

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh  
----- Vice Chairman (J)  
Hon'ble Mr. Rajeev Gupta  
-----Vice Chairman (A)

**CLAIM PETITION NO. 17/NB/DB/2020**

Abhishek Kholia, s/o Shri N.K. Kholia, presently posted as Executive Engineer, Minor Irrigation Division, Pithoragarh, District Pithoragarh.

.....Petitioner

**vs.**

1. State of Uttarakhand through Secretary, Minor Irrigation Department, Government of Uttarakhand, Dehradun.
2. Chief Engineer/Head of Department, Minor Irrigation Department, Government of Uttarakhand, Dehradun.

.....Respondents

Present: Sri Alok Mehra, Advocate for the Petitioner  
Sri Kishore Kumar, A.P.O., for the Respondents

**JUDGMENT**

**DATED: NOVEMBER 17, 2022**

**Per: Sri Rajeev Gupta, Vice Chairman (A)**

This petition has been filed seeking the following reliefs:

- i) To call for the records and set-aside the impugned order dated 18.03.2019.*
- ii) To issue an order or direction directing the respondents to add the period of regular service from 15.09.2004 to 04.07.2011 rendered by petitioner in Government Medical College, Haldwani for grant of pension and other benefits in light of notification dated 30.01.2009 and Government Order dated 07.07.2015.*
- iii) To issue any other order or direction, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.*

*iv) To award the cost of the petition in favour of the applicant."*

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

The petitioner was initially appointed as Deputy Manager (Estate-Civil) in Uttaranchal Forest Hospital Trust, which was totally financed by the Govt. of Uttarakhand. This Trust was renamed as Uttarakhand Forest Hospital Trust w.e.f. 01.01.2007. The Management Committee of the Trust was competent to create all posts as per the Rules of the Trust. Different posts were advertised by the Trust on 25.08.2004 and the petitioner also applied for the post of Deputy Manager (Estate-Civil). The petitioner was declared successful for this post after interview by the Selection Committee. The petitioner joined this post on 15.09.2004 on the basis of appointment order dated 11.09.2004 which provided a fixed honorarium of Rs. 8,100/- per month and was for a period of one year which was to be extended every year. The petitioner was subsequently regularized on this post in the pay scale of Rs. 6500-10,500/- w.e.f. 15.09.2004 and his services were confirmed w.e.f. 16.09.2006.

An advertisement was issued by the Uttarakhand Public Service Commission for Combined State Engineering Examination-2007. The petitioner appeared in this selection process and was recruited as Assistant Engineer in Minor Irrigation Department vide appointment order dated 29.06.2011.

The Uttarakhand Forest Hospital Trust was takeover by the State Government w.e.f. 01.05.2010 and the Medical College was provincialized. After his relieving from the Government Medical College, Haldwani on 04.07.2011, the petitioner gave his joining to the Executive Engineer, Minor Irrigation Division, Chamoli on 05.07.2011, as such there was no break in his service.

New pension scheme also known as Contributory Provident Fund Scheme was introduced by the State Government in respect of its employees

w.e.f. 01.10.2005. The State Govt. notified Uttarakhand Retirement Benefits (Amendment) Rules, 2009 on 30.01.2009 providing that those employees who were appointed after 01.10.2005 in the Government service, but, before that they were in service of Uttarakhand Govt. and were covered by the old pension scheme and there is no break in service between the old and new service, then they would be covered by the old pension scheme. The State Govt. issued a Government Order dated 07.07.2015, which provided for grant of pension, gratuity etc. to all regular employees of Government Medical Colleges from the date of their appointment.

The petitioner moved representation to the competent authority for adding his services rendered in Government Medical College, Haldwani from 15.09.2004 to 04.07.2011 on the basis of Notification dated 30.01.2009 and Govt. Order dated 07.07.2015. The representations filed by the petitioner have been rejected by the respondent no. 1 vide impugned order dated 18.03.2019. While rejecting the representation of the petitioner, respondent no. 1 has held that the petitioner was not in service with the Medical College on 07.07.2015 when the Govt. order was issued and furthermore, the said G.O. does not provide for those employees who have left their job between the date of provincialization i.e. 30.04.2010 and issuance of Govt. Order dated 07.07.2015. On these grounds, it was held that past services rendered by the petitioner in Govt. Medical College, cannot be added for pensionary benefits.

