

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

Writ Petition No. 04 (S/B) of 2021

[Reclassified and Renumbered as Claim Petition No. 78/NB/DB/2022]

Naveen Chandra Joshi, aged about 56 years, s/o Sri B.D. Joshi, presently posted as Chief Administrative officer at Office District Education Officer, Secondary Education, Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, School Education, Uttarakhand, Dehradun.
2. Director Elementary Education, Dehradun, Nanoorkhera, Uttarakhand.
3. Additional Director of Education (Elementary), Kumaun Mandal, Nainital.

..... Respondents

Present: Sri Vinod Tiwari, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

Dated: 08th August, 2024

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 01.09.2022 in WPSB No. 04 of 2021, Navin Chandra Joshi vs. State of Uttarakhand and others, which (order) reads as under:

“The petitioner, who was the government servant, has preferred the present writ petition to seek the benefit of A.C.P. leave encashment, earned leave and seniority.

2. The relief sought for in this petition squarely falls within the jurisdiction of the Uttarakhand Public Services Tribunal.

3. Considering the fact that the petition has been pending since the year 2021, and the counter-affidavit has been filed, we transfer the present writ petition to the Tribunal for registration and consideration as a claim petition.

4. The Registry is directed to transmit the record without any delay.

5. The petition stands disposed of in the aforesaid terms.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 12986 /UHC/ Service (S/B)/ 2022 dated 13.09.2022 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as claim petition no. 78/NB/SB/2022.

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

“(i) To issue a writ order or direction in the nature of certiorari to quash the impugned order dated 23.11.2017 passed by respondent No. 1.

(ii) To issue a writ order or direction in the nature of certiorari to quash the order dated 21.09.2020, 23.09.2020 and 30.09.2020 passed by the respondent No. 1, 2 & 3 respectively for recovering the amount of A.C.P. from the salary of the petitioner.

(iii) To issue a writ order or direction in the nature of mandamus for directing and commanding the respondents to grant the ACP, leave encashment, earned leave and other benefits of seniority to the petitioner counting his past service rendered by him in Basic Siksha Parishad.

(iv) Award cost of the petition to the petitioner.”

4. Petitioner has filed affidavit in support of his petition. Relevant documents have been filed with the petition.

5. The petition has been contested on behalf of the respondents. Sri R.K. Kunwar, Director, Elementary Education, Uttarakhand, Dehradun, has filed counter affidavit on behalf of respondent no. 2.

6. Whereas the petitioner has made an endeavour to make out a case in his favour in the pleadings, the respondents have tried to justify the departmental action in parawise reply.

7. Earlier, when the petition was listed for hearing on 22.05.2023, the Tribunal passed the following order:

“In today's hearing, learned Counsel for the petitioner produced a judgment dated 14.07.2022 of the Hon'ble High Court, according to which, in a bunch of petitions filed by the Group 'D' employees, who were appointed in different Primary/Junior High Schools run by Basic Education Board between the year 1993 to 2005, the Hon'ble High Court has quashed the impugned order dated 21.09.2020 passed by the Additional Secretary, Education Department and consequential orders passed by authorities of Education Department. He also produced a copy of the order dated 22.11.2021 of Hon'ble High Court, according to which, certain Special Appeals filed by the Govt. have been dismissed. Learned Counsel for the petitioner seeks to file R.A. enclosing copies of these orders and to make other pleadings regarding the reliefs claimed by him in the present petition. The same is allowed in the interest of justice.

List on 19.06.2023 for hearing/further orders.

Learned A.P.O. may also enquire about latest status of the litigation from the respondent department in the meanwhile.”

8. WPSS No. 1349 of 2020 and connected writ petitions were decided by the Hon'ble High Court of Uttarakhand by a common judgement on 14.07.2022, as follows:

“Mr. Lalit Samant, Advocate for the petitioners.

Mr. N.P. Sah, Standing Counsel and Mr. V.S. Rawat, Brief Holder for the State of Uttarakhand.

Heard learned counsel for the parties.

Since common questions of law and facts 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. 1349 of 2020 alone are being considered and discussed.

