

**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. 52/NB/DB/2023

Mahiman Singh Bora Aged about 61 years (Male) S/o Late Sher Singh Bora, R/o PWD Colony, Bhotiaparao, Ramnagar, District Nainital.

.....Petitioner

Vs

1. State of Uttarakhand through Secretary, Public Works Department, Government of Uttarakhand, Dehradun.
2. Engineer-in-Chief/Head of Department, Public Works Department, Government of Uttarakhand, Dehradun.
3. Finance Controller, Office of the Engineer-in-Chief/Head of Department, Public Works Department, Accounting Group, Government of Uttarakhand, Dehradun.
4. Chief Engineer (Level-I), Public Works Department, Haldwani, District Nainital.
5. Superintending Engineer, 2nd Circle, Public Works Department Nainital, District Nainital.
6. Executive Engineer, Construction Division, Public Works Department Ramnagar, District Nainital.

.....Respondents

Present: Sri Harendra Belwal, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: MARCH 05, 2025

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

Present claim petition has been filed by the petitioner for the following reliefs:

- a) *To set aside the impugned order no. 484/ कोर्टकेस dated 13.03.2023, issued by respondent no. 6 (Annexure No. 1 to Compilation-I).*

b) To direct the respondents departments to treat the services of the petitioner, as regularized w.e.f. 21.12.1984 and grant him all service benefits including Pension, Gratuity and other post retiral benefits.

c) To refix the Pension, Gratuity and other post retiral benefits on the basis of the last payment certificate, issued by respondent department (Annexure No. 18 to this claim petition) and award interest @ 18% per annum on the delayed of the payment.

d) Issue any other suitable order or direction in favour of petitioner, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

e) Award cost of claim petition in favour of petitioner.

2. Brief facts, necessary for adjudication of the present petition, as stated by the petitioner, are as follows:

2.1 The petitioner was initially appointed as a Junior Lipik/Clerk on 21.12.1984, having its Pay Scale 354-10-424-द०स०-10-5-12-514-द०स०-12-550 on the Ad-hoc basis after adopting due process of selection and petitioner joined in office of Executive Engineer, Construction Division, Public Works Department, Ramnagar, District Nainital.

2.2 The services rendered by the petitioner had been regularized on 27.12.1989 on the post of Junior Lipik/Clerk having its pay scale 354-550, in the office of the Executive Engineer, Construction Division, Public Works Department, Ramnagar, District Nainital.

2.3 On 26.08.2015, the office of the Engineer-in-Chief, P.W.D. Dehradun, Uttarakhand had circulated the revised seniority list, showing the name of the petitioner at serial no. 410, the date of regular appointment had been shown as 21.12.1984.

2.4 The Executive Engineer, Construction Division, P.W.D. Ramnagar sent a letter dated 26.07.2022 to the Superintending Engineer Nainital, IInd Circle, P.W.D. Nainital and recommended the case of the petitioner, mentioned therein all service benefits including Pension shall be granted w.e.f. 21.12.1984.

2.5 The Superintending Engineer Nainital, IInd Circle, P.W.D. Nainital, sent a letter dated 27.07.2022, addressed to the Chief Engineer, P.W.D. Haldwani, recommended the case of the petitioner, grant the service benefits from the date of joining i.e. 21.12.1984.

2.6 The petitioner has superannuated from the post of Chief Administrative Officer from the office of Construction Division, P.W.D. Ramnagar on 31.10.2022, after attaining the age of superannuation. The petitioner has received Basic Pay Rs. 67000+D.A. Rs. 22780+Hill Allowance Rs. 540, Total comes Rs. 90320. The petitioner is entitled to get the Pension and other service benefits on the basis of the last drawn salary.

2.7 The petitioner has moved an application on 03.11.2022, addressed to the Secretary, Public Works Department, Dehradun for redressal of his grievances that other similarly situated employees had been extended the service benefits from their date of initial appointment i.e. 21.12.1984. The respondent department i.e. Executive Engineer, Construction Division, Public Works Department, Ramnagar, District Nainital vide order dated 30.11.2022 wrongly made a fixation showing the date of initial appointment 05.01.1990, while the petitioner was inducted in the office of the respondent department as a Junior Lipik on 21.12.1984 and seniority list has been prepared by the respondent department, in which the date of initial appointment has been shown on 21.12.1984.

2.8 The respondent department did not release the Pension, Gratuity and other admissible dues in favour of the petitioner, while the petitioner has moved an application on 23.02.2024 & 03.07.2024.

