BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIUBUNAL BENCH AT NAINITAL

Present: Hon'ble Mr. Rajendra Singh

……..Vice Chairman (J)

Hon'ble Mr. A.S. Rawat

……..Vice Chairman (A)

CLAIM PETITION NO. 112/NB/DB/2023

Om Prakash Joshi (Male) aged about 54 years, S/O Sri Basant Ballabh Joshi, R/o Punoli, Mulakote, District Champawat.

……..Petitioner

Vs.

1. State of Uttarakhand through Secretary, School Education Department, Government of Uttarakhand, Dehradun

2. Director of Education (Secondary), Uttarakhand, Nanoorkhera Tapovan Marg, Dehradun.

3. Additional Director (Secondary Education), Kumaon Division, Nainital.

4. Chief Education Officer, Champawat.

5. Uttarakhand Public Service Commission, Gurukul Kangari, Haridwar through its Secretary.

6. Sri Shashank Mishra S/o Not known, presently serving as Lecturer, Government Inter College, Tanakpur, District Champawat.

…….Respondents

Present: Sri Bhagwat Mehra, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents no. 1 to 4
Sri Ashish Joshi, Advocate, for respondent no. 5

JUDGMENT

DATED: DECEMBER 11, 2025

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

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

"To set-aside the impugned office memo dated 19-03-2022 issued by the Respondent No. 2 (Annexure No. 1 to Compilation No. I).

B. To direct the Respondents, particularly Respondent No. 2 to consider and promote the petitioner to the post of Lecturer (Sanskrit) from due date i.e. 30-04-2016, when his junior i.e. Respondent No. 6 was promoted to the said post.

C. To direct the official Respondents to grant all consequential service benefits to the petitioner.

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

E. To allow the claim petition with cost."

2. Brief facts of the case are that in the year 1996-97, the Respondent No. 3 advertised various vacancies for the posts of Assistant Teacher L.T. Grade in different subjects. After conclusion of the selection process, the final merit list was prepared and circulated in the month of May, 1999, in which, the petitioner's marks/quality point marks were "67.87". Thereafter, the petitioner and all other candidates were kept waiting for the issuance of appointment order. While various persons who were much junior to the petitioner in order of merit including Sri Shashank Mishra (Respondent No. 6) were issued appointment orders, his marks/quality point marks were admittedly "66.148". But no appointment order was issued regarding the petitioner. The appointment order to the petitioner could be issued on 26-10-1999, while his juniors, including the Respondent No.6, were given appointment orders on 01-07-1999. In the said appointment order, a recital was also made that the seniority in the Cadre shall be fixed later as per provisions of Seniority Rules, governing the field. The petitioner immediately submitted his joining at the given School on 29-10-1999.

3. A tentative seniority list of the teachers appointed between the years 1999 to 2005 was issued on 31-10-2009, however, in the said list also, the names of the petitioner as well as Respondent No. 6 were not mentioned. Thereafter, another tentative seniority list was issued on 06-12-2013 in which the petitioner's name was mentioned at Sl. No.

12295-A, while the name of the Respondent No. 6 was mentioned at Sl. No. 12107.

4. In the year 2016, the person junior to the petitioner, was promoted to the post of Lecturer (Sanskrit), vide order dated 30-04-2016 ignoring the claim of the petitioner, despite the fact that the petitioner was also eligible for promotion to the post of Lecturer (Sanskrit) as well. The petitioner submitted representations on 15-06-2016 and 16.06.2016 to the Respondent No.3. The Respondent No. 3, fixed the seniority of the petitioner above Respondent No. 6, issued a letter on 01-09-2016, whereby a formal approval was sought from the Respondent No. 2 for fixation of the seniority of the petitioner at Sl. No. 12106-A, i.e. above Respondent No. 6, as per his marks/quality point marks i.e. 67.87 in the said selection. Respondent No. 2 did not take any action on the letter dated 01-09-2016 sent by the Respondent no.3.