Petitioners were appointed as Group 'D' employee in different Primary/Junior High Schools run by Basic Education Board between the year 1993 to 2005. These Primary/Junior High Schools were run by Basic Education Board established by U.P. Basic Education Act, 1972 and its employees were not having the status of Government Servant. Petitioners became Government employees w.e.f. 22.04.2006 by virtue of Section 58 of Uttarakhand School Education Act, 2006, which reads as under:

“58. The services of teachers and employees of Basic Shiksha Parishad to be under the control of State Government - All the teachers, officers and employees of Basic Shiksha Parishad, including any supervising or inspecting officer or employee working immediately before the date of the commencement of this Act, shall be transferred to the State Government and they shall become teachers, officers and employees of the State Government and their services shall be governed by the service rules prescribed by the State Government.”

After their induction into Government service, petitioners were given benefit of Assured Career Progression (A.C.P.) Scheme, pursuant to Government Order dated 08.03.2011, on different dates, however, subsequently Additional Secretary, Education Department, Government of Uttarakhand issued a letter to Director General, School Education on 21.09.2020, stating that past services rendered by employees of Basic Education Board, before their induction into Government Service, are not to be taken into account for grant of benefit of A.C.P. and also directed for recovery of excess amount paid as A.C.P. to such employees. Pursuant to the said order, Director, Elementary Education issued a Circular dated 23.09.2020, directing the Departmental Authorities to recover the amount paid as A.C.P. from such employees.

Thus, feeling aggrieved by order dated 21.09.2020 passed by Additional Secretary Secondary Education Department, Government of Uttarakhand and the orders passed by Departmental Authorities consequent thereto, petitioners have approached this Court challenging these orders.

The impugned order dated 21.09.2020 passed by Additional Secretary relies upon paragraph no. 2 (viii) of Government Order dated 08.03.2011 for holding that earlier services rendered by petitioners in Basic Education Board are not to be counted for determining eligibility for A.C.P. English translation of paragraph no. 2 (viii) is as follows:

“Past services rendered in Central Government/ Local Bodies/Autonomous Institutions/Public Sector Undertakings and Corporations will not be counted for grant of A.C.P.”

Heard learned counsel for the parties and perused the record. A Division Bench of this Court in Special Appeal No. 44 of 2010, while dealing with the question of seniority held that services rendered by an employee in Basic Education Board, before his induction in Government service in terms of Section 58 of Uttarakhand School Education Act, 2006, are liable to be added for determining his seniority in Government service. Paragraph no. 8 of the said judgment rendered on 28.06.2010 is reproduced below:

“8. We have considered the rival submissions advanced by the learned counsel for the parties. In terms of the mandate Section 58 of the Uttaranchal School Education Act, 2006, the service rules of the State Government were liable to be referred to, so as to determine the issue of seniority of the respondent. However, in the absence of any explicit rules, which could be made applicable to the respondent under the Uttaranchal Government Servant Seniority Rules, 2002, the continuous length of service rendered by the respondent in the cadre of Senior Clerks is liable to be given effect to, so as to determine inter se seniority viz. the other employees of Education Department of the State

Government. Thus viewed, the respondent is liable to be given benefit of seniority with effect from 01.08.2000, which admittedly, is the date when the respondent was promoted as Senior Clerk in the Basic Education Board. This, in our view, shall also result in giving complete effect to the suo motu determination of the appellants, in absorbing the respondent as a Senior Clerk at the time of his induction into the service of Education Department of the State Government, as also, allowing him to draw salary at the stage he was drawing at the time of his appointment under the Education Department of the State Government. This is bound the basis and the manner of determination of the respondent's seniority also. It would be pertinent to mention, that there was no option with the respondent to continue in the employment of the Basic Education Board, inasmuch as, without obtaining his consent the respondent (as also, all other employees earlier rendering service under the Basic Education Board) was transferred by one stroke of pen to the employment of the Education Department of the State Government. The respondent could not have unilaterally been denied the benefit of service rendered by him as Senior Clerk with effect from 01.08.2000."

The question, which falls for consideration in these cases is also whether the services rendered by petitioners in Basic Education Board, can be taken into account for determining their eligibility for A.C.P. after induction into Government service.

In the aforesaid judgment, Division Bench of this Court has held that since employees of Basic Education Board were transferred to the employment of Education Department, without obtaining their consent, therefore, such employees cannot be denied benefit of their past services.

Section 58 of Uttarakhand School Education Act provides for automatic transfer of service of employees of Basic Education Board. Service of the petitioners were thus transferred to Education Department of the State Government, by operation of law. They had no choice in the matter and status of Government Servant was given to them on 22.04.2006, therefore, the ground on which, benefit of A.C.P. has been withdrawn from the petitioners, does not appear to be reasonable. Benefit of past services rendered under Basic Education Board, cannot be denied to them only on the ground that earlier they were employees of Basic Education Board.

