

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**CLAIM PETITION NO. 133/SB/2022**

1. Raj Juyal (Male), aged about 38 years, S/o Sri B.N.Juyal, Presently posted at S.P. (Regional) Office, Dehradun.
2. Manmohan Negi (Male), aged about 45 years, S/o Sri Anand Singh Negi, Presently posted as S.I.S., S.S.P. Office, Dehradun.
3. Dharmendra Patwal (Male), aged about 40 years, S/o Sri Mahipal Singh Patwal, Presently posted as S.I.O. Office, Dehradun.
4. Mukesh Singh Rauthan(Male), aged about 40 years, S/o Sri Balwant Singh, Presently posted as Intelligence Headquarter, Uttarakhand, Dehradun.
5. Harender Kaithaith (Male), aged about 44years, S/o Late Sri Trilok Singh, Presently posted as A.S.I.O., Gairsain, Chamoli.

**....Petitioners**

**VERSUS**

1. State of Uttarakhand through Chief Secretary, Dehradun.
2. Secretary, Home Department, Government of Uttarakhand, Dehradun.
3. Director General of Police, Police Head Quarters, Dehradun.
4. Inspector General (PHQ), Dehradun, Uttarakhand.
5. Principal Secretary Karmik, Uttarakhand Govt. Dehradun.

**.....Respondents**

**WITH**

**CLAIM PETITION NO. 54/DB/2020**

1. Santosh Kumar Shah S/o Lt. Shri M.L.Shah aged about 57 years, presently posted as sub inspector, intelligence headquarter, Dehradun.
2. Jagdish Raturi S/o Shri Balakrishan Raturi aged about 38 years, presently posted as sub inspector food sefty and drugs administration, Dehradun.
3. Surat Singh S/o Shri Mohar Singh aged about 39 years, presently posted as sub inspector, intelligence headquarter, Dehradun.

4. Sanjay Kumar S/o Shri Vinod Kumar aged about 37 years, presently posted as sub inspector, Local intelligence unit, Pauri Garhwal.
5. Sachin Chauhan S/o Shri Bharat Singh Chauhan aged about 35 years, presently posted as sub inspector, special branch intelligence, Haridwar.
6. Sharmila Rawat D/o Shri Shyam Singh Rawat aged about 34 years, presently posted as sub inspector, intelligence headquarter, Dehradun.
7. Durganand Mangae S/o Shri Dhamanand Mangae aged about 43 years, presently posted as sub inspector, intelligence headquarter chander road, Dehradun.
8. Harish Rawat S/o Shri Mahendra Singh Rawat aged about 39 years, presently posted as sub inspector, Local intelligence unit, Haridwar.
9. Sunil Negi S/o Shri Jagat Singh Negi aged about 40 years, presently posted as sub inspector, intelligence headquarter, Dehradun.
10. Aaftab S/o Lt. Shri Rashid Ahmad aged about 40 years, presently posted as sub inspector, intelligence headquarter, Dehradun.
11. Vikas Nautiyal s/o Sri Dinesh Chandra Nautiyal aged about 40 years, presently posted as sub inspector, Local Intelligence Unit, Dehradun.

**.....Petitioners**

**vs.**

1. State of Uttarakhand through Chief Secretary, Dehradun.
2. Secretary, Home Department, Government of Uttarakhand, Dehradun.
3. Director General of Police, Police Head Quarters, Dehradun.
4. Inspector General (PHQ), Dehradun, Uttarakhand.

**.....Respondents**

**IN CLAIM PETITION NO. 133/DB/2022**

**Present:** Sri M.C. Pant (online), Sri Abhishek Pant & Ms. Tulika Sharma, Advocates, for the petitioners.  
Sri V.P.Devrani, A.P.O., for Respondents.

**IN CLAIM PETITION NO. 54/DB/2020**

**Present:** Sri Shashank Pandey, Advocate, for the petitioners.  
Sri V.P.Devrani, A.P.O., for Respondents.

**JUDGMENT**

**DATED: NOVEMBER 06, 2024.**

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

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 23.09.2022 in WPSB No. 878/2020, Raj Juyal and others vs. State of Uttarakhand and others, which reads as under:

“The petitioners are public servant. The relief sought in the writ petition are following:-

.....

