

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN**

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

----- Chairman

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

WRIT PETITION NO 535(S/B) OF 2019

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 112/DB/2023]

Dr Gyan Prakash Pandey s/o Late Sri Ram Nagina Pandey, r/o Jagdishpur,
Haridwar Marg, Ballia, District Ballia, Uttar Pradesh.

.....Petitioner

Vs.

1. State of Uttarakhand & Ors through Secretary School Education,
Government of Uttarakhand, Dehradun.
2. Chief Education Officer District- Pauri Garhwal, District Pauri Garhwal.
3. Principle, Government Inter Collage Suinsi, Thailisain, District Pauri
Garhwal.
4. Chief Treasury Officer, Pauri Garhwal, District Pauri Garhwal.
5. Director Treasuries, Pension and Entitlement.

.....Respondents

Present: Ms. Neelima Mishra, Advocate for the petitioner (online)
Sri Ved Prakash Devrani, A.P.O. for the respondents

JUDGMENT

DATED: APRIL 23, 2025.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 28.09.2022 in WPSB No. 535/2019, Gyan Prakash Pandey vs. State of Uttarakhand and others, which reads as under:

" The petitioner was a public servant at the time of his retirement. The dispute raised in the present writ petition relates to the amount of gratuity to which the petitioner is entitled.

2) The said issue squarely falls for consideration within the jurisdiction of the Uttarakhand Public Services Tribunal.

3) *Considering the fact that the petition is pending since the year 2019, we direct the Registry to transmit the complete record of the case to the Tribunal, which shall be registered as a claim petition by the Tribunal, and be dealt with accordingly.*

4) *Writ petition stands disposed of accordingly.*

All pending applications also stands disposed of."

2. Writ Petition No. 535 (S/B) of 2019 is, accordingly, reclassified and renumbered as Claim Petition No. 112/DB/2023. 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 petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. Present petition has been filed for the following reliefs:

I. To issue a writ and order or direction in the nature of mandamus to directing to the respondents to pay the rest amount of gratuity along with 18% interest on delayed payment to the petitioner.

II. To issue a writ and order or direction in the nature of mandamus to directing to the respondent to pass the order in number of representation submitted by the petitioner.

III. To pass any other suitable order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

IV. To award cost of the petition in favor of the petitioner.

4. Petition is supported by the affidavit of Sri Gyan Prakash Pandey, petitioner. Relevant documents have been filed along with the petition

5. Facts, giving rise to present petition, are as follows:

5.1 Petitioner retired as Principal, Government Inter College on 31.12.2018. His pension papers were prepared and submitted by fixing the pension, but the amount of gratuity was reduced. He served the department from 11.07.1986 till 31.12.2018, without break. His services were regularized on 14.01.1992. Petitioner was initially appointed on *ad hoc* basis, but he was given all service benefits. After completing 10 years of satisfactory service, he was given benefit of selection grade. After completing 22 years of satisfactory service, he was given benefit of promotional pay scale. In this way, the petitioner served the department for almost 33 years.

5.2 Petitioner moved a representation to the Director, School Education, Uttarakhand, but till date there is no response from the respondent department.

5.3 In para 9 of the petition, it has been stated that *ad hoc* services would be counted for the purpose of pensionary benefits and once the pension papers were prepared, there was no occasion for the Treasury to reduce the gratuity amount of the petitioner.

5.4 Other similarly situated persons have been given benefit of *ad hoc* services while calculating pension, gratuity etc. Different yardsticks have been adopted in the case of the petitioner.

5.5 Petitioner has filed a copy of the judgment rendered by Hon'ble High Court of Uttarakhand on 29.07.2019 in WPSS No. 3669/2018, Vijendra Pal Dwivedi vs. State of Uttarakhand and others in support of his case.

5.6 Petitioner has prayed for payment of remaining amount of gratuity along with interest.

6. Petition has been contested on behalf of respondents. Counter Affidavit has been filed by Sri Jagatram Lakhera, Principal, Government Inter College, Sunsi, Thalishain, District Pauri Garhwal, on behalf of Respondents No. 2 and 3. Separate Counter Affidavit has been filed by Sri Pankaj Tiwari,

Director, Treasury, Pension, Accounts and Entitlement, Uttarakhand, Dehradun, on behalf of Respondent No.5, along with documents in support thereof.

6.1 In para 3 of the C.A. filed on behalf of Respondents No. 2 and 3, it has been stated that petitioner, while working as Principal, Government Inter College, Pauri, Suisi, Berokhal, District Pauri, superannuated on 31.12.2018. Petitioner was initially appointed as Assistant Teacher, Science and Maths, on *ad hoc* basis on 24.07.1986 and his services were regularized *vide* order dated 14.01.1992 by the order of the Regional Deputy Director, Education, Pauri Garhwal.

