

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Capt. Alok Shekhar Tiwari

----- Member (A)

Claim Petition No. 35/NB/SB/2021

Smt. Lachuli Devi (Female), aged about 75 years, W/o Late Sri Amba Dutt Nainwal, R/o Village Kangari, Post Manuli, Tehsil Bhikiyasain, District Almora.

..... Petitioner

Versus

1. State of Uttarakhand, through Secretary, Department of School Education, Government of Uttarakhand, Dehradun.
2. Director, Secondary Education, Uttarakhand, Nanoorkhera, Dehradun.
3. District Education Officer (Basic), Almora.
4. Deputy Education Officer, Block Salt, District Almora.
5. State of U.P. through Secretary, Department of Basic Education, Government of U.P., Lucknow.
6. Director, Basic Education, U.P., Lucknow.

..... Respondents

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

JUDGMENT

DATED : **MAY 29th, 2025**

This claim petition has been filed seeking the
following relief:-

- “A. to set-aside the impugned orders dated 11.09.2019 and 31.08.2020 passed by the Respondent No. 3 alongwith impugned consequential letter dated 23.09.2020 passed by the Respondent No. 4 (Annexure No. 1, 2 and 3 respectively to the Compilation No. I).
- B. to direct the Respondents to forthwith grant Family Pension to the petitioner from due date alongwith all its arrears, keeping in view the judgment dated 28.10.2004 rendered by Hon’ble Uttarakhand High Court in Civil Writ Petition No. 445 (M/B) of 2002 (Smt. Jeewanti Devi Vs. State of Uttaranchal and others) (Annexure No. 6 to the Compilation-II).
- C to direct the Respondents to grant all consequential benefits to the petitioner.
- D. To issue any other or direction, which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.
- E. Award the cost of the Claim petition in favour of the petitioner.”

2. In brief, the facts of the case are that the husband of the petitioner, namely, Sri Amba Dutt Nainwal, was serving as Assistant Teacher, Government Primary School in Basic Education Department. The petitioner's husband retired from service on 01.03.1979 from the post of Assistant Teacher, Government Primary School, Jhadgaon, Block Salt, District Almora. Vide order dated 18.02.1980, pension was sanctioned to him and he received the same till his death, i.e., on 12.10.1993. However, after the death of her husband on 12.10.1993, the Family Pension was not given to the petitioner, despite repeated requests. The petitioner made several representations to the authorities; however, no heed was paid by them. One such representation was given to the then Deputy Basic Education Officer, Almora on 07.04.1998. Thereafter, the petitioner also approached personally the authorities; however, every time, the authorities gave an assurance to her that amount of her Family Pension will be released shortly. The petitioner, being an illiterate lady and residing in a very remote corner/village in hill area of District Almora, i.e., Block Salt (Almora), was hopeful that the amount of Family Pension would be released to her in near future.

3. A similar and identical controversy was pending adjudication before the Hon'ble Uttarakhand High Court in Writ Petition No. 445 (M/B) of 2002 (Smt. Jeewanti Devi Vs. State of Uttaranchal and others). Likewise another Writ Petition No. 7212 (S/S) of 2001 filed by one Smt. Parvati Pandey was also pending for consideration before the Hon'ble Uttarakhand High Court. In the said writ petition, the authorities of the Education Department justified their action of withholding the Family Pension on the basis of proviso to Para 24 of the Government Order No. 5355/15-3133-1962 dated 17.12.1965 and it was contended before the Hon'ble High Court on behalf of the Education Department that Family Pension can be given only for the period of 10 years or upto the age of 65 years, whichever is less, after the date of superannuation.

3 (i). Nevertheless, in the pension order dated 19.02.1980, whereby, Pension was sanctioned to the petitioner's husband, there is no reference of the said Government order dated 17.12.1965 at all.

