

**BEFORE THE STATE PUBLIC SERVICE TRIBUNAL,
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman(J)

Hon'ble Mr. A.S.Rawat

-----Vice Chairman(A)

CLAIM PETITION NO. 19/NB/DB OF 2024

Leeladhar Paldiya aged 70 years S/o Sri Teeka Ram, R/o Ward No. 6 Sainik Colony Kaladhungi, Nagar Palika Kaladungi P/o Kaladungi, Tehsil Kaladungi Uttarakhand, District – Nainital.

.....Petitioner

Versus

- 1- State of Uttarakhand through Secretary Ministry of Forest Dehradun, Uttarakhand, Dehradun.
- 2- Pramukha Chief Conservator of Forest, Dehradun, Uttarakhand, Dehradun.
- 3- Chief Conservator of Forest Kumaon Region, Nainital, District Nainital, Uttarakhand .
- 4- Divisional Forest Officer, Ramnagar, Forest Division, Ramnagar, Uttarakhand, District Nainital.

.....Respondents

Present: Shri A.D. Tripathi, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: APRIL 11, 2025

(Per: Hon'ble Mr. A.S.Rawat, Vice Chairman(A))

Present claim petition has been filed for seeking the following reliefs:

- (i)- *Issue direction/ order to the respondents to count the past 26 years un- interrupted service rendered by the petitioner in the department since 1977 to 1990 as daily wage employee and from 1990 to 2001 as Forest Guard on pay scale, thereafter cultural zamadar from 11, 2001 to 26-09-2003, and after regularization since 23-01-2004 to till date of retirement dated 30-06-2014 from the post of tractor cleaner.*

(ii) To issue direction / order to the respondent to consider the past uninterrupted service rendered as daily wage/forest guard (pay scale)/ cultural zamadar in the department and be counted for pension benefits only. The petitioner rendered service continuously in the department without any interruption which makes him entitled for counting of past service for pension benefits.

(iii)- To issue direction / order to the respondent to consider the claim of the petitioner for pension as they have completed 10 years continuous and satisfactory regular service, including the past 26 years uninterrupted service rendered as daily wage / forest guard (pay scale)/cultural zamadar in the department and be counted for pension benefits only.

(iv)- To pass any other or further order which this Hon'ble court may deem fit and proper in facts and circumstances of the case.

(v)- Cost of the petition may be awarded in favor of the petitioner.

2. The brief facts of the case are as under:

2.1 This is second round of litigation. Earlier, the petitioner had filed Claim Petition No. 12 / NB/DB/2018, which was decided by this Tribunal by directing the petitioners to submit fresh representation to the respondent authorities. The respondent authorities were directed to dispose of the representation within eight weeks after receiving the representation. The petitioner was initially appointed as daily wager in the year 1977 to 1990, he rendered 14 years continuous service without any break. He was given appointment on post of Forest Guard in a pay scale of 825- 1200 vide order no. 4 F.O No. 49/25-3-1 dated 7th May 1990 and posted at Fatehpur Range, Ramnagar Forest Division, Ramnagar, District Nainital against a vacant post. He was again appointed on the post of Cultural Jamadar in a pay scale of Rs. 3050-4590 vide order F.O No. 27/25-3-1 dated 1st Nov. 2001.

2.2 Vide order F.O No. 13/ 25-4-1 dated 26-9-2003, he was again appointed on the post of Cultural Jamadar in the pay scale of Rs. 3050- 4590. Vide order F.O. No. 30/25-4-1 dated 23-01-2004. His services were regularized on the post of Tractor Cleaner in a pay scale of Rs. 2550-3200. Since then, the petitioner was continuously working on the same post and he has retired from service on 30.06.2014.

2.3 The Chief Conservator of Forest vide letter dated 25-11-1993 written to the Government that it would be appropriate to regularize the service of 361 sanctioned post of export Moharir whereas 261 are in working and hundred (100) posts of export Moharir are lying vacant. It was further stated that the U.P. Lower Subordinate Forest Service Rules, 1980 govern the service of the seasonal Moharirs/Jamadar under the changed circumstances, the services of Moharirs /Jamadar are required through the year.

