

**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)

Writ Petition No. 214 (S/B) of 2015

[Reclassified and Renumbered as Claim Petition No. 149/NB/DB/2023]

1. Mata Deen, S/o Sri Bhagirath, presently posted as Block Education Officer, Rudrapur, Udham Singh Nagar.
2. Rajendra Prasad Dandriyal, S/o Sri Harshpati Dandriyal, presently working on deputation as Joint Director, State Project Office, (RMSA), Dehradun.
3. Chandan Singh Bisht, S/o Late Sri H.S. Bisht, presently posted as officiating Deputy Director, Elementary Education, Directorate, Dehradun.
4. Atresh Sayana, S/o Sri C.L. Sayana, presently posted as officiating Deputy Director, Secondary Education, Directorate, Dehradun.
5. Satya Narayan, S/o Sri Hridaya Ram, presently posted as officiating Deputy Director, Secondary Education, Directorate, Dehradun.
6. Chandra Pal Singh Rana, S/o Sri B.S. Rana, presently posted as officiating Deputy Director, Secondary Education, Directorate, Dehradun. (Deceased)
- 6A. Savita Rana (Female), Aged About 47 Years, W/o late Sri Chandra Pal Singh Rana, R/o 64, Lane No. 9 A, Indraprasth, Upper Nathanpur, Nehrugram, Dehradun, Uttarakhand- 248005. (Amended vide Hon'ble Court's order dated 19.09.2023)
7. Hira Lal, S/o Sri Thakur Das, presently posted as District Education Officer (Basic), Bageshwar.

8. Nagendra Bartwal, S/o Sri P.S. Bartwal, presently posted as officiating Deputy Director, Secondary Education, Directorate, Dehradun.
9. Shiv Prasad Semwal, S/o Late N.D. Semwal, presently posted as District Education Officer (Basic), Tehri Garhwal.
10. Smt. Hem Lata Bhatt, D/o Late M.D. Gauniyal, presently posted as officiating Head of Department, SIEMAT. Dehradun.
11. Meharban Singh Bisht, S/o Sri Pratap Singh Bisht, presently posted on deputation as Expert, Sarva Siksha Abhiyan, Dehradun.
12. Shaukat Ali, S/o Late Ninkoo, presently posted as District Education Officer (Basic), Pithoragarh.
13. Ray Singh Rawat, S/o Late Umrao Singh Rawat, presently posted on deputation as Expert, Sarva Siksha Abhiyan, Dehradun.
14. Ashok Kumar Gusain, S/o Late J.S. Gusain, presently posted as District Education Officer (Basic), Chamoli.
15. Narbeer Singh Bisht, S/o Sri H.S. Bisht, presently posted as officiating Deputy Director, Elementary Education, Directorate, Dehradun.
16. Dr. Rajendra Singh, S/o Sri Kripal Singh, presently posted as Principal, District Institute of Education and Training, Didihat, Pithoragarh.
17. Dr. Paras Nath Singh, S/o Late Ram Ashish Singh, presently posted as District Education Officer (Secondary), Udham Singh Nagar.

.....Petitioners

versus

1. State of Uttarakhand through Secretary, School Education, Uttarakhand Government, Dehradun.
2. Principal Secretary, Finance, Uttarakhand Government, Dehradun.
3. Director General, School Education, Uttarakhand, Dehradun.

..... Respondents

With

Writ Petition No. 418 (S/B) of 2015

[Reclassified and Renumbered as Claim Petition No. 150/NB/DB/2023]

1. Brij Mohan Singh Rawat, S/o Sri Mohan Singh Rawat, presently posted as Joint Secretary, Uttarakhand Board of School Education, Ramnagar.
2. Chetan Prasad Nautiyal, S/o Sri Indra Dutt Nautiyal, presently posted as Principal, DIET, Tehri.
3. Harak Ram Kohli, S/o Late Sri D.R. Kohli, presently posted as Block Education Officer, Kanalichina, Pithoragarh.
4. Hawaldar Prasad, S/o Sri Kalpnath Ram, presently posted as Block Education Officer, Dhari, Nainital.
5. Subhaga Arya, D/o Sri Sriram Arya, presently posted as Block Education Officer, Bhimtal, Nainital.
6. Smt. Uma Panwar, W/o Sri B.S. Panwar, presently posted as Block Education Officer, Vikasnagar, Dehradun.
7. Anil Kumar, S/o Late Sri Dhajjo Prasad, presently posted as Block Education Officer, Chinyalisaur, Uttarkashi.
8. Dr. Bachchu Singh Nishad, S/o Late Sri Babu Ram, presently posted as Block Education Officer, Dewal, Chamoli.
9. Sudarshan Singh Bisht, S/o Late Sri D.S. Bisht, presently posted as Block Education Officer, Devprayag, Tehri Garhwal.
10. Devendra Singh Arya, S/o Late Sri Kundan Lal, presently posted as Block Education Officer, Kirtinagar, Tehri.
11. Dharam Singh Rawat, S/o Sri Dayal Singh Rawat, presently posted as Block Education Officer, Pratap Nagar, Tehri Garhwal.
12. Madhu Lal S/o Sri Junu Lal, presently posted as Block Education Officer, Khirsu, Pauri Garhwal.
13. Ray Sahab Yadav, S/o Sri Rati Ram Yadav, presently posted as District Education Officer (Basic), Almora.
14. Amar Bahadur Saroj, S/o Sri Ramjiyawan, presently posted as Block Education Officer, Ghat, Chamoli.

