

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

**WRIT PETITION NO 1972(S/S) OF 2019
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 157/SB/2022]**

1. Devendra Singh Farthiyal aged about 58 years, s/o Late Shri Sher Singh Farthiyal, r/o Mohalla- Jal Nigam Colony, Almora.
2. Ramesh Bhatt aged about 58 years, s/o Late Sri Parmanand Bhatt, r/o Pey Jal Nigam, Bhotiya Parav, Haldwani, District- Nainital.
3. Naresh Chandra Sharma aged about 57 years, s/o Late Sri Rajendra Prasad Sharma, Muni-ki-Reto. District- Tehri Garhwal.
4. Aatma Ram Nautiyal aged about 56 years, s/o Sri Mulki Ram, r/o Village- Balsi, Tehsil- Chiyali Saur, Uttarkashi.

.....Petitioners

VS.

1. State of Uttarakhand through Secretary (Karmik) Home, Dehradun.
2. Accountant General, Government of Uttarakhand, Dehradun.
3. Finance Director, Uttarakhand Pey Jal Resources Development and Construction Corporation, Dehradun.
4. Managing Director, Uttarakhand Pey Jal Resources Development and Construction Corporation, Dehradun.
5. General Manager, Uttarakhand Pey Jal Corporation, Dehradun.
6. Chief Engineer (Garhwal), Uttarakhand Pey Jal Corporation, Pauri.
7. Chief Engineer (Kumauon), Uttarakhand Pey Jal Corporation, Haldwani.

.....Respondents.

Present: Sri Amish Tiwari, Advocate, for the petitioners. (online)
Sri V.P.Devrani, A.P.O., for Respondents No. 1 & 2.
Dr. N.K.Pant, Advocate, for Respondents No. 3 to 7. (online)

JUDGMENT

DATED: AUGUST 06, 2024.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSS No. 1972/2019 , Devendra Singh Farthiyal and others vs. State of Uttarakhand through Secretary (Karmik) Home, Dehradun and others, on 26.09.2022, as follows:

“.....

Petitioners have sought benefit of upgradation of their pay scale after their promotion. According to them, upon grant of promotion, their pay scale was required to be fixed at a particular level. However, their pay scale has been fixed at a much lower level. Petitioners made representation highlighting their grievance. However, their representation was rejected by the competent authority vide impugned order dated 20.6.2019..

Since all the petitioners are public servant, as defined under Section 2(b) of U.P. Public Service (Tribunals) Act, 1976, therefore, they have a remedy of approaching the Tribunal constituted under the aforesaid Act.

In such view of the matter, this Court declines to entertain the writ petition.

Accordingly, writ petition is dismissed on the ground of alternative remedy.

Registry is directed to transmit the record of this case to the Public Services Tribunal, Dehradun. Before sending the record, Registry shall prepare the photocopy of the record at the cost of petitioner and confine the same to the record room.”

2. Writ Petition No. 1972 (S/S) of 2019 is, accordingly, reclassified and renumbered as Claim Petition No. 157 /SB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioners shall be referred to as 'petitioners', in the body of the judgment.

3. By means of present petition, petitioners seek the following reliefs:

“(i). A writ, order or direction in nature of certiorari to quash the letter / order dated 20-06-2019 i.e. Annexure No. 5 issued by the finance

director i.e. respondent no. 3 to the Superintending Engineer, Nirman Mandal, Uttarakhand Pey Jal Nigam, Almora.

(ii). A writ, order or direction in nature of mandamus directing the respondents to give the benefit of fixation of the salary to the petitioners after promotion on the post of Junior Assistant as per the rules 2016 i.e. Uttarakhand Government Servant Salary Rules 2016 by implementation of the clause 13 of the rules thereto, from the date of promotion.

(iii). Any other relief in favour of the petitioners which the hon'ble court deems proper.

(iv). Award of the cost to the petitioners."

4. Petitioners, who are posted as Junior Assistants in the Uttarakhand Pey Jal Nigam (hereinafter referred to as Respondent Corporation), gave representation to the department to consider fixation of their pay scale, as per Rules, which, according to the petitioners, was not considered by the respondent department in right perspective, hence, the petition.

