

**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. 60/NB/DB/2019**

Kunwar Singh Bisht, s/o Late Sri Sobhan Singh, r/o Himmatpur Talla  
Bhagwanpur Road, Pragati Vikash Phase No.II, Haripur Nayak  
KusumkheraHaldwani, District Nainital.

.....**Petitioner**

**vs.**

1. State of Uttarakhand through Secretary, Ministry of Forest, Dehradun, Uttarakhand, Dehradun.
2. Pramukh Chief Conservator of Forest, Dehradun, Uttarakhand, Dehradun.
3. Chief Conservator of Forest, Human Resources Execution & Management, Uttarakhand Dehradun.
4. Conservator of Forest, Shivalik Circle, Uttarakhand, Dehradun.
5. Divisional Forest Officer, Dehradun Forest Division, Dehradun.

.....**Respondents**

(Virtual)

Present: Sri Harendra Belwal, Advocate for the petitioner  
Sri Kishore Kumar, A.P.O. for the respondents

**JUDGMENT**

**DATED: OCTOBER 08, 2024**

By means of this petition, the petitioner seeks the following reliefs:

*(i)- issue a direction/ order to the respondents to regularize his service on the post of Forester as the respondent has regularized service of by of his Juniors on the post of Forester petitioner is possessing the same qualification, and rendering the identical work, in according to the Judgment order passed by the Hon'ble*

*High court in writ petition no. 1254/2014 in (Shambhu Prasad Joshi and others Vs State of Uttarakhand and other) dated 5-6-2017.*

*(ii)- To issue direction / order to the respondent to consider the past uninterrupted service rendered as cultural Zamadar/ road zamadar/plantaion zamadar in the department and the same shall counted for pension benefits only.*

*(iii)- To issue direction/order to the respondent to consider the claim of the petitioner for regularization considering past 30 years uninterrupted service rendered as cultural Zamadar/ road zamadar/ plantaion zamadar in the department.*

*(iv)- To pass any other or further order which this Honb'le court may deem fit and proper in facts an d circumstances of the case.*

*(v)- Cost of the petition may be awarded in favor of the petitioner.*

2. Brief facts of the case are that the petitioner was working as seasonal employee (Cultural Jamadar) in the forest department and he was posted at Rishikesh Forest Range Office in Divisional Forest Office Dehradun Forest Division Dehradun. A writ petition bearing No.1254 of 2014 filed in the Hon'ble High Court. Considering the facts and circumstances of the case, the Hon'ble Court passed an order with a direction to the respondent no. 2&3 to regularize the services of the petitioner on the post of forest guard by passing a reasoned and speaking order within a period of six week from the production of certified copy of the order dated 05-06-2017and also to consider the claim of the petitioner for regularization from a deemed date to when their Juniors were regularized.

3. After submission of the Hon'ble High Court's order, the respondent no. 3 wrote a letter dated 21.03.2018 to respondent no. 4 to take an affidavit from the petitioner that he will not claim any other benefit except of the pay and other allowances of the post of Forest Guard. Respondent no. 4 wrote letter dated 24.02.2018 to respondent no. 5 to take the affidavit from the petitioner and take necessary action on it.

4. The petitioner has submitted his affidavit in the office of Divisional Forest Officer, Dehradun dated 03.04.2018 stating that he

will not claim any grade pay if his services were regularized by considering his long service since 1979 to 2018 in the department. His services may be regularized, he has no objection. The respondent no. 5 wrote letter dated 20.07.2017 to the petitioner to submit affidavit imposing condition that if your case is considered for regularization from the previous date on the post of Forest Guard, the pay scale of Forester which you have drawn, such pay scale will be withdrawn from you.

5. The petitioner replied the letter of the respondent no. 5 dated 06.08.2017 that he will not claim any grade pay if his services were regularized by considering his long service in the department his service may be regularized. The respondent no.5 submitted the list dated 04.10.2013 of seasonal employees to respondent no. 4 showing the petitioner at top of the list but junior to him have been regularized on the post of Forester but no order has been passed in his case of the petitioner despite the order passed by the Hon'ble High Court.