5. The petitioner submitted detailed representations on 21-06-2017 and 22.09.2017, but the respondent no. 2 did not take any decision on them, but vide order dated 04-05-2018 promoted the petitioner to the post of Lecturer (Sanskrit) on ad-hoc basis. Thereafter, the petitioner submitted various representations to respondent no. 2. When no decision was taken in the matter despite repeated requests and a lapse of various years, the petitioner approached Hon'ble Uttarakhand High Court by filing Writ Petition No. 1342 (S/S) of 2021 (Om Prakash Joshi Vs. State of Uttarakhand and others), which was disposed vide order dated 23-10-2021 and corrected order dated 18/11/2021 with a direction to the Respondent No. 2 to promote the petitioner on the post of Lecturer (Sanskrit) from 2016 when junior to him was promoted on the said post.

6. Respondent No. 2 vide impugned order dated 19-03-2022 has cursorily rejected the request of the petitioner, without going into the real issues involved in the matter. The petitioner challenged the impugned order dated 19.03.2022 before the Hon’ble High Court by filing Writ Petition No. 928 (S/S) of 2022 (Om Prakash Joshi Vs. State

of Uttarakhand and others), inter-alia challenging the impugned order. However, the said “writ petition was disposed of vide order dated 24-05-2022 on the ground of alternative remedy and petitioner was directed to approach this Tribunal for redressal of his grievances.

7. Thereafter, the petitioner approached this Tribunal by filing Claim Petition No. 48/NB/DB/2022 (Om Prakash Joshi Vs. State of Uttarakhand and others), which was dismissed vide order dated 14-07-2023 as withdrawn with liberty to file a fresh Claim Petition with better particulars. A similar controversy came up before this Tribunal in Claim Petition No. 122/DB/2022, Manoj Kumar Vs. State of Uttarakhand and others. The Tribunal, after considering the entire legal position on the point, disapproved the similar action and allowed the said Claim Petition vide judgment dated 06-02-2023, which is fully applicable in the present case and said judgment dated 06-02-2023 has attained finality in the absence of any challenge and in fact the same has been complied with. As such in view of this matter also, the impugned order in the present matter cannot be sustained and deserves to be allowed. Hence this petition.

8. C.A./W.S. has been filed on behalf of the official respondents no. 1 to 4 mainly contending therein that-

8.1 याची कार्यालय संयुक्त शिक्षा निदेशक, कुमाऊँ मण्डल, नैनीताल के आ०सं०/485/99–2000 दि० 26–10–99 द्वारा स०अ०, एल०टी० में मौलिक नियुक्त है। उत्तराखण्ड अधीनस्थ शिक्षा (प्रशिक्षित स्नातक श्रेणी) सेवा (सामान्य संवर्ग) वर्ष 1997 से 2005 तक मौलिक रूप से नियुक्ति/पदोन्नत अध्यापकों की अन्तिम ज्येष्ठता सूची निदेशालय के पत्रांक/अन्तिम वरिष्ठता (सामान्य संवर्ग)/903/2009–0/दिनांक 31–10–20109 द्वारा अनंतिम वरिष्ठता सूची में प्राप्त आपत्तियों के निस्तारण के साथ प्रख्यापित की गयी, जिसमें याची का नाम क्रमांक–12297 पर अवधारित किया गया था। याची के नियुक्ति आ०सं०/485/99–2000 दि० 26–10–99 के क्रम में पुनः निदेशालय के आदेश संख्या/वरिष्ठता/914/19(4)–01/2013–14 दिनांक 06 दिसम्बर, 2013 द्वारा याची का नाम उक्त ज्येष्ठता सूची के क्रमांक–12295ए पर संशोधित किया गया। उत्तराखण्ड अधीनस्थ शिक्षा (प्रशिक्षित स्नातक श्रेणी) सेवा (सामान्य संवर्ग) वर्ष 1997 से 2005 तक मौलिक रूप से नियुक्ति / पदोन्नत अध्यापकों की अन्तिम ज्येष्ठता सूची नियुक्ति

