

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

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

----- Member (A)

WRIT PETITION NO. 3172 (S/S) OF 2017
**[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO.
23/NB/SB/2025]**

Girish Chandra Suyal, S/o Sri Chandra Mani, R/o Village and Post
Suyalbari, District Nainital.

.....Petitioner

Versus

1. State of Uttarakhand, through Secretary, Horticulture,
Government of Uttarakhand, Dehradun.
2. Director, Horticulture, Udhyan Bhawan, Chaubatiya, Ranikhet,
District Almora.
3. District Horticulture Officer, Nainital.
4. District Horticulture Officer, Almora.
5. Chief Treasury Officer, Nainital.

.....Respondents

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

JUDGMENT

DATED : 22nd MAY, 2026

By means of this petition, the petitioner seeks the
following relief:

- “i) Issue a writ, order or direction in the
nature of mandamus directing the

respondents to re-fix the salary of the petitioner as per the Government Order dated 1.7.2013 and grant the benefit of third A.C.P. from the date when the petitioner completed 26 years of satisfactory service.

- ii) Issue a writ, order or direction in the nature of mandamus directing the respondents to ensure that the petitioner may not get less salary/pay scale to his juniors on date of his superannuation.
- iii) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant the arrear of salary after re-fixing/calculating the pay scale as per the Government Orders till the superannuation of the petitioner.
- iv) Issue a writ, order or direction in the nature of mandamus directing the respondents to sanction and release the pension as per the re-fixation of the salary with arrears from the date of superannuation.
- v) Issue a writ, order or direction in the nature of mandamus directing the respondents to grant the retiral benefits i.e. gratuity, leave encashment and other dues as per the re-fixation of the salary.
- vi) Issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

vii) To award the cost of the petition in favour of the petitioner.”

2. The brief facts of the matter are that the Horticulture Department had started departmental training for Mali's through Department at Government Garden Chaubatiya, the petitioner completed his training of Mali under the guidance and supervision of the departmental trainer and passed his said training of Mali with the first division in the year of 1976, after which he was appointed as a regular Mali in the Horticulture Department on 30.3.1977.

3. The educational qualification of petitioner is Junior High School (Class 8th) from the recognized institution by the Government, the petitioner is a fully devoted employee of the department, he has served Department as per his best efforts and devotion. The education qualification of the petitioner is not enough for further promotional post in the Department as per the rules.

4. In the Department, there is provision that if any employee could not be promoted, he will be benefitted for next higher scale and thereafter provided promotional scale, but in the matter of petitioner the Department did not provide any promotional benefit and treated the petitioner at par with the other employees posted in the Department to the detriment of the petitioner.

5. The Department has failed to grant promotion or promotional benefit, the petitioner preferred a representation and sent to the authority concerned and requested to provide the benefit of

salary to the petitioner at par with his counter-parts and juniors and further requested that he is getting less salary from his juniors.

6. On the representation of the petitioner, the then concerned Officer sent the reply contrary to the records that there is no question of enhancement of salary, and further mentioned that if the petitioner is not satisfied with the information, he may approach the higher authority/Respondent No. 2.

7. As per the recommendation of the 7th Pay Commission, the State of Uttarakhand issued a Government Order dated 30.12.2016; as per the said Government Order the salaries of the all employees working in the different Departments have been fixed in the whole State, but in the matter of the petitioner, the Department provided less salary as compared from his juniors. This question was raised by the petitioner by way of representation, but the Department ignored the request of the petitioner and not provided the salary at par with his junior incumbent.

8. The respondent No. 3 sent a request letter to the respondent No. 4 and call the service-book of the one Mr. Mohan Singh Bisht, who is much junior to the petitioner and now working in the Department, the petitioner also got the information regarding the fixation-sheet of the salary of Mr. Mohan Singh Bisht, which clearly shown that the said Mr. Mohan Singh Bist has getting basic pay Rs. 50,500/- after increment on 1.1.2017 and the basic salary of the

petitioner has been shown Rs. 46,200/-, which is contrary to the settled law that the senior cannot get less salary to his juniors.