Even otherwise also, reliance upon clause (viii) of paragraph no. 2 of the Government Order dated 08.03.2011 is misplaced, as the said clause contemplates a situation where a person, earlier serving under the Central Government or in a Local Body/ Autonomous Institution/Public Sector Undertaking or Corporation, is re-appointed in a Department of the State Government. It is nobody's case that petitioners were re-appointed in Education Department; though, petitioners were earlier serving under a Statutory Authority, namely, Basic Education Board, but they were not issued fresh order of appointment by the State Government or any departmental authority. Since they became Government Servant by operation of law, thus, this is not a case of re-appointment, therefore, paragraph no. 2 (viii) of Government Order dated 08.03.2011 is not attracted to them.

For the aforesaid reasons, the impugned order dated 21.09.2020 passed by Additional Secretary, Education Department and consequential orders passed by authorities of Education

Department are liable to be quashed and are hereby quashed. The writ petitions are allowed. The amount, if any, recovered pursuant to impugned orders, shall be refunded to the petitioners, within a period of three months' from the date of production of certified copy of the order."

9. Learned Counsel for the petitioner also placed on record Special Appeal No. 214 of 2020 and connected special appeals, filed by the State, which were also decided by a common judgement. The order dated 22.11.2021, passed in Special Appeal No. 214 of 2020 and connected special appeals runs as below:

"Since all these special appeals raise the same legal issues, they are being decided by this common judgment.

2. The appellants have challenged the legality of the order dated 22.10.2019, passed by a learned Single Judge, in Writ Petition (S/S) No.2177 of 2018, and other connected matters, whereby the learned Single Judge has set-aside the order dated 16.03.2018, passed by the Director, Elementary Education, wherein the petitioners were denied the benefit of their past services while calculating the period for granting them the benefit of Assured Career Progression. The learned Single Judge has also issued a writ of mandamus to compute and count services of the petitioners rendered in U.P. Basic Education Board for granting benefit of A.C.P. to them.

3. Without going into the factual matrix of these cases, suffice it to say that on different occasions, this issue has been raised before this Court, namely whether for getting benefit of A.C.P., previous service rendered by the petitioner with the Uttar Pradesh Basic Education Board should be added to the period for receiving the benefit of A.C.P., or not?

4. In the case of Beer Singh Bhandari v. State of Uttarakhand & others, [Writ Petition (S/S) No.270 of 2009, decided on 23.12.2009], a learned Single Judge had directed that the past services rendered by the employees in the U.P. Basic Education Board is bound to be counted for all purposes.

5. A similar view was also expressed by a learned Single Judge in the case of Bachendra Prasad Kanswal & others v. State of Uttarakhand, [Writ Petition (S/S) No.928 of 2012, decided on 09.01.2017].

6. In the present case, the learned Advocate General conceded that these two judgment, mentioned hereinabove, were never challenged. Therefore, they have attained finality. Most importantly, the learned Advocate General conceded that the case of the present petitioners is squarely covered by those two judgments. It is only upon such a concession being made by the learned Advocate General, that the learned Single Judge passed the order dated 22.10.2019.

7. Needless to say, once a concession is made, and the order is a consensual one, no appeal can lie against the said order.

8. Therefore, this Court does not find any merit in these special appeals, and the same are, hereby, dismissed.”

10. Learned Counsel for the petitioner submitted that the petitioner should be given benefit of the aforesaid orders of the Hon’ble High Court. He further submitted that order dated 14.07.2022, passed by Hon’ble High Court in WPSS No. 1349 of 2020 and connected writ petitions, has attained finality, therefore, the instant petition may also be decided in terms of the mandate of Hon’ble Court.

11. Sri Kishore Kumar, learned A.P.O., fairly submitted that present petition is covered by the aforesaid judgment of the Hon’ble High Court.

12. In such view of the matter, present petition should be disposed of in terms of the aforesaid judgements/ orders.

13. Learned Counsel for the parties submitted that such an order may be passed by Single Bench of the Tribunal.

14. The petition is, accordingly, disposed of in terms of the judgement/ order dated 14.07.2022 rendered by the Hon’ble High Court of Uttarakhand in WPSS No. 1349 of 2020 and connected writ petitions. No order as to costs.

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATE: 08th August, 2024
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