6. The respondent no. 4 vide letter dated 22.02.2014 directed the respondent no. 5 that on the recommendation of dated 22.02.2014, service of Sri Sher Singh Seasonal employee was regularized on the post of Forester, the service of rest of seasonal employees shall be regularized considering their suitability for the post immediately.

7. The petitioner filed a representation dated 06-5-2015 regarding regularization of service stating that he is working on the post of cultural Jamadar since 1990 to till dated and service of junior to him have been regularized on the ground of High Courts order but, by ignoring him whereas a specific order has been passed by the respondent no. 4 to respondent no. 5 to regularize the service of petitioner for the post he is suitable.

8. The Divisional Forest Officer Dehradun Forest Division, Dehradun vide its letter No. 1400/29-3 Dehradun dated 06.12.2017

asked the petitioner to submit an affidavit of not claiming any benefits other than the pay scale Rs 5200-20,200/- with grade pay of Rs 2800/- and other benefits, if his services will be regularized by the department.

9. The petitioner submitted affidavit dated 11-12-2017 stating therein that he is not getting the benefits of minimum of pay scale Rs 5200-20,200 and grade pay Rs. 2800/- equivalent to Fitgate- Matrix schedule and clearly stated that he will not claim any other benefits if he will be regularized in service according to service Rules, 2003. The petitioner was working on the post of seasonal export Moharir, Cultural Zamadar working in basic pay scale of 3050-4590, including other allowances per month which is class three post, his service will be regularized on the post of Forester, whereas juniors to petitioner have been regularized on the post of Forester.

10. The petitioner was working in a substantive post after selection they were appointed accordingly their services are governed by the services rules, 1980 as export moharir, plantation Zamadar/ Road Zamadar for a period of 8 months in a pay scale of 3050-along-with D.A and other allowances. Vide Fundamental Rule 15 it is clearly stated that no appointment shall be made in a post carrying less pay than the pay of the post in which he was actually working, therefore the petitioner cannot be appointed on the post carrying lesser pay than he was actually getting in such a situation the petitioner shall be given the benefits of repay fixation in according to the provision of FR 22-C of the Rules.

11. The State of U.P. has issued Government Order regarding pension benefits to temporary employees who have completed 10 years continuous and satisfactory service. In the present case the petitioner has completed 10 years temporary service under the state Government after their regularization in the post. It is also relevant that the petitioner has rendered a valuable continuous uninterrupted service in the department as cultural Zamadar, his service will be

regularized on the post of Forester on the same post and pay scale in which service of his Junior has been regularized in the same terms and conditions his service may be regularized.

12. During Course of arguments, learned Counsel for the petitioner has submitted that he is not pressing the relief no. (i). Learned A.P.O. submitted that since the relief no. (i) is not pressed by petitioner, therefore, there is no need to file Counter Affidavit.

13. Learned Counsel for the petitioner has pleaded that the petitioner has worked in the Rishikesh Range, Dehradun forest division for more than 30 years as the temporary employee on the post of seasonal employees (Cultural jamadar). He was regularized on the post of Forest Guard in compliance vide order of the Hon'ble High Court in W.P. No 1254 of 2014 w.e.f. 2014. The petitioner filed the petition to regularize him on the post of the forester as his junior Mr. Sher Singh has been regularized. The respondent No 4 directed respondent no 5 to post Sher Singh to the post of the Forester and other four persons as per their suitability.

14. The learned counsel for the petitioner did not press the relief no1, regularization to his service on the post of the forester as respondent has regularized service of his junior on the post of the foresters, the petitioner is possessing the same qualification and rendering the identical work in according to the judgment order passed by the Hon'ble High Court in writ petition no 1254 of 2014 in (Shambhu Pd. Joshi and others vs State of Uttarakhand & Others. Date 5/6/2017.