2.9. It is submitted that the petitioner is a retired government employee who had superannuated as a Chief Administrative Officer, from the office of the Executive Engineer, Construction Division, Public Works Department, Ramnagar, District Nainital, as per the case law declared by Hon'ble Apex Court, Hon'ble High Court of Uttarakhand at Nainital, as well as the judgment passed by Public Service Tribunal, the

petitioner is entitled to get Pension, Gratuity and other post retiral benefits after computing the entire length of service from his date of initial appointment i.e. 21.12.1984.

3. C.A./W.S. has been filed on behalf of respondents, in which, it has been stated that:-

3.1 याची की नियुक्ति अस्थाई कनिष्ठ लिपिक के अल्पकालिक रिक्त पद पर तदर्थ नियुक्ति करते हुए यह स्पष्ट किया गया कि-कार्यालय में कार्यभार ग्रहण करने तिथि से अस्थाई कनिष्ठ लिपिक के अल्पकालिक रिक्त पद पर की जाती है। यह अल्पकालिक नियुक्ति कनिष्ठ लिपिक की वरिष्ठ लिपिक के पद पर अस्थाई प्रोन्नति के फलस्वरूप हुये रिक्त पद के विरुद्ध है एवं ऐसे ही प्रमुख अभियन्ता सा०नि०वि० द्वारा वरिष्ठ लिपिक के पद नियमित पदोन्नति द्वारा भर दिये जायेंगे तो पदोन्नति हुये कनिष्ठ लिपिकों के वरिष्ठ लिपिक के पद पर खण्ड में कार्यभार ग्रहण करने तथा अस्थाई रूप से वरिष्ठ लिपिक के पद पर पदोन्नति खण्ड के कनिष्ठ लिपिक के अपने मूल पद पर यानि कनिष्ठ लिपिक के पद पर प्रत्यावर्तित होने पद अथवा इससे पूर्व भी बिना किसी नोटिस के स्वतः ही समाप्त हो जायेगी।

3.2 याची द्वारा अधिवर्षिता आयु पूर्ण करने के उपरान्त अधिशासी अभियन्ता द्वारा याची का वेतन निर्धारण प्रथम तदर्थ नियुक्ति की तिथि 21.12.1984 से गणना करते हुये प्रेषित की गयी है। वित्त नियंत्रक लो०नि०वि० देहरादून के द्वारा पेंशन प्रकरण का परीक्षण करने के उपरान्त पत्र सं० 3118/435 लेखा (कु०क्षे०) पेंशन/2022-23 दिनांक 20.10.2022 द्वारा निम्न त्रुटियां पाये जाने के फलस्वरूप त्रुटिनिवारण हेतु अधिशासी अभियन्ता, नि०ख०, लो०नि०वि०, रामनगर – को प्रेषित किये गये।

(1) कार्मिक की सेवा-पुस्तिका में इंगित विवरण के अनुसार कनिष्ठ लिपिक के पद पर कार्मिक की नियमित नियुक्ति की तिथि दिनांक 05.01.1990 है, उक्त तिथि को कार्मिक का वेतन निर्धारण रू० 950.00 मूल वेतन में होना चाहिये था, किन्तु आपके कार्यालय स्तर से उक्त तिथि में कार्मिक का मूल वेतन रू० 950.00 के आधार पर निर्धारित नहीं किया गया है। ऐसा प्रतीत होता है कि आपके कार्यालय स्तर से कार्मिक को उसकी तदर्थ नियुक्ति तिथि दिनांक 21.12.1984 से वेतन वृद्धि का लाभ अनुमन्य करते हुये मूल वेतन निर्धारण किया गया है।

(2) बिन्दु 01 में उल्लेखित स्थिति के अनुसार ही कार्मिक को अन्य सेवा लाभ /वैयक्तिक लाभ यथा समयमान वेतनमान, ए०सी०पी० तथा एम०ए०सी०पी० के अन्तर्गत अनुमन्य लाभ कार्मिक को नियमित नियुक्ति की तिथि अथवा विनियमितकरण की वास्तविक तिथि से ही अनुमन्य किये जाने हैं, अतः वास्तविक स्थिति के अनुसार

कार्मिक के प्रकरण में समयमान वेतनमान, ए०सी०पी० तथा एम०ए०सी०पी० के रूप में अनुमन्य लाभ संशोधित किये जायें।

