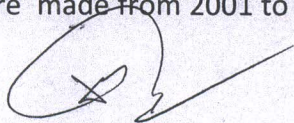


OFFICE OF THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL,  
DEHRADUN.

DATE: 11.09.2015

ORDER - 345

1. In pursuance with the Office Memorandum dated 19.08.2015 vide which a list as provided under Rule 6 (1) of दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप से नियुक्त कार्मिकों का विनियमितीकरण नियमावली, 2013 was issued and also enlisted on the website. Response was sought by the employees within a period of 15 days in pursuance of the notice dated 19.08.2015.
2. Nine employees have submitted their representations. I have gone through the contents of all the representations and the note of the Registry thereupon. In pith and substance all the employees have submitted their grievances which can be categorized in three categories;
  - i. All the persons who have made the representations, have requested to regularize them on the promotional post and not on the basic feeding cadre of Clerical post.
  - ii. The second grievance is that the persons, who have been appointed on the promotional post, their gradation list as provided under Rule 6 of दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप से नियुक्त कार्मिकों का विनियमितीकरण नियमावली, 2013, may be separately published and they should be shown senior to the other employees.
  - iii. The representations have been made that this Tribunal has regularized some of the employees in the year 2012 under the दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप से नियुक्त कार्मिकों का विनियमितीकरण, नियमावली, 2011 and they have been regularized on the higher post, so the parity should be maintained and all the persons who are holding promotional post, they should be regularized on the promotional post.
3. At the outset I would like to mention a fact that the appointments in the Tribunal were made from 2001 to 2004 without following any Rule





and procedure in this regard. The Rules have been ignored while making the appointments, hence the Government took a note of it and the matter was raised in the State Legislative Assembly. The Registrar of this Tribunal sent a communication to the Government which is as under:-

“विधान सभा के तृतीय सत्र 2003 के प्रथम सोमवार हेतु निर्धारित अतारांकित प्रश्न का प्रस्तावित उत्तर—

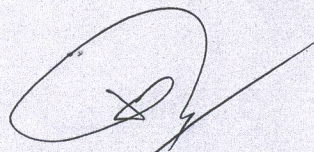
राज्य लोक सेवा अधिकरण का गठन शासनादेश सं० 229/न्याय अनुभाग/ 2001 दिनांक 28 मार्च 2001 के अन्तर्गत दिनांक 31.3.2001 को कर लिया गया । अधिकरण में एक अध्यक्ष, दो उपाध्यक्ष, एक प्रशासनिक एवं एक न्यायिक, दो सदस्य; एक न्यायिक एवं एक प्रशासनिक के पद हैं जिन पर दिनांक 30.7.2003 को अध्यक्ष एवं दो सदस्य प्रशासनिक एवं न्यायिक नियुक्त थे, अधिकरण के अन्य स्टाफ में एक निबन्धक एवं संयुक्त निबन्धक सहित 51 पद स्वीकृत है जिनमें 30.7.2003 को अंशकालिक निबन्धक 26.7.2003 से नियुक्त थे, संयुक्त निबन्धक का पद रिक्त है तथा अन्य पदों सहित कुल 36 कर्मी नियुक्त थे जिनमें एक कर्मचारी प्रतिनियुक्ति पर, 4 संविदा पर तथा शेष 31 कर्मी तदर्थ रूप से कार्यरत थे । चूंकि पदों की स्वीकृति एक निश्चित अवधि तक थी तथा कामकाज चलाने हेतु कर्मचारियों की तुरन्त आवश्यकता थी अतः पदों की स्वीकृत अवधि तक आवश्यकतानुसार कम पदों पर तदर्थ नियुक्ति की गई । पदों की निरन्तरता होने तथा स्थाई होने पर नियमानुसार भर्ती की जायेगी ।

Thereupon the Hon'ble Chief Minister made a statement before the Legislative Assembly which is as under:-

“जी हाँ राज्य लोक सेवा न्यायाधिकरण का गठन अधिसूचना सं० 229/न्याय अनुभाग/ 2001 दिनांक 28 मार्च 2001 द्वारा कर लिया गया है ।”

