

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

Present : Hon'ble Mr. Rajendra Singh

----- Acting Chairman

Hon'ble Capt. Alok Shekhar Tiwari

----- Member (A)

WRIT PETITION NO. 678 (S/S) OF 2020
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO.
150/NB/DB/2022]

Keshar Singh aged about 63 years (male) S/o Late Sri Dharam Singh, Jeep Driver (Retd.) Payjal Nigam Nainital, R/o House No. 282 Charten Lodge Mallital, Nainital District Nainital

----- Petitioner

VERSUS

1. State of Uttarakhand through Secretary Water Resource & Payjal Nigam, Dehradun.
2. Managing Director, Uttarakhand Payjal Nigam, 11, Mohioni Road, Dehradun.
3. Superintending Engineer Construction Division Uttarakhand Payjal Nigam Bheemtal, District-Nainital.
4. Executive Engineer Construction Division Uttarakhand Payjal Nigam Nainital.

----- Respondents

Present: Sri Bhagwat Mehra, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondent No. 1
Sri Siddhant Manral, Advocate for the respondents
No. 2 to 4

JUDGMENT

DATED: 8th OCTOBER, 2026

Per : Capt. Alok Shekhar Tiwari, Member (A)

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

- “(i). a suitable writ order or direction in the nature of mandamus commanding the respondents to count the entire service of the petitioner rendered as work-charge capacity on substantive as Jeep Driver in the respondents department followed by his regularization and calculate/revise the pension of the petitioner accordingly and ensure to make payment of revised/enhanced pension to the petitioner along with arrears of enhance amount of pension and other retiral benefits forthwith within a period as stipulated by this Hon’ble Court.
- (ii). Any other suitable writ, order or direction which this Hon’ble court may deem fit and proper in the circumstances of the case.
- (iii). Award the cost of petition to the petitioner.”

2. Brief facts of the case are as under:

2.1 By means of the present writ petition, the petitioner is seeking a suitable writ order or direction in the nature of mandamus commanding the respondents to count the entire service of the petitioner rendered in work-charge capacity as Jeep Driver in the respondent department followed by his regularization and calculate/revise the pension of the petitioner accordingly and ensure to make payment of revised/enhanced pension to the petitioner along with arrears of enhance amount of pension and other retiral benefits forthwith within a period as stipulated by this Hon’ble Court.

2.2. The petitioner was appointed as Jeep Driver in the respondent department in its work charge establishment vide appointment letter dated 22-7-1989 against the clear substantive and vacant post. On the basis of appointment letter the petitioner joined the services as Jeep Driver at Nainital.

2.3. After joining the service as Jeep Driver the petitioner discharged his duties with his full efficiency and to the satisfaction of his superior. The petitioner also discharged his duties as and when the same required by his superior even after his duty time, therefore, the petitioner's services and conduct was appreciated and he was rewarded by paying remuneration of Rs. 250/- vide Office Memorandum dated 25-8-1998.

2.4. Thereafter, the petitioner was regularized as jeep Driver on the pay scale of 335-8-415-10-49 vide order dated 16-12-1997 and thereafter the petitioner discharged his duties in the respondent department as a regular employee on the post of Jeep Driver.

2.5. Though the petitioner's services were regularized in the year 1997 but the Superintendent Engineer Construction Division Uttar Pradesh Jal Nigam, Nainital has issued a letter dated 23-5-2000 in respect of regularization of the petitioner.

2.6. Thereafter, the petitioner discharged his duties on the post of Jeep Driver as a regular employee continuously without any complaint and his entire service tenure remained unblemished and the petitioner after attaining the age of superannuation has retired from the post of Jeep Driver on 31-7-2017.

2.7. The respondent department has calculated the pension and others retiral benefits and started paying the same to the petitioner.

2.8. The respondent calculated the service of the petitioner, which was rendered by him as a regular Jeep Driver in the department, however, the respondent has not calculated the services of the petitioner as temporary/work charge and accordingly determined his pension which is being paid to him.

2.9. The petitioner was appointed on 22-7-1989 on the post of Jeep Driver on a clear and vacant post in work charge Establishment of the respondents and was regularized on the said post of Jeep Driver in the year 1997 and the respondent department has not counted his services for period which was rendered by petitioner as work charge and, thus, he is being paid much less pension than the amount for which he is entitled after clubbing his service rendered as work charge employee.

2.10. The petitioner came to know about a judgment and order of Hon'ble Apex Court dated 2-9-2019 passed in SLP No. 4371 of 2011 Prem Singh Vs. State of Uttar Pradesh and others, whereby, the Hon'ble Apex Court has held that the services rendered as work charge will be considered as a regular employee and will be calculated for payment and other retiral benefit such as gratuity, pension etc.