उपरोक्त पत्र के कम में अधिशासी अभियन्ता, नि०ख०, लो०नि०वि०, रामनगर के कार्यालय आदेश 1983६/ई० दिनांक 30.11.2022 द्वारा याची (श्री महिमन सिंह बोरा) मुख्य प्रशासनिक अधिकारी के वेतन का नियमितिकरण की तिथि दिनांक 05.01. 1990 से पुनः निर्धारण करते हुये मुख्य कोषाधिकारी नैनीताल एवं उपकोषाधिकारी रामनगर को प्रेषित किया गया।

3.3 विभागाध्यक्ष कार्यालय लो०नि०वि० देहरादून के पत्रांक— 132/141 व्यग अधि०—30/2022 दिनांक 03.02.2023 द्वारा मुख्य अभियन्ता क्षे०का०, लो०नि०वि०, हल्द्वानी को उनके पत्र दिनांक 03.09.2022 के कम में निम्नवत् अवतग कराया गया है:—

“मुख्य अभियन्ता कु०क्षे०, सा०नि०वि० अल्मोडा के कार्यालय ज्ञाप सं० 9588/व्यग/4व्यग—कुमायू/89 दिनांक 27.12.1989 द्वारा उक्त कार्मिक को रिक्त अस्थायी कनिष्ठ लिपिक के पदों के विरुद्ध वेतनमान 354—550 में नियुक्ति दी गयी है। इस दशा में शासनादेश सं० 65/xxxvii(7)/18-50(09)2019 दिनांक 09.03. 2019 के सन्दर्भ में पेंशन हेतु नियमित सेवा माने जाने के सम्बन्ध में प्रकरण पर वित्त नियंत्रक की राय के अनुसार शासनादेश के बिन्दु 2 के अनुसार विनियमितिकरण आदेश जारी करने की तिथि से ही नियमित सेवा इस दशा में आगणित होगी, जब तक कि पूर्वगामी तिथि से नियमितिकरण न किया हो।”

3.4 याची के पुनः वेतन का निर्धारण नियमानुकूल व विधि अनुरूप किया गया है, पूर्व में याची को त्रुटिपूर्ण प्रदान किये गये अधिक वेतन का पुनः निर्धारण विद्यमान वित्तीय नियमों के अनुसार किया गया है। जो नियमानुकूल उचित है।

4. The petitioner has also filed R.A. to the C.A/W.S. and has reiterated the averments made in the claim petition.

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

6. Learned Counsel for the petitioner has argued that the petitioner is a retired government employee who had superannuated as a Chief Administrative Officer, and from the office of the Executive Engineer,

Construction Division, Public Works Department, Ramnagar, District Nainital, as per the case law declared by Hon'ble Apex Court, Hon'ble High Court of Uttarakhand at Nainital, as well as the judgment passed by Public Service Tribunal, as mentioned above, the petitioner is entitled to get Pension, Gratuity and other post retiral benefits after computing the entire length of service of the petitioner, from his date of initial appointment i.e. 21.12.1984. In support of his claim, learned Counsel for the petitioner has cited the following decisions of the Hon'ble High Court of Uttarakhand and the judgment passed by this Tribunal:-

- (i) Judgement and order dated 29.07.2019 passed by Hon'ble High Court of Uttarakhand at Nainital in WPSS No. 3669 of 2018, titled as Vijendra Pal Diwedi Vs. State of Uttarakhand and others, directed therein that all the Ad-hoc services shall be counted for the Pension and other post retiral benefits.
- (ii) Judgement and order dated 01.11.2022 passed by Hon'ble Uttarakhand Public Service Tribunal, Nainital in Claim Petition No. 101/NB/DB of 2022, Sushil Kumar Saxena Vs. State of Uttarakhand and others.

It is further argued that the petitioner is entitled to compute all the post retiral benefits including Pension from his date of initial appointment i.e. 21.12.1984. It is stated that the petitioner has continuously worked up to his date of retirement, all the post retiral benefits shall be calculated on the basis of last drawn salary received by the petitioner from the respondent department. The Hon'ble Apex Court decided the controversy that all the pensionary benefits shall be calculated on the basis of last drawn salary, the operative portion of the order dated 15.03.2024 in the case of Union of India, Ministry of Law and Justice Versus Justice (Retd.) Raj Rahul Garg (Raj Rani Jain) and others in Civil Appeal No. 4272 of 2024 (Arising out of SLP (C) No. 7246 of 2019, decided on March 15, 2024, which is being quoted as under :-

“32. The pensionary payments shall be computed on the basis of her last drawn salary as a Judge of the High Court. The arrears of pension shall be payable to the first respondent on or before 31 March 2024 together with interest at the rate of 6% per annum”.

