

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 61/DB/2019

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 Secretary/ Principal Secretary, Higher Education, Govt. of Uttarakhand, Civil Secretariat, Subhash Road, Dehradun.
2. Director Higher Education, Uttarakhand, Haldwani, Nainital.
3. Screening Committee, dated 28.05.2013 through its President, Education Director, Higher Education, Uttarakhand, Haldwani.

.....Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: SEPTEMBER 05,2019

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, 30.05.2018 of respondent no.3 up to the extent where it relates to deny the benefit

of selection grade and associate pay scale to the petitioners, declare the same as illegal, arbitrary and malafide and in violation of the judgment dated 28.03.2018 of Hon'ble Tribunal passed in claim petition No. 12/DB/2017, with its effect and operation.

(ii) To issue an order or direction to the respondents to allow the benefit of selection grade since dated 27.07.1998 to the petitioners along with associated pay scale, with 18% interest on the arrears on the amount of senior scale and selection grade since 27.07.1998 till the date of actual payment.

(iii) To issue any other order or direction which this court may deem fit and proper in the circumstances of the case in favour of the petitioners.

(iv) To award the cost of petition."

2. Brief facts, giving rise to 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 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 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. When the representations of the petitioner were dismissed, claim petition no. 12/DB/2017 was filed by the petitioners. The same was decided by this Tribunal *vide* judgment & order dated 28.03.2018, as follows:

“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.

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.”

3. Although the meeting of the Screening Committee was held, but the same did not serve any purpose in so far as prayer of the petitioners was concerned. Petitioners' case was not recommended. The same has, therefore, compelled the petitioners to approach this Tribunal in 4th round of litigation.
4. W.S. has been filed on behalf of the respondents. In the C.A., it has been stated that the case of the petitioner no.1 was put up before the Screening Committee, which recommended grant of senior scale to him. Accordingly, petitioner no. 1 has been granted Senior Scale *w.e.f.* 01.01.1994 *vide* G.O. dated 08.06.2017. The Screening Committee did not recommend grant of Selection Grade to him. The matter of petitioner no.2 for grant of Senior Scale and Selection Grade was also put up before the Screening Committee, which has recommended Senior Scale to petitioner no.2 from 01.01.1994, but did not

recommend names of both the petitioners for Selection Grade. Denial of such relief is attributed to the fact that the petitioners have not completed Orientation/ Refresher Course, which is an essential condition laid down in UGC Regulations, 2010, which clearly states that benefit of Career Advancement Scheme (CAS) will be granted to the Librarian only when they fulfill eligibility criteria prescribed by UGC. Non recommendation of Selection Grade to the petitioners is, therefore, attributed to the fact that the petitioners did not undergo the Orientation/ Refresher Course meant for the purpose.

5. Before we proceed further, it will be apt to quote the observations made by this Tribunal while deciding claim petition no. 12/DB/17, as follows:

“ 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”.

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 Vyavastha*). 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.

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.

Once requirement of Refresher Training Programme for Librarians/ Deputy/ Asst. 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 not interfered 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.

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.

6. The case of the petitioners was put to before Screening Committee, which, although recommended Senior Scale to them, but did not recommend Selection Grade.

The reason attributed to non-recommendation of Selection Grade to the petitioners was, that they did not undergo Orientation/ Refresher Course, which is an essential condition laid down in UGC Regulations, 2010.

7. This Tribunal while deciding claim petition No.12/DB/2017, had already noted that U.P. Government's order dated 29.02.1996 was quashed by the Hon'ble High Court of Judicature at Allahabad in WPSB No. 1303/2005, U.P. Librarian Association vs. State of U.P. decided on 12.01.2007. The said order was put to challenge before Hon'ble Apex Court, who refused to interfere in the order. In compliance of judgment of Hon'ble High Court of Uttarakhand, rendered on 23.10.2009, Government of Uttarakhand issued a G.O. on 06.08.2010, according to which the Librarian/ Deputy Librarian/Assistant Librarian will be required to undergo a computer based manpower training, modalities of which shall be disclosed in future, which, to the knowledge of the parties, have not been made public so far.
8. Petitioners have retired in 2006 and 2008. It is pointed out by Ld. Counsel for the petitioners that petitioners' case was recommended by Director, Higher Education, *vide* letter dated 15.06.2012 (Annexure: A 7) to the Govt. The said recommendation was made to Secretary, Higher Education, but no decision has been taken by the Government in such matter. Ld. Counsel further pointed out that the recommendation was made in favour of the petitioners to the effect that since they have retired in 2006 and 2008, therefore, they should be exempted from undergoing Refresher Training Programme on the lines of G.O. dated 11.08.2011 (Annexure: A 9), issued by the Govt. of U.P., in respect of their counterparts in the said State. Those Librarians who had retired in the State of U.P., were granted exemption from undergoing Refresher Training Programme and they were given Senior Scale as well as Selection Grade. Senior Scale has been granted to the petitioners. They are required to be given Selection Grade, which is not given to them only on the ground that they have not undergone Orientation/ Refresher Training Programme. Retired Librarians, who are stated to be junior to the petitioners, have been exempted from the same in the State of U.P.

9. Ld. Counsel for the parties, therefore, agree that a direction may be given to Principal Secretary, Higher Education, Government of Uttarakhand, Respondent No.1, to take a reasoned decision on the recommendation dated 15.06.2012 (Annexure: A 7) of Respondent No.2, within 12 weeks of presentation of certified copy of this order along with copies of Annexure: A 7 and Annexure: A 9.
10. Order accordingly.
11. The claim petition is, accordingly, disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 05, 2019
DEHRADUN

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