

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 53/DB/2014

1. Vijay Singh, S/o Late Makkar Singh, presently posted as Scalar, Uttarakhand Forest Development Corporation, Haridwar.
2. Manohar Singh Rawat, S/o Late B.S. Rawat, presently posted as Scalar, Uttarakhand Forest Development Corporation, Haridwar.
3. Bheem Singh Negi, S/o Late Govind Singh, presently posted as Scalar, Uttarakhand Forest Development Corporation, Haridwar.
4. Balawant Singh Rawat, S/o Late Govind Singh, presently posted as Scalar, Uttarakhand Forest Development Corporation, Kotdwar.
5. Balawant Singh Negi, S/o Late Bachan Singh Negi, presently posted as Scalar, Uttarakhand Forest Development Corporation, Pauri.
6. Surender Singh, S/o Late Umed Singh, presently posted as Scalar, Uttarakhand Forest Development Corporation, Pauri.
7. Chandra Mohan Chaudhary, S/o Late Govind Lal, Chaudhary, Presently posted as Scalar, Uttarakhand Forest Development Corporation, Pauri.
8. Surendra Singh Negi, S/o Late Anand Singh, presently posted as Scalar, Uttarakhand Forest Development Corporation, Pauri.

.....Petitioners

VERSUS

1. State of Uttarakhand through its Principal Secretary, Forest, Civil Secretariat, Dehradun.
2. Managing Director, Uttarakhand Forest Development Corporation, Dehradun.

3. Regional Manager, Garhwal Region, Uttarakhand Forest Development Corporation, Kotdwar.
4. Sri Malvir Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehri Road, Dehradun.
5. Sri Minuddin, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
6. Sri Pratap Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
7. Sri Bhagwan Singh Pundir, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
8. Sri Purnanand Pandey, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
9. Sri Suresh Kumar, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
10. Sri Raghuvir Singh Negi, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
11. Sri Tahar Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
12. Sri Prakash Chand Hemdan, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
13. Sri Vedvat Chauhan, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
14. Sri Girish Chand Pandey, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
15. Sri Shankar Singh Negi, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
16. Sri Murari Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
17. Sri Jeet Singh Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
18. Sri Munish Kumar, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
19. Sri Vijay Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.

20. Sri Jagan Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
21. Sri R.B.Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
22. Sri Dharam Sigh Rathore, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
23. Sri Munufet Ali, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
24. Sri Gaje Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
25. Sri Hori Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
26. Sri Chandrapal Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
27. Sri Surendra Singh Negi, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
28. Sri Balbir Singh Gusain, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
29. Sri Mahipal Ram Rahi, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
30. Sri Lilambar Dutt Tiwari, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
31. Sri Virendra Singh Bhandari, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
32. Sri Omprakash, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
33. Sri Mahavir Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
34. Sri Muniraj, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
35. Sri Mahendra Pal Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.
36. Sri Ful Singh, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.

37. Sri Dindayal Suman, Scalar, through Managing Director, Uttarakhand Forest Development Corporation, 73, Nehru Road, Dehradun.

.....Respondents.

Present: Sri Shashank Pandey, Ld. Counsel
for the petitioners
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondent No. 1
Sri R.K.Garg, Ld. Counsel
for the respondents No. 2 & 3.
Sri B.S. Rawat, Ld. Counsel
for the respondents No. 4,6,7 to 21, 23, 25 to
27 & 29 to 37.

JUDGMENT

DATED: JANUARY 04, 2018

(Hon'ble Mr. Ram Singh, Vice Chairman (J))

1. By way of this petition, the petitioners seek for the following relief:

"a) To issue order or direction quashing the order No. 1278 dated 08.09.2014 passed by respondent no. 3 by which the representation of the petitioners have been rejected.

b) To issue order or direction regularizing the petitioners from the date the juniors of the petitioners were regularized.

c) To grant any relief that the Hon'ble Court may deem fit and proper in the circumstances of the case.

d) To give cost of the petition to the petitioners."

2. As per preposition of the petitioners, they were appointed on the post of Scalars in the respondent department on daily wages basis after conducting written examination and interview by the then U.P. Forest Corporation in the year 1981. They continued to work on daily wage basis from 1981 to 1990. The petitioners were given ad hoc appointment on the post of Scalars vide order dated 27.02.1990 and performed their duties with full jest and vigor.