These reliefs squarely fall for consideration by the Public Service Tribunal. 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 2020 and pleadings have been exchanged, 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 expedite hearing of the petition, considering that the writ-petition is pending since 2020.

This petition stands disposed of.”

2. Writ Petition No. 878 (S/B) of 2022 is, accordingly, reclassified and renumbered as Claim Petition No. 133/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. Since common questions of law and facts are involved in the above noted petitions, hence, they are heard together and are being disposed of by a common judgment and order, for the sake of brevity. Law and facts, which are common to both, are being considered and discussed together

4. When WPSB No. 878 (S/B) of 2022, Raj Juyal and others vs. State of Uttarakhand and others was transferred to this Tribunal, the petitioners filed amended petition before the Tribunal, in which they made the following prayers:

“i. Issue a Writ or direction in the nature of Certiorarified mandamus To declare the impugned order dated 22.07.2020 issued by respondent no.2 as well as order dated 14.02.2019 passed by respondent no.4 and the final seniority list dated 21.09.2020, letter dated 24.09.2020 and office

memorandum dated 28.09.2020 for holding the D.P.C is illegal, arbitrary, irrational and is violation of the provisions of Rule 21 (2)(B) of the Service Rules of 2018 and to quash the same along with its effect and operation also, after calling entire records from the respondents, keeping in view the facts highlighted in the body of the claim petition or to mould the relief appropriately and also to declare any proposed promotion on the basis of impugned seniority list and alleged broadsheet is also against the law discriminating and quash the same along with its effect and operation also after calling entire records from the respondents.

i.a Issue a writ, rule, order or direction in the nature of mandamus to determine and redraw the seniority list strictly in accordance with provisions of Uttarakhand Government Servant Seniority Rules and also to hold a review DPC by considering the case of the petitioners.

ii. Issue a Writ or direction in the nature of Certiorarified mandamus commanding the respondents to determine the seniority of the petitioners as per Rule 21 of the Rules of 2018, as amended in 2019 and as per Uttarakhand Govt. Servant Seniority Rules, 2002 for promotion to the post of Inspector (LIU) and consider the case of the petitioners for the post of Inspector (LIU) by counting their length of service for the purpose of seniority as per the provisions of Uttarakhand Govt. Servant Seniority Rules, 2002 with all consequential benefits, keeping in view the facts highlighted in the body of the petition and further to direct the respondents to hold a review D.P.C. and also to sent a fresh requisition by including the names of the petitioners for promotion on the post of Inspector and also consider the case of the petitioners with all consequential benefits.

iii. Issue any suitable order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

iv. Award the cost of claim petition to the petitioners.”

5. In Claim Petition No. 54/DB/2020, the petitioners prayed for the following reliefs:

“i- To issue order and direction and quash the impugned order dated 22-7-2020 (Annexure No.A-1) issued by Respondent No. 2 as it is against the Provision of Rules 2018 (Annexure A-2) which was passed by Respondent No. 2 without any Power which soever and can not superseded the Provision of Rules 2018.

ii- To quash/ set aside the order dated 5-8-2020 alongwith Interim seniority list was prepared without any Provision of Law and superseded the Rules 2018 as the said order in continuation of order dated 22- 7-2020.

iii To issue order direction to the Respondents to determine the seniority list of the Petitioners as per Rule 21 of Rules 2018 as amended in 2019 and

therefore give effect of Rule 16 for Promotion to the post of Inspector (Civil Police/L.I.U).

iv- To issue any suitable order or direction of any under which Hon'ble Tribunal may deems fit and proper in the present circumstances of the case.

v- To award cost of this petition to the petitioners.”

6. Petition No. 133/DB/2022 is supported by the affidavit of Sri Raj Juyal, petitioner no. 1. Relevant documents have been filed along with the petition.

