

**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)

**REVIEW APPLICATION NO. 09/NB/DB/2024  
(Arising out of the judgment dated 05.03.2025, passed in  
Claim Petition No. 52/NB/DB/2023)**

State of Uttarakhand through Secretary, Public Works Department,  
Govt. of Uttarakhand, Dehradun and others

.....**Review applicants**

**VS**

Mahiman Singh Bora, aged about 61 years, s/o Late Sri Sher Singh  
Bora, r/o P.W.D. Colony, Bhotiaparao, Ramnagar, District Nainital.

.....**Petitioner (Respondent)**

Present: Sri Kishor Kumar, A.P.O., for the review applicants

Sri Harendra Belwal, Advocate for the petitioner(respondent)

**JUDGMENT**

**DATED: NOVEMBER 10, 2025**

This review application has been filed on behalf of the State, to review the judgment and order dated 05.03.2025 passed by this Tribunal in claim petition No. 52/NB/DB/2023, Mahiman Singh Bora vs. State of Uttarakhand & others along with an application for condonation of delay. Learned Counsel for the petitioner (respondent herein) filed objections to the delay condonation application.

2. Accordingly, this Tribunal heard learned Counsel for the parties on delay condonation application. Learned A.P.O. on behalf of the review applicants submitted that after getting certified copy of judgment, department approached the Law Department and the Law Department advised to file review application and thereafter, after collecting the relevant papers, the department contacted to him and

requested to prepare the review application. Thereafter, the review application along with delay condonation application has been prepared. There is delay of near about 115 days in filing the present review application which is neither deliberate nor intentional. Learned Counsel for the petitioner (respondent herein) has also filed objections to the delay condonation application, but has not seriously opposed the delay in filing the review application and submitted that the review application may be decided on merits. He has further submitted that the judgment is correct and there is no scope of review, as the scope of review is very limited.

3. In view of the above the delay condonation application is hereby allowed and the delay in filing the review application is hereby condoned.

4. The judgment sought to be reviewed was passed by this Tribunal on 05.03.2025. The relevant paragraphs of the judgment read as follows:

“10. It will be appropriate to quote the relevant paragraphs of the Judgement and order dated 01.11.2022 passed by Hon’ble Uttarakhand Public Service Tribunal, Nainital in Claim Petition No. 101/NB/DB of 2022, Sushil Kumar Saxena Vs. State of Uttarakhand and others, as the decisions cited by the petitioner in support of his claim, have been mentioned in the above judgment passed by this Tribunal, which is quoted as below:

“7. It is the submission of Ld. Counsel for the petitioner that the matter is squarely covered by the decision rendered by Hon’ble High Court in Special Appeals No. 201, 203 and 207 of 2022 on 05.07.2022, which reads as under:

*“SPA Nos.201, 203 and 207 of 2022*

*All these three appeals are directed against the common judgment rendered by a learned Single Judge of this Court in a batch of writ petitions, including WPSS No.2436 of 2019, Lalit Mohan Pandey v. State of Uttarakhand and others, dated 20.12.2019. The appellant had also preferred a review application which has also been dismissed by the learned Single Judge on 6.9.2021.*

*A special appeal preferred against the same judgment, being Special appeal No.467 of 2021 (State of Uttarakhand and others v. Kedar Ram Arya) arising out of WPSS No.1235 of 2020, has already been dismissed by this Court on 2.3.2022.*

*It appears that the appellant also preferred Special Leave to Appeal Nos.4958- 4959 of 2022 to assail the final judgment as well as the order under review, which has been dismissed by the Supreme Court on 25.3.2022 with liberty to the appellant to prefer an appeal before the Division Bench against the judgment in writ proceedings.*

*As noticed above, this Court has already dismissed the appeal from the same impugned judgment in Special Appeal No.467 of 2021.*

*Following the said decision, these appeals are also dismissed. Pending application, if any, stands disposed of.”*