3 (ii). The said writ petition No. 7212 (S/S) of 2001 was ultimately allowed by the Hon'ble Uttarakhand High Court vide judgment dated 21.01.2004, whereby the Para-24 of the

Government Order No. A-5355/15-5133-1962 17.12.1965 was quashed and the Education Department was directed to release Family Pension in favour of the petitioner in the said writ petition within one month.

3 (iii). The case of Smt. Parvati Devi was regarding withholding of family pension after granting for a period of 05 years, while the case of Smt. Jeewanti Devi was regarding non-sanctioning of family pension due to alleged ground raised by the Department that her husband had not submitted any option before his death. Herein, the petitioner's case is squarely covered by the case of Smt. Jeewanti Devi (as aforesaid). Thereafter, the case of Smt. Jeewanti Devi was allowed vide judgment dated 28.10.2004.

3 (iv). The State Government challenged the aforesaid earlier judgment dated 21.01.2004 before Division Bench of Hon'ble Court by filing Special Appeal No. 25 of 2004. The said Special Appeal was ultimately dismissed by a Division Bench of Hon'ble Uttarakhand High Court vide judgment dated 24.08.2005. After dismissal of the Special Appeal by a Division Bench of Hon'ble High Court, the concerned District Education Officer, sought necessary guidance in the matter from respondent No. 2 vide letter dated 01/05.10.2005 alongwith all necessary

documents. Thereafter, the matter was referred to Government of U.P. and, ultimately, the Government of U.P., vide government order dated 30.06.2006 sanctioned the family pension to Sri Parvati Devi and a direction was also issued to respondent No. 2 to immediately release the amount of family pension as well as arrears of the same to the concerned person.

3 (v). Thereafter, the State of U.P. challenged the aforesaid judgment dated 21.01.2004 before Hon'ble Supreme Court of India by filing SLP (C) No. 11583/2008, which was also dismissed on 21.04.2008.

3 (vi). Meanwhile, against the aforesaid judgment dated 28.10.2004 rendered in the case of Smt. Jeewanti Devi, the State of Uttarakhand filed a Special Appeal No. 38 of 2006 challenging the said judgment dated 28.10.2004. Ultimately, the said Special Appeal was disposed of/dismissed as not pressed, by the Division Bench of the Hon'ble Uttarakhand High Court vide judgment dated 07.12.2009 keeping in view the fact that the judgment dated 28.10.2004 has already been accepted by the State of U.P. and in pursuance of the same the family pension has already been released to Smt. Jeewanti Devi.

3 (vii). As the petitioner was also a similarly situated person like Smt. Jeewanti Devi, as such, she made several representations to the Respondents for releasing of Family Pension alongwith arrears, as were given to Smt. Jeewanti Devi. However, no heed was paid by any of the authorities towards requests made by the petitioner. Ultimately, the District Magistrate, Almora vide letter dated 01.11.2018 directed the Respondent No. 3 to take a decision in the matter. Thereafter, vide letter dated 12.11.2018, the concerned Drawing and Disbursing Officer/Principal, G.I.C. Jhadgaon Block Salt vide letter dated 12.11.2018 informed the Respondent No. 3 that the school was upgraded in 1979 and there is no record and the petitioner has not applied for Family Pension till date. Thereafter, the Respondent No. 3 vide letter dated 12.11.2018, also informed to the District Magistrate about forwarding of the matter to the concerned Principal of G.I.C. Jhadgaon. Thereafter, vide letter dated 20.11.2018, the Chief Education Officer, Almora directed the Respondent No. 3 herein to take a decision in the matter. Consequently, the Respondent No. 3 forwarded the matter to the Respondent No. 4 for further action in the matter, vide letter dated 28.11.2018. Thereafter, the local MLA also sent a letter to the Respondent No. 3 on 10.02.2019, for taking a decision in the

matter. Thereafter, the petitioner submitted a detailed representation on 05.03.2019 to the Respondents No. 2 and 3 narrating entire facts and also claimed similar benefits on the basis of judgment dated 28.10.2004 passed in the case of Smt. Jeewanti Devi. However, the Respondent No. 3 vide impugned order dated 11.09.2019, cursorily rejected the request of the petitioner by observing that the petitioner's case is barred by Government Order of 1965 and petitioner's claim on the basis of judgment of Smt. Jeewanti Devi has virtually been rejected. Although there was a proposal, but, the same was rejected by the State Government.

