

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 39/DB/2019**

1. Sudhir Kant Uniyal, aged about 58 years, S/o Late Shri Bhairav Dutt Uniyal, R/o Sadhbav Kunj, Lane No. 3, House No. 81, Panditwari, Dehradun.
2. Shailendra Anthwal, aged about 58 years, S/o Late Shri Bhairav Dutt Anthwal, R/o Lane No. 3, House No. 20, Ajabpur Kala, Dehradun.

.....Petitioners

**VERSUS**

1. State of Uttarakhand through Principal Secretary/Secretary Technical Education, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Secretary, Finance, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
3. Director, Technical Education, Uttarakhand, Srinagar, Pauri Garhwal.
4. Principal Govt. Polytechnic, Pithuwala, Dehradun.
5. Principal, Govt. Polytechnic, Vias Nagar, Dehradun.

.....Respondents

Present: Sri M.C.Pant & Sri L.K.Maithani, Ld. Counsel for the petitioners  
Sri V.P.Devrani, Ld. A.P.O. for the respondents.

**JUDGMENT**

**DATED: FEBRUARY 13, 2020**

**HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A)**

1. The petitioners have filed this petition for the following reliefs:

*“(a) To quash the impugned order dated 14.11.2018 and 11.12.2018 passed by the respondents No. 2 and 3 and order dated 24.06.2019 and 16.07.2019 passed by the respondent No. 4 respectively with its effect and operation also after calling the entire record from the respondents.*

(b) To issue an order or direction to the concerned Respondents to grant the benefit of upgraded pay scale of Rs. 4500-7000 grade pay 2800/- in the pay-band-1, Rs. 5200-20200 since the date 01.01.2006 by giving notional increment from 01.01.1996 because it is a case of Pay Anomaly of 5<sup>th</sup> Pay Commission, instead of the date 29.05.2015 as the Pay Anomaly Committee recommended the same from the date 01.01.2006 to the employees of State and accordingly re-fix the pay of the petitioners since 01.01.2006 notionally from 01.01.1996 and quash any recovery order passed by the respondents in pursuance of the order dated 14.11.2018 and 11.12.2018. Had it been the impugned order was never in existence.

(c) To issue an order or direction, directing to the respondents to grant the benefit of pay scale up-gradation of pay scale Rs. 5200-20200/- grade pay of Rs. 2800/- to the pay scale of Rs. 9300-34800/- with grade pay of Rs. 4200 to the petitioners as have been granted vide the G.O. dated 17.12.2015 of Respondent No. 1 to the Lab Technicians of Medical Health and Family Welfare Department, along with all service benefits, after calling the entire records from the respondents.

(d) Issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(e) Award the cost of the petition in favour of the petitioners."

2. The petitioners have stated that they were recruited and working in the Directorate, Technical Education Department, on the post of Lab Assistants (Pharmacy). On the recommendations of the Pay Anomaly Committee, Uttarakhand, respondent No. 2 issued a G.O. No. 395/XXVII/(7)/2008 dated 17.10.2008 by which revised pay scales were sanctioned to the employees of the State, who were getting the pay scales, similar to the revised pay scale at the Centre on 31.12.2006. The said revised pay scale was sanctioned to the employees of the State since 2006. Accordingly, the revised pay of the petitioners was fixed w.e.f. 01.01.2006.

3. Thereafter, on the recommendations of the Pay Anomaly Committee vide G.O. dated 873 dated 08.03.2011, issued by the

respondent No. 2, it was provided that the nomenclature of Lab Assistant, Technical Assistant etc. be made as Lab Technicians. It was also provided that the qualification of the post in Technician cadre is intermediate (Science) with Diploma Certificate in the relevant trade of one and half years or more period. Then in the revised pay structure of 01.01.2006, the pay scale of Rs. 4500-7000 be revised/sanctioned in the pay band of Rs. 5200-20200 with grade pay of Rs. 2800.

