

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

**Writ Petition No. 660 (S/S) of 2017**

**[Reclassified and Renumbered as Claim Petition No. 22/NB/SB/2023]**

Bhupal Singh Jeena, s/o late Sri Mohan Singh Jeena, presently posted as Van Beet Adhikari, Kort Kharra South-A Dauli Range Tarai-East Forest Division, Haldwani, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Forest Department, Government of Uttarakhand, Dehradun.
2. The Principal Chief Conservator of Forest, Uttarakhand at Dehradun.
3. The Conservator of Forest, Western Circle, Nainital.
4. Divisional Forest Officer, Tarai-East Forest Division, Haldwani, District Nainital.

..... Respondents

Present: Sri Harendra Belwal, Advocate, for the Petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents

**JUDGEMENT**

**Dated: 08<sup>th</sup> October, 2024**

**Justice U.C. Dhyani (Oral)**

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 23.12.2022 in WPSS No. 660 of 2017, Bhupal

Singh Jeena vs. State of Uttarakhand and others, which (order) reads as under:

“The present Writ Petition has been filed under Article 226 of the Constitution of India with the following reliefs:-

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioner as a confirmed employee in the pay scale of 950-1400 w.e.f. 18-12.1995 (from the initial appointment).

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay him all consequential benefits forthwith as and from when its become due.

(iii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to give admissible pay scale to the petitioner as being drawn by his other counterparts in the department.

2. Heard Mr. Harendra Belwal, learned counsel for the petitioner and Mr. Sushil Vashistha, learned Standing Counsel for the State.

3. Mr. Sushil Vashistha, learned Standing Counsel for the State, submitted that the present matter relates to the conditions of service of a public servant, therefore, the petitioner has alternate efficacious remedy to raise his grievances before the Uttarakhand Public Services Tribunal.

4. Mr. Harendra Belwal, learned counsel for the petitioner, agrees to transfer the present matter to the Uttarakhand Public Services Tribunal.

5. As the disputes raised in the present writ petition can be effectively adjudicated by the Uttarakhand Public Services Tribunal, with the consent of both the parties, the complete record along with the writ petition, after retaining the copies thereof, is being transmitted to the Uttarakhand Public Services Tribunal for hearing the writ petition as a claim petition in accordance with law.

6. The Uttarakhand Public Services Tribunal is also requested to consider entertaining the present matter as a claim petition taking into consideration this fact that the present matter has been pending for past five years.

7. The present Writ Petition (S/S No. 660 of 2017) stands disposed of accordingly.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 2253 /UHC/Service Section(S/S)/PST/ Nainital dated 14.02.2023 of the Registrar (Judicial) of the

Hon'ble High Court. The same has been registered as claim petition no. 22/NB/SB/2023.

3. The petitioner is claiming seniority and consequential service benefits *w.e.f.* 18.12.1995 when the petitioner was appointed in the Forest Department under the U.P. Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974 (for short, 'Dying in Harness Rules') in the pay scale of 950-1400.

3.1 Late Sri Mohan Singh Jeena was father of the petitioner, who was working in the respondent department as a regular employee. Petitioner was initially appointed as *Seasonal Nikkashi Moharir* on 18.12.1995 under the Dying in Harness Rules in the pay scale of 950-1400. No temporary or *ad-hoc* appointment could be made under the Dying in Harness Rules. Respondent department gave appointment to Smt. Geeta Bhatt d/o late Sri Chandra Ballav Bhatt, as a regular employee. Case of the petitioner is identical in nature but the respondent department did not give appointment to the petitioner on regular basis at the time of initial appointment.

3.2 Petitioner moved various representations to the respondent department for redressal of his grievances, but to no avail.

3.3 According to the petitioner, controversy involved in present writ petition has already been settled by the Hon'ble High Court on 21.12.2005 in writ petition no. 1620 (S/S) of 2005, Balam Singh vs. Chief Engineer, Kumaon Division, Almora and others (copy of the judgement: Annexure No. 3 to the petition).