2.4 A writ petition was filed in the Hon'ble High Court of Judicature at Allahabad bearing No. 653 of 1995 (State of Uttar Pradesh Vs Putti Lal), the same was allowed by the Division Bench with a direction to consider the case of the petitioner for regularization/equal pay for equal work vide its order dated 12-2-1998.

2.5 Being aggrieved, the State of U.P. filed a Special Leave to appeal before the Hon'ble Supreme Court, which was allowed. Ultimately the Hon'ble Supreme Court, vide Judgment dated 21-02-2002 disposed the said appeal.

2.6 The petitioner was working on the post of Seasonal Cultural Jamadar at Divisional Forest Office, Ramnagar Forest Division, Ramnagar in basic pay scale of Rs. 3050- 4590, including other allowances per month, which is class-3 post, whereas his services were regularized on the lower grade post of Tractor Cleaner in a pay scale of 2550- 3200.

2.7 The post of the petitioner is not an ex-cadre post. He is rendering his service in the same department and in the same capacity. The petitioner was working in a substantive post after selection they were appointed, accordingly their services are governed by the Service Rules, 1980 as Export Moharir, Plantation Jamadar/ Road Jamadar for a period of 8 months in pay scale of Rs. 3050 along with other allowances.

2.8 Vide Fundamental Rule 15, it is clearly stated that no appointment shall be made in a post carrying less pay than the pay or the post in which he was actually working, therefore, the petitioner cannot be appointed on the post carrying lesser pay than he was actually getting. In such a situation, the petitioner shall be given the benefits of pay fixation in accordance to the provision of FR 22-C of the Rules.

2.9 The State of U.P. has issued Government Order regarding pension benefits to temporary employees who have completed 10 years of continuous and satisfactory service. In the present case, the petitioner filed a representation to the respondent regarding counting the past service rendered by him in daily wage capacity from 1977 to 1990 for 14 years and from 1990 to 2001 for 12 years Forest Guard on pay bill and dated 11, 2001 to 26-09 2003 in the post of cultural Jamadar of 3 years. Total temporary service in the pay scale was 15 years uninterrupted service, but considering 15 years regular uninterrupted service, the petitioner services were regularized on the lower cadre post of Tractor Cleaner vide order dated 23.01.2004. Petitioner was superannuated from regular post of Tractor Cleaner on completion of 11 years regular service in 2014. Retired from service a 24 years service on regular basis that may be counted for the benefits of pension.

2.10 A writ petition No. Nil of 1991 was filed by the U.P Sahayak Van Karamchari Sangh, Kumaon, through its Joint Secretary Sri Jodh Singh Dhek Vs the State of UP Through Secretary, Ministry of Forest Council house, Lucknow and others in the Hon'ble High Court of Judicature At Allahabad. The Hon'ble Court passed an order dated 27-06-1991 **“untill further order, member of Van Karamchari Sangh those who have (seasonal employees) completed three or more years service, their services shall not be terminated.”**

2.11 The Conservator of Forest/ Regional Director Social Forestry Meerut, passed order by appointing the seasonal employees

in the post of Forester on a pay scale of Rs 3050-4590, vide its order no. 67/ 2-4-5 (regularization dated) Meerut May 21, 2002. It is evident from the order of the Conservator of Forest that the post of the seasonal employee is equivalent to the post of forester.

2.12 It is relevant to state here that chapter XVI of Civil Service Regulation lays down the condition of qualifying service Regulation 358(a), 361 & 361. In the present case the petitioner/deponent was appointed on the post of Road Jamadar against sanctioned vacant post in forest Department under UP government in a pay scale of Rs. 345 to 510 in the year 31.01.1987. It is substantive and permanent post and the salary of the petitioner was paid by the Government. It is also relevant to state here that services of the petitioner are governed by "U.P. Lower Subordinate Forest Service Rules, 1980", the post of Jamadar is defined in Sub rule (g) of Rule 3 of the rules as follows:- Jamadar-includes Cultural Jamadar, Plantation Jamadar, Road Jamadar and Bamboo Jamadar and the post of Moharir is defined in sub rule (i). of rule 3 of the rules as follows. Moharir-include Export moharir, loading moharir, passing moharir. Seasonal workers are defined in subrule (j) of rules, are relevant.

