

**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. 127/T/2001

Laxmi Prasad Khanduri, S/o Sri Ram Chandra Khanduri, R/o Sona Singh Building, Joshimath, District-Chamoli (Uttarakhand)

.....Petitioner

VERSUS

1. State of U.P. through Secretary to Government, Horticulture & Fruit Processing, U.P. Sachivalaya, Lucknow,
2. Director, Horticulture and Fruit Processing, U.P., Lucknow,
3. Director, Horticulture and Fruit Utilization, U.P., Chaubatia (Ranikhet) District, Almora,
4. Additional Director, Horticulture & Fruit Utilization, Chaubatia, Almora,
5. Project Coordinator, Indo Dutch Project, Jeolikote, District Nainital.

.....Respondents

&

CLAIM PETITION NO. 109/T/2002

Laxmi Prasad Khanduri, S/o Sri Ram Chandra Khanduri, R/o Sona Singh Building, Joshimath, District-Chamoli (Uttarakhand)

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3. Director, Horticulture and Fruit Utilization, U.P., Chaubatia (Ranikhet) District, Almora,
4. Additional Director, Horticulture & Fruit Utilization, Chaubatia, Almora,
5. Potato Development Officer, Joshimath, Chamoli,
6. State Apiarist, Jeolokote, Nainital.

.....Respondents

Present: Sri J.P. Kansal, Counsel
for the petitioner

Sri Umesh Dhaundiyal, P.O.
for the respondents

JUDGMENT

DATE: OCTOBER 01, 2013

DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)

1. Both the petitions have been preferred by single petitioner named Laxmi Prasad Khanduri. As common questions are involved in both these petitions, therefore, these are being decided by the common judgment.

2. The facts as stated in claim petition no. 127/T/2001 are that petitioner had retired on 31.1.1998 on attaining the age of superannuation from the post of Senior Clerk from the office of the Project Coordinator, Indo- Dutch Project Jeolikot, Nainital. The petitioner was initially appointed as Lower Division Clerk in the office of Deputy Director, Horticulture on 28.1.1962 and was

promoted as Senior Clerk in stopgap arrangement on 28.8.1964 and regular on basis on 01.3.1966. The petitioner was promoted as Assistant Accountant on 07.03.1968 and had also worked on post of Accountant for 98 days w.e.f. 31.5.1969 to 04.09.1969 and thereafter, was again posted as Assistant Accountant.

3. While working as Assistant Accountant, the petitioner fell ill and was illegally reverted to the post of Senior Clerk. The petitioner preferred a Claim petition before the Public Services Tribunal, U.P., but it was dismissed on 23.6.1993. Review petition was also dismissed. So, the petitioner worked on the post of Senior Clerk from 29.4.1978 to 26.7.1978 and was transferred to Jeolikot where he worked on that post till 15.8.1978 thereafter, the petitioner was not permitted to work at Jeolikot. The petitioner had written several letters and reminders but the Director had informed on 31.1.1994 that he will be allowed to join only after the decision of the Claim petition mentioned above, which was a wrong stand. The petitioner was not even allowed to work even after the decision of the above petition. so, the petitioner again preferred a claim petition no. 203 of 1997 in which an interim direction was issued to the Director and in compliance of the order of the Tribunal, the petitioner was permitted to join on the permanent post of Senior Clerk on 12.6.1997 from where he retired on 31.1.1998. The petitioner had worked with all sincerity and devotion and there has nothing been adverse against him on record. The petitioner was never suspended, removed, dismissed or terminated. There was no charge sheet ever against the petitioner. However, the retrial benefits i.e. pension, gratuity etc were not paid to the petitioner. Therefore, the petitioner has prayed for direction to the respondents for making payment of regular pension w.e.f.

01.02.1998 as well as for payment of gratuity. The petitioner has also claimed interest @ 24 % per annum on the arrears of retrial benefits.

4. The petition has been opposed on behalf of the respondents and it has been stated that the petitioner was promoted on the post of Senior Clerk and he had joined on that post on 11.8.1978 and worked there on 15.8.1978 thereafter, the petitioner had absented himself w.e.f. 16.8.1978 and remained absent without any intimation till 11.6.1997. Several letters and reminders were written to him, but of no consequence. The petition preferred by the petitioner before the Tribunal was also dismissed on 9.12.1996. No reason has been assigned by the petitioner for remaining absent for a long time, which amounts misconduct on the part of the petitioner. The petitioner had only worked for 7 months before retirement. Thus, the period of absence cannot be treated as period of service and thus no retrial benefit is due to the petitioner and petition is devoid of merit and is liable to be dismissed.

5. Rejoinder affidavit has also been filed and the fact of remaining absence w.e.f. 16.8.1978 to 11.6.1997 is specifically denied and it has been stated that petitioner reported for duty, but the Project Coordinator did not permit him to join, for which the petitioner cannot be held responsible. Therefore, the principle of 'no work no pay' does not apply upon the petitioner. Certain documents have been filed along with the rejoinder affidavit.