5. Petition is supported by the affidavit of Sri Devendra Singh Farthiyal, petitioner no.1. Relevant documents have been filed along with the petition.

6. Petition has been contested on behalf of respondents. Sri Sunil Kumar Pant, Superintendent Engineer, Construction Circle, Uttarakhand Pey Jal Nigam, Nainital, has filed Counter Affidavit on behalf of Respondents No. 3 to 7. Relevant documents have been filed in support of the Counter Affidavit.

7. In the C.A. thus filed, an effort has been made by the Respondent Corporation to justify the rejection of the representation of petitioners. As per Para 14 of the C.A., respondents, after interpreting the clarification of G.O. dated 23.08.2005, have rightly rejected the representation of the petitioners. It is the submission of Dr. N.K.Pant, Ld. Counsel for Respondents No. 3 to 7, that order under challenge in the instant petition does not suffer from any illegality.

8. Rejoinder Affidavit has been filed on behalf of the petitioners. In para 7 of the R.A. it has been stated that the petitioners although got higher

grade pay than the grade pay of the promotional post, but their claim is with regard to the pay fixation on the basis of Rules of 2016, which were notified on dated 28.12.2016. It is the submission of Sri Amish Tiwari, Ld. Counsel for the petitioners that while rejecting the request of the petitioners for fixation of salary after promotion, the Respondent Corporation did not consider Rules of 2016, and rejected the representation on the basis of G.O. dated 23.08.2005. The Respondent Corporation has, therefore, committed illegality in not deciding the request of the petitioners on the basis of the Rules and rejecting the representation on the basis of G.O. of 2005. Ld. Counsel for the petitioners further submitted that the Rules will have overriding effect over the Govt. Order.

9. The Uttarakhand Government Servants Salary Rules, 2016, were notified by the Government of Uttarakhand on 28.12.2016. Petitioners relied upon the same, but the Respondent Corporation has rejected the representation of the petitioners on the basis of G.O. dated 23.08.2005.

10. It is trite law that in the event of any inconsistency between G.O. and the Rules, the Rules will prevail. Statutory Rules will always override Government Orders in such a situation. It is also fundamental law that, on any subject, if there is inconsistency between earlier G.O./ Notification and subsequent G.O./ Notification, the latter will prevail. In the instant case, the Respondent Corporation has taken a decision on the basis of old G.O. dated 23.08.2005 and not on the basis of the Rules of 2016, as were notified on 28.12.2016.

11. In the decision of *Ashok Ram Parhad vs. State of Maharashtra*, 2023 SCC Online SC 265, Hon'ble Supreme Court has observed that the Government resolutions cannot override statutory Rules.

Similarly, in the case of *Punjab Water Supply & Sewerage Board vs. Ranjodh Singh*, (2007) 2 SCC 491, Hon'ble Supreme Court has held that a scheme issued under Article 162 of the Constitution of India would not prevail over statutory Rules.

12. It appears that the Respondent Corporation has not considered the prayer of the petitioners in correct perspective. The Respondent Corporation should, therefore, be directed to consider the prayer of the petitioners in the light of the Rules of 2016, which were notified on 28.12.2016.

13. Dr. N.K.Pant, Ld. Counsel for Respondent Corporation submitted that if a direction is given by the Tribunal to consider prayer of the petitioners in the light of the Uttarakhand Government Servants Salary Rules, 2016, the respondents will abide the same.

14. The petition is disposed of by directing the Respondent Corporation to consider petitioners' case in the light of the Uttarakhand Government Servants Salary Rules, 2016, as expeditiously as possible, without unreasonable delay on presentation of certified copy of this order along with representation, highlighting their grievance and pinpointing relevant part of the Rules of 2016 and enclosing documents in support thereof.

15. Letter dated 20.06.2019, written by the Finance Controller to the Superintending Engineer, Construction Circle, Uttarakhand Pey Jal Nigam, Almora (Annexure: 5) shall not be given effect to till fresh decision is taken by the Respondent Corporation, in the light of the Rules of 2016.

No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUS 06, 2024
DEHRADUN

VM