15. Padmendra Saklani, S/o Sri Surendra Dutt Saklani, presently posted as State Project Manager Literacy Mission, Uttarakhand, Dehradun.
16. Vinod Kumar Dhondiyal, S/o Sri C.M. Dhondiyal, presently posted as officiating Deputy Director, Secondary Education Directorate, Dehradun.
17. Kundan Lal Radwal, S/o Sri Masudi Lal, presently posted as Block Education Officer, Agastmuni, Rudraprag.
18. Parmendra Bisht, S/o Late A.S. Bisht, presently posted on deputation as Joint Director (Mid Day Meal), Dehradun.
19. Dr. Shool Chandra, S/o Late Sri Mahroop, presently posted as Block Education Officer, Chakrata, Dehradun.
20. Jitendra Saxena, S/o Late Sri Shyam Sundar Lal Saxena, r presently posted as officiating Deputy Director, Directorate General of Education, Dehradun.
21. Dinesh Sati, S/o Late Sri Madhavanand Sati, presently posted as District Education Officer (Basic), Udham Singh Nagar.
22. Dr. Anand Bharadwaj, S/o Sri V.D. Bharadwaj, presently posted as officiating Deputy Director, Secondary Education Directorate, Dehradun.
23. Ambika Ram, S/o Sri Marjad Ram, presently posted as Block Education Officer, Luksar, Haridwar.
24. Jai Prakash Yadav, S/o Sri Ganesh Prasad Yadav, presently posted as District Education Officer (Basic), Rudraprayag.

.....Petitioners

versus

1. State of Uttarakhand through Secretary, School Education, Uttarakhand Government, Dehradun.
2. Principal Secretary, Finance, Uttarakhand Government, Dehradun.
3. Director General, School Education, Uttarakhand, Dehradun

..... Respondents

Present: Sri K.P. Upadhyaya, Senior Advocate, assisted by

Sri Hemant Pant, Advocate, for the Petitioner
Sri Kishore Kumar, A.P.O. for State Respondents

Judgement

Dated: 13th January, 2025

Justice U.C. Dhyani (Oral)

Above-noted petitions have identical facts and common questions of law, hence, these petitions are being discussed and decided together for the sake of convenience, with the consent of learned Counsel for the parties.

2. Hon'ble High Court of Uttarakhand has been pleased to pass an order on 19.09.2023 in WPSB No. 214 of 2015, Mata Deen and others vs. State of Uttarakhand and others, which (order) reads as under:

“Mr. K.P. Upadhyaya, Senior Advocate assisted by Mr. Hemant Pant, Advocate for the petitioners.

2. Mr. K.N. Joshi, Deputy Advocate for the State.

Delay in Substitution Application (IA No.2 of 2022)

3. Learned counsel for the State submits that he does not propose to file any objection to the Delay Condonation Application.

4. For the reasons indicated, the application seeking condonation of delay is allowed. Delay in filing the substitution application is condoned.

Substitution Application (IA No.1 of 2022)

5. The substitution application is treated to have been filed within time.

6. For the reasons indicated, prayer for substitution is allowed. Let widow of the petitioner no.6 be substituted in his place.

7. Amended memo of parties be filed within 24 hours.

8. Petitioners are public servants, as defined under the Uttar Pradesh Public Services (Tribunal) Act, 1976. In the present writ petition, they have claimed benefit of Assured Career Progression Scheme which can also be granted by the Tribunal established under the said Act.

9. Accordingly, the present writ petition is disposed of with a request to the Tribunal constituted under the Act to hear and decide the claim petition of petitioners expeditiously.

10. Registry is directed to transmit the record of the case to the Tribunal.”

3. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 16870/U.H.C./WPSB Section/ PST/ Nainital dated 29.09.2023 of the Deputy Registrar (Judicial) of the Hon’ble High Court. The same has been registered as claim petition no. 149/NB/DB/2023.

