

**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. 111/NB/DB/2021

Arun Kapri S/o Late B.D, Kapri, R/o 2/138 Damuadhunga, Malli Bamori, Jim
Corbett School, Kathgodam, Haldwani District Nainital.

.....petitioner

Vs.

- 1- State of Uttarakhand through Secretary, Medical Education, Dehradun.
- 2- Director, Medical Education, Uttarakhand, Dehradun.
- 3- Principal, Sushila Tiwari Govt. Medical College, Haldwani, Uttarakhand.

.....Respondents

Present: Sri Dinesh Gahtori, Advocate for the petitioner
Sri Kishore Kumar, APO for the Respondents

JUDGMENT

DATED: NOVEMBER 03, 2025

Per: Sri A.S.Rawat, Vice Chairman(A)

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

- "1) To quash the letter dated 25-2-2021 issued by respondent no.3.*
- 2) To issue a positive direction to the respondents to make payment regular pension to the petitioner w.e.f. 1-8-2017 with interest and further direct the respondents to release monthly pension in favour of the petitioner.*
- 3) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the*

circumstances of the facts and circumstances of the case.

4) To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury."

2. Brief facts of the case are as under:

2.1 The petitioner was appointed in Prem Ganga Databya Hospital of Samagra Vikas Sansthan in the month of September 1999. After establishment of Uttarakhand Forest Hospital Trust, the petitioner was absorbed by it on 01.09.2005 after the amalgamation of Prem Ganga Databya Hospital in Dr. Shishila Tiwari Medical Hospital Trust through MOU dated 27-7-2005. Till 30-4-2010 the Shushila Tiwari Govt. Medical College was run by a trust called Uttarakhand Forest Hospital Trust, Haldwani, District Nainital, registered under Societies Registration Act, 1860. Vide notification no.487/XXVIII(1)/2010-08(3)/2009 dated 30-4-2010, the Medical College was taken over by the State government. As per clause 2 of the notification dated 30-4-2010, it has been stated that the human resource shall be absorbed on the status "*Jaisa Jis Sthiti*" meaning thereby all the employees became government employee from their date of appointment as regular in the erstwhile trust.

2.2 The petitioner was appointed on the post of Steno/ Store keeper on 1-9-2005 in the erstwhile Trust through an agreement dated 1-12-2005 in which it has been clearly mentioned that the agreement shall be effective w.e.f.1-9-2005. between the petitioner and the then manager of the trust and the salary was fixed @ Rs 4905/ month. The services of the petitioner was confirmed vide confirmation order dated 23-1-2008 w.e.f. 1-12-2005, but due to some mistake the date of appointment in the trust, date of regularization and date of confirmation was wrongly mentioned as 2-12-2005. Though, the petitioner was appointed on 01-09-2005, regularized on 01-09-2005 and should be confirmed on 01-09-2005 as had been done for other employees.

2.3 The old pension scheme was adopted by State of Uttarakhand w.e.f. October 2005. The petitioner submitted representations that he should be given benefits of old pension scheme as has been given to other employees of the college. The petitioner mentioned there in that he was paid salary for the month of September, October and November 2005 which proves that the petitioner was appointed on 1-9-2005 in the trust and after provincialization of the Medical College, he should be treated as appointed on 01-09-2005. The petitioner retired from service on 31-7-2017 and again submitted representations dated 07-03-2018, 05-12-2018 requesting for grant of pension and GPF.

2.4 The petitioner submitted a detailed representation on 9/12/2020 to the respondents as well as to His Excellency the Governor of Uttarakhand requesting for release of pension and GPF mentioning there in that the Gratuity, leave Encashment has been released in his favour, 60% of PF has been released, 40% of NPS also released but the pension has not been released till date.

