

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

CLAIM PETITION NO 12/NB/SB/ 2023

Chandra Shekhar Joshi, aged about 43 years, s/o Sri L.D. Joshi, serving as Lecturer in G.I.C. Thal, District Pithoragarh and 65 others.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, School Education, Dehradun.
2. Under Secretary, School Education, State of Uttarakhand, Dehradun.
3. Director, School Education, Uttarakhand, Dehradun.
4. Finance Controller, School Education, Uttarakhand, Dehradun.
5. Chief Education Officer, Pithoragarh.
6. Chief Education Officer, Almora.
7. Chief Education Officer, Udham Singh Nagar.
8. Chief Education Officer, Nainital.
9. Chief Education Officer, Haridwar.
10. Chief Education Officer, Pauri Garhwal.
11. Chief Education Officer, Uttarkashi.
12. Chief Education Officer, Rudraprayag.
13. Chief Education Officer, Chamoli.
14. Chief Education Officer, Tehri Garhwal.

.....Respondents

WITH

CLAIM PETITION NO 28/NB/SB/ 2023

Laxman Singh, aged about 49 years, s/o Sri Bachi Singh, serving as Lecturer in G.I.C. Tarikhet, District Almora and 76 others.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, School Education, Dehradun.
2. Under Secretary, School Education, State of Uttarakhand, Dehradun.
3. Director, School Education, Uttarakhand, Dehradun.
4. Finance Controller, School Education, Uttarakhand, Dehradun.
5. Chief Education Officer, Almora.
6. Chief Education Officer, Nainita.
7. Chief Education Officer, Tehri Garhwal.

8. Chief Education Officer, Pauri Garhwal.
9. Chief Education Officer, Udham Singh Nagar.
10. Chief Education Officer, Dehradun.
11. Chief Education Officer, Chamoli.
12. Chief Education Officer, Haridwar.
13. Chief Education Officer, Rudraprayag.
14. Chief Education Officer, Pithoragarh.
15. Chief Education Officer, Champawat.
16. Chief Education Officer, Uttarkashi.

.....Respondents

WITH

CLAIM PETITION NO 38/NB/SB/ 2023

Subhash Chandra Tiwari, aged about 44 years, s/o Sri Matapher Tiwari, serving as Lecturer in G.I.C. Khuriyakhatta, District Nainital and 39 others.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, School Education, Dehradun.
2. Under Secretary, School Education, State of Uttarakhand, Dehradun.
3. Director, School Education, Uttarakhand, Dehradun.
4. Finance Controller, School Education, Uttarakhand, Dehradun.
5. Chief Education Officer, Almora.
6. Chief Education Officer, Nainita.
7. Chief Education Officer, Pauri Garhwal.
8. Chief Education Officer, Udham Singh Nagar.
9. Chief Education Officer, Dehradun.
10. Chief Education Officer, Chamoli.
11. Chief Education Officer, Rudraprayag.
12. Chief Education Officer, Bageshwar.
14. Chief Education Officer, Haridwar.

.....Respondents

WITH

CLAIM PETITION NO 72/NB/SB/ 2023

Lalit Mohan Murari, aged about 52 years, s/o Sri Ram Dutt Murari, serving as Lecturer in G.I.C. Kanalichhina, District Pithoragarh and 21 others.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, School Education, Dehradun.
2. Under Secretary, School Education, State of Uttarakhand, Dehradun.
3. Director, School Education, Uttarakhand, Dehradun.
4. Finance Controller, School Education, Uttarakhand, Dehradun.
5. Chief Education Officer, Tehri Garhwal.
6. Chief Education Officer, Pithoragarh.
7. Chief Education Officer, Dehradun.
8. Chief Education Officer, Haridwar.

.....Respondents

WITH

CLAIM PETITION NO 111/NB/SB/ 2023

Vimal Kumar, aged about 44 years, s/o Sri Tej Bahadur, serving as Lecturer in G.I.C. Mtinagar, District Haldwani and 02 others.

.....Petitioners

VS.

