

**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. 70/DB/2021

Malak Raj, aged about 44 years, s/o Sri Shoula Lal, r/o Dadoli Sogna,
Augustmuni, District Rudraprayag.

WITH

CLAIM PETITION NO. 55/DB/2021

Jagdish Lal, aged about 51 years, s/o Sri Ram Das, r/o Augustmuni,
Basukedar, Rudraprayag, Uttarakhand.

WITH

CLAIM PETITION NO. 56/DB/2021

Sangeeta Rana, aged about 42 years, w/o Sri Vinod Singh, r/o Mothrowala,
District Dehradun.

WITH

CLAIM PETITION NO. 57/DB/2021

Mahendra Singh, aged about 43 years, s/o Sri Ranveer Singh, r/o Gadil
(falasi), Jakhani, District Rudraprayag, Uttarakhand.

WITH

CLAIM PETITION NO. 58/DB/2021

Rakesh Singh, aged about 46 years, s/o Sri Hari Singh, r/o Village
Mathkhani, P.O. Chandrapur, District Rudraprayag, Uttarakhand

.....Petitioners

vs.

1. State of Uttarakhand through Secretary Education, Civil Secretariat,
Subhash Road, Dehradun, Uttarakhand.

2. Director General, School Education, Nanoorkheda, Tapowan Marg, Dehradun.
3. Chief Education Officer, District Rudraprayag.
4. District Education Officer (Primary Education), Rudraprayag, District Rudraprayag
5. District Education Officer (Primary Education), Jakholi, District Rudraprayag.
6. Chaudhary Charan Singh University, Meerut, Uttar Pradesh, through its Registrar.

.....Respondents

Present: Sri Akshay Latwal, Advocate, for the petitioners.

Sri V.P.Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: APRIL 19, 2022.

Justice U.C.Dhyani (Oral)

RELIEFS SOUGHT

By means of Claim Petition No.70/DB/2021, Malak Raj vs. State and others, petitioner seeks the following reliefs:

“a) To set aside the impugned termination order dated 04.01.2021 whereby the services of the petitioner has been terminated by the respondent no.4 and order dated 03.04.2021 whereby the appeal has been rejected by the respondent no.3.

b) To issue an order or direction to the respondents to reinstate the petitioner in service along with all consequential benefits.

c) To issue any other suitable order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

d) To award the cost of the petition to the petitioner.”

2. By means of Claim Petitions No. 55/DB/2021, Jagdish Lal vs. State and others, 56/DB/2021, Sangeeta Rana vs. State and others, 57/DB/2021, Mahendra Singh vs. State and others and 58/DB/2021, Rakesh

Singh vs. State and others, the petitioners have claimed the following common reliefs:

- a) To set aside the impugned termination, whereby the services of the petitioners have been terminated by the respondent no.4 and order dated 27.03.2021 whereby the appeals have been rejected by the respondent no.3.
- b) To issue an order or direction to the respondents to reinstate the petitioners in service along with all consequential benefits.
- c) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.
- d) To award the cost of the petitions to the petitioners.

3. There is common question of law involved in the above noted claim petitions. Material facts are also the same. The above noted claim petitions are, therefore, decided by a common judgment and order, for the sake of brevity and convenience, with the consent of Ld. Counsel for the parties.

4. Claim Petition No. 70/DB/2021, Malak Raj vs. State and others will be the leading case.

PETITIONER'S VERSION

5. Order dated 04.01.2021 (Annexure: A-1) passed by the disciplinary authority and order dated 03.04.2021 (Annexure: A-2) passed by the appellate authority, are in the teeth of present claim petition. Services of the petitioner were terminated..