राज्य लोक सेवा अधिकरण के विभागीय ढाँचे में अध्यक्ष का एक पद, उपाध्यक्ष तथा सदस्य के दो-दो पद एवं अन्य स्टाफ में निबन्धक एवं संयुक्त निबन्धक के पदों को सम्मिलित करते हुए कुल 51 पद स्वीकृत हैं । दिनांक 30.7.2003 तक अध्यक्ष तथा दो सदस्य (प्रशासनिक एवं एक न्यायिक) तथा स्टाफ में निबन्धक को सम्मिलित करते हुए कुल 37 कार्मिक नियुक्त थे ।

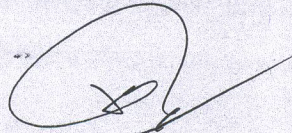
चूंकि पदों की स्वीकृति एक निश्चित अवधि तक थी तथा सुचारु रूप से कार्य चलाने हेतु कर्मचारियों की तुरन्त आवश्यकता थी अतः पदों की स्वीकृत अवधि तक आवश्यकतानुसार कम पदों पर तदर्थ नियुक्ति की गई । पदों की निरन्तरता होने तथा स्थाई होने पर नियमानुसार भर्ती की जायेगी ।”





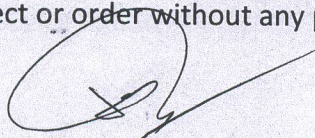
Meanwhile the aforesaid Niyamawali has been enforced by the Government under Article 309 of the Constitution.

4. The first point which has been raised by the employees, I have already dealt this matter in my earlier Office Memo dated 19.08.2015 in Para 14 to 18 and etc. of the said O.M. Thus, I reiterate the same stand taken by me in the said O.M. dated 19.08.2015. Whereas the second category of the grievance of the officials made in the representation is concerned, that the employees, who had been directly appointed on the promotional post without any promotion from the lower cadre, they cannot be regularized on the promotional post as I have already stated this fact in the earlier O.M. dated 19.08.2015 and the case laws have also been cited in this regard. So the said finding is again adopted and reiterated in the reply of the representations. I also conclude that no separate list can be drawn for those employees and all the employees have to be regularized in the feeding basic cadre of the Junior Clerk at the pay scale of Rs.3050/- (later on revised). The second thing which can be noticed in the appointment of the persons who have been appointed on the promotional post without appointing them in the feeding basic cadre of Junior Clerk, have been posted directly on the promotional post and their date of appointment is different, however they also have the same qualification which is required for a Junior Clerk and there is no reason to give a separate status to them in the proposed list. They are neither qualifying the minimum qualification as provided to be appointed on the promotional post, they have not gained the experience as required under the Rules of the Junior Clerk and they have been appointed on the different later dates and now they cannot be given preference over all the employees who have been appointed at the initial stage. As such the date of appointment would be the decisive factor as provided under दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप से नियुक्त कार्मिकों का विनियमितीकरण नियमावली, 2013. I have also dealt this aspect in my earlier O.M. dated 19.08.2015 in Para 11 and 12.





5. Whereas the third point is concerned the employees have requested even if they are regularized on the post of Junior Clerk, their pay, which they are drawing at present, be protected. I think this proposition has been drawn by the employees from the judgment of the Hon'ble Apex Court which has been referred in the O.M. (supra) in which the Hon'ble Supreme Court directed to regularize the petitioners in those writ petitions in the feeding cadre of Group 'D' however, even though they have been appointed on the promotional post of Group 'C' post. The Hon'ble Apex Court has also protected their salaries which they had been earning at that point of time. The employees have forgotten the fact that the Hon'ble Supreme Court while giving this direction, has exercised its power under Article 142 of the Constitution. The Hon'ble Apex Court has not relied upon any of the Rules on which the said direction has been made. The Hon'ble Apex Court has ample power to grant equitable relief under Article 142 of the Constitution of India even though it is not provided in any of the Rules. Thus, this power can only be exercised by the Hon'ble Supreme Court; it cannot be exercised even by Hon'ble High court and other Courts. The fixation of pay is a part of service condition of an employee. It also includes the fixation of the pay scales of different categories of the employees and the Government can make the Rules to fix the pay to a particular class of the employees working in the State. This power has not been delegated to the appointing authority to create a post and make the classification of the employees and to fix the pay scales of the employees. The State Government has to see the parity of the pay in all the departments at one angle. The employees have not demonstrated any Rule in which the appointing authority can fix the pay scales of the employees different to those fixed by the State Government. The employee, who is working as Junior Clerk, will definitely get the pay scale of the Junior Clerk. If the appointing authority promotes him to the higher post, the appointing authority has the power to fix his pay on the higher pay scale. The appointing authority cannot direct or order without any promotion that the Junior





