

**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. 87/NB/DB/2023

Bhopal Dutt Bharathwal, (Male) aged about 74 years, S/O Late Sri Bala Dutt Bharathwal, R/O Village Naya Gaon Chauhan, Post Chilkiya Ramnagar. District Nainital.

.....**Petitioner**

Vs

1. State of Uttarakhand, through Secretary, School Education Department, Government of Uttarakhand, Dehradun
2. Director (Secondary Education), School Education Department, Uttarakhand Dehradun.
- 3 Chief Education Officer, Almora.
4. Principal, Government Inter College, Khairna, Block Betalghat, District Nainital.
5. Director, Lekha Evam Haqdari, Uttarakhand, Camp Office, Haldwani, District Nainital.
6. Chief Education Officer, Nainital.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

DATED: DECEMBER 17, 2025

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

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

“A. To set aside the impugned undated pay re-fixation order (which was passed about 24-02-2023) issued by the Respondent No. 4 (Annexure No. 1 to the Compilation No. I) as well as to set-aside the impugned revised pension payment order dated 24-02-2023 passed by the Respondent No. 5 (Annexure No. 2 to the Compilation No. 1), in so far as it restricts the said benefits only from 28-12-2018.

(A-1) To set-aside the impugned revised pension payment order dated 29-09-2023 passed by the Respondent No. 5 (Annexure No. 17) to the Compilation No. II.

B. To declare the action on the part of the Respondents in virtually defying the legitimate service benefits of the petitioner for the post of Principal, Government Inter College, w.e.f. 26-11-2008, or at least from 20-02-2009, as arbitrary and illegal.

C. To direct the Respondents to forthwith release all service benefits including revision of retiral dues etc., to the petitioner for the post of Principal, Government Inter College, from due date i.e. w.e.f. 26-11-2008, or at least from 20-02-2009.

D. To direct the Respondents to grant all consequential benefits to the petitioner.

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

F. To allow the claim petition with cost.

2. Brief facts of the case are as follows:

2.1 The petitioner was appointed on the post of Assistant Teacher, C.T. Grade in erstwhile State of U.P. w.e.f. 30.12.1968 on regular and substantive basis. He was promoted to the next higher post of Assistant Teacher, L.T. Grade w.e.f. 15.10.1976. Similarly, he was thereafter promoted to the next higher post of Lecturer w.e.f. 05-11-1986. The petitioner was promoted to the next higher post of Head Master, Government High School, which is a subordinate gazetted post, by the State of Uttarakhand vide order dated 28.06.2004, in the pay scale of Rs. 7500-12000. Thereafter, the petitioner was given the duties of Principal Government Inter College, although on same pay scale i.e. Rs. 7500-12000/-, vide order dated 01.11.2007.

2.2 On 26.11.2008, the department convened a meeting of Departmental Promotion Committee for filling as many as 564 vacant posts of Principals, Government Inter College and equivalent posts in which the petitioner's claim was also considered and he was found fit

for promotion and his name was mentioned at Sl. No. 40 of the said list. Although the aforesaid minutes of the DPC were duly approved by the State Government in the first week of December, 2008 itself, however, no formal order of promotion was issued for a long time. The petitioner was due for attaining the age of superannuation i.e. 60 years w.e.f. 31.12.2008, however, he was given benefit of session vide order dated 12.01.2009 till end of academic session i.e. till 31.03.2009

2.3 The respondent No. 1 issued the formal order of promotion, whereby all other persons were promoted, however, the petitioner was left out while the persons from Sl. No. 36 (Sri Chakradhar Bahuguna) till Sl. No. 127, all were much junior to the petitioner, were promoted. The petitioner retired from service as Principal, Government Inter College, Khairna, District Nainital w.e.f. 31.03.2009. Feeling aggrieved from the aforesaid non grant of promotion, the petitioner submitted various representations in the matter. The last representation in the matter was given on 21.04.2010.

2.4 When no decision was taken in the matter, the petitioner approached Hon'ble Uttarakhand High Court at Nainital by filing Writ Petition No. 513 (S/S) of 2010 (Bhopal Dutt Bharathwal Vs. State of Uttarakhand and others. The Hon'ble High Court vide judgment dated 15.05.2018 held that the petitioner shall be deemed to have been promoted to the post of Principal, Government Inter College on regular basis as per the DPC recommendation held on 26.11.2008, for all intents and purposes. The aforesaid judgment dated 15.05.2018 was challenged by the State of Uttarakhand before the Division Bench of Hon'ble Uttarakhand High Court by means of Special Appeal No. 291 of 2021. The said Special Appeal was dismissed by the Hon'ble Uttarakhand High Court vide judgment dated 26.05.2022. Even after dismissal of the Special Appeal, the judgment dated 15.05.2018 was not complied with by the Respondents, the petitioner was constrained to file Civil Contempt Petition No. 177 of 2022, which was disposed of by the Hon'ble High Court vide order dated 16.06.2022, giving liberty to the petitioner to make a representation in the matter and the

competent authority was directed to look into the matter and pass appropriate order as per law. The petitioner made a detailed representation on 24.06.2022 to the Respondent No. 1. The Respondent No. 1 passed an order on 01.12.2022, whereby the petitioner's representation was allowed and the petitioner was promoted on the post of Principal w.e.f. 20.02.2009 in the Grade Pay of Rs. 7600/- on notional basis, from the date when his junior Sri Chakradhar Bahuguna was promoted to the said post.

