

**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.21/NB/DB/2019

Nandan Singh (Male) aged about 44 years S/o Sri K.S. Bisht Presently Working as Lecturer/Research Officer, Uttarakhand Board of School Education, Ramnagar District Nainital.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Secretary School Education, Uttarakhand Dehradun.
2. Director of Secondary Education, Uttarakhand Dehradun.
3. Additional Director of Education, Kumaon Region, Nainital.
4. Khushpal Singh Bhandari, Lecturer, English, Government Inter College, Chinyalisaur, District Uttarkashi.
5. Kundan Singh, Lecturer, English, Government Inter College, Devalthal, Pithoragarh.
6. Narayan Singh Mehra, Lecturer, English Government Inter College, Narayannagar, Kusumkhera, Haldwani District Nainital.
7. Dhoom Singh Negi, Lecturer, English Government Inter College, Kisanpur, (Rampur) Dehradun.
8. Dinesh Chandra Bhatt, Lecturer, English Government Inter College, Saylote, (Kapkote) District Bageshwar.
9. Dinesh Singh Khetwal, Lecturer, English, District Education and Training Institute (DIET) Rudrapur, District Udham Singh Nagar.
10. Ashutosh Singh Bisht, Lecturer, English, Government Inter College, Ghymtoli P.O. Ghymtoli District Rudraprayag.
11. Gopal Krishn Tripathi Lecturer, English, Government Inter College, Dunagiri, District Almora.

.....**Respondents**

Present: Sri N.K.Papnoi, Advocate for the Petitioner
 Sri Kishore Kumar, A.P.O. for the respondents No. 1 to 3
 Sri Vinod Tiwari, Advocate for the respondents No. 4, 6, 7, 8 & 10

JUDGMENT

DATED: OCTOBER 18, 2024

Present claim petition has been filed for seeking the following reliefs:

(i) To quash the impugned order dated 13.07.2018 passed by respondent no. 2, Director Secondary Education, Uttarakhand Dehradun whereby the representation of the petitioner, seeking determination of his seniority has been rejected.

(ii) To quash the final seniority list on 29.03.2012 issued by the department in total ignorance of the rules.

(iii) Grant any other relief, order of direction, which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case.

(iv) Award the cast of the petition to the petitioner.

2. The brief facts of the case on the basis of requisition send by the State Government on 14.02.2003 an advertisement was issued by the Uttarakhand Public Service Commission on 05.10.2003 for filling up the post of Lecturers in Government Inter Colleges for various subjects. The total number of posts advertised were 1120 in men branch and 99 women branch. The petitioner applied against the advertisement and submitted his application forms before the Public Service Commission. The written examination for the aforesaid post was held on 26.09.2004. The petitioner qualified the written examination and was declared successful by the Uttarakhand Public Service Commission after the interviews held by the Commission between 08.09.2005 and 17.05.2006.

3. The appointing authority i.e. Additional Director of Education, Headquarter issued appointment letters to the selected candidates and the petitioner joined on 31.07.2006 in Government Inter College Soli, Salt District Almora.

4. On the basis of the interview a seniority/merit list was prepared by the Uttarakhand Public Service Commission on 17.05.2007. In the aforesaid select list/seniority list the name of petitioner figures at Serial No. 3 on the basis of the marks obtained by the individual in the written examination and interview. The department issued a tentative seniority list on 14.07.2011 of the Lecturers appointed between 2001-02 and the 2008-09 and invited objections.

5. The similarly situated persons like the petitioner preferred representations/ objections against their placing as the persons selected along with them. The objections were not acted properly and disposed of by the published order dated 28.03.2012 rejecting the same. The department thereafter published the final seniority list on 29.03.2012. It is submitted that one Sri Khushpal Singh Bhandari placed at S. No. 6781 of the final seniority list was selected by the Public Service Commission on the basis of the same advertisement and selection like petitioner but was given appointment letter earlier was placed above the petitioner in the seniority list.

6. The petitioner was selected for the post of Lecturer Biology for which the interviews were conducted at the later stage and for the post of Lecturer English the interviews were held the first phase and all the lecturers English subject were placed on the top of the seniority list, Uttarakhand Special Subordinate Educational (Lecturer's Cadre) Service Rules, 2008. Section 21 of the aforesaid rules provide that the seniority shall be determined in accordance with the Uttarakhand Government Servants Seniority Rules 2002. According to Section 8 of the Uttarakhand Government Servants Seniority Rules, 2002 the persons appointed as a result of one selection shall be the same as it is shown in the merit list prepared by the Commission or the Committee. The petitioner was shown at S. No. 3 of the list prepared by the Commission whereas Sri Khushpal Singh Bhandari was shown at S. No. 13 of the list supplied by the Uttarakhand Public Service Commission. Aggrieved by the action of the respondents/seniority list

the petitioner preferred a detailed representation dated 22.09.2015 but of no avail, as the respondents have not decided the aforesaid representations.

