

**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)

EXECUTION PETITION NO. 11 /DB/2022

*(Arising out of judgment dated 28.09.2021,
passed in Claim petition No. 29/DB/2020)*

K.C. Sharma

.....Petitioner-executioner

vs.

State of Uttarakhand through its Principal Secretary/ Secretary, Rural
Development Department, Govt. of Uttarakhand and others

.....Respondents.

Present: Dr. N.K. Pant, Advocate, for the petitioner-executioner.
Sri V.P. Devrani, A.P.O., for the respondents

JUDGMENT

DATED: MAY 26, 2022

Justice U.C.Dhyani (Oral)

By means of present execution application, petitioner-executioner seek to enforce order dated 28.09.2021, passed by this Tribunal in Claim Petition No. 29/DB/2020, K.C. Sharma vs. State and others. A copy of Judgment dated 28.09.2021 has been filed as Annexure: E-1 to the execution application.

2. The execution application is supported by the affidavit of Sri K.C. Sharma, petitioner-executioner.

3. Instead of narrating the facts of the petition again, it is better if the facts, as narrated in the decision dated 28.09.2021, along with the reasons, are reproduced herein below for convenience.

4. The judgment dated 28.09.2021, passed in Claim Petition No. 29/DB/2020 reads as under:

“By means of the present claim petition, the petitioner seeks the following reliefs:

- (i) *To issue an order or direction calling for the record and to quash the rejection order no. 73-Nine/1832/2018/2020 dated 02.06.2020 and grant the higher pay scale to the Account Services of the Rural Development Department as per order passed for the Treasury Staff.*
- (ii) *To issue an order or direction calling for the record and to direct the respondent to grant consequential benefits from the date as per order passed for the Treasury Staff.*
- (iii) *The petitioner is aggrieved by unruly and irresponsible behaviour of the respondent and sought such as sum as Hon'ble Court think fit for causing mental harassment and pain.*
- (iv) *Expenses of the proceedings.*
- (v) *To issue any suitable claim order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*
- (vi) *Award the cost of the claim petition to the petitioner.*

2. Brief facts, according to the claim petition, are as follows:

Petitioner is an Accountant in the office of Chief/District Development Officer, Haridwar and is also the President of the registered Union of the Accountancy Services of Rural Development Department. The pay scales of the Assistant Accountants and Accountants of the Treasuries of the Uttarakhand have been upgraded by the Govt. Orders dated 18.11.2013, 15.02.2019 and 22.02.2019 from 01.01.1986, 01.01.2006 and subsequent dates, in compliance of the order dated 08.03.2013 of the Hon'ble High Court of Uttarakhand in writ petition No.497 of 2010. However, the employees of the Accounts cadre of other departments including that of Rural Development Department have been left arbitrarily. In the above writ petition, the Govt. in its Counter Affidavit filed in the Hon'ble High Court has accepted that the Accounts employees of the Treasuries and other departments have same designation and pay scale and no specialization is required for the Treasuries' employees. Govt. has also accepted in this Counter Affidavit that if the Treasuries' employees' pay scales are upgraded then the pay scales of other Accounts employees of other departments shall also need to be upgraded, due to principles of equality. Petitioner requested the respondents accordingly and a legal notice was also sent on 06.10.2019 to the respondents in this regard. Petitioner also filed a claim petition before this Tribunal bearing no. 162/DB/2019 in which this Tribunal passed order dated 09.01.2020 and directed the respondent No. 1 therein (State of Uttarakhand through Secretary, Finance, Govt. of Uttarakhand) to decide the representation of the petitioner by a reasoned and speaking order. Learned Counsel for the petitioner again requested the respondent no.1 of that Claim Petition in this regard *vide* his letter dated

05.06.2020. Petitioner's representations were disposed of without a reasoned and speaking order on 02.06.2020 and accordingly reply was also sent to learned Counsel for the petitioner on 17.06.2020. Hence this claim petition.

