

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**CLAIM PETITION NO. 74/SB/2021**

Smt. Najma Khatoon, aged about 60 years, w/o Late Sri Rashid Ali, r/o 26  
Vilaspur Kandoli, Garhi Cantt., Gangoda, District Dehradun.

.....Petitioner

**VS.**

1. State of Uttarakhand through Principal Secretary, Health and Family Welfare,  
Govt. of Uttarakhand, Dehradun.
2. Director General, Health and Family Welfare, Gujrada Danda Lakhond,  
Sahastradhara Road, Dehradun.
3. Joint Director, Health and Family Welfare, Gujrada Danda Lakhond,  
Sahastradhara Road, Dehradun.

....Respondents.

Present: Sri Tarun Matta & Sri Rishabh Ranghar, Advocates,  
for the petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondents.

**JUDGMENT**

**DATED: AUGUST 31, 2021**

**Justice U.C.Dhyani (Oral)**

By means of present claim petition, the petitioner seeks the following  
reliefs:

- (i) To quash the impugned order dated 29.08.2016 passed by  
Respondent No.2 (contained as Annexure: A-1 to the petition).

(ii) The respondents be directed to consider the application of the petitioner for rejoining the services.

(iii) The respondents be directed to release the salary and other consequential benefits.

(iv) To issue any other order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

2. Facts, necessary for adjudication of present claim petition, are as follows:

2.1 The petitioner was appointed as Basic Health Worker (Women) on 03.11.1983 at Primary Health Centre, Doiwala, Dehradun. Later on she was transferred to Primary Health Centre, Chakrata, Dehradun in the year 1988. Due to illness of petitioner's daughter, she took leave from 23.10.1990 and remained on leave till 19.03.1991. From 20.03.1991 to 17.06.1991, she was on maternity leave, which was duly informed to the respondents through registered post. On 18.06.1991, petitioner moved an application to *Upper Mukhya Sahayak*, for rejoining her services, in response to which she was asked by the Chief Medical Officer *vide* letter dated 19.06.1991 (Annexure: A 4) to submit her application before Primary Health Centre, Tuni. She was transferred from Primary Health Centre, Tuni to Uttarkashi. On receiving the letter of her transfer, she moved a representation on 09.07.1991 (Annexure: A 5) to Respondent No.3, not to transfer her to Uttarkashi for medical and family reasons. *Vide* letter dated 23.09.1991 (Annexure: A 6) of In-charge Medical Officer, petitioner was informed that her representation for transfer has been rejected and she was relieved. When petitioner went to Uttarkashi, she was told by the Chief Medical Officer, Uttarkashi, that no such letter of her joining has been received by him, therefore, her attendance cannot be marked.

2.2 Aggrieved with the same, petitioner filed WPSS No. 509/2011 before Hon'ble High Court of Uttarakhand, which was dismissed on 27.05.2011 (Annexure: A 7). She preferred Special Appeal No. 129/2011 against the said order, which Special Appeal was disposed of on 30.06.2011 (Annexure: A 8) with the direction to the petitioner to approach the appropriate authority under the rules for the purpose of ascertaining her status *vis-à-vis* the work in which she was engaged. But

petitioner failed to seek information regarding her job status, even after order dated 30.06.2011 of Hon'ble High Court.

2.3 Petitioner filed an Appeal before Uttarakhand Information Commission. In the said Appeal (No. 20067 of 2015), the authority concerned *vide* order dated 30.09.2016 (Annexure: A 9) observed that the transfer of the petitioner by Medical Officer was not as per law. Petitioner was asked by the Chief Medical Officer, Dehradun to submit an affidavit for rejoining and for not claiming service benefits from 1991 and only then she will be considered for rejoining her services, against which, the petitioner filed a civil suit in the Civil Court, which was dismissed *vide* order dated 09.03.2018 as not maintainable in the Civil Court. (Copy: Annexure 09.03.2018). Hence, present claim petition.

3. At the very outset Ld. A.P.O. objected to the maintainability of the present claim petition *inter alia* on the ground that the same is barred by limitation. According to Ld. A.P.O., it is a stale claim in which the petitioner has sought relief in respect of a letter dated 29.08.2016, which is highly time barred.

4. Issue of limitation, therefore, assumes significance in the backdrop of the facts of the claim petition.

5. Clause (b) of sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 (for short, the Act of 1976) provides for limitation in respect of claim petitions filed before the Tribunal, which reads as below:

*“(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall mutatis mutandis apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-*

*(i) Notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;*

*(ii) In computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded:*

*Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by*

*that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:*

.....”  
[Emphasis supplied]

6. The period of limitation, therefore, in such reference is **one year**. In computing such period, the period beginning with the date on which the public servant makes a statutory representation or prefers an appeal, revision or any other petition and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded.
  
7. It will be useful to quote Section 5 of the Limitation Act, 1963, as below:
 

*“**Extension of prescribed period in certain cases.**—Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.*

*Explanation.—The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”*
  
8. It is apparent that Section 5 of the Limitation Act applies to appeals or applications. Petitioners file claim petitions, pertaining to service matters, before this Tribunal. Claim petition is neither an appeal nor an application. It is, therefore, open to question whether Section 5 Limitation Act, 1963, has any application to the provisions of the Act of 1976. In writ jurisdiction, the practice of dealing with the issue of limitation is different. Also, there is no provision like Section 151 C.P.C. or Section 482 Cr.P.C. (inherent powers of the Court) in this enactment, except Rule 24 of the U.P. Public Services (Tribunal)(Procedure) Rules, 1992, which is only for giving effect to its orders or to prevent abuse of its process or to secure the ends of justice.
  