7. Claim Petition No. 54/DB/2020 is supported by the affidavit of Sri Santosh Kumar, petitioner no. 1. Relevant documents have been filed along with the petition.

8. Both the petitions have been contested on behalf of respondents.

9. In Petition No. 133/DB/2022, Sri Omkar Singh, Joint Secretary, Home, Govt. of Uttarakhand, Dehradun, has filed Counter Affidavit on behalf of Respondents No. 1 & 2.

10. In Claim Petition No. 54/DB/2020, Sri Sunil Panthri, Additional Secretary, Home, Govt. of Uttarakhand, Dehradun has filed C.A. on behalf of Respondent No. 1. C.A., on behalf of Respondents No. 3 & 4, has been filed by Sri Beeru Lal Tamta, Deputy Superintendent of Police, Police Headquarter, Uttarakhand, Dehradun. Relevant documents have been filed in support of Counter Affidavits.

11. The reliefs claimed by the petitioners in both the petitions have been mentioned in Paragraphs 4 and 5, as above. Facts, which appear to be relevant for disposing of the petitions, would be mentioned while discussing the matter, to avoid repetition.

12. During the course of hearing, Ld. A.P.O. moved an application enclosing the copy of the Uttarakhand Police Sub-Inspector and Inspector (Civil Police/Intelligence) Service (Amendment) Rules, 2024 (for short, Rules of 2024), for taking the same on record. Such material document was taken

on record. *Vide* Rules of 2024, the Uttarakhand Police Sub-Inspector and Inspector (Civil Police/Intelligence) Service (Amendment) Rules, 2018 (for short, Rules of 2018), were amended. In the Rules of 2024, it has been mentioned that for the existing sub-rule (2) as set out in column-1, the sub-rule as set out in column -2 shall be substituted, namely-

Column 1 Existing sub rule	Column Sub rule hereby substituted.
<p>2(a) Sub- Inspector The seniority of the Sub Inspector appointed Substantively in the service shall be determined under the government servant seniority rules 2002 as revised from time to time.</p> <p>(b) Seniority of Sub-Inspectors selected through direct recruitment shall be prepared cadre wise by adding 50 percent of the percentage of marks obtained in the selection examination and 50 percent of marks obtained in training after training completed successful in training institute and shall be promoted on basis of seniority and seniority of the sub- inspectors promoted on the basis of seniority shall be according seniority of their feeding cadre.</p> <p>(c) All Sub-Inspectors selected against the vacancy of one recruitment year and trained in one training session are junior to all sub-inspectors trained in foregoing training session and senior to trained Sub-Inspectors of later session.</p> <p>Provided that if Sub- Inspectors selected through direct recruitment and by promotion have taken training in the same session then in that condition wherever their seniority possible shall be determined on the basis of quota fixed, for both the source in cyclic order the first place shall be given to the person appointed by promotion (first place seniority and second place to appointed through direct recruitment Sub-Inspectors).</p> <p>(d) Service of the candidate selected for the post of Sub- Inspectors through recruitment/promotion shall be calculated from starting of P.T.C. training period.</p>	<p>(1) <u>Determination of seniority of Sub-Inspectors recruited before the date 31-07-2018.</u></p> <p>(a) Seniority of such Sub-Inspectors recruited in any manner who have undergone training at one time shall be determined cadre wise on the basis of the marks obtained by them in training after selection in training institutions.</p> <p>(b) All sub-Inspector undergone trained in one training session shall be junior to all Sub Inspectors - undergone trained in previous training session and shall be senior to all Sub-Inspectors undergone trained in subsequent training sessions.</p> <p>Provided that, if Sub-Inspectors appointed by direct recruitment and by department promotion/ ranker exam undergone training in one training session then in that case the seniority shall be determined in a cyclic order (the first being a promotee) so far as may be, in accordance with the quota prescribed for both the sources.</p> <p>(2) <u>Determination of seniority of Sub-Inspectors recruited after the date 31-07-2018.</u></p> <p>(a) Seniority of Sub-Inspectors selected through direct recruitment and department promotion/ ranker exam shall be prepared cadre wise by adding 50 percent of the percentage of marks obtained in the selection examination and 50 percent of the percentage of marks obtained in training after training completed successful in training institute and seniority of the Sub-Inspectors promoted on the basis of seniority shall be according seniority of their feeding cadre.</p>

