

**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)

Modification Application

in

**Claim Petitions No. 41/NB/DB/2019, 52/NB/DB/2019,
54/NB/DB/2021, 59/NB/DB/2021, 61/NB/DB/2021,
62/NB/DB/2021, 86/NB/DB/2021 & 03/NB/DB/2022**

Smt. Prem Lata Baudai and others.

.....Petitioner

versus

State of Uttarakhand through Secretary, School Education,
Dehradun, Uttarakhand and others.

..... Respondents

Present: Sri Kishore Kumar, A.P.O. for the applicant
(respondents no. 1 to 5 in claim petition no. 41/NB/DB/2019)

with

Miscellaneous Application No. 118/NB/2024
[Modification Application in Claim Petition No. 41/NB/DB/2019]

Rajendra Prasad Kulashri, aged about 57 years, s/o Late Madan
Mohan Shastri, serving as Head Master in Government Higher
Secondary School, Narayanpur, Ramnagar, District Nainital.

.....Applicant
(Respondent No. 53 in Claim Petition No. 41/NB/DB/2019)

JUDGEMENT

Dated: 07th January, 2025

Justice U.C. Dhyani (Oral)

A modification application has been filed by Sri Kishore Kumar, learned A.P.O. on behalf of respondents no. 1 to 5 for modifying the order dated 21.04.2022. Earlier, when aforesaid application was taken up, a senior official of Secondary Education Department and representatives of Rajkiya Shiksha Sangh were present. The prayer in the modification application is for modifying the judgement and order dated 21.04.2022, "to the extent that department may make promotions to the post of Lecturers, Headmasters and Principals from the L.T. Grade Teachers and the promotion will be subject matter of the final decision of the Govt. in view of the directions given by the Tribunal *vide* judgement and order dated 21.04.2022." Affidavit of Smt. Seema Jaunsari, the then Director, Secondary Education, Uttarakhand, was filed with the same along with documents.

2. When the modification application was presented, the Tribunal was, *prima facie*, of the view that modification application is not maintainable before the Tribunal, therefore, no notice was issued to any party. Prima facie view of the Tribunal was based upon the fact that writ petitions being WPSB No. 51/2023 and WPSB No. 69/2023 have been filed on behalf of the State and others, assailing the orders of the Tribunal, before the Hon'ble High Court.

3. Relevant part of the judgement dated 21.04.2022 reads as under:

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CLAIM PETITIONS NO. 41/NB/DB/2019 & 52/NB/DB/2019

1. Smt. Prem Lata Baudai aged about 48 years d/o Sri Krishan Kant Todariya presently working as Principal in Govt. Girls Inter College Rajpur Road, Dehradun, District Dehradun. Permanent address: R/o 15, Ara Ghar, Dharmpur, Dehradun.
2. Nandi Sharma aged about 46 years d/o Sri Krsihna Nand Waliya presently working as Principal in Govt. Inter College Chakhutiya, Almora, District Almora. Permanent address: r/o c/o Sri B. C. Joshi, C-64, Dharanaula, Almora.
3. Awadhesh Kumar Giri aged about 56 years s/o Sri Ram Adhar Giri presently working as Principal since 29.12.2016 in Govt. Inter College Gadkhet, Bageshwar, District Bageshwar. Permanent address: r/o House No. 34, Shatabdi Enclave, Natthanpur, Dehradun.
4. Pranam Sharma aged about 55 years s/o Sri Satyapal SHarma presently working as Principal in Senior Girl Govt. Inter College Jhabreda, Haridwar, District Haridwar. Permanent address: r/o Ashish Villa, Shanti Kunj Marg, Haridwar.
5. Smt Vinita aged about 56 years w/o Sri Haridutt Sharma presently working as Principal in Girls Govt. Inter College Bhauri, Haridwar, District Haridwar. Permanent address: r/o C-25, Ara Ghar, Dharmpur, Dehradun.
6. Archana Gupta aged about 54 years w/o Sri Kailash Chandra Goyal presently working as Principal in Govt. Inter College Sikhreda, SCERT, Dehradun, District Dehradun. Permanent address: R/o House No. 60, Patel Nagar, Yamunotri Road, Dehradun.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, School Education, Dehradun, Uttarakhand.
2. Additional Director Madhyamik Education, Uttarakhand, Dehradun.
3. Director School Education, Uttarakhand, Dehradun.
4. Additional Director, School Education, Garhwal Region, Pauri.
5. Additional Director, School Education, Kumaon Nainital.
6. R. Minakshi Sundram, Secretary School Education, Dehradun.
7. R. K. Kunwar, Director School Education, Dehradun.