3. On 14.12.2004, a tentative seniority list was circulated by the respondent department in which the persons who were appointed later in

time on daily wage basis, were shown to be regularized before the petitioners, hence, they were shown senior to them. This seniority list was never finalized and the petitioners filed their representations against such injustice and illegality committed against them. Their representations were kept pending and the petitioners were waiting for the decision of the corporation. The petitioners also represented that their services be regularized from the date, their junior daily wagers were regularized, but their grievances were not redressed. It has also been contended that daily wagers appointed later in time, were regularized and appointed on the post of Scalars on regular basis from 20.10.1983, whereas, petitioners were regularized in 1990. Petitioners approached the Hon'ble High Court and respondent No. 3 was ordered by the Hon'ble High Court to consider their representation and pass an speaking and reasoned order, but the representation of the petitioners dated 24.09.2013 was rejected by respondent No. 3 vide order dated 08.09.2014 (Annexure No. A1). Hence, this petition has been filed by the petitioners on the following grounds.

4. That the seniority list circulated in 2004 discloses that the persons who joined the department on a daily wages basis, later in time, were regularized before the petitioners and they were shown senior to them and the representation of the petitioners was decided in contravention of the order of the Hon'ble High Court and in the seniority list, the persons junior to them as daily wagers, were shown senior, in contravention of Article 14 and 16 of the Constitution of India, hence, this petition has been filed for the above mentioned reliefs.

5. By the order of the court, affected private respondents were also impleaded as party to the petition.

6. The petition was opposed by the respondent department and by some of the private respondents. The petition was also heard ex-parte against the absentee private respondents. Learned A.P.O. did not file any Counter Affidavit on behalf of the respondent No. 1 as the state was a formal party, whereas, on behalf of respondents No. 2 & 3, Counter Affidavit was filed by their counsel. Private respondents No. 4 to 37, except private respondents No. 7, 22, 24 and 28 also filed written statement.

7. The respondents have contested the petition with the contention the impugned order dated 08.09.2014 was passed by the respondent after giving opportunity of hearing to the concerned parties in compliance of the order of the Hon'ble High Court dated 18.06.2014 and a speaking order was also passed. It has also been contended that if junior daily wagers to the petitioners were regularized in the year 1983, at that time, representations should have been filed by the petitioners, whereas, the petitioners have filed this petition after a gap of 30 years. Petitioners were also regularized in the year 1990 and at that time too, they have not challenged their seniority neither raised any objection against the appointment of their juniors in 1983, hence, their petition is time barred. When the seniority list was circulated on 14.12.2004, the petitioners never objected to it and no written objection against that seniority list was filed in the department. It has also been contended that in the year 1983, 1984, 1985 and 1990, the persons who qualified daily scalars exam, were appointed on pay bill, but the petitioners never objected to such appointment and they were being paid labour charge and pay till 1990. The petitioners approached the department vide their representation dated 24.09.2013 after 32 years and the present claim petition is devoid of merit and liable to be dismissed.

8. Private respondents opposed the petition with the contention that the petitioners have challenged their seniority after a gap of long time. The petitioners were granted opportunity for objection within 15 days from the date of circulation of the seniority list dated 20.1.2004. The Chayan Samiti was also constituted by the respondents no. 2 & 3 for the selection of candidates and the respondents were appointed and given appointment in 1983 and 1984. The respondent No. 3 dismissed the representation of the petitioners dated 24.09.2013 on the basis of delay and laches, after giving full opportunity to all the parties in dispute and full compliance of order of the Hon'ble High Court was made out. The petitioners accepted their regularization made in 1990 by the respondent No. 3 without any objection to the seniority, hence, they cannot challenge it now after a long period. The demand of the petitioners is not proper and is not sustainable in the eyes of law. It has also been contended that the seniority of the petitioners and private respondents does not come within the jurisdiction of this Court as the

petitioners were workmen under Section 2(z) of U.P. I.D. Act, 1947 as adopted and implemented by the Govt. of Uttarakhand by Notification passed in 2002. The Scalars do perform their work /duty at fields rather in office. There is an industrial dispute between the parties and dispute comes within Section 2(1) of U.P.I.D. Act. Hence, this Tribunal lacks jurisdiction in this matter as it is a dispute between the workmen. The petition is not within the period of limitation under Section 5 U.P. Public Services Tribunal Act, 1976. The cause of action to the petitioners arose first time on 20.10.1983 when the so called juniors to them were regularized and their petition is highly time barred now. Moreover, the petitioners came to know about the seniority list circulated in 2004, they remain slept over it for 10 years and their petition is not maintainable due to prolonged delay in filing of this claim petition. Some of the respondent employees have retired and other are about to retire from services and the petition is filed just to give mental agony, depression, dishonor to the respondent employees. Accordingly, the petition deserves to be dismissed.

