



10. Smt. Vandana Rani (Female) aged about 46 years, W/O Sri Rajendra Prasad, presently serving as Head of Department (Electronics), Government Polytechnic, Aamwala, Dehradun District Dehradun.

.....**Petitioners**

Vs.

1. State of Uttarakhand through Secretary, Technical Education Department, Government of Uttarakhand, Dehradun.
2. Director, Technical Education Uttarakhand Srinagar, District Pauri Garhwal.
3. Uttarakhand Public Service Commission, Gurukul Kangari, Haridwar through its Secretary.
4. Dr. Rajesh Amoli, (male) S/o Not known Head of Department (English) Presently serving as Coordinator, Government Polytechnic, Bachheelikhal, District Tehri Garhwal.
5. Sri Nandan Singh Almiya (Male) S/o Not Known, Head of Department (Electrical) Presently serving as Coordinator, Government Polytechnic, Chamoli, District Chamoli.
6. Smt. Bhawana Pant (Female) W/o Not Known, Presently Serving as Head of Department (English) Government Polytechnic, Kaladungi, District Nainital.
7. Sri Anand Singh Bisht (Male) S/o Not Known, Presently Serving as Head of Department (Basic Science) Government Polytechnic, Nainital District Nainital
8. Sri Brijesh Pandey (Male) S/o Not Known, Presently Serving as Head of Department (Electrical) Government Polytechnic, Ranipokhari, District Dehradun.
9. Smt. Arti Bisht (Female) W/o Not Known, Head of Department (Basic Science) Presently Serving as Coordinator, Government Polytechnic, Pantnagar, District Udham Singh Nagar.
10. Sri Prajapati Palariya, (Male) S/o Not Known, Head of Department (Basic Science) Presently Serving as Coordinator, Government Polytechnic, Kapkot District Bageshwar.
11. Sri Vinod Kumar (Male) S/o Not Known, Head of Department (Basic Science) Presently Serving as Coordinator, Government Polytechnic, Kulsari District Chamoli.
12. Smt. Subha Pokhriya (Female) W/o Not Known, Presently Serving as Head of Department (Basic Science) Government Girls Polytechnic, Almora, District Almora.

13. Dr. Om Pal Singh (Male) S/o Not Known, Presently Serving as Head of Department (Basic Science). Government Polytechnic, Kashipur, District Udham Singh Nagar.
14. Dr. Indu Kaintura (Female) W/o Not Known, Presently Serving as Head of Department (Basic Science) Government Polytechnic, Ratura, District Rudraprayag.
15. Sri Mukesh Tiwari (Male) S/o Not Known, Head of Department (Pharmacy) Presently Serving as Deputy Secretary, Uttarakhand Board of Technical Education (UBTER) Roorkee, District Haridwar.
16. Smt. Kiran Kharkwal, (Female) W/o Not Known, Presently Serving as Head of Department (Pharmacy) Government Polytechnic, Gochar, District Chamoli.
17. Sri Bhupendra Singh Bisht (Male) Not Known, Presently Serving as Head of Department (Pharmacy) Government Polytechnic, Lohagaht, District Champawat.
18. Smt. Anamika Grover (Female) W/o Not Known, Presently Serving as Head of Department (I.D.D.) Government Girls Polytechnic, Sudhowala, District Dehradun.
19. Sri Abhinav Thapliyal (Male) S/o Not Known, Presently Serving as Head of Department (Mechanical) Government Polytechnic, Bhalaswagaj, District Haridwar.
20. Sri Sanjay Kumar (Male) S/o Not Known, Head of Department (C.E./C.S.E./P.G.D.C.A.) Presently Serving as Coordinator, Government Polytechnic, Danya, District Almora.
21. Sri Bhaskar Bhatt (Male) S/o Not Known, Head of Department (C.E./C.S.E./P.G.D.C.A.) Presently Serving as Coordinator, Government Polytechnic, Knada, District Bageshwar.
22. Smt. Abha Mahtoliya (Female) W/o Not Known, Presently Serving as Head of Department (C.E./C.S.E./P.G.D.C.A.) Government Polytechnic, Kotabag, District Nainital.
23. Ms. Mamta Rana (Female) D/o Not Known, Presently Serving as Head of Department (C.E./C.S.E./P.G.D.C.A.). Government Polytechnic, Tanakpur, District Champawat.
24. Sri Om Shankar Singh (Male) S/o Not Known, Presently Serving as Head of Department (C.E./C.S.E./P.G.D.C.A.) Government Girls Polytechnic, Dehradun, District Dehradun.
25. Sri Jitendra Prasad (Male) S/o Not Known, Presently Serving as Lecturer (C.E./C.S.E./P.G.D.C.A.) Polytechnic, Kotabag, District Nainital. Government.

