

**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. 129/NB/DB/2022

1. Umesh Chandra Joshi S/o Shri. Prem Ballabh Joshi, Presently Serving as Assistant Teacher (Primary), Government Primary School, Pinanabhat, District- Champawat.

2. Dungar Dev Joshi S/o Shri. Ghanshyam Joshi, Presently Serving as Assistant Teacher (Primary), Government Primary School, Majhera, District- Champawat.

.....**Petitioners**

Vs.

1. State of Uttarakhand through Secretary, Education, Government of Uttarakhand, Dehradun.

2. Director (Elementary Education), Government of Uttarakhand, Dehradun.

3. Additional Director (Elementary Education), Kumaun Mandal, Nainital.

4. District Education Officer (Elementary Education), Champawat.

5. Deputy Education Officer, Champawat.

.....**Respondents.**

Present: Sri Maneesh Bisht, Advocate for the petitioners
Sri Kishore Kumar, A.P.O., for the respondents

JUDGMENT

DATED: FEBRUARY 28, 2025

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

The petitioners have filed this claim petition for the following reliefs:

"i) To issue an order or direction for quashing the order dated 28.09.2022 passed by respondent no. 2.

ii) To issue order or direction, directing the respondents to grant the benefit of seniority/pay increment to the

petitioners/applicants from the very first date of initial appointment i.e. 15.01.2015, or in alternate to grant the benefit of seniority/pay increment to petitioners/ applicants from the respective date of passing their TET examination.

iii) To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iv) To award the cost of the petition in favour of the applicant.

2. Facts, in brief, of the claim petition are as follows:

2.1 The petitioners were initially engaged as "Shiksha Mitra" in various schools of district Champawat in the Year, 2001 and as such they were regularly discharging their duties as "Shiksha Mitra" till their absorption on the regular pay scale of Assistant Teacher (Primary).

2.2 In the Year, 2015, the petitioners were adjusted/given the provisional appointment as Assistant Teacher (Primary School), in pursuance of the order dated 18.12.2014, passed by the Hon'ble High Court in Special Appeal No.499/2014, and other connected matters in the pay band of 9,300/- to 34, 800/- along with grade pay of 4,200/-. However, vide the said order a rider has been imposed that the appointments made there under, would be subject to the final outcome of the special appeal no. 499 and other connected matters, and further stating therein that if the Hon'ble High Court, concluded that no relaxation regarding the TET can be given, then on those circumstances their appointments would automatically be cancelled.

2.3 In pursuance of the direction given by the Hon'ble High Court, the respondent department vide order dated 18.01.2018, confirmed the appointment of the petitioners as Assistant Teacher (Primary School) in view of the order dated 27.11.2017.

2.4 A bare perusal of the order dated 15.01.2015, would also reveal, the fact that although the petitioners were appointed on basis of the directions of the Hon'ble High Court but their appointment was

made after the recommendation of committee, as per the governing rules i.e. Uttarakhand Government Primary Education (Teachers) Service Rules, 2012, coupled with the fact that their appointment was made on the regular pay scale. Although necessity of TET is now made absolute, but the facts of the matter is that petitioners have passed their TET examination in the Years, 2015 & 2016, itself, and if the contention of the respondents may be admitted for a moment, that petitioners were not TET qualified on 15.01.2015, though, on other hand, respondent department vide the order dated 02.10.014, has given the appointment to some other persons (counterparts of petitioners herein) with the rider that their pay increment would only be applicable from the date of qualifying the TET examination. Hence, same ratio should have been adopted by the respondent department in the case of petitioners also, and the pay increment/seniority shall be given to them w.e.f., their respective date of passing TET examination. The respondent department has made a totally arbitrary & whimsical discrimination, which is not sustainable in the touchstone of reasonableness and fairness.

2.5 Aggrieved by the acts of the respondents, the petitioners had made several representations to the concerned, but in vain, and thus on very compelling situation the petitioners have preferred a Claim Petition before this Hon'ble Tribunal which was numbered as Claim Petition No.101/NB/DB/2021 (Umesh Chandra Joshi and others V/s State of Uttarakhand and others). The aforesaid Claim Petition was ultimately decided by this Hon'ble Tribunal on 27.07.2022, by directing the respondent no. 2 i.e. Director, Elementary Education, Uttarakhand, to decide the representation of the petitioners.