3.4 The petitioner claims parity with Balam Singh's case (*supra*) and Smt. Geeta Bhatt, who was given regular employment under the similar circumstances.

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

5. The petition has been contested on behalf of the respondents. Sri Nitish Mani Tripathi, (the then) Divisional Forest Officer, Tarai-East Forest Division, Haldwani, has filed counter affidavit on behalf of respondent no. 4.

6. In para 3 of such C.A., it has been mentioned that father of the petitioner, namely late Sri Mohan Singh Jeena was appointed as temporary *Seasonal Nikkashi Moharrir* in Forest Office, Tarai-East. Seasonal Nikkashi Moharir is a temporary post. Sri Mohan Singh Jeena was appointed by the department on 01.11.1989. His services were stopped by the department on 27.06.1990. After the death of Sri Mohan Singh Jeena, the petitioner was inducted as *Seasonal Nikkashi Moharrir* on 18.12.1995 and after completing eight months of service, his services were also stopped on 30.06.1996. Petitioner was not appointed under the Dying in Harness Rules. Petitioner worked as daily wager in the department for more than three seasons and after that he participated in Van Rakshi recruitment, as a result of which he was appointed as Van Rakshi on 22.01.2009. Balam Singh's case (*supra*) is not applicable to the petitioner.

6.1 Relevant documents have been filed in support of the counter affidavit.

7. Rejoinder affidavit has been filed by the petitioner reasserting the facts contained in the petition. In para 4 of such R.A., it has been reasserted that the petitioner has been appointed under the Dying in Harness Rules and Balam Singh's case is applicable to him.

8. Petitioner moved an application on 18.12.2016 to the D.F.O., Tarai-East Forest Division, Haldwani. In such application, he prayed that he should be considered as a regular employee and consequential benefits may be given to him. When the petitioner gave such application on 18.12.2016, he was working as Forest Beet Officer. His assertion is that he was given benefit under the Dying in Harness Rules.

9. An effort was made by learned A.P.O. to establish the fact that the appointment of the petitioner was on seasonal basis, as has been indicated in the office order dated 01.11.1989 issued by D.F.O., Tarai-East Forest Division, Haldwani (Annexure No. 1 to C.A.).

10. Learned A.P.O. drew attention of the Tribunal towards order dated 27.06.1990 to submit that petitioner's service came to an end on 30.06.1990 after completion of season (Annexure No. 2 to C.A.). Learned A.P.O. also pointed out that the service of the petitioner was temporary and as has been indicated in office order dated 22.06.1996, the petitioner's service came to an end *w.e.f.* 30.06.1996 (Annexure No. 3 to C.A.).

11. According to learned A.P.O., the petitioner was given appointment as Forest Guard *vide* order dated 23.01.2009 in pay scale 5200-20200. Earlier, he was not a regular employee but *Seasonal Nikkashi Moharrir*. Ld. A.P.O. submitted that, even otherwise, the petitioner is not entitled to any relief claimed in this petition.

12. Office Order dated 18.01.1996 has been filed by the petitioner with R.A. to show that Sri Balam Singh, who filed writ petition no. 1620 (S/S) of 2005 before the Hon'ble High Court was given appointment as Mate in regular work charge establishment. Petitioner's case is identical to *Balam Singh's* case.

13. A decision rendered by the Hon'ble High Court of Uttarakhand in Special Appeal No. 940/2018, State of Uttarakhand and others vs. Balraj Singh Negi and connected Special Appeals, on 10.04.2024 appears to be relevant in this context and reads as under:

“The State has come up in this bunch of appeals against the judgment dated 05.07.2018, passed by learned Single Judge, in Writ Petition (S/S) No. 2684 of 2015, Balraj Singh Negi Vs State of Uttarakhand and others, whereby the writ petition filed by the respondent-writ petitioner Balraj Singh Negi was allowed.