6.2 After attaining the age of superannuation on 31.12.2018, the department calculated the amount of gratuity, commutation and pension by treating his services in the department *w.e.f.* 24.07.1986 to 31.12.2018 and thereafter file was sent on 22.12.2018 to Director, Treasury, Pension, Accounts and Entitlement, Uttarakhand, Dehradun, for sanction of retiral dues.

6.3 Director, Treasury, Pension, Accounts and Entitlement, Uttarakhand, Dehradun, *vide* letter dated 22.01.2019 informed the department that the services, which the petitioner rendered as *ad hoc* teacher, would not be counted for the purpose of granting him pension to the petitioner.

6.4 After receipt of letter dated 22.01.2019 from the Director, Treasury, Pension, Accounts and Entitlement, Uttarakhand, Dehradun, petitioner informed *vide* letter dated 08.03.2019, that in similar matters teachers' *ad hoc* services were added for granting pension. Director, Treasury, Pension, Accounts and Entitlement, Uttarakhand, Dehradun, again informed the department *vide* letter dated 29.03.2019 that the services rendered by the petitioner before 14.01.1992 were as *ad hoc* teacher and the same would not be counted for the purpose of granting retiral benefits. The Finance Controller, Secondary Education, Pauri Garhwal, directed the

petitioner to act as per letter dated 29.03.2019, issued by the Director, Treasury, Pension, Account and Entitlement, Uttarakhand, Dehradun.

7. Rejoinder Affidavit has been filed by the petitioner, reiterating the facts contained in the petition.

8. Ld. A.P.O., while defending the departmental action, submitted that as per Uttarakhand Retirement Benefits Act, 2018, a retired employee is entitled to get the retiral benefits only from the date of his regular appointment. The services rendered by the petitioner on *ad hoc* basis should not be counted for pensionary benefits. Based on the facts of the case, the petitioner is not entitled to get gratuity on the basis of services rendered by him on *ad hoc* basis, according to Ld. A.P.O.

9. The Tribunal observes that petitioner was appointed on *ad hoc* basis on 11.07.1986. Since then he worked continuously as Assistant Teacher till his regular appointment on 14.01.1992.

10. The provisions for granting pension and gratuity to the Govt. employees are although mentioned in the Uttarakhand Retiral Benefits Act, 2018, but Hon'ble Courts have, thereafter, from time to time, given decisions in the matter that services rendered by a Govt. servant on *ad hoc* basis shall be counted for the purpose of pension.

11. One such decision of the Hon'ble High Court of Uttarakhand, Nainital, rendered in the WPSS No 3669 of 2018, Vijendra Pal Dwivedi Vs State of Uttarakhand on 9.07.2019, is reproduced herein below for convenience:

“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]"

12. The respondents should, therefore, be directed to recalculate the amount of gratuity, after counting the services rendered by the petitioner on *ad hoc* basis, in the peculiar facts of the case.

13. The Tribunal has noted above that the Uttarakhand Retirement Benefits Act, 2018 was passed in the year 2018 and the judgment of Vijendra Pal Dwivedi (*supra*) was rendered by the Hon'ble High Court on 29.07.2019, on the grounds, *inter alia*, that all the employees who are similarly situated, should be treated equally and different classification for the purpose of grant of pension etc. 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 extending pensionary benefits.

14. The decision rendered by Hon'ble High Court of Uttarakhand on 06.09.2021 in Review Application (MCC No. 14596 of 2021) in WPSS No. 2434/2019 Roop Narayan vs. State of Uttarakhand and others and connected writ petitions, brings down the curtain to the whole controversy. Relevant paragraphs of the decision dated 06.09.2021 read as under:

"7. Review of the order dated 20.12.2019 has been sought mainly on the ground that these cases have wrongly been decided in terms of the order passed in WPSS No. 3669 of 2019, Vijendra Pal Dwivedi v. State of Uttarakhand and others, because the facts were different. Vijendra Pal Dwivedi was appointed in service on 18.03.1991 and

retired on 31.03.2018, whereas the petitioner in WPSS No. 2434 of 2019 was appointed on 25.10.1990 and retired on 30.06.2018, petitioner in WPSS No. 2436 of 2019 was appointed on 12.12.1990 and retired on 30.06.2019 and petitioner in WPSS No. 2437 of 2019 was appointed on 05.12.1990 and retired on 31.03.2019. It is the case of the State in the review applications that before the petitioners retired, the Uttarakhand Retirement Benefit Act, 2018 (for short, "the Act") came into force and as per the provisions of the Act, the petitioners are not entitled for pension.