2.6 In pursuance of the direction of this Hon'ble Tribunal, the petitioners have moved a detailed representation dated 08.08.2022, before the respondent no.2 along with the judgment and order dated 27.07.2022. Respondent no.2 vide order dated 28.09.2022, without

touching the merit of the case and without appreciating the facts of matter has arbitrarily rejected the claim of the petitioners.

3. C.A./W.S. has been filed on behalf of the respondents no. 1 to 3, in which it has been contend that:-

3.1 याची तत्समय शिक्षा मित्र के पद पर कार्यरत था एवं मात्र द्विवर्षीय डी०एल०एड० प्रशिक्षण प्राप्त शिक्षा मित्र/याची को माननीय उच्च न्यायालय द्वारा पारित निर्णय दिनांक 18.12.2014 के क्रम में सहायक अध्यापक, प्राथमिक, के पद के प्रति नितान्त औपबंधिक नियुक्ति प्रदान की गई थी। तदसमय याची उत्तराखण्ड राजकीय प्रारम्भिक शिक्षा (अध्यापक) सेवा नियमावली 2012 के अनुसार कक्षा 1 से कक्षा 5 तक की कक्षाओं के शिक्षकों को नियुक्ति हेतु निर्धारित अर्हता द्विवर्षीय डी०एल०एड० के साथ अध्यापक पात्रता परीक्षा उत्तीर्ण धारी नहीं थे। जिस कारण याचीकर्ता तत्समय नियमानुसार सहायक अध्यापक प्राथमिक, के पद पर नियुक्ति हेतु पात्र नहीं थे। राज्य में प्रचलित उत्तराखण्ड राजकीय प्रारम्भिक शिक्षा (अध्यापक) सेवा नियमावली 2012 यथा संशोधित नियमावली के प्राविधान के अनुसार ही नियुक्ति प्रक्रिया पूर्ण करने तथा चयन की स्थिति में ही याची सहायक अध्यापक प्राथमिक के पद पर नियुक्ति प्राप्त कर सकता है।

3.2 माननीय उच्च न्यायालय उत्तराखण्ड द्वारा दिनांक 23.08.2017 को पारित अन्तिम निर्णय के पश्चात सहायक अध्यापक प्राथमिक के पद पर नियुक्ति हेतु अर्हता पूर्ण करने वाले शिक्षा मित्रों को शासनादेश सं०-W-682/XXIV(1)/37/2006 दिनांक 27.11.2017 के क्रम में सहायक अध्यापक प्राथमिक के पद पर नियमित नियुक्ति प्रदान की गयी।

3.3 उत्तराखण्ड राजकीय प्रारम्भिक शिक्षा (अध्यापक) सेवा नियमावली 2012 यथा संशोधित नियमावली के प्राविधानों में सहायक अध्यापक प्राथमिक के पद पर नियुक्ति हेतु दी गई अर्हता में ऐसे शिक्षा मित्र जिन्होंने इन्दिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय (IGNOU) से द्विवर्षीय डी०एल०एड० प्रशिक्षण उत्तीर्ण हैं को सहायक अध्यापक प्रारम्भिक के पद पर नियुक्ति हेतु पात्र माना गया है। सेवा नियमावली 2012 के नियम 15 में सहायक अध्यापक, प्राथमिक के पद पर नियुक्ति हेतु चयन की प्रक्रिया दी गई है। सेवा नियमावली 2012 में योग्यता धारी शिक्षा मित्रों को सहायक अध्यापक प्राथमिक के पद पर सीधे समायोजित किये जाने की व्यवस्था नहीं दी गई है। जिस कारण याची को वर्ष 2015-16 में सहायक अध्यापक प्राथमिक के पद पर नियमित नियुक्त नहीं माना जा सकता है। याची को माननीय उच्च न्यायालय में योजित विशेष अपील में पारित अंतिम निर्णय दिनांक 23.08.