2) Before further discussion it is pertinent to mention here that various co-ordinate Benches of this Court have disposed of majority of writ petitions in terms of judgment dated 05.07.2018, rendered in the case of Balraj Singh Negi, as enumerated hereinabove, feeling aggrieved, the State has preferred these special appeals.

3) Since common question of law and facts are involved in this bunch of appeals, therefore, they are being decided by this common judgment for the sake of brevity and convenience.

4) Appellants are the respondents in the writ petitions. The writ petitioners are persons, who were working in various Industrial Training Institutes established under the State. Originally, they were working as Prashikshan Mitras. Subsequently, it is their case that they have been confirmed / appointed by regular selection. The issue, which is raised in the writ petitions, appears to be that they are denied continuation of service from the date they got appointment as Prashikshan Mitras till regularization of their services / appointment by regular selection. Feeling aggrieved, they filed separate writ petitions, which have led to the present bunch of appeals before this Court. Special Appeal No. 940 of 2018 shall be treated as a leading case for the sake of brevity.

5) Brief facts of the case are that respondent-writ petitioner Balraj Singh Negi was appointed as Prashikshan Mitra vide order dated 07.03.2002 on the basis of his qualification against the post of Instructor. Subsequently, an advertisement was issued by the appellants on 21.02.2010 for filling up the post of Instructor, I.T.I. Motor Mechanic. After participating in the selection process, the respondent-writ petitioner was found suitable and got appointed on said post, on 17.12.2010. The similarly situated persons, who were appointed as Prashikshan Mitras were regularized in the year 2013-2014. Respondent-writ petitioner, though was selected on 21.02.2010, but got appointment on 17.12.2014.

6) The only question for consideration before the learned Single Judge was whether the continuous service rendered by the respondent-writ petitioner from 07.03.2002 till his appointment as Instructor, I.T.I. Motor Mechanic on 17.12.2014, has to be counted for pensionary purposes by the appellant State, or not? The writ petition was allowed and a direction was given to the State to count the services rendered by the respondent-writ petitioner w.e.f. 07.03.2002 till his appointment as Instructor, I.T.I. Motor Mechanic on 17.12.2014 for all intents and purposes keeping in view the judgment of Hon'ble Apex Court in AIR 2018 SC 233, Sheo Narain Nagar & others Vs State of Uttar Pradesh and others.

7) The main ground taken by counsel for the State in the present appeal is that once the respondent writ petitioner was appointed on regular basis on 17.12.2014, he could not be given any benefit

of the past services, and reliance of the learned Single Judge on the judgment of Hon'ble Supreme Court in Sheo Narain Nagar's case (supra) is on different facts, and respondent cannot get the benefit of said judgment because in that case the employee had been appointed in the year 1993, and he was given temporary status on 02.10.2002, and after the judgment in Secretary, State of Karnataka & others Vs Uma Devi & others, 2006 (4) SCC 01, he had completed 10 years of service on the date when he was given temporary status, i.e., 02.10.2002, and the Hon'ble Supreme Court had given directions that his services be regularized w.e.f. 02.10.2002 with all consequential benefits and arrears of salary.

8) The facts of the present case are that the respondent-writ petitioner was given regular appointment in 2014 after participating in the selection process pursuant to the advertisement dated 21.02.2010, and he cannot claim parity of benefit of regularization at par with other persons, who were regularized in the year 2013-2014. It is the ratio of the Supreme Court judgment which has to be applied. The respondent-writ petitioner in the present case is claiming parity. He was appointed on 07.03.2002, and as per the regularization policy, the persons who were appointed along with him were regularized in the year 2013-2014, and pursuant to the selection made in the year 2010, he was given appointment on 17.12.2014. Even if he was given appointment on 17.12.2014, he has been working continuously from 07.03.2002 till 17.12.2014 after regular selection also on 21.02.2010. Hence, the services rendered by the respondent-writ petitioner from 07.03.2002 till 17.12.2014 cannot be taken away for the purpose of consequential benefits. Had the respondent-writ petitioner been appointed in 2010, he had completed only 10 years after his initial appointment, and he cannot claim benefit of the past services. Since he was regularized on 17.12.2014, the benefit of past service has to be given and the writ petition has been rightly allowed. However, the benefit which the respondent-writ petitioner has to be given is only with respect to counting the past services for fixation of pension only.