26. Smt. Anjali Pant (Female) W/o Not Known, Presently Serving as Head of Department (Basic Science). Government Polytechnic, Shaktifarm, District Udham Singh Nagar.
27. Sri Pawan Kumar (Male) S/o Not Known, Presently Serving as Head of Department (Basic Science) Government Polytechnic, Pithuwala, District Dehradun.
28. Sri Rajesh Kumar Beri (Male) S/o Not Known, Presently Serving as Head of Department (Basic Science) Government Polytechnic, Jainti District Almora.
29. Sri Sanjay Kumar (Male) S/o Not Known, Presently Serving as Head of Department (Basic Science) Government Polytechnic, Haridwar, District Haridwar.
30. Sri Arvind Kumar (Male) S/o Not Known, Presently Serving as Head of Department (Basic Science) Government Polytechnic, Quashi Chakrata, District Dehradun.

.....**Respondents**

Sri Prabhat Kumar, aged about 51 years, s/o Late Sri G.N.Yadav, presently posted as Head of Department (Electronics) Government Polytechnic Shaktifarm, District Udham Singh Nagar.

.....**Intervenor**

Present: Sri Bhagwat Mehra, Advocate for the petitioners  
 Sri Kishore Kumar, A.P.O. for the respondents No. 1 & 2  
 Sri Ashish Joshi, Advocate for respondent No. 3  
 Sri Vinod Tiwari, & Sri G.C.Kandpal, Advocates for the respondent No. 10  
 Sri Ganesh Kandpal, Advocate for the Intervenor

**JUDGMENT**

**DATED: OCTOBER 24, 2024**

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

*“A. To set aside the impugned seniority list dated 23.04.2018 issued by the Respondent no. 1(Annexure No. 1 to Compilation-I).*

*A(i) To set aside the impugned seniority list dated 20.6.2022 issued by the Respondent no. 1 (Annexure No.14 to the claim petition) so far as it relates to sl. No. 15 onwards.*

*B. To declare the action of the Respondent no. 1 in altering /reversing the merit list prepared by the Commission in order of merit regarding the petitioners vis-à-vis private respondents which was prepared in the year 2004 and which remained intact till date, and on the basis of which promotions of petitioners as well as private respondents*

*were made to the post of Head of Department as arbitrary, illegal and ultra-vires/without authority of law.*

*C. To direct the Respondent no. 1 to prepare a fresh seniority list of personnel serving on the post of Head of Department/Lecturer, Government Polytechnics, strictly in accordance with the Uttarakhand Gov. Servant Seniority Rules, 2002.*

*D. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*E. To allow the claim petition with cost."*

2. The brief facts of the case, as per the claim petition, are as follows:

2.1 The Respondent No. 1 through Respondent No. 3 inter-alia advertised various posts of Lecturers, Government Polytechnic vide advertisement no. 02/Service/2003-04 which was issued in the month of January, 2004. The petitioners, who were fully qualified, also applied to the said post of Lecturer in pursuance of the aforesaid advertisement. The petitioners were permitted to participate in the selection process held in the month of March, 2004. The Commission declared the result of the aforesaid selection vide notification dated 09-07-2004, in order of merit.

2.2 The petitioners were declared successful and their names were placed above the private respondents herein, in order of merit. The private respondents also participated in the same selection and since they were lower in merit, as such their names were placed much below to the petitioners in the said result, which they accepted and never raised any objection till date.