3. Counter Affidavits were filed on behalf of the respondents No. 1 & 4 and on behalf of respondents No. 2 & 3. To these Counter Affidavits, petitioner also filed his Rejoinder Affidavit dated 05.10.2020.

4. In the Counter Affidavit of Respondent no. 1 & 4, the averments of the claim petition are denied mainly stating the following:

Through in WPSS 497 /2020 Counter Affidavit filed by the State Govt. stated in para no. 4,7,10,13 & 33 that all employees of Accounts cadre in all Govt. departments are equals (in respect of pay scale) but such averment of the State Govt. was turned down and not accepted by the Hon'ble High Court. This fact is clear from the judgment dated 08.03.2013 passed by the Hon'ble High Court in WPSS 497/2020. The Treasury Accounts cadre employees were allowed higher pay scale by the Hon'ble High Court. Once the averments and statements of the State Govt. are not accepted by the Hon'ble High Court then in such circumstances relying upon such statements in the present matter does not help the case of petitioner. The Hon'ble High Court in its judgment has directed the State Govt. to give Accountants/Assistant Accountants of Treasury Department, the same salaries as are being given to the Accountants / Assistant Accountants of the Secretariat.

State Govt. has framed common/general service rules for all the Accounts cadre employees working in various Govt. Departments namely Uttarakhand Government Department Subordinate Accounts Cadre (non-gazetted) Service Rules, 2019 [hereinafter referred to as the Rules of 2019]. Their terms and conditions of services including pay scale shall be governed by the provisions of the said Rules. At this point, it is also relevant to mention that the Accounts cadre of the Treasury Department has specific Service Rules namely Uttarakhand Treasury Subordinate (Non-Gazetted) Cadre (Accountant) Rules, 2013 governing the terms and conditions of services of the Accounts cadre employees of Treasury Department. It is settled position of law that when identical provisions of law are placed in two different statutes (one being of general nature and other being specific to the subject matter), it is the specific law which will prevail over the general provisions of law. In the present matter as well, the Accounts cadre employees working in the Treasury Department have specific Service Rules governing their terms and conditions of services whereas the petitioner is governed by the general service rules applicable to all similarly placed Accounts cadre employees working in various departments of the State Govt.

In the Counter Affidavit of Respondents no. 2 and 3, it has been stated that the Personnel department of the Govt. of Uttarakhand *vide* notification no. 124 dated 12.05.2019 has framed/published common/general service rules-the Rules of 2019 for all the Accounts cadre employees working in various Govt. departments. As per provisions of these rules, the pay scales of Assistant Accountants and Accountants of all the Govt. departments' subordinate accounts cadre (non-Gazetted) posts

have been equalized. The said Rules are applicable from the date of their enforcement in Treasury Department.

5. In his R.A. dated 05.10.2020, the petitioner has stated that the respondents granted higher pay scale to the Accounts employees of the Treasuries while leaving the employees of the Accounts cadre of other departments who were getting similar pay scales in the light of the report of *Samata Samiti*. On the principles of natural justice, similarly situated persons cannot be treated differently. The Rules of 2019 are applicable after their commencement. These rules will help the Accounts cadres in the State in future, but the relief being sought for is of equal pay scale before these Rules came to exist, on the basis of principle of equality.

6. This Tribunal *vide* its order dated 11.01.2021 directed the respondents to bring on record a copy of the SLP filed by the State against order dated 08.03.2013 in WPSS No. 497/2010 and current status thereof. Respondents were also directed to file an affidavit enclosing documents to show as to why the Accounta personnel of Secretariat and certain other organizations, have been excluded from the purview of the Rules of 2019.

