

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

CLAIM PETITION NO. 131/SB/2023

Dr. Dinesh Chandra Dhyani, aged about 75 years, s/o Late Sri Rameshwar Sharma, Retired Additional Director, Medical Health and Family Welfare Department, Uttarakhand, presently r/o House No. 09/11, Circular Road, Dalanwala, Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare Department, Govt. of Uttarakhand, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.

.....Respondents

Present: Sri Bhagwat Mehra & Sri Abhijay Singh Panwar, Advocates,
for the petitioner. (online)
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JULY 04, 2024

Justice U.C.Dhyani (Oral)

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

“A To set aside the impugned order dated 07-04-2022 passed by the Respondent No. 1, in so far as it provides for notional benefit only, as well as the modification/consequential order dated 03-01-2023 passed by the

Respondent No. 2 (Annexure No. 1 and 2 respectively to the Compilation No. 1).

B. To direct the Respondents to grant similar benefits to the petitioner as have been granted to similarly situate persons vide order dated 17-07-2018 (Annexure No. 5 to the Compilation No. II), in view of judgment dated 09-11-2017 rendered by Division Bench of Hon'ble Uttarakhand High Court (Annexure No. 4 to the Compilation No. II).

C. To issue an order or direction directing the Respondents to give all consequential benefits to the petitioner.

D. To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E. Award the cost of the Claim petition in favour of the petitioner."

2. The claim petition is supported by the affidavit of petitioner. Relevant documents have been filed along with the claim petition.

3. The claim petition has been contested by respondents. Counter Affidavit has been filed by Dr. Ajit Mohan Johari, Joint Director, Medical Health and Family Welfare, Uttarakhand, Dehradun, on behalf of Respondents No. 1 & 2.

4. This is second round of litigation between the parties. Description of first round appears to be necessary for deciding the second round. They are non-segregable. In the first round, Claim Petition No.87/NB/DB/2020 was decided by this Tribunal on 10.08.2021, as follows:

“ By means of present claim petition, the petitioner, *inter alia*, seeks to direct the respondents to grant those benefits to the petitioner, which have been given to similarly situated persons *vide* order dated 17.07.2018 (Annexure No. 3), in view of the judgment dated 09.11.2017, passed by the Hon'ble High Court and to give all consequential benefits to him.

2. At the very outset, learned Counsel for the petitioner, Sri Bhagwat Mehra submitted that the controversy in hand has been decided by the Division Bench of Hon'ble High Court of Uttarakhand, while deciding Writ Petition (S/B) No. 333 of 2014, Dr. Ratnesh Kumar & others vs. State of Uttarakhand & others *with* Writ Petition (S/B) No. 316 of 2015, Dr. Madhwa Nand Joshi vs. State of Uttarakhand & others, on 09.11.2017.

3. Learned A.P.O. fairly conceded that present claim petition can be decided in terms of the decisions rendered by Hon'ble High Court in Dr. Ratnesh Kumar and Dr. Madhawa Nand Joshi (*supra*).

4. It will be quite appropriate for this Tribunal to reproduce relevant paragraphs of Dr. Ratnesh Kumar's decision (*supra*), as below:

.....

5. Since the facts and relief sought for by the petitioner, in the instant claim petition, is squarely covered by the decisions, rendered by Hon'ble High Court of Uttarakhand in Dr. Ratnesh Kumar and Dr. Madhwa Nand Joshi (*supra*), therefore, present claim petition is decided in terms of Writ Petition (S/B) No. 333 of 2014, Dr. Ratnesh Kumar & others vs. State of Uttarakhand & others *with* Writ Petition (S/B) No. 316 of 2015, Dr. Madhwa Nand Joshi vs. State of Uttarakhand & others, decided on 09.11.2017.

6. It is pointed out by learned Counsel for the petitioner that the Govt. has already taken a decision on the representations of Dr. Ratnesh Kumar and Dr. Madhwa Nand Joshi, *vide* G.O. No. 1143/XXVIII-2/18-09(63)2014 dated 17.07.2018.

7. It is also pointed out by learned Counsel for the petitioner that *vide* G.O. No. 1257/XXVIII-1/19-02(460)2004 dated 10.10.2018, the Under Secretary to the Govt. has raised certain queries and has desired Director General, Medical, Health and Family Welfare to furnish certain informations to the Govt. in respect of 7 Medical Officers, including the petitioner, whose name figures at Sl. No. 5, in the box of such letter.