2.11. Petitioner also came to know that in compliance of the order dated 2-9-2019 passed by Hon'ble Apex Court in SLP No. 4311 of 2011 Prem Singh Vs. State of Uttar Pradesh and others the Public Works Department and Irrigation Department of State Government of Uttarakhand have decided to make payment of

pension and gratuity to the employee of Public Works Department and Irrigation department and issued the Government order dated 4-2-2020 for making payment to the work charge employees, who are retired for making pension and gratuity etc.

2.12. Pursuant to the aforesaid Government order dated 4.2.2020 the Engineer-in-Chief, P.W.D. Dehradun, Uttarakhand has also issued work order dated 13-2-2020 for making of pension and gratuity to the work Charge employee of Public works Department.

2.13. Similarly a Government order dated 4-2-2020 was also issued in respect of the payment of pension and gratuity by the Government to the work charge Employee of Irrigation Department by clubbing their services rendered as Work Charge employee.

2.14. The petitioner has also worked in the Peyjal Nigam Nainital as work charge employee since 1989 to 1997 and thereafter was regularized on the said post in the year 1997 in respect whereof the letter was issued by the respondent in the year 2000, therefore, the case of the petitioner is squarely covered by the decision of the Hon'ble Apex court dated 2-9-2019 passed in SLP No. 4371 of 2011 Prem Singh Vs. State of Uttar Pradesh and others for making payment of gratuity and pension after clubbing his service of work charge. The petitioner was retired on 31-7-2017 and the respondent department has not calculated and clubbed the period of his service which was rendered by the petitioner since the year 1989 to 1997 as work charge/temporary employee and made payment of gratuity and

pension with less amount than the amount for which the petitioner was entitled.

2.15. Having come to know about the aforesaid facts and order of Hon'ble Apex Court, the petitioner made a representation dated 08.06.2020 before the respondent No. 2 with a prayer that he may be paid the pension and other benefits by clubbing the period of his service from the date of his joining, i.e., 1-8-1989 till his regularization which were rendered as Work Charge employee.

2.16. On the aforesaid representation of the petitioner, the respondents have not paid any heed and the petitioner, thus, deprived from his lawful right of receiving the pension according to his entire service rendered by him to the respondent department.

3. On 31.07.2020, Sri Bhupendra Bisht, Advocate, has filed Counter Affidavit on behalf of the Respondents No. 2 (Managing Director, Uttarakhand Peyjal Nigam, 11, Mohioni Road, Dehradun), 3 (Superintending Engineer, Construction Division, Uttarakhand Payjal Nigam, Bheemtal, District-Nainital) & 4 (Executive Engineer, Construction Division, Uttarakhand Payjal Nigam, Nainital), in which it has been stated that-

3.1. At the outset answering respondent denies each and every averment contained in the Arbitration Application save and except which are specifically admitted.

3.2. Before giving parawise reply, the deponent submits that the present petition is barred on the ground of delay and laches on the basis of the principle that a fence sitter cannot be allowed to invoke the jurisdiction of a Court of equity, as because the fence sitter means the person waiting for litigation and when the result has come and a party approaches to the Court of law, in that situation, the benefit would be said to be belated. It is also not in dispute that the fence sitter cannot be allowed to get the benefit of judgment by invoking the jurisdiction of Court of law after lapse of long delay, this principle is subject to well recognized based on the form of delay and laches as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who have/had approached the Court earlier in time, had succeeded in their efforts, then such employees cannot claim the benefit of the judgment rendered in the case of similarly situated persons be extended to them as because they are to be treated fence sitter and caused latches and delay, and/or the acquiescence would be valid ground to dismiss their claim, but in the facts and circumstances of the present case whether the principle of fence sitter would be applicable is now required to be seen.

3.3. The contents of paragraph no. 2 of the writ petition are matter of record, being misconceived are denied. It is submitted that the deponent has given the reasons for disentitlement of the petitioner qua the reliefs claimed in the instant petition in subsequent paragraphs.

3.4. In reply to the contents of paragraph no. 9 & 10 of the writ petition, it is submitted that the petitioner had been getting retiral benefits after his superannuation on 31-07-2017. However, since the judgment passed by the Hon'ble Apex Court pertains to the Public Works Department/Irrigation Department of the State Government, which has not been applicable in case of employees of the Uttarakhand Pey Jal Nigam till date.

