

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

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**WRIT PETITION NO 557(S/B) OF 2021
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 119/DB/2022]**

1. Prem Prakash aged about 71 years s/o Late Sri Atar Singh, R/o 22 Doon Vihar Colony Rajpur Road, Jakhan, Dehradun-248001.
2. Pukhraj Singh (Formerly Pukhraj Kushwaha) aged about 74 years s/o Late Sri Bheem Singh r/o 18/487 Indira Nagar, Lucknow (U.P.)-226016
3. Arun Kumar Agrawal aged about 74 years s/o Late Sri Ram Kishan r/o House No. 16 Lane 6 B, Ashirvad Enclave, Dehradun-248001.
4. Kamal Mohan aged about 73 years s/o of Late Sri Shankar Dutta Shastri r/o B-45 Jigar Colony, Moradabad (U.P.). – 244001.
5. Pramod Kumar Pant aged about 73 years s/o Sri H.D. Pant r/o 136 Engineers Enclave GMS Road, Dehradun-248001.
6. Chandra Prakash Sharma aged about 73 years s/o Late Sri. S.N. Sharma r/o House No. 90, Engineers Enclave Phase-1 GMS Road, Dehradun-248001.

...Petitioners

VERSUS

1. State of Uttarakhand, through its Secretary Energy, Civil Secretariat, Subhash Road, Dehradun-248001.
2. Uttarakhand Power Corporation Limited., through its Managing Director, Urja Bhawan, Kanwali Road, Dehradun.

.....Respondents

Present: Sri B.B.Naithani, Advocate, for the petitioners.
Sri V.P.Devrani, A.P.O., for Respondent No.1.
Sri Manish Kumar Singh, Advocate, for Respondent No.2.

JUDGMENT

DATED: APRIL 15, 2025.

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 13.09.2022 in WPSB No. 557/2021, Prem Prakash and others vs. State of Uttarakhand and others, which reads as under:

"i. issue order, direction or a writ in the nature of certiorari by quashing the impugned order dated 09.07.2015, dated 27.11.2018 (Annexure 1 & 2 respectively to this petition) issued by the respondent no.1 so far these relate to denial of amendment of pay scale & consequent pension to the petitioners post of Chief Engineer L-1 as recommended by Board of Directors of UPCL w.e.f.01.01.2006.

ii. issue a writ, order or direction or writ of mandamus commanding the respondents to revise the Pay and Pension of the petitioners as decided by BOD of UPCL at their 52nd meeting *vide* agenda item 52.13 for amendment of pay scale and consequent pension w.e.f. 01.01.2006.

iii. issue order or direction or a writ in the nature of certiorari by quashing the impugned orders dated 22.12.2017 & 01.10.2020 of the respondent no.1 and orders dated 29.12.2017, 12.11.2020 passed by respondent No.2 (Annexure 3 to 6 to this writ petition), so far as these relate to revision of pay & pension to the petitioners' post of Chief Engineer L-1 w.e.f. 01.01.2016.

iv. issue a writ, order or direction or writ of mandamus commanding the Respondents to revise the pay scale to Chief Engineer L-1 in line with pay scale to this post in UPPCL w.e.f 01.01.2016 and consequent pension to the petitioners w.e.f. 01.01.2016 as decided BOD of UPCL at their 915 meeting at agenda item 91.19 for adoption of pension revision matrixes issued by UPPCL *vide* its order dated 11.04.2018 and sent the recommendation for approval to respondent no.1 *vide* letter dated 16.10.2019 followed by reminder dated 14.02.2020 which are available at Annexure-27 to this writ petition.

v. pass an order, direction or writ in the nature of writ of mandamus commanding the respondents to sanction Pay & Pension and make payment thereof to the petitioners w.e.f. 01.01.2006 and further w.e.f. 01.01.2006 as resolved by BOD UPCL from respective dates with arrears thereof with interest at the rate of 10% per annum for the period of delay in sanction and payment of such arrears to the petitioners."

The relief sought by the petitioners squarely fall within the jurisdiction of the Uttarakhand Public Service Tribunal to consider.

Considering the fact that the petition is pending before this Court since 2021, we transfer the same to the Public Service Tribunal. The same be registered as a claim petition and be dealt with accordingly.

This petition stands disposed of."