4. By means of present petition, petitioners seek following reliefs:

“(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant to the petitioners the benefit of 1st financial upgradation under the ACP scheme w.e.f. the respective dates as disclosed in para-24 of the writ petition and also to release the arrears of salary with interest.

(ii) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the annexure-01 Government Order dated 07th July, 2014 whereby and under the petitioners have been ordered to be treated as substantively appointed Block Education Officer or equivalent thereto in the lower pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/-.

(iii) Hold and declare that the State Government's decision to absorb/substantively appoint the petitioners on a lower post carrying a lower pay scale is unsustainable in the eye of law.

(iv) Issue any other appropriate writ, order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the present case.

(v) Award costs in favour of the petitioners.”

5. Sri Mata Deen (petitioner no. 1) has filed affidavit in support of the petition. Relevant documents have been filed by him in support of the petition.

6. The petition has been contested on behalf of the respondents. Sri Arurendra Singh Chauhan, the then Additional Secretary, Finance, Govt. of Uttarakhand, has filed counter affidavit on behalf of respondent no. 2.

6.1 Sri Subhaiyah Raju, the then Additional Chief Secretary, School Education, Govt. of Uttarakhand, has filed counter affidavit on behalf of respondent no. 1. Relevant documents have been filed in support of the counter affidavit.

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7. Hon'ble High Court of Uttarakhand has been pleased to pass an order on 19.09.2023 in WPSB No. 418 of 2015, Brij Mohan Singh Rawat and others vs. State of Uttarakhand and others, which (order) reads as under:

“Mr. K.P. Upadhyaya, Senior Advocate assisted by Mr. Hemant Pant, Advocate for the petitioners.

2. Mr. K.N. Joshi, Deputy Advocate for the State.

3. Petitioners are public servants, as defined under the Uttar Pradesh Public Services (Tribunal) Act, 1976. In the present writ petition, they have claimed benefit of Assured Career Progression Scheme which can also be granted by the Tribunal established under the said Act.

4. Accordingly, the present writ petition is disposed of with a request to the Tribunal constituted under the Act to hear and decide the claim petition of petitioners expeditiously.

5. Registry is directed to transmit the record of the case to the Tribunal.”

8. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 16871/U.H.C./WPSB Section/ PST/ Nainital dated 29.09.2023 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as claim petition no. 150/NB/DB/2023.

9. By means of present petition, petitioners seek following reliefs:

“(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant to the petitioners the benefit of 1st financial upgradation under the ACP scheme w.e.f. the respective

dates as disclosed in para-24 of the writ petition and also to release the arrears of salary with interest.

(ii) Issue a writ, order or direction in the nature of certiorari calling for the records and quashing the annexure-01 Government Order dated 07th July, 2014 whereby and under the petitioners have been ordered to be treated as substantively appointed Block Education Officer or equivalent thereto in the lower pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/-.

(iii) Hold and declare that the State Government's decision to absorb/substantively appoint the petitioners on a lower post carrying a lower pay scale is unsustainable in the eye of law.

(iv) Issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case.

(v) Award costs in favour of the petitioners."

10. Sri Hawaldar Prasad (petitioner no. 4) has filed affidavit in support of the petition. Relevant documents have been filed by him in support of the petition.

11. The petition has been contested on behalf of the respondents. Sri Subhaiyah Raju, the then Additional Chief Secretary, School Education, Govt. of Uttarakhand, has filed counter affidavit on behalf of respondents no. 1 & 2. Relevant documents have been filed in support of the counter affidavit.

12. Rejoinder affidavit thereto has been filed by Sri Hawaldar Prasad (petitioner no. 4) on behalf of the petitioners. Reply to the rejoinder affidavit has also been filed by Sri Arurendra Singh Chauhan, the then Additional Secretary, Finance, Govt. of Uttarakhand on behalf of respondent no. 2.

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13. Similar petition being claim petition no. 157/NB/DB/2022, Vijay Pal Singh and others vs. State of Uttarakhand and others, was disposed of by this Tribunal *vide* order dated 29.08.2023.

14. Since the above-noted petitions are quite similar on facts as well as in law to the case of Vijay Pal Singh and others, therefore, it will be appropriate to reproduce relevant paragraphs of Vijay Pal Singh’s decision (*supra*) herein below for convenience:

“Hon’ble High Court of Uttarakhand at Nainital, passed an order, in WPSB No. 212/2015, Vijay Pal Singh & others vs. State of Uttarakhand and others, on 24.09.2022, as follows:

“Petitioners are public servants.

2. The reliefs sought in the writ petition are the following:-

“(i) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant to the petitioners the benefit of 1st financial upgradation under the ACP scheme w.e.f. the respective dates as disclosed in para-24 of the writ petition and also to release the arrears of salary with interest.