3 (viii). Since the aforesaid letter was totally evasive and contradictory, as such the petitioner again submitted a representation on 13.12.2019 alongwith all relevant documents including NO Objection Affidavit of the sons of the petitioner, to the Respondent No. 4. Thereafter, all the formalities were completed by the Respondent No. 4 in the matter and vide letter dated 11.02.2020, the Respondent No. 4 sent the entire proposal for Family Pension regarding the petitioner, to the Respondent No. 3. Thereafter, the Respondent No. 3 point out certain defects in the said proposal of the petitioner, as such, the Respondent No.

4 vide letter dated 26.08.2020 again submitted the proposal after rectifying the pointed out defects, to the Respondent No. 3. However, the Respondent No. 3 vide impugned order dated 31.08.2020 rejected the said proposal sent by the Respondent No. 4 observing that the petitioner is not entitled for Family Pension. Hence, this claim petition has been filed by the petitioner before the Uttarakhand Public Services Tribunal, Nainital Bench, Nainital.

4. CA/WS has been filed on behalf of the respondents No. 1 to 4 by learned APO, in which, it has been stated that:-

4.1. शासनादेश संख्या ए-5355/15-3133-1962 दिनांक 17 दिसम्बर, 1965 द्वारा राज्य सहायता प्राप्त शिक्षा संस्थाओं में कार्य करने वाले कर्मचारियों के लिए लाभत्रयी योजना लागू थी। लाभत्रयी पेंशन योजना नियमावली के परिवार पेंशन के बिन्दु 24 (1) में उल्लिखित है कि "परिवार पेंशन जो नीचे उपनियम (2) में निर्दिष्ट धनराशि से अधिक न हो उस कर्मचारी के परिवार को दस वर्ष तक स्वीकृत की जा सकती है जिसकी मृत्यु कम से कम बीस वर्ष की अर्हकारी सेवा पूरी करने के बाद या तो सेवा में रहते हुए हुई हो अथवा सेवानिवृत्ति के बाद हुई हो।

किन्तु प्रतिबन्ध यह है कि किसी भी दशा में परिवार पेंशन के भुगतान की अवधि उस दिनांक से जब मृत कर्मचारी ने अधिवर्ष की वय प्राप्त कर ली होती, पाँच वर्ष की अवधि से अधिक न होगी।

(2) परिवार पेंशन की धनराशि निम्नलिखित होगी—

(क) सेवा में रहते हुये मृत्यु हो जाने की दशा में उस अधिवार्षिकी पेंशन की आधी धनराशि जो कि उक्त कर्मचारी को मिल सकती यदि वह मृत्यु के दिनांक के बाद को सेवानिवृत्त हो गया होता, और

(ख) सेवानिवृत्ति के बाद मृत्यु हो जाने की दशा में उक्त कर्मचारी को उसकी सेवानिवृत्ति के समय स्वीकृत पेंशन की आधी धनराशि”

याची के पति लाभत्रयी पेंशन योजना से आच्छादित थे जिस कारण याची को पारिवारिक पेंशन प्रदान नहीं की जा सकती है।

प्रकरण के समान पारिवारिक पेंशन प्रदान किये जाने के सम्बन्ध में मा0 उच्च न्यायालय उत्तराखण्ड नैनीताल में योजित याचिका संख्या 557/एस0एस0/2010 मोहनी पाण्डे बनाम उत्तराखण्ड राज्य व अन्य में दो जजों की संयुक्त पीठ द्वारा दिनांक 23.04.2013 को अन्तिम निर्णय पारित करते हुए याचिका खारिज की गयी है।

