

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 31/2007**

Dr. Narender Nath Pandey, S/o Late Sri Ram Jag Pandey, R/o  
Rishikul State Ayurvedic College, District Hardwar

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Medical & Health Services, Uttarakhand Shashan, Dehradun,
2. Director, Ayurvedic & Unani Services, Uttarakhand, District, Dehradun,
3. Principal/Superintendent, Rishikul, State Ayurvedic College/Pharmacy, District Hardwar

.....Respondents

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

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

**JUDGMENT**

**DATE: APRIL 15, 2014**

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

1. Order passed by the Principal Secretary, Govt. of Uttarakhand on 4.8.2006 by which the petitioner has been reverted back from the post of Scientist to the Post of Scientific Assistant is under challenge in this claim petition.

2. The facts as are stated in the petition are the petitioner was appointed as Scientific Assistant in Drugs Testing Laboratory falling under the Director of Ayurvedic & Unani Services, Lucknow in the year 1977-78. Later on, his services were regularized on the post of Scientific Assistant on 6.11.1981. In the year 1976-77, a post of Scientific Officer was created in the department, which was under the purview of Public Service Commission and the petitioner was appointed to that post on 11.6.1990 on ad-hoc basis and the process had also been initiated for filling the said post of Scientific Officer through Public Service Commission in the year 1989. The petitioner and one Mr. Jash Ram Dhyani had applied for the post and Mr. Dhyani was declared selected and the petitioner was placed at Sl. No. 1 in the waiting list. However, the Govt. was not satisfied with the selection process as Mr. Dhyani was not qualified for the post and asked the Commission to review the selection, but even then the commission recommended the name of Mr. Dhyani for the appointment. The petitioner who was till then working on ad-hoc basis had also challenged the selection of Mr. Dhyani before the Hon'ble High Court of Allahabad and the selection of Mr. Dhyani was kept in abeyance. Feeling annoyed, the respondents stopped the payment of salary to the petitioner for the post of Scientific Officer. The petitioner again challenged this action before the Hon'ble High Court.

3. On the other hand, Mr. Dhyani had also filed another writ petition. Ultimately, the court permitted Mr. Dhyani to join. The petitioner had again filed a writ petition and the Hon'ble High Court had ordered to maintain status quo and

thereby a peculiar situation was created as the petitioner was working on the post of Scientific Officer on ad-hoc basis and Mr. Dhyani through selection by Commission. Consequently, a proposal was initiated for up-gradation of the post of Scientific Assistant. Meanwhile the writ petition of the petitioner pending before the Hon'ble High Court was dismissed. Despite much deliberation and correspondence, the post of Scientific Assistant could not be upgraded. In the mean time, the state of Uttarakhand was created and the petitioner was allocated to the State of Uttarakhand.

4. Under the Plan 5<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>, some posts were created and budget was allocated. Accordingly a proposal was submitted by the Superintendent, Govt. Ayurvedic College for up-gradation the post of Scientific Assistant to the post of Scientific Officer. After considering the every aspect, the State Govt. agreed in principle to upgrade the posts of Scientific Assistant to Scientific Officer and called for the record from State of U.P. regarding the up-gradation of the posts and ultimately, in 2002, the post was upgraded, but on temporary basis and petitioner had joined on the new post on 21.2.2002. Even after much persuasion, the up-gradation was not made permanent.

5. Later on, in view to up-gradation of the Ayurvedic College Laboratory, several posts were upgraded, but it was mentioned that the earlier posts will continue as contractual. Later on, the post of Scientific Assistant was upgraded as Scientific Officer vide order dated 20.2.2002, but the up-gradation was temporary. The Director had demanded the up-

gradation of the posts permanently and a process was initiated and was completed on 15.7.2004. Only a formal order was to be issued.

