

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

Present: Hon'ble Mr. Rajendra Singh,

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat,

.....Vice Chairman (A)

CLAIM PETITION NO: 53/NB/DB/2023

1. Dr Preeti Trivedi aged about 55 years, w/o Dr. A.K. Shukla, presently posted as Associate Professor (Hindi), Government Degree College, Dosapani, District Nainital, r/o House No. R-2, Prakash City, Phase-3, Bajpur Road, Kashipur, Udham Singh Nagar.
2. Dr. Anita Singh, aged about 62 years, w/o Dr. Ved Prakash Singh, presently posted as Associate Professor (Sociology), S.V. Government Degree College, Lohaghat, District Champawat.
3. Dr. Shashi Bala Verma, aged about 56 years, d/o Late Sri Jagdish Prasad Verma, presently posted as Principal, Government Degree College, Pokhri, Quili, District New Tehri.
4. Dr. Maya Shukla, aged about 58 years w/o Sri Vipin Bihari Shukla, presently posted as Associate Professor (Sanskrit), Government Degree College, Ramgarh, District Nainital, r/o A-12, Ganga Enclave, Nawabi Road, Haldwani, District Nainital.
5. Dr. Subhash Chandra Singh Kushwaha, aged about 57 years, s/o Sri Govind Singh Kushwala, presently posted as Associate Professor (Hindi), Radhey Hari Government P.G. College, District Udham Singh Nagar.
6. Rajeev Singh Kanaujia, aged about 58 years, s/o Late Sri Hardev Bahadur Kanaujia, presently working as Associate Professor (Political Science) at Govt. P.G. College, Ramnagar, District Nainital.
7. Dr. Punita Kushwaha, aged about 57 years, w/o Sri Kamlesh Kushwaha, presently posted as Associate Professor (Hindi), Radhey Hari Government P.G. College, District Udham Singh Nagar.

..... **Petitioners**

Vs

1. State of Uttarakhand through Secretary, Higher Education, Dehradun.
2. Director, Higher Education, Gaulapar, Haldwani.

3. University Grant Commission, Bahadur Shah Zafar Marg, ITO, New Delhi
110002 through its Chairman.

.....**Respondents**

Present: Sri S.S. Yadav, Advocate for the petitioners
Sri Kishore Kumar, A.P.O. for the Respondent no 1 & 2

JUDGMENT

DATED: SEPTEMBER 20, 2024

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

- I. To issue an order or direction to set aside the impugned rejection order dated 07.07.2022 passed by respondent no. 2 alongwith it all petitioners are challenging the notification dated 09.03.2023 issued by respondent no. 2, letters dated 21.02.2022 issued by respondent no. 2, 23.04.2022 issued by respondent no. 2 and rejection order dated 15.03.2023 passed by respondent no. 2 (Annexure No. A-1, A-2, A-3, A-4, A-5 and A-6 to the claim petition).*
- II. To issue an order or direction to the respondent no.1 and 2 to again invite the petitioner no. 1, 2, 3, 4 and 5 and consider their candidature like the candidates mentioned in para no. 36 of the present claim petition (Annexure No. A-20 (Colly) to the claim petition) for providing the Career Advancement Scheme (CAS) for the post of Professor.*
- III. To issue an order or direction to the respondents to open the Smarth Portal for the petitioners to submit their application as per UGC Regulation, 2010 giving the rebate of 03 years window period as per clause 6.3 of UGC Regulation, 2018.*
- IV. To issue an order or direction to the respondent no. 1 and 2 to permit the petitioners provisionally for the consideration of their candidature under Career Advancement Scheme for the post of Professorship in the tune of identical cases mentioned in para no. 37 and 38 of the present claim petition (Annexure No. A-21 and A-22 (Colly) to the claim petition).*
- V. To give any other relief that this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

VI. *Award the cost of the petition.*

2. The facts as stated in the claim petition, in brief, are that the petitioners were appointed to the posts of Assistant Professor from 14.12.1998 to 03.07.2003. They were promoted to the senior scale/Associate time scale from 01.05.2006 to 22.12.2010 after completion of three years of service in the Associate Professor/Lecturer grade. All of them became eligible to promotion to the level of Professor (Level 14) after completion of 7 years of service i.e. w.e.f. 02.05.2012 to 22.12.2013, under Career Advancement Scheme (CAS).

2.1 It has been stated that on 18.07.2018, UGC issued a Notification in regard to the benefit of CAS to the Associate Professor of the State University, Govt. Colleges aided Govt. Colleges. The UGC Regulations was adopted by the State Govt. on 06.09.2023 in regard to CAS. Para 6.3 of the Regulations gives option to submit application to the post of Professor as per UGC Regulations, 2010 or UGC Regulations, 2018 but the benefit was available only for window period of 3 years. The UGC Regulations were adopted by the State of Uttarakhand on 06.09.2019 for CAS for teachers.