7. Subsequently, copy of SLP filed by the State before Hon'ble Supreme Court and copy of the order of Hon'ble Supreme Court on the same have been filed. *Vide* affidavit dated 17.06.2021, it has been apprised that Rules of 2019 cover the Accounts cadre of the Treasuries and have excluded Hon'ble High Court, Office of Advocate General, Secretariat of the Governor, State Secretariat, State Assembly Office, Uttarkahand Public Service Commission and State Public Services Tribunal. This has been done on the basis of a policy decision taken by the State Govt. on the recommendation (para-6.26) in the report of the *Samta Samiti* related to the 4th Pay Commission. The Annexure to this affidavit also includes copy of note-sheet of the Finance Department wherein it has been stated that based on recommendation (para-6.26) referred to above, State Govt. has taken a policy decision that the pay scales, admissible to Assembly Office, Governor's Secretariat, High Court, Lokayukta Office, Public Service Commission, Board of Revenue, Advocate General's Office shall be the same as are admissible to the Secretariat of the State Govt.

8. Petitioner has replied to the above *vide* his Supplementary R.A. dated 23.06.2021 stating that the Rules of 2019 are applicable from their date of commencement i.e. 12.06.2019 while the matter of the petitioner is of an earlier period. The Treasuries were not covered earlier under the Rules of 2019 nor they were covered by the recommendations (para 6.26) given in the report of *Samta Samiti* related to 4th Pay Commission. Hence, respondents are bound to grant the same benefits to the Accounts cadre of the Rural Development Department.

9. We have heard the arguments of the parties at length. Written arguments have also been filed by learned counsel for the petitioner. Our observations are in the succeeding paragraphs.

10. The Assistant Accountants and Accountants of the treasuries have been given higher pay scales in compliance of the order dated 08.03.2013 of the Hon'ble High Court of Uttarakhand in writ petition no. 497/2010. This writ petition was filed by the Uttarakhand Treasury Staff Association against State of Uttarakhand claiming parity with the pay scales of the Accounts staff of the State Secretariat. Counter Affidavit filed by the then Additional Secretary, Finance Department, Govt. of Uttarakhand in this writ petition, has also been enclosed with this claim petition. Para 4 of this Counter Affidavit states that the pay scales of staff of different organizations or departments in the State Govt. may also vary. The pay scale of a post depends upon the mode of recruitment, essential qualification, duty and responsibility, work load and area of work of the post. So the parity of the

pay scale of the posts cannot be established merely on the basis of similar names of the posts. After the recommendation of the *Samata Samiti*, the concept of inter-se parity (with different departments /organizations) has come to an end.

In para 7 of this Counter Affidavit, it is denied that the nature of work and duties of the staff working in the treasury department is of a much more specialized nature than that being done by similarly situated staff of other departments of the Government. In para 10 of the Counter Affidavit, it is stated that the pay scale of the Accountants and Assistant Accountants of the treasury are not lower than that of the Accountant and Assistant Accountant of the other department of the Govt.

In para 11 of this Counter Affidavit, following is stated:

“....As the *Sachivalaya* is a different entity, the accountants & assistant accountants of the account cadre of the *Sachivalaya* cannot be compared with the accountants & assistant accountants of the treasury and the other department of the Govt. The pay scale of Rs. 1640-2900 was granted personally to only those accountants who were working on the post of upper division assistant (pay scale Rs. 1640-2900) at that time. Now the name of the post of the account cadre in *Sachivalaya* has also been changed (Annexure-Z). So these two entities cannot be compared. If the pay scales of the assistant accountant and accountant (Now the changed name is assistant reviewing officer (accounts) and reviewing officer (accounts) of the *Sachivalaya* are granted to the accountants and assistant accountants of the treasury, the Govt. will have to bear a financial burden of about Rs. 21 crores.” This para further states that if on the same analogy above higher pay scales are also granted to the Assistant Accountants and Accountants of the other departments of the Govt., the additional financial burden will be much more.

In para 33 of this Counter Affidavit, the following is stated:

“..... Since 01.01.1996 there is no disparity in pay scales between employees of different cadres except the *Sachivalaya* Cadre with regard to accounts staff. It is also to submit that in case of treasury department there is no disparity in the pay scales of the account staff at headquarters level and district level since beginning that is 1986. Reopening of the matter may lead to further complications and disparity on one hand and huge financial implication to the State exchequer on the other, while there is limitation of resources.”