8. It will also be appropriate to reproduce the decision rendered by Hon“ble Court in WPSS No.3669 of 2018, Vijendra Pal Dwivedi v. State of Uttarakhand and others, dated 29.07.2019, as below:

*“Mr. Sanjay Bhatt, Advocate for the petitioner.*

*Mr. Atul Bahguna, Brief Holder for the State.*

*By means of the present writ petition, petitioner has prayed for the following relief:*

*“(i) To issue a writ, order or direction in the nature of mandamus commanding the respondents to re-fix the pension of petitioner as per last pay drawn by him on the basis of Rs. 83,3000/- and consequently release all the post retiral benefits including arrears of gratuity and commutation with penal rate of interest.”*

*Brief facts of the case are that the petitioner was initially appointed on ad-hoc basis on the post Lecturer (L.T. Grade). On 05.04.1991, the services of the petitioner were regularized on 09.05.2002 and thereafter he worked as regular employee from 09.05.2002 till the date of his retirement i.e. 31.03.2018.*

*It is contended that on 09.05.2002 services of the petitioner was regularized along with other similarly placed persons and he was also given service benefits. It is further contended that in the pension papers, the date of retirement of petitioner was shown as 30.06.2017, whereas the petitioner demitted office on 31.03.2018. It is further contended that the petitioner completed 60 years of age on 20.06.2017 and was due for retirement on 30.06.2017 but he was given the benefit of Academic Session, therefore, he retired from services on 31.03.2018. After his retirement his pension was fixed at Rs. 41,650/-. Thereafter, the pension of the petitioner has been re-fixed and the pension amount has been reduced as Rs. 33,320/- instead of Rs. 41,650/-. Feeling aggrieved, petitioner has filed present writ petition.*

*Heard learned counsel for the parties and perused the material available on record.*

*Learned counsel for the petitioner would submit that the petitioner has not been paid complete post retiral benefit because his services on ad-hoc basis have not been counted on fixation of his pension. He would further submit that in paragraph no.21 of the writ petition, the petitioner has also mentioned the name of other similarly placed persons who have been given benefit of ad-hoc services, while calculating their pension whereof the similar treatment has not been given to the petitioner. He would further submit that the petitioner has been discriminated by not granting the same benefit to him.*

*Learned counsel for the respondents would submit that the petitioner was appointed on ad hoc basis on 05.04.1991 and the services of the petitioner was regularized on 09.05.2002. He would further submit that the petitioner remained on ad-hoc basis since 05.09.1991 to 08.05.2002 and thereafter worked as regular employee from 09.05.2002 till the date of his retirement i.e. 31.03.2018, therefore, the authority concerned has rightly reduced the pension amount of the petitioner. He would further submit that the pension and other retiral benefits have been sanctioned to the petitioner as per the provisions of Government Order dated 05.06.2018 and the increment during the session benefit was not admissible to the petitioner.*

*Perusal of the averment made in the counter affidavit would reveal that the services rendered by other similarly situated persons have been counted for grant of the benefit of pension whereof in the case of the petitioner, same principle has not been followed. Perusal of the averment made in the counter affidavit as well as rejoinder affidavit would further reveal that the service rendered by petitioner on ad-hoc basis between the period from 05.04.1991 to 08.05.2002 has not been counted at the time of fixation of his pension and subsequently, the pension of the petitioner was assumed Rs. 41,650/- but surprisingly his pension was reduced to Rs. 33,320/-. Perusal of the counter affidavit would further reveal that services of the similarly appointed lecturers, who were appointed on adhoc basis for the benefit of pension and other consequential benefits have been counted whereof the petitioner has been*

discriminated for the same benefit, therefore, action of respondents in nongranteeing the benefit to the petitioner is discriminatory in nature.

It is settled position in law that all the employees, who are similarly situated should be treated equally and such a classification for the purpose of grant of pension and other service benefit is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off-date for extension of benefits especially pensionary benefits. The Hon'ble Apex Court in the case of Secretary, Minor Irrigation Department and others vs. Narendra Kumar Tripathi reported in (2015) 11 SCC 80 has held that determination of seniority of service rendered on ad-hoc basis be considered equally. Since, the petitioner was appointed against a substantive vacancy on adhoc basis and after regularization had continuously served the Department.

