

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

**WRIT PETITION NO 577(S/B) OF 2018
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 94/NB/DB/2022]**

Dr. Shaili Singh, aged about 33 years, w/o Dr. Abhash Chandra, presently posted as Mahila Medical Officer, Primary Health Centre, Patti, District Champawat.

.....**Petitioner**

VS.

1. State of Uttarakhand through Secretary, Medical Health & Family Welfare, Uttarakhand, Dehradun, Secretariat Complex, Subhash Road, Dehradun.
2. Director General, Medical Health & Family Welfare, Uttarakhand, Dehradun.
3. Chief Medical Officer, Champawat.

.....**Respondents.**

Present: Sri I.P.Gairola (online) & Sri S.K.Jain, Advocates, for the petitioner.
Sri Kishore Kumar, A.P.O., for Respondents.(online)

JUDGMENT

DATED: SEPTEMBER 09, 2024.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 577/2018 , Dr. Shaili Singh vs. State of Uttarakhand and others, on 13.09.2022, as follows:

“Mr. Dinesh Gehtori, learned counsel holding brief of Mr. I.P. Gairola, learned counsel for the petitioner.

Mr. Anil Bisht, learned Additional Chief Standing Counsel for the State. The petitioner has preferred the present writ-petition for the following relief:-

“i. Issue a writ, order or direction in the nature of certiorari, quashing the impugned restriction no.1 in order (letter no.2p/ra.pu./323/2018/23123 Dehradun) dated 04.10.2018 passed by respondent no.2 (Annexure No.4 to this writ petition), by which half average salary is to be paid to the petitioner during the three years period of post graduation course.

ii. issue a writ, order or direction in the nature of mandamus, commanding/directing the respondents to pay full salary to the petitioner during the three years period of post graduation course.

iii. issue any other suitable writ, order or direction of any nature in favour of petitioner, which this Hon’ble Court may deem fit and proper in the present circumstances of the case.”

The petitioner is a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ-petition.

Considering the fact that the petition is pending since 2018 and pleadings have been completed, 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.

We request the Tribunal to endeavor to dispose of the petition at an early date, considering that the writ-petition is pending since 2018.”

2. Writ Petition No. 577 (S/B) of 2018 is, accordingly, reclassified and renumbered as Claim Petition No. 94/NB/DB/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. Petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the petition.

4. Petition has been contested on behalf of respondents. Dr. T.C. Pant, Director General, Medical Health and Family Welfare, Dehradun, Uttarakhand, has filed Counter Affidavit on behalf of Respondent No. 2. Relevant documents have been filed along with the Counter Affidavit.

5. Petitioner is seeking direction to the respondents to pay the petitioner full salary for 3 years' period of her study of Post Graduation at Shri Guru Ram Rai Institute of Medical Science, Dehradun. Petitioner is also challenging the condition of half average pay during the three years' period of study as provided in order dated 04.10.2018.

5.1 Petitioner was appointed as Medical Officer (Ordinary Grade) *vide* order dated 25.03.2015, issued by Respondent No.1 (Copy: Annexure-1). She joined as Medical Officer on 13.04.2015 at Primary Health Centre, District Champawat (Copy: Annexure- 2). Petitioner was allotted seat for P.G. for the sessions 2018-19 by H.N.B. Uttarakhand Medical Education University, Dehradun. (Copy: Annexure- 3)

5.2 There is scheme in the State of Uttarakhand for Post Graduation in Medical Science, under which the petitioner applied for P.G.-2018. She was selected for P.G. Programme and order was issued to approve the selection of the petitioner *vide* order dated 04.10.2018, passed by Respondent No.2 (Copy: Annexure- 4). Petitioner was relieved from her duties on 01.06.2018 by Respondent No.3. She joined P.G. Programme at Guru Ram Rai Institute of Medical & Health Science, Patel Nagar, Dehradun (Copy: Annexure- 5).

5.3 According to order dated 04.10.2018, issued by Respondent No.2 (Annexure: 4), there is a condition that during three years period of study, the incumbents shall be paid half average salary. In the year 2015, various Medical Officers were selected. They started their P.G. Programme like the petitioner. Similar condition of payment of half average salary to the Medical Officers doing the P.G. Course was imposed, as was imposed on the petitioner.