शासनादेश संख्या 5197/15 (5)—79/77 दिनांक 08.03.78 जो उत्तर प्रदेश बेसिक शिक्षा परिषद द्वारा संचालित स्कूलों के शिक्षकों के सेवानिवृत्त लाभों में परिवर्तन के सम्बन्ध में है, के अनुसार 01 मार्च, 1977 को या उसके पश्चात् सेवानिवृत्त हुए या सेवानिवृत्त होने वाले उक्त विद्यालयों के समस्त स्थाई पूर्णकालिक तथा नियमित शिक्षकों को उसी दर पर पेंशन देय होगी जिस पर राजकीय विद्यालयों के समान स्तर एवं श्रेणी के शिक्षकों को अनुमन्य है तथा उसका आगणन भी राजकीय कर्मचारियों के लिए लागू प्रक्रिया के अनुसार किया जाएगा।

इसमें प्रतिबन्ध है कि उक्त योजना के अन्तर्गत पेंशन प्राप्त करने के लिए प्रत्येक कर्मचारी को इस बात का लिखित विकल्प देना होगा कि इस योजना के अधीन पेंशन प्राप्त करना चाहेगा अथवा शासनादेश संख्या ए-5355/15-3133-1962 दिनांक 17 दिसम्बर, 1965 द्वारा प्रसारित लाभत्रयी याजना के अन्तर्गत पेंशन और उत्तर प्रदेश बेसिक शिक्षा परिषद भविष्य निधि नियमावली, 1975 के अन्तर्गत बेसिक शिक्षा परिषद द्वारा नियुक्त किये गये हैं या किये जाएंगे उन पर यह योजना अनिवार्य रूप से लागू होगी और उनके कोई विकल्प भराना आवश्यक नहीं होगा। जो शिक्षक इस शासनादेश के अन्तर्गत पेंशन प्राप्त करने का विकल्प देते हैं उनके सामान्य भविष्य निर्वाह निधि का लेखा-जोखा जिला बेसिक शिक्षा अधिकारी के कार्यालय में ही रखा जायेगा। और इस सम्बन्ध में सामान्य भविष्य निर्वाह निधि में की गयी कटौती राजकोष में निक्षेप लेखा शीर्षक "838-स्थानीय निधियों के निक्षेप अन्य स्वायत्त निकायों के निक्षेप (क)

आधारित विद्यालयों (बेसिक स्कूलों) के शिक्षण एवं शिक्षणेत्तर कर्मचारियों को भविष्य निधियों के लेन-देन के अधीन जमा की जायेगी।

उक्त शासनादेश के अन्तर्गत स्पष्ट था कि उक्त योजना के अन्तर्गत पेंशन प्राप्त करने के लिए प्रत्येक कर्मचारी को इस बात का लिखित विकल्प देना होगा कि वह इस योजना के अधीन पेंशन प्राप्त करना चाहेगा अथवा शासनादेश संख्या ए-5355/15-3133-1962 दिनांक 17 दिसम्बर, 1965 द्वारा प्रसारित लाभत्रयी योजना के अन्तर्गत पेंशन और उत्तर प्रदेश बेसिक शिक्षा परिषद भविष्य निधि नियमावली, 1975 के अन्तर्गत बेसिक शिक्षा परिषद का अंशदान प्राप्त करेगा।

शासनादेश संख्या 6246/15-8-3004 (46)/77 दिनांक 31.03.1982 जो राजकोष से सहायता प्राप्त जूनियर हाईस्कूल माध्यमिक विद्यालय, डिग्री कॉलेज के शिक्षकों एवं उत्तर प्रदेश के बेसिक शिक्षा परिषद द्वारा संचालित प्राइमरी एवं जूनियर हाईस्कूलों के शिक्षकों को दिनांक 1.10.1981 से राजकीय कर्मचारियों की भौति पारिवारिक पेंशन की सुविधा प्रदान की गयी थी। याची के स्व० पति द्वारा पेंशन हेतु तदसमय विकल्प को चुना गया था।

