

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

**WRIT PETITION NO 522(S/B) OF 2018
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 108/NB/SB/2022]**

Jugal Kishore Tiwari, aged about 66 years, s/o Late Sri S.D.Tiwari, r/o Training Institute Campus, Rampur Road, Rudrapur, Udham Singh Nagar.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, Rural Development, Govt of Uttarakhand, Dehradun.
2. Commissioner, Rural Development Uttarakhand, Pauri.
3. Director Treasury, Pension and Entitlement, Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun.

.....Respondents.

(virtually)

Present: Sri Niranjana Bhatt, Advocate, for the petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.

JUDGMENT

DATED: AUGUST 07, 2024.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 522/2018 , Jugal Kishore Tiwari vs. State of Uttarakhand and others, on 22.09.2022, as follows:

“The petitioner has preferred the present writ petition to seek the following substantial reliefs:

“i) Issue a writ, order or direction in the nature of certiorari calling for records and quashing the impugned Office Order No. 19/Writ/XI(1)/2017- 50(04) 18 dated 2nd April 2018 passed by the Principal Secretary, Rural Development Department, Govt. of Uttarakhand, whereby the representation of the petitioner dated 19th January 2018 has been rejected.

ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to pass an order for constituting the ACP Screening Committee for taking decision on the rectification of the anomaly to the extent that a 9 years junior officer is getting higher salary than the petitioner.

iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to take the decision regarding grant of 3rd Financial Upgradation to the petitioner in the Grade Pay of Rs.8700/- taking into account the services rendered by the petitioner in education department.

iv) Issue, a writ or direction in the nature of mandamus directing the respondents to take decision regarding the pay anomaly of the petitioner and wrong fixation of the pension of the petitioner, in view of the communication dated 11.10.2017 of the Addl. Commissioner, Rural Development, in a time bound manner.

(v) To pass any other/further suitable order which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(vi) Award the cost of writ petition to the petitioner.”

2) The petitioner is a public servant. The substantial reliefs sought by the petitioner squarely fall for consideration within the jurisdiction of the Uttarakhand Public Services Tribunal.

3) Considering the fact that the petition is pending since the year 2018, we direct the Registry to transmit the complete record of the case to the Tribunal, which shall be registered as a claim petition by the Tribunal, and be dealt with accordingly.

4) Writ petition stands disposed of accordingly.”

2. Writ Petition No. 522 (S/B) of 2018 is, accordingly, reclassified and renumbered as Claim Petition No. 108/NB/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 petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. Present petition has been filed by the petitioner being aggrieved by the office order dated 02.04.2018, passed by the Principal Secretary, Rural Development, Government of Uttarakhand, whereby the representation of the petitioner for grant of benefit of 3rd ACP by adding the

services rendered by the petitioner in Education Department has been rejected. The relief sought for by the petitioner is that the impugned order dated 02.04.2018 (Annexure- 15) be quashed and the respondent be directed to revise and refix pension of the petitioner by granting him benefit of 3rd ACP, after adding the services rendered by him in the Education Department of the State (from 1976 to 1985) and to remove anomaly in the pension of the petitioner which has resulted the petitioner in drawing less pension than the similarly situated persons.

4. Other details have been given by the petitioner in his petition. The Tribunal does not feel it necessary to narrate all the details, for they are already part of record.

5. Petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

6. Petition has been contested on behalf of respondents. Sri Pankaj Tiwari, Director, Treasury, Pension and Entitlement, Uttarakhand, Dehradun, has filed Counter Affidavit on behalf of Respondent No. 3.

7. Such C.A. is very brief. In several paragraphs of the C.A. it has been mentioned that, "3rd ACP is to be granted to the petitioner under the relevant provisions of the Government Order by the competent authority/ appointing authority."

8. Earlier, a writ petition being WPSB No. 597/ 2017 was filed by the petitioner before the Hon'ble High Court. Hon'ble Court was pleased to decide such writ petition on 08.01.2018, as follows:

"Complaint of the petitioner is based on non-inclusion of nine years of service, which, according to him, he has spent in the Education Department, for the purpose of calculating pension. According to him, his case has been recommended by Additional Commissioner, Rural Development. He has already filed a representation before the Secretary. He would point out that, in fact, his junior is drawing higher pension. If the period he has spent in the Education Department is taken into consideration, his grievance would stand redressed.

After hearing the learned counsel for the petitioner and learned Standing Counsel, we dispose of the writ petition by directing respondent no.1 to consider taking decision on Annexure-15, in accordance with law, within a

period of six weeks, from the date of production of certified copy of this order. The authority will also take into consideration the recommendations. We leave open the contentions of the petitioner and also liberty to approach this Court seeking the same relief, if need arises.....”

9. The representation of the petitioner was rejected *vide* office order dated 02.04.2018 (Annexure: 15), which is under challenge in present petition. It will be useful to reproduce the impugned order hereinbelow for convenience:

“.....

