



IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 188 of 2021 (S/B)

Km. Poonam Bhatt and Others Petitioners

Vs.

State of Uttarakhand and others Respondents

Presence:

Mr. B.D. Upadhyay, learned Senior Advocate assisted by Mr. Pankaj Tangwan, learned counsel for the petitioners.

Mr. N.K. Papnoi, learned Addl. C.S.C. for the State of Uttarakhand.

Mr. Hari Mohan Bhatia, learned counsel for the respondent nos. 3 & 4.

With

Writ Petition No. 287 of 2021 (S/B)

Dharmendra Prasad and Others Petitioners

Vs.

State of Uttarakhand and others Respondents

Presence:

Mr. B.D. Upadhyay, learned Senior Advocate assisted by Mr. Pankaj Tangwan, learned counsel for the petitioners.

Mr. N.K. Papnoi, learned Addl. C.S.C. for the State of Uttarakhand.

Mr. Hari Mohan Bhatia, learned counsel for the respondent nos. 3 & 4.

Reserved on : 03.08.2026

Delivered on : 11.08.2026

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Siddhartha Sah, J.

(Per: Hon'ble Siddhartha Sah, J.)

Since the same judgment / order dated
03.05.2021 passed by Uttarakhand Public Services Tribunal

has been assailed in both the petitions, therefore, both the petitions are being taken together and decided by this common judgment. For convenience, facts of Writ Petition No. 188 of 2021 (S/B), are being taken into consideration.

2. By means of the present writ petition, the petitioners have assailed the judgment and order dated 03.05.2021, passed by the Uttarakhand Public Services Tribunal in Claim Petition No.33/NB/DB/2019.

3. Background facts narrated in the writ petition are being stated hereunder :

i. The petitioners and private respondents appeared in the selection process initiated by the Director, Ayurvedic and Unani Services for filling up the post of Pharmacist. An advertisement was issued on 5th October, 2009 and the selection committee was constituted as per the Uttarakhand Ayurvedic and Unani Pharmacist Service Rules, 2009. The appointment to the post of Pharmacist was made on the basis of select list to be prepared under Rule 15 of the service rules. The duly constituted selection committee in its meeting held on 25-11-2009 took a decision that the candidates, who have passed the examination through back paper/ supplementary examination

would be treated as a separate class and shall be placed in the merit list below the candidates, who had passed the examination without any supplementary or back paper examination. The respondent no. 3 and 4 and other six candidates who had obtained their diploma examination through back paper/ supplementary examination were, as such, placed below in the merit list and could not be appointed.

ii. The respondent no. 3 and Sri Rakesh Negi filed a writ petition no. 1231 of 2009 (S/S) ("the writ petition") before this Court initially with a prayer that the respondent authorities be directed to consider their names in the final selection list of Pharmacist in Ayurvedic and Unani services and issue appointment letters to them in view of the higher rank and marks obtained by them in batch of year 2007 application.

iii. Later through an amendment application, the respondent no. 3 and Sri Rakesh Negi prayed for quashing of the select list and persons who were likely to be affected were impleaded as a party to the writ petition.

iv. This Court on 3rd August, 2012 was pleased to allow the writ petition and the select list was quashed and the official respondents were directed to prepare a fresh select list in accordance with the rules and to issue appointment orders.

v. The petitioners and other candidates who were not a party to the writ petition and were affected by the order dated 3rd August, 2012 sought leave to appeal and filed a Special Appeal no. 273 of 2012 namely, Ansul Rawat and others Vs. State of Uttarakhand and others ("the special appeal"). The Hon'ble Court on 4th September, 2012 was pleased to dismiss the special appeal and application to leave to file the special appeal, however, it was provided that "this order will not prevent the applicants seeking leave to appeal to take such recourse to law as they may be advised, in the event, they are reappointed, to seek their appointment with effect from the date they were originally appointed ".

