



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Bench No. 497 of 2024

06 August, 2026

Lalita

--Petitioner

Versus

- 1: State Of Uttarakhand
- 2: State Of Uttar Pradesh
- 3: Director General

--Respondents

Presence:-

Mr. Piyush Tiwari, learned counsel for the petitioner.

Mr. S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand.

Mr. I.D. Paliwal, learned Standing Counsel for the State of U.P.

Coram : **Hon'ble Manoj Kumar Tiwari, J.**
 Hon'ble Pankaj Purohit, J.

Hon'ble Manoj Kumar Tiwari, J. (Oral)

By means of present writ petition, petitioner has sought the following reliefs :-

1. “ Issue a writ or order in the nature of certiorari quashing the order dated 02.04.2024 (being Annexure No.23) passed by respondent no.3, by which the inclusion of benefits of time scale of pay and Non-Practicing Allowance (N.P.A) in the pension of the petitioner has been denied.
2. Issue a writ, order or direction in the nature of mandamus directing the respondents to sanction enhanced pension by including the time scale benefit of 5 years of regular service and accordingly enhanced his pension w.e.f. 13.08.1998 and revised Non-Practicing Allowance (N.P.A) and Hill Development Allowance benefit in the pension of the petitioner as per applicable government orders and pay arrears thereof.”

2. According to petitioner, her husband was appointed as Medical Officer on *ad hoc* basis in the year 1992 in the erstwhile State of Uttar Pradesh; he was



subsequently appointed as Medical Officer w.e.f. 01.06.1994 by direct recruitment on the recommendation of Public Service Commission, and he died while in service on 12.08.1998. Petitioner was sanctioned extraordinary family pension which she is getting ever-since the date of death of her husband. Petitioner made a representation claiming time scale of pay which is admissible to a government servant upon completion of 5 years of continuous satisfactory service on a post. Her representation was rejected by the Director General, Medical Health and Family Welfare, Uttarkhand vide order dated 02.04.2024. The reason assigned is that since petitioner's husband was a substantively appointed medical officer w.e.f. 01.06.1994, and he served only for 4 years, 2 months and 12 days till his death, and he had not completed 5 years of service as per government policy, therefore, she is not entitled for time scale.

3. Learned counsel for the petitioner has relied upon the judgment rendered by the Hon'ble Supreme Court in the case of **Dr. Chandra Prakash and others vs. State of U.P. and Another** reported in (2002) 10 SCC 710. Paragraph No.47 of the said judgment is reproduced hereunder: -

"47. In any event as already noted, under Rule 18 seniority is to be determined from the date of their orders of appointment and not from the date of their selection by the PSC or receipt of the Selection list by the Government. As noted in Tandon's case, the selectees had not been issued orders of regular appointment at all. Clearly, therefore, they cannot claim seniority over the writ petitioners some of whom have been serving since 1965 and the rest at least since 1976. Assuming that the writ petitioners had appeared before the PSC, it would not mean that by reason thereof seniority was to be counted from the date of preparation or submission of the Selection Lists. If the selectees on the basis of the decision in Tandon's case were treated as having been appointed, their appointment would at the highest relate to



1996 when this Court directed their appointments from the date of receipt of the selection lists by the Government; a direction which was wholly contrary to the Rules. Strictly speaking with the setting aside of the decision in Tandon's case the selectees cannot even have this order to fall back on. But the fact remains that the selectees have actually been serving. Therefore having regard to the peculiar circumstances of this case, it would, in our view, be equitably appropriate to treat them as having been appointed from the date on which they actually joined the service."

4. The judgment relied by petitioner's counsel does not support the case of petitioner. In the case of Dr. Chandra Prakash (*Supra*), Hon'ble Supreme Court was dealing with a case in which a medical officer, appointed on *ad hoc* basis, was regularized in service, while petitioner's husband was not regularized in service but he was appointed as medical officer after being selected in an open selection held by the Public Service Commission.

5. Even otherwise, in the case of Dr. Chandra Prakash, issue of time-scale or selection grade or A.C.P. was not considered at all and question of seniority alone was decided. In the case in hand, petitioner's husband had not completed 5 years' service as medical officer after substantive appointment till his death, therefore, the view taken by the Director General, Medical Health in the impugned order, cannot be faulted. Thus, there is no scope of interference with order dated 02.04.2024.

6. Learned counsel for the petitioner then submits that while working as Medical Officer, petitioner's husband was receiving Non-Practicing Allowance (NPA) and Hill Development Allowance (HDA) which is treated as part of salary, however, while fixing family pension, those allowances were not taken into account, which has resulted in miscarriage of justice.



7. Mr. I.D. Paliwal, learned Counsel, appearing on behalf of State of Uttar Pradesh, concedes that from perusal of record, it appears that benefit of Non-Practicing Allowance and Hill Development Allowance was not given to petitioner while determining the amount payable as family pension.

8. In such view of the matter, we dispose of the present writ petition with liberty to petitioner to make representation to the Secretary, Medical Health and Family Welfare, Government of Uttar Pradesh. If petitioner makes such representation within two weeks, the concerned Secretary shall take decision, thereupon, as per law, within four months thereafter.

9. Pending application, if any, stands disposed of.

(Pankaj Purohit, J.)

(Manoj Kumar Tiwari, J)

06.08.2026

Rajeev/Nahid