BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

WRIT PETITION NO 28(S/B) OF 2019
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 15/SB/2023]

1. Rajendra Singh Rawat age 48 years S/o Sri Chandra Singh presently posted as Designated Officer (Head Quarter) in the office of Food Commissioner, Dehradun.
2. Virendra Singh Bisht, S/o Sri Gajendra Singh Bisht, presently posted as Designated Officer, office of Chief Medical Officer, Nainital.
3. Gandesh Chandra Kandwal S/o Narayan Dutt Kandwal, presently posted as Designated Officer, office of Chief Medical Officer, Dehradun.
4. Anoj Kumar Thapliyal S/o Sri Bhagwati Prasad presently posted as Designated Officer, office of Chief Medical Officer, Chamoli.
5. Rajendra Singh Kathayat (Male) aged 46 years, S/o Sri Jagat Singh Kathayat presently posted as Designated Officer, office of Chief Medical Officer, Pithoragarh, District Pithoragarh.
6. Ashok Kumar Fuloriya S/o Sri Bhuwan Chandra Fuloriya presently posted as Designated Officer, office of Chief Medical Officer, Bageshwar.
7. Pramod Singh Rawat S/o Sri Kanwar Singh Rawat, presently posted as Designated Officer, office of Chief Medical Officer, Pauri, District Pauri Garhwal.
8. Ajab Singh Rawat S/o Sri Bal Singh presently posted as Designated Officer, office of Chief Medical Officer, Almora.
9. Rajendra Singh Pal S/o Dr. Indra Singh Pal presently posted as Designated Officer, office of Chief Medical Officer, Haridwar.
10. Manish Singh S/o Sri Dalip Singh Sayana, presently posted as Designated Officer, office of Chief Medical Officer, Udham Singh Nagar.
11. Mahimanand Joshi S/o Sri Pyare Ram Joshi presently posted as Designated Officer, office of Chief Medical Officer, Tehri Garhwal.

……Petitioners

vs.

1. State of Uttarakhand through Secretary/ Principal Secretary , Department of Medical, Health and Family Welfare, Dehradun, District Dehradun/ Ex-officio Commissioner of Food Safety, Uttarakhand, Dehradun, District Dehradun.

2. Additional Secretary, Department of Medical Health and Family Welfare, Medical Section-3, Government of Uttarakhand, Dehradun, District Dehradun
3. Commissioner of Food Safety, Uttarakhand, Dehradun, District Dehradun
4. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun, District Dehradun.

…….Respondents.

Present: Sri Rajendra Singh Rawat, Petitioner No.1 &
Sri Anoj Kumar Thapliyal, Petitioner No.4.
Sri V.P.Devrani, A.P.O., for Respondents.

JUDGMENT

DATED: AUGUST 28, 2024.

Justice U.C.Dhyani (Oral)

Sri Rajendra Singh Rawat, Petitioner No.1 and Sri Anoj Kumar Thapliyal, Petitioner No.4. , who are present before the Bench, stated that they are representing all the petitioners. Other petitioners have authorized them to argue on their behalf also.

2. Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 28/2019, Rajendra Singh Rawat and others vs. State of Uttarakhand and others, on 18.11.2022, as follows:

> "……
> *The petitioners are all public servants. The reliefs sought in the writ petition fall within the jurisdiction of the Uttarakhand Public Service Tribunal, Nainital.*
>
> *Considering the fact that the petition is pending since 2019 and pleadings have been complete, therefore, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.*

> *Interim order operating in the petition shall continue to operate unless modified by the tribunal.*
>
> *This petition stands disposed of."*

3. Writ Petition No. 28 (S/B) of 2019 is, accordingly, reclassified and renumbered as Claim Petition No. 15 /SB/2023. 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.

4. Petition is supported by the affidavit of Sri Manish Singh, Petitioner No.10. Relevant documents have been filed along with the petition.

5. Petition has been contested on behalf of respondents. Sri Arurendra Singh Chauhan, Additional Secretary, Medical Health and Family Welfare, Govt. of Uttarakhand, Dehradun, has filed Counter Affidavit on behalf of Respondents No. 1 to 4. Relevant documents have been filed in support of the Counter Affidavit.

6. Rejoinder Affidavit to the Counter Affidavit has been filed on behalf of the petitioners. Supplementary Counter Affidavit, in reply to the Rejoinder Affidavit, has been filed by Sri Mukesh Kumar Rai, Deputy Secretary, Department of Medical Health and Medical Education, Govt. of Uttarakhand, Dehradun, on behalf of the respondents.

7. An interim order was passed by the Hon'ble Court on 10.01.2019 in WPSB No. 28/2019. It would be quite useful to reproduce the said order hereinbelow, for convenience:

> "Admit.
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> 2. The impugned order passed by the Additional Secretary (the second respondent) is questioned in this writ petition as suffering from inherent lack of jurisdiction.
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> 3. Sri Rakesh Thapliyal, learned counsel for the petitioners, would draw our attention to several provisions of the Food Safety and Standard Act, 2006 (hereinafter referred to as "the Act"), to submit

> that, since the petitioners were extended the benefit of the pay-scale of Rs. 15600-39100 with a Grade Pay of Rs. 5400/- by the Commissioner, Food Safety, vide proceedings dated 14.11.2013, it is only the Commissioner, Food Safety (the appointing authority under the Act) who can pass an order of recovery of the said amount; the petitioners have all worked as Designated Officers under the Act; and, consequent on their being appointed to the said post and having extracted work from them as Designated Officers for the past more than five years, the action of the respondent-State in seeking to recover the said amounts from them, and in reducing their pay-scales is arbitrary and illegal.
>
> 4. Sri C.S. Rawat, learned Additional Chief Standing Counsel, would request four weeks' time to file counter affidavit.
>
> 5. When we asked Sri Rakesh Thapliyal, learned counsel for the petitioners, as to how many years of service remain till the petitioners reach the age of superannuation, learned counsel would submit that several of them are below 50 years of age, all of them have several years of service left before they retire, and in case the writ petition were to be dismissed later, it would always be open to the State to recover the said amount thereafter from their salaries, or from their retiral benefits.
>
> 6. We consider it appropriate, in such circumstances, to direct the respondents not to take coercive steps for recovery of the amounts already paid to the petitioners till the date of the impugned order. The petitioners shall henceforth only be entitled to the salary and emoluments, in accordance with the impugned order, until further orders.
>
> . ……."

8. While transferring the complete record of the case to the Tribunal, *vide* order dated 18.11.2022, the Hon'ble Court directed that:

> "Interim order operating in the petition shall continue to operate unless modified by the tribunal."

9. It is submitted on behalf of the petitioners that they are willing to make fresh representation to Respondent No.1, for redressal of their grievances, which may kindly be directed to be decided by Respondent No.1, as per law. Ld. A.P.O. has no objection to such innocuous prayer of the petitioners.

10. Petition is disposed of, with the consent of parties, by making a request to Respondent No. 1, to decide fresh representation of the petitioners, as per law, as expeditiously as possible and without unreasonable delay, on presentation of certified copy of this order along

with fresh representation enclosing the documents in support thereof. No order as to costs.

11. Interim order dated 10.01.2019, passed by Hon'ble High Court in WPSB No. 28/2019, mentioned above, shall continue till the representation is decided.

12. Rival Contentions are left open.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUS 28, 2024
DEHRADUN

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