

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO.63/DB/2023

1. Dr. Dinesh Kumar Upadhyay, S/o Late Shri Dwarika Nath Upadhyay, male, aged about 71 years, R/o 46, Mool Chand Enclave, Bypass Road, Majara, Dehradun.
2. Dr. R.S. Kharayat, male aged about 68 years, S/o Late Shri Dan Singh Kharayat, R/o Kanhiya Vihar, Kargi Grant, Dehradun.
3. Dr. Sampurna Nand Raturi, male, aged about 68 years, S/o Late Shri R. S. Raturi, R/o Shantinagar, Dhalwala, Munikireti, Tehri Garhwal.
4. Dr. Bhagwat Singh Kanwasi, male, aged about 65 years, S/o Late Shri Darwan Singh Kanwasi, R/o Tarun Vihar, Lane No. 3B, Mothrowala Road, Near Bengali Kothi, Banjarawala, Dehradun.
5. Dr. R.P. Joshi, male, aged about 64 years, S/o Late Shri B.P. Joshi, r/o Banganga Bhawan, D 23- Jyoti Vihar, Ajabpur Danda, Dehradun.

.....Petitioners

vs.

1. State of Uttarakhand through Secretary, AYUSH and AYUSH Education, Civil Secretariat, 4 Subhash Road, Dehradun.
2. Director, Homeopathy, Directorate of Homeopathy Medicine Services, Danda Lakhaund, Sahastradhara Road, Dehradun.

.....Respondents

Present: Sri Shashank Pandey, Advocate, for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 07, 2026

Sri Arun Singh Rawat, Vice Chairman (A)

By means of present claim petition, petitioners seek the following reliefs:

- “1.Set aside the impugned Office Memorandum dated 21.03.2023 issued by the Respondent No.2.
2. Include the service of three years in the calculation of the length of service and calculation of salary.
3. Graciously be pleased to pass any such other relief or reliefs as this Hon'ble Tribunal may deem just and proper in the circumstances of this case;
4. Award the cost of the petition to the petitioner against the respondents.”

2. Facts, in brief, of the present claim petition are as follows:

2.1 All the petitioners are retired Medical Officers who have rendered between thirty to thirty five years of services in the respondents department. They were appointed on different dates in the year 1983 and 1985. At the time of appointment of the petitioners, no service rules were in existence for Homeopathic Doctors. Hence, the services of the petitioners were governed vide executive orders. The post of Homeopathic Medical Officer carried a pay scale of Rs.625-1240/-and therefore, was not in the ambit of Public Service Commission.

2.2. The petitioners were appointed against the regular vacant posts, however, the appointment letters of the petitioners mentioned that the appointment was *ad hoc*. They were regularized on 25.10.1994 by the order of Hon'ble Apex Court. Petitioners were given personal pay scale of Rs.3000-4500/- from 25.06.1994 except petitioner No.4. Petitioner No.4 was given direct appointment by Public Service Commission on 25.06.1994 with personal pay scale of Rs.3000-4500/. Which makes it clear that services rendered by the petitioners on *ad-hoc* basis were counted for the purpose of fixation of pay scales and they were given the higher pay scales the day their services were regularized. (Copies of the O.M. dated 16.05.1998 and 12.06.1996 are annexed as: Annexure No. A 3 and A 4).

2.3. Subsequently, services of the petitioners were confirmed by the State of Uttar Pradesh vide Office Memorandum dated 31.12.1999. (Annexure No. A 5).

2.4. After formation of the State of Uttarakhand, the petitioners opted for the State of Uttarakhand and started serving in the Respondent Department till their superannuation. Vide Government order dated 07.04.2011, the State Government *inter alia* clarified that the *ad-hoc* services which were counted as satisfactory regular service for the personal pay scale, would be included for the provision of ACP. (Annexure No. A 6).

2.5 Vide Office Memorandum dated 02.05.2013, the petitioners were granted the benefit of the 3rd ACP. (Annexure No. A 7). The petitioners retired from service on different dates between the year 2012 to 2018.

2.6 The Hon'ble Apex Court in a plethora of judgments categorically highlighted that once an incumbent is appointed to a post according to rule, his seniority/ length of service has to be counted from the date of his appointment and not according to the date of his confirmation.

2.7 Vide impugned Office Memorandum (Annexure No. A 1) Respondents, while counting services of petitioner for the purpose of calculating salary and granting ACP, have considered only the date of regularization and not the actual date of joining of the petitioners, despite clarification given by the State Government vide GO dated 07.04.2011. This was done by the respondents after years of retirement of the petitioners without giving them any opportunity to show cause, which is against the principles of natural justice and in violation of a catena of judgments laid down by the Hon'ble Supreme Court of India.