6. Petitioner was appointed as Assistant Teacher, as per Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981. The candidates, who had obtained *Vishishth* BTC, were also eligible for appointment on the post of Assistant Teacher. At the time of initial appointment, petitioner submitted all his credentials to the respondent department. In the year 2014, a complaint was filed against the petitioner that he is serving in the School on the basis of fake degree. Petitioner was placed under suspension vide letter dated 17.08.2020, issued by District Education Officer, Primary Education, Rudraprayag. The charge levelled against the

petitioner, in the suspension order, was that his B.Ed. degree was verified by the Block Crime and Investigation Department, Dehradun (S.I.T.) and it was found that the details of B.Ed. were 'not as per the university enrollment and confidential record'.

7. According to the petitioner, verification report was not supplied to him. The petitioner further stated in the claim petition that, it is clear on the basis of inquiry report dated 19.06.2014 that the Choudhary Charan Singh University had verified the degree. In the suspension order dated 17.08.2020, the same has been denied. In the claim petition, it has also been stated that the petitioner was never given an opportunity to present relevant documents before passing the impugned order of suspension.

8. According to the petitioner, his suspension order is illegal. He filed WPSS No. 1016/2020 before the Hon'ble High Court of Uttarakhand, which was disposed of by the Hon'ble Court on 10.09.2020.

9. According to the petitioner, respondent authorities should have provided a copy of verification report of the University to the petitioner, to enable him to get the reasonable opportunity to defend his case effectively. The District Education Officer (Primary Education), Rudraprayag (Respondent No.4) issued a notice to the petitioner on 20.10.2020 to show cause as to why departmental enquiry be not initiated against him in accordance with the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010). Petitioner submitted his reply to Respondent No.4 on 10.11.2020, in which it was stated that he completed his B.Ed. course from the Choudhary Charan Singh University with Roll No. E-550201 and Enrollment No. M-0014921, as a regular student. It was on the basis of such B.Ed. degree that petitioner was given appointment as Assistant Teacher in the year 2009.

10. Respondent No.5 was nominated as inquiry officer, to conduct the departmental enquiry. *Vide* letter dated 02.01.2021, petitioner was given further opportunity of hearing by Respondent No.4, directing him to appear before the said authority on 02.01.2021 at 11-00 AM. Petitioner submitted his reply on 02.01.2021. But, without considering his reply, Respondent No.4

issued an order on 04.01.2021, whereby the services of the petitioner were terminated.

11. An F.I.R. was also lodged against the petitioner on 05.01.2021, in which it was alleged that the details of B.Ed. are 'not as per the university enrollment and confidential record'. The F.I.R. was challenged by the petitioner before Hon'ble Court, in which an interim order was passed on 12.01.2021.

12. Being aggrieved against the termination order dated 04.01.2021, Annexure: A-1, a departmental appeal was preferred by the petitioner before the Chief Education Officer, Rudraprayag (Respondent No.3). Such departmental appeal was rejected by the appellate authority *vide* order dated 03.04.2021, Annexure: A-2. Hence, claim petition.

RESPONDENTS' VERSION

13. W.S./C.A. has been filed on behalf of Respondents No. 1 to 5. The affidavit has been filed by Sri Kundi Lal Radwal, District Education Officer, Augustmuni, Rudraprayag. In the C.A., it has been stated that the petitioner was appointed as Assistant Teacher, Primary School, purely on temporary basis. It has also been stated in the C.A. that petitioner's B.Ed. degree was verified by Block Crime and Investigation, Dehradun, (S.I.T.), which was found to be fake. The same was 'not as per the university enrollment and confidential record. It seems otherwise'. The departmental enquiry was conducted by the respondents against the petitioner, in which it was found that the degree was fake. He was not eligible for the post of Assistant Teacher, Primary School. Copy of S.I.T. enquiry report and departmental enquiry report have been filed as Annexure: C.A.- R 1 and C.A.- R 2 to the Counter Affidavit. A charge sheet was issued against him. Petitioner filed reply. The inquiry officer submitted his report. The punishing authority afforded second opportunity of defense, to which petitioner replied. His services were terminated *vide* order dated 04.01.2021 (Annexure: A-1). He filed departmental appeal against the same, which was rejected *vide* order dated 03.04.2021 (Annexure: A-2).

