

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

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

----- Chairman

Hon'ble Mr. D.K.Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 12/DB/2017

1. Hemkar Chandra Tripathi, S/o Late Sri B.C.Tripathi, aged about 70 years, R/o 4/1, Malviya Road, Laxman Chowk, Dehradun.
2. Vijendra Singh Parmar, S/o Sri Narendra Singh, aged about 68 years R/o Government P.G. College, Uttarkashi.

.....Petitioners

vs.

1. State of Uttarakhand through Principal Secretary, Higher Education, Civil Secretariat, Dehradun.
2. Director Higher Education, Uttarakhand, Haldwani.
3. State of U.P. through Secretary, Higher Education, Civil Secretariat, Lucknow.
4. Director of Higher Education, U.P. Allahabad.

.....Respondents.

Present: Sri L.K.Maithani, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents

JUDGMENT

DATED: MARCH 28, 2018

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioners seek following principal reliefs:

“ (i) To quash the impugned orders dated 05.03.2014, 20.02.2014 in league with order dated 24.08.2011 or incidental and consequential orders and declare the same as illegal, arbitrary and malafide along with its effect and operation also after calling the entire records from the respondents.

(ii) To direct the respondents to allow the benefit of Senior Selection Grade3 along with 18% interest and arrears had it been the impugned order was never in existence.

(iii).....

(iv)

(v).....”

2. Brief facts, necessary for adjudication of present claim petition, are as follows:

Both the petitioners were working on the post of Librarian in different Government Degree Colleges in the state of Uttarakhand. Both the petitioners retired. Petitioner No.1 retired in 2006 and petitioner No.2 attained the age of superannuation in 2008. Earlier, they have filed Writ Petitions No. 104/2005 (S/B), 107 of 2005 (S/B) and 108 of 2005 (S/B), along with one Rajendra Prasad Sharma, which were disposed of by Hon’ble High Court of Uttarakhand *vide* order dated 14.09.2005. Pursuant to the said order, the representations made by the petitioners, were rejected *vide* order dated 14.09.2005 by the Director, Higher Education. Consequently, the petitioners filed W.P. No. 247 of 2005 (S/B) before Hon’ble High Court. After hearing the parties, said writ petition was disposed of *vide* order dated 21.10.2005 (Copy annexure-6 to the claim petition), whereby respondent No.1 was directed to decide the representation of the petitioners afresh. The Respondent No.1, *vide* order dated 21.11.2005, rejected the

representation of the petitioners stating that the petitioners are not entitled to the Senior Pay Scale and Selection Grade claimed by them, as they are not the Librarians in the Universities. In the third round of litigation, the petitioners challenged the order dated 21.11.2005 on the ground that the petitioners who are Librarians in the Government Degree Colleges and discharging same functions, cannot be treated differently to the Librarians working in the Universities.

While considering the representation of the petitioners in pursuance to the order dated 21.10.2005, passed by the Hon'ble High Court in Writ Petition No. 247 of 2005 (S/B), reliance was placed on Government Order No. 2452/15-11-95-14 (10)/81, dated 29.02.1996 issued by the State of U.P., which was applicable to the State of Uttarakhand on the date of creation of the State, in view of Section 2(f) of U.P. Reorganization Act, 2000.

Similarly situated Librarians in the Government Degree Colleges in the State of U.P., through U.P. Librarians' Association, filed Writ Petition No. 1303 of 2005 (S/B) before Hon'ble High Court of Judicature at Allahabad, claiming Senior Pay Scale and Selection Grade. Hon'ble High Court, vide judgment and order dated 12.01.2007, quashed the Government order dated 29.02.1996, issued by the Government of U.P. It was held that petitioners of said writ petition cannot be denied benefit of Merit Promotion Scheme now termed as Career Advancement Scheme. It was however, directed by the Hon'ble High Court of Allahabad in its judgment and order dated 12.01.2007 that the Librarians in the Government Degree Colleges, in the State of U.P., were not entitled to arrears w.e.f. 01.04.1980. They were however, found entitled for the same w.e.f. 01.01.1986, the date on which