2.3 Thereafter, the recommendation was made by the Commission to the Respondent No. 1 for making appointment. Ultimately, the Respondent No. 1 vide order dated 23-10-2004 issued a common appointment order regarding the petitioners vis-à-vis private respondents. In the said appointment order also, the names were arranged strictly as per merit prepared by the Commission and the petitioners names are mentioned above the private respondents. This time also, the private respondents raised not a single objection.

2.4 The petitioners have completed more than 17 years of continuous satisfactory service in the Department. The petitioners were promoted to the next higher post of Head of Department on the criteria of seniority,

subject to rejection of unfit. The petitioners as well as private respondents were promoted to the post of Head of Department in order of same seniority position as was prepared at the time of selection.

2.5 In the year 2016, the Respondent No.1 issued a tentative seniority list of the personnel serving on the posts of Head of Department/Lecturer vide letter dated 02.03.2016. However, the said tentative seniority list was prepared de-hors the Rules, governing the field and the same was prepared on the basis of date of joining of the candidates, meaning thereby, treating the person, who has joined earlier, senior to those who joined duties later on in point of time. In the said tentative seniority list, the names of the petitioners and private respondents were mentioned from Sl. No.60 to 114. The petitioner no. 1 was at Sl. No. 60 while all the private respondents were placed below him.

2.6 The said tentative seniority list was thereafter cancelled vide office memo dated 23.02.2018 and another tentative seniority list was issued by means of same office memo. In the said tentative seniority list, the names of the petitioners and private respondents were mentioned from Sl. No. 60 to 114, however, the seniority position between the petitioners as well as private respondent was altered/reversed and the Respondent No. 4 was placed at Sl. No. 60 while the petitioners were placed en bloc junior and Petitioner No. 1 was placed at Sl. No. 87. Thereafter, the petitioners submitted their detailed objections in the matter within time.

2.7 The respondent no.1 decided/disposed of and rejected the objections vide office memo dated 23.4.2018 and circulated impugned final seniority list of the personnel serving on the post of Head of Department/Lecturer in Government Polytechnics and the petitioners were placed much below the private Respondents, in utter disregard and violation of relevant Statutory Seniority Rules, which govern the field. The impugned seniority list has been prepared on the principle of senior in age concept, while the Respondent No. 1 lost sight of the fact that the said principle will apply only when the marks of two or more candidates in the selection in question, are same.

2.8 Feeling aggrieved, the Petitioners again submitted representation against the aforesaid impugned seniority list dated

23.04.2018, to the Respondent No. 1 and requested for correction in the same, in accordance with the statutory provisions contained in the Statutory Rules.

2.9 The petitioners crave leave of this Hon'ble Court to bring on record the document showing the marks obtained by the candidates in the said selection in question, including the petitioners vis-à-vis private respondents, copy whereof has been furnished by the Uttarakhand Public Service Commission under RTI Act.

2.10 The impugned seniority list has been prepared by the Respondent No. 1 in utter violation of provisions contained in Uttaranchal Government Servants Seniority Rules, 2002. Rule 5 of the same, clearly provides that the inter-se seniority of personnel appointed in the same selection, shall remain the same as it was in the merit list prepared by the examining body/ Commission. However, by means of impugned seniority list, the Respondent No.1 has determined the inter-se seniority of the petitioners vis-à-vis private Respondents on the basis of older in age principle, which cannot be justified at all in the eyes of law. Moreover, by means of impugned seniority list, the Respondent No. 1 has tried to encroach upon the domain of Constitutional Body i.e. Commission and has tried to reverse the merit list prepared by the Commission at the time of selection. It is settled position in law that the State has no authority in law to alter/ reverse the merit list prepared by the Commission. As such, the Respondent No. 1 has acted in a manner. which is ultra-vires to his authority powers. It is submitted that if the Respondent No. 1 was not in agreement with the merit list of the Commission, in that case, it could have requested the Commission to take a decision in the matter, after communicating its point of disagreement, however, by no stretch of imagination, the Respondent No.1 can alter the merit list prepared by the Commission. As such, the seniority list has been prepared by the Respondent No. 1 after going beyond his jurisdiction and beyond his competence.