Clerk will get the pay scale of the higher post immediately after the regularization. Thus, I do not find any substance in the ground of the employees.

6. Sri Deepak Bhatt, who had been appointed directly on the promotional post of Reader in the pay scale of 4500-7000/- by the then Chairman, claims in his representation that he had been appointed under the Dying in Harness Rules. He has further stated in his representation that a post of Assistant Registrar had been created by the Government for his appointment. Perusal of the documents reveals that the post of the Assistant Registrar had been created in the establishment; there is no reference in the Government order that the said post had been created for Sri Bhatt who is to be appointed by the Chairman, Public Services Tribunal under the Dying in Harness Rules. The order of the Government is quoted below:-

“प्रेषक,

आर० पी० पाण्डेय,  
सचिव न्याय एवं विधि परामर्शी  
उत्तरांचल शासन

सेवा में,

निबंधक,  
लोक सेवा अधिकरण,  
उत्तरांचल देहरादून  
न्याय अनुभाग:

विषय: उत्तरांचल राज्य लोक सेवा अधिकरण के लिये अतिरिक्त पदों के सृजन के संबंध में ।

महोदय,

उपरोक्त विषयक आपके पत्र सं० 72/लो० से० अ०/ई-1/सामान्य दिनांक 21.09.2001 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि लोक सेवा अधिकरण, उत्तरांचल, देहरादून में कार्य के सुचारू रूप से क्रियान्वयन हेतु शासनादेश सं० 326/न्याय विभाग/2001 दिनांक 4.7.2001 के अनुक्रम में निम्नलिखित अतिरिक्त अस्थायी पदों की उनके नाम के सम्मुख अंकित वेतनमान में श्री राज्यपाल महोदय शासनादेश निर्गत होने की तिथि अथवा पद भरे जाने की तिथि जो भी बाद में हो से 28.2.2002 तक के लिए बशर्ते कि ये इसके पूर्व समाप्त न कर दिये जाये, सृजित किये जाने की सहर्ष स्वीकृति निम्नलिखित शर्तों के अधीन प्रदान करते हैं :-

क्र० सं०	पदनाम	पदों की सं०	वेतनमान
1-	सहायक निबंधक	01	5000-150-8000
2-	अनुसेवक	02	2550-2660-60-3200
योग		03	



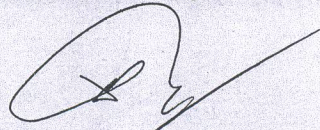
उक्त पदों के धारकों को उक्त पद के वेतन के साथ-2 शासन द्वारा समय-2 पर अनुमन्य किये गये मंहगाई व अन्य भत्ते आदि भी देय होंगे ।

समूह ग एवं समूह घ के पदों को उत्तरांचल में उपलब्ध सरप्लस कर्मचारियों से यथा संभव भरा जायेगा अथवा रिडिप्लॉयमेन्ट से भरा जायेगा ।.....