vi. In pursuance to the order dated 3rd August, 2012, passed in the writ petition and the order dated 4th September, 2012, passed in the special appeal, the State Government considered the

matter and vide order dated 25th September, 2012, the Director, Ayurvedic and Unani Services, Dehradun, who is appointing authority, was asked to prepare afresh merit list and to initiate the process of appointment. In pursuance to the said direction, the Director, Ayurvedic and Unani Services, Dehradun on 07-11-2012 issued the order of appointment / reappointment. In the said order, it was clarified that the appointment/ reappointment order includes the name of the persons, who were already appointed. It was also stipulated in the said order that by including the name of the candidates, who have to be given the benefit of the order passed by the Hon'ble Court in writ petition and the special appeal, the order of appointment/ reappointment is being issued. In the said order, it was also specified that the candidates, who were placed at serial no. 10, 19, 78, 98, 130, 135, 136 and 138 would complete the formalities of providing the medical certificates of the concerned Chief Medical Officer, character certificate, educational and preferential qualification certificate, birth certificate and other relevant documents before submitting their joining before the concerned District Ayurvedic and Unani Officer.

vii. The said stipulation was made with respect to the said 08 candidates only and all other 230 candidates, which includes the petitioners also, there was no such stipulation as the petitioners as well as the aforesaid other candidates were already working since 2009 without any break in service with the department.

viii. The respondent no. 3 and 4 were placed at serial no. 10 and 19 in the said order dated 07-11-2012 and Sri Rakesh Negi, who had earlier filed the writ petition with the respondent no. 3, was placed at serial no. 78.

ix. A tentative seniority list was issued on 10-09-2018 and objections were invited against the said tentative seniority list and the respondent no. 3 did not raise any objection towards his placing in the seniority list and the respondent no. 4 raised objection towards the correction of his date of birth and the said objection was accepted and his date of birth was corrected.

x. After the disposal of the objection, the final seniority list was issued on 5-3-2019. It is submitted that due to typographical error, the date was mentioned as 5-3-2018, which was later

corrected and infact, the correct date of final seniority list is 5-3-2019.

xi The respondent no. 3 and 4 feeling aggrieved by the final seniority list dated 5th March, 2019 preferred a claim petition no. 33/NB/DB/2019 before the Public Service Tribunal.

xii. The respondents as well as present petitioners filed their counter affidavit to which rejoinder affidavit was filed by the respondent no. 3 and 4.

xiii. The learned Public Service Tribunal after hearing the parties, was pleased to allow the claim petition and final seniority list dated 5-3-2018/5-3-2019 was set aside and official respondents have been directed to prepare a fresh seniority list, within three months.

4. The order passed by the Uttarakhand Public Service Tribunal is challenged mainly on the following grounds:-

i. Seniority of the petitioners was rightly fixed by the department in view of the fact that the petitioners were initially appointed on 11-12-2009, whereas the private respondent nos. 3 and 4 were appointed on 07-11-2012 alongwith the petitioners who were reappointed on the said date.

ii. The learned Public Service Tribunal equated the appointment given to the respondent no. 3 and 4 and other 6 candidates with the reappointment granted to the petitioners and other 230 candidates.

iii. The language of the order dated 07-11-2012 of appointment/ reappointment and stipulation made in the order asking the respondent no. 3 and 4 and other six candidates to submit their fresh joining, made it clear that in the case of said respondent no. 3 and 4 and other 6 candidates, it was a fresh appointment.

iv. The petitioners continued to work since 2009 without any break in service and were provided the benefit of pay protection, as such, it is clear that the official respondents, in compliance of the order dated 07-11-2012 in special appeal, had considered their case for grant of reappointment w.e.f. the date they were originally appointed.

v. There was no occasion for the petitioners to take recourse to law as the official respondents had already provided the reappointment to the petitioners w.e.f. the date they were originally appointed, as such, the petitioners were not aggrieved by the order of reappointment dated 07-11-2012.

vi. The learned Public Service Tribunal did not consider the difference between appointment and

reappointment and had erroneously held that the petitioners and respondent no. 3 and 4 were appointed by the order dated 07-11-2012.