9. The petitioner has already been retired from his service on 28.02.2017, but the Department has totally failed to sanction the pension, gratuity, payment of leave encashment and other admissible dues after lapse of 8 months, the Department recommended for pension to the respondent No. 5, but till date no heed was paid by the respondent authorities for granting the retiral dues to the petitioner and did not fix the salary at par with the juniors.

10. The Government issued a Government Order regarding A.C.P. on 1.7.2013, in the said Government Order, there is provision in 3 slabs 10, 18 and 26 years satisfactory services the employee will get the assured career progression scheme benefit, which was again amended as 10, 16 and 26, but the benefit of the said Government Order was not provided by the Department to the petitioner and without rhyme and reason left the petitioner for his destiny.

11. The Government issued a Government Order on 7.10.2015, in the said Government Order, the Government has decided the field employee of Horticulture Department like Mali/Halwaha/Head Choudhary/Parichar/Maun Palak they should be given the benefit of A.C.P. and the persons, who already given the benefit of A.C.P. earlier they may also be examined as per the Service Regulation.

12. In the departmental cadre structure from the post of Mali is mentioned herein under:

Senior Horticulture Inspector – Grade Pay Rs. 4600/-

Assistant Development Officer – Grade Pay Rs. 2800/-

Supervisor – Grade Pay Rs. 2400/-

Mali - Grade Pay Rs. 1800/-

In the hierarchy, the petitioner is entitled to get the salary benefit as per the third A.C.P. after completion of 26 years of service. The Department granted the benefit of third A.C.P. in the year 2015. It is relevant to mention here that the petitioner has completed 26 years of service in the year 2003, but the respondents did not give the benefit of third A.C.P., which is due in the year 2003.

13. The Department has totally failed to provide the benefit of Government Orders, by which the salary of the employee, who has worked in the Department in the capacity of Mali, the Department provided the benefit of A.C.P. in the year 2015 and not provided from the date, which is due.

14. On 18.12.2017, Counter Affidavit has been filed on behalf of the respondent No. 1 by Sri N. P. Sah, Learned Standing Counsel before the Hon'ble High Court of Uttarakhand at Nainital, as follows:

“The contents of para 2 of the writ petition pertain to grievances sought to be agitated by way of this writ petition, in this regard it is stated that as per the provision of Government

Order No. 872 dated 08.03.2011 of Finance Department, Government of Uttarakhand the petitioner has been given benefit of Third A.C.P. as Grade Pay of Rs. 2800/- after completing 26 years of service w.e.f. 01.09.2008 and as per Government Order No. 770 he is paid the Grade Pay of Rs. 4600/- of promotional post w.e.f. dated 06.11.2013 and on the basis of Seventh Pay Commission, vide Government Order dated 30.12.2016 his pay is fixed at Rs. 44900/- on dated 01.10.2016 at pay band of Rs. 9300-34800/-. The contents of para 8 of the writ petition as stated are denied. It is stated that the first promotion on the post of Supervisor Group-III from Mali is as per Service Rules 1993 based on 20% quota for the Malies, who are having 10th passed qualification or equivalent and those Malies, who are having the less qualification than High School are being given the first promotion on the post of Head Malies/Head Chaudharies as per Departmental Service Rules 1986. In regard to the contents of para 9 of the writ petition it is stated that the representation of the petitioner dated 09.02.2006, has already been considered and disposed of by the concerned officer. The contents of para 10 of the writ petition are admitted that in this regard the then Potato and Vegetable Development Officer, Nainital informed the petitioner. The contents of para 11 of the writ petition as stated are denied. In pursuance of representation of the petitioner regarding petitioner is being paid less salary than his junior, the Chief Horticulture Officer, Almora, after consideration has fixed the incorrect pay