आदेश के दिनांक के क्रम में प्रख्यापित की गयी है। संयुक्त शिक्षा निदेशक कुमायूँ मण्डल नैनीताल के आ०सं०/प्र०–1/485/पांच–2(3) / 99–2000 दि० 26–10–99 को निर्गत नियुक्ति आदेश के क्रमांक 1 पर श्री ओमप्रकाश गुणांक–67.87 तथा क्रमांक 2 पर ललिता प्रसाद उप्रेती गुणांक–66.12 का नाम अंकित है। अतः वरिष्ठता क्रमांक–12295 पर अंकित श्री कुंवर राम, जो दिनांक 25–10–99 द्वारा एल०टी० में मौलिक नियुक्त हैं, के नीचे, एवं क्रमांक–12296 पर अंकित श्री ललिता प्रसाद उप्रेती गुणांक–66.12 जो दिनांक 26–10–99 द्वारा एल०टी० में मौलिक नियुक्त हैं, के ऊपर, श्री ओमप्रकाश जोशी गुणांक–67.87 जो दिनांक 26–10–99 द्वारा एल०टी० में मौलिक नियुक्त हैं, के आधार पर कमांक–12295 (ए) पर ज्येष्ठता निर्धारित की गयी है चयन वर्ष 2014–15 के सापेक्ष प्रवक्ता संस्कृत के पद पर पदोन्नति हेतु बरिष्ठता क्रमांक–12199 तक के स०अ० एल०टी० को पात्रता सूची एव ब्राडसीट में सम्मिलित किया गया, जिसके क्रम में उत्तराखण्ड लोक सेवा आयोग हरिद्वार के पत्र संख्या–166 दिनांक 30 मार्च, 2016 द्वारा प्रवक्ता संवर्ग की चयन संस्तुति शासन के माध्यम से निदेशालय को प्राप्त हुई, जिसमें प्रवक्ता संस्कृत हेतु ज्येष्ठता क्रमांक–12199 श्री शशि प्रसाद पुरोहित तक कुल 63 कार्मिकों की चयन संस्तुति प्रदान की गयी। याची ओम प्रकाश जोशी, वरिष्ठता क्रमांक–12295 (ए) को कनिष्ठ होने के कारण सम्बन्धित पात्रता सूची एवं ब्राडसीट में सम्मिलित नहीं किया गया।

8.2 चयन वर्ष 2014–15 के बाद की रिक्तियों को संयुक्त करते हुये चयन वर्ष 2016–17 हेतु स०अ० एल०टी० से प्रवक्ता पद पर पदोन्नति हेतु अधियाचयन शासन के माध्यम से उत्तराखण्ड लोक सेवा आयोग हरिद्वार को प्रेषित किया गया, जिसमें याची ओम प्रकाश जोशी का नाम भी सम्मिलित किया गया। उत्तराखण्ड लोक सेवा आयोग हरिद्वार के पत्र संख्या–230 दिनांक 02–08–20019 द्वारा स०अ० एल०टी० से प्रवक्ता संस्कृत के पद पर पदोन्नति के 125 पदों की चयन संस्तुति शासन के माध्यम से निदेशालय को प्राप्त हुई, जिसमें याची ओम प्रकाश जोशी का नाम भी सम्मिलित था। उपरोक्त चयन संस्तुति के उपरान्त निदेशालय के आदेश संख्या–60 दिनांक 20 मई, 2020 द्वारा श्री ओम प्रकाश जोशी को प्रवत्ता संस्कृत के पद पर मौलिक पदोन्नति प्रदान की गयी। मण्डलीय अपर निदेशक, माध्यमिक शिक्षा, कुमाऊँ मण्डल, नैनीताल के पत्रांक/सेवाऐं–3क(2)/ अराज०/वरिष्ठता/6231/ 2016–17 दिनांक 01–09–16 द्वारा श्री ओम प्रकाश जोशी का नाम वरिष्ठता क्रमांक 12106 ए पर अंकित किये जाने हेतु प्रेषित किया गया है। एल०टी० वरिष्ठता सूची के वरिष्ठता क्रमांक 12106 पर अंकित श्री हरीश चन्द्र त्रिपाठी, जो दिनांक 09–07–99 द्वारा एल०टी० में मौलिक नियुक्त हैं, के नीचे, वरिष्ठता क्रमांक 12107 अंकित श्री शशांक मिश्र, जो दि० 09–07–99 द्वारा एल०टी० में मौलिक नियुक्त हैं, जबकि श्री ओम प्रकाश जोशी स०अएल०टी० के पद पर दिनांक 26–10–99 द्वारा मौलिक नियुक्त हैं।