recommendations of the Pay Commission were made enforceable. State of U.P. filed a petition for Special Leave to Appeal before the Hon'ble Apex Court, who dismissed the petition for SLP No. 14535 of 2007 vide order dated 19.12.2008. The Division Bench of Hon'ble High Court of Uttarakhand, while deciding W.P. (SB) No. 337 of 2005, observed that since the Government order dated 29.02.1996, relied by Respondent No.1, stands quashed, therefore, while allowing the writ petition and quashing the order dated 21.11.2005, passed by Respondent No.1, directed the Respondent No.1 to decide fresh representation of the petitioners in the light of development that the Government order dated 29.02.1996, issued by State of U.P., has already been set aside and quashed.

3. It may be noted here that the judgment of Hon'ble High Court of Allahabad in WP(S/B) 1303 of 2005, U.P. Librarian Association vs. State of U.P. rendered on 12.01.2007, has been filed as Annexure: A6 to the claim petition. The Govt. order dated 29.02.1996 was quashed by the self-same order. As has been stated above, the same was put to challenge before the Hon'ble Apex Court, without getting any success. Copy of such judgment has also been enclosed with this petition as part of Annexure: 6.
4. **In compliance of judgment of Hon'ble High Court of Uttarakhand rendered on 23.10.2009, Government of Uttarakhand issued Government order on 06.08.2010 (Annexure: A 4). According to paragraphs No. 2 & 3 of the Government order No. XXIV(7)/24(5)09/2010 dated 06.08.2010, the Librarians/ Deputy Librarians/ Assistant Librarians will now be required to undergo the Computer based Man Power Training (*Computer Prashikshit Janshakti Par Aadharit Library Pravidhan Ki Vyavstha*). It also said that the vacancies in the cadre, shall be kept vacant (freeze) and separate notification shall be issued in respect of those posts which have been**

frozen . The modalities of training programme, according to G.O., shall be disclosed in future. This Government order was issued after taking concurrence of the Finance Department.

5. A perusal of Annexure: R 2 will reveal that although Senior Scale was given to petitioner No.1, but he was denied the benefit of Selection Grade. The reason given for not granting Selection Grade to such petitioner, was that he did not complete Refresher Training Programme, which requirement has already been done away with by the Government while issuing the G.O. dated 06.08.2010, with retrospective effect from 29.02.1996. It may be reiterated here that such G.O. was passed in compliance of Hon'ble High Court's order dated 23.10.2009 passed in W.P. (S/B) No. 337 of 2005.
6. Once requirement of Refresher Training Programme for Librarians/ Deputy/ Asstt. Librarians was done away with retrospectively w.e.f. 29.02.1996 by a G.O. which was based upon a decision of Hon'ble High Court, and such decision was affirmed by the Hon'ble Apex Court, this Tribunal finds that there was no requirement for the petitioners to have undergone Refresher Training Programme, which is sole basis for denial of Selection Grade to Petitioner No.1. by the Screening Committee. It was on the basis of the proceedings of Screening Committee that the Government has denied Selection Grade to the petitioner No.1. Such a decision cannot sustain in law.
7. Grant of ACP is purely based on length of service. Even if future vacancies, as per Government order dated 06.08.2010, have been frozen, the same cannot be construed to mean that long duration of service rendered by petitioners, should not be recognized, for the purpose of ACP.

8. While setting aside the proceedings of Screening Committee and subsequent Government order made in this behalf, we direct Respondent No.2 to hold the meeting of Screening Committee afresh and grant Selection Grade to petitioner no.1, if he is otherwise found suitable.
9. So far as Petitioner No.2 is concerned, an averment has been made in C.A. which was filed on 12.12.2017 that the matter of such petitioner for grant of Senior Scale will be placed before the next meeting of Screening Committee for consideration. We have been informed that no such meeting has taken place. We, therefore, direct Respondent No.2 to convene a meeting of Screening Committee and place the matter of petitioner No.2 for grant of Senior Scale, as well as Selection Grade, payable under ACP Scheme, at an earliest possible, and in any case, within six weeks of presentation of certified copy of this order.
10. Claim petition thus stands disposed of. No order as to costs.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 28, 2018
DEHRADUN

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