3.5. In reply to the contents of paragraph no. 11, 12, 13, 14, 15, 16 & 17 of the writ petition, it is submitted that firstly, the judgment passed by the Hon'ble Apex Court pertains to the Public Works Department/Irrigation Department of the State Government, which has not been applicable in case of employees of the Uttarakhand Pay Jal Nigam till date. It is further submitted that the Government order passed by the State Government are not automatically applicable in case of employees of the Nigam and have to be separately applied on the employees of the Nigam vide appropriate rules made by the State Government under Section 96 of U.P. Water Supply and Sewerage Act, 1975 and the Nigam has not adopted the Government orders relied by the petitioner till date by means of its Board meeting. Secondly, the petitioner having superannuated on 31-07-2017 is a fence sitter cannot be allowed to invoke the jurisdiction of a Court of equity, as because the fence sitter means the person waiting for litigation and when the result has come and a party approaches to the Court of law, in that situation, the benefit would be said to be belated. Thirdly, the judgments of the

Hon'ble Apex Court are prospective in nature and have been passed in case of other departments in peculiar facts and circumstances of those cases and are not automatically applicable on the employees of the Nigam. Fourthly, in case writ petitions are filed in respect of employees, who have retired long back, the same would open a Pandora box of litigations and would open the flood gates for litigants who have retired long back but now claim benefits in the light of judgments passed well after their superannuation from the department. It is submitted that the petitioner after his superannuation on 31-07-2017 is claiming benefits much belatedly vide his alleged representation dated 08-06-2020.

3.6. In view of the facts and circumstances as stated in the preceding paragraphs, it is amply clear that the writ petition filed by the Petitioner is bereft of merit and is liable to be dismissed with costs.

4. On 18.08.2020, Sri Ramji Srivastava & Sri Sagar Kothari, Advocates has filed Rejoinder Affidavit against the Counter Affidavit filed on behalf of the Respondents No. 2, 3 & 4, in which it has been stated that-

4.1. In reply to the contents of paragraph no. 2 and 3 of the counter affidavit it is submitted here that the instant writ petition has been filed by the petitioner Under Article 226 of the Constitution of India seeking relief for which he is entitled in accordance with law. There is no Arbitration application has been filed, therefore the

averments made in paragraph under reply that the deponent of the counter affidavit has gone through the arbitration application and has understood the contents thereof is wrong and denied.

4.2. The contents of paragraph no. 4 of the counter affidavit are wrong and denied. It is stated here that the petitioner after attaining the age of superannuation has retired from the post of Jeep Driver on **31-7-2017** and thereafter the respondent department has calculated the pension and others retiral benefits and paid the same to the petitioner vide letter dated **28-9-2018**. It is further submitted here that petitioner came to know about a judgment and order of Hon'ble Apex court dated **2-9-2019** passed in SLP No. 4371 of 2011 Prem Singh Vs. State of Uttar Pradesh and others whereby the Hon'ble Apex Court has held that the services rendered as work charge with the services rendered as a regular employee will be calculated for payment and other retiral benefit such as gratuity, pension etc. It is submitted here that when the petitioner came to know that the Public Works Department and Irrigation Department of State Government of Uttarakhand has decided to make payment of pension and gratuity to the employee of Public Works Department and Irrigation Department has issued the Government order dated 4-2-2020, whereby, service rendered by the employee as work charge employee was directed to be included for payment of pension and other retiral benefits. The petitioner having similar circumstances approached this Hon'ble Court by filing the writ petition aforesaid having a grievance that his services rendered as Ad-hoc employee

was not calculated for determining the gratuity and pension while in other department of the State of Uttarakhand such as Irrigation Department and P.W.D. were being granted benefits in compliance of the order and direction of the Hon'ble Apex Court. Therefore, it is absolutely wrong to say that the matter of the petitioner is barred by laches of delay or the petitioner is fence sitter. The case of petitioner is squarely covered by the case law laid down by Hon'ble Apex Court in the matter of **K.I. Shephard and others Vs. Union of India and others holding that in every case it is not necessary for every person to approach the Court. It is the duty of the authority to extend the benefit of a concluded decision in all similar cases without forcing every affected person to approach the Court to seek relief.** It is further submitted here that Judgment and order of Hon'ble Apex Court dated **2-9-2019** passed in SLP No. 4371 of 2011 Prem Singh Vs. State of Uttar Pradesh and others holding that the services rendered as work charge with the services rendered as a regular employee will be calculated for payment and other retiral benefit such as gratuity, pension etc. is not only to the extent of the persons and departments who approached the court but the same is a decision which applies on the matter of in all similarly situated as the decision of the Hon'ble court Apex Court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not. Therefore, the principle of fence sitter does not apply in the matter of the petitioners. The contrary averments made in paragraph under reply are vehemently denied.

4.3. The contents of paragraph no. 6 of the writ petition are not admitted hence denied. It is submitted here that the respondents are admitting the case as a matter of record, but denying the same therefore, the respondents are not permitted to blow hot and cold at the same point of time. The deponent reiterates the contents of paragraph no. 2 of the writ petition.