14. Rejoinder Affidavit has been filed by the petitioner reiterating the facts contained in the claim petition.

DISCUSSION

15. Whereas Ld. Counsel for the petitioner submitted that the petitioner was denied opportunity of hearing, Ld. A.P.O. submitted that due opportunity of hearing was given to the petitioner before passing the impugned punishment order dated 04.01.2021 (Annexure: A-1). According to Ld. A.P.O., there is no illegality in the order of appellate authority, in which he did not find flaw with the order of disciplinary authority and affirmed the order terminating the services of the petitioner.

16. Ld. Counsel for the petitioner relied upon various decisions of Hon'ble High Court and Hon'ble Apex Court to submit that the orders impugned should be set aside. Ld. A.P.O., on the other hand, submitted that show cause notice was given to the petitioner along with the charge sheet and after considering his reply, enquiry was conducted as per the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. When the enquiry officer submitted his report, second show cause notice was issued to him, which the petitioner replied. The submissions of petitioner were considered while passing the impugned orders and, therefore, the claim petition should be dismissed with costs.

17. It is evident on the basis of the documents brought on record that after the charge sheet was issued to the petitioner, he replied to the same; enquiry officer was appointed by the disciplinary authority; enquiry was conducted; on the basis of documentary evidence, charges were held to be proved against the petitioner; enquiry officer submitted his report to this effect to the disciplinary authority, who issued the second show cause notice, but the petitioner could not file reply to the same. It has been brought to the notice of the Tribunal that the petitioner could not participate in the remaining departmental proceedings because of pendency of Criminal Case No. 02/2021, State of Uttarakhand vs. Malak Raj, under Sections 420, 467, 468 and 471 IPC, due to F.I.R. lodged on 05.01.2021 at P.S. Rudraprayag. Therefore, petitioner could not effectively participate in the departmental proceedings.

18. There is yet another aspect of the matter. In internal page no. 03 of the enquiry report, no reasons have been assigned by the enquiry officer as to how the petitioner has been found guilty of filing the fake B.Ed. degree.

19. The enquiry officer wrote thus- The delinquent was directed to appear before the District Education Officer (Primary Education), Rudraprayag on 02.01.2021. The delinquent Teacher did not appear in the office on 02.01.2021. Instead, he filed a written representation on such date. No such fact/ evidence has been found in his representation, which could demolish the evidences found during the departmental proceedings. This is a bald order, no reasons have been assigned by the disciplinary authority as to why he is inclined to find the delinquent petitioner guilty of the charges levelled against him. The enquiry officer has mentioned in the enquiry report that on the basis of S.I.T. enquiry report and departmental proceedings, the B.Ed. marks-sheet of the petitioner is not as per record. Further, the order passed by the appellate authority, the Chief Education Officer, Rudraprayag (Respondent No.3) also appears to be a non-speaking order. The appellate authority has also mentioned that nothing has been found in the representation dated 01.04.2021 of the delinquent petitioner, on the basis of which it can be found that the report submitted by the District Education Officer (Primary Education), Rudraprayag is baseless.

20. In any case, both the impugned orders cannot sustain in the eyes of law and are liable to be set aside.

21. The case in hand is squarely covered by the decision rendered by Hon'ble Division Bench, headed by the Hon'ble Chief Justice of High Court of Uttarakhand in Special Appeal No. 543/2017, State of Uttarakhand vs. Krishan Pal Singh, on 13.02.2019. It will be appropriate to reproduce the entire judgment of the Hon'ble Court, herein below for convenience:

“Heard Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State/appellants and Mr. Kishore Kumar, learned Counsel for the respondent.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No.650 of 2016 dated 28.3.2017.

