

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

CLAIM PETITION NO 161/SB/ 2022

Dr. Kamna Lohani, aged about 55 years, w/o Mr. D.C.Lohani, presently posted as Assistant Professor (History) at Government Degree College, Dehradun City, District- Dehradun.

WITH

CLAIM PETITION NO 162/SB/ 2022

Dr. Mukta Dangwal, aged about 56 years, w/o Dr. Lachi Ram Dangwal, presently posted as Assistant Professor (Economics) at Government Degree College, Dehradun City, District- Dehradun.

WITH

CLAIM PETITION NO 163/SB/ 2022

Dr. Umesh Chandra Maithani, aged about 53 years, s/o Late Dr. A.P. Maithani, presently posted as Assistant Professor (Botany) at Government Degree College, Narendra Nagar, District- Tehri Garhwal.

WITH

CLAIM PETITION NO 164/SB/ 2022

Dr. Lakshmi Datt, aged about 52 years, s/o Shri Shrinand Gargya, presently posted as Assistant Professor (Geography) at Government Post Graduate College, Agastyamuni, District- Rudraprayag.

WITH

CLAIM PETITION NO 165/SB/ 2022

Dr. Dalip Singh, aged about 55 years, s/o Late Shri Matbar Singh, presently posted as Assistant Professor (Political Science), Government Post Graduate College, Agastyamuni, District- Rudraprayag.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, Higher Education, Uttarakhand Government, Dehradun.
2. Principal Secretary, Higher Education, Uttarakhand Government, Dehradun.
3. Director of Higher Education, Haldwani, District Nainital.

.....Respondents

WITH

CLAIM PETITION NO 172/SB/ 2022

Dr. Ashok Kumar, aged about 47 years, s/o Shri Sadanand Maindola, presently posted as Assistant Professor (Economics) at Pt. L.M.S. Campus Rishikesh, Sri Dev Suman Uttarakhand University, District- Dehradun.

.....Petitioner

VS.

1. The State of Uttarakhand through Secretary, Higher Education, Uttarakhand Government, Dehradun.
2. Principal Secretary, Higher Education, Uttarakhand Government, Dehradun.
3. Director of Higher Education, Haldwani, District Nainital.
4. Sri Dev Suman Uttarakhand University, Badshithol, Tehri, district Tehri Garhwal, through its Registrar.

.....Respondents

Present: Sri Ganesh Kandpal, Advocate, for the petitioners. (online)
Sri V.P.Devrani, A.P.O., for the respondents.

JUDGMENT

DATED: JULY 09, 2024.

Justice U.C.Dhyani (Oral)

Since the factual matrix along with law governing the field in the above noted claim petitions is the same, therefore, all the claim petitions are being decided together by a common judgment and order, for the sake of brevity and convenience, with the consent of Ld. Counsel for the parties.

2. As a specimen, the reliefs sought for by the petitioner in Claim Petition No. 161/SB/2022 Dr. Kamna Lohani vs. State of Uttarakhand and others, are being reproduced hereinunder:

"I- Direct the respondents to grant the benefits of career advancement scheme to the petitioner by treating the date of initial appointment i.e. 15-10-2001 as date of substantive appointment and accordingly grant all the consequential benefits. Or alternatively grant the benefits of career advancement scheme to the petitioner by counting the past services rendered by the petitioner from the date of initial appointment i.e. 15-10-2001 in place of date of regularization i.e. 18-03-2013 as per the university grants commission regulations.

II- Direct the respondents to constitute a screening cum evaluation committee as per the regulations issued by the University Grants Commission for granting Senior scale, Selection grade pay scale and promotion on the post of Associate Professor and Professor and accordingly grant Senior scale (Level 11), Selection grade pay scale 12) and promotion on the post of Associate Professor and Professor by counting the past services rendered by the petitioner from the date of initial appointment i.e. w.e.f. 15-10-2001.

III- To pass any other suitable order, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

IV- Award the cost of the petition to the petitioner."

[Emphasis supplied]

3. The claim petitions are supported by the affidavits of petitioners. Relevant documents have been filed along with the claim petitions.

4. The claim petitions have been contested on behalf of the respondents. Counter Affidavits have been filed by Sri Byomkesh Dubey, Deputy Secretary, Higher Education Department, Govt. of Uttarakhand, Dehradun. Relevant documents have also been filed in support of the Counter Affidavits.