शासनादेश संख्या 1511/15-5-98-204/89 दिनांक 15.09.98 के द्वारा वित्त नियंत्रक बेसिक शिक्षा परिषद, इलाहाबाद के प्रस्ताव जो बेसिक शिक्षा परिषद के सेवानिवृत्त शिक्षकों को जी०पी०एफ० पर ब्याज की दर 1977 से दिये जाने एवं जिन शिक्षकों की बिना विकल्प पत्र भरे मृत्यु हो

गयी है, उन्हें विकल्प से छूट प्रदान करके आश्रितों को नवीन पेंशन योजना से आच्छादित किये जाने को शासन द्वारा स्वीकार न करते हुए अस्वीकृत किया गया था।

शासनादेश संख्या 5585/15-5-98-168/95 दिनांक 17 नवम्बर, 1998 के द्वारा वित्त नियंत्रक, बेसिक शिक्षा परिषद, इलाहाबाद के प्रस्ताव जो लाभत्रयी योजना से आच्छादित बेसिक शिक्षा परिषद के शिक्षकों के आश्रित को राज्य कर्मचारियों की भौति आजीवन पारिवारिक पेंशन अनुमन्य किये जाने के सम्बन्ध में था, जिस पर शासन द्वारा सम्यक रूप से विचार किया गया तथा विचारोपरान्त इस प्रस्ताव को स्वीकार किये जाने योग्य नहीं पाया गया था।

अगर याची को पारिवारिक पेंशन का भुगतान किया जाता है तो बेसिक शिक्षा परिषद के अधीन सेवानिवृत्त अन्य शिक्षकों के आश्रितों द्वारा भी पारिवारिक पेंशन की मांग हेतु मा० न्यायालय में वाद योजित किये जाने की सम्भावना है। विधि शास्त्र का स्थापित सिद्धान्त है कि निर्णय ऐसा हो कि जिससे कि मुकदमों की संख्या कम हो अगर याची की याचिका स्वीकार की जाती है तो विभाग में मुकदमों की संख्या में वृद्धि होगी।

याची द्वारा अत्यधिक विलम्ब से लगभग 28 वर्ष व्यतीत हो जाने के उपरान्त याचिका योजित की गयी है। इस अवधि में बहुत कुछ परिवर्तित हो गया है। उत्तर प्रदेश से विभाजन हासेकर उत्तराखण्ड राज्य का गठन

हो गया तथा उत्तराखण्ड राज्य गठन के उपरान्त बेसिक शिक्षा परिषद को उत्तराखण्ड राज्य में समाप्त कर दिया गया। याची के पति उत्तर प्रदेश के अन्तर्गत बेसिक शिक्षा परिषद में सेवायोजित थे। नियमानुसार याची को पेंशन देय नहीं है अगर पेंशन प्रदान की जानी होती तो भी उत्तर प्रदेश राज्य द्वारा प्रदान की जाती उत्तराखण्ड राज्य द्वारा याची के प्रति कोई देयता नहीं बनती।