4.4. The contents of paragraph no. 8 of the counter affidavit are admitted to the extent that after attaining the age of superannuation the petitioner is getting the pension. It is pertinent to state here that the respondent calculated the service of the petitioner, which was rendered by him as a regular Jeep Driver in the department and accordingly, determined his pension, which is being paid to him and the service his service for calculating the pension and other retiral benefits. The rest of the averments made in paragraph under reply are not admitted hence denied. The appropriate reply has already been narrated in the foregoing paragraphs. The deponent further reiterates the contents of paragraph no. 9 and 10 of the writ petition.

4.5. In reply to the contents of paragraph no. 9 of the counter affidavit as stated are not admitted hence denied. The judgment of Hon'ble Apex Court holding that the service rendered by the employee as Ad-hoc will be added for giving retiral benefit would be applicable to all Government Department including the Uttarakhand Pey Jal Nigam, which is an Establishment of Uttarakhand

Government. The contrary averments made in paragraph under reply are not admitted hence denied. The appropriate reply has already been narrated in the foregoing paragraphs. The deponent further reiterates the contents of paragraph nos. 11 to 17 of the writ petition.

4.6. The contents of No. 11 of the counter affidavit are not admitted hence denied. It is the settled proposition of law that once the services of a work-charged employee have been regularized, there appears to be hardly any logic to deprive him of the pensioner benefits as are available to other public servants. After the services of a work-charged employee have been regularized, he is a public servant like other public servant. Non calculation the service rendered as Adhoc basis in service of the petitioner is not only unjust and inequitable but also hit by the vice of arbitrariness. Therefore, in view of the facts and circumstances of the present case mentioned in the foregoing paragraphs of this Rejoinder affidavit as well as writ petition, the writ petition deserves to be allowed and the petitioner is entitled for the relief sought in the writ petition.

5. On 12.10.2022, Sri Bhupendra Bisht, Advocate has filed Supplementary Counter Affidavit on behalf of the Respondents No. 2, 3 & 4, in which it has been stated that-

5.1. The Uttarakhand Pey Jal Nigam is a statutory Body created under the Uttarakhand (The Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002.

5.2. No such orders promulgated in relation to the field workmen has been received by the Uttarakhand Pey Jal Nigam. Had any such Government order been received by the Uttarakhand Pey Jal Nigam from the Government it would have been brought before the Board of the Nigam.

5.3. Keeping the prevailing financial situation in mind the said order would have been proposed by the Board of the Uttarakhand Pey Jal Nigam in the Board Meeting and passed thereafter.

5.4. After being approved by the Board the orders are vetted on the administrative level by the concerned departments. Only thereafter, such government orders are implemented.

5.5. No government orders passed by the Uttarakhand Government are automatically applicable upon the Uttarakhand Pey Jal Nigam as per Section 96 of the Uttarakhand (The Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002. Section 96 of the Uttarakhand (The Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002 reads as under:-

“96. Power to make rules.- (1) The State Government may, by notification in the Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the powers of the auditor under sub-section (3) of Section 50;

(b) the procedure in respect of surcharge under Section 51 including the provision of appeal, if any, in respect thereof;

(c) the procedure that may be followed by a Jal Sansthan or any other agency for assessment of the annual value under sub-section (3) of Section 53 including the authentication and custody of assessment lists, the revision and duration of such lists, the amendment and alteration of such lists, and appeals in case of dispute in respect of assessment;

(d) any other matter which is to be or may be prescribed.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each house of the State Legislature, while it is in session for a total period of not less than thirty days, comprised in its one session or more than one successive sessions, and shall, unless some later date is appointed, take effect from the date of their publication in the Gazette subject to such modifications or annulments as the two Houses of the Legislature may, during the said period, agree to make, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

5.6. In accordance with the above mentioned Section, all government orders are brought before the Board of the Uttarakhand Peyjal Nigam in a Board Meeting. Thereafter, the said orders are approved by the concerned department before being implemented.

5.7. Government orders by the Uttarakhand Government are not automatically implemented by the Uttarakhand Pey Jal Nigam. Hence, the present writ petition is devoid of merit and is liable to be dismissed throughout.

5.8. The petitioner has filed a earlier Writ Petition No. 3165 of 2018 (S/S) Keshar Singh Vs Uttarakhand Pey Jal Sansadhan Vikas

Evam Nirman Nigam. Wherein the petitioner had sought release of the post-retiral dues. The Hon'ble court vide judgment dated 11.09.2018 disposed of the writ petition with the direction to the answering respondent to release the amount of retrial dues and therefore the petitioner could and should have prayed for count the entire service of the petitioner rendered as work charge capacity on substantive as jeep driver in the respondent department. Thus the present petition is barred by constructive res judicata as well as principal law contained in Order 2 Rule 2 of CPC.