2. Writ Petition No. 557 (S/B) of 2021 is, accordingly, reclassified and renumbered as Claim Petition No. 119/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court,

but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. Petition is supported by the affidavit of Sri Prem Prakash, Petitioner No.1. Relevant documents have been filed along with the petition

4. During pendency of the petition before the Tribunal, petitioners introduced various amendments in the petition. Paras No. 7 (A) to Para No. 7 (G) were added. Prayers were also amended as follows:

“(1). To set aside impugned orders dated 09.07.2015; dated 27.11.2018 (available at Annexure: 1 & 2 respectively to this petition) issued by the respondent No. 1 for these relate to the denial of amendment of pay scale & consequent pension to the petitioners post of chief Engineer L-1 as recommended by Board.

(2) To direct respondents to revise the pay and pension of the petitioners as decided by BOD of UPCL at their 52nd meeting *vide* agenda item 52.13 for amendment of pay scale and consequent pension of the petitioners w.e.f. 01.01.2006 with Consequential benefits.

(3) To set aside the impugned orders dated 22.12.2017 & 01-10-2020 of the respondent No. 1 and orders dated 29.12.2017 & 12.11.2020 passed by respondent No. 2 (as available at Annexure No 3 & 4 to the petition) So far as these relate to revision of pension of the petitioners w.e.f. 01.01.2016.

4- To direct respondents to revise the pension of the petitioners w.e.f. 01.01.2016 as decided by BOD of UPCL at their 91st meeting at agenda item 91.19 for adoption of pension revision matrixes issued by U.P.P.CL *vide* its order dated 11.04.2018 and sent the recommendation for approval to respondent No 1 *vide* Letter dated 16.10.2019 followed by reminder dated 14.02.2020 which are available at Annexure 27 (colly) to the petition.

5- To direct the respondents to sanction pay and pension and make payment there of to the petitioners w.e.f. 01.01.2006 and further w.e.f. 01.01.2016 as resolved by BOD of UP.CL from respective dates with arrears thereof with Interest at the rate 10%, per annum for the period of delay in sanctioned payment of such arrears to the petitioners.

5-A To set a side Impugned Orders 10.12.2008 and 22.12.2018 as available at AHHEXURE 6 (A) & 6 (B) respectively to the petition.

6-To pass any other order or direction as this Hon'ble Tribunal deems just and proper in the facts and circumstances of the Case.

7-To allow this petition with cost in favour of the petitioners.”

5. Separate Counter Affidavits were filed on behalf of Respondent No. 1 and Respondent No.2 before the Tribunal, supported by the relevant documents. Whereas Respondent No.1 has contested the petition, Respondent No. 2 has followed the line of the resolution passed in the Board meeting of the UPCL. Sri Atul Kumar Singh, Deputy Secretary, Energy Department, Govt. of Uttarakhand, Secretariat, Dehradun, has filed C.A. on behalf of Respondent No.1. Sri D.S. Khati, General Manager (Human Resource), Uttarakhand Power Corporation Limited (for short, UPCL) has filed C.A. on behalf of Respondent No.2.

6. R.A. to the C.As. has been brought on record by the petitioner. Supplementary R.A. has also been filed.

7. It has been mentioned in Para 6 of the C.A. of Respondent No.2 that as per Clause 68 (iv) of Memorandum of Association & Article of Association of UPCL, the staff structure and sanction of any permanent or temporary posts can only be approved by the Government of Uttarakhand. Moreover, as per the Service Rules, the pay scale admissible to the persons appointed to the various cadres of posts in the establishment, shall be determined by the State Govt. The Managing Director of the Corporation *vide* its order dated 29.12.2017 fixed the pay scale of Chief Engineer Level-I after giving pay protection with grade pay of Rs.10,000/- in compliance of the G.O. dated 22.12.2017. Further more, the Managing Director of the Corporation *vide* its order dated 12.11.2020 enforced revised pension following the concept of one rank one pension in compliance of the G.O. No. 1212 dated 01.10.2020.

8. In para 8 of such C.A., it has been stated that Respondent No.2 is bound by the directions given by the Respondent No.1 regarding pay scale

and revised pensions. The pension of the petitioners has been determined as per pay scale Rs. 37,400-67,000 in grade pay of 11,000/- as informed by Director (Finance), UPCL *vide* Letter No, 411, dated 19.12.2022, (Annexure: C.A.-4).