5. In the above noted claim petitions, the petitioners are seeking direction to the respondents to grant the benefits of Career Advancement Scheme (for short, CAS) to the petitioners by treating their dates of initial appointment as date of their substantive appointment and grant benefits of CAS to the petitioners by counting past services rendered by them in place of date of regularization.

5.1 It is submitted by Ld. Counsel for the petitioners that representations have been submitted by the petitioners requesting them to grant benefit under CAS to the petitioners by counting past services rendered by them from the date of initial appointment as provided in Career Advancement Scheme itself, but till date the respondents have not given any decision on the representations of the petitioners.

5.2 Ld. Counsel for the petitioners placed copy of order dated 15.03.2023 and copy of order No. 4126 dated 14.02.2023, issued by Hon'ble Governor's Secretariat, to submit that benefit of CAS has been given to similarly placed persons, viz, Dr. Kamal Devlal, Assistant Professor (Physics), Uttarakhand Open University, Haldwani and Dr. Manjari Agarwal, Assistant Professor (Management Studies), Uttarakhand Open University, Haldwani.

6. In the C.As., which have been filed to oppose the claim petitions, it has been mentioned that as per UGC Notification 2018, the benefit of 1st CAS Level-11 is admissible to an employee after completing four years of eligible, substantive and regular service and 2nd CAS Level-12 is admissible to an employee after completing five more years of eligible, substantive and regular service in Level-11. Both have been granted to the petitioners. This fact has been concealed by them. Further, the petitioners are not eligible

to get promotion to the post of Associate Professors (Level-13 A) and Professor (Level-14) as per applicable relevant UGC Norms.

6.1 Ld. A.P.O. drew attention of the Bench towards Para 10 (III) of UGC Regulations to submit that previous ad-hoc or temporary or contractual service shall be counted for direct recruitment and for promotion, if the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be. Ld. A.P.O. submitted that present petitioners were drawing emoluments less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, hence the case of the petitioners is not covered by Para 10 (f) of the UGC Regulations.

7. It has also been mentioned by the respondents in their objections that there is inordinate delay of 22 years in filing the claim petitions for the purpose of adding the entire length of service from the date of their initial appointment. There is delay of almost 10 years from the date of petitioners' regularization, hence the claim petition is time barred in view of Section 5 (b)(i) of the Public Services (Tribunal) Act, 1976 (as applicable to Uttarakhand). In reply to the plea of limitation, Ld. Counsel for the petitioners submitted that the petitioners have recurring cause of action; they filed representations to the competent authority, which representations have not been decided so far; the petitioners can bring their claim for adding entire length of service from the date of initial appointment, till their claims are not accepted.

8. It is the specific case of the petitioners that they should be granted benefit of Career Advancement Scheme as per the University Grants Commission norms. Regulation 10.0 of UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018 (for short, UGC Regulations, 2018)

deals with **Counting of Past Services for direct recruitment and promotion under CAS**. Relevant provisions read as under:

“Counting of Past Services for Direct Recruitment and Promotion under CAS

Previous regular service, whether national or international, as Assistant Professor, Associate Professor or Professor or equivalent in a University, College, National Laboratories or other scientific/professional organisations such as the CSIR, ICAR, DRDO, UGC, ICSSR, ICHR, ICMR and DBT, should count for the direct recruitment and promotion under the CAS of a teacher as Assistant Professor, Associate Professor, Professor or any other nomenclature, provided that:

(a) The essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be.

(b) The post is/was in an equivalent grade or of the pre-revised scale of pay as the post of Assistant Professor (Lecturer) Associate Professor (Reader) and Professor.

(c) The concerned Assistant Professor, Associate Professor and Professor should possess the same minimum qualifications as prescribed by the UGC for appointment to the post of Assistant Professor, Associate Professor and Professor, as the case may be.

(d) The post was filled in accordance with the prescribed selection procedure as laid down in the Regulations of the University/State Government/Central Government/ Institutions concerned, for such appointments.(e) The previous appointment was not as guest lecturer for any duration.

(f) The previous Ad-hoc or Temporary or contractual service (by whatever nomenclature it may be called) shall be counted for direct recruitment and for promotion, provided that:

(i) the essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be

(ii) the incumbent was appointed on the recommendation of a duly constituted Selection Committee/Selection Committee constituted as per the rules of the respective university,

(ii) the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be.