2.11 The Respondent No. 1 and not Commission who is the sole competent authority in law, has changed/ reversed/modified the merit list of the selection in question. As such, the impugned seniority list cannot be sustained in the eyes of law at all and same is void-*ab-initio* one.

2.12 The seniority, when it is governed by statutory provisions of law, cannot be decided by any authority of State Government, as per whims and fancies and self devised formula, which has no legal sanctity. The private respondents have accepted their promotion to the next higher post when their turns came as per their inter-se seniority position with the petitioners. In the present case, the private respondents have been bestowed undue favour by the Respondent No. 1 at the cost of the petitioners. The petitioners crave leave of this Hon'ble Court to bring on record one Judgment dated 17.5.2019 by Hon'ble Uttarakhand High Court in Writ Petition No. (S/S) 2402 of 2017 (Pan Singh Bangari and others Vs. State of Uttarakhand and others), whereby the claim of seniority between the employees was not only entertained but was also decided and it was held that if any genuine claim is raised after a considerable delay, the same cannot be sustained and the settled seniority position cannot be reversed after such a long delay. There are various judicial pronouncements on this point by Hon'ble Supreme Court holding that long standing seniority position cannot be permitted to be altered/ reversed amended at a later stage. even on the basis of a genuine claim.

2.13 The aforesaid Judgment dated 17.05.2019 was thereafter challenged before Division Bench of this Hon'ble Court by way of Special Appeal No. 869 of 2019 and the Division Bench of this Hon'ble Court vide Judgment dated 21.11.2019 dismissed the Special Appeal, affirming the law on the point. The impugned seniority list dated 23.4.2018 issued by the Respondent No. 1 cannot be sustained in the eyes of law and the same deserves to be set aside the claim petition is liable to be allowed with cost.

2.14 The impugned seniority list was challenged by the petitioners before the Hon'ble Uttarakhand High Court by way of Writ Petition No. 355 of 2021 (S/B), (Tarun Garg and others Vs. State of Uttarakhand and others). However, the said writ petition was ultimately dismissed by the Hon'ble Uttarakhand High Court on the ground of alternative remedy of approaching this Hon'ble Tribunal and has relegated the matter to this Hon'ble Tribunal vide order dated 06-09-2021.

2.15 It is also submitted that the respondent no.1 in supersession of the aforesaid seniority list dated 23.04.2018, has circulated new seniority list on 20.06.2022 on the selfsame criterion. The said seniority list dated



20.06.2022 cannot be sustained in the eyes of law as the same is also de-hors the settled position in law as well as the provisions contained in the Seniority Rules. As such, the impugned seniority list dated 20.06.2022 also deserves to be set aside.

3. C.A./W.S. has been filed on behalf of respondent no. 3 (Uttarakhand Public Service Commission). It has been stated that the Commission prepared the subject-wise merit list of the candidates who appeared in the examination for the selection for the post of Lecturer in Polytechnic in pursuance to the advertisement. The present claim petition has been filed by the claimant regarding the inter-seniority amongst the Lecturers and the seniority list has been prepared by the Government/ Concerned Department of which they are empowered to prepare the seniority list of their employees. It is further submitted that the Commission selected the candidates on subject wise against the advertised post and sent its recommendation to the State Government. After receiving the recommendation from the Commission the State Government appointed the candidates on their respective posts.