15. A supplementary affidavit has been filed on behalf of the petitioner. It has been stated in the affidavit that after attaining the age of superannuation, the petitioner will retire from the post of Forest Guard in the office of respondent department w.e.f. 30.11.2023, the authority concerned had issued an office order dated 31.07.2023 to this effect. The services of the petitioner ought to have been regularized prior to 2003 as and when junior to the

petitioner has been regularized in the office of the respondent department. It is further mentioned that the petitioner is entitled to count the entire length of service of prior to this date of regularization i.e. 20.02.2014 for determination of pension and accordingly, petitioner is entitled to the revised his post retiral benefits. It is further stated that the petitioner was entered in the forest department as a daily wages basis and superannuated on 30.11.2023, the total length of service rendered by the petitioner in the respondent department comes more than 33 years. Learned counsel for the petitioner submitted that the controversy raised in the present claim petition may be decided in terms of the judgment and order dated 20.08.2024 passed by the Hon'ble High Court of Uttarakhand in **Writ Petition No. 441 of 2022(S/S), Suresh Chandra Kandwal vs. State of Uttarakhand & others** and submitted that the petitioner is entitled to get the same relief as directed by the Hon'ble High Court in its order dated 20.08.2024. It would be appropriate to quote paragraphs no. 12 and 13 of the judgment of the Hon'ble High Court, as under:

“12. He further referred the judgment of the Hon'ble Apex Court in the case of Prem Singh v. State of U.P., (2019) 10 SCC 516. The relevant paragraphs are reproduced as under:-

“33. The question arises whether the imposition of rider that such service to be counted has to be rendered inbetween two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification cannot be done on the irrational

basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34. As it would be unjust, illegal and impermissible to make aforesaid classification to make Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

35. In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.

36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in *State of Karnataka v. Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

37. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

13. Recently, this Court while deciding a bunch of special appeals, filed by the State of Uttarakhand, against the judgment dated 05.07.2018, passed in Writ Petition (S/S) No.2684 of 2015, "Balraj Singh Negi vs. State

of Uttarakhand & others”, had examined the case where the benefit of contractual services could not be made ground to give the benefit of seniority. The only benefit which a person could take is that his services from ad hoc before he was substantially appointed or regularized will be counted for the benefit of pension. In Paragraph Nos.10 and 11, the Division Bench has held as under:-

“10. The past services rendered by a contractual employee had to be taken into account for the purpose of pension only. This proposition has already been considered by Hon’ble Supreme Court in State of Himachal Pradesh and others Vs Sheela Devi, SLP (C) No. 10399 of 2020, decided on 07.08.2023, while upholding the judgment

of the Himachal Pradesh High Court relying upon Rule 17(2) of CCS Pension Rules holding that Rule 17 was engrafted essentially to cater to the eventuality where the employees working on contract basis were regularized on a later stage. It is only for the purpose of pension that the past services as contractual employee is to be taken into account.

.....”

16. In view of the above, we are of the opinion that the department has complied with the order of the Hon’ble High Court and regularized the petitioner on the post of the forest Guard. He has served the department continuously as Cultural Jamadar/road jamadar/ Plantation Jamadar for more than thirty years.

17. Accordingly, the claim petition is disposed of in terms of the decision of Hon’ble High Court passed in Writ Petition (S/S) No. 441 of 2022, Suresh Chandra Kandwal vs. State of Uttarakhand and others by directing the respondents to calculate the service rendered by the petitioner as temporary employee (Seasonal Cultural Jamadar etc.) and recalculate the pensionary benefits only and give necessary benefits to the petitioner within a period of two months on presentation of certified copy of this judgment/order. No order as to costs.

**(A.S.RAWAT)**  
VICE CHAIRMAN (A)

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

*DATED: OCTOBER 08, 2024*  
*DEHRADUN.*  
*KNP*