	<p>(b) All Sub-Inspectors undergone trained in one training session shall be junior to all sub inspector undergone trained in previous training session and shall be senior to all Sub-Inspectors undergone trained in subsequent training session.</p> <p>Provided, if Sub-Inspectors selected through direct recruitment, department promotion / ranker exam and seniority undergone training in the same session then in that condition their seniority wherever possible shall be determined on the basis of quota, for all three sources in cyclic order. (first place seniority, second place department promotion /ranker exam and third place appointed through recruitment Sub-Inspectors). Direct.</p> <p>(3) Notwithstanding anything contrary above if any other fact comes to the knowledge or any dispute takes place regarding seniority then it shall be disposed of according to Uttarakhand Government servant Seniority Rules 2002(as amended from time to time.)</p> <p>(4) Service of the candidate selected for the post of Sub- Inspectors through recruitment/ promotion shall be calculated from the date of starting of P.T.C. training.</p> <p>8. In the principal rules, in Appendix 2, the existing entry (f) shall be hereby omitted.</p> <p>9. In the principal rules in Appendix 3.</p> <p>i. For existing entry (a) and (e) as set out in column-1 below the entry as set out in column-2 shall be substituted, ...</p>
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13. The aforesaid Rules have been framed by the Govt in exercise of powers conferred under sub-section (1) of Section 87 of the Uttarakhand Police Act, 2007 (Act No. 1 of 2008) with a view to further amend the Uttarakhand Police Sub-Inspector and Inspector (Civil Police/Intelligence) Service (Amendment) Rules, 2018. The Rules, *inter alia*, provide for- (i) determination of seniority of Sub-Inspector recruited before the date 31.07.2018 and (ii) determination of seniority of Sub-Inspector recruited after date 31.07.2018. The amended Rules have come into force at once. It

is the submission of Ld. A.P.O. that with the coming into force of aforesaid Rules, both the petitions have rendered infructuous. Accordingly, Rules of 2024 have not been challenged by the petitioners and even if they were challenged, the Tribunal has no jurisdiction to look into the legality (or otherwise) of these statutory Rules.

14. Sri M.C. Pant, Ld. Counsel for Sri Raj Juyal and others submitted that in a homogeneous category, two different employees governed by two different rules, is arbitrary and discriminatory. Sri M.C. Pant, Ld. Counsel for the petitioners further submitted that the Rules were amended during pendency of the petitions. He also submitted that Rules framed under the Uttarakhand Police Act should not be against the principles of natural justice.

15. The Tribunal is afraid, it cannot look into the legality (or otherwise) of the statutory rules, in view of paragraphs 3, 4, 5, 6, 37 & 38 of the decision rendered by Hon'ble High Court of Uttarakhand in WPSB No. 39/2020, Shyam Lal and others vs. State of Uttarakhand and others. The said paragraphs read as under:

“3. When the Writ Petition was initially listed before us on 13.02.2020, we inquired from the learned counsel why the petitioner should not be relegated to avail the remedy of approaching the Tribunal. Both Mr. M.C. Kandpal, learned Senior Counsel, and Mr. M.C. Pant, learned Counsel appearing along with him, submitted that, unlike an Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 (for short the “1985 Act”) (a Tribunal constituted under Article 323-A of the Constitution) which, in the light of the law declared by the Supreme Court in L. Chandra Kumar v. Union of India[1], can also examine the vires of statutory provisions, the Tribunal established under the 1976 Act has no such power; since the vires of Rules 5(3), 8, 10 and 15 of the 2016 Rules and the amended 2018 Rules, have been subjected to challenge in this writ petition, the petitioners cannot be relegated to approach the Tribunal; and this question has not been examined by this Court till date.