याची द्वारा विभिन्न स्तरों को पारिवारिक पेंशन प्रदान किये जाने हेतु पत्राचार किया जा रहा था जिसके क्रम में पत्र प्रेषित किये गये हैं। याची द्वारा अत्यधिक समय व्यतीत हो जाने के उपरान्त पत्राचार किया जा रहा था कार्य की अधिकता के कारण पत्र अग्रसारित या प्रत्यावर्तित किये गये हैं। लेकिन विभागीय नियमानुसार याची को पारिवारिक पेंशन देय नहीं है, जिसके सम्बन्ध में याची को पूर्व में ही अवगत करा दिया गया था, जिससे याची भली-भाँति भिन्न है जानबूझकर अपनी याचिका को मियाद अन्तर्गत करने हेतु रणनीति के तहत इस तरह के भ्रामक तथ्य प्रस्तुत कर रही है। याची इस तथ्य को भली-भाँति जानती है कि विभागीय नियमानुसार याची को पेंशन देय नहीं है। याची द्वारा लगभग 28 वर्ष व्यतीत हो जाने के उपरान्त अत्यधिक विलम्ब से याचिका योजित की गयी है।

4.2. The counter affidavit has relied upon Uttar Pradesh Government order No. 5197(1)/15(5)-79/77 dated

08.03.1971, wherein, the Education Directorate has been informed about the amended post retiral benefits to be given to Uttar Pradesh Basic Education Council controlled primary school teachers (Annexure No. C.A-1), the Government Order No. A-5355/15-3133-1962 dated 17.12.1965 (Annexure No. C.A.-2) and the judgment of Hon'ble High Court of Uttarakhand at Nainital dated 23.04.2013 in the Writ Petition (S/S) No. 557 of 2010 Smt. Mohini Pandey vs. State of Uttarakhand & others (Annexure No. C.A.-3).

5. Rejoinder affidavit has also been filed reiterating the facts mentioned in the present claim petition.

6. Thereafter, Additional CA/WS has also been filed on behalf all the respondents by learned A.P.O., in which, it has been stated that the husband of the petitioner during his service period had preferred the option in writing and had opted for the post retiral benefits as existing before the cut-off-date 01.03.1977, a copy of which has also been filed as **Annexure No. C.A.-1**.

7. Learned Counsel for the petitioner did not file any reply against the Additional CA/WS filed on behalf of all the respondents.

8. I have heard the learned Counsels for the parties and perused the records.

9. Learned Counsel for the petitioner in his arguments has exclusively relied upon four separate judgments on the same matter as Annexure No.-5, 6, 7 and 11, which are respectively given as follows:-

(A). Hon'ble High Court of Uttarakhand at Nainital judgment dated 21.01.2004 in Writ Petition No. 7212 of 2001 (S/S) Smt. Parvati Pandey vs. State of Uttaranchal & others,

(B). High Court of Uttarakhand at Nainital judgment dated 28.10.2004 in Civil Writ Petition No. 445 of 2002 (M/S) Smt. Jeewanti Devi Vs. State of Uttaranchal & others,

(C) High Court of Uttarakhand at Nainital judgment dated 24.08.2005 in Special Appeal No. 25 of 2004 State of Uttaranchal & another vs. Smt. Parvati Pandey,

(D) High Court of Uttarakhand at Nainital dated 07.12.2009 Special Appeal No. 38 of 2006 State of Uttaranchal & others vs. Smt. Jeewanti Devi & another.

10. Learned Counsel for the petitioner has emphasized that all these four judgments relied upon as above pertain to the same subject matter originating-out of the proviso to para-24 of the Government Order No. 5355/15-3133-962 dated 17.12.1965 concerning the family pension in the Education Department. In spite of giving out the chronology and findings of these four judgments he has conceded to the fact that there has been a culminating judgment of the Hon'ble High Court of Uttarakhand on this subject matter in the writ petition (S/S) No. 557 of 2010 Smt. Mohini Pandey Vs. State of Uttarakhand & others dated 23.04.2013, which has attained finality on the matter under question and is binding upon all the parties concerned in this matter. Nevertheless, he has emphasized that this instant claim petition is more akin to the earlier judgment dated 28.10.2004 rendered in the case of Smt. Jeewanti Devi, therefore, this instant claim petition must succeed.