5. The respondent nos. 3 and 4 filed their counter affidavit and mainly contended that :

(a) That after careful reading of both the aforesaid judgment dated 03.08.2012, passed in the writ petition and 04.09.2012, passed in the special appeal, it is crystal clear that this Hon'ble High Court did not give any liberty to the official respondents to appoint/reappoint the petitioners and other incumbents who were selected and appointed on 11.12.2009, from the date they were originally appointed and also the official respondent i.e. Government of Uttarakhand accepted the Judgment Dated 03.08.2012 and did not prefer any appeal against said Judgment.

(b) That after careful reading of Judgment Dated 04.09.2012 it is also crystal clear that the liberty has been given to the Petitioners and other incumbents who preferred the special appeal on their appeal to take such recourse to law as they may be advised, in the event, they are reappointed, to seek their appointment with effect from the date they were originally appointed but as per the admitted fact before the Tribunal also by filing Written Statement

neither the Petitioners nor any of the incumbents approached the Court of law to seek their appointment from the date they were originally appointed i.e. the Petitioners as well as other incumbents also accepted the Judgment Dated 03.08.2012 in its totality. In this regard before the Tribunal in Claim Petition the answering Respondent took the said Plea in Para No. VIII and while filing the Written Statement the petitioners did not specifically reply the pleadings of the answering respondents.

(c) That if we read together both the Rule 20 of Uttarakhand Ayurvedic Evam Unani Bhashjik (Pharmacists) Service Rules 2009 and Rule 5 Uttarakhand Government Servants Seniority Rules 2002, then we will find that after Judgment Dated 03.08.2012 and 04.09.2012, the State Government issued the Government Order Dated 25.09.2012 and appointment/reappointment order Dated 07.11.2012 and in both the orders they never said that the reappointment of the private respondents are being made from the date when they were originally appointed, therefore in view of Rule 20 of Uttarakhand Ayurvedic Evam Unani Bhashjik (Pharmacists) Service Rules 2009 read with Rule 5 Uttarakhand Government Servants Seniority Rules 2002, the Petitioners as well as answering respondents were appointed on the result of any one

selection and their inter se seniority shall be determined only on the basis of merit list prepared by the commission or committee, therefore the Seniority List as prepared by the official respondents is against the law and rightly set aside by the Learned Tribunal. It is also relevant to mention here that in this case the official respondents failed to determine the seniority as per Rule 20 of Uttarakhand Ayurvedic Evam Unani Bhashjik (Pharmacists) Service Rules 2009 and Rule 5 of Uttarakhand Government Servants Seniority Rules 2002, therefore the answering respondents challenged the Seniority List before the Learned Tribunal and the learned Tribunal passed the impugned order as per Law.

(d) That it is also relevant to mention here that after the Judgment dated 03.08.2012 and 04.09.2012 by which the entire selection process has been quashed by the Hon'ble High Court and in view of the direction issued by the Hon'ble High Court the official respondent issued the order dated 07.11.2012 and in the event when petitioners did not avail the liberty as granted by the Hon'ble High Court in view of the Judgment Dated 04.09.2012 and even then their appointment treated from 11.12.2009 in the impugned Seniority List, then in that situation it amounts nullifying the Judgment of Hon'ble High Court Dated 03.08.2012 and 04.09.2012 by the

Official Respondents, and as per the settled law, it cannot be allowed to be done merely by issuing the appointment/reappointment order dated 07.11.2012, which is completely silent on the issue, moreover the Government Order Dated 25.09.2012 by which the Government of Uttarakhand permitted to the Director issue fresh appointment order in view of Judgment dated 03.08.2012 and 04.09.2012 is also completely silent on the issue and neither the Government of Uttarakhand by its Government Order Dated 25.09.2012 nor the Director Ayurvedic and Unani has stated in its order dated 25.09.2012 and 07.11.2012 that the petitioners as well as other incumbents who are reappointed will be given their reappointment from the date they were originally appointed, meaning thereby neither the Government of Uttarakhand nor the Director Ayurvedic and Unani in its order given the reappointment to the Petitioners as well as other incumbents from the date they were originally appointed, merely in the order dated 07.11.2012 by saying that the answering respondents will complete the formalities before submitting their joining, cannot be override the Judgment Dated 03.08.2012 and 04.09.2012.

