

**HIGH COURT OF UTTARAKHAND AT NAINITAL**

**THE HON'BLE CHIEF JUSTICE MS. RITU BAHRI  
AND  
THE HON'BLE JUSTICE SRI RAKESH THAPLIYAL  
23<sup>rd</sup> February, 2024**

**Special Appeal No. 153 of 2022**

State of Uttarakhand and others .....Appellants  
Versus

Prakash Chandra Harbola and others .....Respondents

Counsel for the appellants : Mr. P.C. Bisht, learned Addl. C.S.C.  
Counsel for the respondents : Mr. Bhagwat Mehra, learned Counsel.

**Judgment: (per Rakesh Thapliyal, J.)**

The instant Special Appeal is preferred by the State against the judgement and order dated 23.09.2021, passed by the learned Single Judge in Writ Petition (S/S) No. 2899 of 2018.

2. The respondent /petitioner preferred the Writ Petition with the following reliefs :-

*“A. To issue a writ order or direction in the nature of mandamus declaring the action of the Respondents, particularly Respondent No.1 and 3 in passing the impugned order dated 8.1.2018 and 22.01.2018 (Annexure No.32 and 33 respectively to the writ petition), as arbitrary and illegal.*

*B. To issue a writ order or direction in the nature of certiorari for quashing the impugned letter dated 8.1.2018 and impugned office order dated 22.1.2018 passed by the Respondent No. 1 and 3 respectively (Annexure No.32 and 33 to the writ petition).*

*C. To issue a writ order or direction in the nature of mandamus commanding the Respondents, particularly Respondent No.1 and 3 to grant all service benefits to the petitioner including Selection Grade, Promotional Pay Scale*

*and benefits of A.C.P. to the petitioner with effect from the date when the petitioner took charge on the post of Executive Officer i.e. 1.6.1990 along with its arrears.*

*D. To issue a writ order or direction in the nature of mandamus commanding the Respondents to grant all consequential benefits to the petitioner.*

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

*F. Award the cost of the writ petition in favour of the petitioner.”*

3. The brief facts of the case are that the petitioner was initially appointed on the post of Clerk on 01.03.1982 in the pay scale of Rs.330-495 in the Municipality, which at the relevant point of time was a Notified Area Committee of Dwarahat, District Almora. The petitioner discharged the duties on the said post w.e.f. 01.03.1982 till 31.07.1986, but due to non creation of the post of Clerk, the services of the petitioner came to an end w.e.f. 31.07.1986. Subsequently, the petitioner approached to the authorities for his reinstatement into the services, and thereafter, the Government created 7 posts in Municipality of Karanprayag, i.e. the Notified Area Committee of Karnprayag, District Chamoli, out of which, one post of Clerk was created in the pay scale of Rs. 330-495. Subsequently, by another government order dated 27.04.1987, directions were issued to appoint the petitioner on the newly created post of Clerk after taking into consideration his past services, either in Notified Area Committee, Nandprayag or Notified Area Committee of Karnprayag. In compliance thereof, the District Magistrate, Chamoli issued an appointment order on 04.05.1997 and appointed the petitioner on the post of Clerk in

Notified Area Committee, Karnprayag in the pay scale of Rs.330-495 on regular and substantive basis.

4. Thereafter, the District Magistrate, Chamoli referred the matter of pay fixation of the petitioner to State of U.P. on 26.06.1987, and subsequently, the benefit of pay protection was granted to the petitioner and his pay scale was fixed as Rs.365/- by adding the services rendered by the petitioner in Dwarahat Notified Area.

5. Simultaneously, the directions were issued to the District Magistrate to condone the break in service of the petitioner, i.e., 9 months 4 days in petitioner's services for the purposes of all service benefits, and accordingly, the District Magistrate treated the petitioner to be in service and condoned the break of 9 months and 4 days and granted all service benefits.

6. The petitioner continued regularly, and thereafter, a seniority list was prepared in 1991, wherein, the petitioner was shown as senior-most Clerk appointed w.e.f. 01.03.1982, wherein, it is also mentioned that the petitioner is also working as Secretary, due to transfer of one Chandra Shekhar Tiwari on administrative grounds.