.....”

9. A direction can, therefore, be given to Respondents No. 1 & 3 to consider the prayer of the petitioners in the light of Regulations 10.0 of the UGC REGULATIONS ON MINIMUM QUALIFICATIONS FOR APPOINTMENT OF TEACHERS AND OTHER ACADEMIC STAFF IN UNIVERSITIES AND COLLEGES AND MEASURES FOR THE MAINTENANCE OF STANDARDS IN HIGHER EDUCATION, 2018, which has been referred to above. The reasons are three fold. Firstly, the

representations of the petitioners have not been decided by the appropriate authority(ies) so far. Secondly, petitioners' cases are yet to be examined/scrutinized on the touchstone of the UGC Regulations, 2018. Thirdly, according to Ld. Counsel for the petitioners, similarly placed persons, viz, Dr. Dr. Kamal Devlal, Assistant Professor (Physics), Uttarakhand Open University, Haldwani and Dr. Manjari Agarwal, Assistant Professor (Management Studies), Uttarakhand Open University, Haldwani, have been granted benefit of Career Advancement Scheme (CAS), on their representations by Hon'ble Governor/ Chancellor. Petitioners' cases are also required to be examined on the basis of the same, whether their cases are identical or different. Fourthly, there are observations of different Hon'ble High Courts on the point, which might benefit the petitioners and which are being reproduced hereinbelow for ready reference.

Hon'ble Madras High Court in Writ Petitions No. 16061 to 16063 of 2020, Rajasekaran and others vs. State of Tamil Nadu and another, which were decided on 16.06.2021, has observed that:

" 21. The Rajasthan High Court at Jodhpur in the case of Rajasthan Agricultural University, Bikaner now known as Swami Keshwanand Rajasthan Agriculture University, Bikaner, through its Registrar, (SKRAU), Bikaner (raj.) vs. Dr.Mohan Lal Gupta and 8 others in Division Bench, Spl. Appeal Writ No.56 of 2017, the appeal filed by the University was dismissed by following the decision of the Hon'ble Supreme Court in the State of Rajasthan and another vs. Milap Chand Jain & Another, (2013) 14 SCC 562. The Hon'ble Supreme Court held as under:-

"4. Accordingly, this writ petition is also allowed in the light of the co-ordinate Bench decision of this Court in [https://www.mhc.tn.gov.in/judis/W.P.Nos.16061 to 16063 of 2020 Anuradha Shirvastava's case \(supra\)](https://www.mhc.tn.gov.in/judis/W.P.Nos.16061%20to%2016063%20of%2020%20Anuradha%20Shirvastava's%20case%20(supra).). The respondents are directed to take into consideration the period for which the petitioners rendered service in ad hoc/temporary capacity before their regular selection on the post of Assistant Professor while determining their eligibility for the grant of Senior/Selection Scale under Career Advancement Scheme. The needful shall be done and the consequential benefits shall be granted to the petitioners by the respondents within a period of three months from the date of receipt of certified copy of this order. No order as to costs."

26. The petitioners therefore are entitled to count their temporary services in the capacity of Teaching Assistants for the purpose of Career Advancement Scheme of the ICAR which has been implemented by the respondent.

29. Consequently, these writ petitions are disposed by directing the respondents to count the services of the petitioners on the temporary basis from the date of appointment till the date of regularization.

Likewise, Hon'ble Andhra High Court in Writ Petition No. 22466 of 2011, Dr. N.J. Prameela Subhashini vs. The Registrar, Osmania University, Hyderabad and others, which was decided on 05.09.2017, has observed that:

“21. In the facts of these cases, principle laid down in the said two decisions have no application. These writ petitions do not concern assessment of suitability of petitioners to a particular academic position vis-a-vis their qualifications and academic skill possessed by them as assessed by expert body. One of the requirements of extension of CAS benefits is putting in minimum service in the lower grade. The UGC guidelines enable computation of the ad-hoc service rendered for the purpose of acquiring the eligibility for upgradation to the next scale/post. Whether the service rendered by petitioners on adhoc basis can be counted as eligible service is in issue. Thus, it is not a case of assessment of suitability and professional competence of the candidates vis-a-vis their academic qualifications, but of computation of the adhoc service towards the eligible service to grant benefits of CAS as per UGC guidelines. It is also relevant to note that their eligibility to teach in relevant discipline was assessed before they were selected on adhoc basis and their suitability to hold the post of Assistant Professor on regular basis was also assessed before they were selected and appointed in the year 2007.