1. The State of Uttarakhand through Secretary, School Education, Dehradun.
2. Under Secretary, School Education (Secondary), State of Uttarakhand, Dehradun.
3. Director, School Education, Uttarakhand, Dehradun.
4. Finance Controller, School Education, Uttarakhand, Dehradun.
5. Chief Education Officer, Nainital.
6. Chief Education Officer, Udham Singh Nagar.

.....Respondents

(virtually)

Present: Sri Lalit Samant, Advocate, for the petitioners.
Sri Kishore Kumar, A.P.O., for the respondents.

JUDGMENT

DATED: AUGUST 06, 2024.

Justice U.C.Dhyani (Oral)

Since a common question of law and facts is involved in the above noted claim petitions, therefore, all the claim petitions are being heard and 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. In the above noted claim petitions, the petitioners seek the following common reliefs:

“(i) To set aside / quash clause 2 (Ga) of G.O No. 150 dated 06.09.2019, G.O No. 674 dated 13.09.2019, so far it relates to the Petitioners to the extent not providing one increment to the petitioners from which they have been given selection pay scale and also being running contrary to the Rule 13 (i) (ii) of the salary Rules 2016, issued by respondent no.1 and 2 (contained as Annexure No 1 and 2 of the claim petition). And also impugned orders dated 07.04.2022, 04.07.2022 and 09.12.2022 (contained as Annexure No.3, 4 and 5 of the claim petition) issued by respondent no. 4 and other consequential order(s) if any.

(ii) To issue order or direction, directing to the respondents to keep on paying selection pay scale to the petitioners as per Rule 13 (i)(ii) of the salary Rules 2016 and refund the recovery amount if any to the petitioners.

(iii) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) Award cost of the Petition to the present Petitioners.”

3. Claim petitions are supported by the affidavits of the petitioners. Relevant documents have been filed in support of the petitions.

4. Claim petitions have been contested on behalf of respondents. Sri Kuldeep Gairola, Chief Education Officer, Chamoli, and Sri C.N.Kala, Chief Education Officer, Uttarkashi, have filed Counter Affidavits on behalf of

Respondents No. 4 and Respondent No.11, respectively, in claim petition no. 12/NB/SB/2023.

Sri Shiv Prasad Semwal, Chief Education Officer, Tehri Garhwal, and Sri C.N.Kala, Chief Education Officer, Uttarkashi, have filed Counter Affidavits on behalf of Respondents No. 7 and Respondent No.16, respectively, in claim petition no. 28/NB/SB/2023.

5. Sri Lalit Samant, Ld. Counsel for the petitioner submitted that controversy involved in present claim petitions has been settled by Hon'ble High Court of Uttarakhand, while deciding WPSS No. 2269 of 2022 and connected writ petitions, *vide* order dated 04.01.2024. Ld. A.P.O. fairly conceded that these petitions are covered by the judgment rendered by Hon'ble High Court.

6. Ld. Counsel for the petitioners submitted that all the petitioners are serving as Lecturer in different Government Inter Colleges within the State of Uttarakhand, except Sarvsri Kuldeep Singh, Sevak Singh Bhandari & Susheel Kumar, who are serving as Assistant Teachers, L.T. Grade(Petitioners No. 20, 21 & 22 of Claim Petition No. 72/NB/SB/2023).

7. It will be useful to reproduce the judgment rendered by Hon'ble High Court on 04.01.2024 in WPSS No. 2269 of 2022 and connected writ petitions, as under:

“.....Since common questions of law and fact are involved in these writ petitions, therefore they are heard together and are being decided by a common judgment. However, for the sake of brevity, facts of Writ Petition (S/S) No. 2269 of 2022 alone are being considered and discussed.