fixation of Sri Mohan Singh Bisht, Mali. In regard to the contents of para 12 of the writ petition it is stated that as per recommendation of Seventh Pay Commission, the pay scales of Sri Mohan Singh Bisht and the petitioner has been fixed on the status of dated 31.12.2015 at Rs. 44900/-, which is correct. Thus, the pay scale of both the employees is fixed on dated 01.01.2017 at Rs. 44900/-. The contents of para 13 of the writ petition as stated are denied. After re-fixation of pay scale of the petitioner that pension, amount of Gratuity and encashment has been sanctioned from the Treasury Nainital from dated 11.10.2017. The contents of para 14 of the writ petition as stated are denied. It is stated that the petitioner is given the benefit of A.C.P. as per the Government Order dated 08.03.2011 & Government Order dated 01.07.2013. The petitioner is claiming the pay as per A.C.P. level, which is payable to him w.e.f. dated 01.09.2008 as such the pay fixation is done as per Government Order w.e.f. 01.09.2008. The contents of para 15 of the writ petition pertain to record, call for no comments, however, it is also stated that as per Government Order dated 07.10.2015 the petitioner is given benefit of A.C.P. w.e.f. 01.11.2013. The contents of para 16 of the writ petition as stated are denied. It is stated that the petitioner is given the Third A.C.P. under promotional post of Rs. 4600/- Grade pay as w.e.f. 06.11.2013. The benefit of A.C.P. system is provided vide Government Order dated 08.03.2011 from dated 01.09.2008, before the issuance Government Order dated 06.11.2013, the Grade Pay of

promotional post was not payable but as per Appendix 1 to the Government Order dated 17.10.2008, the petitioner is provided next Grade Pay at relevant time.”

15. On 19.12.2017, Counter Affidavit has also been filed on behalf of the respondent No. 3 by Sri N. P. Sah, Standing Counsel, High Court of Uttarakhand before the Hon’ble High Court of Uttarakhand at Nainital, in which, the averments of the petitioner have been denied

16. Sri Anil Anthwal, Learned Counsel for the petitioner, has also filed Rejoinder affidavit against the Counter Affidavits filed on behalf of the respondents No. 1 & 3, reiterating the facts mentioned in the present claim petition.

17. At the outset only, it is apparent that this claim petition had been filed originally before the Hon’ble High Court of Uttarakhand at Nainital as Writ Petition No. 3172 (S/S) of 2017, which was relegated by the Hon’ble High Court to this Tribunal vide its order dated 04.03.2025 with the explicit consent of the parties, and the same is being adjudicated by this Tribunal in the same form, treating it as a claim petition. Therefore, the prayers put forward by the petitioner in the original writ petition, have been adjudicated upon by this Tribunal considering it as a claim petition only, notwithstanding the original prayers for issue of a writ, order or direction in the nature of certiorari/mandamus etc., which are beyond the jurisdiction of this

Tribunal. For this clerical mistake, the claim petition is not being dismissed.

18. Heard the learned Counsels for the parties and perused the record.

19. Learned Counsel for the petitioner in his arguments has reiterated the facts and pleadings of the petition. In short his contention is as follows:-

(a). The petitioner was appointed as regular Gardener or Mali on 30.03.1977.

(b). In the Mali cadre there is scope of promotion after 10 years of satisfactory service on the post of Supervisor. Nevertheless, since the petitioner was educated only upto Class-8th, so from the very beginning this was clear before the petitioner and the respondent department that there is available no promotional avenue to the petitioner, but for such employees there has been kept a provision of selection grade after 08 years of service, which has not been given to the petitioner.

(c). As per the relevant Government Order the plaintiff has become eligible for 3rd ACP after 26 years of satisfactory service which never given to the petitioner, though he had completed satisfactory service of 26 years' service in the year 2003.

(d). Further, the petitioner served the respondent department for a period of about 40 years and superannuated in the year 2017. But computation and fixation of his pension has been done by the respondent department by the new method of pension fixation, instead of the old method, while logically speaking the calculation and fixation of the petitioner's pension should have been done by the old method and, therefore, instead of calculating ACP for the petitioner the respondent department should have awarded grade pay to the petitioner by the old method.