1. On 29/10/1976 the petitioner was appointed as a teacher of physics at the pay scale of Rs. 400 to 750 and on 12/11/1976 in the first part he rendered his services in Bagheshwar ra.e.ca. Public Service Commission, Uttar Pradesh appointed him as assistant professor physics at pay scale Rs. 400 to 750 and consequently he was posted at the same school. After being selected as the Region Development Officer in the pay scale of Rs. 690 to 1420 he was consequently relieved from the education department 31st July 1980 onwards. From 1st February 1985 he rendered his services at the State Training Institution, Bakshitalab, Lucknow and in the same way from 12th November 1976 to 30th September 2013 his departmental services have continued with consistency. As per the order issued by the Uttar Pradesh Government on 18th May 1987 apart from the post of teacher to the post of Development Officer carrying additional responsibility, Village Development and Panchayati Raj, Government of Uttar Pradesh's GO 532(1) dated 6th July 1987 carrying regulation number 22B of Part 2 of the financial manual, this was the standard used to set his wages.

2. Government Order number 972 on 8th March 2011 provided for the Uttarakhand Government's Village Development Department to follow its order number 1634/11 dated 25th October 2011 to provide benefit of the second ACP to three officers and accordingly the name of the petitioner was earmarked as serial number 1. Consequently the administration brought in another office order 1633, dated 25th October 2011 which provided for the Village Development Department's fourteen officers to the third financial upgradation. In this order, the name of the petitioner was listed at number 6 and on 1st February, 2011 in the third ACP the third ACP's benefit has been extended. However, at the 12th place, Shri. Manvendra Singh Rana was given this benefit 3rd March, 2010 onwards. Mr. Rana came to the post of Region Development Officer on 1st November 1993 and is much junior to the petitioner. In 1985 in District Uttarkashi he was giving his services as a Block Development Officer in Mori and has worked with me.

3. In line with the above, it is to be specified that Shri. Jugal Kishor Tiwari in the earlier Department had pay scale of Rs. 650 to 1280 when appointed on 31st January 1985 and in the new Department (Village Development Department) on 1st February 1985 as Region Development Officer, his wages scale was between Rs. 690 to 1420. In contract, Shri. Manvendra Singh Rana in his earlier department (Labour and Service Department) on 31st October 1993 was on the wage scale of Rs. 2200 to 4000 and in his

new department (Village Development Department) as Block Development Officer his wage scale was between Rs. 2200 and 4000. The Finance Department has already stated that as per Government Order number 872 dated 8th March 2011, in clause 1(2)(kha) (VI) as per the prevalent order, in the other Departments of the Government, officers rendering the same services should be given the same pay scale while determining their financial upgradation. As per this rule, Shri. Manvendra Singh Rana, in his earlier department had the pay scale of Rs. 2200 to 4000 on date 30th March 1984 whereas Shri Tiwari in his earlier department had the pay scale of Rs. 690 to 1420 that he carried to his new department. Since the pay scales of Mr. Tiwari and Mr. Rana were different in their original departments that is why the benefit of the third financial upgradation was extended to Mr. Manvendra Rana on 3rd March, 2010 whereas to Shri Jugal Kishor Tiwari on 1st February 2011 which is as per the rules.

4. Therefore, in the light of the above stated facts, in accordance with the directions of the Hon'ble High Court, petitioner Jugal Kishor Tiwari's memorandum dated 19th January 2018 and annexure 15 that specifies his main argument is found to be powerless and is therefore not accepted and emphatically rejected."

10. Sri Niranjn Bhatt, Ld. Counsel for the petitioner submitted that there is no whisper about the recommendations of the Additional Commissioner, Rural Development, in favour of the petitioner, in the impugned order. Ld. Counsel for the petitioner further submitted that the Hon'ble Court directed the authority concerned to take into consideration the recommendations made by the Addl. Commissioner, Rural Development, while deciding the representation of the petitioner, which has not been done in the instant case. Ld. Counsel for the petitioner, therefore, prayed that the matter may be remitted to the authority concerned to take into consideration the recommendations made by the Addl. Commissioner, Rural Development, which has been filed as Annexure-13 with the petition.

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

12. Without going into the merits of office memorandum dated 02.04.2018, the Tribunal deems it proper to request Respondent No.1 to look into the recommendations made by the Addl. Commissioner, Rural Development also, while considering the representation of the petitioner, as has been directed by the Hon'ble High Court in its order dated 08.01.2018

in WPSB No. 597/2017, complete text of which has been mentioned herein above in Para 8 of the judgment .

13. There is yet another reason for the Tribunal to request Respondent No.1 to do so. In Paragraphs 4, 6, 8, 10 and 12 of the C.A. filed by Sri Pankaj Tiwari, Director Treasury, Pension and Entitlement, Uttarakhand, Dehradun, it has been mentioned that, “3rd ACP is to be granted to the petitioner under the relevant provisions of the Government Order by the competent authority/ appointing authority.”

14. Petition is disposed of by making a request to Respondent No.1, to also consider the recommendations made by the Addl. Commissioner, Rural Development, while looking into the grievance of the petitioner. The Tribunal is not making such request to Respondent No.1 on its own. Hon’ble High Court had directed the authority concerned to take into consideration the recommendations made by the Addl. Commissioner, Rural Development, which are based on the advise given by the Director, Accounts (Audit), Uttarakhand. It appears that such recommendations have not been taken into account while dealing with the representation of the petitioner.

15. The matter is accordingly, remitted to the respondent department without commenting upon the merits of the impugned order dated 02.04.2018 (Annexure: 15), for fresh decision in accordance with law. The same should be done without unreasonable delay on presentation of certified copy of this order. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUS 07, 2024
DEHRADUN