4. In view of its importance, we had, by our order dated 13.02.2020, requested the learned Advocate General to assist this Court in adjudicating this question of law. Elaborate submissions have been put forth on behalf of the petitioner, and by the learned Advocate General, to the effect that the State Legislature has not conferred, on the Tribunal, the power to adjudicate the constitutional validity of statutory provisions; the Tribunal cannot, therefore, adjudicate such disputes as its jurisdiction is confined within the limits prescribed by the provisions of the Statute (the 1976 Act) under which it was established; and the petitioners have no other remedy except to invoke the extra-ordinary jurisdiction of this Court,



under Article 226 of the Constitution of India, in cases where the constitutional validity of statutory provisions are subjected to challenge.

5. Mr. M.C. Pant, Learned counsel appearing for the petitioner, would rely on Krishna Sahai & others v. State of U.P. & others, (1990) 2 SCC 673; Rajendra Singh Yadav & others v. State of U.P. & others, (1990) 2 SCC 763; Public Services Tribunal Bar Association v. State of U.P. & another, (2003) 4 SCC 104; and Telecom District Manager & others v. Keshab Deb, (2008) 8 SCC 402.

6. Learned Advocate General would also submit that conferring jurisdiction is a legislative function; consequently the High Court would not, in the exercise of its power of judicial review, confer jurisdiction on the Tribunal which the legislature has chosen not to; omission of the State Legislature to confer certain powers on the Tribunal cannot be made up by Courts; and, as a result, the Tribunal must be held to lack jurisdiction to adjudicate questions regarding the constitutional validity of statutory provisions. He would rely on Shorter Constitution by D.D. Basu (18th Edition) Reprint 2002; A.R. Antulay v. R.S. Nayak & another, AIR 1988 SC 1531; and L. Chandra Kumar, AIR 1997 SC 1125, in this regard

37. The orders of the Supreme Court are judicial orders, and are otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court is bound to come in aid of the Supreme Court in having its orders worked out. (Spencer & Co. Ltd.[16]; M/s Bayer India Ltd.[17]; and E.S.P. Rajaram[19]). The High Court has an obligation, in carrying out the Constitutional mandate, maintaining the writ of the Supreme Court running large throughout the country. (M/s Bayer India Ltd.[17]; E.S.P. Rajaram[19]; and Spencer & Co. Ltd.[16]). Acting in aid of the Supreme Court, the High Court should ensure that the orders of the Supreme Court are adhered to by all, both in letter and spirit. It is obligatory for this Court, therefore, to ensure that the orders of the Supreme Court, in Krishna Sahai[2]; and Rajendra Singh Yadav[3], are adhered to by the Government of Uttarakhand and, as directed therein, to take action forthwith to ensure that an Administrative Tribunal is constituted for the State of Uttarakhand under the 1985 Act. Let a copy of this order be sent to the Chief Secretary, Government of Uttarakhand. The Chief Secretary is requested to take necessary action forthwith, and submit an action taken report to this Court within four months from today.

38. In so far as the present case is concerned, the petitioner has challenged the constitutional validity of the Rules made under the proviso to Article 309 of the Constitution of India. He cannot, therefore, be relegated to approach the Public Services Tribunal.

.....”

*[Emphasis supplied]*

16. State of Uttarakhand assailed the directions issued by the Hon’ble High Court in Para 37 of the judgment in SLP (C) No. 13862/2020. An order was passed by the Hon’ble Supreme Court on 08.01.2021, as under:

“Issue notice, returnable on 22.02.2021.

Dasti in addition.

Pending further consideration, the directions issued by the High Court in Para 37 of the judgment under appeal shall remain stayed.”