4. Petitioners are serving as Lecturer (except Mr. Satyeshwar Prasad Kandpal, who is serving as Assistant Teacher, L.T. Grade) in different Government Inter Colleges within the State of Uttarakhand. They are challenging the recovery ordered to be made from their salary, on the ground that excess amount was paid to them. In Writ Petition (S/S) No. 2269 of 2022, petitioners have sought the following substantive reliefs:-

“i. Issue a writ order or direction in the nature of certiorari to quash clause 2 (Ga) of G.O. No. 150 dated 06.09.2019, G.O. No. 674 dated 13.09.2019, so far it relates to the Petitioners to the extent not providing one increment to the petitioners from which they have been given selection pay scale and also being running counter to the Rule 13(ii) of the salary

Rules 2016, issued by respondent no. 1 and 2 (contained as Annexure No 7 and 8 to this writ petition). And also recovery order dated 14.9.2022, 14.9.2022 and 21.9.2022 (contained as Annexure No. 9 to this writ petition) issued by respondent no. 4 and any other consequential order(s) if any.

ii. To issue writ order or direction in the nature of Mandamus directing to the respondents to keep on paying selection pay scale to the petitioners as per Rule 13(i) (ii) of the salary Rules 2016 and refund the recovery amount if any to the petitioners."

5. It is not in dispute that at the time of grant of selection grade pay, petitioners were given one additional increment, in terms of Rule 13 (i) and (ii) of Uttarakhand Government Servants Salary Rules, 2016. English Translation of the relevant extract of Rule 13 is reproduced below:-

"13. In the case of promotion from one level to another level in the revised pay structure or assured career promotion or time scale/selection pay scale, the pay fixation will be done in the following manner: (i) One increment shall be given to the level from which the employee is being promoted and he shall be placed in a cell equal to the amount so received in the level of the post to which the promotion is made and if any such cell is not available in the level in which promotion is given, it will be placed in the next higher cell from that level. (ii) In the case of assured career promotion or time scale / selection pay scale also, the salary will be fixed as per the above procedure. (iii) Basic Pay+ Practising Prisoner Allowance in respect of Government servants in receipt of Practising Allowance shall not exceed the average of the Basic Pay in the revised scale of pay applicable to the top level.

| Level Pay in Revised Pay Structure | Pay Band | <u>5200-20200</u> | | | | |
|--|-----------|-------------------|-------|-------|-------|-------|
| | | 1800 | 1900 | 2000 | 2400 | 2800 |
| Level 4 | Grade Pay | | | | | |
| 2. Basic pay 28700 in Revised Pay | Level | 1 | 2 | 3 | 4 | 5 |
| 3. Financial upgradation under promotion/AACP/time scale/selection scale given in lvl 5. | 1 | 18000 | 19900 | 21700 | 25500 | 29200 |
| 4. One increment given in level 4 salary after 289600 | 2 | 18500 | 20500 | 22400 | 26300 | 30100 |
| 5. Advanced Level i.e. Pay 30100 in Level 5 (Rs. 29600 in Level 5 amount equal to or higher) | 3 | 19100 | 21100 | 23100 | 27100 | 31000 |
| | 4 | 19700 | 21700 | 23800 | 27900 | 31900 |
| | 5 | 20300 | 22400 | 24500 | 28700 | 32900 |
| | 6 | 20900 | 23100 | 25200 | 29600 | 33900 |
| | 7 | 21500 | 23800 | 26000 | 30500 | 34900 |

(iv) After the issuance of the said notification, if it is decided by the Government to upgrade the pay scale / level of any post to the next higher level, then in such case the basic pay of the post holder working in that post will be at the higher level (Level) and if no such cell is available in that higher level/pay scale, it shall be placed in the immediate next higher cell (At the immediate next higher cell). Will be kept.”

6. The aforesaid Rules were notified in the official gazette on 28.12.2016. Thereafter, a Government order was issued on 06.09.2019 providing for selection grade and promotion pay scale to teachers serving in Government and Government Aided Educational Institution. The said Government Order, however, was silent regarding additional increment while granting selection grade and promotion pay scale, however petitioners were granted additional increment, in terms of Rule 13(i) & (ii) of Uttarakhand Government Servants Salary Rules, 2016 before issuance of Government Order dated 06.09.2019. However, the benefit of additional increment given to petitioners has been ordered to be recovered on the ground that the Government Order dated 06.09.2019, issued by Secretary, Education, is silent regarding such benefit.

7. The authorities of Education Department are, therefore, contending that petitioners were not entitled to benefit of additional increment and it was wrongly given to them, and the amount paid as additional increment, has to be recovered from petitioners. The order of recovery passed against petitioners cannot be sustained mainly because of the fact that petitioners did not play any fraud upon the authorities for getting benefit of additional increment, therefore, any benefit which the departmental authorities have sanctioned to the petitioners cannot be recovered now.

