

**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. 89/DB/2018

1. Himanshu Naugai, aged about 35 years s/o Sri P.C. Naugai, presently posted as Deputy Education Officer Bikiyasain, District Almora.
2. Anshul Bisht, aged about 39 years s/o Sri Jagat Singh Bisht, presently posted as Deputy Education Officer Champawat, District Champawat.
3. Chakshushpati Awasthi, aged about 34 years s/o Sri Bhagwan Ballabh Awasthi, presently posted as Deputy Education Officer, Dhari, District Nainital.
4. Surendra Singh Negi, aged about 44 years s/o Sri Anand Singh Negi, presently posted as Deputy Education Officer, Kirtinagar, District Tehri Garhwal.
5. Poonam Chauhan, aged about 33 years d/o Sri B.S.Chauhan, presently posted as Deputy Education Officer, Bagheshwar, District Bagheshwar.
6. Vinod Singh aged about 39 years s/o Sri Bachan Singh, presently posted as Deputy Education Officer, Pratapnagar, Tehri Garhwal.
7. Pankaj Kumar Upreti, aged about 39 years s/o Sri Kailalsh Chandra Upreti, presently posted as Deputy Education Officer, Narendra Nagar, District Tehri Garhwal.
8. Abhishek Shukla, aged about 34 years s/o Sri Onkarnath Shukla, presently posted as Deputy Education Officer, Gugadda, District Pauri Garhwal .
9. Sumer Singh, aged about 35 years s/o Sri Gabbar Singh, presently posted as Deputy Education Officer, Jaiharikhal, District Pauri Garhwal.
10. Reena, aged about 29 years d/o Sri Punjab Singh, presently posted as Deputy Education Officer, Roorkee, District Haridwar.
11. Himanshu Kr. Srivastava, aged about 37 years s/o Late Sri Jagdish Lal Srivastava, presently posted as Deputy Education Officer, Vikasnagar, District Dehradun.
12. Bhaskar Chandra, aged about 35 years s/o Sri Jagdish Prasad, presently posted as Deputy Education Officer, Pokhri, District Chamoli.
13. Solohita Negi, aged about 36 years w/o Sri V.R.Pandey, presently posted as Deputy Education Officer, Bhimtal, District Nainital.
14. Vandana Rautela, aged about 39 years d/o Late Sri Shiv Singh Rawat, presently posted as Deputy Education Officer, Kashipur, District Udham Singh Nagar.

15. Ravi Mehta, aged about 39 years s/o Sri K.S.Mehta, presently posted as Deputy Education Officer, Gadarpur, District Udham Singh Nagar.
16. Bharat Joshi, aged about 31 years s/o Sri Bhuwan Chandra Joshi, presently posted as Deputy Education Officer, Chaukhutiya, District Almora.
17. Amit Kumar Chand, aged about 39 years s/o Sri Suresh Chand, presently posted as Deputy Education Officer, Kotabagh, District Nainital.
18. Vineeta Kathait, aged about 37 years d/o Maj. M.S.Kathait, presently posted as Deputy Education Officer, Thauldhar, District Tehri Garhwal.
19. Pooja Negi, aged about 33 years d/o Sri Ravindra Singh Negi, presently posted as Deputy Education Officer, Kalsi, District Dehradun.
20. Bhanu Pratap, aged about 39 years s/o Sri Lakhan Singh, presently posted as Deputy Education Officer, Munsyari, District Pithoragarh.
21. Ashwani Rawat, aged about 39 years s/o Sri D.S. Rawat, presently posted as Deputy Education Officer, Ramgarh, District Nainital.
22. Geetika Joshi, aged about 41 years d/o Sri U.C.Joshi, presently posted as Deputy Education Officer, Tarikhet, District Almora.
23. Harendra Shah, aged about 35 years s/o Sri Jagdish Chandra Shah, presently posted as Deputy Education Officer, Lohaghat, District Champawat.
24. Prema Bisht, aged about 41 years d/o Late Sri Laxman Singh Bisht, presently posted as Deputy Education Officer, Bajpur, District Udham Singh Nagar.
25. Varsha Bhardwaj, aged about 37 years d/o Sri Vishwamitra Bhardwaj, presently posted as Assistant Director S.C.E.R.T., Dehradun, District Dehradun.
26. Amit Chauhan, aged about 30 years s/o Late Sri Sardar Singh, presently posted as Deputy Education Officer, Naugaun, District Uttarkashi.
27. Tara Singh, aged about 43 years s/o Sri Bihari Singh, presently posted as Deputy Education Officer, Lamgada, District Almora.
28. Akansha Rathore, aged about 32 years d/o Sri Arjun Singh Rathore, presently posted as Deputy Education Officer, Sahaspur, District Dehradun.
29. Amrita Jaiswal, aged about 32 years d/o Sri Manmohan Jaiswal, presently posted as Deputy Education Officer, Kaljikkhal, District Pauri Garhwal.
30. Vivek Panwar, aged about 42 years s/o Sri Rampal Singh Panwar, presently posted as Deputy Education Officer, Joshimath, District Chamoli.
31. Bushra, aged about 31 years d/o Sri Islam, presently posted as Deputy Education Officer, Ekeshwar, District Pauri Garhwal.
32. Ajeet Singh, aged about 32 years s/o Late Sri Siyaram, presently posted as Deputy Education Officer, Bironkhal, Pauri Garhwal.
33. Harish Singh, aged about 34 years s/o Sri Gaje Singh Rautela, presently posted as Deputy Education Officer, Bhaisiyachana, District Almora.
34. Yashveer Singh, aged about 42 years s/o Late Sri Bachan Singh, presently posted as Deputy Education Officer, Thatyud, District Tehri Garhwal.
35. Mohammad Saved Alam, aged about 39 years s/o Sri Israr Ahmad, presently posted as Deputy Education Officer, Kot, District, Pauri Garhwal.