8. **Claim petition is, accordingly disposed of, in terms of Writ Petition (S/B) No. 333 of 2014, Dr. Ratnesh Kumar & others vs. State of Uttarakhand & others *with* Writ Petition (S/B) No. 316 of 2015, Dr. Madhwa Nand Joshi vs. State of Uttarakhand & others, decided on 09.11.2017, by directing the first respondent, to take decision into the grievance of the petitioner, within a reasonable time, but not later than 8 weeks from the date of production of certified copy of this judgment along with representation."**

5. Representation of the petitioner was rejected by Respondent No.1, which order (dated 07.04.2022) is impugned in present claim petition (Annexure: 1). The aforesaid judgment rendered by this Tribunal on 10.08.2021 has bearing on the merits of present claim petition.

6. It is the submission of Sri Bhagwat Mehra, Ld. Counsel for the petitioner that despite clear directions of the Tribunal, respondent department has not given the benefit to the petitioner which (benefit) was given to the similarly situated persons in the light of decision rendered by Hon'ble High Court on 09.11.2017 in WPSB No. 333/ 2014, Dr. Ratnesh Kumar and 29 others and WPSB No. 316/2015, Dr. Madhawanand Joshi vs. State of Uttarakhand and others.

7. In reply, Ld. A.P.O. submitted that the decision of Dr. Ratnesh Kumar's case was considered while passing impugned order dated 07.04.2022. Ld. A.P.O. drew attention of the Bench towards para 5 of the order impugned (Annexure: 1) to submit that judgment of the Hon'ble High Court was considered while passing the impugned order, details of which have been given in para 4 of the same.

8. Contradicting the arguments of Ld. A.P.O., Ld. Counsel for the petitioner drew attention of the Bench towards G.O. dated 17.07.2018 (Annexure: 5), which was issued in respect of similarly situated persons in compliance of the order of Hon'ble High Court dated 09.11.2017. He submitted that petitioner's case is squarely covered by the judgment rendered by Hon'ble High Court and when similarly situated persons have been given some service benefit, the petitioner is also entitled to get such benefit.

9. Again Ld. A.P.O. made an endeavour to defend the impugned order by arguing that the words used in the G.O. are 'from the date of notional promotion', which is 01.05.1990 in case of petitioner, whereas it was 01.01.1990 in case of other persons. Ld. A.P.O. submitted that Selection grade / pay scale Rs.14300-18300/- is admissible to those medical officers of PMHS cadre who were in the pay scale of Rs.12000-16500 on 01.01.1990 as per the condition of G.O. dated 01.02.2006, whereas the date of notional promotion of petitioner on the post of Joint Director was 01.05.1990. Hence the pay scale of Rs.12000-16500/- was granted notionally to the petitioner *w.e.f.* 01.05.1990 not from 01.01.1990. Moreover this benefit was admissible to the PHMS Cadre up to 31.03.2021 only.

10. The Bench is unable to subscribe to such submission of Ld. A.P.O. on the grounds that, firstly, it is an artificial distinction which does not appear to have nexus with the object sought to be achieved and secondly, when similarly situated persons were given some benefit on the basis of a decision rendered by Hon'ble High Court on 09.11.2017, the petitioner cannot be denied such benefit and cannot be subjected to discrimination. It would be in the interest of justice to ignore artificial distinction of dates (01.01.1990 and 01.05.1990), which appears to have no nexus with the object for which the G.O. was issued .

11. Genesis of G.O. dated 17.07.1018, which was issued after due consideration with the Finance Department, may be traced to judgment

dated 09.11.2017 passed by Hon'ble High Court of Uttarakhand in WPSB No. 333/ 2014 and connected writ petition, which is also based on certain decisions of Hon'ble Supreme Court, latest being of Dr. Chandra Prakash and others vs. State of U.P. and others, reported in (2002) 10 SCC 710.