(e). While the petitioner was in service the method of calculation was being followed w.e.f. 01.01.1996. On 02.12.2000, the new system came in Uttar Pradesh immediately after the creation of State of Uttarakhand. On 12.03.2001, the State of Uttarakhand adopted the aforesaid G.O. dated 02.12.2000. In pursuance of that G.O. the petitioner had become eligible for 3rd ACP in the year 2003. Nevertheless, the respondent department kept this matter pending for in depth consideration.

(f). While drawing the attention of the Tribunal towards the concept of A.C.P. the learned Counsel emphasized that the initial Government Order

regarding A.C.P. benefit was issued on 08.03.2011 and later on amended by subsequent G.Os., wherein finally the benefit of A.C.P. was enforced w.e.f. 01.09.2008 for Class-III and IV employees of the Government. Nevertheless, the respondent Department did not give the benefit of the same to the petitioner at that time. Also this is noticeable that though the petitioner had become entitled for re-fixation of salary alongwith increments and grade-pays as per the Government Order dated 02.12.2000/12.03.2001 after completion of 26 years of regular service in 2003, his salary was not re-calculated as per the aforesaid Government Orders, therefore, the petitioner remained at a loss from the year 2003 till the year 2008, since when the concept of A.C.P. was enforced.

(g). The Learned Counsel for the petitioner has also relied upon the judgment dated 09.07.2018 delivered by Hon'ble High Court of Uttarakhand at Nainital in the bunch of Writ Petition No. 3636 (S/S) of 2017 Devendra Singh Rawat Vs. State of Uttarakhand and others etcetera, alongwith Writ Petition No. 446 (S/S) of 2020 Lalit Chandra Tiwari and others Vs. State of Uttarakhand and others dated 12.02.2025, and judgment dated 18.05.2023 delivered by the Hon'ble Tribunal Division Bench at

Nainital in Claim Petition No. 24/NB/DB/2023 [Writ Petition No. 2288 (S/S) of 2017] Balwant Singh & others Vs. State of Uttarakhand and others. The Learned Counsel emphasized that the petitioner also is entitled for an upgraded pay-scale as per these judgments. This is noticeable here that all these judgments have been delivered mainly in connection with the respondent Department of Horticulture itself.

(h). Further, learned Counsel for the petitioner drew the Tribunal's attention towards the petitioner's rejoinder affidavit Annexure No. R.A-1, wherein the Director, Horticulture (Respondent No. 2) has issued Letter No. 2563/2-34(4)/2018-19 dated 27.10.2018, to the Chief Agriculture Officers of Nainital and Uttarkashi directing them to provide the selection grade to those employees of Gardener cadre, who have not passed their High School Examination and, therefore, whose promotional avenues are no more available: in such cases Hon'ble High Courts' judgment in Writ Petition No. 3533/SS/2017 Purnanand Nautiyal Vs State of Uttarakhand and others benefits are to be given. Since the case of the petitioner is similar, he is also entitled for such benefits.

20. Learned A.P.O. has pleaded that the petitioner submitted his first representation before the creating of Uttarakhand State and then straightway he has submitted his next representation in the year 2017. In the intervening period of his service the petitioner has never bothered to get his salary re-fixed. Therefore, the prayers of the petitioner are subject to the principle of estoppel. Further as per the Annexure No. 5 of the petition the petitioner had taken an option for salary increment on 1st January of every year w.e.f. 01.01.1986 and his salary has been calculated according to that option only. The petitioner's grievance that some junior employees of the respondent Department have been drawing a higher salary than the petitioner has also been resolved as is evident from Annexure No. 7 to the petition and Annexure No. C.A.-1, 2 & 3 of the counter affidavit of the Respondents No.1 & 3. Similarly, the petitioner's representation submitted on 24.08.2017 has also been satisfactorily disposed off, which was related to the release of pension and other post retirement dues of the petitioner. Therefore, it is evident through the Counter Affidavits that whatsoever dues were to be given to the petitioner have already been provided to the petitioner, therefore, this claim petition lacks substance and should be dismissed.