भवदीय

आर० पी० पाण्डेय,  
सचिव

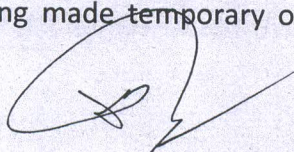
7. The perusal of the said Government order clearly reveals that one post of the Assistant Registrar and two posts of Anu Sevak have been created for the establishment. According to the Rules, the post of Assistant Registrar is to be filled up by promotion and the Rules do not provide that the appointing authority can make the direct recruitment on the post of Assistant Registrar. When I have gone through the original record, the original record revealed that Sri Bhatt was appointed by the then Chairman and there is no iota of fact in the appointment letter that he has been appointed under the Dying in Harness Rules. Sri Bhatt has been appointed on the promotional post of Reader. It is the settled position of law that the appointee cannot be appointed directly on the promotional post.
8. Dying in Harness Rules, 1974 applicable in Uttarakhand clearly provides that applicant has to show that no one of his family is in service of any of the State Government or Central Government or any Government Corporation. Perusal of the record reveals that no such condition has been fulfilled in the said note or while making appointment, all the relevant Rules of the day in harmony have not been taken into consideration and the appointment has been made. It is also to be noted that the petitioner's father had never been an officer of the Public Services Tribunal. There is a reference in the note that the Government has forwarded the application of Sri Bhatt. Perusal of the files does not reveal that any such forwarding note has been given in the file or on the application of Sri Bhatt is also missing. The Office Superintendent has stated that there was no communication from the Government with regard to the appointment





of Sri Bhatt under Dying in Harness Rules. The Deputy Registrar, who keeps the files in his custody, states that he was appointed after the appointment of Sri Bhatt, thus, he is not aware of the matter. Sri Deepak Bhatt was also called upon to ascertain the above anomaly as to whether any Government order to that effect has been made that he had to be appointed in the Public Services Tribunal under the Dying in Harness Rules, but he could not demonstrate me any such Government order or any such endorsement on the application. As I have pointed out that petitioner's father had never been an officer of this Tribunal, so for seeking an appointment in this Department, there must be some Government order regarding his appointment under the Dying in Harness Rules. Merely an endorsement by an officer of the Government to the Public Services Tribunal is not sufficient. According to Article 154 of the Constitution, the executive power of the State vests on the Governor, so any order passed by the Government must be in the name of His Excellency the Governor. Though, the power in this respect has been delegated to the Hon'ble Ministers. So, even if merely an endorsement is there, that is insignificant. In view of above, I do not find any force in the representation of Sri Bhatt and the representation is hereby rejected.

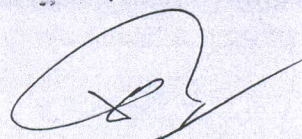
9. Sri Suresh Singh Rawat has also made a representation that his regularization be made in the Clerical Cadre of Category 'C'. He was appointed as Orderly in the establishment. Thereafter, Sri Rawat was promoted on the post of Junior Clerk. Sri Rawat was appointed as Orderly on ad-hoc basis and thereafter he was promoted to Junior Clerk on ad-hoc basis. Thus, he was holding both the posts on ad-hoc basis. He has alleged in his representation that he has been working for last 10 years, so he holds lien over the post. It is very noteworthy that Sri Rawat was appointed as ad-hoc Orderly on the promotional post in the Category 'D' and thereafter he was promoted in Category 'C' on the post of Junior Clerk on ad-hoc basis. Thus, it is settled law that the appointee from ad-hoc post to promotional post cannot be appointed without the appointee being made temporary or permanent by any





order of the authority. Apart from that there are rules for the promotion of the Class-IV to Class -III employees that too have not been adhered to. The petitioner is totally appointed and promoted on ad-hoc basis. So, there is no question of any lien on the said posts. If the petitioner would have been appointed directly on Class-III post, he could have said that his regularization should be made in Class-III category. His appointment letter clearly reveals that he has been promoted from ad-hoc post to ad-hoc post without adhering the rules, as I have pointed out earlier the employees cannot be regularized on the promotional post. The lien can only be maintained by an employee who holds a substantive post in the Department. If a person has never been appointed either temporary or permanent basis, he cannot claim any lien over any post. In the judgment of **Secretary State of Karnataka Vs. Uma Devi 2006(4) SCC 1**, it has been clearly held that the persons who have been appointed by back door entry, cannot claim any benefit of the service rendered by them in the past. In view of the above the representation of Sri Rawat is liable to be dismissed and is hereby dismissed.