11. Learned A.P.O. has argued very briefly and has relied upon the abovementioned judgment dated 23.04.2013 rendered in the Writ Petition No. 557 (S/S) of 2010 Smt. Mohini Pandey vs. State of Uttarakhand & others dated 23.04.2013. As per the learned A.P.O. all the earlier judgments have been superseded by this judgment dated 23.04.2013, wherein the matter has been settled in negative. Thus, in this instant claim petition the option as given by the petitioner's husband has attained finality and in the light of his option this claim petition must be dismissed.

12. This Tribunal has gone through all the referred documents, Government Orders and rendered judgments on the matter under question. This entire subject matter revolves around the Government Order No. A-5355/15-3133-1962 dated 17.12.1965 and the option given by the petitioner's husband, who gave a clear option in which he did not opt for provident fund and pension-cum-family pension until death; instead he preferred the post retiral benefits existing before 01.01.1977.

13. The culminating judgment on this matter dated 23.04.2013 in the writ petition (S/S) No. 557 of 2010 Smt. Mohini Pandey vs. State of Uttarakhand & others reads as follows:-

"JUDGMENT

Coram: Hon'ble Barin Ghosh, C.J.

Hon'ble V.K. Bist, J

BARIN GHOSH, C.J. (Oral)

In a writ petition filed by Smt. Parvati Pandey registered as Writ Petition No. 7212 of 2001 (SS), it was contended that after payment of family pension for some time, the State Government has refused to pay any further family pension to her. In that writ petition, the State Government pointed out that the family pension to Smt. Parvati Pandey has been stopped in view of the Government Order dated 17th December, 1965. Relevant portion of paragraph 24 of the said Government Order is as follows:-

“A family pension not exceeding the amount specified in sub-rule (2) of Rule 24 may be granted for a period of 10 years to the family of an employer who dies either while still in service or after retirement, after completion of not less twenty years of qualifying service:

Provided that the period of payment of family pension shall in no case extend beyond a period five years from the date on which the deceased employee would have attained the age of superannuation.”

2. A look at the Government Order dated 17th December, 1965 would show that thereunder Rules were framed and paragraph 24 of the Government Order means Rule 24 of the Rules, thus, framed.

2. In Writ Petition No. 7212 of 2001 (SS), this Court declared that paragraph 24 of the said Government Order dated 17th December, 1965, so far as it relates to the petitioner (Smt. Parvati Pandey), is quashed. The Court, accordingly, directed the respondents to the said writ petition to release family pension in favour of the petitioner (Smt.Parvati Pandey) within one month after receipt of certified copy of the order of the Court. The State Government made a belated attempt to challenge the said order before the Hon'ble Supreme Court and, after having failed to satisfy the Hon'ble Supreme Court with the reason for delay in approaching the Hon'ble Supreme Court, complied with the said order. That appears to be the reason for filing the present writ petition, where also, after death of the husband of the petitioner, writ petitioner received pension for some time and, later on, the same was stopped in view of the said Government decision. A look at the said order dated 17th December, 1965 would make it abundantly clear that the said order was issued for the purpose of giving triple benefit to certain employees. Under the Scheme, those employees became entitled to contributory provident fund, compulsory life insurance and pension including family pension in accordance with the Scheme. Husband of the writ petitioner was one of those employees, who were entitled to the benefit of the said Government Order dated 17th December, 1965. Certain other employees, while, at that time or subsequent thereto, were not made entitled to triple benefits under the said Scheme, but were entitled to double benefits, i.e. General Provident Fund and pension as well as family pension until death. The scheme, under

which the entitlement to receive family pension extended until death, was not applicable to the husband of the petitioner. The husband of the petitioner was in service on 8th March 1978. At that time Government gave an option to all those employees including the husband of the petitioner, who were covered by the triple benefit scheme propounded by the Government Order dated 17th 2013:UHC:2826 3 December, 1965, to opt for General Provident Fund and refund, or permit refund of the contributory portion of the contributory provident fund, so as to entitle them to come under that Scheme, where an employee is entitled to the benefits of General Provident Fund with pension and family pension until death. The husband of the petitioner did not opt to take the advantage under the said Government order dated 8th March, 1978. He died in the year 1988. Subsequent thereto, petitioner was paid a paltry sum of money as and by way of family pension and after expiry of the period mentioned in the Government Order dated 17th December, 1965, she stopped receiving pension. No sooner the petitioner came to learn about the judgment of this Court rendered in Writ Petition No. 7212 of 2001 (SS), and that, the said judgment has been complied with, the present writ petition has been filed.