9. In Para 9 of the C.A. filed on behalf of Respondent No.2, it has been stated that the Secretary, Energy *vide* G.O. No. 674/1 (2)/2015-06(2)-15/2015, dated 09.07.2015, denied to give permission to implement such facilities to pensioners in UPCL and Respondent No.2 is bound by the direction of the State Govt. regarding pay scale and revised pensions, hence Boards' Resolution could not be implemented. Other resolutions also could not be implemented for the same reason.

10. The sum and substances of petitioners' prayer is for implementation of Board Resolution of Agenda No.52.13 in 52nd meeting of Board of Directors and also for implementation of Board Resolution of Agenda No. 91.10 in 91st meeting of Board of Directors and consequential reliefs. Boards' Resolutions could not be implemented because the State Govt. did not accord approval.

11. In the 52nd meeting of the BOD, it was recommended that in place of Pay Band-4 (37400-67000) Grade pay 11000, the pay scale of 63000-3% annual increment-78000, should be implemented with effect from 01.01.2006 on analogy with proposal approved by Uttar Pradesh Power Corporation Limited (in short UPPCL). Further, in 91st meeting of Board of Directors of UPCL it was recommended that the pension matrix as issued by UPPCL *vide* its order dated 11.04.2018 be adopted for retired employees of UPCL.

12. The Government of Uttarakhand has issued order No. 12/1(2)/2021-06(02)-02/2015 T.C.-1 dated 06.01.2022 whereby earlier existing pay matrix and time scale (ACP) available at 9th, 14th and 19th year have been restored in respect of employees of all the three power corporations with effect from 01.01.2016. Order dated 22.12.2017 of Govt. of Uttarakhand has been superseded by this order dated 06.01.2022. The

resultant effect of supersession of order dated 22.12.2017 *vide* order dated 06.01.2022 is that the grade pay of 11000 /- has been restored and accordingly the earlier prevailing fitment (prior to 01.01.2016) has been revived.

13. According to the Article 68(iv) of the Article of Associations of UPCL the staff structure and sanction of any permanent or temporary posts including contractual posts shall be approved by the Govt. of Uttarakhand. According to section 10(1) of Companies Act, 2013, Articles of Association have binding force. Section 10(1) of Companies Act, 2013 and Article 68(iv) are being reproduced hereinbelow for convenience:

“Section 10(1). Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and,

Article 68(iv), The staff structure and sanction of any permanent or temporary posts including contractual posts shall be approved by the Govt. of Uttarakhand.”

14. The staff structure of the organization includes pay scales also. Respondent No.1 may accept or reject any recommendation of the Board of Directors. It is the State Govt. which is the final authority for effecting any change in the pay structure of employees of UPCL in view of aforesaid provisions of Companies Act, 2013 and Articles of Association.

15. The State UP was bifurcated by enforcement of UP Reorganization Act, 2000 as a result which the State of Uttarakhand came into existence. The Government of India issued an order dated 05.11.2001 u/s 63(4)(a) of the U.P. Reorganization Act, whereby assets and liabilities between UPPCL and UPCL were divided. By operation of this order all the distribution assets of UPPCL located in the State of Uttarakhand were transferred to UPCL. Since then UPCL is operating all these distribution assets. Allocation of employees was also mandated *vide* Para 2(e) of aforesaid Order dated 05.11.2001. Para 2(e) of the Order dated 05.11.2001 is reproduced hereinbelow for convenience:

“Para 2(e). Employees of the Uttar Pradesh Power Corporation Limited and Uttar Pradesh Jal Vidyut Nigam Limited, who are, on the appointed day, posted in the area falling within the State of Uttaranchal, shall stand transferred on deputation to Uttaranchal Power Corporation Limited and Uttaranchal Jal Vidyut Nigam Limited, as the case may be. The employees of the head office of the Uttar Pradesh Power Corporation Limited will be divided on the ratio of consumption of power while the employees of the head office of the Uttar Pradesh Jal Vidyut Nigam Limited will be divided on the ratio of hydro power capacity existing in two State.