Paras 3 & 4 of the order of Hon'ble High Court in the above writ petition are reproduced hereunder:

“3. A fact has been stated at the bar by the petitioner before this Court which has not been denied by the State counsel that now Accountant/Assistant Accountant of Treasury Department in Uttar Pradesh are getting the same salary along with the arrears, as are being given to the Accountant/Assistant Accountant working in State Secretariat.

4. Since this was not being done in the State of Uttarakhand, the writ petition was filed before this Court. A fact has come up in the rejoinder affidavit that since April, 2001 members of the association are getting the same salary as are being given to the

Accountant/Assistant Accountant of the Secretariat of State of Uttarakhand. Deputy Advocate General for the State agreed that there is now a parity between the employees of the Treasury Department and the employees of the Secretariat of the State of Uttarakhand and now they are getting same salary. However, the question only remains about the arrears. Since the counterparts in Uttar Pradesh are getting the same since 1.1.1986, the petitioners are also liable to get the same benefits.”

11. Although the R.A. filed in the above writ petition is not before us but it appears that correct facts were not placed before the Hon'ble High Court. There was parity in the salary between employees of the treasury department and the employees of the Secretariat of the State of Uttarakhand from April, 2001 till December, 2005 only and from 01.01.2006, higher pay scales were given to the accounts staff of the State Secretariat. So, there was disparity again from 01.01.2006 onwards.

12. In view of the position as stated in para 4 of the order, the Hon'ble High Court confined its order to the grant of arrears to the treasury employees prior to April 2001 only *i.e.* arrears since 09.11.2000 till March 2001 were to be given by the State of Uttarakhand and arrears prior to 09.11.2000 were to be given by the State of U.P. There was no order by the Hon'ble High Court of Uttarakhand for maintaining parity between the pay of the treasury employees and Secretariat employees for the period after December 2005.

13. It was incumbent on the State Govt. to place correct facts before the Hon'ble High Court either before passing of the above order or soon thereafter. However, it was not done. In compliance of these orders of Hon'ble High Court, the Govt. issued G.O. dated 18.11.2013 increasing the pay scales of the Assistant Accountants and Accountants of the treasuries w.e.f. 01.01.1986 and for arrears upto March 2001 to be paid by the States of U.P. and Uttarakhand as ordered by the Hon'ble High Court. Subsequently a Contempt petition was filed in 2016 in the Hon'ble High Court of Uttarakhand alleging non-compliance of its order dated 08.03.2013.

14. The State Govt. filed Special Appeal No. 68/2018 against the judgment and order dated 08.03.2013 before the Division Bench of the Hon'ble High Court of Uttarakhand along with application for condonation of delay. The Hon'ble High Court declined to condone the delay of 1771 days in filing the Special Appeal and dismissed the Special Appeal *vide* its judgment and order dated 10.08.2018. Against this order, the State Govt. filed SLP before the Hon'ble Supreme Court, which was also dismissed by the Hon'ble Supreme Court stating that the conduct of the petitioners as reflected in the impugned order does not entitle them to be heard on merits before this Court. The Hon'ble Apex Court did not express any view on the merits of the dispute.

15. Eventually, to avoid contempt of Hon'ble High Court's order, the State Govt. issued Govt. Orders dated 15.02.2019 and 22.02.2019 further upgrading the pay scales of Assistant Accountants and Accountants of the treasuries w.e.f. 01.01.2006 and further dates as had been done for the Accounts staff of the Secretariat.

16. It is notable that there was no express direction in the Hon'ble High Court's order dated 08.03.2013 to upgrade the pay scales of the treasury employees w.e.f. 01.01.2006 onwards. The State Govt. had opposed the grant of parity in its Counter Affidavit filed before the Hon'ble High Court. After R.A., the State Govt. should have placed correct facts before the Hon'ble High Court or filed the Special Appeal soon after the

order of the Hon'ble High Court. Thus, we observe that the State was forced to give higher pay-scales *w.e.f.* 01.01.2006 onwards to the treasury employees at par with the Secretariat employees without their being any order for the same on the basis of wrong picture presented before the Hon'ble High Court and further, the State Govt. did not take timely action to get its mistake corrected.

