

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
AT NAINITAL

Present: Hon'ble Mr. Ram Singh  
----- Vice Chairman (J)  
Hon'ble Mr. U.D.Chaube  
-----Member (A)

**Claim Petition No. 22/N.B./D.B./2014**

1. Dr. Dinesh Chandra Joshi, S/o Sri Lokmani Joshi, presently serving as Medical Officer (Community Health), Additional Primary Health Center, Chorgaliya, District Nainital.
2. Dr. Rakesh Kumar Sharma, S/o late Sri Iswari Nandan Sharma, Medical Officer, Community Health (Retired), R/o 120, Malik Colony, Rudrapur, District Udham Singh Nagar.
3. Dr. Pramod Chandra Joshi, S/o Sri Ghananand Joshi, presently serving as Medical Officer (Community Health), Additional Primary Health Center, Kaladungi, District Nainital.
4. Dr. U.C. Joshi, S/o late Sri Shiv Dutt, presently serving as Medical Officer (Community Health), Additional Primary Health Center, Jeolikite, District Nainital.
5. Dr. Virendra Kumar, S/o Sri Ram Chandra, presently serving as Medical Officer (Community Health), Additional Primary Health Center, Kaniya, Ram Nagar, District Nainital.
6. Dr. O.P. Bahukhandi, S/o late Sri Suresh Chandra Bahukhandi, Medical Officer (Community Health), presently serving as Deputy Chief Medical Officer, Dehradun.

.....Petitioners

**VERSUS.**

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare Department (AYUSH and AYUSH Education Section) Government of Uttarakhand, Dehradun.

2. Director General, AYUSH/Director, Ayurvedic and Unani Services, Uttarakhand, Dehradun.
3. Director General, Medical Health and Family Welfare, Uttarakhand, Dehradun.
4. State of U.P. through Secretary, Medical Health and Family Welfare Department, Government of U.P., Lucknow.
5. Director General, Medical Health and Family Welfare, U.P., Lucknow.
6. Dr. Preetam Prakash Uniyal, S/o Sri Neel Kanth Uniyal.
7. Dr. Narendra Singh Lingwal, S/o Sri Chandra Singh.
8. Dr. Sushil Singh Bisht, S/o Sri Gopal Singh (**Omitted**)
9. Dr. Kailash Kumar Singh S/o Sri Charan Singh.
10. Dr. Mahendra Kumar Karwal, S/o Sri Shyam Lal.
11. Dr. Vinay Kumar Sharma S/o Sri Raitu Lal.
12. Dr. Shyam Singh S/o Sri Ram Pal Singh.
13. Dr. Manju Kumari W/o Sri Krishna Kant Tiwari (**Omitted**)
14. Dr. Ravi Kumar S/o Sri Neki Ram.
15. Dr. Dinesh Kumar Garg, S/o Sri Murari Lal.
16. Dr. Pramod Kumar Kapoor, S/o Sri Tilak Raj Kapoor.
17. Dr. Alka Agarwal, W/o Sri Dinesh Kumar.
18. Dr. Ashok Kumar Tyagi, S/o Sri Sewa Ram.
19. Dr. Bishambar Dutt Dimri, S/o Sri Gopal Dutt.
20. Dr. Rajendra Prasad Raturi S/o Sri Vidya Dutt Raturi.
21. Dr. Amresh Chandra Upadhyay, S/o Sri Harish Chandra.
22. Dr. Yogesh Pal S/o Sri Rajpal Singh.
23. Dr. Dinesh Prasad Gairola, S/o Sri Satyeshwar Prasad.
24. Dr. Ashok Kumar Badola, S/o Sri Parmanand Badola.
25. Dr. Mahendra Pratap Singh, S/o Sri Kalpnath Singh.
26. Dr. Naresh Kumar Gupta S/o Sri Ram Swaroop.
27. Dr. Sabaj Kumar Anand, S/o Sri Bhairi Ram.
28. Dr. Ram Awtar Singh, S/o Sri Balwant Singh.
29. Dr. Shobha Rani, W/o Sri K.K. Mishra.
30. Dr. Mahendra Pal, S/o Sri Gaianda Lal.
31. Dr. Ravindra Pratap Singh S/o Sri Ram Shankar.
32. Dr. Mithlesh Kumar, S/o Sri Mahilal Premi.
33. Dr. Subhash Chandra, S/o Sri Raghubir Singh.