[Emphasis supplied]

16 Section 23(7)(a) of UP Electricity Reforms Act, 1999 provides that service conditions of the employees, which were prevailing immediately before the date of transfer, shall not be varied unfavourably. In para 6(10) of the Transfer Scheme, 2000, it is provided that service conditions of the employees shall be framed by the transferee and till such time the service conditions are not framed, service conditions of erstwhile UPSEB shall apply. Section 23(7)(a) of UP Electricity Reforms Act, 1999 and para 6(10) of the UP State Electricity Reforms Transfer Scheme, 2000 are reproduced hereinbelow for convenience:

“Section 23 (7) (a): Terms and conditions of services of the personnel shall not be less favourable to the terms and conditions which were applicable to them immediately before the transfer;

Para 6(10). Subject to the provisions of the Act and this Scheme, the Transferee shall frame regulations governing the conditions of service of personnel transferred to the transferee under this Scheme and till such time, the existing service conditions of the Board shall mutatis mutandis apply.”

[Emphasis supplied]

17. Aforesaid UP Electricity Reforms Act, 1999 was adapted in State of Uttarakhand *vide* Uttaranchal (UP Electricity Reforms Act, 1999) Adaptation and Modification Order, 2001 of the Govt. of Uttarakhand. UPCL was established under Section 13 of the said Order of 2001. Further, the said Order of 2001 was repealed by State of Uttarakhand by Act no. 08 of 2005. In the meanwhile Electricity Act, 2003 (Central Act) had come into force.

18. Sri V.P.Devrani, Ld. A.P.O. submitted, on the strength of Para 15 of the C.A. that in view of the aforesaid provisions of the Section 23(7)(a) of UP Electricity Reforms Act, 1999 read with aforesaid Para 6(10) of the

Transfer Scheme, 2000, it is clear that protection of service conditions of the erstwhile UPSEB is available to the extent of same being applicable immediately before the date of transfer i.e. 14.01.2000. Thereafter service conditions can be framed by the transferee organization. State of Uttarakhand and UPCL are not obligated to adopt each and every order of UPPCL. The claim of the petitioners that pay structure of UPPCL, as adopted by the Board of Directors of UPCL in the Agenda no. 52,16 should be accepted by Government of Uttarakhand, in view of Section 23(7)(a) is contrary to the scheme. The claim petition is against law and hence the same is liable to be dismissed.

19. It is admitted fact that the petitioners were the employee of UPPCL, who were on deputation with the UPCL. They were working in that part of erstwhile State of U.P., which now falls within the territory of Uttarakhand. They continued to work in the successor State of Uttarakhand. They were, therefore, on deputation with UPCL. Their service conditions are governed by the service conditions of the employees of the UPPCL. The BOD of UPCL has decided to give them certain financial benefits, which were turned down by the Energy Department of the State of Uttarakhand. It has been informed to the Tribunal that the pay scales of the counterparts of the petitioners, who were working with the UPPCL, have been revised in the year 2006. The petitioners claim parity with them along with consequential reliefs.

20. Sri B.B.Naithani, Ld. Counsel for the petitioners submitted that the UPCL is an autonomous organization, therefore, resolution of the BOD of UPCL, should not have been referred to the Govt in the Energy Department for approval. UPCL should have implemented it on its own, but Sri V.P.Devrani, Ld. A.P.O. and Sri Manish Kumar Singh, Ld. Counsel for Respondent No.2, contested that the UPCL is bound by the directions of the Govt., therefore, they have referred the matter to the Govt. in view of the G.O. No.446/XXVII(7)/2008 dated 10.12.2008 and Section 68(iv) of the Article of Association.

21. Whosoever might be the competent authority to decide such issue (The Board of UPCL/ UPPCL/ Govt. of Uttarakhand/ Govt. of U.P.), the decision making process and reasons given in the impugned order No.874/1(2) 2015 06 (2)-15/2015 dated 09.07.2015 (Annexure: 1) is troubling the Tribunal. Impugned order has placed reliance on Section 69 (A) of the UP Reorganization Act, 2000. It has been issued, probably, on the assumption that the petitioners have been merged with the UPCL. Ld. Counsel for the petitioners emphatically submitted that the petitioners were on deputation with UPCL and their services have not been merged with UPCL. Respondent Department could not produce any document, even in the information sought under RTI Act, to show that the petitioners, who were the employees of UPPCL, were merged with UPCL. The Tribunal has quoted Para 2(e) of the order dated 05.11.2001, above, that such employees like petitioners, stood transferred to UPCL on deputation.