36. Ramesh Chand Maurya, aged about 40 years s/o Sri Ganga Ram Maurya, presently posted as Deputy Education Officer, Kapkote, District Bageshwar.
37. Hemlata Gaur, aged about 33 years d/o Sri Ram Prasad, presently posted as Deputy Education Officer, Bhatwari, District Uttarkashi.
38. Sanjay Kumar, aged about 40 years s/o Sri Kartar Singh, presently posted as Deputy Education Officer, Dehradun.
39. Monika Bam, aged about 32 years d/o Sri Fateh Singh, presently posted as Deputy Education Officer, Raipur, District Dehradun.
40. Brijpal Singh, aged about 36 years s/o Sri Mehar Singh Rathore, presently posted as Deputy Education Officer, Narsan, District Haridwar.
41. Vinod Kumar, aged about 46 years s/o Late Sri Purushottam, presently posted as Deputy Education Officer, Devprayag, District Tehri Garhwal.
42. Khushal Singh Toliya, aged about 32 years s/o Late Sri Sher Singh Tolia, presently posted as Deputy Education Officer, Narayanbagad, District Chamoli.
43. Bhuvneshwar Prasad, aged about 35 years s/o Sri Natthi Prasad, presently posted as Deputy Education Officer, Bhilangana, District Tehri Garhwal.
44. Anee Nath, aged about 33 years s/o Sri Dharam Nath, presently posted as Deputy Education Officer, Chamba, District Tehri Garhwal.
45. Bhupinder Kumar, aged about 42 years s/o Sri Mohan Lal, presently posted as Deputy Education Officer, Betalghat, District Nainital.
46. Dikamber Lal Arya, aged about 34 years s/o Sri Mohan Ram, presently posted as Deputy Education Officer, Dwarahaat, District Almora.
47. Ganesh Singh Jyala, aged about 36 years s/o Sri Diwan Singh Jayala, presently posted as Deputy Education Officer, Bin, District Pithoragarh.
48. Pankaj Kumar, aged about 45 years s/o Late Sri A.P.Sharma, presently posted as Deputy Education Officer, Chakarata, District Dehradun.
49. Pallalvi Nain, aged about 36 years d/o Sri Nain Ram, presently posted as Expert SSA, SPO Dehradun, District Dehradun.
50. Dhanbir Singh, aged about 39 years s/o Late Sri Gindo Singh, presently posted as Deputy Education Officer, Jakhanidhar, District Tehri Garhwal.
51. Kaina, aged about 33 years d/o Sri Jagpal, presently posted as Deputy Education Officer, Karanprayag, District Chamoli.
52. Deepti, aged about 36 years d/o Sri Madanlal Jatav, presently posted as Deputy Education Officer, Karanpur, District Haridwar.
53. Sushma Gaurav, aged about 40 years d/o Sri Narendra Prasad, presently posted as Deputy Education Officer, Sitar ganj, District Udham Singh Nagar.
54. Gunjan Amrohi, aged about 34 years d/o Sri Kiran Prakash, presently posted as Deputy Education Officer, Rudrapur, District Udham Singh Nagar.
55. Kundan Singh, aged about 36 years s/o Sri Pratap Singh, presently posted as Deputy Education Officer, Bhagwanpur, District Haridwar.
56. Soni Mahara, aged about 36 years d/o Sri Gopal Singh ;Mahara, presently posted as Deputy Education Officer, Khatima, District Udham Singh Nagar.