The order rejecting the claim of the petitioner for adding the services rendered by him from 15.09.2004 till 04.07.2011 in Govt. Medical College, Haldwani is erroneous and cannot be sustained in the eyes of law. A bare perusal of paragraph no. 3 of the G.O. dated 07.07.2015 would reveal that all service benefits including pension and gratuity were to be paid to all those regular employees who were working on the day of provincialization of Medical College i.e. who were regular employees on 30.04.2010. This benefit was given retrospectively i.e. from the date of their initial appointment. The petitioner was regularized w.e.f. 15.09.2004 and was working as Deputy

Manager (Estate-Civil) in the Govt. Medical College, Haldwani on 30.04.2010, when the College was provincialized. Therefore, the petitioner fulfilled all the conditions mentioned in the Govt. order dated 07.07.2015 for grant of service benefits from the date of his initial appointment including pension. The services rendered by the petitioner at Govt. Medical College, Haldwani are liable to be added to his present services for pensionary and other benefits in light of Notification dated 30.01.2009 and Govt. Order dated 07.07.2015.

Hence the claim petition.

3. Identical Counter Affidavits have been filed on behalf of respondents no. 1 & 2 mainly stating that prior to the appointment of the petitioner as Assistant Engineer, Minor Irrigation, he was working on the post of Deputy Manager (Estate-Civil) in Govt. Medical College, Haldwani in the pay scale of Rs. 6500-200-10,500/- which is lower than the pay scale of the post of Assistant Engineer. At the time of issuance of the G.O. dated 07.07.2015, the petitioner was serving in the Minor Irrigation Department and he was not in the services of Govt. Medical College, thus he is not covered under the category of regular employees and in the G.O. dated 07.07.2015, there is no mention about the employees who left their job between the issuance of provincialization order dated 30.04.2010 and granting of service benefits Govt. Order dated 07.07.2015. Such employees are not eligible for old pension scheme and the case of the petitioner has been rightly rejected.

4. Rejoinder Affidavit has been filed on behalf of the petitioner to these Counter Affidavits mainly stating that his representation was rejected on totally erroneous grounds that the petitioner was not in service of Medical College on 07.07.2015 when the Govt. Order was issued. This stand cannot be sustained as the Govt. Order clearly specifies that service benefit including pension and gratuity is to be paid to regular employees of Medical College like State Govt. employees from the date of their initial appointment, who were working in Medical College on the date of provincialization *i.e.*

30.04.2010. The Govt. Order nowhere provides that it would be applicable only from the date of issuance of the Govt. Order. The petitioner was relieved from Government Medical College on 04.07.2011 and he joined on the post of Assistant Engineer, Minor Irrigation Department on 05.07.2011; as such there was no break in service. The petitioner being appointed on a higher Grade Pay has no relevance with the present controversy in hand as the petitioner fulfills the criteria mentioned in Govt. Order dated 07.07.2015, because petitioner was a regular confirmed employee in Government Medical College, Haldwani till 04.07.2011. Therefore, services rendered by petitioner in Govt. Medical College, Haldwani are liable to be added to his present services for pensionary and other benefits in light of Notification dated 30.01.2009 and Govt. Order dated 07.07.2015.

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

6. The Uttarakhand Forest Hospital Trust was provincialized vide Notification dated 30.04.2010 which stated that the Units established under the Trust shall attain Govt. status as integral part of the Government Medical College, Haldwani w.e.f. the prescribed date, 01.05.2010 and the Rules regarding the service conditions of the existing employees shall be made with the concurrence of the Personnel Department and Finance Department. Subsequently, G.O. dated 07.07.2015 was issued by the Secretary, Medical Education, which provided that all the regular employees working on the date of provincialization shall be given all service benefits and pension, gratuity etc. from the date of their appointment according to the following conditions:

(i) It shall be ensured in respect of all regular employees working on the date of provincialization that prescribed qualifications and Rules were fully complied with for their recruitment /appointment and that the employees fall in the category of regular employees as per the Rules.

(ii) Regular employees appointed after 01.10.2005 shall get the benefits of only Contributory Pension Scheme promulgated in the State from 01.10.2005.

(iii) All regular employees working on the date of provincialization, whose E.P.F. deduction was being made according to the E.P.F. Rules, their continuation shall be ensured at the time of starting of GPF deduction.