8.3 वरिष्ठता क्रमांक 12295 पर अंकित श्री कुंवर राम, जो दि० 26–10–99 को नियुक्त है, के नीचे, एवं क्रमांक 12296 पर अंकित श्री ललिता प्रसाद उप्रेती, पांक–66.12 जो दि० 26–10–99 द्वारा स०अ०एल०टी० में मौलिक नियुक्त हैं, के श्री ओमप्रकाश जोशी, गुणांक 67.87 जो दि० 26–10–99 द्वारा स०अ०एल०टी० मौलिक नियुक्त हैं, के आधार पर क्रमांक 12295ए पर नियमानुसार वरिष्ठता पूर्व से निर्धारित है। इसी वरिष्ठता क्रमांक– क्रमांक 12295ए के आधार पर निदेशालय के आदेश संख्या–60 दिनांक 20 मई, 2020 द्वारा श्री ओम प्रकाश जोशी प्रवक्ता संस्कृत कर पद पर नियमानुसार ज्येष्ठता के आधार पर मौलिक पदोन्नत हुये हैं। याची द्वारा मा० उच्च न्यायालय उत्तराखण्ड नैनीताल में याचिका संख्या–1342/एस०एस०/ 2021 योजित की गयी जिसमें मा० न्यायालय द्वारा दिनांक 18–11–2021 को पारित आदेश का क्रियात्मक अंश निम्नवत् हैः–

> "This writ petition was disposed of by this Court by this Court vide its judgment of 23.10.2021 but while disposing of the writ petition in para 3, last line, the reference of grant of actual promotion, the expression given therein i.e. "in 2010" is being sought to be corrected as "2020".

मा० न्यायालय द्वारा पारित उक्त निर्णय के अनुपालन में व्यक्तिगत सुनवाई का अवसर प्रदान करते हुये निदेशालय के आदेश संख्या/विधि प्रकोष्ठ (माध्यमिक)/ 1760/2021–22 दिनांक 19 मार्च, 2022 द्वारा प्रकरण का निस्तारण किया गया है।

9. C.A./W.S. has also been filed on behalf of the respondent no.5 (Uttarakhand Public Service Commission), in which, it has been stated that the process for conducting the DPC by the Commission has been done on the basis of Requisition sent by the State Government, Service Rules, Eligibility List and other documents in support of Requisition. In the present case, the State Government has sent the Requisition dated 04-12-2016 for the promotion under the Uttarakhand Special Subordinate Education (Lecturer Cadre) Service (General Branch and Female Branch) for Selection Year 2014-15. The list of eligible candidates for selection year 2014-2015 for Sanskrit subject, which was sent with the Requisition dated 04-12-2015, the name of the petitioner, Shri Om Prakash Joshi was not there. Along with the Requisition, certificate was also sent by the State Government that there is no dispute in the Eligibility List from which the promotion is to be made on the post of Lecturer. The State Government has also given the certificate that all the candidates whose names have been sent

alongwith the Requisition are eligible and the list has been prepared from the final seniority list which is undisputed. The Commission on the basis of the requisition has conducted the DPC as per the Rules and against the posts for selection year 2014-2015 and has sent its recommendation to the State Government on 30-03-2016.The name of the petitioner was not in the list of eligible candidates sent by the State Government. There is no illegality in the order dated 19-03-2022 by which the representation of the petitioner has been rejected. The claim petition is liable to be dismissed with costs.

10. R.A. has been filed on behalf of the petitioner and the contentions made in the C.A/W.S. have been denied and the averments mentioned in the claim petition have been reiterated. It is further stated that the Commission has fairly admitted that in the eligibility list for the selection year 2014-15 for Sanskrit Subject, sent by the Department, the name of the petitioner was not mentioned at all. It has been further admitted by the Commission that the department has furnished a certified along with a requisition certifying that "there is no dispute in the eligibility list from which the promotion is to be made on the post of Lecturer". Further a certificate was given by the department to the Commission that "all the candidates whose names have been sent along with requisition are eligible and the list has been prepared from the final seniority list which is undisputed". From the said averments of the Commission, it is apparent that the Commission has indirectly admitted that the omission/inaction/lapses, if any, in not sending the name of the petitioner for promotion, were on the part of the State Government/Education Department. From the said stand of the Commission, it is crystal clear that the petitioner was denied the legitimate claim of promotion due to inaction/omission/ lapses on the part of the Department authorities and now the department cannot be permitted to take benefit of its own inaction/omission, while refusing the claim of the petitioner for legitimate claims.