9) Keeping in view the judgments rendered by Hon'ble Supreme Court in Secretary, Minor Irrigation Department and others Vs Narendra Kumar Tripathi, (2015) 11 SCC 80, as well as in recently pronounced judgment in the case of Rashi Mani Mishra and others Vs State of Uttar Pradesh and others, 2021 0 Supreme (SC) 387, where the Hon'ble Supreme Court has consistently held that the seniority of a person has to be counted from the date of substantive appointment. His ad hoc appointment prior to the date of substantive appointment cannot be made ground to give him benefit of seniority. The only benefit which a person can take is that his services from ad hoc before he was substantially appointed or regularized will be counted for the benefit of pension.

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.

11) Similar view has also been taken by Punjab and Haryana High Court in the case of Som Nath and others Vs State of Punjab and others, CWP No. 1432 of 2012, along with batch of writ petitions, decided on 23.01.2013, holding that the entire daily wage service of an employee from 1988 till the date of his regularization is to be counted as qualifying service for the purpose of pension.

12) In view of the aforesaid, impugned judgment dated 05.07.2018, rendered by learned Single Judge in Writ Petition (S/S) No. 2684 of 2015, Balraj Singh Negi Vs State of Uttarakhand and others, is modified only with respect to the consequential benefit. The benefit of service rendered by the respondent-writ petitioner Balraj Singh Negi prior to his regular appointment, i.e., 17.12.2014 will be counted only for the purpose of pension. The said benefit will also be applicable in the cases of other respondents-writ petitioners in this bunch of appeals for the purpose of pension only."

14. The ratio of the aforesaid decision is that the benefit of service rendered by an employee prior to his regular appointment may be counted for the purpose of pension only.

15 A perusal of petitioner's appointment order dated 18.12.1995 would indicate that petitioner was appointed as temporary *Seasonal Nikkashi Moharrir* in pay scale of 950-1400 on a vacancy which occurred due to the death of his father late Sri Mohan Singh Jeena, *Seasonal Nikkashi Moharrir*, during service. Although there is no reference of Dying in Harness Rules in order dated 18.12.1995 (Annexure No. 1 to the petition) but the very language of such order suggests that he was given appointment under the Dying in Harness Rules. The very fact that his father was *Seasonal Nikkashi Moharrir*, who died during harness, the petitioner was given appointment on the vacancy caused by the death of his



father, on the same post, indicates that petitioner's appointment was compassionate appointment.

16. **At this stage, Ld. Counsel for the petitioner submitted that the decision rendered by the Hon'ble High Court on 21.12.2005 in WPSS No. 1620/2005, Balam Singh vs. Chief Engineer, Kumaon Division, Almora and others, has been complied with by the respondent department. He prayed that respondent department may be directed to consider petitioner's case in the light of the said decision of the Hon'ble High Court.**

17. Considering the facts noted above, the Tribunal feels that the innocuous prayer of Ld. Counsel for the petitioner is worth accepting.

18. **Petition is disposed of by making a request to the Respondent No.1 to consider petitioner's case, in accordance with law, in the light of the decision rendered by the Hon'ble High Court on 21.12.2005 in WPSS No. 1620/2005, Balam Singh vs. Chief Engineer, Kumaon Division, Almora and others, as expeditiously as possible and without unreasonable delay.**

19. Rival contentions are left open.

**(JUSTICE U.C. DHYANI)**  
CHAIRMAN

*DATE: 08<sup>th</sup> October, 2024*  
*DEHRADUN*  
*RS*