7. Thereafter, the District Magistrate sent a recommendation letter to the government for approval of appointment of the petitioner as Secretary, and thereafter, the approval was accorded to the appointment of the petitioner as Secretary by order dated 12.12.1991. Thereafter, the District Magistrate again by another letter dated 20.12.1991, sent letter to the government seeking instructions and guidelines with regard to

the salary to the post of Secretary and on 26.12.1991, the State Government directed that the petitioner shall continue on the post of Secretary and the salary attached to the said post shall also be paid to him.

8. By virtue of an Amendment Act of 1994, in the Municipality Act, which was notified on 30.05.1994, all Nagar Mahapalika of the State became Nagar Nigam and all Nagar Palika became Nagar Palika Parishad and all the Notified Areas and Town Area Committee were became Nagar Panchayat. Consequently, the nomenclature of the post of Secretary was changed to Executive Officer (Nagar Panchayat). Thereafter, a tentative seniority list was issued in respect of the incumbent serving on the post of Executive Officer in different Nagar Panchayats and the petitioner was also included in the said seniority list, and ultimately, the said tentative seniority list was converted to final seniority list on 07.07.1994, wherein, the petitioner's name was placed at S.No. 31 and it was also shown that the petitioner was working as Executive Officer w.e.f. 01.06.1990.

9. In the year 2000, the State was bifurcated and the employees were asked to exercise their option. Consequently, the petitioner opted for the State of Uttarakhand and he was finally allocated to the State of Uttarakhand as an Executive Officer in Nagar Panchayat in the pay scale of Rs.3200-4900.

10. Subsequently, after bifurcation, another tentative seniority list was issued on 26.10.2005 of the person serving as Executive Officer and the said tentative seniority list was

converted to final seniority list on 19.06.2006, wherein, the petitioner is shown at S.No.27.

11. On 14.07.2006, the respondent No.1 passed a transfer order and reverted the petitioner to the original post and being aggrieved with the same, a Writ Petition, bearing Writ Petition (S/S) No. 1052 of 2006, was preferred and the Writ Petition was allowed on 14.09.2011 and the order dated 14.07.2006 was quashed and direction was issued to the respondents to reinstate the petitioner as Secretary / Executive Officer with all consequential benefits.

12. Subsequently, the judgement passed by the High Court dated 14.09.2011 was complied with and the petitioner was reinstated on the post of Executive Engineer and posted at Nagar Panchayat Kedarnath with all consequential benefits and pursuant thereto, the petitioner joined on 05.12.2011, and after attaining the age of superannuation, i.e., 60 years, the petitioner retired from the services from the post of Executive Engineer from Nagar Panchayat, Mahuwadabra, District Udham Singh Nagar. w.e.f. 31.01.2015.

13. After retirement, the respondents issued a confirmation order on 04.03.2016, wherein, the petitioner's services on the post of Executive Officer were confirmed. Thereafter, after being retired, when no retiral dues were paid to the petitioner, the petitioner preferred a Writ Petition, bearing Writ Petition (S/S) No.2043 of 2016, wherein, a direction was sought that the respondents may be directed to grant pension and gratuity from the date of retirement, i.e. 31.01.2015 with interest, including the entire arrears of pension.

14. In this Writ Petition the counter affidavit was called wherein, it was contended by the Director that since the date of confirmation of the petitioner on the post of Executive Officer is not clear in the confirmation order dated 04.03.2016, as such, he has referred the matter for clarification to the Government, and thereafter, on 31.03.2017, the respondent No.3 sanctioned the pension to the petitioner of an amount of Rs.6,860/- p.m. treating the petitioner to be an ad hoc Executive Officer. Neither the pay scale nor other service benefits like, selection grade/time scale, first promotional pay scale and second promotional pay scale, etc. were given to the petitioner and not only this, the benefits of ACP was not given to him on the pretext that he is not a regular employee on the post of Executive Officer.

