2026:UHC:10399-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Bench No. 121 of 2025

HON'BLE SRI MANOJ KUMAR TIWARI
AND
HON'BLE SRI JUSTICE SUBHASH UPADHYAY
16 November, 2026

Surendra Dutt Bijalwan & another ... Petitioners

Versus

State Of Uttarakhand & others ... Respondents

Presence:-

Mr. C.D. Bahuguna, learned Senior Counsel assisted by Mr. C.S. Dalakoti, learned counsel for the petitioners.

Mr. J.C. Pande, learned Standing Counsel for the State of Uttarakhand.

Mr. C.S. Rawat, Advocate with Ms. Rajni Supyal Latwal, learned counsel for respondent no. 4.

Hon'ble Manoj Kumar Tiwari, ACJ
Hon'ble Subhash Upadhyay, J.

(Per: Hon'ble Manoj Kumar Tiwari, ACJ.)

JUDGMENT

1. This writ petition is filed challenging judgment and order dated 06.03.2025 passed by Uttarakhand Public Services Tribunal Bench at Nainital in Claim Petition No. 68/NB/DB/2022. Operative portion of the impugned judgment is reproduced below:-

> "13. Based on the pleadings of both the parties and the documents presented, we are of the opinion that the petitioner was appointed on ad-hoc basis on 30/8/1989 on the post of the Junior Clerk. He was reappointed by the respondents on the order of the Hon'ble High Court, was treated as on the job from the date of termination (on 30.06.1992) to his rejoining on 23.09.2002 for which he was paid salary and other consequential benefits also.
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> 14. By the order of the Hon'ble High Court, the ad-hoc service of the petitioner from date of his initial appointment on 30/8/1989 till date of regularization on 28.01.2013 has become continuous. The respondents have considered this period for grant of ACP also. The order of regularization mentions that the seniority of the petitioner will count from the date of his regularization and the respondents did not accept the representation for granting the seniority from his date of adhoc appointment.

15. The judgment of this Tribunal in the matter of Mohan Singh vs State of Uttarakhand is not applicable in this case, as it deals with seniority of the persons who were appointed on the different dated but regularized from the same date by different orders. Here the petitioner and private respondents were regularized from different dates by different orders.

16. The judgment as cited by the petitioner in the case of State of Haryana & Ors vs. Devi Lal (supra) is applicable in the case of the petitioner, as petitioner has worked continuously w.e.f. 30/8/1989 till his regularization.

17. On the basis of the above, we hold that the impugned order dated 06.08.2022 is liable to be modified treating the seniority of the petitioner from 30.08.1989, the date of his initial appointment and the seniority list dated 06.08.2022 is liable to be modified to the extent that the petitioner is placed at Sl. No. 4 above Shri Rajendra Prasad Pant.

ORDER

The impugned order dated 06.08.2022 is hereby modified treating the seniority of the petitioner from 30.08.1989, the date of his initial appointment. Accordingly, the respondents are directed to modify the impugned seniority list dated 06.08.2022, placing the petitioner at Sl. No 4 above Sri Rajendra Prasad Pant. No order as to costs."

2. Learned Senior Counsel appearing for the petitioners submits that respondent no. 4 was given ad-hoc appointment as Junior Clerk in the year 1989; his services were terminated vide order dated 30.06.1992 but he was reinstated in service pursuant to interim order passed by this Court in WPSS No. 6614 of 2001 (*old number WPSS No. 5996 of 1996*); his services were regularized on 28.01.2013 under Regularisation Rules, 2011 framed by State of Uttarakhand.

3. Learned Senior Counsel further submits that respondent no. 4 never challenged his regularization effective from 28.01.2013 or the stipulation made in the regularisation order; after more than nine years of his regularization, he approached Uttarakhand Public

Services Tribunal claiming seniority for the past services rendered before regularization as ad-hoc employee and learned Tribunal allowed the claim petition by ignoring Rule 10 of the Regularisation Rules.

4. Rule 10 of the Regularisation Rules, 2011 is *pari materia* to Rule 10 of Regularisation Rules, 2013 which provides that a regularized employee will be entitled to seniority only from the date he assumes charge of the post/cadre after regularization and he shall be placed in the seniority list below the substantively appointed employees serving in that post/cadre.

5. Learned Tribunal has held that since benefit of ad-hoc service was given to respondent no. 4 for ACP, therefore, he is entitled to seniority for the entire service period, including those rendered in ad-hoc capacity.

6. ACP is governed by Executive Instructions, while seniority is governed by Statutory Rules framed under proviso to Article 309 of the Constitution. Merely because the service rendered by respondent no. 4 in ad-hoc capacity was taken into account for grant of ACP will not entitle him for seniority, unless the Seniority Rules so provide.