4. C.A/W.S. has been filed on behalf of respondent no. 1 by learned A.P.O. In the C.A/W.S. it has been stated that the department of technical education decided the seniority of the employees on the basis of the Uttaranchal Govt. Servants Seniority Rules, 2002 and the subject wise seniority list the Uttarakhand Public Service Commission. There is a provision of promotion to the post of Principal from the different feeder cadres. To decide the seniority amongst the employees, the provision has been defined in the Uttarakhand Govt. Servant Seniority Rules, 2002. Rule 6 of the said rules provides that where according to the service rules, appointments are to be made only by promotion from a single feeding cadre, the seniority inter-se of persons so appointed shall be the same as it was in the feeding cadre. Rule 7 provides that where according to the service rules, appointment are to be made only by promotion but from more than one feeding cadres, the seniority inter se of persons appointed on the result of any one selection shall be determined according to the date of the order of their substantive appointments in their respective feeding cadres. The department vide letter dated 02.03.2016 issued a tentative seniority list and invited the objections. Based on the objections received from the candidates, the department again issued a tentative list on 23.02.2018 and

final list on 23.04.2018. The seniority list has been prepared and included the Lecturers who were appointed in 2004 and were placed in the seniority list as per the aforesaid Seniority Rules. The appointment letters in 2004 in respect of the Lecturers were issued on the same day. This is to bring to the notice that the Hon'ble Supreme Court in Civil Appeal No. 7002 of 2004, D.P. Dass vs. Union of India and others, decided on 09.08.2011. The operative part of the judgment is as under:

“34. For the reasons aforesaid this Court holds that for determination of seniority of the officers who were recommended on the same date, age is the only valid and fair basis as such their seniority should be decided on the basis of age of the candidates who have been recommended.”

So the department has followed the Uttarakhand Govt. Servant Seniority Rules, 2002 in toto and also the directions of the Hon'ble Supreme Court in Civil Appeal No. 7002 of 2004. Any other Principle to finalize the seniority list is not acceptable. In this respect, the decision of the Hon'ble High Court in Special Appeal no. 169 of 2019, Smt. Leela Bisht vs. Pan Singh and others decided on 21.11.2019. The contention of the petitioner to change the seniority list cannot be accepted in view of the aforesaid judgment. The appointment order for the post of Lecturer of different cadres has been issued by the Govt. on 23.10.2004 and in Point No. 7 of the appointment letter, it is clearly mentioned that the seniority of the concerned candidate will be decided later on. So this is clear that serial numbers mentioned in the appointment letter are not in the order of the seniority. The seniority list finalized by the department has been acted upon by the department and has promoted the HODs/Lecturers to the post of Principal vide order no. 1168 dated 04.12.2020. The petitioners did not appeal in the Hon'ble High Court against this order of promotion.

5. In the R.A. against the C.A/W.S. filed on behalf of respondent no.1, the petitioner has submitted that the reliance placed by the respondents upon the judgment rendered in the case of D.P. Dass vs. Union of India and others, reported in (2011) 08 SCC 115 is totally misplaced and misconceived and has no application at all in the present case. A bare perusal of the said judgment would reveal that in the said case, there was no rules governing the field, however, in the present case, that is no so and the rules governing the field are existing. So far as the judgment dated

21.11.2019 rendered in the case of Smt. Leela Bisht and others vs. Pan Singh and others is concerned, the ratio of the said judgment is also not applicable in the present case being totally based different facts.

6. Intervention application has been filed on behalf Sri Prabhat Kumar, s/o Late Sri G.N. Yadav, presently posted as Head of Department (Electronics), Government Polytechnic Shakti farm, District Udham Singh Nagar, whose name is at sl. No. 51.

7. Supplementary Counter Affidavit has been filed on behalf of respondent no. 2 by learned A.P.O. reiterating the submissions already made in the Counter Affidavit and requested to maintain the seniority list prepared by the department.

8. Supplementary R.A. has been filed by the petitioner to the Supplementary C.A. of respondent no. 2, in which it has been stated that that the claim petition was initially filed challenging the seniority list dated 23.04.2018 and during pendency of the present claim petition, the respondent no.1 issued seniority list dated 20.06.2022 which is based on the earlier seniority list dated 23.04.2018, so as a precaution seniority list dated 20.06.2022 has also been challenged by way of amendment.