10. Sri Brijesh Kumar has given his representation that his case has not been considered for regularization on the post of Stenographer and he is proposed to be regularized on the post of Junior Clerk. For regularizing Sri Brijesh on the post of Junior Clerk, as already given in the O.M. dated 19.08.2015, I want to also add that whenever I hear the cases in the Nainital Bench, I have to bring all the record to Dehradun and I have to dictate the judgments to the P.S. & P.A. posted at Dehradun and I have to carry the draft in Pan drive to Nainital and when the draft is read by the Hon'ble Member to deliver the judgment and he agrees to my opinion and if he suggests any amendment, which are to be incorporated and if there some clerical mistakes occurs in the draft and thereafter that pan drive is given to Sri Brijesh and original judgments are taken from the computer at Nainital. Apart from that the subjective satisfaction has be recorded as on today. He has filed a photocopy of certificate by which he has stated that he is qualified as



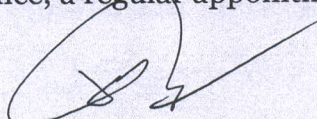


Stenographer. Apart from that when he was appointed as Stenographer, perusal of the record reveals that there is a certificate of one Staff member that his performance is 'Good' in stenography and in typing. No proper test has been taken at the time of initial appointment as to determine whether he possess the required qualification or not. I have also asked him several occasions to improve him in the shorthand as well as in typing but of no avail. Now the satisfaction has to be recorded at the time of regularization. It is well known that the function of the Tribunal is exclusively judicial and we all have to dictate lengthy and a number of judgments in the pending cases. If the Stenographer is not good and he cannot transcribe correctly, it affects the efficiency of the officer and it also deprives of the litigant from getting the quick justice. In view of the above I do not find any ground to regularize him on the post of Stenographer.

11. While disposing of all these representations, I could not restrain myself from quoting few sentences of the judgment rendered by Hon'ble Apex Court in Uma Devi Case (supra) in Para 47 and 48 which reads as under:-

“47When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

48. .... There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made

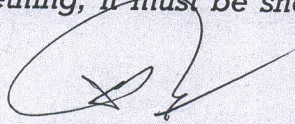




only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.”

12. The above extracted observations of the Hon'ble Supreme Court is binding and the ad-hoc employees has no right to seek any particular benefit of to claim a particular post. From the above observation of the Hon'ble Supreme Court it is clear that the appointment should be made strictly according to Service Rules. In the case in hand we will strictly consider the दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप से नियुक्त कार्मिकों का विनियमितीकरण नियमावली 2013 to regularize these employees. The judgment of Hon'ble Supreme Court in Uma Devi (supra) in Para 52 has also held that Daily Wager and all the persons appointed on temporary basis or on ad-hoc or on contractual basis have no legal right to seek any enforcement of his claim before the authority. If the ad-hoc employee has no legal right, he cannot claim to enforce any legal duty of the authority in this regard. Hon'ble Apex Court in Para 52 has held as under:-

“Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in Dr. Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College [(1962) Supp. 2 SCR 144]. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. *This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute*





*imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.*

13. The above principle not only applies in the case of Sri Brijesh Kumar but also applies to other employees who have been appointed on ad-hoc basis.
14. Keeping in view the above discussion as well as my previous O.M. dated 19.08.2015, which is also on the website, I do not find any good ground in these representations made by the employees under Rule 6(2) of the 2013 Niymawali I hereby reject all the representations.
15. Let the list as mentioned under Rule 6(2) be again displayed along with this Office Memorandum. Thus, the list already issued is hereby affirmed. The O.M. dated 19.08.2015 is also made a part of this order. Let the Registry proceed further in this matter.

*Dated 11.9.2015*

  
(JUSTICE J.C.S. RAWAT)  
CHAIRMAN