

**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. 113/NB/DB/2022

Bipin Chandra Bhatt (Male) aged about 49 years, S/o Late Shri J.D. Bhatt, presently posted as Assistant Professor (Mathematics) in Hemwati Nandan Bahuguna, Government Post Graduate College, Khatima, District- Udham Singh Nagar.

.....Petitioner

Versus

1. State of Uttarakhand through Secretary, Higher Education, Civil Secretariat, Dehradun, Uttarakhand.
2. The Director, Higher Education Uttarakhand Navarkhera, Gaulapar, Haldwani District Nainital.
3. Screening-Cum-Evaluation Committee, through its chairman at directorate, Higher Education Uttarakhand Navarkhera, Gaulapar, Haldwani District Nainital.

.....Respondents

Present: Sri Bipin Chandra Bhatt, Petitioner in person
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: JANUARY 22, 2025

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

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

“1- To set aside the impugned decision of Screening-Cum-Evaluation committee which was communicated by Director, Higher Education Uttarakhand vide its letter dated 08-06-2022 qua to the petitioner (contained in annexure No.1 to the claim petition).

II- To direct the respondents to grant the benefits of career advancement scheme to the petitioner by counting the past services rendered by the petitioner as contractual lecturer from

the date of initial appointment i.e. 10-11-2008 as per the university grants commission regulation 2018 which was adopted by the state government.

III- To direct the respondents to grant promotion to the petitioner from the level 10 to level 11 by treating the condition provided in clause 10(f)(III) of UGC regulation, 2018 regarding emolument according to the same term and condition of clause 13.0 of regulation 2018 as adopted by the state government vide order dated 6-9-2019.

IV- To direct the respondents to constitute a screening-cum-evaluation committee as per the regulation 2018 issued by the University Grants Commission for granting promotion from level 10 to level 11 and accordingly grant promotion from level 10 to level 11 to the petitioner by counting the past services rendered by the petitioner as Assistant professor on contractual basis.

V- To pass any other suitable order, which this Hon'ble Tribunal may deem fit and proper on the basis of the facts and circumstances of the case.

VI- Award the cost of the petition to the petitioner."

2. The brief facts of the case are that the petitioner was appointed on the post of Lecturer (Mathematics) on 01.11.2008 contractual basis on a consolidated salary of Rs. 10,000/- per month which was extended time to time subsequently. The contractual lecturers are discharging same duties as the regular lecturers. The remuneration of the contractual lecturer was decided by the State Govt. The UGC issued guidelines in 2010. The clause 13.1 of the UGC Regulations, 2010 is reproduced as under:

"The teachers should be appointed on contract basis only when it is absolutely necessary and when the student-teacher ratio does not satisfy the laid down norms. In any case, the number of such appointments should not exceed 10% of the total number of faculty positions in a College/University. The qualifications and selection procedure for appointing them should be the same as those applicable to a regularly appointed teacher. The fixed emoluments paid to such contract teachers should not be less than the monthly gross salary of a regularly appointed Assistant Professor. Such appointments should not be made initially for more than one academic session, and the performance of any such entrant teacher should be reviewed for academic performance before reappointing her/him on contract basis for another session."

3. The services of the petitioner was regularized on 18.07.2016 and since then he is working as a lecturer. The UGC in 2018 issued Regulations and stipulated Career Advancement Scheme (CAS) for the teachers working in Govt. Degree Colleges and Universities. The Scheme stipulates for counting past services for granting benefits under CAS. The Regulations of 2018 were adopted by the State Govt. on 06.09.2019. The respondents invited applications for CAS vide order dated 11.12.2021, clearly mentioning that the incumbent who were regularized in the year 2016 are also entitled to submit their application for the promotion under Career Advancement Scheme.

4. The petitioner who is Assistant Professor without Ph.D will be entitled for promotion from level 10 to 11 on completion of six years of service and subject to completing one orientation course and one refresher course. The petitioner completed his orientation course in the year 2018. And also completed his refresher course in the year 2019 on 18-12-2019, as such on the said date the petitioner became eligible for promotion from level 10 to 11. The application of the petitioner was duly recommended by the Principal, Government Post Graduate College Khatima, District Udham Singh Nagar to the Director, Higher Education, Government of Uttarakhand vide letter dated 4-1-2022.

5. The Director, Higher Education, Government of Uttarakhand, ignoring the provisions of Regulations, 2018 issued by U.G.C. regarding granting the benefit of Career Advancement Scheme (CAS) by counting past contract service rendered by the petitioner, passed order on 08.06.2022 whereby declined the benefit of Career Advancement Scheme to the petitioner on the ground that services of the petitioner was regularized on 23rd July 2016 and further there is no order for granting benefit under CAS by counting past contractual services. It appears while passing order dated 08.06.2022, the respondent did not go through the Career Advancement Scheme issued under UGC Regulations, 2018 which was duly adopted by the State Government vide order dated 06.09.2019.