3. The aforesaid writ petition was heard along with other writ petitions and, by a common order dated 28.3.2017, the learned Single

Judge held that the services of the petitioners were terminated without holding a regular enquiry; and the petitioners were permanent employees and their service could only have been terminated in conformity with Article 311 of the Constitution of India. Following the judgment of the Supreme Court, in 'D.K. Yadav v. J.M.A. Industries Ltd.' 1993 (3) SCC 259, the learned Single Judge directed the appellant-respondents to reinstate the petitioner with all consequential benefits, reserving liberty to the State to proceed with the matter in accordance with law.

4. Facts, to the limited extent necessary, are that, relying on a Basic Training Certificate produced by him as proof of his possessing the prescribed qualifications, the petitioner was appointed as an Assistant Teacher on 12.3.1996. On a complaint made against him, that the Basic Training Certificate produced by him was fake and false, a charge-sheet was issued to the petitioner on 11.3.2014, calling upon him to show cause why action should not be taken against him for submitting a fake Basic Training Certificate. The petitioner submitted his reply to the chargesheet on 28.3.2014 denying the charge. In his reply to the charge-sheet, the petitioner stated that, while he had failed in one paper in the main examination, he had appeared for the supplementary examination with the very same roll number and, on his having passed the supplementary examination, he was awarded the Basic Training Certificate.

5. No departmental enquiry was held thereafter. The petitioner was placed under suspension on 4.12.2015, and continued to remain under suspension till he was dismissed from service by order dated 6.1.2016.

6. The appellant-respondent should have conducted a departmental enquiry, in as much as the respondent-writ petitioner had denied the charges levelled against him. They should have also afforded the petitioner a reasonable opportunity of defending himself in such an enquiry and, thereafter, should have furnished him a copy of the enquiry report calling for his objections. It is only thereafter, could a punishment have been imposed on the petitioner. Instead, the appellant has straightway, after receipt of the petitioner's reply to the charge-sheet denying the charges, dismissed him from service.

7. While, we find no error in the order under appeal necessitating interference in so far as the order of punishment was set aside by the learned Single Judge, the fact however remains that the learned Single Judge has also directed that the respondent-writ petitioner be reinstated into service with all consequential benefits.

8. As noted hereinabove, the petitioner was placed under suspension on 4.12.2015, and continued to remain under suspension when he was dismissed from service by proceedings dated 6.1.2016. Setting aside the order of punishment would only require that the order of suspension be continued, and for the disciplinary enquiry to be completed early.

9. In such circumstances, we consider it appropriate to modify the order of learned Single Judge and direct the appellants-respondents to continue to pay the petitioner subsistence allowance, which he is entitled to during the period of suspension, till the completion of departmental enquiry initiated against him.

10. As a charge memo was issued to the petitioner as early as on 11.3.2014 i.e. nearly 5 years ago, the appellant-respondent is directed to complete the departmental enquiry with utmost expedition and, in any

event, not later than four months from the date of production of a certified copy of this order.

11. Subject to the aforesaid modification, the appeal is disposed of. No costs. Pending application, if any, also stands disposed of.”

COMMON ORDER

22. Taking a leaf out of Hon’ble Court’s order, this Tribunal finds that the petitioners were placed under suspension and continued to remain under suspension when their services were terminated. The orders of punishment are set aside. The Tribunal also finds that setting aside the orders of punishment would only require that the orders of suspension be continued and for the disciplinary enquiry to be completed early.
23. Respondents are, accordingly, directed to continue to pay the petitioners subsistence allowance which they are entitled to during the period of suspension till the completion of departmental enquiry initiated against them. The respondents are directed to complete the departmental enquiry in accordance with law, with utmost expedition and, in any event, not later than four months from the date of production of certified copy of this order.
24. The claim petitions thus stand disposed of. No order as to costs.
25. Let copies of this judgment be placed in Claim Petitions No.55/DB/2021, 56/DB/2021, 57/DB/2021 and 58/DB/2021.

RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: APRIL 19, 2022
DEHRADUN.

VM