34. Dr. Krishna Lal, S/o Sri Gyan Chandra.
35. Dr. Krishna Singh Napalchiyal, S/o Sri Dan Singh Napalchiyal.
36. Dr. Raghubir Singh, S/o Sri Lal Singh Pal.
37. Dr. Ashok Kumar, S/o Sri Moti Lal.
38. Dr. Mahiman Singh, S/o Sri Trilok Singh (Omitted)
39. Dr. Girish Chandra Singh Jangpangi S/o Sri Lalit Singh.
40. Dr. Mahendra Singh Gunjiyal, S/o Sri Mangal Singh Gunjiyal.
41. Dr. Rajendra Prasad Pandey, S/o Sri Dharmanand Pandey.
42. Dr. Yatendra Singh Rawat, S/o Sri Bhisam Singh.
43. Dr. Sampooranand Raturi S/o Sri Vidya Dutt Raturi.
44. Dr. Rajendra Prasad Bhatt, S/o Sri Chandra Mani.
45. Dr. Rajiv Kumar Verma, S/o Sri Budh Singh Verma.
46. Dr. Umesh Chandra Pathak, S/o Sri Janardhan Pathak.
47. Dr. Ashok Kumar Sharma, S/o Sri Bhagwan Das.
48. Dr. Madho Ram S/o Sri Rati Ram. (Omitted)
49. Dr. Jamuna Dutt Dwivedi , S/o Late Sri Ram Dutt Dwivedi.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel  
for the petitioners.

Sri V.P. Devrani, Ld. A.P.O.  
for the Respondent Nos. 1, 2 & 3

### **JUDGMENT**

**DATED: SEPTEMBER 07, 2016**

**(Hon'ble Mr. Ram Singh, Vice Chairman (J))**

1. This petition has been filed for seeking following relief:-

“A. To direct the Respondents, particularly Respondent No.1  
to regularize the services of the petitioners w.e.f.  
21.1.1991.

- B. To direct the Respondent No.1 to prepare the seniority list afresh and grant all consequential service benefits to the petitioners.
  - C. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
  - D. To allow the claim petition with cost.”
2. The proposition of the matter is that the petitioner Nos.1 & 2 and 3 to 6 were appointed as Medical Officer, Grade-III on ad-hoc basis in State of U.P. on 25.06.1984 and 1.2.1986 respectively. According to the provisions of Uttar Pradesh Regularization of Ad-hoc Appointments (on posts within the purview of Public Service Commission) Rules, 1979, the process of regularization of ad-hoc persons in U.P. was undertaken and 133 persons were regularized on 21.1.1991 and except petitioners, some other persons, even junior to the petitioners, were also regularized on 31.10.1992.
  3. In the year 2000, after creation of State of Uttarakhand petitioners opted for Uttarakhand. As they were continuing on ad-hoc basis, hence according to Uttarakhand Regularization Rules 2002, services of the petitioners were regularized by the State of Uttarakhand w.e.f. 27.1.2006 on the posts of Ayurvedic and Unani Medical Officer vide Government order dated 30.03.2010.
  4. In the State of U.P. some other persons, junior to the petitioners, were regularized w.e.f. 27.12.2003 and 6.09.2005 and they submitted representation with the prayer that their regularization should be made effective w.e.f. 21.1.1991. Ultimately, the State of U.P. issued Office Memorandum dated 12.1.2010 (Annexure-P-16) whereby the date of regularization of the aforesaid 1116 officers was preponed to 21.1.1991. However, the said O.M. dated 12.1.2010 was subsequently cancelled by the State of U.P. on 6.4.2010 (Annexure-P-17) on the ground that some of the officers

had not completed three years of ad-hoc service on the date of regularization i.e. 21.1.1991.