21. After having heard the learned Counsels and perusing the record this emerges before the Tribunal that the petitioner has prayed for the redressal of his grievances in one way or the other as follows:-

- (a) re-computation of the missing increments in his salary as per the old method of salary fixation upto the year 2000 when the State of Uttarakhand was created,
- (b) correction of his salary by re-fixation in comparison to his junior colleagues, whose salaries are allegedly more than the petitioner's,
- (c) considering non-availability of promotional avenues to the petitioner owing to his educational qualification merely upto Class-8th additional increments should have been given to the petitioner and the arrears calculated accordingly as per the relevant Government Orders,
- (d) fixation of time scale in accordance with the Government Order dated 02.12.2000
- (e) grant of selection grade in the year 2003 after completion of 26 years of service or the petitioner should be given his 3rd A.C.P. w.e.f. year 2003,
- (f). the petitioner has referred to the Government Orders dated 01.07.2013 (Annexure No. 9), 07.10.2015(Annexure No. 10) and (Annexure No. RA-1) in support of his claims.

22. Although the main prayer of the petitioner is only regarding fixation of 3rd ACP, yet the remaining grievances get covered in the subsequent prayers for additional redressal. So far as the petitioner's grievances regarding missing increment upto the year 2000, a reversal to the old method of salary fixation and comparative re-fixation of

salary as compared to his junior colleagues are concerned, they have already been taken care of as per the Annexures available in the record. It is evident that the petitioner, being simply a Class-8th educated Gardener of the respondent Department was mistaken regarding the Financial Rules on these issues.

23. So far as the remaining grievances and prayers of the petitioner are concerned, the respondents have tried to put-up the factual positions before the Tribunal so far as the re-fixation of salary, pension and other post-retiral dues of the petitioner is concerned by annexing various documentary evidences. Nevertheless, the Tribunal has noticed that regarding certain grievances as raised by the petitioner the Counter Affidavit, as well as the Supplementary Counter Affidavit, are either silent or evasive in their counter averments, as well as in supplying such documents which could have made the situation crystal clear.

24. The first representation submitted by the petitioner before the respondents (Annexure No. 4) and the second representation (Annexure No. 6) have been taken care of by the respondents to the satisfaction of the petitioner, nevertheless, the remaining grievances are still pending subject matter to be prayers of this instant petition. So far as the contention of the learned A.P.O. regarding the estoppel is concerned, it is not relevant in the matters of remaining prayers of the petitioner.

25. Though the Counter Affidavit of respondent No. 1 has annexed a copy of pay fixation and another copy of a letter of Chief Treasury Officer Nainital dated 11.10.2017, nevertheless, these annexures fail to throw proper light so far as the main grievances of the petitioner are concerned, the written averments of the Counter Affidavit are evasive, for example, the paragraph No. 8 of the Counter Affidavit reads as under:-

“8. The contents of para 8 of the writ petition as stated are denied. It is stated that the first promotion on the post of Supervisor Group-III from Mali is as per Service Rules 1993 based on 20% quota for the Malies, who are having 10th passed qualification or equivalent and those Malies, who are having the less qualification than High School are being given the first promotion on the post of Head Malies/Head Chaudharies as per Departmental Service Rules 1986.”