2.8 Non-inclusion of the *ad-hoc* service of the petitioners, would result in re-fixation of the pay as well as pension of the petitioners.

Further, the pay-fixation of the petitioners results in reduction of salary which tantamount to punishment.

2.9 As per the provisions of Section 74 of Uttar Pradesh Reorganization Act, 2000, service conditions of any person allocated to the State of Uttarakhand cannot be varied to his disadvantage without prior permission of the Central Government. Thus the act of the respondents is in violation of the aforesaid provision.

2.10 The ACP was granted to the petitioners by the Hon'ble Governor, however, the Respondent No. 2 has issued the impugned order. As per Article 351A of Civil Service Regulations, it is only the Governor who has a right to withhold or withdraw a pension or any part of it or ordering recovery from pension. In the present case, the same is being ordered by the Respondent No. 2, who is not competent to do so.

2.11 It is the submission of Ld. Counsel for the petitioners that the first personal pay grade which ought to have been granted after 8 years of service, was granted after completion of 11 years of service or more, resultantly all the ACPs were granted after a delay of 3 years.

2.12 It is also the submission of Ld. Counsel for the petitioners that as a result of the re-fixation of the pay of the petitioners, the respondents will issue recovery against the petitioners, which would cause immense financial loss to them and also, recovery from the retired employees or employees who are due to retire within one year, is not permissible in law, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

3. Petitioner No.1 has filed affidavit in support of the claim petition. Relevant documents have also been brought on record along with the same.

4. Claim petition has been contested on behalf of respondents. C.A. has been filed by Sri B.B. Mathpal, Deputy Director, Directorate of Homeopathic Medical Services, Uttarakhand, Dehradun,

on behalf of Respondents No. 1& 2. Relevant documents have been filed in support of the C.A.

4.1 On the strength of C.A. filed on behalf of Respondents Ld. A.P.O., submitted that Government of Uttarakhand introduced ACP Scheme vide order No. 872 dated 08.03.2011, which was subsequently clarified vide G.O. No. 65 dated 09.03.2019. Para No. 01 of G.O. dated 09.03.2019 reads as under:

“समयमान वेतनमान की व्यवस्था से सम्बन्धित शासनादेश संख्या-वे०ओ०-2-2010/दस-83-स०क० (सा०)-82. दिनांक 04 फरवरी, 1983 में निम्न प्राविधान उपबन्धित हैं-

नियमित सेवा से तात्पर्य ऐसी सेवा से है, जो सक्षम प्राधिकारी द्वारा सेवा नियमों / शर्तों के अनुसार किये गये चयन के फलस्वरूप नियुक्त किसी कर्मचारी द्वारा की गयी हो। अल्प अवधि के लिये अवकाश अवधि के लिए अथवा तदर्थ रूप से नियुक्ति पर किसी कर्मचारी द्वारा की गयी सेवा को 'नियमित सेवा नहीं माना जायेगा और 'नियमित सेवा' की अवधि का आगणन उस तिथि/वर्ष से किया जायेगा, जिसके आधार पर किसी कर्मचारी की अपने संवर्ग में ज्येष्ठता निर्धारित की गयी हो

उक्त से स्पष्ट है कि समयमान वेतनमान / ए०सी०पी०/एम०एम०सी०पी० के अन्तर्गत लाभ की अनुमन्यता हेतु निर्धारित सेवा अवधि की गणना सम्बन्धित कार्मिक के नियमित नियुक्ति की तिथि से ही की जाए। इसमें संविदा, दैनिक वेतनभोगी, नियत वेतन, कार्यप्रभारित, सीजनल, तदर्थ आधार पर की गई सेवाओं को गणना में नहीं लिया जाएगा। किसी स्थाई /अस्थायी सृजित पद पर नियमित नियुक्ति के पश्चात यदि किसी कार्मिक को स्थानापन्न, तदर्थ, प्रभारी व्यवस्था के रूप में उच्चतर पद अथवा समकक्ष पद पर नियुक्त किया जाता है तो ऐसी दशा में उक्त अवधि की सेवायें गणना में ली जायेगी। अर्थात् दो नियमित नियुक्तियों के मध्य में तदर्थ, प्रभारी अथवा स्थानापन्न रूप से की गयी निरन्तर सेवायें समयमान वेतनमान /एस०सी०पी०/एम०एम०सी०पी० हेतु गणना में ली जायेगी।

