

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

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

----- Chairman

Hon'ble Capt. Alok Shekhar Tiwari

----- Member (A)

**REVIEW APPLICATION NO. 05/NB/DB/2023
(Arising out of Claim Petition No. 157/NB/DB/2022)**

Vijay Pal Singh and others.

.....Review Applicants

versus

State of Uttarakhand and others.

..... Respondents

Present: Sri K.P. Upadhyay, Senior Advocate, assisted by
Sri Hemant Pant, Advocate, for the Review Applicants
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

Dated: 04th October, 2024

Justice U.C. Dhyani (Oral)

WPSB No. 212/2015, which was reclassified and renumbered as claim petition no. 157/NB/DB/2022, was decided by the Tribunal *vide* order dated 29.08.2023. Relevant paragraph of the judgement is reproduced herein below, for convenience:

“8. The Tribunal observes the following:

(i) There is no response of the respondent department to the clarification sought by this Tribunal in its order dated 02.05.2023 which has been reproduced in para 6 of this judgment. In the hearing of 20.06.2023, the Tribunal asked the learned Counsel for

the petitioners whether the other similarly placed Principals of Inter Colleges have been granted the first ACP of Grade Pay Rs. 8700/- and if not, have they demanded the same and what has been the result thereof. Learned Counsel for the petitioners also has not provided any information on this point. The Tribunal again holds that in 2009, the petitioners were working like other Principals of Inter Colleges and the consideration of granting first ACP of Grade Pay Rs. 8700/- should be similar for all of them. In the absence of the response of the department, and no further light thrown by the petitioners on this aspect and their request to close further opportunity to respondents to file reply in this regard, the Tribunal is unable to give a final adjudication in the matter and can only direct that if other similarly placed Principals of Inter Colleges have been granted the first ACP of Grade Pay Rs. 8700/-, the petitioners be also granted the same, notwithstanding the fact that they have subsequently moved to the administrative side. If the other similarly placed Principals have not been granted the first ACP of Grade Pay Rs. 8700/-, then such demands from those Principals might have been rejected by the department and it is also possible that litigation might also have gone on in this regard. After taking the same into consideration and taking into account the various contentions of the petitioners as mentioned in the body of this judgment, the respondent no. 1 is directed to pass a detailed reasoned and speaking order, after consultation with the finance department, about the admissibility or non-admissibility of the first ACP of Grade Pay of Rs. 8700/- to the petitioners in 2009, within a period of three months of presentation of certified copy of this order.

(ii) Regarding the absorption of the petitioners in the administrative side on a post of lower grade pay, the petitioners' contention is that their Grade Pay of Rs. 7600/- as Principals was made effective from the dates of their initial appointments and as such, they should be absorbed against the posts like Deputy Director, on administrative side which have Grade Pay of Rs. 7600/-. The contention of the respondents is that the petitioners along with others were selected through common selection for a Group of various equivalent posts and it was only incidental that they were posted as Principals while others got different posts. On the basis of parity with Central Govt. teachers, the pay scales of the Principals were far more upgraded while pay scales of other posts did not get similarly enhanced. Parity with other similar administrative posts for which common examination was conducted according to the Service Rules of 1992 is to be seen while absorbing the petitioners on the administrative side and the higher pay that they were getting as Principal has been protected as personal pay while absorbing the petitioners on the post of Block Education Officer with Grade Pay of Rs. 6600/-. A perusal of Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992, which has been filed as Annexure no. 2 to the petition, shows that the post of Principal, Inter College has been kept at sl. No. 46 of the Appendix-A thereof, while the post of Deputy Director is at sl. No. 18 in this Appendix-A. According to these Service Rules, the pay scale of the petitioners at the time of appointment was Rs. 2200-4000, while the pay scale of the Deputy Director was Rs. 3000-4750/-. Merely because the pay scales of the Principals got more enhancement and at the time of their absorption, their Grade Pay was Rs. 7600/- which was equivalent to the Grade Pay of the post of Deputy Director, they cannot be absorbed substantively on the post of Deputy Director and equivalence on other aspects with the posts of administrative side has also to be taken into account. A perusal of the Uttarakhand