2.3 The respondent no 2 on 10/11/2020 invited application for the post of senior scale/ selection grade/ associate pay scale. But the applications for the post of the professor were not invited. On 24/12/2020, the respondent no. 2 invited applications for the post of professor of Govt. Aided Degree Colleges. The respondent no. 2 on 11/12/2021 invited applications for the post of senior scale, selection grade/ associate/professors designations pay scale in the govt. degree colleges but the window period of three years has not been provided in the advertisement. The advertisement is against the provisions of the UGC regulations 2018. The petitioners should also be given the option to apply as per provisions of 2010.

2.4 The petitioners no. 1 to 5 applied for promotion to the post of Professor but the petitioner no. 6 could not apply because of medical

problems and petitioner no. 7 could not apply because of death of her daughter. Since the window period of three years, according to the stand taken by the petitioners is upto 10.12.2024, they should be permitted to apply according to UGC Regulations, 2010, but their applications under U.G.C. Regulations, 2010 are not being accepted by the respondents.

3. The Respondents No 1 & 2 filed the counter affidavit against the interim relief sought by the petitioner and stated that the UGC regulations were effective till 17/07/2021. The petitioners submitted their applications against the advertisement date 11/12/2021 i.e. beyond the date on which the relaxation of the option of 2010 was not existing. The respondents accept that the Regulations were made effective from 6/9/2019 i.e. the date of adoption of the regulations by the State of Uttarakhand till 05/09/2022. The petitioners would have exercised the option till 05/09/2022. The respondents submitted that the process to complete the filling of the posts of the professors as per regulation 2010 were completed in 2018 as the Regulation was applicable till 2018.

3.1 It is further stated that in 2018, the petitioners applied as per UGC Regulations, 2010 in that process, the petitioner Nos 3, 5,7 failed as they did not fulfill criteria of API and other criteria of UGC Regulations 2010. Petitioner no. 1 did not appear in the interview. Petitioners no 2,4,6 also did not apply. UGC Regulations 2018 were issued in supersession of UGC Regulations, 2010. There is provision in the UGC Regulations ,2010 and 2018, that the candidate failed or remained absent in the earlier process can apply under currently available process only. So, the claim of the petitioners is dismissed.

3.2 The respondent no 1 has filed the Counter affidavit and accepts that the applicability of the window for submitting the application form was till 05/09/2022. The request to allow the submission of the applications till 19/12/2024 is not maintainable. The window period is not mandatory as per 6.3. The respondent further

accepts that the petitioner may apply after one year of failing in the process or failing to apply for the process of selection.

4. R.A. has been filed on behalf of the petitioners denying the contents of the C.A. and reiterated the averments made in the claim petition.

5. Heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioners has been argued that that vide G.O. dated 11.12.2021 (Annexure-10 of the claim petition), the applications were invited for promotion to the post of Professor under Career Advancement Scheme (CAS). This G.O. states that the applications should be filed according to the UGC Regulations, 2018. Para 6.3 of the UGC Regulations, 2018 reads as below:

“The criteria for promotions under Career Advancement Scheme laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify shortly under the existing regulations, a choice may be given to them, for being considered for promotions under the existing Regulations. This option can be exercised only within three years from the date of notification of these Regulations”

According to the above para, an option was given for a period of three years to apply either under UGC Regulations, 2010 or under UGC Regulations, 2018 from the date of notification of these Regulations (i.e. 18.07.2018). The Hon'ble High Court, in Writ Petition no. (S/B) 157 of 2021, Dr. Harbir Singh Randhava and others vs. State of Uttarakhand & others, observed that because the Uttarakhand Govt. had adopted the UGC Regulations, 2018 on 06.09.2019, the period of three years to exercise of options under Clause 6.3, the limitation would be governed from the date of adoption of the 2018 Regulations by the State of Uttarakhand, i.e. 06.09.2019.

7. It is further argued that since applications from Associate Professors working in Govt. Colleges for promotion under CAS to the

post of Professor were invited for the first time vide G.O. dated 11.12.2021, the three years period will commence from 11.12.2021 and continue till 10.12.2024.