8. On behalf of the petitioners, objections have been filed, inter alia, on the ground that there is no legal ground to file the review application; in order to avoid the actions in the contempt petition, the review applications have been filed; the matter has already been settled by the Hon'ble Supreme Court in the case of Prem Singh v. State of U.P. keeping in view the analogous provision, which was in force prior to coming in force of the Act.

10. Learned counsel for the State would submit that in the matters of pension, the provisions of the Act are applicable in the State of Uttarakhand. The Act came into force w.e.f. 13.04.2018. The petitioners in the instant case retired after coming into force of the Act, but while deciding the instant petitions, this fact was not brought to the notice of the Court that the provisions of the Act are in force. Hence, according to learned State Counsel, it makes a ground for review.

11. On the other hand, learned counsel for the petitioners would submit that the Court was aware of the enforcement of Act when the matter was decided on 20.12.2019. Learned counsel for the petitioners made reference to WPSS No. 2436 of 2019, specifically para 11 to it, which is as hereunder:-

"11. The Petitioner also wants to bring on record copy of Uttarakhand Retirement Benefits Act, 2018. A true copy of Uttarakhand Retirement Benefits Act, 2018 is being filed herewith and marked as Annexure No. 6 to this Writ Petition."

12. It is argued that in their counter affidavit, the State, did not state anything about the provisions of the Act, as stated by the petitioner in para 11 of WPSS No. 3436 of 2019. In their counter affidavit, what they have stated is that it is a matter of record. Based on it, it is argued that the Court was well aware of the provisions of the Act when the order was passed in these petitions on 20.12.2019. It is not that the provisions of the Act were not in the notice of the Court when the instant petitions were decided.

13. In addition to it, learned counsel for the petitioners would also submit that, in fact, the instant petitions have been decided in terms of the judgment and order dated 29.07.2019 passed in WPSS No. 3669 of 2018.

14. The order dated 29.07.2019 passed in WPSS No. 3669 of 2018 was challenged by the State in Special Appeal No. 100 of 2020 and Ground “D” of it was related to the applicability of the Act. It was also considered in the appeal. Therefore, learned counsel for the petitioners would submit that there is no ground, which may occasion in reviewing the order dated 20.12.2019.

15. In case a statutory provision is not brought to the notice of the Court when the matter is decided, perhaps under certain circumstances such an order may be termed as per incuriam and it may be subject to review. But, the question is as to whether it happened in the instant case? It is true that in WPSS No. 2434 of 2019 and 2437 of 2019, the State did not opt to file counter affidavit. But in writ petition i.e. WPSS No. 2436 of 2019, counter affidavit was filed and based on it, the matter was decided together.

16. As stated, in WPSS No. 2436 of 2019, in para 11, the fact that the Act had come into force has been stated and the State in their counter affidavit, in that writ petition, had not commented on it. Simply it is averred that it is a matter of record. The fact remains that the instant petitions were heard together.

19. Not only this, in appeal against the judgment and order dated 29.07.2018 passed in WPSS No. 3669 of 2018, the State had taken ground “D” at the strength of provisions of the Act. It also indicates that the State was well aware that the provisions of the Act were in force on the date when the matter was argued and decided by this Court on 20.12.2019. It also indicates that the factum of enforcement of the Act was in the notice of the Court when the matter was decided on 20.12.2019. Therefore, the version of the State that the provisions of the Act were not in the notice of the Court when the matter was decided on 20.12.2019 does not merit acceptance.

20. There is no ground to review the order dated 20.12.2019. Accordingly, the review applications deserve to be dismissed.”

15. There should not be any hesitation in coming to the conclusion that the controversy in hand has been settled by the Hon’ble High Court of Uttarakhand in Review Application (MCC No. 14596 of 2021) in WPSS No. 2434/2019, Roop Narayan vs. State of Uttarakhand and others and connected writ petitions on 06.09.2021, in which the law laid down by the

Hon'ble High Court in WPSS No. 3669 of Vijendra Pal Dwivedi vs State of Uttarakhand and others has been appropriately considered. The respondents have taken the same stand here.

16. The petition is, accordingly, disposed of in terms of decision rendered by Hon'ble High Court of Uttarakhand on 06.09.2021 in Review Application (MCC No. 14596 of 2021) in WPSS No. 2434/2019, Roop Narayan vs. State of Uttarakhand and others and connected writ petitions. No order as to costs.

(ARUN SINGH RAWAT)
VICE CHAIRMAN(A)

(JUSTICE U.C. DHYANI)
CHAIRMAN

DATED: APRIL 23, 2025
DEHRADUN.
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