(ii) issue a writ, order or direction in the nature of certiorari calling for the records and quashing the annexure-01 Government Order dated 07th July, 2014 whereby and under the petitioners have been ordered to be treated as substantively appointed Block Education Officer or equivalent thereto in the lower pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/-

(iii) hold and declare that the State Government’s decision to absorb / substantively appoint the petitioners on a lower post carrying a lower pay scale is unsustainable in the eyes of law.”

3. The reliefs sought by the petitioners squarely fall for consideration within the jurisdiction of the Uttarakhand Public Services Tribunal.

4. Considering the fact that the Writ Petition has been pending since 2015, and the 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. Since the Writ Petition has been pending since 2015, we request the Tribunal to expedite the hearing of the Claim Petition, provided the petitioners do not seek any adjournment.

5. The Writ Petition stands disposed of accordingly.”

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3. The case of the petitioners is outlined as below:

3.1 The petitioners were appointed to the posts of Principal, Govt. Intercollege or equivalent thereto in the year 1999. At that time, their service conditions were governed by the U.P. Educational (General Cadre) Service Rules, 1992.

3.2 The Finance Department of the Govt. of Uttarakhand issued a Govt. Order dated 20th December, 2001 whereby the Central pay scale was made applicable to the teachers of the State in terms of the 5th Central Pay Commission and the teachers/principals of primary and secondary schools of the State were granted the same pay scale as was admissible to the teachers working in the Central Govt. As per the above Govt. order dated 20th December, 2001, the recommendation of the 5th pay commission was made applicable w.e.f. 01st January, 1996, but in respect of the teachers of the State the same was made applicable from 01st July, 2001 with actual benefits. The Govt. Order provided that the pay of the incumbents appointed after 01st January, 1996 would be notionally determined and fixed in terms of the revised pay scale and actual benefits would be given from 01st July, 2001. By the said Govt. Order dated 20th December, 2001 the ordinary pay scale of Rs. 8000-275-13500 as well as the selection pay scale of Rs. 10000-325-15200 corresponding to the post of Principal and equivalent thereto were revised to Rs. 10000-325-15200. Thus the pay scale of the petitioners who were appointed long after 01st January, 1996 in the year 1999 stood revised notionally treating them to have been initially appointed in the pay scale of Rs. 10000-325-15200.

3.3 On 19th October, 2006 the State Govt. in exercise of powers under proviso to Article 309 of the Constitution of India notified the Uttarakhand Educational (General Education Cadre) Service Rules, 2006. Serial no.5 of the appendix to the said Rules dealt with the posts placed in senior pay scale grade-2 namely, the pay scale of Rs. 10000-325-15200. The total number of sanctioned posts in the said senior pay scale grade-2 was 772. The posts of Principal (Govt. Intermediate College/ Govt. Girls Intermediate College), Vice Principal District Institute of Educational Research & Training, Head of Department/ Deputy Director State Council for Educational Research and Training, Deputy Director Head Quarters and Joint Secretary Uttarakhand Board of School Education were placed in the senior pay scale grade-2 of Rs. 10000-325-15200.

3.4 In consonance with the aforesaid rules of 2006 the Govt. of Uttarakhand issued a Govt. Order dated 20th November, 2006 regarding the revised pay scale of Principal and higher posts. The said Govt. Order reiterated that the pay scale of Rs. 8000-13500 admissible to the Principals was revised to higher pay scale of Rs. 10000-15200 from the date of taking over charge of the said post.

3.5 Vide Govt. Order dated 01st March, 2009 the recommendation of 6th pay commission was made applicable to the teachers/principals working in the primary and secondary educational institutions of the Education Department of the State of Uttarakhand w.e.f. 01st January, 2006. By the said Govt. order dated 1st March, 2009 the pay scale of the post of Principal was upgraded from Rs. 10000-15200 to Rs. 12000-16500. After implementation of the report of the 6th pay commission notionally from 01st January, 2006 and effectively from 01st March, 2009, the pay scale of the post of Principal and equivalent posts was placed in pay band-3 of Rs. 15600-39100 with grade pay of Rs. 7600/- w.e.f. 01-01-2006.

3.6 The above Govt. Order dated 01st March, 2009 was in respect of the members of the Educational Cadre of the department and as a result the officers who were working against the Administrative posts were not getting the benefit of recommendation of the 6th pay commission made applicable in the State of Uttarakhand. In view thereof the anomaly in the pay scale of the officers governed by the same service Rules of 2006 was highlighted and referred to the pay anomaly committee. Subsequently, after taking into account the provisions of the Service Rules of 2006 as well as the recommendation of the pay anomaly committee report, the State Govt. issued a Govt. Order dated 11th March, 2011 thereby granting the upgraded pay scale to the officers of Administrative Cadre of the department as well w.e.f. 01st January, 2006.

