

**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. 45/NB/DB/2023**

Chandra Singh Chauhan, aged about 56 years, S/o Late Gopal Singh Chauhan, R/o Bari Bagicha, Almora, District Almora, Uttarakhand.

.....Petitioner

Vs

1. State of Uttarakhand through Secretary, Personnel, Dehradun.
2. State of Uttarakhand through its Director, Cultural Directorate, Uttarakhand, Dehradun.
3. State of Uttarakhand through its In-charge, Regional Archaeological Officer, Almora.
4. Accountant General, Pension & Entitlement, Uttarakhand, Dehradun.

.....Respondents.

Present: Sri Abhijay Negi, Advocate, for the petitioner  
Sri Kishore Kumar, A.P.O. for the respondents no. 1 to 3  
Sri Rajesh Sharma, Advocate, for the respondent no. 4.

**JUDGMENT**

**DATED: DECEMBER 04, 2024**

**Hon'ble Mr. A.S.Rawat, Vice Chairman (A)**

By means of present claim petition, petitioner seeks the following reliefs:

*“(i) To quash the clause No 8(1) (2) in Notification dated 21-11-2011 passed by the respondent no. 2 (contained as Annexure No 1 to the petition).*

(ii) *To issue an order or direction in the respondents to sanction and pay the pensionary benefits including all admissible service benefits to the petitioner.*

(iii) *Issue an order or direction in the respondents to count the earlier services i.e. before regularization of the petitioner as regular services for pensionary benefits.*

(iv) *Grant any other relief or direction, which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.*

(v) *Award the cost of the petition to the petitioner.*

2. The facts of the case, in brief, are as follows:

2.1 The Petitioner was initially appointment as Research Assistant on 26/09/2001. He was regularized in the service from 08/05/2012 in the Pay Band -2 Pay scale Rs 9300-34800 and the grade pay Rs. 4200 in pursuant of the Govt Order dated 21/11/2011.

2.2 The Petitioner was promoted to the post of the Regional Archeological Officer, Almora on the pay scale of Rs. 56100-177500, Level -10 on 31.12.2021.

2.3 The petitioner made a representation on 02/5/2022 to the Director, Directorate of Culture, Uttarakhand, Dehradun for the provision of service benefits and the pension by adding the service prior to regularization in the service of the petitioner. He worked on a daily wage / fixed salary before his regularization on 08.05.2012.

2.4 The petitioner filed a writ petition on 25/02/2023 for calculating pensionary benefits before regularization, which was dismissed by the Hon'ble Court with a liberty to approach the Hon'ble Public Services Tribunal.

2.5 The petitioner submitted that he qualifies for the pension as per the Regulation 370 of the CSR which is as under:

*"370. Continuous temporary or officiating service under the Government of Uttar Pradesh followed without*

*interruptions by confirmation in the same or any other post shall qualify except--*

*(i) periods of temporary or officiating service in non-pensionable establishment;*

*(ii) periods of service in work charged establishment; and*

*(iii) periods of service in a post paid from contingencies."*

*Note-If service rendered in a non-pensionable establishment, work-charged establishment or in a post paid from contingencies falls between two periods of temporary service in a pensionable establishment or between a period of temporary service and permanent service in a pensionable establishment, it will not constitute an interruption of service.*

2.6 The petitioner was discharging before the notification dated 21.11.2011, the duties which are permanent nature and substantive, the post was regularized which was in existence since his engagement as the daily wage worker.

2.7 The stand taken by the respondents in the notification dated 21/11/2021 that as per the Rule 4 of the Uttarakhand Retirement Benefit Act 2018 the service rendered before 2005 cannot be counted for the pensionary benefits.

2.8 His case is covered under the judgement of the Hon'ble Supreme Court in the matter of Prem Singh vs State of U.P. & others and Habib Khan in which the Hon'ble Court directed to count the service rendered in the work charged establishment for the pensionary benefits.

3. Impleadment application has been filed by Chanchal Tewari, Yogendra Bhandari, Anirudh Singh Bist, Chandi Prasad Pokhariyal for the similar reliefs as claimed by the petitioner. The applicant Chanchal Tewari subsequently filed withdrawal application also. The impleadment application of the applicants cannot be considered as they can file the petition separately to seek relief.