2.13 The word "Continuous Temporary Service" has been defined under section 25-B (2)(a) (ii) of Industrial Dispute Act, 1947. The petitioner was continuously working on the post of Road Jamadar since 31.01.1987, date of appointment, thereafter his service was regularized in the post of Forest Guard on 10.12.2003 and he is continuously working on the post of Forest Guard, without any break. Therefor the section 25-B is applicable in case of the petitioner.

2.14 There is no selection of daily wager nor they have been given pay scale and no service book is to be made and no annual remark/entry is given to them in service book by the authority.

2.15 The petitioner is a Govt. Servant, the civil service Regulations are applicable in its case, regulation 422 speaks about

“Condonation of Interruption and Deficiencies”, the regulation reads in-verbatim as under:

“In the absence of a specific indication to the contrary in the service records, an interruption/ interruptions between two spell of service rendered under the State Government will be treated as automatically condoned and the interruption/interruptions services treated as qualifying services for pensions.

2.16 The State Government of Uttar Pradesh issued a Government Order No. G-3-296/79-X-912/70 dated 30.04.1979, amending G.O No. G.2-3060/X-6-67, dated 31.01.1968, to the extent that regulation no. 422 will be applicable in all service cases in relation to the pension matter.

2.17 The petitioner has rendered a valuable continuous interrupted 26 years service in the department and thereafter regularized on the post of Tractor cleaner on pay scale of 2550-3200+other allowances. Now he has completed more than 10 years regular service, he will be able to get full pension, if the past temporary service will be counted for pension benefits.

2.18 In view of the facts recorded herein above, it is expedient and necessary in the interest of justice, this Hon’ble court may be pleased to allow the claim petition of the petitioner, directing the respondent to count the past uninterrupted service rendered by the petitioner for pension benefits only, as the law has been declared by the Hon’ble Supreme Court and High courts, otherwise he will suffer loss and injury.

3. The Respondents no 2, 3 & 4 filed Counter Affidavit and the facts of the C.A. are as below:

3.1 The daily wager is neither the part of permanent establishment nor the temporary establishment of forest department. The Financial Rules of Forest Department are mentioned in Financial Hand Book-Vol-VII. As per Para-103 of Financial Hand Book-Vol-VII a daily wager

is neither part of permanent establishment nor he is the part of temporary establishment of Forest department. The engagement of any person as daily wager is not a qualifying service under Uttar Pradesh, Retirement Benefits Rules-1961.

3.2 The Govt. of Uttarakhand vide notification no. 176/XXX/1(3)/2023/78(1)2022 dated 08-05-2023 notified the Uttarakhand Qualifying Service for Pension & Validation Act-2022 (Uttarakhand Act. No. 15/2023) to provide for the qualifying service for pension and to validate certain action taken in this behalf and for the matter concerned therewith or incidental there to.

3.3 The Govt. of Uttarakhand vide notification 19/XXVII(7)/2005 Dehradun dated 25-10-2005 made amendment in Uttar Pradesh Retirement Benefits Act, 1961 and the persons appointed after 01-10-2005 will be under preview of said Rules. The claim of the petitioner is not maintainable before this Hon'ble Court regarding the engagement as daily wager be treated as qualifying service for retirement benefits.

3.4 It is necessary to mention here that the petitioner has not preferred any representation before the respondent authorities within the 02 weeks from the date of judgment in Claim Petition No. 12/NB/DB/2018, Leeladhar Paladiya Vs State of Uttarakhand and others. The petitioner sent a representation without mentioning any date in it and the said representation was received in the office of deponent on 28-11-2023. The petitioner himself admitted that he has not submitted the necessary representation along with certified copy of judgment dated 20-06-2018.