2.5 The Respondent No. 4 prepared pay fixation order without any date of the same. However, in the said order, an expression has been used that "the same is payable from 28.12.2018". The Respondent No. 5 issued the impugned order on 24.02.2023 whereby although the revised pension payment order has been issued in respect of the petitioner, however a note has been appended at the bottom of the said impugned order that the benefit of revised pension is to be given only from 28.12.2018. In pursuance of the same, an amount of Rs. 3,25,000/- has been paid in the account of the petitioner on 25.02.2023. However, the said benefit has been given from 28.12.2018 only and not from the actual date i.e. 28.11.2008, or at least from 20-02-2009. The action of the Respondents in the matter is totally arbitrary and illegal which cannot be justified in the eyes of law. Moreover, no documents etc. regarding fixation of petitioner's claim has been given to him till date, despite repeated requests.

2.6 The action of the Respondents in the matter is totally arbitrary and illegal which cannot be justified in the eyes of law. The petitioner has not been given his legitimate claims i.e. service benefits of the post of Principal, Government Inter College from 26.11.2008 or at least from 20.02.2009, till date. Consequently, his retiral benefits have also not been revised till date. As such, having left no other options, the petitioner is approaching to this Hon'ble Court with the hope of justice. The respondent No. 2 to 5 have not re-fixed the salary and revised retiral dues of the petitioner on the post of Principal, Government Inter

College, as per order dated 01.12.2022 passed by the Respondent No. 1 till date, the.

2.7 During pendency of the present claim petition, the impugned order dated 24.02.2023 passed by the Respondent No. 5, which was under challenge, has further been amended vide another order dated 29.09.2023, whereby, the pension amount of the petitioner has further been reduced from Rs. 15,195/- to Rs. 14,750/-. The revised pension payment order came to the knowledge of the petitioner for the first time only by means of Counter Affidavits. When the Respondents passed order dated 14.06.2023, whereby, the earlier order dated 17.03.2012 has been cancelled. The impugned order dated 14.06.2023 was passed behind the back of the petitioner and in utter violation of principle of natural justice. The impugned order dated 14.06.2023 has been passed without application of mind and without considering the relevant facts of the petitioner which is liable to be quashed forthwith.

3. Two separate C.A./W.Ss. have been filed on behalf of respondents no. 1 to 4 and Respondent no. 6. In both the Counter Affidavits, the respondents have contended that:

3.1 In the DPC held on 26.11.2008, the petitioner was recommended for promotion to the post of Principal, but due to his retirement on 31.12.2008, before the promotion order was issued on 20.02.2009, he could not be promoted to the post of Principal. Consequently, the petitioner filed a writ petition no. 513/SS/2010 before the Hon'ble High Court of Uttarakhand, Nainital. In compliance with the judgment dated 15.05.2018 and the order dated 16.06.2022, passed in Contempt Petition no. 177/2022, the Government of Uttarakhand, vide Office Memorandum No. 79914 dated 01.12.2022 disposed of the petitioner's representation dated 24.06.2022 and issued an order that in compliance with the promotion order dated 20.02.2009 based on the Departmental Selection Committee's recommendation dated 26.11.2008, the petitioner (Mr. Barthwal) is notionally promoted to the post of Principal (Pay Scale 78800-209200,

Grade Pay Rs. 7600) from the date his immediate junior, Shri Chakradhar Bahuguna, assumed charge of the post of Principal. In pursuance of the order passed by the Government of Uttarakhand dated 01.12.2022, the petitioner's salary was re-fixed, and an order was issued by the office of Respondent No. 5 vide their letter No. 1344 dated 24.02.2023. In the present writ petition, the petitioner has challenged the said order dated 24.02.2023. After receiving the notice of the present claim petition, the Directorate examined the petitioner's salary fixation and, vide its letter dated 14.07.2023, instructed Respondents No. 4 and 6 to re-fix the petitioner's salary as per the details given in the letter. In compliance with the instructions given by Respondent No. 2 through the letter dated 14.07.2023, the petitioner's salary has been correctly fixed. Accordingly, in compliance with the order of the Hon'ble High Court of Uttarakhand, Nainital, dated 15.05.2018, the salary has been fixed on the basis of the petitioner's notional promotion to the post of Principal from the date of issuance of the order, i.e., 20.02.2009, and the actual benefit of revised pension has been provided from 28.12.2018 as per the provisions of Government Order No. 317 dated 28.12.2018, which is totally appropriate. Respondent No. 5 has already cancelled the petitioner's pension payment order dated 24.02.2023 and a revised order regarding the petitioner's pension has been issued as per rules vide its letter No. 625 dated 29.09.2023, which is totally appropriate, and the present petition is liable to be dismissed.

