

**BEFORE THE UTTARAKHAND PUBLIC SERVICES 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. 137/NB/DB/2023

Heera Ram, aged about 61 years, S/o Late Sri Padi Ram, Retired Tractor Driver,
Nagar Palika Parishad, Bhowali, District Nainital R/O Village Farsoli, Near Naini
Band, Bhowali, District Nainital.

.....**Petitioner**

Vs

1. State of Uttarakhand through Secretary, Urban Development Department,
Government of Uttarakhand, Dehradun
2. Director, Urban Development, Uttarakhand, Dehradun
3. Nagar Palika Parishad, Bhowali, District Nainital through its Executive Officer.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O., for the respondents no. 1 & 2
Sri Navnish Negi, Advocate for the respondent no.3

JUDGMENT

DATED: JULY 11, 2025

Hon'ble Sri A.S.Rawat, Vice Chairman (A)

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

"1. To direct the respondents, particularly respondent no. 3 to grant the benefit of pay scale of the post of Tractor Driver to the petitioner, for the relevant period i.e. 07-06-1989 to 31-12-2022, in view of peculiar facts and circumstances of the present case, as well as settled legal position on the point and also in view of dictum of Hon'ble Apex Court in the case of "State of Punjab and others Vs. Jagjeet Singh and others" reported in SCC 2017 (1) 148 and also in view of judgment dated 16-03-2017 passed by Hon'ble Uttarakhand High Court (Annexure No. 12 to the Compilation No. II).

II. To direct the Respondents, particularly Respondent No. 3 to pay all arrears to the petitioner on account of grant of pay scale of the post of Tractor Driver.

III. To direct the Respondents, particularly Respondent No. 3 to forthwith grant all consequential benefits to the petitioner including payment of revised retiral dues, etc.

IV. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

V. To allow the claim petition with cost.

2. Brief facts of the case are as follows:

2.1 The petitioner joined the duties on the temporary post of Tractor Driver on 17.06.1989 and discharged duties on the said post since 17.06.1989 without any break. But the respondent No. 3 was giving Pay Scale of Class-IV employee to the petitioner. It is submitted that the post of Driver is a Class-III post. The petitioner continuously requested the respondent No. 3 to pay him salary of the Tractor Driver from time to time. Afterwards, the petitioner submitted representations to the Respondent No. 3, who sent a letter to the Director, Local Bodies, U.P., Lucknow through District Magistrate, Nainital on 26.7.1995 stating therein that the Nagar Palika Parishad Bhowali, has purchased two Tractors for sanitation and cleaning, out of the fund provided by the State Government in the year 1989. It was further stated in the said letter, that for plying the Tractor, one Tractor Driver (i.e. the petitioner) has also been appointed. It was further stated that since no post of Driver for the establishment of respondent no. 3 has been sanctioned, the concerned Tractor Driver is being given the Pay Scale of Class IV employee only. As such, it was requested that the post of Tractor Driver is necessarily to be created in the establishment of respondent No. 3.

2.3 The petitioner submitted representations to pay him the salary of the Tractor Driver and the respondent No.3 requested the Director, Local Bodies, U.P. through District Magistrate Nainital, reiterating the facts stated in the earlier letters and requested that the post of Driver be sanctioned for the respondent No. 3.

2.4 When no decision was taken on petitioner's representations, he approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 189 (S/S) of 2003 (Hira Ram Vs. Executive Officer and others), which was dismissed on the ground of alternative remedy by the Hon'ble High Court vide order dated 22-08-2008 with a liberty to the petitioner to approach the Public Services Tribunal. The same order could not be communicated by the counsel of the petitioner and more particularly he became government advocate thereafter. The petitioner could not approach this Hon'ble Tribunal at the relevant time, due to non-information of the same. Moreover, since the order/judgment was not on merit, as such, it cannot be said that the same suffers from constructive res-judicata.

2.5. A similarly situated person, namely Sri Ghanshyam was appointed in Nagar Palika Parishad, Kichha, District Udham Singh Nagar on the post of Peon (Class IV employee), however, the work of Driver was being taken from him by the said Nagar Palika Parishad. He approached Hon'ble Uttarakhand High Court for claiming salary of the driver on the principle of **"equal pay for equal work"** and Hon'ble Uttarakhand High Court disposed of the said Writ Petition of Sri Ghanshyam with a direction to make a representation in the matter. The said representation was rejected by the concerned Nagar Palika Parishad on the ground that no post of driver is sanctioned in the said Municipality. Sri Ghanshyam thereafter again approached Hon'ble Uttarakhand High Court by means of Writ Petition No. 196 (S/S) of 2012 (Ghanshyam Vs. State and others), which was decided on 16.03.2017 with the order that sanctioning of a post is not a pre-requisite to grant the salary on the principle of "equal pay for equal work", and a mandamus was issued to treat the said petitioner as driver since the date he started discharging the duties of a Driver. It was further directed that the arrears of the salary be paid along with 8% interest per annum. Sri Ghanshyam was given the pay scale of Driver along with the arrear of the same and also the interest was also paid and in total a sum of Rs. 8,82,646/- was paid to him.

2.6 Having come to know about the above decision, the Petitioner also submitted a representation on 04.12.2017 to the Respondent No. 3 for the similar relief. When no decision was taken on the representation dated 04-12-2017 by the respondents, the petitioner approached the Hon'ble Uttarakhand High Court by filing Writ Petition No. 222 (S/S) of 2019 (Heera Ram Vs. State of Uttarakhand, which was dismissed on 28-07-2023 on the ground of alternative remedy. The petitioner has now approached this Tribunal. The petitioner retired from service w.e.f. 31-12-2022 after attaining the age of superannuation.