12. It will be apposite to reproduce relevant paragraphs of WPSB No. 333/ 2014, Dr. Ratnesh Kumar and others vs. State of Uttarakhand and others along with connected writ petition, herein below for convenience:

"3. Briefly put, the case of the petitioners is as follows:

Petitioners were appointed as Medical Officers in the State of U.P. There is reference to litigation at three stages in regard to the seniority and appointments of Doctors. The first case was with regard to the judgment in the matter of State of U.P. Vs. Dr. H.C. Mathur (SLP No. 13840 of 1992, decided on 24.11.1992). Secondly, it was followed by the decision in the matter of State of U.P. & others Vs. Dr. R.K. Tandon & others reported in (1996) 10 SCC 247. Lastly, there is a decision in the matter of Dr. Chandra Prakash and others Vs. State of U.P. and others reported in (2002) 10 SCC 710. The Hon'ble Supreme Court disposed of Dr. Chandra Prakash's case with the following directions:

"48. We accordingly allow the writ petitions and declare that (1) the writ petitioners are not within the purview of the 1979 Rules; (2) the State Government will fix the seniority of all doctors in the PMHS cadre from the date of the orders of their initial appointment within a period of six weeks from the date of this order and give all consequential benefits including promotions and positions on the basis of such seniority list; and (3) those doctors who were selected in 1972 and 1977-78-79 by PSC and who were not issued any orders of appointment and joined the service on the basis of Tandon case, will be treated as having been appointed on the date that they actually joined the service and their seniority will be counted from that date. There will be no order as to costs."

4. In short, the case of the petitioners is that they have not been given the benefits in regard to Annexure-17 of WPSB No. 333 of 2014, which we treat as a leading case. We notice paragraph nos. 26 & 29, by which Annexure Nos. 14 & 17 are marked, which read as follows:

"26. That in order to comply the order of the Supreme Court of India on 02.02.2005 the State of U.P. issued office memo whereby they have notionally promoted retired medical officers upto the Joint Director cadre and vide order dated 20.05.2005 they have notionally promoted serving medical officers upto the cadre post of Joint Director upto the seniority no. 1347 with effect from 01.01.1986, upto the seniority no. 3220 with effect from 10.05.1990, upto the seniority no. 3528 with effect from 27.04.1995, wherein the name of the petitioners finds places. In the above government order dated 20.05.2005, it has been mentioned that the notional promotion is being made in the pay scale applicable at relevant time. The copy of government order dated 20.05.2005 is being annexed herewith as Annexure No. 14 to the writ petition.

29. That it is submitted that without finalizing the seniority of medical officers working in the State of Uttarakhand on the basis of seniority list dated 05.06.2003 of the State of U.P. vide order dated 31.01.2007 the State of Uttarakhand notionally promoted the petitioner on the cadre post of Joint Director with effect from 01.01.1986, 10.05.1990 and 27.04.1995 and declined to pay the arrears of the salary. Though in the judgment and order dated 04.12.2002 Hon'ble Supreme Court of India had clearly directed the State

Government to give all consequential benefits including promotions and positions on the basis of such seniority. But neither State of U.P. nor State of Uttarakhand has extended the benefits of the as per judgment of the Hon'ble Supreme Court of India. The copy of the office memo dated 31.01.2007 is being annexed herewith as Annexure No. 17 to the writ petition."

5. We also deem it necessary to notice paragraph nos. 27 & 28. Same read as under:

"27. That State Government promoted the petitioners notionally, but not given the arrears of salary though theory of no-work-no-pay is not applicable in the case of petitioners as there is no fault on their parts. Even despite pay scale applicable at the relevant time has not been given to the petitioners.

28. That it is submitted though in the part compliance of the judgment and order of the Supreme Court of India the opposite parties notionally promoted the petitioners and other similarly situated medical officers on the cadre post of Joint Director in the pay scale applicable at the relevant time. As per government order dated 29.12.1997 which has been clarified vide government order dated 31.07.2008 the medical officers who have been promoted on and before 01.01.1996 on the cadre post of Joint Direction in the pay scale of s. 3700-5000 are entitle for selection grade of Rs. 4500-5700. But the said pay scale has not been given to the petitioners. The copy of the government order dated 29.12.1997 and 31.07.2008 are being annexed herewith as Annexure No. 15 and 16 to the writ petition."

6. Subsequently, petitioners have filed applications for amendment of the writ petitions, when they were confronted with the contents of Annexure-17 order. Annexure-17 order purports to provide that, while they were given benefit of notional promotion upto the post of Joint Director, which is to be filled up on the basis of seniority and further post are to be filled up on the basis of merit, they would get the pay and benefit from the day, on which they actually took over the charge. This order was not challenged at the time when they filed the writ petition. It may be noticed that the writ petition was itself filed only in September, 2014. Going by the dates of retirement of the petitioners, it would appear that the last retirement from amongst the petitioners took place in the year 2009.