यहां पुनः स्पष्ट किया जाता है कि यदि पूर्व/ वर्तमान में निर्गत किए गए/निर्गत किए जा रहे ए०सी०पी०/एम०एम०सी०पी० सम्बन्धी स्पष्टीकरणों /प्रावधानों में दी गई व्यवस्था से इतर कोई स्वीकृति निर्गत की गई है तो ऐसे सभी किरणों की पुनः जांच कर ली जाए और जहां कहीं त्रुटिपूर्ण स्वीकृति की स्थिति सामने आती है, वहां अधिक हुय वेतन-भत्तों के भुगतान के समायोजन की कार्यवाही की जाए।”

4.2 It is the submission of Ld. A.P.O. that in view of the above mentioned provision, only substantive nature/regular service are qualifying services to grant the benefit of ACP, while in the case of the petitioner the *ad hoc* services rendered as Homoeopathic Medical Officer in the year 1983 & 1985 till the date of substantive appointment

from UP Public Services commission on 25-10-1994, were calculated to grant the benefit of 3rd ACP in the Grade pay Rs. 8700/- against the A.C.P. G.O., hence the 3rd ACP benefit in the Rs. 8700/- is not admissible to the petitioner as such said order is liable to be cancelled and excess and over payment made to the petitioners, being public money of tax payers, is liable to be adjusted from pension.

4.3 It is also the submission of respondents that Section 74 of Uttar Pradesh Reorganization Act. 2000 is not applicable in the matter of the petitioners because no service condition/service benefit given to the petitioners by the State of UP has been withdrawn by the state of Uttarakhand only the wrong 3rd ACP benefit in the Grade pay Rs. 8700/- has been granted to the petitioners by miscalculating the *ad-hoc* services with regular services in the year 2009 by the State of Uttarakhand in terms of the ACP G.O. dated 09.03.2019 issued by the finance department Govt. of UK.

4.4 It is further submitted by Ld. A.P.O. that wrongful fixation, erroneous or incorrect fixation should not be continued as per law and it should be corrected. Ld. A.P.O. also submitted that a three members inquiry committee was constituted to correct this wrong fixation, under the chairmanship of Director Homoeopathy U.K. The said committee submitted its A.C.P. amendment report/minutes of meeting on 04.03.2023 in respect of the petitioners and other similarly situated beneficiaries (Annexure No-C-A-R-3). On the basis of the minutes of the committee dated 04.03.2023, the adjustment order of excess/over payment made to the petitioners due to wrong benefit of 3rd ACP Grade Pay Rs. 8700/- by wrongly calculating *ad hoc* services, has been duly rectified and corrected vide office order No. 1262, dated 21.03.2023, which is under challenge in this claim petition. There is no need to serve show cause notice to the petitioners as the order dated 21.03.2023 has not been issued under any provision of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 as amended in 2010.

5. We have heard the arguments of the Learned Counsel for the petitioners as well as Learned APO and perused the documents brought on record.

6. Learned Counsel for the petitioners argued that the petitioners were appointed as Homeopathy doctors in 1983 and 85 on ad hoc basis by following due process of appointment. They were regularized on the posts of the Homeopathic doctor w.e.f. 26.10.1994 in compliance of the order of the Hon'ble supreme Court dated 25.10.1994. The petitioners were granted personal pay scale of Rs 3000-4500 also w.e.f. 26.10. 1994 after completion of 8 years of the service immediately on their regularization. The petitioners were confirmed in the service on 31.12.1999. Subsequently they were allocated Uttarakhand cadre on bifurcation of the State of UP.

6.1. The petitioners were granted benefit of 3rd ACP vide OM dated 02/05/2013. The petitioners retired from the service from 2012 to 2018.

6.2. Learned counsel for the petitioners further argued that the Government issued clarification of OM dated 08/03/2011 vide letter dated 07/04/2011 and at point No. 4 it is clearly mentioned that the ad hoc services which have been considered for granting the benefit of the personal pay scale will count for granting financial upgradation. There are many judgements of the Hon'ble Courts which direct to include ad hoc services for counting the benefit of ACP. The learned counsel for the petitioner argued that the legality of the decision taken by the Govt of UP can not be questioned after bifurcation of the state. He has relied on the decision of *the Hon'ble Apex Court in Civil Appeal No. 3984/2012, State of Uttarakhand and Another vs. Umakant Joshi with Civil Appeal No. 3982/2012, Sudhir Chandra Nautiyal vs. Umakant Joshi and others with Civil Appeal No. 3983/2012, Surendra Singh Rawat vs. Umakant Joshi and others*, in which the Hon'ble apex court directed that the Uttarakhand High court which came into existence on 9.11.200 had no jurisdiction to entertain the petition for issuance of mandamus to state for giving retrospective promotion to R-1 w.e.f.