7. When no action has been taken by the respondents on the representation of the petitioner, petitioner preferred a writ petition bearing No. WP(S/S) 2726 of 2017 Nandan Singh Vs State of Uttarakhand and others before Hon'ble High Court. The writ petition had been disposed of by Hon'ble High Court vide order dated 22.09.2017 directing the respondent (Director, Secondary Education) to decide the representation of the petitioner within a period of six months.

8. After lapse of requisite time period, the respondents failed to comply the order dated 22.09.2017 passed by Hon'ble High Court whereby the respondent (Director, Secondary Education) had been directed to decide the representation of the petitioner within six months, petitioner filed a contempt petition before Hon'ble High Court bearing Contempt Petition No. 445 of 2018.

9. The respondent vide order dated 13.07.2018 rejected the representation of the petitioner. The petitioner again preferred a writ petition before Hon'ble High Court of Uttarakhand at Nainital but same has been dismissed by the Hon'ble Court on the ground to alternative remedy. This act of the respondent is wholly illegal and arbitrary and not sustain in the eyes of law. Hence requested to quash the impugned order dated 13.07.2018 passed by respondent No. 2 and seniority list dated 29.03.2012 issued by department.

10. Respondents No. 2 and 3 have filed their Counter Affidavit and opposed the claim petition and have stated that the petitioner by way of the instant claim petition challenged the order dated 13.07.2018 by which the representation of the petitioner has been rejected by the respondent no. 2, against which the petitioner preferred writ petition no. 3747 of 2018 S/S and the Hon'ble High Court of Uttarakhand vide order dated 31.10.2018 dismissed the writ

petition on the ground of alternate remedy, hence the petitioner filed the present claim petition against the rejection order dated 13.07.2018. The petitioner in its second prayer prayed for quashing the seniority list dated 29.03.2012. It is also relevant to mention here that the petitioner vide its representation dated 22.09.2015 requested to change his seniority without challenging the seniority list dated 29.03.2012.

11. In the erstwhile state of Uttar Pradesh, the appointment of the lecturers has been done as per the Uttar Pradesh Special Subordinate Education (Lecturer Cadre). As per rule 14, the Commission sends the names of the selected candidates as per subject and thereafter the appointing authority granted appointment to the candidates as per the subject wise selection. Meaning thereby the seniority list of the lecturer was prepared as per the selection made subject wise by the recruiting body. The Rule 15(3) of Rules of 1992 provides that the Commission prepared the list as per the merit of candidate on the basis of the marks obtained by them in interview and if two or more candidates secure equal marks in interview then the commission will place their name in the merit list as per their general importance. The rule 21 of Rule of 1992 provides for making the seniority list as per the date of appointment and as per the Uttar Pradesh Government Servant Seniority Rules 1991. The Uttar Pradesh Government Servant Seniority Rules 1991 and Uttarakhand Government Servant Seniority Rules 2002 provide the procedure in rule 5, which is quoted below:

“उस स्थिति में ज्येष्ठता जब केवल सीधी भर्ती द्वारा नियुक्तियों की जाए – जहां सेवा नियमावली के अनुसार नियुक्तियों केवल सीधी भर्ती द्वारा की जानी हो वहां किसी एक चयन के परिणामस्वरूप नियुक्त किए गए व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो यथास्थिति आयोग या समिति द्वारा तैयार की गई योग्यता सूची में दिखाई गई है।”

12. In lecturer cadre the different subjects have different merit list, thus the merit list of one subject will not be compared with other

subject. Thus, the merit list prepared by the commission for different subject in admissible. The tentative seniority list of the Lecturers was issued by the department and invited the objections against the same and consequently after deciding the objections the final seniority list was issued on 29.03.2012. The department as per the rules prepared the tentative sonority list and thereafter final seniority list and the person namely Dependra Singh Nayal who was first in the merit list of Biology Subject and who was selected by the commission vide letter no. 426/11/D.R./Service/2003-04 dated 16.06.2006 has been placed at serial no. 8071 in the merit list and thereafter Mr. Ajay Kumar Chaudhary was place at serial no. 8072 who was appointed through promotion and the petitioner was placed at serial no. 8073. At that time the petitioner did not give any objection to the tentative seniority list. All contents of the present claim petition are based on twisted facts and also on the basis of misrepresentation. The claim petition is devoid of merit and hence liable to be dismissed with cost.