9. The petitioners also filed rejoinder affidavit reiterating the same contention of the petition and have further reiterated that the impugned order passed by the respondent no. 3 is in gross violation of the principles of natural justice. Daily wagers employees who were junior to the deponent, were made senior and the representation of the petitioners has been rejected merely on the ground of delay. The petitioners came to know about such injustice in 2004 and they were having no opportunity to represent in 1983 and their petition deserves to be allowed.

10. We have heard both the sides and perused the record.

11. It is an admitted fact to both the parties that the petitioners as well as private respondents were initially appointed to work in the department on daily wage basis. After conducting the test, the petitioners were allowed to work as daily wagers in the year 1981, whereas, other private respondents were engaged as daily wagers in the year 1983, 1984 and 1985, after the petitioners. Contention raised by the petitioners is that the daily wagers who were engaged in the department later in time, were given regular appointment in 1983 before them, whereas, the petitioners who were

working in the department as daily wagers prior to the private respondents, were regularized and were given appointment in 1990. Accordingly, in the seniority list issued in 2004, those daily wagers were shown senior to them, who were engaged in the department later in time. Virtually, the petitioners are seeking their seniority with the private respondents in the so called “daily wagers cadre”.

12. Neither the petitioners nor the respondents have made it clear that under what rules, their so called regularization was made by the department. Department was also not able to explain under what rules, the regularization of the daily wagers to the regular post was made and it was verbally argued that the petitioners and respondents were regularized under an Administrative Order, which is not on record.

13. Admittedly, the post to which the persons are working, is a public post and appointment to that post can be made as per the service rules. Learned counsel for the respondents has argued that the daily wagers, are not public servants as they are not appointed under any rules against a post. It was argued that daily wagers or seasonal workers do not acquire any status/cadre of service. They are assigned the temporary work to perform as per seasonal need. They were not covered in purview of an employee, even they were not covered under the classification of an employee or workmen. It has also been contended that casual seasonal workers neither hold regular nor temporary post and they are engaged only to perform the work of casual nature of scheme and get their wages from temporary allotted budget. It has also been contended by the respondents that the seniority is normally measured by length of services but there is always a break in the services of seasonal workers (daily wages) and the daily wagers (Seasonal scalars) were engaged without pursuant to the policy of their regularization. The past experience certificates before fresh appointment in the year 1990, were just to explain their experience and seasonal worker is nowhere classified as regular employee. It has also been contended that a casual labourer neither holds any regular nor temporary post and they are only paid for the effective days of their working and none of the daily wagers are entitled for

regularization except under some rules and they have no right for regularization.

14. Learned counsel for the respondents has relied upon the law laid down by the Hon'ble Apex Court in **Nand Kumar Vs. State of Bihar & Ors, 2014 (2) Supreme, 23**, wherein it was held that the daily wagers cannot be treated as permanent employees, they are not appointees in the strict sense of the term "appointment". They do not hold a post and the scheme of alternative appointment framed for regular employees of abolished organization cannot, therefore, confer a similar entitlement on the daily wagers of abolished organization is not applicable to daily wagers and the regularization depends upon facts of the case and applicable rules. It was also held that daily wagers are not appointees, hence there is no right of regularization. According to the Hon'ble Apex Court, daily wagers cannot enjoy regular status or acquire the same status as that of the regular employees and committee cannot be faulted in treating the daily wage employees in different footing and deciding their removal from their services. Learned counsel for the respondents has also argued that as per law laid down by Hon'ble Apex Court, no daily wagers can claim vested right of seniority as they are not member of any regular service.

15. Respondents have also argued that the petitioners raised this issue after a long delay. This court is of the view that the petition has been filed after a long delay but in view of the argument of learned counsel for the petitioners that they were regularly asking for the justice from the respondents and they were waiting for the decision and as the seniority list issued in 2004 was never finalized, hence their petition is within time. This court is of the view that continuous cause of action was accrued to them, hence petition cannot be thrown away on the point of limitation.