In view of the above, the writ petition is allowed. Respondent/competent authority is directed to re-fix the pension of the petitioner after counting the service rendered by him on adhoc basis and respondent shall also pay all the consequential benefit after re-fixation of his pension.

No order as to costs."

[Emphasis supplied]

9. It will also be apposite to reproduce the decision rendered in WPSS No.2436 of 2019, Lalit Mohan Pandey v. State of Uttarakhand and others, dated 20.12.2019, as below:

"All these petitions were decided by this Court by a common judgment dated 20.12.2019. It is as hereunder:-

"Since the controversy involved in aforesaid petitions is same, therefore, the same are being disposed of by this common judgment and order.

2. By means of aforementioned writ petitions, the petitioners are seeking a writ of mandamus commanding and directing the respondents to re-fix the pension of the petitioners as per last pay drawn and shall pay all retiral benefits including arrears of gratuity and commutation with penal rate of interest.

3. After arguing the writ petitions at some length, learned counsel for the petitioners would submit that the case of the petitioners is squarely covered by the judgment dated 29.07.2019 passed by this Court in WPSS No. 3669 of 2018.

4. Learned Deputy Advocate General does not oppose the said statement made by learned counsel for the petitioners.

**5. Having considered the submission of learned counsel for the parties and having perused the judgment dated 29.07.2019 passed in WPSS No. 3669 of 2018, this Court is satisfied that the case of the petitioners is squarely covered by the judgment dated 29.07.2019. Accordingly, all the writ petitions are disposed of with a direction to the respondents/competent authority to re-fix the pension of the petitioners after counting the service rendered by them on ad-hoc basis and respondents shall also pay all consequential benefits after re-fixation of their pension.**

6. Pending applications, if any, stand disposed of.

7. No order as to costs.

8. All pending applications stand disposed of accordingly."

[Emphasis supplied]

11. Learned Counsel for the petitioner has confined his prayer to count the period spent on the adhoc basis for refixing the pension and payment of the pensionary benefit to the petitioner. The order dated 13.03.2023 is liable to be quashed. The claim petition is liable to be allowed. The respondents are directed to count the period spent on adhoc basis for the payment of pensionary benefits. The pension of the petitioner is required to be refixed accordingly and pay the arrears of the pensionary benefits.

### **ORDER**

The claim petition is allowed. The order dated 13.03.2023 is set aside and the respondents are directed to refix the retiral dues of the petitioner after counting the service rendered by him on adhoc basis and

pay the pensionary benefits within three months from the date of presentation of certified copy of the judgment. No order as to costs.”

5. The above judgment was passed after hearing the parties and the Tribunal had drawn a reasonable and justifiable conclusion after considering all the relevant facts, circumstances of the case as well as judgment of the Hon'ble High Court and accordingly, the respondents were directed to refix the retiral dues of the petitioner after counting the service rendered by him on adhoc basis and pay the pensionary benefits.

6. The decision of the Tribunal is a well considered decision and it cannot be said that there was any error or mistake in the judgment passed by this Tribunal. In fact, the scope of review is very limited and only any manifest error, which is apparent on the face of record can only be corrected in review. The Tribunal cannot act as an Appellate Court for the reappraisal or re-appreciation of its own judgment in the proceedings of review. Even if, for the sake of argument, it is assumed that there is any shortcoming in the judgment of the Tribunal or the Tribunal failed to appreciate the facts or law in correct perspective, even then it cannot be corrected in the proceedings of review. It can only be done by the Higher Court.

7. Hence, we find no apparent error, which can be corrected in review. We do not find any force in the review and we are of the considered view that the Tribunal has passed the order taking into account all relevant facts and law.

8. Review application is, accordingly, dismissed. No order as to costs.

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

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

*DATE: NOVEMBER 10, 2025*  
*DEHRADUN*  
*KNP*