9. The Tribunal is, therefore, strictly required to adhere to the provisions of Section 5 of the Act of 1976.

10. At present, we are on admission of the claim petition and not on merits of the same. Relevant provisions for admitting a claim petition by this Tribunal, under the U.P. Public Services (Tribunal) Act, 1976, are as follows:

**“Section 4(3):** On receipt of a reference under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary that the reference is fit for adjudication or trial by it, admit such reference and where the Tribunal is not so satisfied, it shall summarily reject the reference after recording its reasons.”

The Tribunal is, therefore, required to satisfy itself whether the reference is fit for adjudication by it or not? If the reference is fit for adjudication, then the reference should be admitted, and if the Tribunal is not so satisfied, it should summarily reject the reference after recording its reasons.

11. In *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others*, (2009) 1 SCC 168, Hon’ble Supreme Court observed, as below:

*“It is well settled and needs no restatement at our hands that under Article 226 of the Constitution, the jurisdiction of a High Court to issue appropriate writs particularly a writ of Mandamus is highly discretionary. The relief cannot be claimed as of right. One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a Writ is an adequate ground for refusing a Writ. The principle is that courts exercising public law jurisdiction do not encourage agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum.”*

*[Emphasis supplied]*

12. In *Shiba Shankar Mohapatra and others vs. State of Orissa and others*, (2010) 12 SCC 471, Hon’ble Supreme Court has observed as below:

*“It was not that there was any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters. It is further observed by the Hon’ble Apex Court that, no party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the court is guilty of delay and laches. The Court exercising public law jurisdiction does not*

*encourage agitation of stale claim where the right of third parties crystallizes in the interregnum.*

*[Emphasis supplied]*

*In R.S. Makashi v. I.M. Menon & Ors. AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees.*

*The Court referred to its earlier judgment in State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc., AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured."*

*[Emphasis supplied]*

This Tribunal is not even exercising the jurisdiction under Article 226 of the Constitution. The Act of 1976 is self contained Code and Section 5 of such Act deals with the issue of limitation. There is no applicability of any other Act while interpreting Section 5 of the Act of 1976.

13. It may be noted here, only for academic purposes, that the language used in Section 21 of the Administrative Tribunals Act, 1985 (a Central Act) is different from Section 5 of the U.P. Public Services (Tribunal) Act, 1976 (a State Act). It is not a *pari materia* provision. Relevant distinguishing feature of the Central Act is being reproduced herein below for convenience:

**“21. Limitation-** (1) A Tribunal shall not admit an application—

(a).....within one year from the date on which such final order has been made.

.....  
(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application maybe admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

*[Emphasis supplied]*

14. **It, therefore, follows that the extent of applicability of limitation law is self contained in Section 5 of the Uttar Pradesh Public Services (Tribunal)Act, 1976. Section 5 of the Act of 1976 is the sole repository of the law on limitation in the context of claim petitions before this Tribunal.**

15. The petitioner, in her claim petition, has attributed many reasons for condoning the delay in filing claim petition, including the fact that she has no income to support her family, she is facing financial crunch, her husband has passed away, she is facing severe hardship in imparting education to her children and managing her home. This Tribunal is sympathetic to the petitioner, but as per the scheme of law, the Tribunal can condone the delay in filing the claim petition only within the limits of Section 5 of the Act of 1976. It may be noted here that the period of limitation, for a reference in this Tribunal, is one year. In computing the period of limitation, period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded. Apart from that, this Tribunal is not empowered to condone the delay on any other ground, in filing a claim petition. It may also be noted here that delay could be condoned under Section 5 of the Limitation Act, 1963, only in respect of an appeal or an application in which the appellant or applicant is able to show sufficient cause for condoning such delay. A reference under the Act of 1976 before this Tribunal is neither an appeal nor an application. Further, such power to condone the delay is available to a Tribunal constituted under the Administrative Tribunals Act, 1985. In such Tribunal, delay in filing application might be condoned under Section 21, 'if the applicant satisfies the Tribunal that he/she had sufficient cause for not making the application within such period.' Since this Tribunal has not been constituted under the Administrative Tribunals Act, 1985 and has been constituted under the Uttar Pradesh Public Services (Tribunal) Act, 1976, in which there is no such provision to condone the delay on showing sufficient cause, therefore, this Tribunal is unable to condone the delay in filing present claim petition, howsoever reasonable petitioner's plight may appear to be.

16. The principal relief in present claim petition is for quashing the order dated 29.08.2016 (Annexure: A1). Petitioner filed a suit in the

Civil Court for releasing the salary and other benefits since 1991, on 31.01.2017, which plaint was rejected under Order 7 Rule 11 CPC *vide* order dated 09.03.2017 by Ld. Civil Judge (Senior Division). Even if such order is kept in mind, the fact remains that the claim petition ought to have been filed on or before 09.03.2018, by which date there was no spread of pandemic Covid-19, therefore even the benefit of order passed by Hon'ble Supreme Court in *Suo Motu Writ Petition (Civil) No(s).3/2020*, is not available to the petitioner.

17. The petitioner was required to be alert and vigilant. She was required to press for her claim within a reasonable time, as per the principle enunciated by the Hon'ble Apex Court in *Gulam Rasul Lone vs. State of J&K and others, (2009) 15 SCC 321*, which has not been done.

18. In view of above discussion, this claim petition is clearly barred by limitation and that being so, should not be admitted in view of Section-4(3) of the U.P. Public Services (Tribunal) Act (No. XVII of 1976. The reference is not fit for adjudication and is, therefore, not admitted.

19. The reference is thus summarily rejected under sub-section(3) of Section 4 of the U.P. Public Services (Tribunal) Act, 1976 (as applicable to the State of Uttarakhand).

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: AUGUST 31, 2021*  
*DEHRADUN*

*VM*