendered by him on ad hoc basis. The learned Single Judge also directed the respondents to pay all consequential benefits after re-fixation of his pension.

7. This Court has raised a specific query to the learned counsel for the State with regard to the finality of the order dated 29.07.2019, passed by the learned Single Judge, in Writ Petition (S/S) No. 3669 of 2018 (Vijendra Pal Dwivedi vs. State of Uttarakhand and others). The learned counsel for the State has frankly conceded that the judgment

of the learned Single Judge in the case of Vijendra Pal Dwivedi (supra) was challenged by the State in Special Appeal No. 100 of 2020 (State of Uttarakhand and others vs. Vijendra Pal Dwivedi). By judgment dated 04.08.2020, a learned Co-ordinate Bench has dismissed the Special Appeal, and confirmed the order passed by the learned Single Judge.

8. *This Court has also asked the learned counsel for the State whether an appeal would lie against a consensual order. For, in the present case, it is the Deputy Advocate General for the State, who had conceded before the learned Single Judge that the issue in the present case is squarely covered by the judgment dated 29.07.2019 passed in the case of Vijendra Pal Dwivedi (supra). The learned counsel has frankly conceded, and in the opinion of this Court rightly so, that an appeal does not lie against a consensual order. Therefore, the present appeal filed by the State is highly misplaced.*

9. *For the reasons stated above, this Court does not find any merit in the present appeal. It is, hereby, dismissed.*

10. *In sequel thereto, pending application, if any, also stands disposed of.*

11. *No order as to costs."*

10. This Tribunal is of the opinion that the case of the petitioner is squarely covered by the aforesaid decisions of the Hon'ble High Court of Uttarakhand. This Tribunal is satisfied that the case of the petitioner is squarely covered by the aforesaid judgment dated 29.07.2019.

11. The petition is, accordingly, disposed of with a direction to the Respondent Department to re-fix the retiral dues of the petitioner after counting the service rendered by him on ad-hoc basis and respondents shall pay the additional amount due to him without unreasonable delay. No order as to costs.

RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 03, 2024
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KNP