13. Respondents No. 4 to 11 have also filed Counter Affidavit and have opposed the claim petition stating therein that the screening and interview for English subject was conducted in accordance of the list of Uttarakhand Public Service Commissions. Consequently, after getting through the screening the deponent and other private respondents were called for interview held on 03.09.2005 and then on the basis of marks obtained in the interview, a list of successful candidates in English subject was prepared by UKPSC. The lists was out on 24.09.2005. The respondent No. 3 vide its order dated 10.11.2005 and the amended order dated 24.11.2005 appointed the deponent and respondent No. 4, 5, 7, 8, 9, 10 & 11 is different Govt. Inter Colleges which they joined accordingly in 2005. The petitioner was appointed lecturer in Biology at serial no. 2 vide order dated 31.07.2006 passed by respondent no. 3 and the amended order dated 26.09.2006 at G.I.C. Soli Salt, District Almora. The Petitions was appointed as lecturer in Biology approximately nine months later then the appointment of answering respondents as lecturer in English. If is

well settled law that seniority of an employee would be counted from the date of his/her substantive appointment. The appointing authority has done the same according to the Uttarakhand Gov. Servant's Seniority Rules 2002. There is no ambiguity in the order of the respondent no.-3.

14. Para-8 of Uttarakhand Govt. Servant's Seniority Rule 2002 clearly states that in the Govt. Secondary Schools in a specific recruitment year the post of lecturers are to be filled from two sources. The seniority of lectures would be fixed from the date of their substantive appointments/promotion in (one from promotion, and one from direct recruitment). In the case of private respondents the date of substantive appointment is 10.11.2005 while in that of the petitioner's case it is 31.07.2006. Further, the merit list of a particular subject cannot be compared with that of any other subject because parameters and standards of assessment of proficiency and knowledge differ from subject. The department issued a tentative seniority List on 14.07.2011 of the lecturer Cadre for the year 2001-2002 to 2008-2009 and invited for objection but the petitioner did not make any objection to that list and the objections that made by others were disposed of accordingly. The department finally prepared a final list, on 29.03.2012 of teachers of lecturer cadre (from 2001-2002 to 2008-2009). Now the petitioner cannot claim the same, the principal of estoppels would prevail in the case of petitioner and claim petition being devoid of merit is liable to be dismissed.

15. We have heard learned Counsel for the parties and perused the record carefully.

16. Learned Counsel on behalf of the petitioner has submitted the petitioner and the private respondents were appointed on the basis of the same advertisement published by the Uttarakhand Public Service Commission on 05.10.2003. The appointment letters were issued by the department as per subject wise recommendations received from the Uttarakhand Public Service Commission. The lectures in the

English were issued offer of the appointment on 10.11.2005, whereas, the lectures in Biology were issued offer of appointment on 31.07.2006.

17. The Commission issued the final combined merit list on 17.05.2017. In which the petitioner from biology subject is placed at Sl. No. 3 below Dipendra Nayal at Sl. no. 2 and the topper of the English respondent no 4 is placed at Sl. No. 13. Subsequently the Department issued the tentative seniority list on 14.11.2011 and invited objections. The list was finalized on 29.03.2012. The petitioner made a representation against the combined seniority list on 22.09.2015 citing the reason that he been placed at Sl. No. 8073 as against the Khuspal Singh Bhandari which has been placed at Sl no. 6781 despite that fact that the petitioner is placed at sl no 3 in the combined seniority list issued by the Uttarakhand Public Service Commission. The respondents did not respond to the representation dated 22.09.2015 of the petitioner. He approached the Hon' ble High Court to seek relief through the writ petition -no. WP(S/S) 2726 of 2017 and the Hon'ble High Court ordered on 22.09.2017, the respondents to dispose of the representation within six months.

18. The respondents turned down the representation and cited the rule of the that seniority has been decided based on the date of the offer of the appointment of the candidates. The private respondents have been appointment in 2005 and the petitioner has been appointed in the year 2006. So the contention of the petitioner is totally wrong, the decision of the department was communicated to the petitioner. The petitioner filed the writ petition no. 3747 of 2018 against the order of the respondents. The Hon'ble High dismissed the petition on the ground of the alternate remedy available. The petitioner filed the claim petition in the Uttarakhand Public Service Tribunal and with the request to quash the order of the respondent dated 13.07.2018 and the seniority list finalized on 29.03.2012 and issue fresh seniority list.