5. The petitioners, after their regularization in the State of Uttarakhand, also submitted representations on 1.1.2011 to Respondent No.1 with the prayer to regularize their services w.e.f. 21.1.1991 i.e. from the date juniors to them were regularized in U.P., but the Government did not take any decision on their request. Petitioners, along with similarly situated persons approached the Hon'ble Uttarakhand High Court by filing the writ petition 13(SB)/2011 and Writ petition No. 20(SB)/2011, which were disposed of by the Hon'ble High court vide order dated 2.2.2011. In the meantime the Government vide office order No. 159 and 354 dated 8.4.2011 rejected the demand of the petitioners to regularize them w.e.f. 21.1.1991 on the ground that order dated 12.1.2010 of U.P. Government had also been cancelled by State of U.P. vide order dated 6.4.2010.
6. The U.P. Government's order dated 6.4.2010 was challenged by the persons employed in the State of U.P. before the Hon'ble Allahabad High Court in writ petition No. 30339/10, which was disposed of on 25.5.2010 (Annexure-P-21) with the direction to issue fresh correct list and ultimately on 28.7.2011 (Annexure-P-23) the U.P. Government passed an order to regularize those people w.e.f. 21.1.1991.
7. Thereafter, on 15.2.2012, petitioners again represented in the State of Uttarakhand and requested to regularize them w.e.f. 21.1.1991, but no decision on their representation was taken, rather a seniority list was issued on 9.4.2012 (Annexure-P-26) in which names of petitioners were not shown. Another representation was also submitted on 2.9.2012 and writ petition No. 293(SB)/12 was filed on the basis that their names were not shown in the seniority list and direction was issued by the Hon'ble Court on 3.10.2012 (Annexure-P-27) to include the names of the

petitioners in the final seniority list. The petitioners further submitted a representation on 7.10.2012 (Annexure-P-28) to prepone the date of regularization w.e.f. 21.1.1991 but without considering the prayer of the petitioners, respondents issued a tentative seniority list dated 25.10.2012 (Annexure-P-29) in which the date of substantive appointment of the petitioners were shown as 27.1.2006, which was the date of regularization of their services in the State of Uttarakhand. Objection was further raised to prepone this date to 21.1.1991. Respondents, thereafter, issued a final seniority list in which date of appointment of petitioners was shown as 27.1.2006 and the representation was dismissed on the ground that regularization cannot be made prior to the date of creation of the State of Uttarakhand.

8. Petitioners also submitted that in June, 2013, similarly situated persons Dr. Hari Shankar Shiromani and six other persons filed their case in U.P., Public Services Tribunal and they obtained suitable order to regularize their services from the date when their juniors were regularized. Hence, the petitioners again submitted their representation on 28.1.2014 (Annexure-P-35) to prepone the date of regularization, but the Government did not pass any order in favour of petitioners and on 14.8.2014 a letter was written to Director(Annexure-P-36), to circulate the final seniority list and to obtain objections, if any. Respondent No.2 on 28.8.2014 circulated the final seniority list (Annexure-P-37), to which the petitioners again submitted their objections and asked for their regularization w.e.f. 21.1.1991 but the Government did not take any action till now in this regard, hence this petition.
9. The private respondents were also served with the notices but the petition has been contested only on behalf of Respondent Nos.1,2 & 3. The State of U.P. did not file any counter affidavit. The respondents opposed the claim of the petitioners mainly on the ground that the petitioners cannot claim their regularization w.e.f.

21.1.1991 and nor this prayer can be granted by the respondents i.e. the present State of Uttarakhand which came into existence on 9.11.2000. The petitioners were ad-hoc appointees when they opted for the State of Uttarakhand and their services were regularized in the State of Uttarakhand under the Rules framed by the State of Uttarakhand and they can claim their seniority only as per Uttarakhand Government Servant Seniority Rules, 2002 from the date of their substantive appointment. The prayer of the petitioner for regularization w.e.f. 21.1.1991 cannot be granted by the State of Uttarakhand and the petitioners should have approached the appropriate forum at appropriate time in the State of U.P. prior to the creation of new State. The petitioners should have raised their plea before Uttar Pradesh authorities and any order or the judgment of the Service Tribunal of State of U.P. in relation to their employees passed after creation of Uttarakhand, is not applicable in the present state of Uttarakhand, therefore, the representations of the petitioners were rightly rejected by the competent authority and they were rightly placed in their seniority in accordance with the substantive appointment . According to the respondents, in view of the judgment of Hon'ble Apex Court in State of Uttarakhand Vs. Umakant Joshi 2012, UD 583, this Tribunal does not have any jurisdiction to entertain the petition for issuance of any direction for retrospective regularization of services w.e.f. 21.1.1991.