This paragraph appears to be in contravention and seems to be an evasive towards the Government Order dated 07.10.2015, wherein specific directions have been given regarding those employees, who are deprived of promotional avenues. Similarly, the Counter Affidavit is silent as to why the petitioner had not been given Grade Pay after completion of 26 years of regular service in the year 2003. Further, the Supplementary Counter Affidavit filed on behalf of the respondents No. 2, 3 & 4 has been able to provide answers to certain issues, but has failed to address the core issues between the

year 2000 to 2008, instead it has tried to divert the attention of the Tribunal towards the re-fixation of salary of the petitioner c.f. his junior colleagues, a question that had been settled long back. The core issues still remain to be addressed by the respondents. Meanwhile, the petitioner has re-emphasized and countered most of the averments of the Counter Affidavits by his Rejoinder Affidavit. The petitioner has drawn the Tribunal's attention towards the Annexures R.A.-1 & R.A.-2 specifically indicating that the petitioner deserved re-fixation in the light of Hon'ble High Court's judgment in Writ Petition No.3533/SS/2017 Purnanand Nautiyal Vs. State of Uttarakhand and others since his case stands on the similar footing, this question also has not been addressed by the Counter Affidavit and Supplementary Counter Affidavit of the respondents.

26. The crux of the instant petition is that even after having served the respondent Department for approximately 40 years the petitioner has to suffer financial losses due to the negligence of the respondent Department in complying with various Government Orders from the year 2000 till the time of superannuation in the year 2017. Since the petitioner is not very well versed with the financial rules and the Government Orders he is not able to put his finger exactly upon the point as to where he should have been given a Grade-Pay, and since when his ACP calculations should be taken for consideration. What he prays exactly is that whether ACP, or Selection Grade, there must be a justified salary revision for the petitioner by the respondents w.e.f. year 2000 onwards. The payments already provided to the

petitioner could be adjusted against the overall dues and arrears, if any, as a result of re-scrutiny of his pay structure, w.e.f. 2000. Therefore, in the petitioner's view his salary must be scrutinized beginning from G.O. dated 02.12.2000 afresh, and thereafter his pension and other post-retiral dues must be computed accordingly. For this purpose, he has relied chiefly upon the Government Orders dated 02.12.2000, 01.07.2013 and 07.10.2015, and upon the landmark judgments as cited earlier, pertaining to the Horticulture Department itself.

27. The conclusion of the Tribunal based upon the aforesaid observations is as follows:-

- (i). There appears to have been a lack luster attitude of the respondent Department in scrutinizing and re-fixing the salary and allowances of the petitioner in accordance with the Government Order dated 02.12.2000, which must be conducted afresh.
- (ii). The position is not clear as to whether the petitioner has been provided the stipulated increment and relief so far as the lack of promotional avenues to the petitioner are concerned.
- (iii). The respondent Department has failed to explain as to why re-fixation of salary has not been done as per the rules after completion of 26 years of regular service by the petitioner in the year 2003.

(iv). Again it appears that during the subsequent considerations in accordance with Government Orders dated 01.07.2013 and 07.10.2015 the petitioner's case has been overlooked and calculated mistakenly at par with other employees, who had availed the promotional avenues, thus leaving the petitioner at loss.

ORDER

Therefore, the claim petition succeeds partly to the extent that the petitioner's salary and other emoluments would be scrutinized afresh in the light of all the Government Orders w.e.f. dated 02.12.2000 onwards till the superannuation of the petitioner. The respondent No. 2, i.e., the Director, Horticulture, Udhyan Bhawan, Chaubatiya, Ranikhet, District Almora is directed to comply with all the Government Orders pertaining to the selection grade and provisions of ACP etc. applicable to the respondent Department till the time of superannuation of the petitioner in the year 2017 while re-scrutinizing the petitioner's pay structure. The respondent Department will also comply with the directions as spelt-out in the cited judgments since they have dealt with the Horticulture Department itself categorically.

It goes without saying that as a result of this re-scrutinization and re-fixation of salary and allowances if there are any improvements in the petitioner's salary structure, then there would be conducted a re-computation of the petitioner's pension and other allowances as per rules. The respondent No. 2 will get this entire exercise completed

within a period of 06 months from the date of receipt of the certified copy of this judgment presented by the petitioner. No orders as to costs.

(Capt. Alok Shekhar Tiwari)
Member (A)

DATE: 22nd MAY, 2026
NAINITAL
BK