57. Ravi Kumar, aged about 33 years s/o Sri Ratan Lal, presently posted as Deputy Education Officer, Ukhimath, District Rudraprayag.

58. Kamleshwari Mehta, aged about 39 years d/o Sri Dan Singh Mehra, presently posted as Deputy Education Officer, Okhalakanda, District Nainital.

.....Petitioners.

VS.

1. State of Uttarakhand through Additional Chief Secretary/ Secretary, Department of School Education State of Uttarakhand, Dehradun.
2. Director General of School Education, Uttarakhand, Dehradun.
3. Director of Secondary Education, Uttarakhand, Dehradun.
4. Uttarakhand Public Service Commission through its Secretary Haridwar .
5. Dinesh Chand Dimri, Officiating Block Education Officer, Narsan, District Haridwar.
6. Hira Singh Negi, Officiating Block Education Officer, Dugadda, District Pauri Garhwal.
7. Chandra Shekhar Singh Bankoti, Officiating Block Education Officer, Bhasiya Chana, District Almora.
8. Harish Singh Bora, Officiating Block Education Officer, Bin, District Pithoragarh.
9. Pushpa Joshi, Assistant Director, SCERT, Dehradun.
10. Smt. Indira Negi, Deputy Education Officer, Doiwala, District Dehradun.
11. Ranjit Singh Rana, Officiating Block Education Officer, Kalsi, District, Dehradun.
12. Dr. Rashmi Badoni, Staff Officer, Director Elementary Education, Uttarakhand, Dehradun.
13. Smt. Kamla Jangpangi, Officiating Block Education Officer, Ramgarh, District Nainital.
14. Ganesh Prasad, Officiating Block Education Officer, Munakot, District Pithoragarh.
15. Dr. Brijendra Joshi, Officiating Block Education Officer, Bagheshwar, District Bagheshwar.
16. Ramswaroop Yadav, Officiating Block Education Officer, Dwarikhal, District Pauri.
17. Mahavir Singh Chaudhary, Officiating Block Education Officer, Barakot, District Champawat.
18. Mukhlal Prasad, Officiating Block Education Officer, Doiwala, District Dehradun.
19. Ranjit Singh Negi, Officiating Block Education Officer, Kashipur, District Udham Singh Nagar.
20. Jagdish Prasad Kala, Officiating Block Education Officer, Pauri, District Pauri.

21. Vinay Kumar Arya, Officiating Block Education Officer, Lamgara, District Almora.
22. Pushkar Lal Tamta, Officiating Block Education Officer, Takula, District Almora.
23. Srikant Purohit, Officiating Block Education Officer, Roorkee, District Haridwar.
24. Pankaj Sharma, Officiating Block Education Officer, Sahaspur, District Dehradun.
25. Chandi Prasad Raturi, Officiating Deputy Secretary, Uttarakhand Vidyalayee Shiksha Parishad Ramnagar, District Nainital.
26. Amit Kotiyal, Officiating Block Education Officer, Yamkeshwar, District Pauri.
27. Shailendra Amoli, Staff Officer, Director, Secondary Education, Uttarakhand.
28. Tarun Kumar Pant, Officiating Block Education Officer, Berinag, District Pithoragarh.
29. Shyam Singh Bisht, Officiating Block Education Officer, Dwarahaat, District Almora.
30. Sanjeev Joshi, Assistant SPD, RMSA, Dehradun.
31. Bhaskaranand Pandey, Officiating Block Education Officer, Kotabag, District Nainital.
32. Prakash Singh Jangpangi, Officiating Block Education Officer, Hawalbag, District Almora.
33. Swaraj Singh Tomar, Officiating Block Education Officer, Raipur, District Dehradun.
34. Ramesh Singh, Officiating Block Education Officer, Jaunpur Thatyur, District Tehri.
35. Shailendra Singh Chauhan, Officiating Block Education Officer, Chamba, District Tehri.
36. Ajay Kumar Chaudhary, Officiating Block Education Officer, Bahadarabad, District Haridwar.
37. Harendra Kumar Mishra, Officiating Block Education Officer, Haldwani, District Nainital.

.....Respondents.

Present: Sri L.K. Maithani, Advocate for the petitioners.
Sri V.P. Devrani, A.P.O., for Respondents No.1 to 3.
Sri Shashank Pandey & Sandeep Tiwari, Advocates for
Respondents No.20, 22, 24, 27 to 31 and 34 to 37.

JUDGMENT

DATED: AUGUST 10, 2020.