6. The petition no. 109/T/2002 has been filed with the above facts and it is further stated that the payment of pay and allowances, and benefit of seniority and promotion have not been

extended to the petitioner w.e.f. 16.8.1978. It has also been stated that the date of birth of the petitioner is 01.02.1940, so he is entitled to remain in service till February, 1998 and petitioner has prayed for the payment of pay and allowances, along with interest @18% per annum and to extend further the benefit of seniority and promotion w.e.f. 16.8.1978 and to continue to remain in service till the actual date of superannuation.

7. This petition has also been opposed on the similar grounds as have been mentioned above.

8. A rejoinder affidavit has also been filed and the fact of remaining absent w.e.f. 16.8.1978 to 11.6.1997 has been specifically denied and it has been stated that petitioner reported for duty, but the respondent no 6 did not permit him to join, for which the petitioner cannot be held responsible. Therefore, the principle of 'no work no pay' does not apply to the petitioner. Certain documents have also been filed along with the rejoinder affidavit.

9. Both these claim petitions were preferred before the Public Services Tribunal, Uttar Pradesh and after the creation of the State of Uttarakhand; these petitions were transferred to this Tribunal.

10. We have heard both the parties at length and perused the material available on record carefully.

11. First of all, the maintainability of the petition has been challenged on behalf of the respondents on the ground that the petitioner had never been the employee of the State of

Uttarakhand, therefore, this Tribunal does not have jurisdiction to adjudicate these petitions. According to the version of the petitioner himself, he had retired before the creation of the new State of Uttarakhand. So he cannot be treated as public servant in view of the Section-2(b) of the Public Services Tribunal Act, which is quoted below:

[2(b) “public servant” means every person in the service or pay of-

(i) the State Government; or

*(ii) a local authority not being a Cantonment Board;
or*

(iii) any other corporation owned or controlled by the State Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty per cent of paid up share capital is held by the State Government) but does not include-

(1) a person in the pay or service of any other company; or

(2) a member of the All India Services or other Central Services;]

In support of the contention, the learned counsel for the respondents relies upon the following cases:

- i. State of Uttarakhand & another vs. Umakant Joshi, 2012 (1) U.D., 583

- ii. W.P. (S/B) No. 33 of 2007, State of Uttarakhand and others Vs. Public Services Tribunal, Uttaranchal & others,
- iii. W.P. No. 261 (SB) of 2006, U.P. Jal Nigam through its Chief Managing Director Vs State of Uttarakhand State Public Services Tribunal & others.
- iv. W.P. (S/B) No. 71 of 2013, State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna,
- v. W.P. (S/B) No. 56 of 2005, The State of Uttar Pradesh and others Vs. Khusal Singh Patwal and another.

12. On the other hand, it has been contended on behalf of the petitioner that petition was initially preferred before the Public Services Tribunal, U.P. and after the creation of the State, it stood transferred to this Tribunal in view of the provisions contained in Section 91 of U.P. Reorganization Act, 2000. Therefore, this Tribunal is competent to decide these petitions. In support of this contention, the learned counsel for the petitioner relies upon the following cases:

- i. Bihar State Electricity Board and another Vs. Ram Deo Prasad Singh and others (2011) 12 Supreme Court Cases, 632,
- ii. W.P. (S/B) No. 33 of 2007, State of Uttarakhand and others Vs. Public Services Tribunal, Uttaranchal & others,
- iii. Hari Dass Vs. Medical Superintendent Swaroop Rani Nehru Hospital, Allahabad [1989(1)UPLBEC 471],

13. We have carefully considered the rival contentions. In fact, the provisions of Section 91 of the Reorganization Act 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 on attaining the age of superannuation much 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 are not attracted. The principle laid down by the Hon'ble Supreme Court in Bihar State Electricity Board and another Vs. Ram Deo Prasad Singh and others (Supra) is not applicable in the present case as no cause of action had ever arisen in the State of Uttarakhand.

14. 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 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 Uttarkahand & another Vs. Umakant Joshi. Hon'ble High Court of Uttarakhand has also laid down the similar principle in State of Uttarkahand & 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 cannot even 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 retired much 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, it 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 on the basis of the principle laid down by Hon'ble High Court in W.P. (S/B) No. 33 of 2007 (Supra). More over as stated above, the Hon'ble Supreme court of India in Umakant Joshi's case clearly laid down that in cases the cause of action arose in the State of U.P., in these cases only that State is competent to pass any order or to redress the grievance of any employee and not the new State. Applying the above principle, it further becomes clear that the jurisdiction does not vest to this Tribunal for adjudicating the matter in controversy on both the above petitions. Thus, the contention of the respondents appears to be reasonable.

15. In the light of the discussion made above, we are of the considered opinion that jurisdiction does not vest in this Tribunal for adjudicating the matter in controversy in both

these petitions. For want of jurisdiction, we have no option except to return the petitions to the petitioner. At the same time, we also want to make observation that the petitioner has been pursuing these petitions before this Tribunal bonafidely and there is no fault on his part.

ORDER

This Tribunal has no jurisdiction to adjudicate the matter in controversy in the petitions. Let the petitions be returned to the petitioner for presentation before the appropriate Authority, Tribunal or Court. The petitioner must present the petitions before the appropriate authorities within a period of three months from today. No order as to costs. A copy of the judgment shall also be placed on the record of Claim Petition No. 109/T/2002.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: OCTOBER 01, 2013
DEHRADUN

KNP