9. C.A./W.S. has also been filed on behalf of respondent no. 10. it has been stated that the petitioners although aggrieved right there in 2004 but they did not challenge the same at the relevant time. Now they cannot agitate the matter after such a long delay. The doctrine of estoppel will apply here in the matter of petitioners. So it is clear that the order dated 23.10.2004 is merely a selection order for appointment in which Lecturers (Electronics) are placed first. The combined seniority list is prepared by the State on the basis of Uttarakhand Public Service Commission merit list and the marks obtained by them on the respective subject. It is also relevant to mention that the DPC has already been held twice previously on the basis of the same seniority list but the petitioners had no objection at the said time. So he has submitted that the petitioners are not entitled for any relief and their petition is devoid of merits and is liable to be dismissed.

10. In the R.A. to the C.A./W.S. filed on behalf of respondent no. 10, the petitioners have denied the contentions of the C.A. being totally erroneous and misconceived.

11. Supplementary Affidavit has been filed on behalf of respondent no. 1 stating therein that pursuant to the order issued by this Tribunal on 25.07.2023, the respondents were directed to obtain clarification concerning the final result released by the Public Service Commission. Based on the State Public Service Commission's letter dated 11.09.2023, the subsequent information is submitted as below:

I. The selection process for selecting lecturers for various branches/subjects within the Technical Education Department was executed strictly in accordance with existing regulations.

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It is imperative to understand that any reconsideration or alternative approach based on normalization of marks for the purpose of determining seniority is not feasible under the current circumstances.

II. The Commission has explicitly clarified, in the line with *the Uttarakhand Lok Sewa Aayog Pariksha Parinam Nirman Prakriya-2022*, that there exists no stipulation or provision that mandates the normalization on interview marks across different branches/subjects evaluated by distinct interview boards.

12 The petitioner has filed supplementary R.A. to the Supplementary Affidavit filed on behalf of respondent no. 1. He has further submitted that the reliance placed by the respondent no. 1 on the judgment so referred in the paragraphs under reply, are totally misconceived and erroneous, hence, emphatically denied. The same ground was also taken in the Counter Affidavit filed by respondent no. 1, which was duly replied in the R.A. filed by the petitioners. At the cost of repetition, it is again submitted that the said judgment deals with a situation where no service rules governs the field. Further, it is submitted that the similar issue came up before the Division Bench of the Hon'ble High Court in the case of Sandeep Verma vs. State of Uttarakhand and others by means of Writ Petition No.357 (S/B) of 2013 and the controversy was decided by the Hon'ble Division Bench of Uttarakhand High Court vide judgment dated 06.08.2015 holding that the seniority should be made on the basis of the marks scored in the common selection irrespective of the different branches. The Hon'ble High Court in the another writ petition namely Writ Petition No. 416 (S/B) of 2015 (Deepti Bhatt Vs. Secretary Rural Development) and the said writ petition was dismissed vide judgment dated 30-10-2015. The said controversy went into

appeal before the Hon'ble Apex Court and the Hon'ble Supreme Court vide judgment dated 22-02-2016 dismissed the same and affirmed the law declare by the Division Bench of Uttarakhand High Court. The said judgments are fully applicable in the present case and the instant case is covered by the aforesaid verdict given by Hon'ble High Court and affirmed by Hon'ble Supreme Court.

13. We have heard learned Counsel for the petitioners and perused the record carefully.

14. Learned Counsel for the petitioners has argued that the seniority list of HOD/Lecturer for the post of Principal has not been prepared as prescribed in the Uttaranchal Govt. Servants Seniority Rules, 2002. The department has issued the appointment letters to the candidates on the basis of the seniority list given by the Uttarakhand Public Service Commission. He has further argued that the respondents have followed the decision of the Hon'ble Apex Court in the case and used the age criteria to finalize the seniority of then lecturers appointed in 2004 by the same appointment letter which is totally illegal. The decision of the Hon'ble High court in the cases of *Sandeep Verma vs. State of Uttarakhand and others in Writ Petition No.357 (S/B) of 2013 and Writ Petition No. 416 (S/B) of 2015*, *Deepti Bhatt Vs. Secretary Rural Development* should be followed. He pleaded further that the seniority of 2018 and subsequently in 2022 have to be quashed and fresh seniority list needs to be prepared.