15. Thereafter, the petitioner submitted a representation claiming all service benefits w.e.f. the date of his initial appointment, including the additional increment on completion of 8 years of continuous satisfactory service and pay scale on the next higher post i.e. Executive Officer on completion of 14 years service as first promotional scale and on completion of 19 years, another additional increment and on completion of 24 years, second promotional pay scale.

16. When no action was taken on the representation, the petitioner again preferred a Writ Petition, bearing Writ Petition (S/S) No. 3715 of 2017, which was disposed of by this Court by an order dated 02.01.2018, whereby, the direction was issued to the respondents to decide the representation of the petitioner by a reasoned and speaking order within a period of eight weeks.

17. Subsequently, the petitioner's representation was rejected. Being aggrieved of the same, the Writ Petition was preferred.

18. After exchange of the pleadings, the learned Single Judge allowed the Writ Petition by judgement and order dated 23.09.2021. While allowing the Writ Petition, the learned Single Judge took note of Rule 31 of U.P. Town Area and Notified Area Committees (Centralised) Services Rules, 1976 (for short '1976 Rules'), and by taking note of the said Rules, the learned Single Judge come into conclusion that the petitioner's case squarely falls under Rule 31 of 1976 Rules by observing therein that on 01.06.1990, the petitioner was given charge of Secretary, Town Area Committee Karnprayag, and subsequently, the District Magistrate, Chamoli by communication dated 25.11.1991, sent proposal to the State Government for approval of temporary /ad hoc appointment of the petitioner as Secretary. The State Government thereafter on 12.12.1991 accorded the approval and not only this, even thereafter, the District Magistrate again communicated to the Government with regard to the salary of the petitioner and the State Government directed the District Magistrate, Chamoli that the petitioner shall be permitted to be continue to work as ad hoc / officiating Secretary till further order and will be paid salary of the post of Secretary.

19. After taking into consideration all the aspects of the matter, including Rule 31 of 1976 Rules, learned Single Judge ultimately draw a final conclusion that denial of the service benefits to the petitioner w.e.f. the date of initial ad hoc appointment as Secretary, Town Area Committee, Karnprayag is not based on any logic.

20. We perused the entire judgement as well as the records available on records and during the course of arguments, learned counsel for the respondent/petitioner placed reliance on the judgment of Hon'ble Supreme Court in the case of **State of Gujrat and others Vs. Talsibhai Dhanjibhai Patel (Special Leave to Appeal (C) No. 1109 of 2022 decided on 18.02.2022**, wherein, the judgement of High Court of Gujarat dated 13.10.2020, passed in LPA No. 762 of 2020 was challenged. The Hon'ble Supreme dismissed the said SLP by affirming the judgment of Gujarat High Court by observing that it is unfortunate that the State continued to take the services of the incumbent on ad hoc basis for 30 years, and thereafter, now contend that the services rendered by the incumbent was on ad hoc and he is not entitled to pensionary benefits. The State cannot be permitted to take the benefit of its own wrong. To take the services continuously for 30 years and thereafter to contend that the employee, who has rendered 30 years continuous service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such steps.

21. After perusal of the said judgement, we are of the view that there is no illegality and infirmity in the judgement rendered by the learned Single Judge.

22. We have also examined the conduct of the State, the manner in which the Special Appeal was preferred. Prior to this petition, the petitioner for his right also approached to this Court in the year 2016, then in 2017 and subsequently in the year 2018 and when this petition was filed by the petitioner, the petitioner was 63 years old and now almost he has completed more than 68 years as on date.



23. It appears that without any substance and without going through the record, the present Appeal has been preferred by the State. Therefore, this Court is of the view that filing of such an appeal is totally an abuse of process of law, therefore, this Court has no hesitation to impose a cost of Rs.50,000/- upon the State Government to be paid to the respondent/petitioner within a period of one month.

24. Subject to the aforesaid observations, we do not find any merit in the present Special Appeal. Accordingly, the same is dismissed.

---

**Ritu Bahri, C.J.**

---

**Rakesh Thapliyal, J.**

Dt: 23<sup>rd</sup> February, 2024

Shiv