2017 के उपरान्त निर्गत शासनादेश दिनांक 27.11.2017 के कम में सहायक अध्यापक प्राथमिक के पद नियमित नियुक्ति प्रदान की गई है। अतः नियमित नियुक्ति से पूर्व याची को सेवा सम्बन्धित लाभ नहीं दिया जा सकता है। इसी कम में निदेशक प्रारम्भिक शिक्षा द्वारा माननीय लोक सेवा अधिकरण उत्तराखण्ड के आदेश दिनांक 27.07.2022 के समादार में याचीगणों के प्रत्यावेदनों का निस्तारण अपने आदेश 28.09.2022 द्वारा किया गया।

3.4 वर्ष 2017 में विशेष अपील में पारित अन्तिम निर्णय दिनांक 23.08.2017/04.09.2017 के उपरान्त शासनादेश सं० 682 दिनांक 27.11.2017 के क्रम में सहायक अध्यापक प्राथमिक के पद पर नितान्त औपबन्धिक रूप से कार्यरत ऐसे शिक्षा मित्र जो उत्तराखण्ड राजकीय प्रारम्भिक शिक्षा (अध्यापक) सेवा नियमावली 2012 (यथा संशोधित नियमावली) के प्राविधानानुसार सहायक अध्यापक प्राथमिक के पद नियुक्ति हेतु अर्हता पूर्ण करते थे को सहायक अध्यापक प्राथमिक के पद पर नियमित नियुक्ति प्राप्त करने की तिथि से ही सेवा सन्दर्भित लाभ यथा वरिष्ठता/पदोन्नति का लाभ दिया जा सकता है। इसके अतिरिक्त माननीय लोक सेवा अधिकरण, उत्तराखण्ड के संज्ञान में यह लाना है कि माननीय सर्वोच्च न्यायालय में योजित सिविल रिट पीटीशन सं०-57/2008 रमेश कुमार बनाम हाईकोर्ट दिल्ली व अन्य में पारित निर्णय दिनांक 01.02.2010 के अनुसार—

"In view of the above, as it remains admitted position that petitioner Ramesh Kumar had secured 46.25% marks in aggregate and as he was required only to have 45% marks for appointment, writ petition No. 57 of 2008 stands allowed. The connected writ petition filed by Desh Raj Chalia as he failed to secure the required marks in aggregate, stands dismissed. The respondents are requested to offer appointment to petitioner Ramesh Kumar, at the earliest, preferably within a period of two months from the date High court. It is however, clarified that he shall not be entitled to get any seniority or any other perquisite on the basis of his notional entitlement. Service benefits shall be given to him from the date of his appointment. No costs."

अतः माननीय सर्वोच्च न्यायालय के उक्त निर्णय के कम में भी याचीगणों को सेवा सम्बन्धित लाभ नियमित नियुक्ति की तिथि (नवम्बर 2017) के उपरान्त ही दिए जा सकते हैं।

3.5 याची की याचिका सव्यय अस्वीकार होने योग्य है। मा० न्यायाधिकरण से प्रार्थना है, कि याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जिस कारण उक्त याचिका खारिज होने योग्य है।

4. R.A. has also been filed on behalf of the petitioners denying the contents of the C.A./W.S. and have reiterated the averments made in the claim petition.

5. We have heard the learned counsel for the parties and perused the record.

6. Learned Counsel for the petitioners has pleaded that the petitioners have been provisionally absorbed by the Respondents vide order dated 15th January 2015 subsequent to the Interim order dated 18/12/2014 of the Hon'ble High Court of Uttarakhand at Nainital in the Spl. Appeal No 499/2014, 500/2014 and 501/2014. The appointment of the petitioners was subject to the final decision of the Hon'ble High in the writ petitions and in case the Hon'ble High Court does not exempt the qualification of Teachers Examination Test (TET), the provisional absorption/appointment will be automatically cancelled. In the meantime, the petitioners acquired the required qualification (passing of TET) in the year 2015 and 2016 and they were appointment on regular basis vide Government order dated 18th January 2018, subsequent to the final decision of the Hon'ble High Court in the Spl. Application No 351/SS/ 2016. There are other teachers who were similarly placed but they have been given regular appointment even before their acquiring the required qualification. The petitioner on the same analogy be given the benefit of the annual increment/seniority etc. with effect from their date of provisional appointment 15.01.2015. The learned Counsel further relied on the judgement of the **Hon'ble Supreme Court in the matter of Direct Recruit Class-II Engineering Officers Association Vs State of Maharashtra and others in Civil Appeal No 194-202 of 1986 decided on May 2, 1990** whereby the Hon'ble Supreme Court directed that-

“47(A)

(B) If initial appointment is not made by following the procedure laid down by the rules but appointee continues in the post uninterruptedly till the

regularisation of his service in accordance with the rules, the period of officiating service will be counted.