4. Thereafter, vide G.O. dated 399 dated 29.05.2015, respondent No. 1 changed the nomenclature of the post of Lab Assistant (Pharmacy) of the Technical Education Department to the post of Lab Technician (Pharmacy) and after removing the pay Anomaly, upgraded the pay scale of Rs. 3200-4900 to the pay scale of Rs. 4500-7000, sanctioned the grade pay of Rs. 2800 in the pay band of Rs. 5200-20200. It has also been contended by the petitioners that the pay scales of Lab Technicians of Medical Department were further revised to Rs 9300-24800, grade pay Rs. 4200 vide G.O. dated 17.12.2015 in line with Govt. of India. The nature of work and duties and service conditions of Lab Technicians of the Medical Health and Family Welfare Department and the Department of the petitioners are the same hence, similar benefit should be granted to the petitioners as well.

5. The benefit of upgraded scale to the petitioners has been granted from the date of issuance of the G.O. whereas, the higher pay fixation was made notionally since 01.01.1996 or 01.01.2006 and actually w.e.f. 01.01.2006. Thereafter, respondent No. 3 vide order dated 11.12.2018, directed the Principals of all Govt. Polytechnics to grant the benefit of upgraded pay scale from the date of issuance of the G.O. dated 29.05.2015 instead of 01.01.2006 and adjust the excess amount paid from the pay in installments. The act of the respondents is illegal, arbitrary, irrational discriminatory, malafide and against the principles of natural justice.

6. The petitioners having no other efficacious remedy except to approach this Tribunal have filed this petition.

7. It is also contended that after filing of claim petition, respondent No. 4, passed order dated 24.06.2019 and 16.07.2019 in respect of petitioner no. 2 and also order of adjusting the alleged excess amount from the petitioner.

8. Respondents have opposed the petition on the ground that petitioners, who were initially appointed as Lab Assistant in the Technical Education Department in Uttar Pradesh, were allocated to the State of Uttarakhand. The nomenclature of their posts was changed vide G.O. No. 399/XLI-1/2015-29/2006 dated 29.05.2015. Their educational qualification being at par with other technician cadre of the State, nomenclature of the post of Lab Assistant (Pharmacy) was changed and renamed as Lab Technician (Pharmacy), their pay scale was revised to 4500-7000 and sanctioned grade pay of Rs. 2800 in the pay band of Rs. 5200-20200 from the date of issuance of the G.O. dated 29.05.2015. The said G.O. was made applicable prospectively and therefore, revised pay scale was only to be extended to the petitioners w.e.f. 29.05.2015. The changed nomenclature and the benefit of revised pay structure was granted to them, as mentioned in the G.O. The petitioners, who earlier submitted their applications, to grant them the benefit of upgraded pay scales undertook responsibility for wrong fixation/recovery of excess amount paid due to wrong fixation.

9. Respondents No. 4 & 5 constituted three members committees for the purpose of granting upgraded pay scales to the petitioners. In view of the recommendations of the Pay Anomaly Committee, the benefits were granted to them notionally w.e.f. 01.01.1996, actually w.e.f. 01.01.2006 in the upgraded pay scales of Rs. 4500-7000, sanctioned grade pay of Rs. 2800, on their request upon the condition that if any otherwise instructions were received from the higher authority/audit, the excess amount paid, will be recovered from them in lump-sum. The terms

and conditions laid down in the fixation order No. 363-367/Est./p.f./2015-16 dated 27.11.2015, which reads as under:

“4. सम्बन्धित कर्मचारी को इस आशय से कि यदि आपके वेतन निर्धारण में उच्चाधिकारियों/सम्प्रेक्षकों द्वारा किसी भी स्तर पर कोई भी आपत्ति की जाती है तो अधिक दी गयी धनराशि एक मुश्त वसूल की जायेगी।”

10. Respondents have also contended that the petitioners did not challenge the condition mentioned in their upgraded pay fixation order, passed by the sanctioning authorities, either before the department or before any court of law. Hence, they have impliedly accepted the condition attached with it and now petitioners have waived their right to challenge the same. The impugned order dated 14.11.2018 was passed and vide order dated 11.12.2018 a direction was issued by the respondent No. 3 to rectify this upgraded pay fixation w.e.f. 29.05.2015 instead of 01.01.2006, actually and notionally w.e.f. 01.01.1996. The recovery order is yet to be passed whereas, petitioners have approached the court without any such order hence, no cause of action duly accrued to them and their claim petition is premature.