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53. Rajendra Prasad Kulashri S/o Sri Madan Mohan Shastri presently posted as Lecturer (Mathematics), Govt. Inter College, Dhikuli, Ramnagar, District Nainital.

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.....Respondents

With

CLAIM PETITION NO. 54/NB/DB/2021

Rajendra Prasad Kulashri, aged about 57 years, s/o Late Madan Mohan Shastri, serving as Head Master in Government Higher Secondary School, Narayanpur, Ramnagar, District Nainital.

.....Petitioner

vs.

.....

Present: Sri Lalit Samant, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the Respondents No. 1 to 3
Sri S.S. Yadav, Advocate, for the Caveators for
Respondents no. 4, 5 & 6

With

CLAIM PETITION NO. 59/NB/DB/2021

1. Navin Chandra Mathpal, aged about 56 years, s/o Late Shri Amarnath Mathpal, presently posted as Assistant Teacher, L.T. Grade (English) at Govt. Higher Secondary School, Kumalta, District Almora.

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Vs.

.....

Ajay Singh, aged about 54 years, c/o Amar Singh, r/o Kurkawala, Markham Grant, Doiwala, District Dheradun.

.....Intervenor

Present: Sri Kailash Chandra Tiwari, Advocate for the petitioners
Sri Kishore Kumar, A.P.O., for the Respondents No. 1 to 4
Sri S.S.Yadav, Advocate, for the respondents No. 5 to 9
Sri Shailendra Nauriyal, Advocate, for Intervenor

With

CLAIM PETITION NO. 61/NB/DB/2021

1. Laxman Singh Khati, aged about 57 years, s/o Late Bishan Singh Khati, Serving as Head Master in Government Higher Secondary School, Aamthal, District Pithoragarh.

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vs.

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Present: Sri Lalit Samant, Advocate, for the petitioners
Sri Kishore Kumar, A.P.O., for the respondents

With

CLAIM PETITION NO. 62/NB/DB/2021

1. Jeevan Singh Dhami, aged about 55 years, s/o Late Hosiyar Singh Dhami, Serving as Lecturer (Mathematics) in Government Inter College, Mayalekh, District Pithoragarh.

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Vs.

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Present: Sri Lalit Samant, Advocate, for the petitioners
Sri Kishore Kumar, A.P.O., for the respondents no. 1 to 3

With

CLAIM PETITION NO. 86/NB/DB/2021

1. Vinod Kumar Joshi, aged about 60 years, s/o Late Sri Badra Dutt Joshi, presently posted as Principal, Government Inter College, Narainagar, Haldwani, District Nainital.

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Vs.

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Present: Ms. Pooja Tiwari, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents

With

CLAIM PETITION NO. 03/NB/DB/2022

1. Ravindra Kumar Pal, aged about 56 years, s/o Shri Munna Lal, r/o Block Road, Bhimtal, Nainital.

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Vs.

.....

Present: Sri Kailash Chandra Tiwari, Advocate for the petitioners
Sri Kishore Kumar, A.P.O., for the State Respondents

.....

This bunch of claim petitions is about the inter-se seniority of Lecturers and Assistant Teachers (L.T. Grade) appointed on adhoc basis after 01.10.1986 and before 01.10.1990 (hereinafter called as 'First Set') vis-à-vis other Lecturers and Assistant Teachers (L.T. Grade) regularly appointed after 01.10.1990 (hereinafter called as 'Second Set').

2. Petitioners of Claim Petitions No 54/NB/DB/2021, 59/NB/DB/2021, 61/NB/DB/2021, 62/NB/DB/2021, 86/NB/DB/2021 and 03/NB/DB/2022, belong to the First Set and petitioners of Claim Petitions No. 41/NB/DB/2019 and 52/NB/DB/2019 belong to the Second Set of Lecturers/Assistant Teachers (L.T. Grade).

3. As the issues involved in all these claim petitions are the same, they have been heard together and are being disposed of by this common judgment.

4. The pleadings filed in these claim petitions as well as written arguments are part of record and are not being reproduced for the sake of brevity. They will be referred to as and when required.