.....

7. The petitioners were appointed on 15/1/2015 provisionally and they were not having the required qualification of passing the TET as prescribed under the Rule 9(a)(2) Uttarakhand Government Primary Education (Teacher) Service Rules 2012. They were selected from among the 'Shiksha Mitra' who either have or have not the required qualification. In case those who did not have the required qualification they were given exemption of required qualification of passing the TET examination subject to the final decision of the Hon'ble High Court of Uttarakhand, Nainital on the exemption of the passing of TET. Learned Counsel has further pleaded that the impugned order dated 28/9/2022 of respondent No. 2 is liable to be quashed.

8. Learned A.P.O. has pleaded that the petitioners have been given the regular appointment from 2018 subsequent to the final decision of the Hon'ble High Court in the Spl. Application No. 351/SS/2016. The petitioners did not have the required qualification for appointment to the post Asstt. Teacher in 2015 and their appointment was subject to the final decision of the Hon'ble High Court of Uttarakhand at Nainital subject to agreeing to the relaxation of the required qualification of passing of TET. Which they acquired subsequently and they were given regular appointment afterwards on the final decision of the Hon'ble High Court in the writ petition. The petitioners cannot be given the benefits of increments and the seniority from the year 2015 as they did not have the required qualification of passing of TET Examination. This has been reiterated in the order of appointment dated 15.01.2015 issued subsequent to the decision of the Hon'ble High Court in the writ Petition no. 501 of 2014 that in case they do not acquire the required eligibility, their absorption/appointment will automatically be cancelled. The learned A.P.O. has relied on the judgement of the Hon'ble Supreme Court in

the matter of Ramesh Kumar Vs. Delhi High Court and others in the writ petition No 57/2008 that service benefits shall be given from the date of the appointment. The learned A.P.O. has pleaded that the Claim Petition is liable to be dismissed.

9. Based on the pleadings from the parties, we are of the opinion that the petitioners were, although appointed in the year 2015 but that was on provisional basis and they were not eligible to hold the post of the Asstt. Teacher at that time. They acquired the eligibility of passing the TET subsequently and they were appointed on regular basis in 2018 after the final decision of the Hon'ble High Court in one of the similar petitions. The respondents while deciding the representation of the petitioners have highlighted the decision of the Hon'ble High Court of Uttarakhand, Nainital in the matter of Spl. Appeal No. 82/2017 and other appeals on 4/9/2017. The relevant para of the decision of the Hon'ble court is as under:

Meaning thereby, despite the fact the Shiksha Mitras and the Shiksha Acharyas, who held out to be not an appointee against a regular post and not eligible to hold the post, Hon'ble Apex Court has granted them a liberty to participate in two consecutive recruitments subject to the condition they avail the qualification of TET for the proposed selection. Their participation in the process was subject to the condition of acquiring the TET qualification. The Hon'ble Apex Court has also observed that they may be granted suitable age relaxation and some weightage for their experience may be decided by the concerned authority. On an over all scrutiny having qualification of TET has become inevitable for being appointment as primary school teacher.

.....

10. The petitioners are praying for the seniority/increment from the date of their appointment in 2015 or from the date of passing the TET. In view of the judgement of the Hon'ble Supreme Court in the matter of **Direct Recruit Class-II Engineering Officers Association Vs State of Maharashtra and others in Civil Appeal No 194-202 of 1986 decided on May 2, 1990** whereby the Hon'ble Supreme Court directed that-

47 (A)

(B) If initial appointment is not made by following the procedure laid down by the rules but appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

.....

The decision of the Hon'ble High Court of Uttarakhand, Nainital that passing of the TET is compulsory for the appointment of Assistant Teacher and the fact that the petitioners have worked continuously till their regular appointment in the same post of the Asstt. Teacher since their appointment, they acquired the required qualification of passing of the TET also in the intervening period. The petitioners may be considered for giving the benefit of the seniority from the date of passing their passing TET in September 2015 and September 2016.

11. In view of the above, the impugned order dated 28.09.2022 is liable to be quashed and the claim petition is liable to be allowed.

ORDER

The claim petition is allowed. The impugned order dated 28.09.2022 is hereby quashed. The respondents are hereby directed to grant the benefit of seniority to the petitioners from their respective date of passing of TET examination. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: FEBRUARY 28, 2025
NAINITAL.
KNP