8. It has been argued on behalf the respondents that the choice of exercising options whether to apply under the UGC Regulations, 2010 or UGC Regulations, 2018 was available only upto 05.09.2022 as per the interpretation of the judgment of the Hon'ble High Court, while as per the UGC Regulations, 2018, this period is available upto 17.07.2021 only. UGC Regulation 1.3 provided that these Regulations shall come into force from the date of notification (i.e. 18.07.2018). The Directorate of Higher Education invited applications for promotion under the UGC Regulation, 2018 on 11.12.2021. It has further been argued that because at present UGC Regulations, 2018 are in force, the Directorate of Higher Education considered the promotions of Petitioners under UGC Regulation, 2018. It is further submitted that the promotion to the post of Professor under UGC Regulations are not merely based on span of service, rather fulfilment of Academic Performance Index (API) and other eligibility criteria of Publications and other academic and extension activities are mandatory, which are not fulfilled by all the Petitioners and thus Screening Committee of CAS could not recommend their names for Professor Pay grade. Clause 6.4 of the UGC Regulation, 2018 mentioned the stages of promotion under the career advancement scheme of incumbent and newly-appointed assistant professors/associate professors/professors as follows:

6.4 IV. Associate Professor (Academic Level 134) to Professor (Academic Level 14)

Eligibility:

1. Associate Professors who have completed three years of service in Academic Level 13A.
2. A Ph.D. degree in subject relevant/allied/relevant discipline.
3. A minimum of 10 research publications in peer-reviewed or UGC-listed journals out of which three research papers shall be published during the assessment period.
4. A minimum of 110 Research Score as per Appendix II, Table 2

CAS Promotion Criteria:

A teacher shall be promoted if;

- i) The teacher gets 'satisfactory' or 'good' grade in the annual performance assessment reports of at least two of the last three years of the assessment period, as per Appendix II, Table 1 and at least 110 research score as per Appendix II, Table 2.
- ii) The promotion to the post of Professor is recommended by selection committee constituted in accordance with these Regulations.

9. It has been further argued on behalf of respondents that the petitioner Nos. 1, 2, 3, 4, 5 applied for promotion to the post of Professor but the research papers presented by them do not fulfill the standards as mentioned under Clause 6.4 B (IV)(3) of the UGC Regulation, 2018, thereby, they were rejected under the UGC Regulations, 2018. Learned Counsel for the petitioner argued that the petitioners had applied under UGC Regulations, 2010. The rejection order is filed as Annexure no.1 to the claim petition and this order is dated 07.07.2022, meaning thereby, that these petitioners had applied before 07.07.2022 but their applications were rejected as they do not fulfil the criteria of the UGC Regulations, 2018.

10. Based on the facts and the arguments furnished by the Leaned counsels appearing on behalf of the petitioners and the Respondents, we are of the opinion that the respondents misinterpreted the applicability of the UGC Regulations, 2018 and the relaxation under clause 6.3. They did not inform the UGC that in Uttarakhand the date of adoption of the UGC regulation 2018 was 6/9/2019 and simply asked about the applicability of the relaxation of UGC regulation, 2018 and got the reply based on the information furnished to UGC. The reply of the UGC was used to deny the applicants the opportunity to get screened as per UGC Regulations 2010. The applicants along with many persons who applied in pursuance of the letter dated 11/12/2021 as per the UGC Regulation, 2010 were rejected arbitrarily and without application of mind and informed vide letter dated 7/7/2022. Now, the UGC vide notification dated 6/6/2024 has notified UGC Regulations 2024, which is the amendment of the UGC Regulations 2018 in respect of its validity

and exercise of the option under the clause under 6.3. The provision under 6.3 in the amended Regulations is as under:

“The criteria for promotions under Career Advancement Scheme laid down under these Regulations shall be effective from the date of notification of these Regulations. However, to avoid hardship to those faculty members who have already qualified or are likely to qualify till 31st December 2024 as per the UGC Regulations on Minimum Qualifications for Appointment of Teachers and other Academic staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education, 2010, a choice may be given to them either for being considered for promotions under the 2010 or 2018 Regulations. The date of eligibility shall be retained as the date of promotion. On the date of submission of the application, the candidate should fulfill all eligibility criteria required for promotion.”

11. Keeping in view the facts mentioned above, the impugned orders dated 7/7/2022 rejecting the petitioners no. 1,2,3,4 & 5 in the screening placed at Sl. No 24, 34, 2, 3 & 23 and Letters dated 09/03/2023, 21/2/2021, 23/04/2022 and 15/03/2023 are liable to be quashed and the petitioners may be screened as per the UGC regulations 2010.

ORDER

The claim petition is hereby allowed. The impugned orders dated 07.07.2022 rejecting the petitioners no. 1,2,3,4 & 5 in the screening placed at Sl. No 24, 34, 2, 3 & 23 and Letters dated 09/03/2023, 21/2/2021, 23/4/2022 and 15/3/2023 are hereby quashed. Respondents no. 1 & 2 are hereby directed to consider the candidature of the petitioners under the Career Advancement Scheme for the post of Professorship as per the UGC Regulations, 2010. No order as to costs.

A.S.RAWAT
VICE CHARMAN (A)

RAJENDRA SINGH
VICE CHARMAN (J)

DATED: SEPTEMBER 20, 2024
DEHRADUN
KNP