7. Rule 10 of the Regularisation Rules, 2011 unequivocally provides that upon regularization, a regularized employee shall be entitled to seniority only from the date of assuming charge, after regularization. It further provides that a regularized employee shall be

placed in the seniority list below existing members of service. This aspect, however, was completely overlooked by learned Tribunal.

8. Learned Tribunal has not indicated any reason for modifying the seniority list. In para 12 of the impugned judgment, contention of learned State Counsel based on Rule 10 of Regularisation Rules is noted, however, the same has not been dealt with in the impugned judgment. Learned Tribunal has relied upon a judgment rendered by Hon'ble High Court of Punjab & Haryana rendered in the case of *State of Haryana & others vs Devi Lal*, which is distinguishable on facts.

9. An ad-hoc employee does not automatically get seniority from the date of initial appointment, unless the regularization order so provides. Regularisation Order dated 28.01.2013 provides that three persons, including respondent no. 4, shall stand regularized with immediate effect. Respondent no. 4 did not challenge the said stipulation made in the regularization order before any judicial forum. After accepting the benefit of regularization, with the condition attached therewith, respondent no. 4 challenged the seniority list by contending that he was entitled to seniority from the date of his initial appointment.

10. Learned Tribunal, by ignoring the stipulation made in the regularization order that regularization shall be effective from 28.01.2013, allowed the claim

petition, without adverting to Rule 10(1) of the Regularisation Rules. Thus, the impugned judgment is interferable.

11. In the case of *Shyam Sunder Oberoi & others vs. District & Sessions Judge, Tis Hazari Courts, reported as 2022 (3) SCC 197*, Hon'ble Supreme Court while dealing with the issue of *inter se* seniority between direct recruits vis-à-vis employees, who were regularized on the post of Lower Division Clerk, held as under:-

> "**17.** We consider it appropriate to observe that the employees who were appointed on ad hoc basis and qualified typing test at the later stage, in absence of the scheme of rules in determining seniority, at least could not have a right to march over such of the employees who were appointed on substantive basis after going through the process of selection for holding regular selection and their right of seniority in no manner be relegated qua such of the ad hoc employees who qualified typing test at a later stage and regularised subsequently from the date of initial appointment like in the instant case by an Order dated 17-11-2000."

12. Similarly in the case of *Rashi Mani Mishra & others vs State of Uttar Pradesh & others, reported as (2021) 17 SCC 399*, Hon'ble Supreme Court held as under:-

> "**22.** As per Rule 21 of the 1993 Rules, the seniority of persons substantively appointed to a post in the service shall be determined in accordance with the Uttar Pradesh Government Servants' Seniority Rules, 1991, as amended from time to time. Even as per the Service Rules, 1993, "substantive appointment" means an appointment, not being an ad hoc appointment, on a post in the cadre of the service… . As per Seniority Rules, 1991, which also defines the "substantive appointment" as per Rule 4(h), the seniority shall be counted only from the date of their "substantive appointment". In the present case, Seniority Rules clearly provide that seniority in any category or cadre post shall be determined from the date of order of "substantive appointment". As observed and held by this Court in Santosh Kumar [Santosh Kumar v. G.R. Chawla, (2003) 10 SCC 513 : 2004 SCC (L&S) 329] , ad hoc appointments cannot be deemed to be substantive

appointments. Even the definition of “substantive appointment” under the Service Rules, 1993 and the Seniority Rules, 1991, referred to hereinabove, is very clear and the service rendered as ad hoc cannot be treated as “substantive appointment”.

23. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularisation in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely, Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularisation as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent redetermination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989 i.e. from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularisation in the year 1989 is to be restored.”

13. In the case of *State of Haryana & others vs. Vijay Singh & others, reported as (2012) 8 SCC 633*, Hon’ble Supreme Court, after considering the entire case law on the point, has held as under:-

“30. None of the aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and such appointment is not made by the specified recruiting agency is entitled to have his ad hoc service counted for the purpose of fixation of seniority. Therefore, the respondents, who were appointed as Masters in different subjects, Physical Training Instructor and Hindi Teacher on purely ad hoc basis without following the procedure prescribed under the 1955 Rules are not entitled to have their seniority fixed on the basis of total length of service. As a corollary to this, we hold that the direction given by the High Court for refixation of the respondents' seniority by counting the ad hoc service cannot be approved.”

14. The view taken by learned Tribunal is

contrary to the settled law on the point and is thus unsustainable.

15. Accordingly, the writ petition is allowed. Judgment dated 06.03.2025 passed by learned Uttarakhand Public Services Tribunal in Claim Petition No. 68/NB/DB/2022 is set aside.

MANOJ KUMAR TIWARI, ACJ

SUBHASH UPADHYAY, J.

Dt: 16.11.2026
Aswal