

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

CLAIM PETITION NO. 113/T/2009

Aan Dev Pant, S/o Sri Joga Dutt Pant, R/o Village Pathyura,
Post Vivil, District Champawat

.....Petitioner

VERSUS

1. State of U.P. through Secretary, Irrigation Department,
Civil Secretariat, Lucknow,
2. Chief Engineer, Irrigation Department, U.P, Lucknow,
3. Finance Controller & Chief Accounts Officer, Office of the
Chief Engineer, Irrigation Department, U.P. Cannt, Road,
Lucknow,
4. Executive Engineer, Investigation & Planning Division-II,
Pithoragarh.

....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

ORDER

DATE: MARCH 03, 2014

1. This petition was filed before the U.P. Public Services Tribunal, Lucknow in the year 2000. After the creation of the State of Uttarakhand, the petition was

transferred to this Tribunal. The petitioner has challenged the order dated 31.12.1999 passed by Executive Engineer, Investigation & Planning Division-II, Pithoragarh by which the petitioner was retired from the service w.e.f. 31.7.1998.

2. First of all, the Counsel appearing for the respondents have challenged this petition on the ground of maintainability before this Tribunal. We are also of the view that before going to the merits of the petition, it is proper to decide the question of maintainability of this petition before this Tribunal.

3. We have heard both the parties at length and perused the written submissions submitted on behalf of the petitioner.

4. It has been contended on behalf of the respondents that the petitioner had been retired before the creation of the State of Uttarakhand and at that time the petitioner was in the service of the State of U.P. and not in the service of the State of Uttarakhand. The petitioner had never been the employee of the state of Uttarakhand and as per the provisions contained in Section-2(b) of Uttarakhand Public Services Tribunal Act, 1976 only those persons are entitled to prefer the petition before the Tribunal who are public servants i.e. employee of the State of Uttarakhand. As the petitioner has never been in the service of the State of Uttarakhand, he cannot be treated to be public servant as per the provisions mentioned above, therefore, he is not entitled to prefer this petition before this Tribunal. On the other hand, it has been contended that the petitioner had preferred

this petition before the U.P. State Public services Tribunal from where it has been transferred to this Tribunal as per the provisions of Section 91 of the U.P. Reorganization Act, 2000. Therefore, this petition is maintainable before this Tribunal.

5. We have carefully considered the rival contentions raised by the parties. In fact, the provisions of Section 91 of the U.P. Reorganization Act, 2000 would have been applicable, had the matter related to the State of Uttarakhand been pending before the Public Services Tribunal, Uttar Pradesh, but in our opinion, the matter was not at all related to the State of Uttarakhand as the petitioner had already been retired from the service before the creation of the State of Uttarakhand. In case, the petitioner has any grievance regarding the service conditions that is concerned to the State of U.P. only and not to the State of Uttarakhand as the petitioner had never been in the employment of the State of Uttarakhand, therefore, provisions of Section 91 of U.P. Reorganization Act, 2000 are not attracted in the present case. The learned counsel for the petitioner relies upon the principle laid down by the Hon'ble Supreme Court in Bihar State Electricity Board and another Vs. Ram Deo Prasad Singh and others, (2011)12 S.C.C., 632 but that principle is not applicable in the present case as no cause of action had ever arisen in the State of Uttarakhand.

6. As regards, the contention of the respondents is concerned, it is clear that the petitioner was employee of the State of U.P. and the grievance to the petitioner, if any, is

against the State of U.P. only. The petitioner had never been the employee of the State of Uttarakhand and therefore, no cause of action arises to the petitioner against the State of Uttarakhand. The similar principle has been laid down by the Hon'ble Supreme Court in State of Uttarakhand & another Vs. Umakant Joshi 2012(1) U.D. 583. Hon'ble High Court of Uttarakhand has also laid down the similar principle in State of Uttarakhand & others Vs. Public Services Tribunal & others in W.P. (S/B) No. 33 of 2007 and it has been held that in case any public servant has never been an employee of the State of Uttarakhand then the Uttarakhand Public Services Tribunal does not have any jurisdiction to entertain the petition. As the petitioner had not been the employee of the State of Uttarakhand, therefore, the present petition does not lie before this Tribunal and even it cannot be treated as a pending proceeding on the date of coming into force the U.P. Reorganization Act, 2000. This petition could have been treated to be pending had the matter in dispute been involved regarding the State of Uttarakhand. In fact, the petitioner had been retired before the creation of the State of Uttarakhand, therefore, the cause of action arose before the creation of this State, so even if, this petition was pending before the Public Services Tribunal, Uttar Pradesh at the time of creation of the State of Uttarakhand, cannot be treated as pending on the date of creation of the State for the purpose of conferring jurisdiction to this Tribunal and no benefit can be extended to the petitioner. Applying the above principle, it becomes clear that this petition is not maintainable before this Tribunal. Thus, the contention of the respondents appears to be reasonable.

7. It has also been contended on behalf of the petitioner that according to provisions of Section 91 of U.P. Reorganization Act, 2000, the authority vests with the Hon'ble High Court of Allahabad for determination of the point of jurisdiction once the petition stands transferred in Uttarakhand, but we do not find any force in the contention as the matter has been settled by the Hon'ble High Court of Uttarakhand and the Hon'ble Supreme Court.

8. The provisions of Section 12 of Uttarakhand Public Services Tribunal Act has also been referred, but these provisions are transitory provisions which were meant for the cases which were pending in another court at the time of enactment of the aforesaid Act and these provisions have no relevance for the present controversy.

9. In the light of the discussion made above, we are of the considered opinion that the petition is not maintainable before this Tribunal for adjudicating the matter in controversy involved in this petition. So, we have no option except to return the petition to the petitioner. At the same time, we also want to make an observation that the petitioner has been pursuing this petition before this Tribunal bonafidely and there is no fault on his part.

10. Let the petition be returned to the petitioner for presentation before the proper court, authority or forum.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: MARCH 03, 2014
DEHRADUN
KNP