2.7 The Petitioner is entitled for the pay scale of the driver since the date of his working on the said post, on the principle of "equal pay for equal work", as has been specifically held by Hon'ble Supreme Court in the case of "State of Punjab Vs. Jagjit Singh and others", reported in 2017 (1) SCC 148.

2.8 The Hon'ble High Court of Uttarakhand at Nainital, dealing with almost similar situation like the petitioner who is discharging duties of higher post, has dealt with in the case of Mahendra Kumar Vs. State of Uttarakhand and others vide judgment dated 23-06-2020 passed in WPSS No. 582 of 2020. The ration laid down in the said judgment also fully applicable in the present case of the petitioner.

2.9 In view of the aforesaid facts and circumstances above, the petitioner has prayed to allow the claim petition.

3. C.A./W.S. has been filed on behalf of respondent no. 3. Learned A.P.O. has adopted the same for respondents no. 1 & 2 also. It has been stated in the C.A. that the appointment of the petitioner on the post of driver was not against the sanctioned and substantive vacancy, he joined as Class IV employee vide order dated 17.06.1989. The appointment of the petitioner on the post of driver is not permanent and the pay scale granted to the petitioner is as per the Rules applicable to the ad -hoc employees. The post of driver in the respondent Nagar Palika, Bhowali was not substantively vacant and sanctioned at the relevant point of time.

4. R.A. has also been filed on behalf of the petitioner, in which, he has denied the contentions made by the respondents and he has reiterated the averments made in the claim petition.

5. We have heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner argued that the petitioner was appointed on the temporary post of Tractor Driver, a Class—III post and he worked continuously on that post for 33 years till his retirement. But he was paid salary of the Class-IV post and the post of the Tractor Driver was never sanctioned. He was never paid salary of Tractor Driver, despite his several requests and the reminders. Even the Nagarpalika, Bhowali also requested the Director, Local Bodies, U.P. to create the posts of Tractor Drivers. Hon'ble Uttarakhand High Court in Writ Petition No. 196 (S/S) of 2012 (Ghanshyam Vs. State and others) ordered to pay the salary of the driver with 8% of the interest per annum. On the basis of the said order the petitioner made representation. When no decision was taken, the petitioner filed a writ petition in the Hon'ble High Court Uttarakhand at Nainital, which was dismissed on the ground of alternate remedy to approach the Uttarakhand Public Service Tribunal. The petitioner is entitled to the pay of the driver in view of the judgement of the Hon'ble Apex Court in the matter of State of Punjab vs. Jagjeet Singh & others, SCC (2017) (1) 148, on the principle 'equal pay for the equal work'. A similar judgement has been given by the Uttarakhand High Court at Nainital in the matter of Mahendra Kumar Vs state of Uttarakhand on 23.06.2020. The petitioner has been sanctioned pension and the other pensionary benefits of Class -IV post. In view of the facts mentioned above, the claim petition is liable to be allowed.

7. Learned Counsel for the respondent No. 3 argued that the petitioner was given a temporary appointment as Tractor Driver. As the sanctioned post of the Tractor Driver was not available, he was paid salary of Class -IV employee. There is no document showing that he was regularized on the Class- IV post. The judgment of the Hon'ble

Apex Court in the matter of State of Punjab vs. Jagjeet Singh & others, SCC (2017) (1), 148 on the principle 'equal pay for the equal work' will not apply in this case, as he was not regularized on the class -IV post also. The petitioner applied for the salary of the post of the tractor driver after his retirement and filed the writ petition and the claim petitions. In case the plea of the petitioner is accepted based on the service record, then, in view of the judgement of the Hon'ble Apex court in the matter of Union of India & others vs Tarsem Singh, he is entitled to the benefit of the salary of the tractor Driver for three years before retirement. Learned A.P.O., on behalf of respondents no. 1 & 2 is also in agreement with the arguments advanced by learned Counsel for the respondent no. 3.

8. Based on the argument of the Learned Counsel for the parties and the documents submitted, we find that the petitioner was appointed on the post of the Tractor Driver on temporary basis, as the post was not sanctioned, he was not paid the salary of the tractor driver. The petitioner was paid the salary of the Class -IV employee (peon), and petitioner retired from the Class-IV post. The petitioner has been given pension and the pensionary benefits of the class-IV post. There is no letter related to his regularization on the post of the Class-IV in the service records, but there is mention of his being 'permanent Tractor driver/peon' in the prescribed column of the service book. Since, petitioner worked as a Tractor Driver for 33 years continuously which is a higher post, therefore, he is entitled to get the salary of the Tractor Driver in view of the judgement of the Hon'ble Apex Court in the matter of *State of Punjab Vs. Jagjit Singh and others reported in 2017 (1) (SCC) 148*, as well as the judgment of the Hon'ble High Court of Uttarakhand at Nainital in the matter of Ghanshyam vs. State of Uttarakhand & others. Since, petitioner has filed the claim petition after his retirement (on 31.12.2022), his claim for the arrears of salary for the Tractor Driver will be restricted to three years before date of retirement in view of the judgement of the Hon'ble Apex Court in Civil Appeal No. 5151-5152 of 2008, *Union of India & others vs Tarsem Singh*. The relevant para of the judgement is as under:

“5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

9. In view of the above, the petitioner is entitled to the arrears of salary of the Tractor Driver for three years before his date of retirement.

ORDER

The claim petition is allowed. The respondents are directed to pay the salary of the Tractor Driver to the petitioner for three years before his date of retirement, within three months of presentation of certified copy of the judgement. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: JULY 11, 2025
DEHRADUN
KNP