7. Learned A.P.O. has pleaded that the petitioner has been appointed on adhoc basis on 21.12.1984 and he was regularized w.e.f. 27.12.1989 and his salary has been fixed on the basis of the date of regularization on the post of Junior Assistant and the pension has been fixed on the basis of last salary drawn by him.

8. The judgment passed by the Hon'ble High Court in Writ Petition No. 3669 of 2018, Vijendra Pal Diwedi vs. State of Uttarakhand and others and the judgment of this Tribunal in the matter of Sushil Kumar Saxena vs. State of Uttarakhand are applicable in the present case.

10. It will be appropriate to quote the relevant paragraphs of the Judgement and order dated 01.11.2022 passed by Hon'ble Uttarakhand Public Service Tribunal, Nainital in Claim Petition No. 101/NB/DB of 2022, Sushil Kumar Saxena Vs. State of Uttarakhand and others, as the decisions cited by the petitioner in support of his claim, have been mentioned in the above judgment passed by this Tribunal, which is quoted as below:

“7. It is the submission of Ld. Counsel for the petitioner that the matter is squarely covered by the decision rendered by Hon'ble High Court in Special Appeals No. 201, 203 and 207 of 2022 on 05.07.2022, which reads as under:

“SPA Nos.201, 203 and 207 of 2022

All these three appeals are directed against the common judgment rendered by a learned Single Judge of this Court in a batch of writ petitions, including WPSS No.2436 of 2019, Lalit Mohan Pandey v. State of Uttarakhand and others, dated 20.12.2019. The appellant had also preferred a review application which has also been dismissed by the learned Single Judge on 6.9.2021.

A special appeal preferred against the same judgment, being Special appeal No.467 of 2021 (State of Uttarakhand and others v.

Kedar Ram Arya) arising out of WPSS No.1235 of 2020, has already been dismissed by this Court on 2.3.2022.

It appears that the appellant also preferred Special Leave to Appeal Nos.4958- 4959 of 2022 to assail the final judgment as well as the order under review, which has been dismissed by the Supreme Court on 25.3.2022 with liberty to the appellant to prefer an appeal before the Division Bench against the judgment in writ proceedings.

As noticed above, this Court has already dismissed the appeal from the same impugned judgment in Special Appeal No.467 of 2021.

Following the said decision, these appeals are also dismissed. Pending application, if any, stands disposed of."

8. It will also be appropriate to reproduce the decision rendered by Hon"ble Court in WPSS No.3669 of 2018, Vijendra Pal Dwivedi v. State of Uttarakhand and others, dated 29.07.2019, as below:

"Mr. Sanjay Bhatt, Advocate for the petitioner.

Mr. Atul Bahguna, Brief Holder for the State.

By means of the present writ petition, petitioner has prayed for the following relief:

"(i) To issue a writ, order or direction in the nature of mandamus commanding the respondents to re-fix the pension of petitioner as per last pay drawn by him on the basis of Rs. 83,3000/- and consequently release all the post retiral benefits including arrears of gratuity and commutation with penal rate of interest."

Brief facts of the case are that the petitioner was initially appointed on ad-hoc basis on the post Lecturer (L.T. Grade). On 05.04.1991, the services of the petitioner were regularized on 09.05.2002 and thereafter he worked as regular employee from 09.05.2002 till the date of his retirement i.e. 31.03.2018.

It is contended that on 09.05.2002 services of the petitioner was regularized along with other similarly placed persons and he was also given service benefits. It is further contended that in the pension papers, the date of retirement of petitioner was shown as 30.06.2017, whereas the petitioner demitted office on 31.03.2018. It is further contended that the petitioner completed 60 years of age on 20.06.2017 and was due for retirement on 30.06.2017 but he was given the benefit of Academic Session, therefore, he retired from services on 31.03.2018. After his retirement his pension was fixed at Rs. 41,650/-. Thereafter, the pension of the petitioner has been re-fixed and the pension amount has been reduced as Rs. 33,320/-

instead of Rs. 41,650/-. Feeling aggrieved, petitioner has filed present writ petition.

Heard learned counsel for the parties and perused the material available on record.

Learned counsel for the petitioner would submit that the petitioner has not been paid complete post retiral benefit because his services on ad-hoc basis have not been counted on fixation of his pension. He would further submit that in paragraph no.21 of the writ petition, the petitioner has also mentioned the name of other similarly placed persons who have been given benefit of ad-hoc services, while calculating their pension whereof the similar treatment has not been given to the petitioner. He would further submit that the petitioner has been discriminated by not granting the same benefit to him.