3.5 The petitioner cannot claim his engagement as seasonal worker and he was regularized on the post of Tractor Cleaner. The Annexure no. 01 of this claim petition is the records of the petitioner regarding his engagement as daily wager. Daily wager and seasonal workers are different in nature. It is also necessary to mention here the regularization of the petitioner as Tractor Cleaner was made in

compliance of judgment and order dated 21-02-2002 passed by Hon'ble Apex Court in Civil Appeal No. 3634/1998, State of Uttar Pradesh & others vs. Putti Lal as well as the provisions of Uttaranchal Forest Department Regularization (on Group 'D' posts of daily wages appointments) Rules, 2003. The petitioner never challenged his appointment/ regularization as Tractor Cleaner. Now after the retirement the petitioner cannot say that he was regularized to a lower grade post. It is necessary to mention here that as per the order dated 21-02-2002 passed by Hon'ble Apex Court the daily wager could be regularized only against the sanctioned vacant post of Group-D.

3.6 The petitioner never made any representation to the respondent authorities regarding his regularization during his service. The petitioner never challenged the process of regularization carried out in year 2003-04 before this Hon'ble Tribunal or before Hon'ble High Court of Uttarakhand at Nainital. The petitioner is mentioning an order dated 21-05-2002 issued by Conservator of Forest, Meerut, Uttar Pradesh regarding the regularization of daily wagers in the post of Forester on Group-C Post. The State of Uttarakhand never regularized any daily wager on Group-C Post of Forester in compliance of judgment and order dated 21-02-2002, State of Uttar Pradesh & others Vs. Putti Lal. The petitioner was regularized as Tractor Cleaner in year 2004 and he never challenged his regularization during his service till 2014. The claim of the petitioner is time barred as well as not maintainable as per law. The regularization of the petitioner is not liable to be reviewed after the lapse of more than 20 years. The petitioner was regularized on 23-01-2004 and he was retired 30-06-2014. The services of the petitioner as Tractor Cleaner is a qualifying service for retiral benefits. The petitioner has already received the retirement benefits as per Rules. The petitioner is not entitled for any retirement benefit on his engagement as daily wager.

3.7 The provision of Industrial Dispute Act-1947 is not applicable in the matter of Forest Department as Forest Department is not an

industry. The engagement of the petitioner as daily wager is not liable to count with regular service. The Govt. of Uttarakhand vide notification no.176/XXXVI(3)/2023/78(1)2022 dated 08-05-2023 notified the Uttarakhand Qualifying Service for Pension & Validation Act-2022 (Uttarakhand Act. No. 15/2023) to provide for the qualifying service for pension and to validate certain action taken in this behalf and for the matter concerned therewith or incidental there to. It is necessary to mention here that the government order dated 01.07.1989 is not applicable in the matter of petitioner because he was a daily wager and his appointment was not temporary in nature. The case of petitioner is identical to 284 of 2004 (S/B) Madan Mohan Chaudhary Vs state of Uttarakhand & others where in the Division bench of Hon'ble High Court, Nainital examined the government order 01.07.1989 with reference to the judgment passed by the Divisional Bench in Special Appeal no 225 of 2008 state of U.P. and another Vs Pittamber Datt Sanwal. The opinion of the division bench was that the order 01.07.1989 only recognizes the status of a temporary or regular post as that of a confirmed employee for the purpose of pensionary benefits.

3.8 The Hon'ble Apex Court in Udai Pratap Thakur & another Vs. State of Bihar & others reported in 2023 live law (SC 371) held that only work charge engagement should be included for qualifying service. The operative part of judgment and order is being quoted as under-

4.1 It is submitted that their services rendered as work charged cannot be counted for the purpose of actual pension, otherwise, there shall not be any difference between a regular employee and a work charged employee. It is submitted that till the work charged employee is regularized, he continues to be work charged employee. It is submitted that therefore, the Larger Bench of the High Court has rightly observed and held that for the purpose of pension, only such period from the work charged tenure would be added for making the service of an employee to qualify him for pension and while adding such period of work charged tenure, the modus operandi for counting would be one year for every five years of service rendered under work charged establishment and if that also leaves some

shortfall, then further number of years of work charged tenure can be taken / added for making the service of the employee pensionable. It is submitted that therefore, the High Court has rightly upheld the vires of Rules, 2013.