3.7 The above Govt. Order dated 11th March, 2011 dealt with the post of Deputy Director (and equivalent posts), Joint Director and Additional Director. The Govt. Order provided that the Deputy Director and equivalent posts would be entitled to upgradation of their pay scale in the pay band-3 carrying the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.8 A perusal of the Govt. Order dated 11th March, 2011 shows that against the post of Deputy Director/equivalent posts it has been mentioned that the said post carried the pay scale of Rs. 10000-15200 on or before 01st January, 2006. It has also been mentioned that the post of Deputy Director/equivalent posts carried the pay scale of Rs. 10000-15200 in terms of the notification no. 317, dated 19th October, 2006 whereby the Service Rules of 2006 were notified. The post of Principal of Govt. Intermediate College/ Govt. Girls Intermediate College was placed in the pay scale of Rs. 10000-15200 alongwith the post of Deputy Director and other equivalent posts.

3.9 By a Govt. Order dated 14th June, 2011 the State Govt. made a declaration regarding the restructuring of the Education Department. After restructuring of the department, 297 posts in the Administrative Cadre of the department were created. The Govt. Order dated 14th June, 2011 shows that 48 posts of Deputy Director/equivalent posts in the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/- and 97 posts of Block Education Officer/equivalent posts in the pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/- were created.

3.10 By a Govt. Order dated 18th July, 2011, the Secretary, Secondary Education invited options from the Principals / Officers for Academic or Administrative Cadre. The said Govt. Order provided that the posts of Deputy Education Officer, Block Education Officer/equivalent posts, Deputy Director/equivalent posts, Joint Director/equivalent posts, Additional Director/ equivalent posts and the post of Director would be the posts belonging to Administrative Cadre. As submitted above, the post of Block Education Officer and its equivalent posts carry a pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/- whereas the posts of Principal, Deputy Director and equivalent posts carry a pay scale of Rs. 15600-39100 with grade of Rs. 7600/-.

3.11 It is considered very pertinent and significant to point out here that the above Govt. Order dated 18th July, 2011 specifically held out that after exercising option the concerned incumbent would be posted in his cadre in terms of his status / position as on 01st January,

2006. It may be reiterated that w.e.f. 01-01-2006 petitioners were placed in pay band-3 of Rs. 15600-39100 with grade pay of Rs. 7600/-

3.12 In pursuance of the Govt. Order dated 18th July, 2011 the petitioners exercised their option and opted for Administrative Cadre of the department. After considering the options of the Officers/Principals of the Education Department, the State Govt. issued an office memorandum dated 25th June, 2012 thereby declaring the list of members of Administrative Cadre and Academic Cadre. The petitioners were allotted the Administrative Cadre of the department.

3.13 By a notification dated 20th December, 2013, the Uttarakhand State Educational (Administrative Cadre) Service Rules, 2013 were notified. Rule 5 of the said rules deals with source of recruitment to various posts of the cadre. As per rule 5 (iv), the post of Deputy Director and its equivalent posts are to be filled by promotion through the selection committee from amongst substantively appointed officers who have completed 4 years service on the post mentioned at serial no. 5 of Appendix-A or have completed 10 years service in his/her cadre on the 01st day of the year of recruitment.

3.14 From a bare perusal of the aforesaid Service Rules, it reveals that rule 16 deals with recruitment by promotion and provides that the post of Deputy Director or equivalent thereto is filled by way of promotion on the basis of seniority subject to rejection of unfit. It is evident from Appendix-A that the posts of Block Education Officer or equivalent thereto have been placed at serial no. 5 and carry the pay scale of Rs. 15600-39100 with grade pay of Rs. 6600/-. It is further evident from the Appendix that the posts of Deputy Director and equivalent posts are mentioned at serial no. 4 and the said posts carry the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.15 By the impugned Govt. Order dated 07th July, 2014 the petitioners who were holding on officiating basis the post of Deputy Director or equivalent thereto in the senior pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/- in terms of the Service Rules of 2006 framed under proviso to Article 309 of the Constitution have been absorbed / adjusted on the post of Block Education Officer or equivalent thereto in the pay scale of Rs. 15600-39100 with lower grade pay of Rs. 6600/-. The Govt. Order dated 07th July, 2014 provides that any order issued earlier on the subject shall stand superseded. The Govt. Order states that the posts mentioned in column-6 against the names of the respective officers shall be treated to be the substantive posts of the said officers. Petitioners figure at serial nos. 124, 51, 102, 110, 119, 116 & 89 of the impugned order dated 07.07.2014.