Learned counsel for the respondents would submit that the petitioner was appointed on ad hoc basis on 05.04.1991 and the services of the petitioner was regularized on 09.05.2002. He would further submit that the petitioner remained on ad-hoc basis since 05.09.1991 to 08.05.2002 and thereafter worked as regular employee from 09.05.2002 till the date of his retirement i.e. 31.03.2018, therefore, the authority concerned has rightly reduced the pension amount of the petitioner. He would further submit that the pension and other retiral benefits have been sanctioned to the petitioner as per the provisions of Government Order dated 05.06.2018 and the increment during the session benefit was not admissible to the petitioner.

Perusal of the averment made in the counter affidavit would reveal that the services rendered by other similarly situated persons have been counted for grant of the benefit of pension whereof in the case of the petitioner, same principle has not been followed. Perusal of the averment made in the counter affidavit as well as rejoinder affidavit would further reveal that the service rendered by petitioner on ad-hoc basis between the period from 05.04.1991 to 08.05.2002 has not been counted at the time of fixation of his pension and subsequently, the pension of the petitioner was assumed Rs. 41,650/- but surprisingly his pension was reduced to Rs. 33,320/-. Perusal of the counter affidavit would further reveal that services of the similarly appointed lecturers, who were appointed on adhoc basis for the benefit of pension and other consequential benefits have been counted whereof the petitioner has been discriminated for the same benefit, therefore, action of respondents in nongranteeing the benefit to the petitioner is discriminatory in nature.

It is settled position in law that all the employees, who are similarly situated should be treated equally and such a

classification for the purpose of grant of pension and other service benefit is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off-date for extension of benefits especially pensionary benefits. The Hon'ble Apex Court in the case of Secretary, Minor Irrigation Department and others vs. Narendra Kumar Tripathi reported in (2015) 11 SCC 80 has held that determination of seniority of service rendered on ad-hoc basis be considered equally. Since, the petitioner was appointed against a substantive vacancy on adhoc basis and after regularization had continuously served the Department.

In view of the above, the writ petition is allowed. Respondent/competent authority is directed to re-fix the pension of the petitioner after counting the service rendered by him on adhoc basis and respondent shall also pay all the consequential benefit after re-fixation of his pension.

No order as to costs."

[Emphasis supplied]

9. It will also be apposite to reproduce the decision rendered in WPSS No.2436 of 2019, Lalit Mohan Pandey v. State of Uttarakhand and others, dated 20.12.2019, as below:

"All these petitions were decided by this Court by a common judgment dated 20.12.2019. It is as hereunder:-

"Since the controversy involved in aforesaid petitions is same, therefore, the same are being disposed of by this common judgment and order.

2. By means of aforementioned writ petitions, the petitioners are seeking a writ of mandamus commanding and directing the respondents to re-fix the pension of the petitioners as per last pay drawn and shall pay all retiral benefits including arrears of gratuity and commutation with penal rate of interest.

3. After arguing the writ petitions at some length, learned counsel for the petitioners would submit that the case of the petitioners is squarely covered by the judgment dated 29.07.2019 passed by this Court in WPSS No. 3669 of 2018.

4. Learned Deputy Advocate General does not oppose the said statement made by learned counsel for the petitioners.

5. Having considered the submission of learned counsel for the parties and having perused the judgment dated 29.07.2019 passed in WPSS No. 3669 of 2018, this Court is

satisfied that the case of the petitioners is squarely covered by the judgment dated 29.07.2019. Accordingly, all the writ petitions are disposed of with a direction to the respondents/competent authority to re-fix the pension of the petitioners after counting the service rendered by them on ad-hoc basis and respondents shall also pay all consequential benefits after re-fixation of their pension.

6. Pending applications, if any, stand disposed of.

7. No order as to costs.

8. All pending applications stand disposed of accordingly.”

[Emphasis supplied]

11. Learned Counsel for the petitioner has confined his prayer to count the period spent on the adhoc basis for refixing the pension and payment of the pensionary benefit to the petitioner. The order dated 13.03.2023 is liable to be quashed. The claim petition is liable to be allowed. The respondents are directed to count the period spent on adhoc basis for the payment of pensionary benefits. The pension of the petitioner is required to be refixed accordingly and pay the arrears of the pensionary benefits.

ORDER

The claim petition is allowed. The order dated 13.03.2023 is set aside and the respondents are directed to refix the retiral dues of the petitioner after counting the service rendered by him on adhoc basis and pay the pensionary benefits within three months from the date of presentation of certified copy of the judgment. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN(J)

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

DATED: MARCH 05, 2025

DEHRADUN.

KNP