4. Counter affidavit has been filed by the respondents 2 & 3, the summary of the C.A. is as under:

4.1 The order for the regularization clearly says that it will be effective from the date of issue and the employee will be considered as regularized from the same date. The benefits of the past services rendered cannot be considered. The persons appointed after 2005 cannot be considered for the payment as per old pension scheme, they are covered under CPF.

4.2 The facts related to his appointment subsequent to the regularization order, his promotion and taking charge etc. are same as the petitioner mentioned in the Claim petition.

4.3 The respondents submitted that the claim petition is liable to be dismissed.

5. Counter affidavit has been filed by the respondent no 4, the Accountant General, Uttarakhand Dehradun also, in which the respondent has submitted that contents of the petition are not related to the respondent. The respondent prayed to remove his name from the list of the respondents arrayed.

6. The petitioner filed Rejoinder Affidavit in which he has submitted that he has rendered continuous service in the capacity of the temporary employee without interruption. So he is entitled to get the counting his past service before regularization for the pensionary benefits.

7. Learned Counsel on behalf of the petitioner has pleaded that the Rule 8(1) & (2) of the Rules of the regularization should be quashed and the petitioner should be regularized from the date of his engagement as a temporary employee as he has been working continuously for 22 years. He is entitled to get the service benefit since the date of his engagement. He has further pleaded that the petitioner is entitled to get the service rendered as the temporary employee before regularization for the pensionary benefits.

8. The learned A.P.O. pleaded that the petitioner has sought relief to quash the clause 8(1)&(2) in the Notification dated

21.11.2011, he pointed out that the principal relief sought by the petitioners in the present claim petition is covered by the decision of Hon'ble High Court of Uttarakhand in "***Shyam Lal's decision (supra) and the claim Petition No 89/DB/2018 Himanshu Naugai and Ors vs state of Uttarakhand and Ors***". It is clear that the relief no 8(ii) is consequential to the relief no. 8(i) and arise out of the Notification dated 21/11/2011, the relevant clause of which has been challenged, therefore the relief 8(i)&8(ii) cannot be granted by this Tribunal. The petitioner cannot rely on the judgement of the Hon'ble Supreme Court in the matter of Prem Singh vs State of U.P. for counting the service rendered as the temporary worker before the regularization, as the matter pertains to claiming benefit after the person is retired. The relief sought by the petitioner in the present case can be claimed after retirement only. It is premature to seek this relief as 8(iii). So, the petition is liable to be dismissed.

9. Based on the documents presented by petitioners and the respondents and the arguments of the learned pleaders from both sides, we are of the opinion that so far as the relief no. 8 (i) is concerned, Hon'ble High Court of Uttarakhand at Nainital has settled the controversy that the 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:

"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.”

10. This Tribunal has also delivered the Judgement in Claim Petition No. 89/DB/2023 dated August 10,2020 and dismissed the petition for want of jurisdiction.

11. In the instant claim petition, the petitioner has challenged the constitutional validity of the Rules framed under proviso to Article 309 of the Constitution of India. The Hon'ble High Court has clearly settled that this Tribunal cannot decide questions relating to Constitutional validity of statutory provisions/ rules.

12. This Tribunal, therefore, is of the view that the question, as to whether Uttarakhand Regularization Rules, 2011 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 and, therefore, this Court is unable to give such declaration, as desired by the claim petitioner. In other words, since the *vires* of *Daily Wagers, Work charged, Contract, Fixed Pay, Part-time and Adhoc Appointed Employees, Regularization Rules, 2011* cannot look into very benefit, the Tribunal is unable to give any decision on relief 8(ii) of the claim petition also as it is the consequential benefit of the relief no 8(i).

13. The next relief is for counting service rendered by the petitioner before regularization for the pensionary benefit. The relief



is premature as the petitioner is still in the service and the benefit of the decision of the Hon'ble Supreme court in the matter of Prem Singh and others vs State of UP cannot be given to the petitioner at this stage.

14. Since the Tribunal has no jurisdiction to grant relief at serial no 8(i), therefore, it also lacks jurisdiction to grant second reliefs no. 8(ii) also which is consequential benefit. Relief at the serial no 8(iii) cannot be granted as it is a premature claim.

15. As a result thereof, we have no option but to dismiss the claim petition without going into its merit.

**(RJENDRA SINGH)**  
VICE CHAIRMAN (J)

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

*DATE: DECEMBER 04, 2024*  
*DEHRADUN*  
*KNP*