3.16 It has further been provided by the impugned order dated 07th July, 2014 that the officers who have been absorbed on the post higher than the substantive post held by them, will be treated to be holding the higher posts in the officiating capacity. It has been provided that the officers who are working on the present post and are getting higher pay scale but have been absorbed on the lower pay scale of the lower posts will continue to get the present pay scale as their personal pay until they are promoted in the present pay scale.

3.17 The above impugned action of the State Govt. is per se arbitrary and illegal inasmuch as the petitioners who are the direct appointees in the pay scale of Rs.10000-15200 in terms of the 5th pay

commission recommendation and receiving the upgraded pay scale of Rs.12000-16500 w.e.f. 1st January, 2006 i.e. the pay scale in pay band-3 of Rs.15600-39100 with grade pay of Rs.7600/- cannot be absorbed on a post carrying a lower grade pay of Rs. 6600/-. The said action of the State Govt. being manifestly contrary to the specific promise held out to the petitioners vide Govt. order dated 18th July, 2011 is not sustainable in view of the doctrine of promissory estoppel. If the State Govt. vide its order dated 18th July, 2011 had not made a representation to the concerned officers of the department that after allocation of the Academic or Administrative cadre the status / position of the officers as on 01.01.2006 shall remain intact, the petitioners would not have opted for the Administrative cadre only for being posted / absorbed against the post of Block Education Officer or equivalent thereto carrying lower grade pay. The result of the impugned order dated 07th July, 2014 is that the petitioners who were the appointees in the revised pay scale of Rs.10000-15200 w.e.f. the respective dates in the year 1999 have been absorbed on a post carrying same pay scale (i.e. PB-3 15600-39100 GP-6600 as per the 6th CPC). The impugned order dated 7th July, 2014 is, therefore, liable to be quashed and set aside and the petitioners are entitled to be absorbed as per their status on 01.01.2006 as promised by the Govt. order dated 18th July, 2011.

3.18 The second grievance of the petitioners is that despite their entitlement to the 1st financial upgradation in terms of the ACP Scheme of the State Govt., the said benefit has not been extended to them. Petitioners made their individual representations to the Govt for redressal of their grievance. However, the grievance raised by way of their representations was not attended to.

3.19 In order to demonstrate the justification regarding their entitlement to first financial upgradation, the petitioners need to point out the provisions contained in the ACP Scheme. The Govt. of Uttarakhand vide Govt. order no. 872 dated 08th March, 2011 has taken a policy decision to implement the ACP scheme for its employees. The State Govt. decided to implement the ACP scheme w.e.f. 01-01-2006 in the applicable revised pay structure for all categories of Govt. employees/officers in place of the then applicable provision of time pay scale.

3.20 It was provided in the above Govt. Order dated 8th March, 2011 that on a post of direct recruitment on completion of 10 years, 18 years and 26 years of continuous satisfactory service from the date of regular appointment three financial upgradations shall be made admissible. The three financial upgradations are to be made admissible only in the revised pay structure made applicable w.e.f. 01-01-2006. The following provisions of the Govt. order dated 8th March 2011 containing the ACP Scheme need to be brought to the kind notice of this Hon'ble Tribunal –

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3.21 Subsequent to the above Govt. order dated 08.03.2011, the State Govt. issued several Govt. Orders which were primarily clarificatory in nature. By Govt. Order no. 589, dated 01st July, 2013 also the State Govt. clarified the position relating to the ACP Scheme for the State employees. One of the salient features of the said Govt. Order was that the second financial upgradation on a post of direct recruitment was made admissible on completion of 16 years of

continuous satisfactory service instead of the earlier length of 18 years. The requirement for being entitled to the 1st and 3rd financial upgradation, however, remained unaltered. The following provisions of the above Govt. order dated 1st July, 2013 are considered relevant –

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3.22 From the Govt. orders relating to the ACP Scheme it is obvious that for getting financial upgradation on a post all post holders who have completed the prescribed length of satisfactory service are entitled for that financial upgradation irrespective of their seniority. As submitted earlier, the petitioners were initially appointed in the year 1999 in the pay scale of Rs. 10000-15200 (corresponding revised scale in 6th CPC 15600-39100, PB-3, GP-6600) and after the State Govt. implemented the 6th pay commission report they have been given the upgraded pay scale in pay band-3 Rs. 15600-39100 with grade pay of Rs. 7600/- w.e.f. 1st January, 2006. The Rules of 2006 have also recognized the petitioners as the officers in the pay scale of Rs. 15600-39100 with grade pay of Rs. 7600/-.