7. Confronted with Annexure-17 order, they filed an application for amendment. They have also filed an affidavit in support of the application for amendment. Both being necessary for the purpose of adjudication, we extract the same:

Application for Amendment:

"1- That the petitioners may permitted to add following paras, after para 40 of memo of writ petition:

40A. That the judgment and order dated 04.12.2002 passed by the Hon'ble Supreme Court of India in writ petition No. 43 of 1998 is rem in its nature. Thus besides others as per judgment and order dated 17.10.2014 passed by the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh and others Vs. Arvind Kumar Srivastava and others (2015) 1 SCC 347, it is duty of the opposite parties to give the benefits to all similarly situated medical officers, either they have approached or not approached any court of law.

40B. That as per law laid down by the Hon'ble Supreme Court of India beside others in the case Purnendu Mukhopadhyay & others Vs. V.K. Kapoor & another reported in (2008) 4 SCC 403, B. Prabhakar Rao & others Vs. State of Andhra Pradesh & others reported in 1985 (Supp) SCC 432 and D.S. Nakara & others Vs. Union of India reported in (1983) 1 SCC 305 being welfare State, the State cannot make any discrimination between and amongst the equals.

40C. That it is submitted that State of U.P. as well as State of Uttarakhand extending the benefits of Dr. Chandra Prakash Case to some of the medical officers and denying to extend the benefits to some of the medical officers under the garbe of the office memo dated 31.01.2007, copy whereof have already been annexed as annexure no. 17 at page no. 103 of the writ petition.

40.D That after office memo dated 31.01.2007 vide office memo dated 21.06.2008 (annexure no. 18 of the page no. 104 of the writ petition), they have extended the benefits and revise the pay-scale of several medical officers.

40E. That not only in the State of U.P. but in compliance of the order of the Hon'ble Supreme Court of India, the State of Uttarakhand also by way of adopting the theory of pick and choose, extended the benefits of Dr. Chandra Prakash and have given the arrears of the salary and pension to Dr. D.P. Bahuguna, Dr. U.C. Srivastava, Dr. H.K. Srivastava. The copy of the orders dated 30.09.2015, 03.10.2015, 06.10.2015 and 09.12.2015 are being annexed herewith as Annexure no. 21A to the writ petition.

2- That the Hon'ble Court may kindly be pleased to permit the petitioners to add following grounds in the grounds part of the writ petition.

(v) Because in order to extend the benefits of the Dr. Chandra Prakash, opposite parties are adopting the theory of pick and choose, though as per service jurisprudence and judgment of the Hon'ble Court being welfare State, the State have no authority make discrimination between and amongst the equals.

(w) Because on one hand under garbe of the office memo dated 23.01.2007, opposite parties are not giving the arrears to the petitioners, on other hand they are paying the arrears to others. Thus the office memo dated 23.01.2007 is liable to be quashed.

3. That the Hon'ble Court may kindly be pleased to be add following prayer in the prayer part of the writ petition.

III.A Issue a Writ, Order or Direction in the nature of certiorari quashing the office memo dated 21.01.2007 (contained in annexure no. 17 to the writ petition)."

Relevant portion of the affidavit filed in support of the Application for Amendment:

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10. Learned counsel for the petitioners would point out that, contrary to the judgment of the Hon'ble Supreme Court in Dr. Chandra Prakash's case, though, they have been given notional promotion upto the level of Joint Director, they have not been given the consequential benefits including the pay scale, which is appended in Annexure-17 order.

11. When the issue of laches was raised, the learned counsel appearing for the petitioners would address the following contentions before us:

In the first place, he would submit that the judgment in Dr. Chandra Prakash's case is the judgment in rem. According to him, the petitioners were under the impression that being the judgment in rem, they would be given the benefit and they are entitled to get the benefit in terms of the direction issued in Dr. Chandra Prakash's case. They have however moved Annexure-19 representation dated 22.06.2014 just preceding the filing of the writ petitions followed by Annexure-20 representation dated 25.08.2014 and another representation, namely, Annexure-21. In view of the judgment, which came to be pronounced in the matter of State of U.P. and another vs. Dr. B.B.S. Rathore & another and in the connected cases which was pronounced in 2014, it appears that the petitioner has addressed the first representation on 22.06.2014 followed by two other representations.

