

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**WRIT PETITION NO 85(S/B) OF 2022
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 102/DB/2022]**

1. Ravindra Singh Pawar, aged about 56 years, s/o Sri Balpa Singh Panwar, at present posted as Officiating Assistant Engineer-in-Charge, Municipal Corporation, Kotdwar, Uttarakhand.
2. Gulab Singh Panwar, Aged about 54 years, s/o Late Sri Dharam Singh, r/o Papariyana Gopeshwar, Chamoli, Posted as Junior Engineer, Municipal Council, Vikas Nagar.
3. Ramesh Singh Bisht, Aged about 55 years, s/o Late Shri Rajendra Singh Bisht, r/o Prashant Vihar, Nakronda Road, Harrawala, Dehradun, Currently posted as Officiating Assistant Engineer-in Charge, Municipal Council, Mussoorie.
4. Ved Prakash Badhani, Aged about 58 years, s/o Sri Vishweshwar Prasad Badhani, r/o Ho.No. 62, Vivekanand Gram Street-4, Nathanpur, Dehradun, Currently posted as Officiating as Assistant Engineer-in Charge, Municipal Corporation Dehradun.
5. Rajit Kumar Kotiyal, aged about 53 years, s/o Sri Ganga Prasad Kotiyal, r/o 491/162, Narayan Vihar, Kargi Chowk, Dehradun, Currently posted as Officiating Engineer-in Charge, Municipal Corporation Dehradun.
6. Anand Singh Mishrwan, Aged about 47 years, s/o Shri Mor Singh Mishrwan, r/o Ganga Nagar, Rishikesh, Dehradun, Currently posted as Officiating Engineer-in Charge, Municipal Corporation Rishikesh.
7. Vinod Thapliyal, Aged about 52 years, r/o Bhagirath Puram, Banjarawala, Dehradun, Junior Engineer, Municipal Corporation Dehradun.
8. Umesh Chandra Awasthi, Aged about 53 years, s/o Sri Ram Dutt Awasthi, r/o Jagdamba Colony, near Sports Stadium, Pithoragarh, posted as Junior Engineer, Municipal Council, Pithoragarh.
9. Prem Kumar Sharma, aged about 53 years, s/o Sri Shiv Kumar Sharma r/o Autosh Nagar, Rishikesh Junior Engineer, Municipal Corporation Dehradun.
10. Digar Singh Mahra, aged about 54 years, s/o Late Sri Sher Singh Mahra, r/o Sainik Colony, Malli Bamroi, Haldwani, Nainital, posted as Junior Engineer, Municipal Council, Nainital.
11. Laxman Singh Bora, aged about 56 years, s/o Sri Diwan Singh Bohra, r/o Village Aam Bagh, Taukpur, Champawat, posted as Junior Engineer, Municipal Council, Tanakpur.

12. Mahendra Singh Bisht, aged about 56 years, s/o Late Shri Jeewan Singh Bisht, r/o Tilak Nagar, Dal Dath, Kaladunga Road, Haldwani

.....Petitioners

VS.

1. State of Uttarakhand through Secretary Urban Development, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director, Urban Development, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.

.....Respondents.

Present: Sri M.C.Pant, Sri Abhishek Chamoli &
Sri Abhishek Pant, Advocates, for the petitioners.
Sri V.P.Devrani, A.P.O., for Respondents.

JUDGMENT

DATED: FEBRUARY 06, 2025

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand at Nainital, passed an order in WPSS No. 85/2022, Ravindra Singh Panwar and others vs. State of Uttarakhand and others, on 01.09.2022, as follows:

“The petitioners have preferred the present writ petition to assail the Public Notice dated 04.01.2022 inviting applications to fill-up the posts of Assistant Engineer on the ground that the said posts can be filled up by promotion.

2. The petitioners are public servants, and the dispute raised in this petition squarely falls for consideration within the jurisdiction of the Uttarakhand Public Services Tribunal.

3. Since a counter-affidavit has been filed in this matter, we transfer the records of this petition to the Uttarakhand Public Services Tribunal for registration and hearing as a claim petition.

4. The interim order passed in this petition on 16.02.2022 shall continue till the matter is taken up for consideration by the Tribunal.

5. This petition stands disposed of accordingly."

2. Writ Petition No. 85 (S/S) of 2022 is, accordingly, reclassified and renumbered as Claim Petition No. 102 /DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioners shall be referred to as 'petitioners', in the body of the judgment.

3. Following reliefs have been sought by the petitioners in present petition:

"I. Issue appropriate writ or direction in the nature of Certiorified mandamus declaring the impugned public notice dated 04.01.2022 along with all consequential orders and actions which are offshoots of the impugned order, as arbitrary, illegal, irrational, unjust which also suffers from legal malafide and to quash the same after calling entire records from the Respondents, along with its effect and operation and also direct the respondent to forthwith consider the case of the petitioners for promotion on the post of Assistant Engineer with all consequences of benefits and in a time bound manner and further to command the respondents not to fill up the post of Assistant Engineer which are available for promotion by way of deputation keeping in view of facts highlighted in the body of petition or to mould the relief appropriately to safeguard the interest of the petitioners.

II. Issue any other writ rule or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case.

III. Award cost of petition."

4. Petitioners, in present petition, have assailed the impugned public notice dated 04.01.2022, issued by Respondent No.2 (Director, Urban Development), who invited application from the regular employees of the Central Govt./ State Govt. and Public Undertaking Corporations, having prescribed qualification, to be taken on deputation. One of the conditions in

the public notice was that the applications of the employees working in local bodies, will not be accepted.