5.9. In view of the facts and circumstances as stated in the preceding paragraphs, it is amply clear that the writ petition filed by the petitioner is bereft of merit and is liable to be dismissed with costs.

6. Learned Counsel for the petitioner did not file any Supplementary Rejoinder Affidavit against the Supplementary Counter Affidavit filed on behalf of the respondents No. 2, 3 & 4.

7. 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. 678 (S/S) of 2020, which was relegated by the Hon'ble High Court to this Tribunal vide its order dated 15.11.2022, 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.

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

9. Learned Counsel for the petitioner has mainly reiterated the facts and pleadings as submitted in the writ (claim) petition. Apart from the main arguments, learned Counsel for the petitioner has relied upon Hon'ble Apex Court's judgment in Habib Khan's case, wherein, it was held by two Judges' Bench that the entire work-charge period of the employee would be counted for the computation of the pension. Subsequently, in the case of Prem Singh the three Judges' Bench decided on 02.09.2019 that the entire service in the work-charge would be considered for the computation of pension, but only an arrear of three years would be payable. Later on again, a two Judges' Bench of the Hon'ble Apex Court in the judgment of Udai Pratap Thakur's case on 28.04.2023 held that for the purposes of computation of post retirement dues under the provisions of payment of Gratuity Act the entire work-charge period should be taken into consideration. The learned Counsel for the petitioner has also relied upon Sudhanshu Sekhar Jena case decided by Hon'ble Apex Court on 21.02.2025 for putting forward his point before the Hon'ble Tribunal. Learned Counsel also clarified that the main benefit that would be accrued in favour of the petitioner would be in the terms of amounts of gratuity and leave encashment etc., the

relevant documents about which have deliberately not been produced by the respondent Corporation.

10. At this juncture, the Tribunal enquired of both the Counsels as to whether departmental vacancy for the post of regular Driver was available at the time when the petitioner was taken into temporary service of the Driver in the year 1989. The Tribunal wanted to ascertain as to whether the appointment of the petitioner as a work-charge Driver was done in anticipation of regularization later on against a regular vacancy, or was it entirely an ad-hoc appointment. Learned Counsel for the respondent Corporation could not reply the same or indicate the concerned document on record.

11. Further, the Tribunal observed that in the order-sheet dated 19.10.2020 the Tribunal had observed as follows:-

“WPSS No. 678 of 2020

The petitioner who had retired from the services of the Uttarakhand Payjal Nigam has filed the present writ petition praying for the remittance of the retiral dues after including therein the period of services rendered by him in the work-charge establishment.

He submits that he was appointed on 22.07.1989, as a jeep driver and later on his services were regularized on 16.12.1997 and later he had attained the age or superannuation on 31.07.2017.

In fact, for the remittance of the pensionary benefits after including the period of services rendered by him in the work-charge establishment was based on the principles which had been laid down by the Hon'ble Apex Court in the matter of Prem Singh's case as

adjudicated on 02.09.2019 in SLP No. 4371 of 2011, Prem Singh vs. State of U.P. and others.

The response was called for and respondents have filed the counter affidavit, the defence taken by them in para 9 of the counter affidavit is to the effect that the benefit of the government order of the State by virtue of which the pensionsary benefits have been directed to be determined after including therein the services rendered in the work-charge establishment, would not be applicable in the case of the petitioner, until and unless, the Uttarakhand Payjal Nigam, Bheemtal, District Nainital, adopts it, but however, nothing has been placed on record to show that on what basis this proposition has been pleaded by the respondents which creates a bar of applying the government order in the absence of its being adoption of it by the respondents corporation.

In order to answer to the said query of the Court, the counsel for the respondents submits that he may be granted two weeks time to place on record the guidelines issued by the corporation which creates such impediment of enforcing the government order issued by the State in the absence of its prior adoption by the department.”

12. Learned Counsel for the petitioner, resuming his argument, drew attention of the Tribunal towards Annexure No. 1 on record and emphasized that the appointment of the petitioner as a work-charge Driver had been done on 22.07.1989 against the vacancy of the post of a regular Driver at that time as is evident by the appointment letter/office memorandum issued by the Executive Engineer on 22.07.1989 (Annexure No. 1).