(e) That it is settled principle of law that the Judgment Passed by the Hon'ble High Court is law of land and binding precedent over the authorities as

well as parties to the case, and once the Judgment Dated 03.08.2012 and 04.09.2012 attained finality, it cannot be override by order dated 07.11.2012 issued by Respondent No.2.

(f) It is wrong to say that there was not a single day break in service of the petitioners since 2009 and they were given the salary protection and continuity in service, it is again relevant to submit here that after the Judgment Dated 03.08.2012 as per the law there is service break in the service of the petitioners from 03.08.2012 till 07.11.2012 when the official respondents issued the fresh appointment/reappointment orders and while issuing the same neither in the Order Dated 07.11.2012 nor in Government order dated 25.09.2012, the official respondents appointed the petitioners from the date they were originally appointed and both the said orders are completely silent on the issue, apart from that vide Judgment dated 04.09.2012 the Hon'ble Division Bench given the liberty to the petitioners to approach the Court of law in the event, they are reappointed, to seek their appointment with effect from the date they were originally appointed but the petitioners failed to avail the said liberty as granted by the Hon'ble Division Bench and both the Judgment Dated 03.08.2012 and 04.09.2012 attained finality.

6. Before proceeding further, it needs to be mentioned that while allowing the claim petition, the Uttarakhand Public Service Tribunal has *inter alia* taken the following into consideration:-

(a) We are also of the view that the seniority could only be settled as per serial number and merit of the persons, mentioned in their fresh appointment order dated 07.11.2012, because the substantive appointment of the petitioners as well as private respondents and other incumbents shall be deemed to be made vide order dated 07.11.2012 and, therefore, their seniority can only be fixed on the basis of such fresh order of substantive appointment. Unless the private respondents were given initial appointment with back date, they cannot be treated appointed in 2009, in contravention of the order of Hon'ble High Court. Neither the State respondent nor the private respondents had exercised the liberty granted to them by the Division Bench of Hon'ble High Court for seeking and getting fresh appointment from the date, they were originally appointed. Hence, without getting the appointment effective from back date, the private respondents cannot be treated to be appointed in 2009, prior to the appointment of the petitioners.

(b) Learned A.P.O. has raised objection that tentative seniority list was issued and no objections were raised

against the same and now, the petitioners cannot raise their objections in this case. We find no force in this argument, because of the reasons that respondent No. 2 also raised an objection to settle the seniority as per the order of the Court but his objection was not considered mentioning the fact that order of Hon'ble High Court was only about the preparation of the merit list and for the purpose of seniority, the date of appointment is to be seen. This fact is proved by Annexure: 1, in which at Sl. No. 80, the objections of Rakesh Kumar Rawat was disposed of in this manner and the final seniority list (Parpatra-II) was issued. The names of the petitioners were placed at sl. No. 663 and 664 in the seniority list whereas, their names should have figured at Sl. No. 352 and 360 just below Ms. Deepa Saini and Km. Poonam Bhatt respectively.

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

8. Mr. B.D. Upadhyay, learned Senior Advocate appearing on behalf of the petitioners while reiterating the grounds agitated in the petition, would submit that the petitioners, after having been granted the initial appointment in the year 2009, were never given any break and their services continued uninterruptedly, and in the meantime, they received due service benefits like pay protection, etc. Though the re-appointment order was issued on 07.11.2012, yet their seniority

has to be counted from the date when they were originally appointed in the year 2009, and the Public Service Tribunal, having taken a view otherwise and has committed a serious error by allowing the claim petition.