17. Sri Shashank Pandey Ld. Counsel for Santosh Kumar and others, petitioners of Claim Petition No. 54/DB/2020, while supporting the arguments of Sri M.C. Pant, Ld. Counsel for Raj Juyal and others, petitioners of Petition No. 133/DB/2022, drew attention of the Tribunal towards paragraph 51 of the decision rendered by the Tribunal in Claim Petition No. 12/2009, Sri Chandra Singh Negi vs. State of Uttarakhand and others, which paragraph reads as below:

“51. In view of the above discussion, I conclude that the Tribunal has the power to quash Rules, Regulations and Government Orders of Uttarakhand regarding the service conditions of a State Government employee and the view taken by the Division Bench in 126/T/2003 Sujata Vs. State & others that the vires of the order issued by the State of Uttarakhand regarding the service conditions of the State employees can be examined and can be held violative to the Constitution, statute and rules by the Tribunal. So I reply the question in affirmative referred to the larger Bench. The vires of any Rule, Regulation, Government order, Letter can be challenged before the Tribunal.”

18. As has been noted above, the Hon’ble High Court has held in para 32 of Shyam Lal’s case (*supra*) that the Service Tribunals constituted under the Act of 1976 have not been conferred jurisdiction, by the Legislature to adjudicate disputes relating to the *vires* of statutory provisions or rules. It is, therefore, not open to the High Court, when the validity of statutory provisions are under challenge before it in proceedings under Article 226 of the Constitution of India, to relegate the person aggrieved thereby to avail the remedy of approaching the Public Services Tribunal constituted under the 1976 Act.

19. Therefore, any statement made by the Tribunal, which is contrary to the observations of the Hon’ble High Court, stands eclipsed and superseded to such an extent.

20. It will also be worthwhile to reproduce the observations made by the Tribunal on 07.09.2020, on a reference, herein below for convenience:

“The issue has now been finally settled by Hon'ble High Court of Uttarakhand in WPSB No. 39/2020, Shyam Lal and another vs. State of Uttarakhand and others that this Tribunal has no jurisdiction to look into the vires of any statutory Rules or Rules framed under Article 309 of the Constitution of India.

Relevant paras of Shyamlal's decision (supra) are being reproduced herein below for convenience:

“30. The 1976 Act does not contain any specific provision conferring power on the Tribunal, constituted under the said Act, to decide questions relating to the vires of statutory provisions and Rules. The power to create or enlarge jurisdiction is legislative in character. The Legislature alone can do it by law and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of a Court. (A.R. Antulay). In the absence of any such power being conferred on it by the Legislature, it is not the function of this Court to confer any such jurisdiction on the Tribunal constituted under the 1976 Act, for the jurisdiction of a Court/Tribunal can be created, enlarged or divested only by the Legislature, and not by the Court. (A.R. Antulay; and Shorter Constitution by D.D. Basu (18th Edition) Reprint 2002). The High Court would not ordinarily, in the exercise of its power of judicial review, prescribe functions to be discharged by the Tribunal which the State Legislature has not stipulated.

31. Even otherwise, as held by the Supreme Court in Madras Bar Association, the answer to the question, whether any limitation can be read into the competence of the legislature to establish and confer jurisdiction on Tribunals, would depend upon the nature of jurisdiction that is being transferred from Courts to Tribunals. These yardsticks would vary depending on whether the jurisdiction is being shifted from the High Court, or the District Court or a Civil Judge. The 1976 Act was promulgated for adjudication of disputes relating to employment matters of public servants of the State Government etc. The jurisdiction of the Civil Courts, for redressal of their grievances, was taken away, (Public Services Tribunal Bar Assn.), and cases then pending in the Civil Court were transferred to it. Unlike the Tribunal constituted under the 1976 Act, cases pending in the High Court were initially transferred to the Administrative Tribunals constituted under the 1985 Act. It is only in terms of the law declared by the Supreme Court, in L. Chandra Kumar, were the decisions of these Tribunals, constituted in terms of the 1985 Act and as enacted by Parliament under Article 323-A of the Constitution, made subject to the judicial review of the High Court under Article 226 of the Constitution of India.

32. The Service Tribunals constituted under the 1976 Act have not been conferred jurisdiction, by the Legislature to adjudicate disputes relating to the vires of statutory provisions or rules. It is, therefore, not open to the High Court, when the validity of statutory provisions are under challenge before it in proceedings under Article 226 of the Constitution of India, to relegate the person aggrieved thereby to avail the remedy of approaching the Public Services Tribunal constituted under the 1976 Act.