8. Even otherwise also, petitioners were given benefit of additional increment on the strength of statutory Rules known as ‘Uttarakhand Government Servants Salary Rules, 2016’, which fact is admitted to learned State Counsel, therefore, such benefit cannot be withdrawn on the ground that Government Order is silent on the point. It is settled law that executive instructions or a Government Order cannot override provisions of a statute. The Rules under which benefit was given to petitioners is statutory, therefore it will override the Government Order dated 06.09.2019.

9. Hon’ble Supreme Court in the case of Ashok Ram Parhad v. State of Maharashtra, 2023 SCC OnLine SC 265 has held as under :-

“31. On having come to the conclusion that the Government resolutions cannot override statutory rules, and the resolutions neither speaking about promotion to the post of DFO nor about seniority conclusively, the Proviso would operate with full force.”

10. Similarly, in the case of Punjab Water Supply & Sewerage Board v. Ranjodh Singh, (2007) 2 SCC 491, Hon’ble Supreme Court has reiterated that a scheme issued under Article 162 of Constitution of India would not prevail over statutory Rules. Para no. 14 of the said judgment, is reproduced below:-

“14. Once it is held that the terms and conditions of service including the recruitment of employees were to be governed either by the statutory rules or rules framed under the proviso to Article 309 of the Constitution of India, it must necessarily be held that any policy decision adopted by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be illegal and without jurisdiction. In A. Umarani v. Registrar, Coop. Societies [(2004) 7 SCC 112 : 2004 SCC (L&S) 918] a three-Judge Bench of this Court has opined: (SCC p. 126, para 45)

“45. No regularisation is, thus, permissible in exercise of the statutory power conferred under Article 162 of the Constitution if the appointments have been made in contravention of the statutory rules.”

It was further held: (SCC pp. 126-27, para 49)

“49. It is trite that appointments cannot be made on political considerations and in violation of the government directions for reduction of establishment expenditure or a prohibition on the filling up of vacant posts or creating new posts including regularisation of daily-waged employees. (See Municipal Corpn., Bilaspur v. Veer Singh Rajput [(1998) 9 SCC 258 : 1998 SCC (L&S) 1178] .)”

11. In the present case, the statutory Rules provide for additional increment to Government servants at the time of their promotion or grant of selection grade/promotion pay scale, therefore, grant of such increment to petitioners cannot be termed as irregular. The recovery, ordered by the competent authority from the salary of petitioners, only on the ground that Government Order dated 06.09.2019 is silent about such increment, is therefore, unsustainable.

12. In such view of the matter, the order of recovery passed against petitioners is liable to be quashed and is hereby quashed. The writ petitions are allowed.”

8. Ld. counsel for the parties submitted that since the controversy in hand has been settled by the Hon’ble High Court, therefore, the above noted claim petitions may also be decided by the Tribunal in terms of decision rendered by the Hon’ble High Court.

9. Ld. Counsel for the petitioners submitted that the claim petitions should be disposed of by Single Bench of the Tribunal by setting aside the orders of recovery passed against the petitioners of the above noted claim petitions, as was done by the Hon’ble High Court in similar matters.

10. Identical cases should be decided alike. When the Hon’ble High Court has decided the controversy in hand, this Tribunal should follow the

same in letter and spirit. Therefore, the above noted claim petitions are being disposed of in the manner in which WPSS No. 2269 of 2022 and connected writ petitions were decided by Hon'ble High Court of Uttarakhand on 04.01.2024.

11. Above noted claim petitions are, accordingly, disposed of in terms of judgment rendered by the Hon'ble High Court in WPSS No. 2269 of 2022 and connected writ petitions on 04.01.2024.

12. Let copies of this judgment be placed on the files of Claim petitions No. 28/NB/SB/2023, Laxman Singh & others, 38/NB/SB/2023, Subhash Chandra Tiwari & others, 72NB/SB/2023, Lalit Mohan Murari & others and 111/NB/SB/2023, Vimal Kumar & others.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 06,2024
DEHRADUN

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