16. On merit, learned counsel for the petitioner has argued that the private respondents engaged in 1983, were junior to those regular appointees who were engaged in 1981 and the petitioners were denied the benefit of their prior daily wages service while appointing them in regular cadre in 1990, hence on the basis of equality, they want their regularization from back date from which their juniors were regularized.

17. Learned counsels for both the parties were asked to show the relevant regularization rules under which the petitioners or private respondents were regularized but they failed. The petitioners never filed their appointment letters issued in 1981 as daily wagers. It is also an admitted fact that other private respondents were given regular appointment in 1983, 1984 and 1985 and it was mentioned that daily wager scalars/Chaukidar are appointed on the regular post of Scalars in a specified pay scale from the date of their joining and they were appointed by different appointment orders, the copies of which were filed vide Annexure No. R1 to R19 with the Counter Affidavit. Whereas, the petitioners were appointed vide order dated 27.02.1990 (AnnexureA-4) in the following words:-

“कार्यालय प्रभागीय लॉगिंग प्रबन्धक उत्तर प्रदेश वन निगम, कोटद्वार, गढ़वाल।
पत्रांक 1750/3-2(4), दिनांक: कोटद्वार: 27 फरवरी, 1990

तदर्थ नियुक्ति/तैनाती आदेश

उत्तर प्रदेश वन निगम के हित में विगत वर्षों से कार्यरत निम्न दैनिक स्केलर्स की तदर्थ नियुक्ति वेतनबिल स्केलर के पद पर वेतनमान रू0 320-6-362-द0रो0-6-360-8-420 द0रो0-8-460 में कार्य पर उपस्थिति की दिनांक से निम्न प्रतिबन्धों के अधीन उनके नाम के सम्मुख दर्शाये गये प्रभागों के अर्न्तगत की जाती है। उक्त वेतनमान में महंगाई भत्ता एवं अन्य भत्ते जो उत्तर प्रदेश वन निगम में देय हैं, अनुमन्य होंगे।

- 1- यह तदर्थ नियुक्ति नितान्त अस्थाई है जो बिना किसी पूर्व सूचना के अथवा कार्य समाप्त होने पर समाप्त की जा सकती है।
- 2- यह तदर्थ नियुक्ति चरित्र एवं पूर्ववृत्त के सत्यापन के प्रतिबन्ध पर की जा रही है।
- 3- इस नियुक्ति पर उपस्थिति होने हेतु किसी प्रकार का कोई मार्ग व्यय देय नहीं होगा।
- 4- तदर्थ नियुक्ति पर उपस्थिति के समय निम्न प्रमाणपत्र मूल में दिखाकर छायाप्रतियां जमा करनी होंगी।

(क) हाई स्कूल प्राक्षिक योग्यता प्रमाण पत्र, जन्मतिथि व गणित विषय सहित।

(ख) मुख्य चिकित्साअधिकारी द्वारा जारी स्वस्थता प्रमाणपत्र।

(ग) तहसीलदार द्वारा जारी आरक्षण प्रमाणपत्र, जाति उपजाति सहित।

(घ) किन्हीं दो राजपत्रित अधिकारियों से चरित्र प्रमाणपत्र, जो आपके सम्बन्धी न हों।

क्रम सं०	नाम कर्मचारी	पिता का नाम व पूरा पता	आरक्षित वर्ग	तैनाती प्रभाग
1	2	3	4	5
1.	श्री विजय प्रताप सिंह	श्री भगवती दीप, ग्राम भलवा, पो० पहाड़पुर, सरायभीष्म, सुल्तानपुर	सामान्य	बि०लो० प्रभाग
2.	श्री सुरेन्द्र सिंह रावत	श्री ज्ञान सिंह ग्राम तल्ला निवास, पो० किमसार, गढ़वाल	—”—	—”—
3.	श्री विजयपाल सिंह	श्री सौराज सिंह, ग्राम-मसूरी, पो० कोतवाली, बिजनौर।	—”—	—”—
4.	श्री जगदीश सिंह	श्री रघुवीर सिंह ग्राम कमलापुर, पो० नहटौर, बिजनौर	—”—	—”—
5.	श्री सुरेन्द्र कुमार त्यागी	श्री रमेश चन्द्र, ग्राम- मलकपुर, पो० स्यौहारा, बिजनौर	—”—	—”—
6.	श्री ओमपाल सिंह	श्री मलखान सिंह, ग्र० व पो० फुगाना,	—”—	—”—