13. Learned Counsel for the petitioner has relied upon the case of Uday Pratap Thakur and Anr. Vs. The State of Bihar and Ors Civil Appeal No. 3155 of 2023 (@SLP (C) No. 10653 of 2018 with Binod Kumar and Ors. Vs. The State of Bihar and Ors. Civil Appeal No. 3156 of 2023 (@ SLP (C) No. 26340 of 2018 with Ganga Prasad Singh and Ors. Vs. State of Bihar and Ors Civil Appeal No. 3157 of 2023 (@ SLP (C) No. 7215 of 2019 and Maheshwar Pandey Vs. State of Bihar and Ors. Civil Appeal Nos. 3158-3159 of 2023 (@ SLP (C) Nos. 8734-8735 of 2023 (@ Diary No. 28954 of 2020).

14. Learned A.P.O., on his part apprised the Tribunal that in this matter the Government is only a formal party.

15. Learned Counsel for the respondents argued that the instant writ (claim) petition is the second round of litigation on the part of the petitioner, the facts about which the petitioner has hidden from the Hon'ble High Court and the Tribunal and, therefore, the petitioner has not come into the judicial process with clean hands. The petitioner had superannuated on 31.07.2017 and had filed an earlier Writ Petition No. 173/2018 before the Hon'ble High Court of Uttarakhand at Nainital, wherein he had not at all raised the issue of inclusion of work-charge period between 1989 to 1997. Therefore, this writ (claim) petition is defective as per the provisions of Order II Rule 2 and Order 21 of the C.P.C., which mandate that in the frame of suit the entire matter of grievance must be put forward once and for all. Any discrepancy or withholding of information would legally be considered as withdrawal and abandonment. Therefore, the instant

matter is infructuous and deserves to be dismissed on these counts. He further apprised the Tribunal that the respondents had considered the entire work-charge service of the petitioner, but only for qualifying the petitioner for the pension as mandated by Hon'ble Apex Court's rulings. Learned Counsel for the respondents also drew attention of the Tribunal that the 2019 ruling of Hon'ble Apex Court was critically disagreed upon by the 2023 ruling, which in turn was overruled by a 2025 ruling. Therefore, the final crux of the matter is that the entire work-charge period is mandated to be taken into consideration for qualifying the petitioner for his pension, but the post-retiral benefits would not be computed on the entire period of work-charge and regular service, as of now.

16. Learned Counsel for the respondents also drew attention of the Tribunal that the Hon'ble High Court's question in the order-sheet dated 19.10.2020 has been replied in detail in the para-9 of the Supplementary Counter Affidavit filed by respondents No. 2, 3 & 4, which bars the Corporation and its employees to automatically comply with any Government Order unless and until the Board of Directors has adopted the same. Therefore, the petitioner has made a blunder by claiming that Government Orders passed in compliance of the Hon'ble Apex Court's order dated 02.09.2019 in S.L.P. No. 4371 of 2011 Prem Singh Vs. State of Uttar Pradesh and others for the employees of Public Works Department and Irrigation Department would automatically upon the respondent Corporation too.

17. Learned Counsel for the respondent Corporation has relied upon in Civil Appeal No. 3155 of 2023 (@SLP (C) No. 10653 of 2018, Civil Appeal No. 3156 of 2023 (@ SLP (C) No. 26340 of 2018, Civil Appeal No. 3157 of 2023 (@ SLP (C) No. 7215 of 2019 and Civil Appeal Nos. 3158-3159 of 2023 (@ SLP (C) Nos. 8734-8735 of 2023 (@ Diary No. 28954 of 2020), Uday Pratap Thakur and Anr. Vs. The State of Bihar and Ors, Binod Kumar and Ors. Vs. The State of Bihar and Ors., Ganga Prasad Singh and Ors. Vs. State of Bihar and Ors and Maheshwar Pandey Vs. State of Bihar and Ors., and Civil Appeal of 2025 @ Special Leave Petition (Civil) No. 2146 of 2024 State of Odisha & Ors. Vs. Sudhanshu Sekhar Jena

18. With the permission of the Tribunal, learned Counsel for the respondents has filed his written submission already on 22.08.2024 as follows:-

“ FACTS:-

22.07.1989- Petitioner was appointed as Jeep Driver (Annexure No. 1)

16.12.1997- Petitioner's service was regularized.

31.07.2017- Petitioner superannuated.

28.09.2018- Chart of payment of retiral dues of the Petitioner.

Petitioner had preferred an earlier writ petition bearing W.P.S.S. No. 173 of 2018 before the Hon'ble High Court, wherein the Petitioner had sought the following reliefs:-

“(i). To issue a writ, order or direction in the nature of mandamus, commanding the

Respondent to forthwith release the outstanding retiral benefits to the Petitioner forthwith details whereof is given in representations dated 15.11.2017 and 25.12.2017 (Annexure No. 6 to the Writ Petition).

(ii). To issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii). To award the cost of the writ petition in favour of the Petitioner."