State Educational (Administrative Cadre) Service Rules, 2013 shows that the post of Deputy Director is the next promotional post from the post of Block Education Officer on which the petitioners have been absorbed while according to the Services Rules of 1992, the post of Deputy Director was the second promotional post from the post of Principal. According to the petitioners' own averments, while demanding 1st ACP, they are saying that they have not got any promotion since their initial appointment then how they can claim to be absorbed on the further promotional post of Deputy Director on the basis of their similar pay scale/Grade Pay alone. The respondents have given proper justification for placing the petitioners after their absorption on administrative side in Grade Pay of Rs. 6600/-. Vide the impugned order dated 07.07.2014, the petitioners have been ordered to be adjusted against the post of Block Education Officer or equivalent thereto. The Tribunal, therefore, holds that no injustice has been caused to the petitioners by their absorption on the post of Block Education Officer or equivalent thereto with Grade Pay of Rs. 6600/- and protecting the higher pay, that they were getting as Principal, as personal pay and no reliefs can be provided to the petitioners on this account."

2. Petitioners (hereinafter referred to as 'review applicants'), by means of present review application, seek to review the aforesaid order.

3. Delay condonation application for condoning the delay of 37 days in filing the review application has been filed along with affidavit of Sri Uma Dutt Goswami. The same is not seriously opposed by Sri Kishore Kumar, learned A.P.O. Delay in filing the review application is condoned.

4. Various grounds have been taken in the review application with a prayer to review Tribunal's order dated 29.08.2023.

5. It is the submission of Sri K.P. Upadhyay, learned Senior Counsel for the review applicants that the Tribunal has left the petitioners' claim regarding entitlement to the 1st financial upgradation to grade pay Rs. 8700/- from grade pay Rs. 7600/- under the ACP Scheme of the State Govt. on account of stagnation on the same post for over 10 years undecided. The Tribunal has also rejected the challenge made by the petitioners to the Govt. order dated 07.07.2014, whereby they were absorbed against the post of Block Education Officer or equivalent post carrying lower grade pay of Rs. 6600/-.

5.1 Learned Senior Counsel for the review applicants further submitted that the Tribunal has, after extracting the pleadings of the parties and written submissions of the petitioner, not adjudicated upon the issue regarding claimed benefit of 1st financial upgradation from grade pay Rs. 7600/- in PB-3 to grade pay Rs. 8700/- in PB-4 and instead, has relegated the review applicants to the State Govt., to seek parity with the Principals continuing in the academic cadre. He also submitted that non-adjudication upon the petitioners' prayer for necessary directions to the respondents to grant the benefit of ACP to the petitioners from the due dates is not only an error apparent on the face of record but also contrary to the provision contained under Section 5(2) of the Uttar Pradesh Public Services (Tribunals) Act, 1976, which obligates the Tribunal to decide every reference on the basis of perusal of documents and representations, and of oral and written arguments, if any.

5.3 It is also the submission of Sri K.P. Upadhyay, learned Senior Counsel for the review applicants that the matters could not have been further relegated to the State Govt. on any ground. The Tribunal has failed to exercise the jurisdiction vested in it thereby committing an error apparent on the face of record resulting in miscarriage of justice. He further submitted that failure on the part of the Tribunal in deciding long pending controversy on merits would also be termed as an error apparent on the face of record. The Tribunal has totally overlooked the provisions of Uttarakhand Education (General Education Cadre) Service Rules, 2006, whereunder the petitioners' position *vis-à-vis* the Service Rules of 1992 had undergone a substantial change. Rejection of the challenge to the order dated 07.07.2014 without considering the Service Rules of 2006 is an error apparent on the face of record entitling the petitioners to seek review of the rejection. The Tribunal has not dealt with and considered the Govt. order dated 18.07.2011, whereby a promise was held out to the concerned officers including the petitioners that after exercising the option for

allotment to Academic or Administrative cadre, the concerned post holders shall be posted in their respective cadre.