11. Respondents have also contended that petitioners were claiming the benefit of the judgment passed by the Hon'ble High Court in writ petition No. 338 of 2014 (S/B) dated 19.11.2016. It was a different matter and does not help to them. Respondents have also contended that the powers under Article 226 of the Constitution of India, does lie only with the Hon'ble High Court to strike down the word 'immediate effect' which does not lie with this Tribunal. Hence, relief sought upto that extent is not legally sustainable and tenable before this Tribunal and jurisdiction of this Tribunal for quashing of this G.O. is not admitted and denied, as the petitioners were wrongly given the benefit of the G.O. of 2015 from back date hence, the impugned orders were correctly passed. The claim petition deserves to be dismissed.

12. In the R.A., petitioners have denied the contention of the respondents and further submitted that the respondents are trying to

project before the Court the case of the petitioners is of wrong fixation whereas, petitioners are grouped into one cadre and in this regard there was a Government Order for all the department of the State Govt. and department of Health cannot be treated differently. The judgment of the Hon'ble High Court is very relevant for granting the relief. The Hon'ble High Court in writ petition No. 338 of 2014 (S/B), Vijay Chandra Raturi vs. Additional Secretary Law cum-L.R., Government of Uttarakhand & others, struck down the words 'immediate effect' from the G.O. hence, the impugned orders dated 14.11.2018 and 11.12.2018 are wrong and liable to be quashed with all consequential benefits. The above orders are not clarification of the order G.O. dated 29.05.2015, but are directive in nature by which order for re-fixation of revised pay scale has been ordered to be made w.e.f. 29.05.2015 instead of 01.01.2006. The respondents are treating the similarly situated persons in a discriminative manner, violating the Article 14 and 16 to the Constitution of India and the same cadre in the State Government is being treated differently. Hence, the petition deserves to be allowed.

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

14. The Govt. Order dated 17.10.2008, Annexure A5 of the petition is the general G.O. of pay fixation w.e.f. 01.01.2006 on the basis of the recommendations of the 6<sup>th</sup> Central Pay Commission. According to this G.O., the pre-revised scale of Rs. 4500-7000 has been revised to Pay Band-I of Rs. 5200-20200 with grade pay of Rs. 2800. The G.O. dated 873/xxvii(7)न०प्रति०/2011 dated 08.03.2011, Annexure A-6 to the claim petition is of the Finance Department, Govt. of Uttarakhand, passed on the recommendations of the Pay Anomaly Committee which recommends that for Lab Technicians cadre of Medical Department, in the revised pay structure effective from 01.01.2006, for the Lab Technicians and Senior Lab Technicians, Pay Band-I and Grade Pay of Rs. 2800 and Pay Band-II and Grade Pay Rs. 4200 respectively be continued.

For other departments, different designations of this level be kept as Lab Technician.

15. On the basis of the above G.O. of the Finance Department dated 08.03.2011, the Technical Education Department has issued G.O. dated 29.05.2015 (Annexure: A7 to the claim petition) whereby the designation of Lab Assistant (Pharmacy) has been changed to Lab Technician (Pharmacy) and their unrevised pay scale of Rs. 3200-4900 has been upgraded to Rs. 4500-7000, which in the revised pay structure w.e.f. 01.01.2006 comes to Pay Band-I Rs. 5200-20200 and Grade Pay of Rs. 2800 with **immediate effect**.

16. A reading of the above G.Os. shows that the Lab Technicians of the Medical Department were already getting Pay Band-I and Grade Pay of Rs. 2800 in the revised pay structure w.e.f. 01.01.2006. While this upgraded Pay Band has been sanctioned to the Lab Assistants (Pharmacy) renamed as Lab Technicians (Pharmacy) of the Technical Education Department vide G.O. dated 29.05.2015, upgrading unrevised pay scale of Rs. 3200-4900 to Rs. 4500-7000, with **immediate effect**.