16.11.89 since the issue involves the legality of the decision taken by the Govt of UP to promote on K w.e.f. 16.11.1989 and other promoted vide order dated 22.1.2001 with retrospective effect .The impugned order dated 21.03.2023 issued by the respondent authorities is in violation of the Government order granting ACP, counting ad hoc services and judgements of the Hon'ble courts to that effect.

In view of the above the impugned order dated 21.03.2023 is liable to be quashed.

7. Learned APO argued that the benefit of the ACP can be granted for the period of the regular service. The petitioners were regularized on 26.10.1994 and retired between the year 2012 to 2018. They have been granted benefits of 3rd ACP vide order dated 02.05.2013 by counting the ad hoc service rendered by the them before their regularization on 26.10.1994. The Govt. issued clarification of granting benefit /personal scale /time scale / ACP /MACP vide order dated 09.03.2019 in which at point no 1 it is clearly mentioned that regular service rendered shall be counted for granting personal scale of pay / ACP /MACP. The respondent authorities constituted a Committee to review the admissibility of ACP to the petitioners and the committee recommended that the petitioners are eligible for the grant of the 2nd ACP w.e.f. 25.10.1994 and the benefit of the ad hoc service rendered by them before 1994 cannot be given to them. The committee also recommended to recover the excess amount paid to the petitioners. The respondent authorities issued the order dated 21.03.2023 and granted 2nd ACP to the petitioners w.e.f. 2010 after 16 years of regular service and directed to recover the amount of the excess payment. The recovery of the excess payment from the petitioner has been stayed by the order of the Tribunal vide order dated 02.05.2023.

7.1 Learned APO prayed that that the impugned order dated 21.03.2023 need not be interfered and the excess amount paid to petitioners may be ordered to be recovered.

8. Based on the arguments of the parties and the documents presented to the Tribunal, it is clear that the petitioners were regularized in the service in 1994. They were granted 1st personal pay scale on 26.10.1994. They were allocated the State of the Uttarakhand after bifurcation of the State of Uttar Pradesh in 2000. The petitioners were granted 3rd ACP vide order dated 2.5.2013 on different dates from 01.2.2009 to 03.12.2011 as per the ACP order dated 08.03.2011 and the clarification on ACP issued on 07.04.2011. The ad hoc services rendered by them before 25.10.1994 were counted for grant of personal pay scale by the Govt. of UP.

8.1 This order dated 02.05.2013 of granting 3rd ACP to the petitioners was modified after the Government issued a clarification vide order dated 09.03.2019 and they were granted 2nd ACP vide order dated 21.03.2023.

8.2 The petitioners have been granted benefit of 3rd ACP vide order dated 02.05.2013 by counting ad hoc service before 26.10.1994 and regular service of 16 years rendered by them from 26.10.1994 onwards as per the provisions of the ACP orders issued from time to time. The petitioners in support of counting ad hoc service for grant of the ACP has mentioned in the claim petition as well as their learned counsel also argued that there are judgements of the Hon'ble Courts on counting of ad hoc service for grant of the ACP but no such order was produced at any stage.

8.3 The order of the Govt. of Uttar Pradesh granting personal pay scale to the petitioners on 26.10.1994 has not been referred back by the Govt. of Uttarakhand to the Govt. of Uttar Pradesh for rectification. The petitioners were drawing that personal pay scale till the grant of 3rd ACP to them. So, the personal pay scale granted to them has remained unchallenged irrespective of the fact whether the decision of the Govt. of Uttar Pradesh was right or wrong, the Govt. of Uttarakhand has accepted it. The respondents should consider the personal pay scale granted to the petitioners as one promotion/upgradation of scale and petitioners are entitled to get 3rd ACP, as

mentioned vide order dated 02.05.2013. In such a situation, the impugned order dated 21.03.2023 is liable to be quashed. Second relief sought by the petitioner cannot be accepted as any discrepancy in the order for granting the personal pay scale should have been referred to Government of Uttar Pradesh.

Accordingly, the claim petition is partly allowed. Order dated 21.03.2023 is hereby quashed. No order as to cost.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE:AUGUST 07 , 2026.
DEHRADUN

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