Per: Justice U.C.Dhyani

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

- “ (i) To declare that the amendment in the rule 5(vi)(a) Uttarakhand State Education (Administrative Cadre) Service Rules, 2013 by amending Rules, 2016 as *ultra vires* to the Constitution of India and a colourable piece of legislation promulgated to benefit the class of employees and therefore should be struck off.
- (ii) To quash the impugned office order No. 224 of dated 03.11.2014 (Annexure: A-2), impugned office order no. 190 of dated 16.03.2018 (Annexure No. A-4) and final seniority list dated 17.07.2018 (Annexure No. A-1) passed by the respondent no.3, with its operation and effect.
- (iii) To issue an order or direction to the concerned respondent to redraw the fresh seniority list including the name of the petitioners above the private respondents.
- (iv) To issue any other order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.
- (v) To award the cost of petition.
- (vi) To issue any other order or direction which this Court may deem fit.”

RELIEF NO. 01: THIS TRIBUNAL LACKS JURISDICTION

2. So far as the relief no. 1 is concerned, Hon’ble High Court of Uttarakhand at Nainital has settled the controversy that this Public Services Tribunal has no power to look into the constitutional validity of the Rules. In the decision of *Shyam Lal and another vs. State of Uttarakhand and others, in WPSB No. 39/2020*, Hon’ble High Court has clearly laid down that the Uttarakhand Public Services Tribunal has no power to decide the questions relating to *vires* of statutory provisions and Rules. In Paragraphs No. 30 to 38, Hon’ble Court has held, as under:

“30. The 1976 Act does not contain any specific provision conferring power on the Tribunal, constituted under the said Act, to decide questions relating to the *vires* of statutory provisions and Rules. The power to create or enlarge jurisdiction is legislative in character. The Legislature alone can do it by law and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of a Court. (A.R. Antulay). In the absence of any such power being conferred on it by the Legislature, it is not the function of this Court to confer any such jurisdiction on the Tribunal constituted under the 1976 Act, for the jurisdiction of a Court/Tribunal can be created, enlarged or divested

only by the Legislature, and not by the Court. (A.R. Antulay; and Shorter Constitution by D.D. Basu (18th Edition) Reprint 2002). The High Court would not ordinarily, in the exercise of its power of judicial review, prescribe functions to be discharged by the Tribunal which the State Legislature has not stipulated.

31. Even otherwise, as held by the Supreme Court in Madras Bar Association, the answer to the question, whether any limitation can be read into the competence of the legislature to establish and confer jurisdiction on Tribunals, would depend upon the nature of jurisdiction that is being transferred from Courts to Tribunals. These yardsticks would vary depending on whether the jurisdiction is being shifted from the High Court, or the District Court or a Civil Judge. The 1976 Act was promulgated for adjudication of disputes relating to employment matters of public servants of the State Government etc. The jurisdiction of the Civil Courts, for redressal of their grievances, was taken away, (Public Services Tribunal Bar Assn.), and cases then pending in the Civil Court were transferred to it. Unlike the Tribunal constituted under the 1976 Act, cases pending in the High Court were initially transferred to the Administrative Tribunals constituted under the 1985 Act. It is only in terms of the law declared by the Supreme Court, in L. Chandra Kumar, were the decisions of these Tribunals, constituted in terms of the 1985 Act and as enacted by Parliament under Article 323-A of the Constitution, made subject to the judicial review of the High Court under Article 226 of the Constitution of India.

32. The Service Tribunals constituted under the 1976 Act have not been conferred jurisdiction, by the Legislature to adjudicate disputes relating to the *vires* of statutory provisions or rules. It is, therefore, not open to the High Court, when the validity of statutory provisions are under challenge before it in proceedings under Article 226 of the Constitution of India, to relegate the person aggrieved thereby to avail the remedy of approaching the Public Services Tribunal constituted under the 1976 Act.

33. The fact however remains that this would, as held by the Supreme Court in L. Chandra Kumar, enable a litigant to avoid approaching the Public Services Tribunal, and to directly invoke the extra-ordinary jurisdiction of the High Court under Article 226 of the Constitution of India, by raising a challenge, albeit frivolous, to the constitutional validity of a statutory provision or rule. This would, in turn, result in docket explosion in the High Court, and its precious time and resources being needlessly spent in adjudicating such frivolous challenges to the constitutional validity of statutory provisions and Rules. In this context it is useful to note that, in Krishna Sahai, the Supreme Court had commended to the State of Uttar Pradesh to consider the feasibility of setting up of an appropriate tribunal under the 1985 Act in the place of the Public Services Tribunal functioning under the 1976 Act so that, apart from the fact that there would be uniformity in the matter of adjudication of service disputes, the High Court would not be burdened with service litigation; and a Tribunal, with plenary powers, could function to the satisfaction of everyone