Writ petition no. 173 of 2018 was disposed of by the Hon'ble High Court vide order dated 18.01.2018 with the following directions:-

"Accordingly, the writ petition is disposed of in terms of the judgment rendered by Division Bench of this Court in Writ Petition No. (S/B) No. 459 of 2017.

Pending application, if any, also stands disposed of accordingly."

SUBMISSIONS:-

It is pertinent to mention that the Petitioner had earlier preferred a writ petition regarding his retiral dues. However, there was no pleading with regard the prayer that is being sought by the Petitioner before this Hon'ble Tribunal. Moreover, the Petitioner has come before this Hon'ble Tribunal concealing his earlier writ petition which had been disposed of by the Hon'ble High Court vide order dated 18.01.2018 and no liberty was granted by the Hon'ble High Court to the Petitioner to approach any Court of law or authority for seeking revision to his pension and other arrears by counting the entire service

of the Petitioner as work-charge employee for the purpose of pension and other benefits. Hence, the claim of the Petitioner is liable to be dismissed for concealing the fact that he had earlier preferred a writ petition which was disposed of by the Hon'ble High Court with no liberty and as such the claim petition is liable to be dismissed on this ground only.

Further, the Petitioner's instant claim petition is barred by the principles enunciated under Order II Rule 2 read with along with Section 11 of the Code of Civil Procedure, 1908 as well as Order XXIII of the Code of Civil Procedure, 1908 as this is the second petition of the Petitioner and hence, the same is barred by res-judicata. It is pertinent to mention that the instant claim petition is hit by Order II Rule 2 of the Code of Civil Procedure, 1908 as it is settled law that a person must include their entire claim related to a specific cause of action in one lawsuit. In the instant case at hand, the Petitioner being well aware of his right chose to not include the same in his earlier writ petition. As such, the instant claim petition is liable to be dismissed on the ground of being hit by Order II Rule 2 of the Code of Civil Procedure, 1908. Also, as the Petitioner abandoned the claim he is seeking before this Hon'ble Tribunal hence, the claim petition is also barred by the principles laid down in Order XXIII of the Code of Civil Procedure, 1908 as the Petitioner abandoned his claim in the earlier writ petition. The said provisions being general principles of law are applicable on writ petitions as well as claim petitions.

The Petitioner's reliance upon the judgment of the Hon'ble Supreme Court in the matter of Prem Singh vs. State of Uttar Pradesh reported in (2019) 10 SCC 516 is completely misplaced as is evident from a bare perusal of the said judgement itself as the same only permits

counting of services rendered under work-charged establishment for the purpose of qualifying service for pension and not to treat the same for seeking maximum pension. The work-charged service can be counted as qualifying service for pension not for the purpose of maximum pension. Further, the Hon'ble Supreme Court has clarified the said proposition of law in the matter of Uday Pratap Thakur & Ors. Vs. The State of Bihar & Ors., bearing Civil Appeal No. 3155 of 2023 decided on 28.04.2023, whereby, it has been held as under:-

“Now, insofar as the reliance placed upon the decision of this Court in the case of Prem Singh (supra) by the learned counsel appearing on behalf of the appellants is concerned, the reliance placed upon the said decision is absolutely misplaced. In the said case, this Court was considering the validity of Rule 3(8) of the U.P. Retirement Benefit Rules, 1961, under which the entire service rendered as work charged was not to be counted for qualifying service for pension. To that, this Court has observed and held that after rendering service as work charged for number of years in the Government establishment / department, denying them the pension on the ground that they have not completed the qualifying service for pension would be unjust, arbitrary and illegal. Therefore, this Court has observed and held that their services rendered as work charged shall be considered/counted for qualifying service. This Court has not observed and held that the entire service rendered as work charged shall be considered / counted for the quantum of pension/pension. The decision of this Court in the case of Prem Singh (supra), therefore, would be restricted to the counting of service rendered as work charged for qualifying service for pension.”

A bare perusal of the above quoted finding of the Hon'ble Supreme Court makes it abundantly clear that it has not been observed by the Hon'ble Supreme Court and not been held that the entire service rendered as

work-charged shall be considered/counted for the quantum of pension/pension. The decision of the Hon'ble Supreme Court in the case of Prem Singh (supra), therefore, would be restricted to the counting of service rendered as work-charged for qualifying service for pension. The Petitioner has already qualified for pension and as such, his reliance on the judgement of the Hon'ble Supreme Court in Prem Singh vs. State of Uttar Pradesh reported in (2019) 10 SCC 516 is completely misplaced. The Petitioner even on merits has no case and has merely agitated a cause which has no substance to it at all. Hence, the claim of the Petitioner is liable to be dismissed with cost.