3.23 It is the assertion of the petitioners that they had been working on the same post for over 10 years without any financial upgradation. The petitioners fulfil the requirements for entitlement to the 1st financial upgradation from the due dates in the year 2009. As per the ACP Scheme the petitioners are entitled to be given the 1st financial upgradation to the grade pay of Rs. 8700/- in pay band-4 Rs. 37400-67000 on completing 10 years of continuous satisfactory service. The said financial upgradation has become due to the petitioners w.e.f. 30.03.2009, 24.05.2009, 11.05.2009, 06.04.2009, 09.04.2009, 01.05.2009 and 30.03.2009 respectively.

4. Separate identical Counter Affidavits have been filed on behalf of the respondents no. 1 and 2, which mainly state the following:

4.1 The petitioners were selected by the Uttar Pradesh Service Commission by holding a common selection examination in accordance to Uttar Pradesh Educational (General Education Cadre) Service Rule, 1992 for various equivalent posts, namely, District Basic Education Officer, Assistant District Inspector of Schools, Assistant Deputy Director Education, Deputy Secretary & Additional Deputy Secretary Regional Office, UP Board of Secondary Education etc. in the pay scale of Rs. 2200-4000 (revised to Rs. 8000-13500 again revised to Rs. 15600-39100 with grade pay of Rs. 5400) and incidentally appointed as Principals in Government Inter Colleges in their first posting in the year 1999.

4.2 On the basis of the recommendation of the 5th Pay Commission w.e.f. 1.1.1996 the Principal's pay scale was revised in the pay scale of Rs. 8000-13500 actually w.e.f. 01.7.2001 and notionally w.e.f. 1.1.1996 or from the date of appointment. However, for giving parity to the teaching cadre of the State with that of Central Government, the Finance Department issued a Government Order dated 20.12.2001 and the petitioners were given upgraded pay scale of Rs.10000-15200. Thereafter, on accepting the recommendation of 6th Pay Commission the pay scale of petitioners were revised in the scale of Rs.15600-39100 with grade pay of Rs. 6600 vide G.O. no. 395 dated 17.10.2008. Again vide G.O. no. 74 dated 1.3.2009 for giving parity to the teaching cadre of the State with that of Central Government the pay scale of the petitioners was upgraded in the scale

of Rs.15600-39100 with grade pay of Rs. 7600. However, it is relevant to state here that the pay scale of others selected in other equivalent posts remained in the scale of Rs.15600-39100 with grade pay of Rs. 5400 or Rs. 6600.

4.3 The revision of pay scale of post of principal of the petitioners is being produced herein in a tabular form:-

S.no.	Post	Pay Scale Applicable as per 4 th Pay Commission w.e.f. 01.01.1986	Pay Scale Applicable as per 5 th Pay Commission w.e.f. 01.01.1996		Pay Scale applicable as per 6 th Pay Commission w.e.f. 01.01.2006		
			By the State Government	As per Central Government upgraded pay scale	By the State		As per Central Government upgraded pay scale
1.	2.	3.	4.	5.	6.	7.	8.
1.	Principal	Rs.2200-4000	Rs.8000-13500	Rs.10000-15200	Rs.15600-39100 Grade Pay Rs.5400	Rs.15600-39100 Grade Pay Rs.6600	Rs.15600-39100 Grade Pay Rs.7600

From above it is clear that as per common selection in terms of Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 the pay scale of other equivalent posts remained as per column 3, 4, 6 & 7. However, the post of principal was given financial upgradation as per column 5 & 8 at different times as per the pay scale made applicable to Central Government Teachers.

4.4 The contention of the petitioners that inspite of working as Principal since 1999 and having completed more than 10 years of service in the same post are entitled for benefit of first ACP is misconceived in as much as the petitioners have already received revised pay scale and financial upgradation as per Central Government teachers and there being no stagnation in terms of financial benefits are not entitled for the benefit of First ACP. Regarding the entitlement of grade pay of Rs. 8700 it is stated that the post of petitioners (Principal) earlier being a direct recruitment post, as per Uttarakhand Educational (General Education Cadre) Service Rules, 2006 is now a promotional post from Deputy Principal, as such, the petitioners were treated to be Class-1 officer in the senior scale category-II of Rs.15600-39100 in grade pay of Rs. 6600 (part-7 Rule 24 (2)5), 2006 Rules). In view of the aforesaid the status of the petitioners having been changed from Class-II to Class-1 officer in grade pay of Rs. 6600 they are not entitled for the benefit of first ACP, hence, the question of payment of grade pay of Rs. 8700 does not arise.