34. Again in Rajendra Singh Yadav, the Supreme Court opined that there was no justification why a Service Tribunal of a different pattern should operate in the State of Uttar Pradesh with inadequate powers to deal with every situation arising before it; a Tribunal set up under the Administrative Tribunals Act would have plenary powers to deal with every aspect of the dispute; the U.P. Services Tribunal should be substituted by a Tribunal under

the Administrative Tribunals Act, as early as possible, to enable uniformity of functioning, and the High Court being relieved of the burden of dealing with certain service disputes; steps should be taken to replace the Service Tribunal, by a Tribunal under the Administrative Tribunals Act, 1985, as that would give the Tribunal the necessary colour in terms of Article 323-A of the Constitution; disputes which arise, on account of the Service Tribunal not having complete jurisdiction to deal with every situation arising before it, would then not arise; and several States had already constituted such Tribunals under the 1985 Act.

35. Both in Krishna Sahai and in Rajendra Singh Yadav, the Supreme Court had opined that it would be appropriate for the State of Uttar Pradesh (which would also include the successor State of Uttarakhand) to change its manning to maintain judicial temper in the functioning of the Tribunal. The State Government was directed to consider the feasibility of setting up an appropriate Tribunal under the Administrative Tribunals Act, 1985 in the place of the existing Service Tribunal established under the 1976 Act. (Public Services Tribunal Bar Assn.). Despite repeated directions of the Supreme Court, and though nearly three decades have since elapsed, the Public Services Tribunal constituted under the 1976 Act has not been substituted by a State Administrative Tribunal under the 1985 Act.

36. Article 144 of the Constitution requires all authorities, Civil and Judicial, in the territory of India to act in aid of the Supreme Court. The singular Constitutional role of the Supreme Court under the Constitution, and correspondingly of the assisting role of all authorities - civil or judicial in the territory of India - towards it, mandate the High Court, which is one such judicial authority covered under Article 144 of the Constitution, to act in aid of the Supreme Court. While the High Court is independent, and is a co-equal institution, the Constitutional scheme and judicial discipline requires that the High Court should give due regard to the orders of the Supreme Court which are binding on all courts within the territory of India. (Spencer & Co. Ltd. and another v. Vishwadarshan Distributors (P) Ltd.; M/s Bayer India Ltd. and others v. State of Maharashtra and others; CCE v. Dunlop India Ltd.; and E.S.P. Rajaram v. Union of India]).

37. The orders of the Supreme Court are judicial orders, and are otherwise enforceable throughout the territory of India under Article 142 of the Constitution. The High Court is bound to come in aid of the Supreme Court in having its orders worked out. (Spencer & Co. Ltd.; M/s Bayer India Ltd.; and E.S.P. Rajaram). The High Court has an obligation, in carrying out the Constitutional mandate, maintaining the writ of the Supreme Court running large throughout the country. (M/s Bayer India Ltd.; E.S.P. Rajaram; and Spencer & Co. Ltd.). Acting in aid of the Supreme Court, the High Court should ensure that the orders of the Supreme Court are adhered to by all, both in letter and spirit. It is obligatory for this Court, therefore, to ensure that the orders of the Supreme Court, in Krishna Sahai; and Rajendra Singh Yadav, are adhered to by the Government of Uttarakhand and, as directed therein, to take action forthwith to ensure that an Administrative Tribunal is constituted for the State of Uttarakhand under the 1985 Act. Let a copy of this order be sent to the Chief Secretary, Government of Uttarakhand. The Chief Secretary is requested to take necessary action forthwith, and submit an action taken report to this Court within four months from today.

38. In so far as the present case is concerned, the petitioner has challenged the constitutional validity of the Rules made under the proviso to Article 309

of the Constitution of India. He cannot, therefore, be relegated to approach the Public Services Tribunal.”

3. In the instant claim petition, the petitioners have challenged the constitutional validity of the Rules framed under proviso to Article 309 of the Constitution of India. The Hon’ble Court has clearly settled that since this Tribunal cannot decide questions relating to Constitutional validity of Statutory provisions/ Rules and the petitioners have challenged the constitutional validity of Rules made under proviso to Article 309 of the Constitution of India, therefore, they (petitioners) cannot be relegated to approach the Tribunal.

4. This Tribunal, therefore, is of the view that the question, as to whether the amendment in Rule 5(vi)(a) of Uttarakhand State Education (Administrative Cadre) Service Rules, 2013 by Amending Rules, 2016 is *ultra vires* to the Constitution of India and is a colourable piece of legislation promulgated to benefit a class of employees, cannot be adjudicated by this Tribunal and, therefore, this Court is unable to give such declaration, as desired by the claim petitioners. In other words, since the *vires* of the Uttarakhand State Education (Administrative Cadre) Service Rules, 2013, as amended by Amending Rules, 2016, cannot be looked into by the Tribunal, therefore, this Tribunal is unable to give any decision on relief 8(i) of the claim petition.