17. The above shows that before issuance of the G.O. dated 29.05.2015, the Lab Assistants/Lab Technicians of the Technical Education Department were in lower pay scale as compared their counterparts of the Medical Department. The G.O. dated 08.03.2011 of the Finance Department, recommended certain qualifications for Lab Technicians and similar pay scale (similar pay scale and Pay Band in the revised pay scale) for Lab Technicians of different departments. The same was subsequently done by the Technical Education Department vide its G.O. dated 29.05.2015 with **immediate effect**. The relevant portion of this G.O. is reproduced as under:

“-----उक्त पदनाम को “ प्रयोगशाला प्राविधिज्ञ, फार्मसी ” (लैब टेक्नीशियन , फार्मसी ) में परिवर्तित किए जाने एवं उक्त पद के वर्तमान वेतनमान ₹ 3,200-4,900 (अपुनरीक्षित) को उच्चिकृत कर ₹ 4,500-7,000 अनुमन्य करते हुए, दिनांक 01.01.2006 से लागू पुनरीक्षित वेतन संरचना में वेतन बैण्ड -1 ₹ 5,200-20,200 एवं ग्रेड वेतन ₹2,800/- तत्काल प्रभाव से स्वीकृत किए जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं।”

18. The mention of the unrevised pay scales and revised pay structure w.e.f. 01.01.2006 has probably led to the confusion of upgrading the pay scale from 1996/2006, while it is clearly mentioned that upgraded pay scale has been sanctioned with **immediate effect** (तत्काल प्रभाव). The same has been clarified in the letter dated 14.11.2018 (Annexure: A1 to the claim petition) wherein direction has also been given to refix the pay w.e.f. 29.05.2015 instead of from 01.01.2006 and the excess payment made has been directed to be adjusted in installments from the pay of future months.

19. Referring to the principles laid down by the Hon'ble Supreme Court in the case of **State of Punjab vs. Rafiq Masih (2015)4 SCC, 334**, the petitioners have argued that the recovery of the excess amount already paid cannot be and should not be made from them and the same has also been ordered in the interim order dated 10.01.2019 of the Hon'ble High Court of Uttarakhand in writ petition No. 87 of 2019, Pooran Singh Rawat vs. State & others (a different person from the petitioners of this claim petition). Learned A.P.O. has contended that the case of the petitioners is not covered under the principles laid down by the Hon'ble Supreme Court in the Rafiq Masih case (supra), as the petitioners in their request to the respondents No. 4 & 5 (Principals of the Government Polytechnics) had undertaken responsibility for wrong fixation of pay/recovery of excess amount paid as a result of pay fixation. The orders of pay fixation issued by the Principals also mentioned that if any objection is raised by the senior officer/auditor about pay fixation, the excess payment shall be recovered lump-sum which was not objected to or challenged by the petitioners. Therefore, petitioners now cannot take the plea of undue hardship, if recovery of excess payment is made from them in installments. We find force in the argument of learned A.P.O. as the orders were conditional and the benefit was granted on the undertaking of the petitioners that the excess amount can be recovered from them.



20. It is clear from the above analysis that the intention of the G.O. dated 29.05.2015 of Technical Education Department (Annexure: A7 to the claim petition) was to rename the post and upgrade the pay with **immediate effect** (i.e. w.e.f. 29.05.2015) and not from any previous date. The petitioners had undertaken to refund the excess amount paid to them on the basis of the wrong fixation of pay and respondents are justified in revising the pay upgrading the same from 29.05.2015 and recovery of excess amount in installments.

21. The other relief sought by the petitioners is that the Medical Department vide their G.O. dated 17.12.2015 (Annexure: A10 to the claim petition) have upgraded the pay scales of the Lab Technicians working in the Medical Department from Pay Band Rs. 5200-20200, Grade Pay of Rs. 2800 to Pay Band Rs. 9300-34800, Grade Pay of Rs. 4200 in line with the Government of India, Medical and Family Health Department O.M. dated 17.07.2015. The petitioners want the same pay scale upgradation which has been opposed by the respondents as the G.O. dated 17.12.2015 pertains to the Lab Technicians of Medical Department only and the Lab Technicians of other departments are not covered by the same. This issue is of policy matter which can be the subject matter of consideration of the Pay Anomaly Committee of the State and does not call for adjudication by this Tribunal.

22. In view of the above, there is no force in the claim petition and the same is liable to be dismissed.

### **ORDER**

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

**(RAM SINGH)**  
VICE CHAIRMAN (J)

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

*DATED: FEBRUARY 13, 2020*  
*DEHRADUN.*  
*KNP*