11. Despite giving sufficient opportunities, neither anyone appeared on behalf of respondent no. 6 nor. C.A/W.S. was filed on his behalf. In these circumstances, the right to file C.A/W.S. by respondent no. 6 was closed vide order dated 03.09.2024.

12. We have heard the arguments of learned Counsel for the parties and perused the record carefully.

13. Learned Counsel for the petitioner has argued that the petitioner was selected for the post of the L.T. teacher based on the selection in which he got 67.87 quality point marks. He was appointed on 26/10/1999. He came to know that there are candidates who have lower marks than him and appointed prior to him. His serial number in the seniority list was at-12295-A, whereas that of Shri Shashank Mishra Respondent No. 6, who has scored 66.148 marks was appointed vide order dated 01/07/1999 has Sl. No 12107. The petitioner represented to correct his seniority but his representation was not considered. The petitioner filed a writ petition in the Hon'ble High Court of Uttarakhand at Nainital and as per the order of Hon'ble High Court, he submitted representation to correct his seniority which was rejected. The department sent a list of the LT grade teachers for the promotion to the post of the lecturer, but his name was not sent to the Uttarakhand Public Service Commission for consideration, whereas the person who was junior to him was promoted.

13.1 The name of the petitioner was sent in the second batch of the candidates and it was considered by the Uttarakhand Public Service Commission. He was promoted to the post of the lecturer on o4/05/2018 on ad hoc basis which was regularised on 20/5/2020.

13.2 The petitioner has further represented to correct his seniority and to consider his promotion w.e.f. the date his junior was promoted. But his representation was no considered, and he filed a writ petition against the inaction on the part of the respondents. The Hon'ble High Court dismissed the writ petition on the ground of alternate remedy and directed petitioner to approach the Uttarakhand Public Services Tribunal.

13.3 Learned counsel for the petitioner argued that since the petitioner scored higher marks than the private respondent his seniority should be above him. He should be given promotion on the post of the lecturer on the same date 01/05/2016 as given to his junior, the private respondent. Keeping in view the facts mentioned above, the impugned order dated 19/03/2022 is liable to be quashed and the claim petition is liable to be allowed.

14. Learned APO argued that the petitioner was initially appointed on 26/10/1999, whereas the private respondent was appointed on 01/7/1999. The name of the private respondent was selected and recommended for the post of the lecturer (Sanskrit) by the Uttarakhand Public service Commission vide letter dated 30/03/2016 along with 62 others persons. The name of the petitioner was there in the list of 125 persons recommended by the commission vide letter dated 02/08/2019 and petitioner was promoted on the post of the lecturer vide order dated 20/05/2020. The name of the petitioner has been placed at Sl. No 1295A and his date of appointment is 26/10/1999 whereas that of Shri Shashank Mishra at Sl. No. 12107 with date of appointment 09/07/1999. So, by virtue of the appointment prior to the petitioner Shri Shashank Mishra has been correctly promoted prior to the petitioner. The claim petition is liable to be dismissed.

15. Based on the arguments of the parties and the documents placed before the Tribunal, we find that the petitioner has been given initial appointment on 26/10/1999 as against the private respondent, who has lower marks but given appointment on 01/07/1999. The discrepancy in issuing appointment letter after the respondent No. 6 has been overlooked by the respondents while deciding the seniority of the petitioner. The petitioner has requested to correct his seniority but that was not considered. The petitioner was promoted on 20/5/2020 whereas the private respondent was promoted on 30/04/2016 prior the petitioner despite he is being junior to the petitioner. The respondents have explained the difference in seniority based on their different dates of the appointment. In fact, the

respondents rather than correcting the seniority of the petitioner have been trying to justify their wrong action. The petitioner should deserve to be placed at the right place and given promotion from 30/04/2016, the date, on which private respondent no.6 has been promoted. Hence the impugned order dated 19/03/2022 issued by the Respondent No. 2 is liable to be quashed and claim petition liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned order dated 19/03/2022 is hereby quashed. The respondents are directed to place the petitioner above respondent no. 6 in the seniority list and hold the review DPC to promote petitioner notionally w.e.f. 30/04/2016 within three months of presentation of the certified copy of the judgement. No order as to costs.

RAJENDRA SINGH
VICE CHAIRMAN (J)

A.S.RAWAT
VICE CHAIRMAN (A)

DATED: DECEMBER 11, 2025
DEHRADUN
KNP