3. The fact remains that the petitioner cannot take advantage of the said judgment, inasmuch as by that judgment paragraph 24 of the Government Order dated 17th December, 1965 was not quashed, but was quashed only for Smt. Parvati Pandey. Nothing has been shown in the instant writ petition, why paragraph 24 of the Government Order dated 17th December,

1965 should be interfered with by the Court. The fact remains that at the time when the Government Order dated 17th December, 1965 was issued, the husband of the petitioner was not covered by the Scheme, under which an employee is entitled to the benefit of the provident fund and pension-cum-family pension until death. The Government, accordingly, introduced a benefit scheme for those employees by the said Government Order. Later, in 1978, the Government gave an option to all those employees by the Government Order dated 17th December, 1965 to opt for provident fund and pension-cumfamily pension until death. The husband of the petitioner chose not to opt for the same. Petitioner, the wife of the employee, now cannot contend that paragraph 24 of the Government Order dated 17th December, 1965 is at all interferable since her husband never thought that the same is interferable.

4. The writ petition is thoroughly misconceived and the same is dismissed.

(V. K. Bist, J.)
23.04.2013

(Barin Ghosh, C.J.)
23.04.2013"

A thorough reading of the culminating judgment dated 23.04.2013 reveals that this judgment has pondered upon all the eventualities evolving out of the impugned Government Order dated 17.12.1965 and that it has got super-riding effect over all the 04 previous judgments respectively:-

- (I). Hon'ble High Court of Uttarakhand at Nainital judgment dated 21.01.2004 in Writ Petition No. 7212 of 2001 (S/S) Smt. Parvati Pandey vs. State of Uttaranchal & others,
- (II). High Court of Uttarakhand at Nainital judgment dated 28.10.2004 in Civil Writ Petition No. 445 of 2002 (M/S) Smt. Jeewanti Devi Vs. State of Uttaranchal & others,
- (III). High Court of Uttarakhand at Nainital judgment dated 24.08.2005 in Special Appeal No. 25 of 2004 State of Uttaranchal & another vs. Smt. Parvati Pandey,
- (IV). High Court of Uttarakhand at Nainital dated 07.12.2009 Special Appeal No. 38 of 2006 State of Uttaranchal & others vs. Smt. Jeewanti Devi & another, which have been relied upon by the learned Counsel for the petitioner.

In this culminating judgment dated 23.04.2013 the option preferred by the petitioner's husband and the Government Order dated 17.12.1965 have been perceived as the pivotal points for consideration of family pension or otherwise, in such cases. Furthermore, Hon'ble High Court has categorically denied to adjudicate beyond the scope of the impugned Government Order dated 17.12.1965 and has held that the option preferred by the petitioner's husband is the ultimate decider of the matter. Meaning thereby, that even in this instant case too, the impugned Government Order dated 17.12.1965 would be applied, in toto, in the light of the option preferred by the petitioner's husband.

Since in this instant case, despite having been given an opportunity to opt for the General Provident Fund and pension, as well as the family pension until death, the petitioner's husband had opted otherwise, the claims made in the instant claim petition do not hold good.

14. In the light of the aforementioned judgment and the option preferred by the petitioner's husband, this claim petition deserves to be dismissed.

ORDER

Accordingly, the claim petition is hereby dismissed.

No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: MAY 29th, 2025
NAINITAL
BK