33. The fact however remains that this would, as held by the Supreme Court in L. Chandra Kumar, enable a litigant to avoid approaching the Public Services Tribunal, and to directly invoke the extra-ordinary jurisdiction of

the High Court under Article 226 of the Constitution of India, by raising a challenge, albeit frivolous, to the constitutional validity of a statutory provision or rule. This would, in turn, result in docket explosion in the High Court, and its precious time and resources being needlessly spent in adjudicating such frivolous challenges to the constitutional validity of statutory provisions and Rules. In this context it is useful to note that, in *Krishna Sahai*, the Supreme Court had commended to the State of Uttar Pradesh to consider the feasibility of setting up of an appropriate tribunal under the 1985 Act in the place of the Public Services Tribunal functioning under the 1976 Act so that, apart from the fact that there would be uniformity in the matter of adjudication of service disputes, the High Court would not be burdened with service litigation; and a Tribunal, with plenary powers, could function to the satisfaction of everyone

34. Again in *Rajendra Singh Yadav*, the Supreme Court opined that there was no justification why a Service Tribunal of a different pattern should operate in the State of Uttar Pradesh with inadequate powers to deal with every situation arising before it; a Tribunal set up under the Administrative Tribunals Act would have plenary powers to deal with every aspect of the dispute; the U.P. Services Tribunal should be substituted by a Tribunal under the Administrative Tribunals Act, as early as possible, to enable uniformity of functioning, and the High Court being relieved of the burden of dealing with certain service disputes; steps should be taken to replace the Service Tribunal, by a Tribunal under the Administrative Tribunals Act, 1985, as that would give the Tribunal the necessary colour in terms of Article 323-A of the Constitution; disputes which arise, on account of the Service Tribunal not having complete jurisdiction to deal with every situation arising before it, would then not arise; and several States had already constituted such Tribunals under the 1985 Act.

35. Both in *Krishna Sahai* and in *Rajendra Singh Yadav*, the Supreme Court had opined that it would be appropriate for the State of Uttar Pradesh (which would also include the successor State of Uttarakhand) to change its manning to maintain judicial temper in the functioning of the Tribunal. The State Government was directed to consider the feasibility of setting up an appropriate Tribunal under the Administrative Tribunals Act, 1985 in the place of the existing Service Tribunal established under the 1976 Act. (*Public Services Tribunal Bar Assn.*). Despite repeated directions of the Supreme Court, and though nearly three decades have since elapsed, the Public Services Tribunal constituted under the 1976 Act has not been substituted by a State Administrative Tribunal under the 1985 Act.

36. Article 144 of the Constitution requires all authorities, Civil and Judicial, in the territory of India to act in aid of the Supreme Court. The singular Constitutional role of the Supreme Court under the Constitution, and correspondingly of the assisting role of all authorities - civil or judicial in the territory of India - towards it, mandate the High Court, which is one such judicial authority covered under Article 144 of the Constitution, to act in aid of the Supreme Court. While the High Court is independent, and is a co-equal institution, the Constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of the Supreme Court which are binding on all courts within the territory of India. (*Spencer & Co. Ltd. and another v. Vishwadarshan Distributors (P) Ltd.; M/s Bayer India Ltd. and others v. State of Maharashtra and others; CCE v. Dunlop India Ltd.; and E.S.P. Rajaram v. Union of India*]).