17. The petitioner of the present claim petition is demanding parity with the accounts staff of the treasuries who have been given parity with the accounts staff of the Secretariat as described above. The same has been opposed by the respondents through their averments in their Counter Affidavits and arguments.

18. We observe that there was parity in the pay scales of the accounts staff of the petitioner's department and the treasuries from April 2001 to December 2005. From 01.01.2006 onwards, disparity has arisen on account of the compulsion of the State Govt. to upgrade the pay scales of the treasuries' accounts staff to bring them at par with the accounts staff of Secretariat as explained above. The State Govt. has also notified the Rules of 2019 in which the accounts staff of various departments of the government except State Secretariat and a few other organizations have been brought under one Service Rules with same pay scales. Both Treasuries' staff and Rural Development Department's staff are now covered under the Rules of 2019, while the Secretariat staff has been kept out of it.

19. As far as the claim of parity made in the present claim petition prior to April 2001 is concerned, we find that it is highly time barred. The parity was given to the treasury staff with the Secretariat staff for this period in compliance of the order of the Hon'ble High Court dated 08.03.2013 *vide* G.O. dated 18.11.2013 but the petitioner has first approached the Tribunal for the same only through claim petition No.162/DB/2019 in 2019. Therefore, any relief for this period cannot be considered.

20. So far as the parity with treasuries' employees from 01.01.2006 is concerned, we observe that before the Rules of 2019, the petitioner's department (Rural Development Department) and the treasuries have been governed by different Service Rules. We also observe that there is no order of the Hon'ble High Court to grant parity to the treasury employees with the Secretariat employees from 01.01.2006 onwards but it is on the basis of not placing the entire facts before the Hon'ble High Court and further laxity on the part of the Govt. that Govt. has been compelled to grant them parity. This has been a mistake on the part of the Govt. and the Tribunal should not and cannot extend this mistake of the Govt. to any other department.

21. We also observe that, had the above mistake not been committed by the Govt., the pay scales of the accounts staff of the treasuries and the petitioner's department would have continued to remain the same after April, 2001. The Rules of 2019 have placed them under the same Rules with equal pay scales. Therefore, it is necessary that now the parity in the pay scales of the accounts staff of the petitioner's department and the treasuries is brought about from 12.06.2019 onwards, when the Rules of 2019 have been notified. This can be done either by suitably enhancing pay scales mentioned in these Rules or by subsuming the erstwhile enhanced pay scales of the treasury employees in their Assured Career Progression/Modified Assured Career Progression or in any other manner, which the Government may deem fit after hearing the affected parties. The respondents are directed to ensure the same within a period of six months from the date of presentation of certified copy of this order.

22. The claim petition is, accordingly, disposed of. No order as to costs.”

5. It is the submission of learned Counsel for the petitioner-executioner that a copy of judgment dated 28.09.2021 was served upon the respondents on 07.10.2021, but till date compliance of the order of the Tribunal has not been done by them.

6. It is the submission of learned counsel for the petitioner-executioner that casual approach on the part of the respondents should not be tolerated and strict action should be initiated against him. Ld. A.P.O. submitted that he did not receive instructions despite notices upon the respondents no. 3 and 4.

7. Considering the facts of the case, this Tribunal directs the respondents to comply with the order dated 28.09.2021, passed by this Tribunal in Claim Petition No. 29/DB/2020, K.C. Sharma vs. State & others, if the same has not been complied with so far, without further loss of time, failing which the concerned respondents may be liable to face appropriate action under the relevant law governing the field.

8. Petitioner- executioner is directed to place copies of this order before the respondents by 06.06.2022, to remind that a duty was cast upon said authorities to do something, which has not been done. The same requires to be done now, without unreasonable delay.

9. Execution application is, accordingly, disposed of at the admission stage.

10. Let copies of this order be supplied to ld. Counsel for the petitioner-executioner and ld. A.P.O., by 28.05.2022, as per Rules.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 26, 2022
DEHRADUN
VM/RS