15. Learned A.P.O. has argued that the seniority list has been prepared as per the Rules of 2002. But for the candidates who were appointed on the same date on 23.10.2004 and belong to different streams as per the result published by the Public Service Commission there is no provision in the Rules of 2002. Uttarakhand Public Service Commission has given the subject-wise merit list of the successful candidates in this case. In such situation, the judgment of the Hon'ble Apex Court in ***Civil Appeal No. 7002 of 2004, D.P. Dass vs. Union of India and others***, decided on 09.08.2011 has been followed. The seniority of the candidates in the respective streams has been kept same as in the merit list submitted by the Uttarakhand Public Service Commission but the seniority among different streams has been decided on the basis of the age. This has been followed by the Department of Higher Education also. Any attempt to interfere with the seniority list will

lead to disturb many lecturers which is against the well-settled law that seniority once settled long ago cannot be changed in the later stage.

16. Based on the records placed by both the parties and the arguments of the learned pleaders we are of the opinion that the petitioners and the private respondents under dispute are appointed on the same date and in the different streams but joined the department on different dates. The department, at the time of appointing them clearly mentioned in the order of appointment letter that the seniority of the candidates will be decided later on.

17. The plea of the learned Counsel for the petitioners relied on the judgements of Hon'ble High Court in the case of *Sandeep Verma vs. State of Uttarakhand and others in Writ Petition No.357 (S/B) of 2013 and Writ Petition No. 416 (S/B) of 2015, Deepti Bhatt Vs. Secretary Rural Development* in which the issue was redetermination of the seniority decided by the Public Service Commission earlier. Whereas in this Claim petition, seniority among different streams has not been determined by the Public Service Commission. Hence aforesaid rulings are not applicable in this case.

18. The department has finalized the seniority list based on The Uttaranchal Government Servants Seniority Rules, 2002 as well as the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 7002 of 2004, D.P. Dass vs. Union of India and others, decided on 09.08.2011. The operative part of the judgment is as under:

***“34. For the reasons aforesaid this Court holds that for determination of seniority of the officers who were recommended on the same date, age is the only valid and fair basis as such their seniority should be decided on the basis of age of the candidates who have been recommended.”***

Where promotion for the post, are from the different streams, the date of appointment is same, it has been decided on the basis of the age (date of birth) of the candidates only. So, the candidates have been placed in the list as per their age but the seniority of the candidates in the same stream has been kept as mentioned in the merit list issued by the Uttarakhand Public Service Commission. The department has followed the same procedure in finalizing the seniority list in 2022 also. Many Head of the

departments/ lecturers have been promoted to the post of the principals based on the seniority list finalized in 2018. This will not be in the fitness of the things to accept the contention of the petitioners. More over the as action has already been taken on the basis of the list prepared by the department, so it cannot be changed now, otherwise it will lead to litigation. This is reiterated in the case of Special Appeal no. 169 of 2019, Smt. Leela Bisht vs. Pan Singh and others decided on 21.11.2019 by the Hon'ble High Court. The operative part of which, is as under:

*"7. What the learned counsel has failed to address us is on the question whether the seniority list, which was prepared several years earlier and which was repeatedly acted upon, can be revised after a long lapse of time.*

*10. The law declared in the judgments of the Supreme Court, on which the learned Single Judge has placed reliance upon, emphatically hold that it cannot.*

*11. The learned Single Judge was, in our view, justified in setting aside the order dated 22.06.2017 and the amended seniority list dated 15.07.2017, since it was contrary to several seniority lists prepared earlier, which were acted upon by the authorities concerned from time to time."*

19. In view of the above, it is clear that for determination of seniority of the candidates who were recommended on the same date, age is the only valid and fair criteria, as such, their seniority should be decided on the basis of age of the candidates. Hence, the claim petition is devoid of merit and is liable to be dismissed.

### **ORDER**

The claim petition is hereby dismissed. No order as to costs.

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

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

DATED: OCTOBER 24, 2024  
DEHRADUN.  
KNP