5. It is the submission of Ld. Counsel for the petitioners that such condition is contrary to the Uttarakhand Local Municipal Body (Centralized) Staff Service Rules, 2019 (for short, Staff Service Rules, 2019), as it is nowhere mentioned in the Rules that source of recruitment could be through contract and by way of deputation. In reply thereto, Ld. A.P.O. submitted that it is not necessary to mention such a condition in the Service Rules. According to Ld. Counsel for the petitioners, petitioners have fundamental right of being considered for promotion in order of seniority to the post of Assistant Engineer. In the instant case, applications were invited for taking the applicants on deputation and the existing employees of the Local Bodies have been barred for applying to such posts. According to the petition, impugned order cannot sustain as the post of Assistant Engineer is within the purview of Public Service Commission and as such no order for taking the employees on deputation can be passed without the approval of Public Service Commission.

6. Petitioners were initially appointed as Daily Wager. Thereafter, their services were made *ad hoc* under the post of Junior Engineer. They were not regularized despite their entitlement to be classified permanent employees. They were, however, given regular pay scale consolidating their pay at par to the regular employees.

7. Petitioners were regularized *vide* Office Memorandum dated 24.12.2014 on the recommendation of selection committee as per the Daily Wages, Work Charged, Contract, Fixed Salary, Part-time and Ad-hoc Appointed Employees Regularization Rules, 2013. Details of petitioners' employment have been given in the table appended to Para 3 and thereafter in Para 4 to 6 of the petition. The words 'Service Cadre', 'Source of Recruitment' have been reproduced in Para 7 of the petition. The Tribunal need not reproduce these definitions, for, they are already part of record.

8. Rule 16 of the Staff Service Rules, 2019 has been reproduced at the end of Para 7 of the petition. The Rules relied upon by the petitioners have also been brought on record as Annexure Nos. 9, 10, 11 & 12 to the petition.

9. Petition is supported by the affidavit of Sri Ravindra Singh Panwar, Petitioner No.1. Relevant documents have been filed along with the petition.

10. Claim Petition has been contested on behalf of Respondents. Counter Affidavit has been filed by Sri Vinod Kumar Suman, the then Secretary (In-charge), Urban Development Department, Govt. of Uttarakhand, on behalf of Respondents. Relevant documents have been filed in support of Counter Affidavit.

11. In Para 4 of the C.A. thus filed, it has been mentioned that there is extreme shortage of manpower in the Engineering Cadre of the Local Bodies, which is causing great hardship in discharging technical duties in various construction work undertaken by the Local Bodies and in implementation of various programmes of the Central Government. In addition to this, there are various policies initiated by the State Govt., which require technical experts, but due to shortage of such manpower in the Local Bodies, the policies and programmes are not being implemented effectively. To meet such a situation, Respondent No. 2 issued impugned public notice for appointing the Assistant Engineers on deputation.

12. In Paras 6 and 7 of the C.A., the status of the petitioners as Daily Wager, on *Ad-Hoc* basis, as Regular Junior Engineers etc. has been dealt with. The Tribunal does not feel it necessary to reproduce those averments, for the sake of brevity. Further, Tribunal need not go into such details for deciding the controversy in hand. In Para 7 of the C.A./W.S., it has been mentioned that the petitioners were regularized *w.e.f.* 24.12.2014 and as on date, they did not complete minimum period of service on the post of Junior Engineer (Civil). Since the petitioners have not availed benefit of Relaxation Rules, 2021, therefore, they are not applicable to the petitioners.

13. In Para 8 of the C.A./W.S., it has been mentioned, among other things, that the petitioners do not meet the eligibility criteria, therefore, they have no *locus standi* for conducting the DPC. The action of the official respondents does not infringe any of their fundamental right.

14. The short question, which arises for consideration of this Tribunal is, whether it was proper on the part of the respondent department to say, in public notice dated 04.01.2022 (Annexure: 1), that the employees working in Local Bodies are not eligible to apply for deputation, pursuant to such public notice?

15. Tribunal's task has been made much easier by the Hon'ble High Court, who was pleased to stay the Notification dated 04.01.2022 (Annexure: 1), while issuing *rule nisi* (on 16.02.2022).

16. Interim order dated 16.02.2022, passed by the Hon'ble High Court of Uttarakhand, reads as under:

“Heard Shri M.C.Pant, learned counsel for the petitioners and Mr. S.S.Chaudhary, learned Standing Counsel for the State of Uttarakhand.

Issue rule nisi.

In view of the fact that the Notification dated 04.01.2022 (Annexure-1) is violative of the rules governing the selection appointment and promotion of Assistant Engineer (Civil), the Annexure-1 'shall remain stayed as far as the entry no. 2 i.e. relating to Assistant Engineer (Civil) is concerned, till the next date of listing.

List this matter on 6th April, 2022.

17. If eligible employees are to be taken on deputation, the condition that the employees of Local Bodies shall be barred from applying for such posts, could not have been put in the public notice/ Notification.

18. If the applications from eligible persons were to be called, the employees of Local Bodies should not have been barred from applying to the deputation posts. Such condition is discriminatory to the petitioners. The impugned Notification/ public notice is, therefore, bad in the eyes of law, to such extent.

19. On receiving instructions from the respondent department, Ld. A.P.O. apprised the Tribunal that the Notification/ public notice dated 04.01.2022 (Annexure: 1) is unlikely to be implemented in future.

20. Without elaborating any further on the merits of the petition, the interim order passed by the Hon'ble High Court is made absolute. The petition thus stands disposed of with the direction to the respondents to consider the case of the petitioners for promotion on the post of Assistant Engineer, in accordance with law.

21. The question, whether a deputationist can be inducted in regular service cadre or not, is left open to be decided by the Tribunal in some other petition at an appropriate occasion.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 06,2025.
DEHRADUN

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