22. The possession of required academic qualifications and ability to teach in the concerned discipline, Statistics/ Chemistry as the case may be, is not doubted. They have rendered considerable service while working on adhoc basis. It is also appropriate to note that CAS is introduced to grant periodical upgradation as an incentive to teaching faculty after rendering a particular period of service and possessing required academic qualification. UGC recognized the fact of large number of persons in teaching faculty get initially appointed on temporary/ adhoc basis before they were regularly appointed. Thus, clauses in the scheme, as noted above, are tuned in such a way to enable such lecturers to compute the adhoc service for the purpose of financial upgradation/elevation. The fact that scheme recognizes computation of adhoc service / service rendered even in private institutions would also goes to show that UGC was conscious of existence of such kind of appointments and gives weight to such service to grant periodical upgradation. It is in recognition of fact that such long continuation on adhoc basis and/or service in private institutions would also amount to stagnation. It is an incentive on rendering satisfactory service and therefore scope of computation of service is expanded. This scheme is a beneficial scheme and intend to address the grievance of teaching faculty on stagnation and to provide incentive of upgradation duly taking note of adhoc service and/or service rendered in private institutions. It being a beneficial scheme, the Clauses of CAS guidelines must receive liberal construction.

23. On cumulative reading of the clauses incorporated in the UGC guidelines, the object of the scheme and having regard to the educational qualifications possessed and ad-hoc service rendered by the petitioners, assessment of their eligibility by duly constituted selection committee at the institution level when they were appointed on adhoc basis and by the University when they were regularly appointed, I am of the opinion that petitioners are entitled to seek

computation of the ad hoc service rendered by them to make them eligible for extending the benefits of CAS. Contrary action of the University is illegal and amounts to arbitrary exercise of power. In the facts of this case, such action is also discriminatory.”

Respondents are required to assess the suitability of the petitioners on this score also.

10 The following has emerged on the basis of above discussion:

- (i) The petitioners submitted their representations to the respondents requesting them to grant benefit under CAS by counting past services rendered by them from the date of initial appointment, as provided in CAS, but their representations have not been decided so far.
- (ii) Petitioners' case is required to be scrutinized, whether they are entitled to the benefit of UGC Regulations or not. If they are entitled to some benefit under the UGC Regulations, such benefit should be given to them.
- (iii) Hon'ble Madras High Court and Hon'ble Andhra High Court have made certain observations in the writ petitions, decided by them, which observations have been reproduced in Para 9 of this judgment. Respondents are required to assess the suitability of the petitioners on the touchstone of these decisions also.
- (iv) It is the specific case of the petitioners that similarly placed persons, viz, Dr. Kamal Devlal, Assistant Professor (Physics), Uttarakhand Open University, Haldwani and Dr. Manjari Agarwal, Assistant Professor (Management Studies), Uttarakhand Open University, Haldwani, have been given benefit of CAS. The respondents should examine the case of the petitioners, whether the same is *in parity* with the case of Dr. Kamal Devlal & Dr. Manjari Agarwal's case or not. If it is found that the case of the petitioners and case of Dr. Kamal Devlal & Dr. Manjari Agarwal are identical, then benefit of CAS should be given to the petitioners also.

The Tribunal is of the view that the respondents should be directed to examine the case of the petitioners on the above noted vital aspects.

11. Such exercise (which has been noted in Para 10 above) should be completed as expeditiously as possible and without unreasonable delay.

12. Order accordingly.

13. Ld. Counsel for the petitioners submitted that such an order may be passed by Single Bench of the Tribunal. Ld. A.P.O. agrees to such legal proposition.

14. The claim petitions thus stand disposed of. No order as to costs.

15. Let copies of this judgment be placed on the files of Claim petitions No. 162/SB/2022, Dr. Mukta Dangwal, 163/SB/2022, Dr. Umesh Chandra Maithani, 164/SB/2022, Dr. Lakshmi Dutt, 165/SB/2022, Dr. Dalip Singh and 172/SB/2022, Dr. Ashok Kumar.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 09, 2024
DEHRADUN

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