6. The UGC Regulations, 2018 categorically provides that the fixed emoluments paid to contract teachers should not be less than the monthly gross salary of a regularly appointed Assistant Professor. The UGC Regulations 2018, which the State of Uttarakhand has adopted vide clause 13.0 with amendment therein, whereby provided that the appointment process on contract basis and emolument shall be as stipulated by the State Govt. Clause 10 of the UGC Regulations, 2018 which has already been adopted by the state vide order dated 06-09-2019 categorically provides the previous service rendered by the teacher as contract service shall be counted for granting benefit under CAS, ignoring the same, the respondent vide impugned order dated 08-06-2022 declined/rejected the claim of the petitioner for granting benefit of Career Advancement Scheme on the ground that there is no order regarding the granting benefit by counting past service rendered on contract basis. As such, the impugned order is illegal, arbitrary in nature and the same is in violation of the UGC Regulations, 2018.

7. C.A./W.S. has been filed on behalf of the respondent no. 1 and it is submitted that Screening cum-Evaluation committee for CAS (Career Advancement Scheme) has taken decision as per provisions stipulated by UGC. The petitioner and similarly situated other faculties have been appointed on temporary basis in contractual position on a fixed honorarium (not salary), which was enhanced from time to time as clearly evident from first para of Annexure-3 (G.O. dated 30 Sept., 2009), Annexure-5 (G.O. dated 04 April, 2011) and Annexure-6 (G.O. dated 29 Aug, 2014) and conditions of which are clearly mentioned in the contractual appointment letter issued vide letter no. Degree Sewa/6687/Samvida Chayan/2008-09 dated 01 November, 2008. In the said appointment letter, conditions mentioned clearly say that, on the basis of invitation for contractual appointment, claim for regularization will not be made, as the posts are of Group 'A' posts under the ambit of Public Service Commission and since those who are accepting the contract are free to apply for the regular appointment further through Public Service Commission. The Govt. vide its G.O. no.

158/XXIV(4)/2016- 1(25)/2016 dated 18 July, 2016 (Annexure no. 7 to the claim petition) took the decision to regularize the services of petitioner and likewise other similarly situated persons. In para 2 of the said G.O. it has been clearly mentioned that, the benefit of past services rendered by such regularized persons will not be admissible for career advancement scheme and retiral benefits as pension and gratuity. Clause 10 of UGC Regulations, 2018 clearly mentions the condition of previous regular service, which was not in case of the petitioner's service. It is further clarified by clause 10 (e) and 10 (f) of the Regulation.

8. The petitioner and likewise others were not getting the emoluments equivalent to gross salary, rather some fixed honorarium. Thus, it is very much clear that petitioner and likewise others similarly situated persons do not satisfy the condition by which their past services can be counted for career advancement scheme and for other service benefits. Petitioner is putting unfair and unjust demand, which is not admissible and acceptable as per stipulated norms and laws. It is further submitted that UGC Regulations are not binding on state in toto, rather state depending upon the financial and other considerations may adopt UGC Regulations partially or wholly as stipulated in various decisions of Hon'ble Apex Court. Being a small State and having limited resources, it is upto the State to take rational financial decisions for the sake of larger public interests. Since the intent of state was to overcome the shortage of teachers for time being and further recruitment to be done by Public Service Commission itself, state has fixed the honorarium and other service conditions.

9. It is also worth mentioning that G.O. which regularized these contractual lecturers clearly mentions that service benefits would be admissible and given from date of regularization and so the benefit of past services could not be given for the purpose of CAS or retiral benefits. It is further submitted that vide GO dated 06 Sept, 2019, state has adopted the provision of UGC Regulations with certain amendments. The UGC Regulations are partly mandatory and partly

directive as upheld by Hon'ble Apex Court in Kalyani Mathivanan Case as Kalyani Mathivanan Vs K.V. Jeyaraj in Civil Appeal No. 5946-5947 of 2014, Sudhir Budakoti Vs State of Uttarakhand and others in Civil Appeal No. 2661 of 2015. It is not binding on the state to adopt all the provisions of UGC, Regulations, which has been further upheld by Hon'ble Supreme Court in Sudhir Budakoti Vs. State of Uttarakhand case. So in various cases, the fact has been held by Hon'ble Apex Court that, State depending upon its financial and other conditions is free to adopt UGC Regulations partially or wholly. Thus the claim of counting of past services of petitioner and likewise does not bear any ground on the basis of the service conditions of the contractual appointment, further regularization GO, clause 10F(iii) of UGC Regulations 2018 and adopted Rule 13 of UGC Regulations vide GO dated 06 Sept, 2019. The claim and demand of petitioner is not liable to be admitted as per laws and thus liable to be rejected.