3.9 The claim petition and the grounds mentioned in it are devoid of merit and same is liable to be dismissed.

4. R.A. has also been filed by the petitioner in which he has reiterated the averments made in the claim petition and has denied the contents of the Counter Affidavit.

5. We have heard the Learned Counsel for the petitioner and learned A.P.O. and perused the record.

6. Learned Counsel on behalf on the petitioner pleaded that the petitioner has worked in the Ramnagar Forest Division for more than 26 years as a daily wager and temporary employee on the post of Cultural Jamadar, Forest Guard since 1977 to 2003 before his regularization on the post of Tractor Cleaner on 23/1/2004 by the Divisional Forest Officer Ramnagar. The petitioner has retired from the post of the Tractor Cleaner on 30.06.2014 after working on the post for more than 10 years. As he has worked against a substantive post for more than 10 years, he has been granted pension. The petitioner is now requesting to grant him pensionary benefits for the period before regularization, wherein he has worked for more than 26 years continuously in different capacities. The learned counsel for the petitioner did not press the relief no.1 and has relied on the judgement of the Hon'ble Supreme Court in Civil Appeal No. 6789 of 2019 in the matter of Prem Singh vs State of Uttar Pradesh along with other appeals which clearly States that past service before regularization shall count for pensionary benefits. Learned Counsel for the petitioner further cited the judgement passed by the Hon'ble High Court of Uttarakhand in the WP (S/S) No 441 of 2022 in the matter of Suresh Chandra Kandpal Vs State of Uttarakhand & Others on 20-8-2024 for counting past services for pensionary benefits. Considering the above Judgements of the Hon'ble Courts this Hon'ble Tribunal has also

passed orders dated 03 December 2024 in Claim petitions No.18/NB/DB/2020, No. 19/NB/DB/2020, No. 20/NB/DB/2020 & No 21/NB/DB/2020 for counting past service rendered by the petitioners before their regularization for pension benefits.

7. The learned A.P.O. has pleaded that the petitioner did not work continuously for 26 years as claimed by him. He worked in the department on seasonal basis. His claim for the pensionary benefits for the period before his regularization is denied as he did not work continuously during this period. The claim petition is liable to be dismissed.

8. On the basis of arguments of the learned counsels and the documents filed by the petitioner, we are of the opinion that the petitioner has been regularized on post of the Tractor Cleaner and worked for more than 10 years on the post before retiring on 30/6/2014. He got the pension as he has served as a regular employee for more than 10 years as per the rules. The claim of the petitioner for counting the service rendered by him as the daily wager and temporary employee for the pensionary benefits is covered under aforesaid judgements passed by the Hon'ble Supreme Court and Other High Courts. The relevant paragraphs of the judgment of Hon'ble Supreme Court passed in the case of Prem Singh vs. State of U.P. (supra) are reproduced as under for convenience:

“33. The question arises whether the imposition of rider that such service to be counted has to be rendered in between two spells of temporary or temporary and permanent service is legal and proper. We find that once regularisation had been made on vacant posts, though the employee had not served prior to that on temporary basis, considering the nature of appointment, though it was not a regular appointment it was made on monthly salary and thereafter in the pay scale of work-charged establishment the efficiency bar was permitted to be crossed. It would be highly discriminatory and irrational because of the rider contained in the Note to Rule 3(8) of the 1961 Rules, not to count such service particularly, when it can be counted, in case such service is sandwiched between two temporary or in-between temporary and permanent services. There is no rhyme or reason not to count the service of work-charged period in case it has been rendered before regularisation. In our opinion, an impermissible classification has been made under Rule 3(8). It would be highly unjust, impermissible and irrational to deprive such employees benefit of the qualifying service. Service of work-charged period remains the same for all the employees, once it is to be counted for one class, it has to be counted for all to prevent discrimination. The classification

cannot be done on the irrational basis and when respondents are themselves counting period spent in such service, it would be highly discriminatory not to count the service on the basis of flimsy classification. The rider put on that work-charged service should have preceded by temporary capacity is discriminatory and irrational and creates an impermissible classification.