4. The petitioner has also filed Rejoinder Affidavits to the C.A/W.S. filed on behalf of the respondents. In the R.A., the petitioner has reiterated the averments made in the claim petition.

5. We have heard Learned Counsel for the petitioner and Learned A.P.O. and perused record.

6. Learned Counsel for the petitioner argued that the petitioner was given charge of the Principal w.e.f. 26-11-2008. The process for the promotion was started by the department in 2008 and the DPC was held on 26.11.2008, but the order of the promotion along with

the postings were issued on 12.02.2009. In the meantime the petitioner superannuated on 31.12.2008 and his name did not figure in the promotion order dated 12.02.2009. He filed writ petition in the Hon'ble High Court of Uttarakhand Nainital for not giving him promotion, the Hon'ble High Court passed judgment to consider the promotion of the petitioner from the date of DPC i.e. 26.11.2008. The respondents filed review petition against the judgement of the Single Bench of the Hon'ble High Court of Uttarakhand which was dismissed by the Hon'ble High Court. So, the decision of the Hon'ble High stood. The Department did not comply with the judgment of the Hon'ble High Court and the petitioner filed the contempt petition in which the Hon'ble High Court directed the petitioner to submit a representation to the respondents. The representation of the petitioner was considered by the respondent no. 1 and directed respondent no.2 to grant promotion to the petitioner on notional basis with effect from 19.02.2009 from the date his junior was promoted. But he was given actual benefit of the pension w.e.f. from 28.12.2018. The pension of the petitioner was revised and the PPO was issued vide order dated 24.02.2023. The respondents further revised the PPO vide order dated 29.09.2023. The petitioner is entitled to the benefit of the pension from the date for DPC otherwise at least from the date of 19/02/2009 as agreed by the respondents. In view of the above, the impugned orders are quashed the claim petition is liable to be allowed.

7. Learned A.P.O. argued that the petitioner has been promoted in the meeting of the DPC held on 26.11.2008 but the order of the promotion could be issued on 19.02.2009 after his retirement on 31.12.2008. The petitioner approached the Hon'ble High Court of Uttarakhand at Nainital for redressal of grievance and the Hon'ble High Court vide order dated 15.05.2018 directed to promote the petitioner from the date of the DPC meeting held on 26.11.2008. After the dismissal of the appeal of the respondents in the Division Bench of the Hon'ble High court and pursuance of the decision of the Single Bench's judgment of the Hon'ble High Court at Nainital and the order of the Hon'ble High Court in the contempt petition, the respondents

ordered on 01.12.2022 to promote the petitioner on notional basis from the date his junior has been promoted but the actual benefit of the pension was ordered to be given from 28.12.2018 as per the directions of the Finance department vide letter no 317 dated 28.12.2018. The pension of the petitioner has been fixed accordingly and he has been paid the arrear of the pension also. The pension order of the petitioner has been issued vide letter dated 24.02.2023 which has been further modified by the respondent No 4 vide letter dated 29.09.2023. The pension pay order to the petitioner has been issued as per the rules. In view of the above the claim petition is liable to be dismissed.

8. Based on the argument of the Learned counsels for the parties and the documents placed, we find that the DPC meeting for the promotion was held on 26.11.2008 and DPC recommended the name of the petitioner for promotion to the post of the Principal. The order of the promotion was issued on 19/02/2009. But in the meantime, the petitioner retired on 31.12.2008. He was given extension of the tenure till 31.03.2009, the end of the academic session. During this period as per records he was paid salary of the post he was holding on the date of retirement minus pension. He approached the Hon'ble High Court of Uttarakhand at Nainital to get his promotion order issued as he failed to get any response from the Official Channel. Hon'ble High Court vide judgement dated 15.05.2018 ordered to promote him from the date of the meeting of the DPC when he was found eligible for the promotion to the post of the Principal. But after pursuing the implementation of the order of the Hon'ble High Court, the petitioner was given notional promotion w.e.f. 19.02.2009 by the respondents, the date when his junior was promoted. The pension of the petitioner was revised vide order dated 29.09.2023, but the actual benefit of the revised pension was given from 28.12.2018 in view of the letter no 317 dated 28.12.2018 of the finance department regarding fixation of the pay of the persons appointment on the basis of the direct recruitment and promotion after 01.01.2006.

9. The respondents No 5 issued the order and fixed the pension of the petitioner accordingly and paid him the arrear of the pension vide order dated 24.02.2023, which was further revised by the respondent no.1 vide order dated 29.09.2023. The respondent did not pay the pension as per the order of the Hon'ble High Court from the date of the DPC on 26.11.2008 but from 19.02.2009 the date of promotion of his junior on notional basis and fixed his pension accordingly, which the petitioner has accepted also. He was given the actual benefit of the pension arrear also w.e.f. 28.12.2018 as per the aforesaid letter of the finance department. The petitioner has been given benefit of promotion and his pension has been fixed as per the guidelines of the Government. Hence 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: DECEMBER 17, 2025
DEHRADUN
KNP