		मुज्जफर नगर		
7.	श्री अनीस अहमद	श्री इतखार अहमद, मो0 शाहजहीर निकट पटियावाली मस्जिद, नगीना।	—”—	—”—
8.	श्री भोपाल सिंह	श्री सूर्यपाल सिंह, ग्राम— मायापुरी, पो0 नागलसोती, बिजनौर	—”—	—”—
9.	श्री धर्मपाल सिंह	श्री छोटे सिंह, ग्राम— जीतपुर, पो0 नागलसोती, बिजनौर	—”—	—”—
10.	श्री बचन सिंह	श्री अमर सिंह, ग्राम— शिवपुर, पो0 कोटद्वार, गढ़वाल।	—”—	—”—
11.	श्री सुनील कुमार	श्री सुरेन्द्र सिंह, ग्राम— काण्डी, पो0 टाकर, गढ़वाल।	—”—	—”—
12.	श्री वेदप्रकाश	श्री साधौराम, ग्राम— डाटवाला, पो0 श्यामपुर, बिजनौर	—”—	—”—
13.	श्री सुरेशपाल	श्री किशोरी सिंह, ग्राम— मायापुरी, पो0 नांगलसोती, बिजनौर	पिछड़ीजाति	बि0लो0 प्रभाग
14.	श्री अखिलेश कुमार	श्री ओमप्रकाश, मुख्य व्यवस्थापक, पर्वतीय विकास खण्ड, नजीबाबाद।	—”—	—”—
15.	श्री महेश कुमार	श्री जेट सिंह, ग्राम व पो0 मण्डवाली, बिजनौर	अनु0जाति	—”—
16.	श्री रामलाल	श्री कलियालाल, ग्राम— चामक, पो0 चोपता, चमोली।	—”—	गढ़0लौ0 प्रभाग
17.	श्री बीर सिंह	ख्याली सिंह, ग्राम— मण्डवली, पो0 बिजनौर, बिजनौर	—”—	बि0लो0 प्रभाग
18.	श्री कैलाश चन्द्र	श्री ओम प्रकाश, ग्राम व पो0 लाल ढांग बिजनौर	पिछड़ीजाति	—”—
19.	श्री हीरामणी मंगगाई	श्री जोगेश्वर प्रसाद, ग्राम— बगवाड़ी, पो0 चंदौलाराई, गढ़वाल।	सामान्य	गढ़0लौ0 प्रभाग
20.	श्री महिपाल सिंह	श्री दरबान सिंह, ग्राम— कोटली, पो0 घोलकीर, चमोली	—”—	—”—
21.	श्री महिपाल सिंह	श्री प्रेम सिंह, ग्राम पनाई, पो0 गौचर, जिला चमोली	—”—	—”—
22.	श्री चन्द्रमोहन चौधरी	श्री गोविन्द राम, ग्राम— बाँटा, पो0 डाडामण्डी, गढ़वाल	—”—	विक्रय प्रभाग
23.	श्री सुरेन्द्र सिंह गुसाई	श्री उम्मेद सिंह, ग्राम व पो0 पाबौ, गढ़वाल	—”—	—”—
24.	श्री विजय सिंह	श्री मकड़ सिंह, ग्राम व पो0— देवलाड़, गढ़वाल।	—”—	—”—
25.	श्री विक्रम सिंह	श्री बहत्तर सिंह, ग्राम— कोल्टा, पो0 बुघाड़ी, गढ़वाल।	—”—	—”—
26.	श्री मनोहर सिंह	श्री भगत सिंह, ग्राम खण्डूली, पो0 डूंगरीखाल, गढ़वाल।	—”—	—”—
27.	श्री ननकन प्रसाद	श्री बालक राम, ग्राम— बेलवाशुक्ल, पो0 इन्डियाकोट, गोण्डा	—”—	—”—
28.	श्री गोविन्द सिंह	श्री प्रताप सिंह, ग्राम मन्दोली, पो0 सुन्दरपुर, अल्मोड़ा।	—”—	—”—
29.	श्री सन्तन सिंह	श्री शेखर सिंह, ग्राम— भलगंव, पो0 डाडामण्डी, गढ़वाल।	अनु0जाति	—”—