5.4 Various Medical Officers have filed writ petitions before the Hon'ble High Court. In WPSB No. 437/2015 Dr. Sanjay Kumar & another vs. State of Uttarakhand and others; WPSB No. 462/2015 Dr. Amit Jain & another vs. State of Uttarakhand and others; WPSB No. 176/2015 Dr. Vandana Semwal vs. State of Uttarakhand and others; and WPSB No.

546/2015 Dr. Prashant Saini vs. State of Uttarakhand and others, following was observed:

“.....learned senior counsel appearing for the petitioners would submit that the petitioners are prepared to serve in any part of the State of Uttarakhand till they superannuate.

In such circumstances, there can be no basis for discriminatory treatment. Accordingly, all the petitions are allowed. The portion of impugned memorandums, in the name of the petitioners of the effect that the petitioners will only be given 50% of their pay on average basis will stand set aside and we direct respondent no. 1 to pay full salary to the petitioners including the arrears, naturally after giving credit to the amount which has already paid.”

5.7. A copy of judgment dated 16.06.2016 rendered in WPSB No. 462/2015 Dr. Amit Jain & another vs. State of Uttarakhand and others has been filed as Annexure: 6.

5.8 All the petitioners were paid full salary, instead of half average pay, in the light of order dated 16.06.2016.

5.9 Order dated 19.05.2017 was issued by Respondent No. 1, quoting the order dated 16.06.2016. Order dated 19.05.2017 has been brought on record as Annexure: 7 to the petition.

5.10 P.G. Programme attended by the petitioner and also by those who filed writ petitions before the Hon'ble High Court, was in the interest of job requirement and for betterment of performance during service period. As per order dated 16.06.2016, the Respondent No.1 has already issued orders for payment of full salary to the then Medical Officers, attending the P.G. Course. Earlier candidates of P.H.M.S. services, were allowed to draw full salary during their P.G. Programme (Copy: Annexure- 8). Order dated 04.10.2018 contains three important points, which are as follows:

- i. The respondents were providing only half of the salary for the period of three years of the study of post graduation.
- ii. The respondents were not providing even a single penny for the third year of study period.
- iii. All the expenses, which were to be incurred by the petitioners on their study of post graduation course, were to be borne by the petitioners themselves.

5.11 It is clear from the above noted paragraphs that the total expenditure is being borne by the petitioner herself. The condition of half average salary to the petitioner is against the earlier practice of paying full salary to the Medical Officers during their P.G. Programme.

5.12 In the similar circumstance, Dr. Asad Abbas was permitted to complete his P.G. from the same college. When he was not provided the facility of full salary during his study period, he filed WPSB No. 62/2014 before the Hon'ble High Court. Hon'ble Court decided the writ petition on 10.04.2015 (Copy: Annexure- 9). In pursuance to the said order, the respondents have paid full salary along with allowance to Dr. Asad Abbas. (Copy: Annexure- 10)

5.13 Petitioner is given half salary during study period only for a period of two years. The respondents have not paid any benefit of expenses incurred on study.

6. In para 11 of the C.A. a reference of Dr. Sayed Asad Abbas' case has been given, which is quoted herein below for convenience:

"We have heard learned counsel for the parties. Seeing the paucity of doctors in the State of Uttarakhand, we appreciate that the petitioner is ready to serve in any part of the State of Uttarakhand till his superannuation. Though, no doctor can compel the Government to give full salary for pursuing his M.D. (Medicine Course), but once the Government has made a policy and is giving full salary to other doctors

who are pursuing their P.G. Courses, the respondents cannot discriminate the petitioner."

6.1 In para 11 of the C.A., the following has also been mentioned:

"Earlier in some of the matter, some doctors were given full salary during study leave, but some were given half average salary, therefore, the Hon'ble Court directed not to discriminate the petitioners of that writ petition. However in the present matter, the fact and situations are different as now in regard to grant of study leave the government has taken a policy decision by which the Government Order dated 19.5.2017 has been issued, therefore, after 19.5.2017 the doctors, who are taking study leave for P.G. Course, would be bound by the provisions of the aforesaid policy."

