

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

MISCELLANEOUS APPLICATION NO. 01/SB/2025
(In Claim petition No. 106/NB/SB/2022)

Sri Suresh Chandra Pathak, s/o Late Sri H.B. Pathak, r/o Village
Bhagwanpur, Jai Singh Ward No. 41, Haldwani, District- Nainital.

.....Petitioner/applicant

vs.

The State of Uttarakhand through its Principal Secretary, Education,
Govt. of Uttarakhand, and others.

.....Respondents

(virtual)

Present: Sri Chitrarth Kandpal, Advocate for petitioner/ applicant.
Sri Kishore Kumar, A.P.O. for Respondents/O.Ps.

ORDER

DATED: JANUARY 14, 2025

Justice U.C.Dhyani (Oral)

An application sent by Sri Suresh Chandra Pathak, petitioner of
Claim Petition No. 106/NB/SB/2022, has been received by post in the Tribunal,
in which the applicant has made a prayer to the Principal Secretary, Education,
Govt. of Uttarakhand, for the following-

- (i) Opportunity of personal hearing may be given to him. Date and time be fixed for the same.
- (ii) Applicant is 79 years old. He is suffering from cardiac and other age related problems.
- (iii) He will have to undertake journey for which he will have to arrange for an attendant.
- (iv) Applicant wants that the Principal Secretary concerned should study the file before calling upon the applicant for personal hearing.
- (v) The copy of the order must have been sent to the respondents by Ld. A.P.O. [the applicant has sent this application in the alternative].

2. The Tribunal deems it proper to reproduce relevant paragraphs of the judgment dated 30.09.2024 passed in Petition No. 106/NB/SB/2022, Surendra Chandra Pathak vs. State of Uttarakhand and others, for ready reference:

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

Writ Petition No. 100 (S/B) of 2020

[Reclassified and Renumbered as Claim Petition No. 106/NB/SB/2022]

Surendra Chandra Pathak, aged about 74 years, s/o late Sri H.B. Pathak
r/o village Bhagwanpur near Block Office Jai Singh, Haldwani, Nainital.
.....Petitioner

versus

1. State of Uttarakhand through Principal Secretary, Education Department, Government of Uttarakhand, Dehradun.
2. Secretary, School Education, Government of Uttarakhand, Dehradun.
3. Director General, School Education, Nanoorkheda, Dehradun, Uttarakhand.
4. Director, Secondary Education, Nanoorkheda, Dehradun, Uttarakhand.
..... Respondents

Present: Sri Chitrarth Kandpal, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGEMENT

Dated: 30th September, 2024

Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 19.09.2022 in WPSB No. 100 of 2020, Surendra Chandra Pathak vs. State of Uttarakhand and others, which (order) reads as under:

"The petitioner has preferred the present Writ Petition to seek the following relief :-

"(I) Issue a writ, order or direction in the nature of Mandamus commanding and directing the respondent authorities to correct the pay scale of the principal from the date, the petitioner was appointed on the post i.e. 12.07.1986 and the pay scale of the petitioner on the post of the officers and particularly at the time of retirement on the post of District Education Officer/Joint Director and correct the pension on the basis of that and fix the pension correctly from the date of his retirement i.e. 28.02.2006."

2. The petitioner falls within the definition of a public servant. The claim raised by the petitioner squarely falls for consideration by the Uttarakhand Public Services Tribunal.

3. Considering the fact that the Writ Petition has been pending since 2020, and pleadings are complete, we direct the Registry to transfer the complete record of this Writ Petition to the Uttarakhand Public Services Tribunal. The Tribunal shall register the same as a Claim Petition, and deal with the same accordingly.

4. The Writ Petition stands disposed of accordingly.

5. In sequel thereto, pending application, if any, also stands disposed of."

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 13839/UHC/Service (S/B) 2022 dated 26.09.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 106/NB/SB/2022.

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10. To sum up, the petitioner was appointed as Assistant Teacher LT grade in high school classes on 24.10.1975 at Guru Nanak Inter College, Nanakmatta, and remained there upto 06.01.1976; thereafter, he joined as Assistant Teacher LT grade for subject Science/Math on 13.01.1977 at Gaulapar, Daulatpur Inter College, Haldwani and worked there up to 12.01.1977; Govt. issued an advertisement for direct selection of Head master, petitioner applied for the same, got selected and was appointed as Head Master in the aided High School Kharkheena, Block Bhikiyasain, District Almora on 11.05.1979; the said school was provincialized on 31.01.1981; petitioner was appointed as Head Master in the pay scale of Rs. 450-950 *vide* order dated 31.08.1981; petitioner's services remained without break and uninterrupted; from Kharkheena, he was transferred to Bhatroj Khan, where he joined on 19.07.1983; petitioner was promoted as Principal in Government Inter College, Lamachaur, on 28.06.1986, where he joined on 12.07.1986; he was transferred as Principal, GIC, Kathgharia, on 04.08.1990, where he remained posted as Principal till 24.02.1996; petitioner was promoted to Class-I post as Assistant Director (Expert) on 24.02.1996 in the World Bank aided project, where he worked upto 02.12.1997; petitioner was transferred and posted as District Inspector of Schools, Almora, where he joined there on 03.12.1997 and worked up to 14.06.2002; petitioner was transferred and posted as District Inspector of Schools, Udham Singh Nagar on 15.06.2002, whereafter, he was transferred on promotion on 20.02.2004 on the post of Deputy Director (Level) against the post of District Education Officer, Udham Singh Nagar against the pay scale and post of Joint Director, whereafter he retired on 28.02.2006.