37. The orders of the Supreme Court are judicial orders, and are otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court is bound to come in aid of the Supreme Court in having its orders worked out. (Spencer & Co. Ltd.; M/s Bayer India Ltd.; and E.S.P. Rajaram). The High Court has an obligation, in carrying out the Constitutional mandate, maintaining the writ of the Supreme Court running large throughout the country. (M/s Bayer India Ltd.; E.S.P. Rajaram; and Spencer & Co. Ltd.). Acting in aid of the Supreme Court, the High Court should ensure that the orders of the Supreme Court are adhered to by all, both in letter and spirit. It is obligatory for this Court, therefore, to ensure that the orders of the Supreme Court, in Krishna Sahai; and Rajendra Singh Yadav, are adhered to by the Government of Uttarakhand and, as directed therein, to take action forthwith to ensure that an Administrative Tribunal is constituted for the State of Uttarakhand under the 1985 Act. Let a copy of this order be sent to the Chief Secretary, Government of Uttarakhand. The Chief Secretary is requested to take necessary action forthwith, and submit an action taken report to this Court within four months from today.

38. In so far as the present case is concerned, the petitioner has challenged the constitutional validity of the Rules made under the proviso to Article 309 of the Constitution of India. He cannot, therefore, be relegated to approach the Public Services Tribunal.”

The controversy, whether this Tribunal has power to go into the constitutional validity of the Rules etc. or not, has now been set at rest, by Hon’ble High Court.”

21. It will also be worthwhile to reproduce the observations made by the Tribunal in judgment and order dated 10.08.2020, passed in Claim Petition No. 89/DB/2018, Himanshu Naugai and others vs. State of Uttarakhand and others, herein below for convenience:

**“RELIEF NO. 01: THIS TRIBUNAL LACKS JURISDICTION**

2. So far as the relief no. 1 is concerned, Hon’ble High Court of Uttarakhand at Nainital has settled the controversy that this Public Services Tribunal has no power to look into the constitutional validity of the Rules. In the decision of *Shyam Lal and another vs. State of Uttarakhand and others, in WPSB No. 39/2020*, Hon’ble High Court has clearly laid down that the Uttarakhand Public Services Tribunal has no power to decide the questions relating to *vires* of statutory provisions and Rules. In Paragraphs No. 30 to 38, Hon’ble Court has held, as under:

.....

.....

3. In the instant claim petition, the petitioners have challenged the constitutional validity of the Rules framed under proviso to Article 309 of the Constitution of India. The Hon’ble Court has clearly settled that since this Tribunal cannot decide questions relating to Constitutional validity of Statutory provisions/ Rules and the petitioners have challenged the constitutional validity of Rules made under proviso to Article 309 of the

Constitution of India, therefore, they (petitioners) cannot be relegated to approach the Tribunal.

4. This Tribunal, therefore, is of the view that the question, as to whether the amendment in Rule 5(vi)(a) of Uttarakhand State Education (Administrative Cadre) Service Rules, 2013 by Amending Rules, 2016 is *ultra vires* to the Constitution of India and is a colourable piece of legislation promulgated to benefit a class of employees, cannot be adjudicated by this Tribunal, therefore, this Court is unable to give such declaration, as desired by the claim petitioners. In other words, since the *vires* of the Uttarakhand State Education (Administrative Cadre) Service Rules, 2013, as amended by Amending Rules, 2016, cannot be looked into by the Tribunal, therefore, this Tribunal is unable to give any decision on relief 8(i) of the claim petition.

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25. As a result thereof, we have no option but to dismiss the claim petition for want of jurisdiction (as to subject matter).

26. We make it clear that we have not entered into the merits of the claim petition.”

**22. Resultantly, the Tribunal has no option but to dismiss the petitions.**

23. It would have been a futile exercise to enter into the controversy raised in the petitions, for Amending Rules of 2024 have been framed to cover the subject. The petitions revolved around the Rules of 2018, which have yielded place to the Amending Rules of 2024. The statutory Rules have not been challenged by the petitioners, probably because they were conscious of the fact that the Tribunal lacks jurisdiction to look into the *vires* of such rules. Efforts were made by Ld. Counsel for the petitioners to assail the Amending Rules (of 2024) during the course of arguments. It has been discussed above why the Tribunal is unable to accept such submissions of Ld. Counsel for the petitioners.

**(ARUN SINGH RAWAT)**  
VICE CHAIRMAN (A)

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

*DATE: NOVEMBER 06, 2024*  
*DEHRADUN*