7. Sri S.K.Jain, Ld. Counsel for the petitioner submitted that petitioner's case is squarely covered by the decisions rendered by Hon'ble Court in WPSB No. 437/2015 Dr. Sanjay Kumar & another vs. State of Uttarakhand and others and WPSB No. 62/2014 Dr. Sayed Asad Abbas vs State of Uttarakhand and others, therefore, the same direction should be given to the respondents which direction was given in the case of Dr. Sanjay Kumar (*supra*) & in the case of Dr. Asad Abbas (*supra*), in favour of the petitioner.

8. Sri Kishore Kumar, Learned A.P.O. also agrees with the submission of Ld. Counsel for the petitioner. He submitted that all the facts are similar to the above noted writ petition(s).

9. In WPSB No. 437/2015 Dr. Sanjay Kumar & another vs. State of Uttarakhand and others and connected writ petitions, Hon'ble High Court directed as under

"Petitioners are appointed as Medical Officer in the State. Subsequently, they were selected for Post Graduation Courses, and they seek following prayers:

- i) *To issue a writ, order or direction in the nature of mandamus, commanding the respondents to provide the*

petitioners full salary along with complete allowances and the expenses incurred by the petitioners for the complete period of three years of their study of Post Graduation Course at Medical College Haldwani, District Nainital.

- ii) To issue suitable directions to the respondents to modify and amend the office memo dated 07.04.2015, bearing no.649/XXVIII-2/01(16)2011, issued in the name of the petitioner no.1 (Annexure No.1 to the writ petition) and the office memo dated 07.04.2015, bearing no.648/XXVIII-2/01(16) 2011, issued in the name of the petitioner no.2 (Annexure No.2 to the writ petition) providing a benefit of full salary to the petitioners during complete period of three years of their study of Post Graduation Course, along with the expenses to be incurred by the petitioners on their study of Post Graduation Course at Medical College Haldwani.*
- iii) Any other relief which this Hon'ble Court may deem fit and proper, may kindly be awarded in favour of the petitioner and against the respondents.*
- iv) Award the cost of the petition in favour of the petitioner and against the respondents.*

We have heard Mr. T.A. Khan, learned senior counsel assisted by Mr. Aditya Kumar Arya, learned counsel for the petitioners and Mr. Pradeep Joshi, learned Standing Counsel for the State.

Reliance has been placed upon the judgment of this Court dated 10.04.2015 passed in Writ Petition No.62 of 2014 (S/B) (Annexure-14). We notice paragraphs 5 and 6 of the said judgment, which are extracted hereunder:

“We have heard learned counsel for the parties. Seeing the paucity of doctors in the State of Uttarakhand, we appreciate that the petitioner is ready to serve in any part of the State of Uttarakhand till his superannuation. Though, no doctor can compel the Government to give full salary for pursuing his M.D. (Medicine Course), but once the Government has made a policy and is giving full salary to other doctors who are pursuing their P.G. Courses, the respondents cannot discriminate the petitioner.

6. Considering the submission advanced by the learned counsel for the parties, we set aside the portion of Office Memorandum dated 03.07.2013 passed by the respondent no.1, which provides that the petitioner would be entitled for half salary on average basis, and direct the Government to make payment of full salary to the petitioner as is being

given to other doctors of the State of Uttarakhand, who are pursuing their P.G. Courses.”

Sri T.A. Khan, learned Senior Counsel appearing for the petitioners would submit that the petitioners are prepared to serve in any part of the State of Uttarakhand till they superannuate.

In such circumstances, there can be no basis for discriminatory treatment. Accordingly, all the petitions are allowed. The portion of impugned memorandums, in the name of the petitioners to the effect that the petitioners will only be given 50% of their pay on average basis, will stand set aside, and we direct respondent no.1 to pay full salary to the petitioners including the arrears, naturally after giving credit to the amount which has already paid.”

10. Since the controversy in hand is covered by the judgment rendered by Hon'ble High Court in WPSB No. 437/2015 Dr. Sanjay Kumar & another vs. State of Uttarakhand and others, therefore, the present petition should be decided in terms of the aforesaid judgment.

11. Present petition is disposed of in terms of the decision rendered by Hon'ble High Court on 16.06.2016 in WPSB No. 437/2015 Dr. Sanjay Kumar & another vs. State of Uttarakhand and others and connected writ petitions.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 09, 2024
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