2.5 The respondent no. 3 vide its letter dated 25-01-2021 rejected the claim of the petitioner for grant of pension and wrongly stated that since the petitioner was regularized on 02-12-2005 and which is after 01.10.2005 as such his services are under New Pension Scheme (NPS) and is entitled for CPF. The petitioner submitted an objection dated 17-2-2021 to said letter dated 25-01-2021 stating there in that the petitioner was given appointment in government establishment on 1-9-2005 and the pension under CPF is not being paid to him and requested for release of pension. It is submitted here that the services of the petitioner in the erstwhile Trust were under CPF but after provincialization of the college under trust, the services should be governed by the government rules and regulations. The option which the respondent no.3 is talking about was with the trust and not with the government, so the question of option does not arise, the petitioner never gave his option for C.PF after 30.04.2010. Since it is admitted and proved from record that the petitioner was given salary

from September 2005 by the trust as such the date of appointment should be 01-09-2005 not 02-12-2005. On 01-09-2005, the old pension scheme was applicable in the government as such the petitioner should be treated under old pension scheme and petitioner is entitled for regular pension w.e.f. August 2017. The petitioner submitted another representation to the Joint Director, Medical Education on 24-7-2021 stating all the facts and requested for release of pension.

3. Two separate Counter Affidavits have been filed on behalf respondents no. 2 & 3. In both the Counter Affidavits, the contents are same. In the C.A./W.S., the respondents have the preliminary objections as under:

a. The petitioner was taken in the Uttarakhand Forest Hospital Trust, Haldwani (in short Trust) by virtue of MOU signed by and between Samgar Vikas Sansthan, Lucknow and the Trust. Thus, the petitioner was an employee of the Trust till 30.04.2010 and hence was not a public servant within the meaning of the Uttarakhand (U.P. Public Services Tribunal Act, 1976).

b. The Trust was in existence up to 30.04.2010 only, and was dissolved by a resolution passed by the Board of Trustees of the said Trust and subsequently, assets and liabilities of the erstwhile Trust were taken over by the State Government, Department of Medical Education vide notification dated 30/04/2010 on "as is where is basis" effective from 01.05.2010.

c. As per prevailing rules of the erstwhile Trust, an appointment on contract basis was issued vide order dated 01.12.2005 in favor of the petitioner and accordingly he had joined duty on 02/12/2005 in the erstwhile Trust.

d. The petitioner had worked with the Trust from December 2005 to 30/04/2010 as an employee of the said Trust, and his services were regularized on the post of Steno/Store Keeper with effect from 02.12.2005 i.e. from the date joining duty vide order dated 05.10.2006.

The petitioner had never raised any grievance regarding his date of joining as 02.12.2005 in the regularization and subsequent confirmation orders.

e. The petitioner raised his grievance for the first time on 30/07/2015, after provincialization of the Medical College/Hospital, only after issuance of Government order no.-2244/XXVIII (1)/2015-39/2010 dated 07/07/2015, vide which service benefits, such as, Pension, Gratuity etc. were extended to the permanent employees of the erstwhile Trust from the date of their initial appointment in the Trust.

f. The petitioner was entitled and covered under Employees Provident Funds and Misc. Provisions Act, 1952 till 30/04/2010 and subsequently, on acquisition of the services of the petitioner by the State Government from 01/05/2010, he was entitled for NPS, a contributory pension scheme and had applied for Pran card under the scheme, accordingly both the shares i.e. employer and employee contributions were made in the account of the petitioner.

g- The petitioner was retired from the service of the respondent no.-3 Medical College on 31/07/2017 and his retirement dues, such as, EPF and EPS accumulation, Gratuity, Leave encashment, General insurance and contributory pension under NPS as per option given by the petitioner have been settled.

In view of the facts mentioned above, the claim petition of the petitioner is liable to be rejected.

3.1 The petitioner and others were taken in the employment of the erstwhile Trust from 01.12.2005, however, payment was made to the petitioner and similarly placed persons of the Samgra Vikas Sansthan in terms of MOU. The petitioner including another were appointed on contract basis vide order dated 01.12.2005 and had joined duty on 02.12.2005. However, the petitioner was compensated in terms of monthly payment made from 01/09/2005 to 30/11/2005, in view of MOU signed between Samgra Vikas Sansthan, Lucknow and Trust.

3.2 Earlier Dr. Sushila Tiwari Memorial Forest Hospital was being managed and controlled through Uttarakhand Forest Hospital Trust, Haldwani. An MOU was signed on 27.07.2005 between the Samagra Vikas Sansthan and UFHT Haldwani. Subsequently, the Trust was dissolved vide notification dated 30.04.2010, the assets and liabilities of the said Trust were taken over by the State Government, wef 01.05.2010. Therefore, from appointed date 01.05.2010, the permanent employees of the erstwhile Trust assumed the status of State Government Employees.