34. As it would be unjust, illegal and impermissible to make aforesaid classification to make Rule 3(8) valid and non-discriminatory, we have to read down the provisions of Rule 3(8) and hold that services rendered even prior to regularisation in the capacity of work-charged employees, contingency paid fund employees or non-pensionable establishment shall also be counted towards the qualifying service even if such service is not preceded by temporary or regular appointment in a pensionable establishment.

35. In view of the Note appended to Rule 3(8), which we have read down, the provision contained in Regulation 370 of the Civil Services Regulations has to be struck down as also the instructions contained in Para 669 of the Financial Handbook.

36. There are some of the employees who have not been regularised in spite of having rendered the services for 30-40 or more years whereas they have been superannuated. As they have worked in the work-charged establishment, not against any particular project, their services ought to have been regularised under the Government instructions and even as per the decision of this Court in *State of Karnataka v. Umadevi (3)* [*State of Karnataka v. Umadevi (3)*, (2006) 4 SCC 1 : 2006 SCC (L&S) 753]. This Court in the said decision has laid down that in case services have been rendered for more than ten years without the cover of the Court's order, as one-time measure, the services be regularised of such employees. In the facts of the case, those employees who have worked for ten years or more should have been regularised. It would not be proper to regulate them for consideration of regularisation as others have been regularised, we direct that their services be treated as a regular one. However, it is made clear that they shall not be entitled to claiming any dues of difference in wages had they been continued in service regularly before attaining the age of superannuation. They shall be entitled to receive the pension as if they have retired from the regular establishment and the services rendered by them right from the day they entered the work-charged establishment shall be counted as qualifying service for purpose of pension.

37. In view of reading down Rule 3(8) of the U.P. Retirement Benefits Rules, 1961, we hold that services rendered in the work-charged establishment shall be treated as qualifying service under the aforesaid rule for grant of pension. The arrears of pension shall be confined to three years only before the date of the order. Let the admissible benefits be paid accordingly within three months. Resultantly, the appeals filed by the employees are allowed and filed by the State are dismissed."

9. Hon'ble High Court of Uttarakhand in Writ Petition No. 441 of 2022(S/S), *Suresh Chandra Kandwal vs. State of Uttarakhand & others* has also passed a judgement dated 20.08.2024 for counting the past service for the pensionary benefits in view of the Judgement of the Hon'ble Supreme Court.

10. In the light of the aforesaid decision of the Hon'ble Supreme Court, this Tribunal has also delivered the judgement dated 08/10/2024 in the Claim Petition No. 60/NB/DB/2019, Kunwar Singh vs State of Uttarakhand, and in other Claim petitions No.18/NB/DB/2020, No. 19/NB/DB/2020, No. 20/NB/DB/2020 &No 21/NB/DB/2020 for counting of past services for the grant of the pensionary benefits.

11. On the basis of the above, it is clear that the department has regularized petitioner and paid pensionary benefits for the service rendered after his regularization. But he has served the department continuously in different capacities as daily wager, Cultural Jamadar and Forest Guard for more than 26 years and he is entitled to get the benefit of the past services rendered by him for pensionary benefits.

12. In view of the above, the claim petition is hereby disposed of in terms of the judgment of Hon'ble Supreme Court in the case of Prem Singh v. State of U.P., (2019) 10 SCC 516 by directing the respondents to calculate the service rendered by the petitioner as daily wager, Cultural Jamadar and Forest Guard and recalculate and pay pensionary benefits only to the petitioners within a period of two months on presentation of certified copy of this judgment/order. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN(J)

(A.S.RAWAT)
VICE CHAIRMAN (A)

DATED: APRIL 11, 2025
DEHRADUN.
KNP