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RELIEFS NO. 2 & 3: WHETHER CONSEQUENTIAL RELIEFS?

5. The next relief is for quashing the impugned office order under Order No. 224 of 03.11.2014, which has been enclosed as Annexure: A 2 and the impugned order No. 190 dated 16.03.2018, which has been enclosed as Annexure: A 4 along with final seniority list dated 17.07.2018, which has been enclosed as Annexure: A 1 to the claim petition. These orders are stated to have been issued by Respondent No.3. Another relief has been sought to redraw a fresh seniority list including the name of the petitioner above the private respondents.

6. It is the submission of Ld. Counsel for respondents, including Sri V.P.Devrani, Ld. A.P.O., who is representing State and Sri Sandeep Tiwari, who is representing private respondents, that since reliefs no.

8(ii) and 8(iii) flow from relief no. 8(i), therefore, this Tribunal cannot give reliefs no. 8(ii) & 8(iii).

7. It is the suggestion of Sri Sandeep Tiwari, Ld. Counsel for private respondents that either the petitioner should wait for constitution of a new Tribunal under the Administrative Tribunals Act, 1985, as directed by the Hon'ble High Court and the claim petition should be adjourned *sine die* or, the petitioners should withdraw present claim petition and file writ petition before the Hon'ble High Court or, if the petitioners are keen to press the claim petition, since relief no. 8(i) cannot be granted by this Tribunal and reliefs no. 8(ii) & 8(iii) flow from relief no. 8(i), therefore, the claim petition should be dismissed.
8. Sri V.P. Devrani, Ld. A.P.O., representing the State, submitted that since private respondents have been promoted further and Hon'ble High Court has given a decision that Constitutional validity of statutory Rules cannot be looked into by the Tribunal, therefore, this claim petition has rendered infructuous. According to Ld. A.P.O., the claim petition should be dismissed as infructuous.
9. Ld. Counsel for private respondents too submitted that DPC for the promotion to the post of Block Education Officer was convened on 04.07.2019 and after having worked as officiating Block Education Officer since 15.01.2015, the private respondents were promoted on the post of Block Education Officer *w.e.f.* 19.03.2020 and, therefore, the present claim petition has rendered infructuous.

FACTS OF THE CLAIM PETITION:

10. Before proceeding to discuss reliefs no. 8(ii) & 8(iii) further, it is necessary to reproduce the facts of the claim petition. Prior to the year 2011, under Uttaranchal Education (General Education Cadre) Service Rules 2006 (Annexure: A 7), there were 183 posts of Group-B in the pay scale of Rs.8000-13500/- grade pay Rs.5400/-, which included 95 posts of Vice Principal, 65 posts of Senior Lecturer DEATC, 20 posts of Senior Lecturer/ Assistant Director SCERT, 3 posts of Law Officer, 1 post of Deputy Secretary, Education Board and 1 post of Staff Officer, HQ. Under the Rules of 2006, the educational qualification for all the posts was the same and recruitment to the post was made through Public

Service Commission under Rule 5, whereby 50% of the posts were filled up by direct recruitment and remaining 50% by way of promotion from substantively appointed Deputy Block Education Officers and equivalent gazetted officers who have completed five years' service on the first date of recruitment year. *Vide* G.O. dated 14.06.2011(Annexure: A 10), the cadre structure of the department was recognized and for the primary and secondary education, two separate wings, namely, academic and administrative wings, with separate set of officers, were created. *Vide* G.O. dated 14.06.2011, 95 posts of Vice Principal were abolished and 1 post of Deputy Secretary was up-graded to the post of Block Education Officer in grade pay Rs.6600/- in the administrative cadre, while 3 posts of Law Officers, 1 post of Staff Officer were included in the administrative cadre in the grade pay of Rs.5400/-. *Vide* G.O. dated 27.06.2013, 63 posts of General Lecturer and 20 posts of Assistant Director were transferred to new cadre known as the Teacher Education Cadre and as per the norms of National Council of Teacher Education (NCTE), the educational qualification was also re-determined and changed. Appointments to the posts in this cadre were made from eligible working Teachers through selection committee constituted at Directorate level. After reorganization of the cadre, options were invited from the Principals appointed/ promoted prior to 01.01.2006 and Group-A officers and thereafter *vide* office order dated 25.06.2012, the academic and administrative cadres were allocated to them. *Vide* G.O. dated 07.07.2014, 97 officers of Group-A/ Principals, on the post of Block Education Officers were merged in the pay scale of Rs.15600-39100/- grade pay Rs.6600/-. G.O. dated 07.07.2014 has been filed by the private respondents with supplementary C.A., as Annexure: R 2.