10. The petition has also been opposed on the ground that it is time barred and long delay of 24 years has not been satisfactorily explained. The respondents have also submitted that the case of Dr. Mahendra Singh was different because he was regularized in the State of U.P. on 21.10.1992 and his name was wrongly entered in the seniority/ regularization list in the State of Uttarakhand which was later on corrected on his representation. According to respondents, this plea of the petitioners cannot be accepted that

the State of Uttarakhand has given retrospective relief to some persons (Dr. Mahendra Singh) leaving the petitioner.

11. We have heard both the parties and perused the complete record.
12. Undoubtedly the petitioners were ad-hoc employees at the time when they opted for the State of Uttarakhand. Some persons of their cadre were regularized in State of U.P. in the year 1991 and 1992 and they were left out. The petitioners were having the opportunity to raise their claim before the appropriate forum at the appropriate time, which they did not avail till the year 2000. After creation of State of Uttarakhand, when they opted for Uttarakhand, they were ad-hoc appointees. Their services were regularized not by the State of U.P. but by the State of Uttarakhand on 30.3.2010 according to the Regularization Rules of State of Uttarakhand (as amended) and they were regularized w.e.f. 27.1.2006. Hence, this is first date of their substantive appointment which was made by the State of Uttarakhand and not by State of U.P. After creation of State of Uttarakhand, when they opted for the State, their services were regularized in 2010 with effect from 27.1.2006, so they cannot claim any parity with the employees of State of U.P. through this petition.
13. The main question for the decision before this Tribunal is whether the State of Uttarakhand or this Tribunal is having any right to decide the matter and give relief to the petitioners with effect from the date, prior to the creation of State of Uttarakhand.
14. The arguments of Ld. Counsel for respondents are mainly based on the law laid down by the Hon'ble Apex Court in the case of State of Uttarakhand and another Vs. Umakant Joshi 2012 UD 583 in which it was laid down that the Hon'ble High Court of Uttarakhand, which has come into existence w.e.f. 9.11.2000, does not have any jurisdiction to entertain the petition filed by the respondents for issuance of mandamus to the State Government to promote the petitioners with back date, because the issues



raised in the writ petition involved examination of decision taken by the State of U.P. to promote another persons with effect from the date, prior to the creation of the State. The ratio laid down by the Hon'ble Appex Court is that neither this Tribunal can grant a relief to issue any direction to the State to give promotion or regularize the services from the date prior to the formation of the State nor the Government of Uttarakhand can do it. The contention raised and arguments made by the respondents is acceptable and this Court is of the view that this Tribunal has no jurisdiction to grant such relief and accordingly the respondents have rightly rejected the demand of the petitioners to regularize them w.e.f. 21.1.1991, the date which is prior to the creation of the State of Uttarakhand.

15. Another plea raised by the respondents is the ground of delay and laches which is also sustainable. When the regularization of some junior employees was made by the State of U.P. in the year 1992, the cause of action arose to the petitioners at that time and they did not ask for their regularization in the State of U.P. till the formation of new State neither they have asked for their regularization w.e.f. 21.1.1991 at the time when they were regularized in the year 2010. After getting their services regularized in the new State of Uttarakhand w.e.f. 27.8.2006, they represented for the first time for their regularization from back date on the basis that their counterpart in the State of U.P. have been regularized with this date. But such order of U.P. Government was passed in the year 2013, much later from the date of separation of two states. The petitioners cannot claim the benefit on the basis of any such order passed by the State of U.P. after bifurcation of the State.
16. Hence, the claim of the petitioners is excessively delayed and no satisfactory explanation has been given for such delay. Petitioners' argument regarding change of date of seniority in case of Dr.

Mahendra Singh, is not helpful to them because it was not a case of regularization from back date. As Dr. Mahendra Singh was already regularized in State of U.P. in October, 1992 and his name was wrongly included in the list of State of Uttarakhand and on his representation, simply an order was passed rectifying the error. As such, petitioners cannot claim parity with that case.

17. Considering all the circumstances of the case and relying upon the principle laid down by the Hon'ble Apex Court in State of Uttarakhand and another Vs. Umakant Joshi (supra), the petition fails and deserves to be dismissed for all the relief asked for by the petitioners.

**ORDER**

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

Sd/-

**(U.D.CHAUBE)**  
MEMBER (A)

Sd/-

**(RAM SINGH)**  
VICE CHAIRMAN(J)

*DATE: SEPTEMBER 07, 2016*  
*NAINITAL*

VM