10.1 Petitioner was appointed as Principal in the year 1986 but he was given the benefit of the post of Principal from 1994 by stating that his appointment and promotion on the post of Principal was on temporary basis. Petitioner has taken a plea, in the petition, that the petitioner was entitled to be confirmed within three years as per U.P. Education Service Rules, 1992 and total length of service will be counted for the post of Principal, while he got the pay scale and other benefits of the post of Principal on 28.06.1986

and even the pay scale of the Principal was revised on 01.01.1996 and from 01.01.2006, it was Rs. 15500-39100 + 7600 grade pay and in the same way, the pay scale of the Assistant Director was from the Education Department, while the petitioner received lesser pay scale at the time of his retirement due to wrong fixation of his pay scale. On account of such facts, he is also getting lesser pension at the time of his retirement when he was getting the pay scale of Rs. 10000-15200 + grade pay 6600/-.

10.2 In the year 2003, he was asked to give the option to either remain in the education stream or in the administrative side. The petitioner was posted on the administrative side, although the same was not the part of petitioner's services, from the post of Principal in the year 1997. On the basis of service rules, the service of the petitioner was to be regularized within three years but the respondent authorities have treated the petitioner on the post of Headmaster on temporary basis up to the year 1994 and on the post of Principal in the year 1995.

10.3 On 28.02.2006, the petitioner was getting pay scale of Rs. 10000-15200/- + 6600 grade pay, while working on the post of Deputy Director, he is entitled to get the pay scale of Rs. 12000-375-16500/- + grade pay 7600.

10.4 In the year 2004, the petitioner was promoted on the post of District Education Officer, Udham Singh Nagar and worked against the post of Joint Director, on 01.01.2006 at Rs. 37400-67000/- with grade pay of Rs. 8700 and this was notional upto 2009 and thereafter, the payment in the pay scale or pension may be fixed on that basis, while the pension of the petitioner was fixed on the pay scale of Rs. 10000-15200/- + 6600 grade pay, which is lesser than the pension ought to have been fixed for him. According to the petitioner, he is he entitled to get the higher pay scale of the Principal and of the officer cadre and also the pension on higher side after the retirement. Petitioner's pay scale was not properly fixed and he is also not getting pension as per his entitlement.

10.5. In the detailed counter affidavit, filed on behalf of the respondents, it has been stated, among other things, that the petitioner retired on 28.02.2006 and his pension has rightly been determined in the pay scale of Deputy Director.

10.6. As has been stated above, rejoinder affidavit has been filed assailing the facts contained in the counter affidavit.

11. Petitioner's salary is required to be fixed in the correct pay scale. His pension is also required to be fixed on the basis of correct pay scale. The Tribunal feels that, for this purpose, personal hearing is required to be given to the petitioner, as only the petitioner and respondent department can settle the dispute of pay scale and pension, amicably, at the negotiating table, by considering each other's grievances and limitations. It is a financial matter relating to fixation of correct pay scale and fixation of pension, which can be solved only when the respondents are willing to resolve the same.

12. It turns out to be a case in which a Tribunal may not draw the petition to logical conclusion on the face of pleadings and documents thus exchanged. Procrastinating the case for directing the parties to bring more evidence, will be a futile exercise. The Tribunal, therefore, deems it appropriate to direct respondent department to consider the prayer of the petitioner in right earnest.

13. Efforts should be made to provide substantial justice to a suitor, instead of looking for technical justice.

14. Considering the facts noted above, the Tribunal feels it proper to request the respondents to consider the case of the petitioner, in a time bound manner, as per law.

15. The petition is disposed of by requesting the respondents to consider the case of the petitioner and take an appropriate decision, after giving opportunity of personal hearing to the petitioner, in accordance with law. Since the petitioner is 78 years old, this should be done with utmost expedition, without unreasonable delay on presentation of certified copy of the order along with documents in support thereof.

16. If cause of action survives to the petitioner, he is at liberty to approach the Tribunal to pursue his claim, as per law.”

3. Considering the above noted facts, the Principal Secretary, Education, Govt. of Uttarakhand, is requested to look into the matter and consider the prayer of the petitioner/ applicant sympathetically.

4. Registry is directed to send copy of the application along with other documents enclosed with the same to the Principal Secretary, Education, Govt. of Uttarakhand, for compliance of the order of the Tribunal.

5. Miscellaneous Application is, accordingly, disposed of.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 14, 2025.
DEHRADUN

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