11. For administrative cadre, the Uttarakhand State Education (Administrative Cadre) Service Rules, 2013 (for short, 2013 Rules) were framed (Annexure: A 14). Under 2013 Rules, in the pay scale of Rs.15600-39100, grade pay Rs.5400/-, 100 posts (95 Dy. Education Officers, 2 Staff Officers and 3 Law Officers) and in the pay scale of Rs.15000-39100/- grade pay Rs.6600/-, 97 posts (95 Block Education Officers, 1 Dy. Secretary and 1 Staff Officer) were created. The posts of grade pay Rs.5400/- under the Rules of 2013, are within the purview of

the Commission, and are posts of direct recruitment and of administrative cadre. The post of Block Education Officer is promotional post of Dy. Education Officer in which *vide* G.O. dated 07.07.2014, 97 posts of Group-A Officers/ Principals were merged. Against the vacancy of promotion quota and direct recruitment quota of the selection year 2009-10, certain procedure was adopted by the respondents, details of which have been given in the claim petition as well as in the written submissions filed by the petitioner. During the pendency of recruitment process of the petitioner, the respondent department conducted promotional exercise for the vacancies of selection year 2010-11 and promoted 39 Block Education Officers to the posts of Vice Principals *vide* office order dated 14.06.2011, whereby the private respondents no. 18 to 27 were promoted (Annexure: A 9). Two writ petitions were filed before Hon'ble High Court of Uttarakhand. Representations of private respondents were decided by Respondent No.1 *vide* office order dated 19.08.2014, details of which may be found at Annexure: A 2, enclosed with the claim petition. *Vide* office order dated 03.11.2014, respondent no.1 allocated the administrative cadre to the private respondents from the date of their joining (Annexure: A 3) and thereafter *vide* office order dated 15.01.2015 (Annexure: A 16), respondent no. 1 gave the officiating charge of Block Education Officer to the private respondents.

12. "Uttarakhand State Education (Administrative Cadre) Service (Amendment) Rules, 2016" is the bone of contention between the parties. According to petitioner, the amendment to the said Rules is illegal. In Rule 5 of the 2013 Rules, certain amendments were incorporated by Respondent State. Details of such amendments may be found at Annexure: A 5 to the claim petition.
13. According to the petitioners, *vide* office order dated 16.03.2018, respondent no.1 merged the private respondents to the post of Deputy Education Officer in the administrative cadre retrospectively, since the date of their joining, i.e., 03.11.2014, (Annexure: A4). On the same day, *vide* another office order dated 16.03.2018 (Annexure: A 19), a seniority list of administrative cadre was issued which included the names of only private respondents. Petitioners objected to the same

(objections, Annexure: A 2). Thereafter, *vide* office order dated 17.07.2018, respondent no. 1 issued the impugned final seniority list without including the name and determining the seniority of the petitioners *vis-a-vis* private respondents (Annexure: A 1). According to petitioners, the inclusion of private respondents in the seniority list of the cadre, above the petitioners, is wrong and illegal.

14. It may be noted here that office orders dated 16.03.2018 and 17.07.2018 were passed consequent to the amendments in the 2013 Rules. When the petitioners say that the inclusion of the private respondents in the seniority of administrative cadre over and above the petitioners is wrong and illegal, they are indirectly challenging the legality of the amendments in the Rules and consequential office orders passed by the Respondent-State in this regard.

15. In the beginning of this judgment, this Tribunal has quoted the decision of *Shyam Lal (supra)* rendered by Hon'ble High Court, who has given categorical finding that this Tribunal has no jurisdiction to look into the *vires* of any statutory Rules or Rules framed under Article 309 of the Constitution of India. The reliefs sought by the petitioners in Clause No. 8(ii) and Clause No. 8(iii), are consequential to relief sought in clause 8(i) and arise out of the amendments in the Rules, which, as has been stated above, cannot be legally looked into by this Tribunal.

