

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/S) No. 2107 of 2022

Jagat Chand Ramola and another

.....Petitioners

Versus

State of Uttarakhand and others

....Respondents

Present:

Mr. C.D. Bahuguna, Senior Advocate, assisted by Mr. C.S. Dalakoti, Advocate for the petitioners.
Mr. K.N. Joshi, D.A.G. for the State.

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the orders dated 01.09.2022 and 01.08.2022 issued by the respondent no.2/Senior Staff Officer (Establishment), in the Office of the Engineer-In-Chief, Public Works Department ("PWD"), Dehradun. The order dated 01.09.2022 relates to the petitioner no.2 Kushal Singh Panwar and order dated 01.08.2022 relates to the petitioner no.1 Jagat Chand Ramola. These orders were passed post retirement of the petitioners, which records that in the year 1995, the petitioners were absorbed in the service, but they were given higher pay scale of Rs.1200 – Rs.2040, whereas they were entitled to the pay scale of Rs. 950 – Rs. 1500 and accordingly. By these impugned orders, directions were given that the dues and pension of the petitioners may be fixed.

2. Briefly stated, according to the petitioners, after appearing in written examination and the interview, they were appointed on the post of Project Workers in the Bonded Labourer Rehabilitation Scheme ("the Scheme") in the State of Uttarakhand. The petitioner no.1 was

appointed on 23.03.1984 and the petitioner no.2 was appointed on 25.02.1982 on the pay scale of Rs. 250 – Rs. 425. They joined their posts on 24.03.1984 and 05.03.1982, respectively. Subsequently, the Scheme was abandoned by the Government and the services of the petitioners were terminated by an order dated 29.01.1992. This order was challenged before the Hon'ble High Court judiciary at Allahabad. The Hon'ble High Court judiciary at Allahabad on 26.10.1993 allowed the writ petition; quashed the termination orders of all the project workers, including the petitioners and issued direction to the State Government for absorption of the petitioners in the Government Department. Against this order, SLP was also dismissed. When the State of Uttar Pradesh did not comply with the directions dated 26.10.1993, passed by the Hon'ble High Court judiciary at Allahabad, contempt petition was filed. Subsequently, the petitioners were absorbed in PWD, Dehradun as Junior Clerk on 05.04.1995 at a pay scale of Rs. 950 - Rs1500. They joined their duties.

3. It was the case of the petitioners that since they were working as a Project Workers in the Scheme in the pay scale of Rs.1200 – Rs.2040 and they were absorbed in the pay scale of Rs.950 – Rs.1500, they agitated their claim so as to get pay protection and finally, it was allowed by the orders dated 29.04.2008 and 12.03.2008 issued by the Chief Engineer, Level-I, PWD, Dehradun. Thereafter, the petitioners were given promotional pay scale etc. and after completing their tenure, the petitioners retired. The petitioner no.1 was retired on 31.01.2021 and the petitioner no.2 was retired on 31.09.2021. They were not paid their dues and by the impugned order, it was observed that on 05.04.1995, their absorption was wrongly done in the pay scale of Rs.1200 – Rs. 2040, whereas, it ought to have been

in the pay scale of Rs.950 – Rs.1500. Accordingly, directions were issued to calculate the pay of the petitioners throughout their career and thereafter, their pension matter may be settled. This is impugned.

4. The respondent nos. 2, 3, 4, 5 and 6 have filed their counter affidavit. The events, the joining of the petitioners as project workers in the Scheme, their termination and subsequent absorption on 05.04.1995 in the PWD has been admitted by these respondents. In the counter affidavit, in para 3, these respondents have admitted that initially, the petitioners were absorbed on the post of Junior Clerk. Rs.950 – Rs. 1150, but subsequently, on 29.04.2008, it was decided to absorb them in the pay scale of Rs.1200 – Rs.2040 (as amended pay scale of Rs.4000-100-6000 w.e.f. the date of absorption and it was clarified that the post would be as Junior Assistant). In this counter affidavit, para 3, also records that in accordance with Clause 7 of the Government Order dated 03.07.1992, a separate order should have been issued by the Administrative Department with the consent of the Finance Department for the purpose of protection of the last pay scale drawn from the erstwhile department and at the relevant time, there was no separate order passed for this purpose. It is only thereafter, the matter was further agitated. Though, in its counter affidavit, in para 3 itself, it is admitted by these respondents that the petitioners were working under the Scheme on the pay scale of Rs.1200 – Rs. 2040 (revised pay scale of Rs. 4000 to 6000, Grade Pay 2400/-).

5. It is further interesting to note that in para 30 of the writ petition, the petitioners have stated that various other employees, who had been working under the Scheme were also absorbed in the PWD alongwith the petitioners with the same pay scale. They have retired

and their cases were never reopened. The petitioners have named those persons in para 30 of the writ petition. In para 17 of the counter affidavit, these respondents have admitted this situation and stated that similarly placed persons were paid under mistake and the petitioners cannot claim for the negative parity.