4.5 Regarding placing the petitioners in the grade pay of Rs. 6600 vide Government Order dated 7.7.2014 it is stated that the petitioners were getting grade pay of Rs.7600 in terms of parity with Central Government teachers as they were functioning as Principals. The petitioners after having opted and allotted administrative cadre have been rightly placed in the equivalent post namely Block Education Officer in the pay scale of Rs.15600-39100 with grade of Rs. 6600/-. Therefore, the contention of the petitioners that they have been placed in a lower grade pay is misconceived. It is pertinent to

submit here that an employee cannot be granted promotional or higher pay scale merely on the basis that the post in which he was posted has been upgraded in terms of pay scale while others who were selected through same process but were incidentally posted to different posts, the pay scale of which have not been upgraded were getting different lower pay. Therefore petitioners can only get higher pay, at most for the period they worked on the upgraded posts. In this case the petitioners have been given upgraded pay as a personal pay, as its evident from the order dated 07-07-2014. The Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 were applicable at the time when the petitioners got selected and appointed. Under these Rules, certain posts were grouped together. Post of Principal was one of them, the other posts being that of Additional District Basic Education officer, Additional District Inspector of School and Others. All these posts were having pay scale of Rs. 2200-4000, revised pay scale of Rs. 8000-13500, again revised pay scale of Rs. 15600-39100 with grade pay Rs. 5400 as of now). The pay scale of the post of Principal was upgraded from time to time while pay of other posts didn't change. Through the same selection process, incidentally the petitioners got posting as Principal for some point of time, while others got posting in other posts in the group of posts. On upgradation of the pay scale of the post of Principal, the persons who incidentally got posting as principal cannot get extra benefit of pay upgradation. At the most they can get higher pay for the period they were working as principals and when they get other posting, they should return to their original pay scale. On getting adjusted to the administrative cadre posts, which they themselves opted, they have been adjusted to the promotional post and pay scale, over and above that, their upgraded pay was protected as personal pay.

5. Rejoinder Affidavit has been filed on behalf of the petitioners to the above Counter Affidavits mainly stating the following:

.....

6. After hearing arguments of learned Counsel for the parties at some length, this Tribunal passed the following order on 02.05.2023:

“Heard arguments of learned Counsel for the parties at some length.

The Tribunal would like clarifications on the following points:

(i) The version of the respondent-department is that the teaching cadre is not covered by the A.C.P. scheme because in the case of teaching cadre, they are already given upgraded scales namely selection scale and promotion scale as parity with Central Govt. teachers. Had the petitioners not opted for the administrative side, they would have continued as Principals of the Inter Colleges. In any case, in 2009, when the option for administrative side had not been asked, they were absolutely at par with the other Principals of Inter Colleges. It is understandable that the other similarly placed Principals of Inter Colleges have not been given the 1st A.C.P. of grade pay Rs. 8700/-. The department may affirm the same.

(ii) The petitioners were absorbed on the post of Block Education Officer which carries the grade pay of Rs. 6600/- and the balance

of the grade pay of Rs. 7600/-, which they were already getting as Principals, was given as personal pay to them to make up the difference between the two grade pays. Had the petitioners at the time of their selection in 1999 been kept on the administrative posts, then what would have been the posts and further financial upgradations admissible to them?

(iii)The respondent-department may also clarify, in detail, that why they are denying A.C.P.s to teaching cadre when the same is not specifically prohibited in the Govt. Orders relating to A.C.P.

Parties may file the desired information through affidavit within two weeks. Copies of this order may be provided to the learned Counsel for the parties today itself. Registry may also send a copy of this order to the respondents.”

.....

7. Learned A.P.O. informed in the hearing on 20.06.2023 that he had provided copy of this Tribunal’s order dated 02.05.2023 to the department and even after telephonically reminding the department, no instructions have been received from the department. Learned Counsel for the petitioner pleaded that in such situation, opportunity to the respondents for filing reply be closed. Then, the learned Counsel for the parties were heard at length. Subsequently, written submissions on behalf of the petitioners have been filed on 26.06.2023, whose further contentions are reproduced as below:

.....

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.

9. The petition is disposed of with the above directions/ observations. No order as to costs"

15. Review application, being review application no. 05/NB/DB/2023, Vijay Pal Singh and others vs. State of Uttarakhand and others, was filed on behalf of the petitioners/ review applicants for reviewing the order dated 29.08.2023, which (review application) was dismissed by the Tribunal *vide* order dated 04.10.2024.

* * *

16. Since the above-noted claim petitions are covered by the decision rendered by the Tribunal on 29.08.2023 in claim petition no. 157/NB/DB/2022, Vijay Pal Singh and others vs. State of Uttarakhand and others, therefore, these petitions are decided in terms of the said decision (Vijay Pal's).

* * *

17. Let a copy of this order be placed on the file of claim petition no. 150/NB/DB/2023, Brij Mohan Singh Rawat & others vs. State of Uttarakhand and others.

(Capt. Alok Shekhar Tiwari)
Member (A)

(Justice U.C. Dhyani)
Chairman

DATE: 13th January, 2025
DEHRADUN
RS