19. Learned A.P.O. on behalf of the respondents no 1,2 & 3 has pleaded that the Uttarakhand Public Service Commission has recommended the subject wise names of the candidates selected to the department . The department issued the offer of the appointments subject wise on different dates as per the subject wise recommendations received from UKPSC. The combined seniority list issued by the UKPSC is the proficiency list which has not been considered by the department. More over in the combined seniority list the direct and the promote lecturers have been placed by the department based on the dated of their substantive appointments and in the ratio of 1:1. The rule 5 of the Uttarakhand Government Servant Seniority Rules, 2002.

20. The learned counsel on behalf of the private respondents has also pleaded that list has been prepared based on the date of offer of the appointments issued by the department at different times. The petitioner was appointed almost after nine months of the appointment of the respondents, so there is no comparison in respect of their seniority.

21. On the basis of the above discussion, we are of the opinion that the Uttarakhand Public Service Commission conducted the interview for the candidates successful for the different subjects on different dates and recommended the candidates for appointment on the basis of the subject wise merit to the department. The department respondent No 3 issued the offer of appointments for the different subjects on different dated. The offer of appointment for the post of the English Lecturer was issued on 10.11.2005 and for the biology lecturer on 31.07.2006. The UKPSC issued the final merit list on-17.05.2007 in which the petitioner has been placed at sl. no 3 and the private respondents at the differ serial nos. below the petitioner. The final seniority list issued by the department is based on the offer of the appointment and the subject wise merit of the candidates along with the adjustment of the promotees in the ratio of 1:1. Here the seniority list prepared by the Commission in respect of the direct recruitees

prevails over the list prepared by the Department, however while preparing the final seniority list of the lecturer, which includes the lecturer recruited through promotions, the inter-se seniority of the direct recruitees will not be disturbed.

22. In view of the above, we come to the conclusion that there is anomaly in preparation of the seniority list on 29.03.2012 of the Lecturers appointed between 2001-2002 to 2008-09. The combined seniority list prepared by the department should have considered the combined seniority list prepared by UKPSC in respect of directly recruited lecturers. The Uttarakhand Government Servants Seniority Rules, 2002 have been promulgated and in Seniority Rules of 2002, Rule 8 is a paramateria, with Rule 8 of the Seniority Rules of 1991. Rule-8 of the Seniority Rules of 2002 reads as under:-

“8. (1) जहां सेवा नियमावली के अनुसार नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जानी हों, वहां इस प्रकार नियुक्त व्यक्तियों की ज्येष्ठता उनकी मौलिक नियुक्ति के आदेश के दिनांक से निम्नलिखित उप नियमों के उपबन्धों के अधीन अवधारित की जायेगी और यदि दो या अधिक व्यक्ति एक साथ नियुक्त किये जायं तो उस क्रम में अवधारित की जायेगी जिसमें उनके नाम नियुक्ति के आदेश में रखे गये हैं:

प्रतिबन्ध यह है कि यदि नियुक्ति के आदेश में कोई ऐसा विशिष्ट पूर्ववर्ती दिनांक विनिर्दिष्ट हो जिससे कोई व्यक्ति मौलिक रूप से नियुक्त किया जाय, तो वह दिनांक मौलिक नियुक्ति के आदेश का दिनांक माना जायेगा और अन्य मामलों में इसका तात्पर्य आदेश जारी किये जाने के दिनांक से होगा :

अग्रेतर प्रतिबन्ध यह है कि सीधे भर्ती किया गया कोई अभ्यर्थी अपनी ज्येष्ठता खो सकता है, यदि किसी रिक्त पद का उसे प्रस्ताव किये जाने पर वह विधिमान्य कारणों के बिना, कार्यभार ग्रहण करने में विफल रहता है, कारणों की विधिमान्यता के संबंध में नियुक्ति प्राधिकारी का विनिश्चय अन्तिम होगा।

(2) किसी एक चयन के परिणामस्वरूप—

(क) सीधी भर्ती से नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी, जैसी यथास्थिति आयोग या समिति द्वारा तैयार की गयी योग्यता सूची में दिखायी गयी हो;

(ख) पदोन्नति द्वारा नियुक्त व्यक्तियों की परस्पर ज्येष्ठता वही होगी जो इस स्थिति के अनुसार कि पदोन्नति एकल