22. Secondly, the impugned order dated 09.07.2015 (Annexure: 1) nowhere deals with the Resolution of the BOD of UPCL. The context of reference of the Govt. was something else. It was for substituting the pay scales of the employees of UPCL on the strength of O.M. dated 21.04.2011 issued by UPPCL on the basis of recommendations of 6th pay commission. The decision thus taken by the Energy Department is only on the basis of Section 69 of the U.P. Reorganization Act, 2000, which reads as under:

“69. Special provisions relating to retrenchment compensation in certain cases.—Where on account of the reorganization of the existing State of Uttar Pradesh under this Act, any body corporate constituted under a Central Act, State Act or Provincial Act, any co-operative society registered under any law relating to co-operative societies or any commercial or industrial undertaking of that State is reconstituted or reorganized in any manner whatsoever or is amalgamated with any other body corporate, co-operative society or undertaking, or is dissolved, and in consequence of such reconstitution, reorganization, amalgamation or dissolution, any workman employed by such body corporate or in any such co-operative society or undertaking, is transferred to, or re-employed by, any other body corporate, or in any other co-operative society or undertaking, then, notwithstanding anything contained in section 25F or section 25FF or section 25FFF of the Industrial Disputes Act, 1947 (14 of 1947), such transfer or re-employment shall not entitle him to any compensation under that section: *Provided that—* (a) the terms and conditions

of service applicable to the workman after such transfer or re-employment are not less favourable to the workman than those applicable to him immediately before the transfer or re-employment; (b) the employer in relation to the body corporate, the co-operative society or the undertaking where the workman transferred or re-employed is, by agreement or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation under section 25F or section 25FF or 22 section 25FFF of the Industrial Disputes Act, 1947 (14 of 1947) on the basis that his service has been continuous and has not been interrupted by the transfer or re-employment.”

23. The same position has been reiterated in Government’s subsequent letter dated 27.11.2018 (Annexure: 2). The confusion, it appears, arose because the petitioners’ services were deemed to be merged with UPCL, whereas, in fact, they were on deputation with UPCL. Their principal employer was still UPPCL and not UPCL.

24. To sum up, firstly, Section 69 (a) of the Uttar Pradesh Reorganization Act, 2000, has no relevance in the matter. Secondly, the Tribunal would have found some sense in letter dated 27.11.2018 (Annexure: 2), only if petitioners were the employees of UPCL. Then only they could not have, possibly, claimed parity with their counterparts of UPPCL. Here, as has been mentioned earlier, petitioners were the employees of UPPCL and were on deputation with UPCL. In any case, the impugned orders dated 09.07.2015 (Annexure: 1) and 27.11.2018 (Annexure: 2) are liable to be set aside. It appears that either no decision has been taken by the Respondent No.1 on the letters sent by Respondent No.2, or if any decision has been taken, the same does not reflect the issue which was raised in Board’s meetings of UPCL. In any case, both the orders Annexure: 1 and Annexure: 2 cannot be allowed to sustain and are hereby quashed *qua* petitioners, the reason being, no decision has been taken on UPCL Boards’ Resolutions or if any decision has purportedly been taken, the same has been taken on the ground that the petitioners are the employees of UPCL and not on the ground that they were the employees of UPPCL and continue to be the employee of UPPCL and are on deputation with UPCL. Their principal employer was UPPCL as on the date the Board’s Resolutions were passed.

25. The competent authority is, therefore, directed to take appropriate decisions, as per law, on letters of Respondent No. 2, under intimation to the petitioners. If Respondent No.1 agrees with the decision of the Tribunal that the petitioners were the employees of UPPCL and were on deputation with UPCL, then it is free to take the decision either on its own or may refer the matter to the UPPCL for taking an appropriate decision, as per law. UPPCL was the principal employer of the petitioners, who were on deputation with UPCL, as on the date UPCL/s Board passed those Resolutions.

26. The Tribunal need not go into the admissibility of other reliefs, as claimed by the petitioners, for they will depend on the outcome of decision taken by the Govt. in this regard.

27. The Tribunal has only found fault with the decision making process while issuing Annexure: 1 and Annexure: 2 in their applications to the petitioners and has intervened only to such an extent. It is made clear that the Tribunal has not gone into other legal aspects of the impugned decisions either in their applicability to the petitioners or for that matter, other employees of the Corporation. Also, it has no business to comment upon other Resolutions taken in Board's meetings. It has confined itself only to their applicability in respect of petitioners' case.

28. Rival contentions, in respect of other factual or legal issues are left open. No order as to costs.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 15, 2025
DEHRADUN