उपरोक्त तदर्थ नियुक्ति आदेश प्राप्त होने की तिथि से 15 दिन के अन्दर समस्त प्रमाणपत्रों सहित अपनी उपस्थिति कार्यालय में देना सुनिश्चित करें अन्यथा नियुक्ति स्वतः निरस्त समझी जायेगी।

(गोपाल सिंह)
प्रभागीय लॉगिंग प्रबन्धक,
उत्तर प्रदेश वन निगम,
कोटद्वार।”

18. The order of appointment of the petitioners and the private respondents in clear terms made it clear that it was not a regularization order under any rules or any scheme, but it was the new appointment order, passed by the respondents and it was made effective from the date of their taking charge on the post, after fulfilling conditions mentioned in their appointment order, hence, this court do not agree with the argument of the petitioners and the respondents that the daily wagers were regularized in their service rather the persons who were working with the department as daily wagers, on the basis of their experience were given appointment to the service by different orders and the petitioners were appointed first time to the regular services in 1990 vide Annexure No. A4, likewise some of the private respondents were appointed to the regular cadre in 1983, 1984 and 1985, hence the court does not agree with the argument of the petitioners that any regularization of the daily wagers was made under any law. Even otherwise, the regularization of some persons working with the department on daily wagers, cannot be made except under some rules or so called administrative scheme/order as pleaded by the parties, but none of the parties was able to produce any such rules or order/scheme, hence, the court is of the view that the petitioners as well as private respondents, who were working with the department as daily wagers, got their fresh appointment in the services of the scalars on different dates. The petitioners got their regular appointment in 1990 whereas, other private respondents were appointed from 1983 to 1985.

19. It has also been argued on behalf of the petitioners that in compliance of the order of the Hon'ble High Court, their representation was not decided by the department and no cogent reason was mentioned. The petitioners made their request to regularize them from the date their junior dailywagers were regularized i.e. from 1983 and also requested for higher pay scale from that date. The respondents had decided their representation and dismissed the same on the ground that

when regularization was made in 1983, the petitioners never applied for the same nor objected to such regularization and they accepted their regularization in 1990, hence they are now debarred to raise this objection after a period of more than 20 to 30 years. Learned counsel for the petitioners has argued that the respondents did not comply with the direction of the Hon'ble High Court in its letter and spirit and the reasons are not sufficient to test the constitutional criteria. This court is of the view that both the parties are addressing their appointments as regularization in service but in view of the court, this was not a regularization, but it was their fresh appointment to the services. Although the reasons mentioned in the order, disposing the representations of the petitioners, does not appeal to our conscience because if any such so called regularization was undertaken by the department of already working daily wagers then it was the necessity of principles of natural justice and common law that the complete list of the daily wagers working at that time should have been prepared and they should be given regularization in order of their engagement in the department unless there exist different reasons. Regularization of some employees leaving the other working prior to them should not be done without any rules & scheme. In view of the court, there was no such regularization as per any Rules or scheme and it was fresh appointment to the services made by the department. The petitioners were appointed to the regular services in 1990 whereas, other private respondents, who started working on daily wage basis, later in time were given appointed in 1983, hence they became senior as per length of service. .

20. The Seniority Rules of 2002 of the Government, according to the respondents, has been adopted by the department and seniority of the employees is to be counted from the date of their substantive appointment in the services and accordingly, the impugned seniority list of 2004 was issued.

21. In their petition, the petitioners have mainly sought two reliefs firstly, they have prayed to issue order or direction quashing the order No. 1278 dated 08.09.2014 passed by respondent no. 3 by which the representation of the petitioners have been rejected and also prayed to issue order or direction regularizing the petitioners from the date, the juniors of the petitioners were regularized.

22. This court is of the view that there was no such regularization rather it was a new appointment of the petitioners as well as of private respondents and this court cannot direct the respondents to give appointment to the petitioners from any such back date, if it was not so made by the initial appointment issued in 1990, on the basis of which they are serving in the department. Regarding the order dated 08.09.2014 passed by the respondent No.3, this court is of the view that, as there was no such regularization according to any Regularization Scheme or Rules, hence, there is no need to quash any such order, irrespective of the fact that the respondents are also addressing their appointment orders, as the orders of their regularization. In view of the above, the petition has no merit and deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JANUARY 04, 2018
DEHRADUN

KNP