9. Per contra, Mr. H.M. Bhatia, learned counsel for the respondent nos. 2 and 3 would contend that :

i. That by virtue of the judgment and order dated 03.08.2012, the resolution of the selection committee dated 25.11.2009 was quashed and the select list prepared on the basis of the resolution of the selection committee was also quashed, and a mandamus was issued commanding the respondents to publish a fresh list in accordance with Rule 15(5) of the Uttarakhand Ayurvedic and Unani Pharmacist Service Rules, 2009.

ii. The judgment/order dated 03.08.2012, passed by the learned Single Judge was thereafter confirmed in Special Appeal No. 273 of 2012, by the judgment and order dated 04.09.2012 passed by the Division Bench, wherein the Leave to Appeal as well as Special Appeal was dismissed. However, the order dated 04.09.2012 was not to prevent the applicants of the Special Appeal to seek such recourse to law as may be advised, in the event, they are re-

appointed, to seek their appointment with effect from the date when they were originally appointed.

iii. Vide G.O. dated 25.09.2012, the Government directed the Director, Ayurvedic and Unani to prepare a fresh list and initiate the appointment process in compliance with the orders of the Hon'ble High Court dated 03.08.2012 and 04.09.2012.

iv. In pursuance of the order dated 25.09.2012, the respondent department issued the seniority list dated 05.03.2018/05.03.2019, which is in pursuance to the orders of Hon'ble Court dated 03.08.2012 and 04.09.2012.

v. The Public Service Tribunal has passed the impugned order dated 03.05.2021 as per law inasmuch as unless the private respondents were given initial appointment with back date, they cannot be treated appointed in 2009, in contravention of the order of Hon'ble High Court. Neither the State respondent nor the private respondents had exercised the liberty granted to them by the Division Bench of Hon'ble High Court for seeking and getting fresh appointment from the date, they were originally appointed. Hence, without getting the

appointment effective from back date, the private respondents cannot be treated to be appointed in 2009, prior to the appointment of the petitioners.

At the end, learned Senior Counsel for the petitioners has also submitted that due to the order impugned, the petitioners shall be placed in the seniority below the 2010 & 2011 batches, hence some protection be granted. We are afraid that this aspect cannot be considered in this petition.

10. After hearing the learned counsel for the parties & perusing the record, it is clear that the resolution of Selection Committee dated 25.11.2009 was quashed vide judgment / order dated 03.08.2012 and a fresh list was to be issued. The judgment / order dated 03.08.2012 attained finality vide judgment / order dated 04.09.2012, passed in SPA No. 273 of 2012 and though liberty was granted to the appellants thereof the petitioner did not take steps to seek appointment w.e.f. the date they were originally appointed. Vide G.O. dated 25.09.2012, the Government directed to initiate the appointment process in compliance of orders dated 03.08.2012 and 04.09.2012. In pursuance to G.O. dated 25.09.2012, the seniority list dated 05.03.2018 / 05.03.2019 was issued. Neither the petitioners exercised liberty to be given appointment from the date they were appointed nor their appointment was effective from the date of appointment. Hence, the seniority list treating them to be appointed in the year 2009 was thus erroneous and

in utter violation of judgments / orders of this Court dated 03.08.2012 and 04.08.2012.

11. Thus, from the aforesaid, it is clear that the impugned order dated 03.05.2021 has taken into consideration the prior orders passed by this Court on 03.08.2012 and the judgment and order dated 04.09.2012, has also considered the Rules of 2009 and after considering all the relevant submissions of counsel for both the parties, has rightly come to the conclusion that the names of the petitioners in the final seniority list was not placed as per their place in the substantive appointment and by treating the initial appointment of the private respondents in 2009, an error has been committed in settling the seniority. As the petitioners as well as private respondents and other incumbents were appointed to the service under the Rules vide order dated 07.11.2012 hence, their seniority can only be fixed in accordance with the merit settled therein.

12. After carefully examining all the aspects of the case and the impugned judgment and order dated 03.05.2021, it is clear that the order of the Uttarakhand Public Service Tribunal is a well considered, just & proper and does not require any interference as it has been passed in accordance with the provisions of law and has rightly set-aside the seniority list dated 05.03.2018/05.04.2019 and is in consonance with the earlier orders dated 03.08.2012 and 04.09.2012 passed by this Court.

13. In view of the above, the writ petitions lack merit and the same are dismissed as such.

(Siddhartha Sah, J.)
11.08.2026

(Ravindra Maithani, J.)
11.08.2026

Shiv/