BRIEF FACTS

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POINTS IN FAVOUR

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POINTS AGAINST

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DISCUSSION

22. After careful examination of all the documents, this Tribunal observes the following:

- (i) The G.O. dated 13.07.2021 states that there is no justification for granting seniority from 01.10.1990 but does not explicitly specify from which date the grant of seniority is justified and on what grounds.
- (ii) The issuance of this G.O. dated 13.07.2021 implicitly upholds the earlier seniority given from 1999 to the teachers of the First Set.
- (iii) The Rules of 1979 and further amendment in 1989 were not applicable to the teachers of the First Set as they prescribed regularization of *adhoc* teachers appointed before 01.10.1986 and not for *adhoc* teachers appointed subsequently. These Rules also could not be technically treated to be some sort of guidelines for regularization of *adhoc* teachers appointed subsequently.
- (iv) The G.O. No. 3179 dated 21.11.1995 was the sole provision for regularization of teachers of the First Set. According to Hon'ble High Court's interpretation of this G.O., the date of regularization of such teachers is 01.10.1990 which has been affirmed by Hon'ble Apex Court while dismissing the SLP filed by the State Govt. in Bhuwan Chandra Kandpal's case (*supra*).
- (v) Hon'ble High Court in its judgment dated 03.01.2019, passed in Writ Petition No. 1008(S/S) of 2014, Trivikram Singh Kunwar & others vs. State of Uttarakhand and another and other connected writ petitions, has held the judgment dated 28.02.2004 passed in Bhuwan Chandra Kandpal's case to be judgment in '*rem*' and declared that the services of the petitioners of the writ petition stood regularized *w.e.f.* 01.10.1990. The State Govt. has decided to comply with this judgment and order dated 03.01.2019 and accordingly fixed the date of regularization of the teachers of the First Set as 01.10.1990.
- (vi) The Hon'ble High Court in the above judgment has separated the issue of seniority from the issue of regularization and has directed

the Govt. to take decision regarding revision of seniority list in accordance with law after giving all affected parties a reasonable opportunity of hearing.

- (vii) The facts of the K.C. Yamini's case (*supra*) are different from the present case and the Tribunal agrees with the distinction between them as stated in para 17.4 of this judgment. Moreover, in the G.O. dated 13.07.2021 while relying on this judgment of Hon'ble Supreme Court, 01.10.1990 has been assumed to be the date of *ad hoc* appointment while it is the date of regularization. The dates of *ad hoc* appointments of teachers of the First Set are before 01.10.1990. Though they have not completed three years' of service on 01.10.1990 but their date of regularization is 01.10.1990 and no contrary interpretation is acceptable after the judicial pronouncement in this regard. Therefore, stating that from this date, pensionary and retiral benefits can be given but not seniority, is a clear manifest error
- (viii) As explained above, the Govt. is wrongly treating 01.10.1990 as the date of *ad hoc* appointment of the teachers of the First Set. Similarly, they are wrongly treating such teachers to have been regularized in 1999. The earlier regularization of 1999 is not in existence after the same has been held to be *w.e.f.* 01.10.1990 in view of the judicial pronouncement and acceptance of the same by the State Govt.
- (ix) Para 6(1) of the G.O. dated 13.07.2021 mentions the names of certain teachers who had joined after 01.10.1990 and were not in service on 01.10.1990. The Tribunal holds that such teachers need not be regularized from 01.10.1990 as they came into service after such date. This does not appear to be the intention of any judicial pronouncement that such people be regularized *w.e.f.* 01.10.1990.
- (x) Para 21 of the Claim Petition No. 59/NB/DB/2021 as reproduced earlier in this judgment, is reiterated below:
"21. That it is also pertinent to mention here that to give rest to the dispute the teachers who were appointed prior to 01.10.1986 were given the date of substantive appointment/regularization from 07.08.1989 vide order dated 19.03.2020 issued by the Deputy Secretary of Govt. of Uttarakhand."

The same is neither expressly admitted nor expressly denied in the Counter Affidavit of the Director, Secondary Education. However, this Counter Affidavit and the G.O. dated 13.07.2021 state their dates of regularization to be 07.03.1995 (Lecturers)/03.03.1991 (L.T. Grade). Probably, the subsequent order dated 19.03.2020 of the Govt. as mentioned in para 21 of the claim petition has been overlooked in the Counter Affidavit as well as in the G.O. dated 13.07.2021. Even if the averment of para 21 of the claim petition is not correct, the dates of regularization of earlier appointees can be fixed to be before 01.10.1990, so that teachers appointed on *ad hoc* basis earlier also get regularized earlier.

- (xi) The persons appointed on regular basis between 1990 and 1999 have no inherent right to claim seniority over persons appointed on *ad hoc* basis and regularized earlier than the date of their appointment. Keeping these later appointees below the teachers of the First Set who have been regularized on 01.10.1990 in

seniority is not bad in law.