5.4 Learned Senior Counsel also pointed out that as per Hon'ble Apex Court's decision given in the case of Perry Kansagra vs. Smriti Madan Kansagra, (2019) 20 SCC 753: AIR (online) 2019 SC 536, power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a Court or even an advocate.

5.5 According to learned Senior Counsel, the order under review falls under the scope and ambit of Order 47 Rule 1 CPC, therefore, review application should be allowed.

6. Learned Senior Counsel drew the attention of the Tribunal towards Section 5(2) of the Uttar Pradesh Public Services (Tribunals) Act, 1976, to submit that the sub-section provides that "the Tribunal shall decide every reference expeditiously and ordinarily every case shall be decided by it on the basis of perusal of documents and representations, and of oral or written arguments, if any." In all humility at the command of the Tribunal, there appears to be no reason to hold that the decision, sought to be recalled, is not a decision in the eyes of law. The decision has been given as per the scheme of law governing the field.

7. Sri Kishore Kumar learned A.P.O. submitted that the review application is not maintainable. It is liable to be rejected in the backdrop of facts, which have been mentioned in the review application. There is no error apparent on the face of record or clerical/ arithmetical mistake in the order under review. The same should be dismissed.

8. The scope of review jurisdiction is very limited. Review is permissible only when (i) there is an error apparent on the face of record; (ii) there is clerical or arithmetical mistake; or (iii) for any other sufficient reason. None of these three is attracted in this case.

There is no manifest error apparent on the face of it. There is no clerical mistake. There is no other sufficient reason to indicate that the order sought to be recalled should be recalled/ reviewed in the interest of justice.

9. The reasons have been given, in the judgement itself, as to why the Tribunal has directed the respondent no. 1 to pass a detailed, reasoned and speaking order after consultation with the financial department about the admissibility and non-admissibility of 1st ACP of grade pay Rs. 8700/- to the petitioners in the year 2009. The Tribunal has made an endeavour to give reasons in support of the decision taken on 29.08.2023. Ours is a hierarchical judicial system. No judge can ever claim that he has delivered correct judgement, for, "to err is human." No one is infallible, save under law. If incorrect decision has been given, the same can always be got corrected in the higher Court(s), in hierarchical system of justice.

10. Review is not appeal in disguise. In Lily Thomas vs. Union of India, reported in (2000) 6 SCC 224, Hon'ble Supreme Court has held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with such power. The review cannot be treated like an appeal in disguise.

11. Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike on a mere looking and would not require long process of reasoning on the points where there may conceivably be two options. The power of review may not be exercised on the ground that the decision was erroneous on merits. Power of review can also be exercised for any sufficient reason which is wide enough to include a misconception

of fact or law by a Court or even an advocate. Here, there was no misconception of fact or law. It was observed by Hon'ble Apex Court in Perry Kansagra vs. Smriti Madan Kansagra (*supra*), that it is beyond any doubt or dispute that the review Court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law.

12. Assuming, for the sake of arguments (although not admitted), that the submissions of learned Senior Counsel for the review applicants are valid and legally sound, still, the fact remains that these grounds may be available to the review applicants in appellate or writ jurisdiction, but not in review jurisdiction.

13. Granting the relief as prayed for by the review applicants is beyond the jurisdiction of a review Court. Even if all the factual grounds taken in the review application are taken to be true, the same would not attract review jurisdiction enabling the Tribunal to grant desired relief to the review applicants.

14. The review application, therefore, fails and is dismissed. In the circumstances, there shall be no order as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

(Justice U.C. Dhyani)
Chairman

DATE: 04th October, 2024
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