16. There is a case of discrimination. The case, in short, is that, even after 2007, while petitioners have not been given the consequential benefits; three others have been given benefits. To the same, the answer is that they were persons, who were party in Appeal No. 3042 of 2010 filed by Dr. Chandra Prakash and others. It is pointed out that, pursuant to the order in Dr. Chandra Prakash's case, on 04.12.2002, an O.M. was passed by the State of Uttar Pradesh finally fixing the seniority of Doctors of P.M.H.S. cadre. Thereafter, vide O.M. dated 02.02.2005, the State of U.P. gave notional promotion to those 1276 Medical Officers, who were entitled as per next below Rule, in which, names of three persons, namely, Dr. Umesh Chandra Srivastava, Dr. Devi Prasad Bahuguna and Dr. Hari Kishan Srivastava figured and they were included and given pay scale w.e.f. 16.03.1979 and notional promotion in the pay scale of Joint Director w.e.f. 01.01.1986. Thereafter, the State of Uttarakhand also issued the O.M. in the year 2007 giving notional promotion to those Medical Officers, who were entitled as next below Rule.

17. It is also pointed out that Dr. Umesh Chandra Srivastava and Dr. Devi Prasad Bahuguna, in fact, filed writ petition in the year 2004 in the High Court of Allahabad and Dr. Hari Kishan Srivastava filed a separate writ petition, in which the State of Uttarakhand was made party and certain directions were issued on the same and finally they also approached the Hon'ble Apex Court preferring S.L.P. No. 3042 of 2010 and that is how they were given the benefit. These are all the submissions, which were made at the bar.

18. Incidentally, we may also notice that the Hon'ble Apex Court in the matter of State of U.P. and others vs. Dr. B.B.S. Rathore, has held as follows:

“However, we make it clear that with regard to others, who have not been granted arrears of salary and have not moved before any other Court of law or this Court, we have not expressed any opinion. They cannot claim benefit automatically in view of the order passed in these cases. Their case may be determined individually on the merit of each case.”

22. We would think that this is a matter, which must be looked into. Accordingly, while we decline the other reliefs sought in the writ petitions, we direct that the first respondent will look into the complaint of the petitioners that the pay scale of Joint Director, which is mentioned in Annexure-17 order, has not been fixed for the purpose of pension. A decision will be taken in this regard within a period of two months from the date of production of a certified copy of this judgment. The decision will be taken on Annexure-20 representation limited to the above aspect only.”

13. On the basis of observations made in the above noted decision, G.O. dated 17.07.2018 was issued.

14. The facts and law governing the field are required to be read and considered *in toto*, and not in isolation. It appears that difference of dates (01.01.1990 and 01.05.1990) has no relevance in the matter. At least a common prudent person is unable to fathom the relevance of such date in the context of this particular case. The object was to give relief to a section of medical officers, which has been given to all, but for the petitioner, who has been denied such benefit, on a trivial technical ground.

Considering the peculiar facts of the case, such artificial distinction may be ignored.

15. Moreover, the Tribunal itself had observed, on the strength of submissions of Ld. A.P.O. (Nainital Bench), while deciding Claim Petition No. 87/NB/DB/2020 on 10.08.2021, that petitioner's case is squarely covered by the decision rendered by Hon'ble High Court in Dr. Ratnesh Kumar's case (*supra*). It is open to question whether the respondent department could have travelled beyond what was stated by the State Counsel before the Nainital Bench of the Tribunal. Moreover, when G.O. dated 17.07.2018 was issued, it was after due consultation with the Finance Department, which has not been consulted while issuing the impugned order dated 07.04.2022.

16. In view of the above, impugned order dated 07.04.2022 (Annexure: 1) is liable to be set aside, to a limited extent. Respondent No.1 should be directed to grant such service benefit to the petitioner, which has been granted to similarly situated persons *vide* order dated 17.07.2018 (Annexure No. 5) in the light of judgment rendered by Hon'ble High Court of Uttarakhand on 09.11.2017 in WPSB No. 333/ 2014, Dr. Ratnesh Kumar and 29 others & WPSB No. 316/2015, Dr. Madhawanand Joshi vs. State of Uttarakhand and others (Annexure No. 4), ignoring 'not so relevant' cut-off date, creating artificial distinction, in the peculiar facts of the case. This should be done without further loss of reasonable time.

17. Order accordingly.

18. The claim petition is disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 04, 2024.
DEHRADUN

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