3.3 The services of the petitioner were confirmed from 03.12.2007, vide order dated 23/01/2008 passed by the then Secretary Trust and contractual services of the petitioner were regularized with effect from 02.12.2005. The representations were furnished by the petitioner for extending old pension to the petitioner. Since, the petitioner was entitled for NPS in terms of joining on the post of Steno/Store Keeper on 02/12/2005, keeping in view this fact, the petitioner had applied for Pran card no. and was covered under contributory pension scheme (NPS). Therefore, having availed all dues by the petitioner after retirement, he cannot re-agitate for old pension scheme issue. Moreover, it is submitted that the petitioner's representation dated 09/12/2020 was rightly decided by respondent no. 3 vide reply letter dated 25/01/2021, all dues in respect of the petitioner had been settled after retirement on 31/07/2017 on attaining the age of superannuation.

3.4 The pension is not the bounty of the state government, it is the right of a retired employee, subject to his entitlement for the same. It is respectfully submitted that the Uttarakhand State Government made applicable New Pension Scheme (NPS) for the employees entering into the employment on or after 01/10/2005. The petitioner who was appointed in the erstwhile Trust on 02/12/2005 was covered under NPS and he has availed the same on his retirement. Therefore, he cannot claim dual benefits. The present claim petition is untenable and liable to be rejected with cost.

4. R.A. has also been filed on behalf of the petitioner and he reiterated the averments made in the claim petition.

5. Heard learned Counsel for the parties and perused the record.

6. Learned Counsel for the petitioner argued that the petitioner was appointed as a Steno/Store keeper in the Dr Sushila Tewari Hospital Trust on 01.09.2005 and became the government servant on 30.04.2010 on provincialization of the Medical College and Hospital Trust. As per the agreement, all the employees of the Trust who were working with the Trust would be considered employees of the Government and be entitled to the benefits of the Government employees. The petitioner retired from the Government Hospital on 31.07.2017. But he has not been sanctioned pension as per the old pension scheme. He has been paid EP, gratuity, leave encashment etc. He has represented to the respondents to correct his date of appointment and regularization as 01.09.2005 in place of 02.12.2005 but that has not been rectified so far. He has requested to set aside the impugned order dated 25.02.2021 and allow the claim petition and other consequential benefits.

7. Learned A.P.O. argued that the petitioner has been appointed on 01.12.2005 on contract basis and joined duty on 02.12.2005 in Uttarakhand Forest Hospital Trust, Haldwani. The trust was taken over by the Government w.e.f. 01.05.2010. He has been permanent employee of the Government w.e.f. 01.05.2010. The petitioner was made payment of salary from September 2005 to November 2005 in view of MOU between erstwhile Samgra Vikas Sansthan, Lucknow and UFHT Haldwani and the petitioner was employee of Samgra Vikas Sansthan. The contractual service of the petitioner was regularized w.e.f. 02.12.2005. New Pension Scheme has been implemented in the Uttarakhand Government w.e.f. 01.10.2005. The petitioner was covered under New Pension Scheme for which he applied also. The petitioner has not challenged his date of regularization which he

claimed to be mentioned erroneously. The claim petition is liable to be dismissed.

8. Based on the arguments of the learned counsels for the parties and the documents presented, we find that the petitioner was appointed as Steno/Storekeeper in the Uttarakhand Forest Hospital Trust, Haldwani on 02.12.2005 and subsequently became the Government servant on its acquisition by the Government on 01.12.2010. As per the terms and conditions of the MOU all the persons of the UHFT Haldwani were to be Government Servant from the date of establishment of the Trust and will get benefits of the Government employees. The petitioner became the Government employees on the date of his appointment in the trust but the Government order dated 23.01.2008 notifying date of appointment of the employees and the regularization in the service is mentioned as 02.12.2005. So based on the date of appointment and the confirmation he has been sanctioned New Pension Scheme. Although petitioner has mentioned this anomaly in various representations while requesting to consider him for the old pension scheme but the date of the appointment and the confirmation has not been corrected. The petitioner has not challenged this date also. In view of the above, the claim petition is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: NOVEMBER 03, 2025
DEHRADUN
KNP