10. R.A. has been filed by the petitioner denying the contents of the C.A./W.S. filed by the respondents and reiterated the averments made in the claim petition. Further it has been stated that the Principal found the petitioner eligible for the promotion from level 10 to 11 by counting the past contractual services as per the UGC Regulations, 2018 adopted by the State Govt. and recommended to the Director, Higher Education, Uttarakhand for further proceedings. In cases of Kalyani Mathivanan Vs K. V. Jeyaraj in Civil Appeal No. 5946-5947 of 2014, Sudhir Budakoti Vs State of Uttarakhand and others in Civil Appeal No. 2661 of 2015, the UGC Regulations were not adopted by the concern state government and here state government has adopted the UGC Regulation 2018 with certain amendments. It is clear from the regulation so amended vide GO dated 06-09-2019 that the contract teacher will get the emoluments as decided by the state government. Clause 13 regarding emoluments paid to contract teacher is parimateria to clause 10 (f) (iii) of UGC Regulation 2018, consequently the clause 10 (f)(iii) will be replaced by amended Clause 13 of UGC Regulations, 2018. The impugned decision of Screening-Cum-

Evaluation Committee communicated by Director, Higher Education Uttarakhand vide its letter dated 08.06.2022 is arbitrary and illegal, hence the same is liable to be quashed. In view of the fact and circumstances narrated above, the claim petition deserves to be allowed with cost.

11. We have heard the petitioner and learned A.P.O. on behalf of the respondents and perused the record.

12. The petitioner submitted that the Clause 10(f) of the UGC Regulations, 2018 on minimum qualification for the appointment to the post of Teachers and other academic staff for universities and colleges and measurers for maintenance of standard in Higher Education, is as under:

“10(f) The previous Ad-hoc or Temporary or contractual service by whatever nomenclature it may be called) shall be counted for direct recruitment and for promotion, provided that:

(i) the essential qualifications of the post held were not lower than the qualifications prescribed by the UGC for Assistant Professor, Associate Professor and Professor, as the case may be

(ii) the incumbent was appointed on the recommendation of a duly constituted Selection Committee/Selection Committee constituted as per the rules of the respective university;

(iii) the incumbent was drawing total gross emoluments not less than the monthly gross salary of a regularly appointed Assistant Professor, Associate Professor and Professor, as the case may be.”

13. The petitioner has pleaded that he fulfills the requisite criteria for including the period of engagement as contractual lecturer for the benefit of ACP. He maintains that he has given information related to his period of engagement on temporary basis in the format prescribed for giving self-information to the Departmental Promotion Committee through Principal of his college. The DPC did not consider the aforesaid guidelines issued by the UGC and found him unfit for promotion to the higher post. He further pleaded that the guidelines of the UGC are sufficient to count the period spent by him as contractual lecturer for the benefit of higher post under CAS. The order dated 08.06.2022 is liable to be quashed.

14. Learned A.P.O. pleaded that the petitioner was not engaged continuously for the period more than 7 years as he claims. He was engaged time to time based on the requirement of the college. He was being paid a fixed amount along with the amount for the classes taken by him. His engagement letter dated 11.02.2008 also mentions that he will not claim regular appointment for working on contract basis. His regularization order dated 18.07.2016 also mentions that the period spent on contractual lectureship will not be admissible for the benefit of ACP, pension, gratuity etc. So, his service conditions do not give him any scope for counting his past services on contract basis for promotion under CAS. His request for promotion has rightly been rejected by the DPC and his claim is liable to be dismissed.

15. Based on the arguments and facts submitted by the petitioner and learned A.P.O., we are of the opinion that the approval of the Govt. or the competent authority authorized by the Govt. for the purpose of approving the counting of the period of engagement on contract basis for consideration for ACP etc. is required, the DPC has aptly mentioned the reasons for not finding the petitioner eligible for promotion (letter dated 08.06.2022, Annexure-1). The UGC Regulations, 2018 have been adopted by the State Govt. with some modification vide letter dated 06.09.2019, but the order for counting the period spent on contractual engagement is not within the purview of DPC as the DPC considers the candidate for promotion based on Academic Performance Indicator (API) etc. The petitioner has not made any representation to the higher authorities for counting the period spent on contractual lectureship for the purpose of the benefit of ACP etc. So, his claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

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

DATE: JANUARY 22, 2025
DEHRADUN
KNP