- (xii) The apprehension expressed in para 6(3) of the G.O. dated 13.07.2021, is uncalled for. The provision for regularization of teachers of the First Set was made *vide* G.O. No. 3179 dated 21.11.1995 and in the absence of a similar G.O. in other departments, it cannot be presumed that demands will be raised for regularization from the date of *ad hoc* appointments. In this para, the Govt. has again confused 01.10.1990 to be the date of *ad hoc* appointment of the teachers of the First Set. It is reiterated that their dates of appointment are earlier and 01.10.1990 is their date of regularization according to the G.O. No. 3179 dated 21.11.1995 and its judicial interpretation by the Hon'ble Courts.
- (xiii) The Tribunal does not intend to grant seniority to the teachers of the First Set from the date of regularization and the two can be segregated if there are justifiable reasons for the same.
- (xiv) Normally, the date of regularization should be treated as the date of substantive appointment unless there are justifiable reasons against the same.

23. In view of the above, the G.O. dated 13.07.2021 (Annexure No. 1 to the Claim Petition No. 59/NB/DB/2021) is not in accordance with law and is hereby set aside. The respondent State is required to consider the issue of fixation of inter-se seniority after getting rid of its earlier prejudices like treating the date of *ad hoc* appointment to be 01.10.1990, regularization to be done in 1999 etc. and take a well-considered justified decision in accordance with law after verifying the averments made in para 21 of the claim petition No. 59/NB/DB/2021 and keeping in view our observations made above and clearly decide from which date(s) seniority is to be given to the teachers of the First Set. The Govt. in the Secondary Education Department may complete this exercise in consultation with the Law Department and Personnel Department, within a period of three months henceforth. Till the time such exercise is completed, the promotions made *vide* Directorate's order no. 235 dated 23.07.2021 (Annexure No. 2 to the claim petition no. 59/NB/DB/2021) shall remain in abeyance and no further promotions of the Lecturers/Assistant Teachers (L.T. Grade) regularized/appointed on 01.10.1990 and afterwards shall be made.

24. The claim petitions are, accordingly, disposed of. No order as to costs.

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4. Learned A.P.O., through present modification application/ review application, submitted that judgement/ order dated 21.04.2022 may be modified.

5. In response to the query of the Tribunal, learned A.P.O. fairly submitted that as against the order dated 21.04.2022, passed

by the Tribunal in claim petition no. 41/NB/DB/2019, Prem Lata Baudai & others and connected claim petitions, details of which have already been given above, writ petitions have been filed before the Hon'ble Court. In this way, the judgement dated 21.04.2022 has been assailed and is subject matter of challenge before the Hon'ble Court.

6. The legal question is- in such a situation, when the judgement/ order of the Tribunal is subject matter of challenge and writ petitions have been filed against the same and are pending before the Hon'ble High Court, whether any modification application/ review application is maintainable before the Tribunal?

7. There are catena of decisions on the point that the scope of review application/ modification application is very limited and the same can be entertained only when there is error apparent on the face of record; there is clerical/ arithmetical mistake; there is discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was passed or for any other sufficient reason. Neither of these is available to the applicant in the instant case. Moreover, the application itself is not maintainable because the judgement of the Tribunal has been assailed and is pending adjudication before the Hon'ble High Court.

8. The Tribunal is, therefore, of the view that the modification application/ review application filed on behalf of the State is not maintainable. The same is, accordingly, dismissed, as not maintainable.

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9. Another application, which was registered as miscellaneous application no. 118/NB/2024, has been filed by Sri Rajendra Prasad Kulashri, private respondent no. 53 in claim

petitions no. 41/NB/DB/2019 & 52/NB/DB/2019 and petitioner of claim petition no. 54/NB/DB/2021, under Section 151 CPC.

10. When the application was filed, the applicant appeared in person. He was heard. *Prima facie* view of the Tribunal regarding non-maintainability of the application was conveyed to the applicant. Sri Kulashri was informed that his application shall be taken up for hearing along with the modification application filed by learned A.P.O. on behalf of the State.

11. Since the Tribunal has arrived at the conclusion that such modification applications/ review applications are not maintainable and lack merit in view of the law and facts noted above, therefore, Sri Kulashri's application too is dismissed, as not maintainable.

12. Let a copy of this order be placed on the file of miscellaneous application no. 118/NB/2024.

(Capt. Alok Shekhar Tiwari)
Member (A)

(Justice U.C. Dhyani)
Chairman

DATE: 07th January, 2025
DEHRADUN
RS