6. Heard learned counsel for the parties and perused the record.

7. Learned Senior Counsel appearing for the petitioners submits that the petitioners were working under the Scheme for a long, when their services were terminated; after the orders passed by the Hon'ble High Court judiciary at Allahabad, they were absorbed in the PWD, on 05.04.1995, on the pay scale of Rs. 950 – Rs.1500. But, it is argued that earlier the petitioners were working on the pay scale of Rs 1200 – Rs. 2040 as project workers therefore, they agitated that their pay should be protected and by orders dated 29.04.2008 (*qua* petitioner no.1) and 12.03.2008 (*qua* petitioner no.2), the respondent no.3/ the Chief Engineer, Level-I, PWD, Dehradun corrected the pay scale of both the petitioners was corrected to Rs.1200 – Rs.2040.

8. It is argued that pay scale of the petitioners was rightly corrected in the year 2008. Their absorption could not have been done on the pay scale below the pay scale, at which, they were working under the Scheme. Referring to the Government Order dated 03.07.1992, which is Annexure 8 to the writ petition, learned senior counsel submits that paras 7 and 8 based on which, objection has been raised has no relevance. The petitioners deserve protection of the

pay scale, which they got in the year 2008. If the Finance Department's approval has not been taken, he submits that, after such a long delay, now, it cannot be said that the pay protection was wrongly granted. Insofar as, violation to Clause 8 is concerned, he submits that it has no application because the petitioners were appointed as Junior Assistant in the PWD.

9. Learned State counsel submits that the petitioners were absorbed in the PWD on 05.04.1995 and from that date they may be considered as Government servants. Their service conditions should have been specified by any Government order, which was never specified. He submits that when the petitioners were granted pay protection in the year 2008, after their absorption in the PWD, at that time approval of Finance Department was not taken and no separate order was passed. The matter was referred to the Finance Department and thereafter, impugned orders have been passed.

10. Facts are not in dispute. The petitioners were working under the Scheme on the pay scale of Rs.1200 – Rs.2040. Their services were terminated and subsequently, they were absorbed in the PWD on 05.04.1995 at the pay scale of Rs.950 – Rs.1500, which they agitated and with regard to the petitioner no.1 Jagat Chand Ramola on 29.04.2008, his claim for the pay scale, at the time of absorption was corrected as Rs.1200 – Rs. 2040 and by order dated 12.03.2008, the pay scale of the respondent no.2 Khushal Singh Panwar has been corrected from the date of his absorption as Rs.1200 – Rs.2040.

11. The only question is, as to whether this pay scale of Rs. 1200 – Rs. 2040, which was approved to the petitioners, at the time of

their absorption on 05.04.1995 is correct? In the impugned order, reference has been made to an order dated 03.07.1992, particularly, it is stated that the petitioners were given the pay scale of Rs. 1200 – Rs. 2040, in fact, from 05.04.1995, in violation to paras 7 and 8 of the Government Order dated 03.07.1992. Para 7 of this Government Order dated 03.07.1992 speaks that the persons, whose services were terminated under the Scheme would be appointed in the Government Service and their last drawn pay shall be protected, for which purpose, after consultation from the Finance Department, a separate order shall be passed. Para 8 records that the erstwhile employees of the Scheme, shall be appointed only against the post to be filled by direct recruitment.

12. It is not disputed even by the respondents that before their absorption in the PWD on 05.04.1995, the petitioners were working under the Scheme on the pay scale of Rs.1200 – Rs.2040. As per Government Order dated 03.07.1992, the petitioners last drawn salary was to be protected at the time of their appointment in the Government services. Initially, the petitioners pay was not protected, when they were absorbed in the PWD at the pay scale of Rs. 950 – Rs.1500, but subsequently, on their agitation in the year 2008, the respondent no.3/ the Chief Engineer, Level-I, PWD, Dehradun corrected this. Pay has rightly been protected. But, what is being stated by the respondents/State is that as per Clause 7 of the Government Order dated 03.07.1992, the Finance Department ought to have been consulted and a separate order should have been issued. But, if it is not done, whose fault is it? The petitioners cannot be blamed for it. It is not the case that the petitioners were not working on the pay scale of Rs.1200 – Rs.2040, when their services were terminated under the

Scheme. It is also admitted that the Government Order dated 03.07.1992 protects the last drawn salary of the employees, who were terminated under the Scheme and they were inducted in the Government service. Only one formality was not done according to the respondents that the Finance Department was not consulted and separate order was not passed. For that reason, revision of the salary cannot be done after a lapse of 27 years. The petitioners have already retired. The petitioner no.1 was retired on 31.01.2021 and the petitioner no.2 was retired on 31.09.2021. Therefore, this Court is of the view that premise of the impugned order itself is bad in the eyes of law. Accordingly, the petition deserves to be allowed.

13. The writ petition is allowed.

14. Impugned orders dated 01.09.2022 and 01.08.2022 set aside.

15. Respondents are directed to pay all admissible dues to the petitioners within two months from today alongwith the interest @ 6% per annum.

(Ravindra Maithani, J.)
18.12.2025

Jitendra