पोषक संवर्ग से या अनेक पोषक संवर्गों से होती है यथास्थिति, नियम 6 या नियम 7 में दिये गये सिद्धान्तों के अनुसार अवधारित की जाय।

(3) जहां किसी एक चयन के परिणामस्वरूप नियुक्तियां पदोन्नति और सीधी भर्ती दोनों प्रकार से की जायं, वहां पदोन्नत व्यक्तियों की, सीधे भर्ती किये गये व्यक्तियों के संबंध में ज्येष्ठता, जहां तक हो सके, दोनों स्रोतों के लिए विहित कोटा के अनुसार चक्रानुक्रम में (प्रथम स्थान पदोन्नत व्यक्ति का होगा) अवधारित की जायेगी।

दृष्टान्त—(1) जहां पदोन्नत व्यक्तियों और सीधी भर्ती किये गये व्यक्तियों का कोटा 1:1 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी :-

प्रथम पदोन्नत व्यक्ति

द्वितीय सीधी भर्ती किया गया व्यक्ति और इसी प्रकार आगे भी।

(2) जहां उक्त कोटा 1:3 के अनुपात में हो, वहां ज्येष्ठता निम्नलिखित क्रम में होगी :-

प्रथम पदोन्नत व्यक्ति

द्वितीय से चतुर्थ तक सीधे भर्ती किये गये व्यक्ति

पांचवां पदोन्नत व्यक्ति

छठा से आठवां सीधी भर्ती किये गये व्यक्ति और इसी प्रकार आगे भी।

प्रतिबन्ध यह है कि—

(एक) जहां किसी स्रोत से नियुक्तियां विहित कोटा से अधिक की जायं, वहां कोटा से अधिक नियुक्त व्यक्तियों को ज्येष्ठता के लिए उन अनुवर्ती वर्ष या वर्षों के लिए बढ़ा दिया जायेगा जिनमें कोटा के अनुसार रिक्तियां हों;

(दो) जहां किसी स्रोत से नियुक्तियां विहित कोटा से कम हों, और ऐसी न भरी गयी रिक्तियों के प्रति नियुक्तियां अनुवर्ती वर्ष या वर्षों में की जायं, वहां इस प्रकार नियुक्त व्यक्ति किसी पूर्ववर्ती वर्ष की ज्येष्ठता नहीं पायेंगे किन्तु वह उस वर्ष की ज्येष्ठता पायेंगे जिसमें उनकी नियुक्तियां की जायं किन्तु उनके नाम शीर्ष पर रखे जायेंगे, जिसके बाद अन्य नियुक्त व्यक्तियों के नाम चक्रानुक्रम में रखे जायेंगे;

(तीन) जहां सेवा नियमावली के अनुसार, सुसंगत सेवा नियमावली में उल्लिखित परिस्थितियों में किसी स्रोत से बिना भरी गयी रिक्तियां अन्य स्रोत से भरी जायं और कोटा से अधिक नियुक्तियां की जायं, वहां इस प्रकार नियुक्त व्यक्ति उसी वर्ष

की ज्येष्ठता पायेंगे मानों वे अपने कोटा की रिक्तियों के प्रति नियुक्त किये गये हों।”

Hence in Rule 8 of both the above Seniority Rules, sub rule (1) provides that subject to the other sub-rule, seniority is to be fixed from the date of substantive appointment, but if the appointments have been made with retrospective date, that date will be treated as the date of substantive appointment. However, this Fundamental Sub rule (1) is subject to the sub-rule (2) and (3) also. Sub-rule (2) specifically provides that the seniority of the persons, directly selected **by a single selection process, will remain the same as per the select list, prepared by the Public Service Commission.** It means, if out of one selection process, the persons are appointed by different order on different dates, their seniority, fixed as per the list prepared by the Commission, will continue and it will not be affected by the different dates of appointment. So the impugned order dated 13.07.2018 and the seniority list finalized by the department on 29.03.2012 are liable to be quashed and fresh list is to be prepared accordingly.

ORDER

The impugned order dated 13.07.2018 passed by the respondent no. 2, Director Secondary Education, Uttarakhand Dehradun as well as the seniority list 29.03.2012 is hereby quashed. The respondents are directed to prepare a fresh seniority list as per the seniority fixed by the Commission. No order as to costs.

(A.S.RAWAT)
VICE CHARMAN (A)

RAJENDRA SINGH
VICE CHARMAN (J)

DATED: OCTOBER 18, 2024
DEHRADUN