16. The petitioners, in their written submissions, have also mentioned the legal position stating that the procedure for recruitment to the post of Vice Principal and other equivalent posts has been made as per Rules 14 to 19 of the 2006 Rules. These provisions have been quoted in the written submissions of the petitioner, who has also submitted that the promotion and seniority of the private respondents over and above the petitioners is in violation of Article 14 and 16 of the Constitution of India. Petitioners have also submitted that the merger of private respondents on the post of Dy. Education Officer in administrative cadre is illegal. A reference of Article 320 of the Constitution of India, which deals with Public Service Commission, has also been given to say that the transfer of the private respondents *vide* impugned office order dated 16.03.2018 by respondent no.1 from academic section to administrative

section, is without approval of the Commission and, therefore, the merger of private respondents on the post of Dy. Education Officer is illegal. [Note: There was no consultation with Public Service Commission.] It is also stated that the merger of the private respondents in administrative cadre with retrospective effect was also not possible and the reason attributed to the same is that in the G.O. dated 19.08.2014, it was provided that the actual merger in the administrative cadre will be made on the basis of availability of posts.

17. Ld. Counsel for the petitioners next argued that without determining the seniority of private respondents *vis-à-vis* petitioners, placement of private respondents in administrative cadre is wrong and illegal, and the private respondents cannot claim seniority over petitioners in the administrative cadre.

18. It may be stated here that since the Rules were amended subsequently in the year 2016 and impugned Government-orders or office-orders were issued riding on the back of those amendments in the Service Rules.

19. It is also the submission of Ld. Counsel for the petitioners that the merger of the private respondents with retrospective effect *w.e.f.* 03.11.2014 was not possible because the petitioners were already selected against these posts. On 03.11.2014, only 9 posts in administrative cadre were vacant against 6 posts, private respondents no. 5 to 17 could not be merged because the persons mentioned from Sl. Nos. 1 to 6 of promotion order dated 30.06.2010 were senior to the petitioners and first claimants to the post. The substance of the submissions of Ld. Counsel for the petitioner is that the amendment in 2013 Rules by Amending Rules 2016, by which the provisions of merger of private respondents with retrospective effect have been made, was not possible. Thus, as per the petitioners, the impugned order no. 190 dated 16.03.2018 of retrospective merger of the private respondents is bad in the eyes of law.

20. It may again be stated, at the cost of repetition that the reliefs no. 8(ii) and 8(iii) are consequential to relief no. 8(i). Petitioners themselves say that the retrospective merger of private respondents was not possible

because amendment in the Rules of 2013 by Amending Rules of 2016 is bad in the eyes of law. In all humility, this Tribunal has already mentioned above that this Tribunal lacks jurisdiction to determine the issue.

21. Ld. Counsel for private respondents has also objected to the maintainability of the claim petition on the ground of limitation, arguing that the petition is barred by time. Ld. Counsel for private respondents have referred to Section 5 (b)(1) of the U.P. Public Services (Tribunal) Act, 1976 to quote that “notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year.”
22. Ld. Counsel for the petitioners replied that the cause of action to the petitioners arose only after issuance of impugned office-order no. 190 of 16.03.2018, whereby office-order dated 03.11.2014 was made operational after giving retrospective merger to the private respondents. In other words, according to the petitioners, the cause of action did not arise to them on 03.11.2014. Cause of action arose to them only when impugned office order dated 16.03.2018 was issued, whereby the merger of private respondents was given retrospective effect. The Tribunal is of the view that the claim petition has been filed within time. It is not barred by limitation. Cause of action arose to the petitioners only when office-order dated 16.03.2018 was issued. Claim petition has been filed on 21.12.2018. The same is therefore, within time in the backdrop of the discussion enumerated herein above.
23. Principal relief no. 8(i) cannot be granted. The other reliefs, viz, reliefs no. 8(ii) and 8(iii) flow from relief no. 8(i). These are consequential to the first relief. Had the Tribunal been in a position to grant the first relief, it would have looked into the consequential reliefs. But since this Tribunal has no jurisdiction to grant first relief, therefore, it also lacks jurisdiction to grant second and third reliefs, which are consequential to the first relief and arise only out of the principal relief.

CONCLUSION:

24. Since the principal relief sought for by the petitioners, in the present claim petition, cannot be granted by this Tribunal in view of the

decision of Hon'ble High Court of Uttarakhand in *Shyam Lal's* decision (*supra*) and it is more than clear, from the above discussion, that reliefs no. 8(ii) and 8(iii) are consequential to relief no. 8(i) and arise out of the amendments in the Service Rules, *vires* of which has been challenged, therefore, reliefs no. 8(ii) and 8(iii) also cannot be granted by this Tribunal. In a nutshell, since this Tribunal cannot grant relief no. 8(i), therefore, it also cannot grant reliefs no. 8(ii) and 8(iii), being consequential in nature.

25. As a result thereof, we have no option but to dismiss the claim petition for want of jurisdiction (as to subject matter).
26. We make it clear that we have not entered into the merits of the claim petition.
27. Since the claim petition was drafted and filed much earlier to the decision of *Shyam Lal (supra)*, therefore, in the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 10, 2020
DEHRADUN

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