In view of the above mentioned, it is expedient and necessary in the interest of justice, that this Hon'ble Tribunal may most graciously be pleased to dismiss the claim petition of the Petitioner on the grounds as narrated in the preceding paragraphs and award cost in favour of the Respondents, otherwise the Respondents shall suffer irreparable loss and injury."

19. Learned Counsel for the petitioner argued in his rebuttal that the reference to an earlier Writ Petition No. 3165 (S/S) of 2018 Keshar Singh Vs. Uttarakhand Peyjal Sansadhan Vikas Evam Nirman Nigam which has been put forward by the respondents in Supplementary Counter Affidavit as Annexure-I decided on 11.09.2018 is not the writ petition of the petitioner, and has been erroneously filed by the respondents, because that petitioner Keshar Singh is a different person, who had worked as a Chowkidar, therefore, nothing of that impugned judgment should be referred to in this instant matter. Instead the present petitioner's first Writ Petition

was 173/2018 decided by Hon'ble High Court on 18.01.2018 in favour of the petitioner, on the basis of which the respondent Corporation was compelled to calculate and provide the post-retiral dues to the petitioner. The instant Writ (Claim) Petition has been filed in the light of a new cause of action that has arisen after Hon'ble Apex Court's judgment dated 02.09.2019 in Prem Singh's case. Therefore, res-judicata will not apply on this instant writ (claim) petition. Also this is absolutely wrong on the part of the respondents to say that this second Writ (Claim) Petition of the petitioner suffers from defect of delay and laches and acquiescence. In fact, the petitioner had every reason and cause of action for filing this second Writ (Claim) Petition for obtaining his amended retiral dues which is a legal right of the petitioner in accordance with the impugned judgment of Hon'ble Apex Court dated 02.09.2019.

20. Having heard the learned Counsels for the parties and having perused the record in depth, the Tribunal has noted the significant facts and legal position in the matter as follows:-

(a). Though the citations relied upon by the parties are pertinent to this instant matter under question, yet it is important to note that the State of Uttarakhand has not issued any generalized Government Orders in pursuance to the cited rulings as pronounced by the Hon'ble Apex Court, particularly the judgment dated 02.09.2019 in the case of Prem Singh, rather only the Public Works

Department and Irrigation Department have issued the G.Os. for their departmental employees. No Government Order seems to have been issued by the Karmik Department in a generalized form of guidelines in respect of all the government employees including the State Corporations. Therefore, this is not universal in application within the Government Departments.

(b). Any Corporation functions under the statute of incorporation only, and not necessarily under the direct issuance of Government Orders for the Government Departments. Any Government Order issued in a generalized way, or in a specific manner for any particular Department is not applicable on a Corporation unless and until it has been adopted by the Board of Directors of that particular Corporation.

(c). As the learned Counsel for the respondent Corporation has correctly pointed out in his arguments and Counter Affidavit, Section-96 of the Uttarakhand (The Uttar Pradesh Water Supply and Sewerage Act, 1975) Adaptation and Modification Order, 2002 provides that no Government Orders passed by the Government of Uttarakhand are automatically applicable upon the Uttarakhand Pey Jal Nigam, meaning thereby, that

though the cited rulings of the Hon'ble Apex Court as well as the Government Orders issued in the Public Works Department and Irrigation Department are relevant to this instant matter, yet they cannot be enforced legally upon the respondent Corporation unless and until the Board of Directors of the respondent Corporation adopt the same in favour of the similarly situated employees of the respondent Corporation. Since the petitioner has not been able to establish that the Board of Directors of the respondent Corporation has adopted the impugned Government Orders accordingly, the provision under question cannot be suo moto enforced upon the respondents.

(d). This is also noteworthy here that the present writ (claim) petition does not suffer from the defects of delay and laches and acquiescence as insinuated by the learned Counsel for the respondents. The case of the petitioner is squarely covered by the case law laid down by the Hon'ble Apex Court in the matter of K. I. Shephard and others Vs. Union of India and others. However, this cannot be denied that the petitioner did not agitate the judicial process with transparency and clean hands. There was apparently an endeavour to hide

the facts about the first writ petition of the same petitioner before the Hon'ble High Court for obtaining his post-retiral dues unscrupulously.

21. Therefore, this writ (claim) petition manifestly suffers from the defects as enumerated above and does not hold water. Consequently, the writ (claim) petition is liable to be dismissed.

ORDER

Accordingly, the writ (claim) petition is hereby dismissed.

No orders as to costs.

(CAPT. ALOK SHEKHAR TIWARI)
Member (A)

(RAJENDRA SINGH)
Acting Chairman
(Virtual)

DATED: 8th OCTOBER, 2026
NAINITAL

BK