7. The above G.O. dated 07.07.2015 was addressed to the Director, Medical Education Department and only the Medical Education Department could have verified whether the petitioner fulfills the conditions stipulated in the G.O.. Therefore, this Tribunal *vide* its order dated 20.09.2022 desired that certificate from the competent authority (not below the rank of Director) in the Medical Education Department, regarding compliance of the conditions mentioned in the G.O. dated 07.07.2015 in respect of the petitioner, be filed. In compliance of this order of the Tribunal, learned Counsel for the petitioner has filed Certificate issued by the Principal, Govt. Medical College, Haldwani, which is countersigned by the Director, Medical Education, Uttarakhand, which states that the petitioner has been working on the post of Deputy Manager (Estate-Civil) from 15.09.2004 to 04.07.2011 as a regular/permanent employee and has been relieved in the afternoon of 04.07.2011 as a result of his selection on the post of Assistant Engineer (Civil) in the Minor Irrigation Department of the Uttarakhand State. It is further certified that the then Uttarakhand Forest Hospital Trust has made selection on the post of Deputy Manager (Estate-Civil) according to prescribed qualification and Rules, and the petitioner working on the post of Deputy Manager (Estate-Civil) was in the category of regular employee and that, other regular employees similar to the petitioner are being given all service benefits like pension, gratuity, GPF from the date of regular appointment in compliance of the G.O. dated 07.07.2015.

8. It is clear from the above that petitioner during his employment with the Govt. Medical College was entitled to all service benefits and pension,

gratuity etc from 15.09.2004 according to the G.O. dated 07.07.2015. It is to be seen whether his shifting to Minor Irrigation Department causes any disentitlement for the same.

9. The Uttarakhand Retirement Benefits (Amendment) Rules, 2009 prescribe that those employees who have been newly appointed on 01.10.2005 or afterwards in any service of the State Govt. but before this date they were in any other service under the Uttarakhand State Govt. and were covered under the old pension benefit scheme and there is no interruption between their old Govt. service and the new Govt. service, such employees shall be covered by the old pension benefits scheme. Admittedly, there is no interruption between petitioner's old Govt. service in the Govt. Medical College, Haldwani (from where he got relieved in the afternoon of 04.07.2011) and the new Govt. service in the Minor Irrigation Department (where he joined in the forenoon of 05.07.2011 according to the joining letter of the petitioner filed as Annexure no. 1 to the Counter Affidavit of the respondents). Since the petitioner was covered under the old pension benefits scheme during his posting in the Govt. Medical College, Haldwani and there is no interruption in his service, he shall continue to be covered under the old pension benefits scheme, even though his appointment in the Minor Irrigation Department has been made after 01.10.2005, according to the Uttarakhand Retirement Benefits (Amendment) Rules, 2009.

10. The impugned order dated 18.03.2019 issued by the Additional Secretary, Minor Irrigation Department, which denies service benefits and pension, gratuity etc. to the petitioner from his date of appointment (15.09.2004) is based on two grounds:

(i) The petitioner was not in the service of Medical College on the date of issuance of the G.O. dated 07.07.2015, therefore, he does not come in the category of regular employee.

(ii) There is no provision in the above G.O. for the employees who have left the services between the date of provincialization (30.04.2020) and the Govt. Order dated 07.07.2015.

11. The Tribunal observes that it is nowhere prescribed in the G.O. dated 07.07.2015 that a person has to be in the service of the Govt. Medical College on 07.07.2015; rather the G.O. is about the persons working on the date of provincialization and grants benefit to them from the date of regular appointment. The abovementioned second ground in the impugned order dated 18.03.2019 is also baseless as the G.O. dated 07.07.2015 does not forbid grant of service benefits and pension, gratuity etc. to persons who left service between the date of provincialization and the date of this G.O. (07.07.2015). It is clear that continued coverage under the old pension benefits scheme is admissible to the petitioner according to the Uttarakhand Retirement Benefits (Amendment) Rules, 2009.

12. In view of the above, the impugned order dated 18.03.2019 is hereby set aside and the respondents are directed to add the period of regular service from 15.09.2004 to 04.07.2011 rendered by the petitioner in the Govt. Medical College, Haldwani for grant of pension and other benefits.

13. The claim petition is, accordingly, allowed. No order as to costs.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

*DATE: NOVEMBER 17, 2022*  
*DEHRADUN*  
*KNP*