6. In the mean time, Govt. issued an order No. 700/XXVIII (1)2006-25/2005 dated 14.7.2005 regarding the creation of the posts consequent to the up-gradation of Laboratory, which included the posts of Scientific Officer (Chemistry). Consequently, the petitioner was also sanctioned the salary of Scientific Officer. Suddenly, impugned order was issued on 4.8.2006 by which the earlier order dated 14.7.2005 was amended as follows:

“उक्त पदों पर नियुक्ति भारत सरकार के पत्र संख्या के0...927 / 2 / 99—बी0सी0सी0 (आई0एस0एम0) दिनांक 28 मार्च, 2001 द्वारा स्वीकृत पदों के सापेक्ष नियुक्त पदधारकों के समायोजन द्वारा भरे जायेगे। को एतद्वारा दिनांक 14.07.2005 से ही विलोपित किया जाता है।”

7. In consequence of the above-mentioned order, the benefits extended to the petitioner were got withdrawn and the petitioner was got reverted to the post of Scientific Assistant. Feeling aggrieved by this order, the present petition has been filed.

8. The petition has been challenged on behalf of all the respondents and it has been admitted that the petitioner was inducted into the service on the post of Scientific Assistant. He had applied for the post of Scientific Officer also, but was not selected and was kept at Sl. No.1 in the waiting list and Mr. Jash Ram Dhyani was appointed as Scientific Officer.

However, the petitioner also continued to work on the post of Scientific Assistant.

9. After the creation of State of Uttarakhand, the Laboratory and Pharmacy of Rishkul Ayurvedic College were upgraded and several posts were created on temporary basis. Out of which three posts were of Scientific Officer. A Govt. Order was issued on 20.2.2002 to the fact that the six posts out of the abovementioned seven temporarily created posts shall be filled on contractual basis and which will last till the completion of the project. A Govt. Order was again issued on 14.7.2005 by which it was made clear that the abovementioned posts shall be filled from the officials who had already been working. Consequently, the petitioner who was working as Scientific Assistant was granted the pay scale of Scientific Officer vide order dated 20.2.2002. Later on the abovementioned order was recalled as the post of Scientific Officer comes within the purview of Public Service Commission. Consequently, the petitioner was reverted to his original post of Scientific Assistant. The petitioner is not entitled for any relief as the post against which the petitioner claims relief was temporary and was to last till the completion of the project. No rights of the petitioner have been violated and the petition is liable to be dismissed.

10. A rejoinder affidavit has also been filed and mainly the facts which have been stated in detail in the petition have been reiterated.

11. We have heard both the parties and perused the record carefully.

12. A long and chequered history has been narrated in the petition, which is not relevant for the disposal of this petition. The relevant facts for the disposal of this petition are that on up-gradation of the laboratory of the Rishikul, several posts were created vide order dated 8.11.2001(copy Annexure A-23).

13. The Govt. had taken a decision on 20.2.2002 that the posts created vide order dated 8.11.2001 shall be filled up from the officials who were already working (copy of this order Annexure-A-24).

14. The petitioner was permitted to join on the post of Scientific Officer (Chemistry) on 21.2.2002 (Copy of charge certificate Annexure-A-25).

15. Again the Govt. had created several posts on temporary basis vide order dated 14.7.2005. Out of which three posts were of Scientific Officer (Copy of order Annexure A-29). The petitioner was sanctioned the pay scale of the Scientific Officer which he was not permitted on 21.2.2002 because of non-availability of the post.

16. Thereafter, the impugned order was passed by which the order dated 14.7.2005 was amended and consequently, the petitioner got reverted.

17. Now the question is whether the reversion of the petitioner consequent to the impugned order is justified or not? In this context, first of all, it has been contended on behalf of the petitioner that once the petitioner was promoted to the post of Scientific Officer he cannot be reverted without affording an opportunity of hearing. In fact, the opportunity of hearing has not been provided to the petitioner, thus the impugned order is in utter disregard and violation of principles of natural justice. It's true that no opportunity of hearing was afforded to the petitioner, but we have to keep in mind that the promotion of the petitioner to the post of Scientific Officer was purely on temporary basis and it was to last till the completion of the project. It was not a permanent promotion, therefore, any employee who was promoted temporarily, has no claim for opportunity of hearing. It has been mentioned in every order that the post is temporary in nature and it will continue till the completion of project. In view of the above assertion and clarification, we do not find any force in the contention of the petitioner that opportunity of hearing must have been provided to him, so we do not find any violation of the principles of natural justice.

18. It has further been contended that there was no occasion to the State Govt. for modifying the order dated 14.7.2005 and modification is not just and reasonable the order is malafide and just to harass the petitioner. But we do not find and malafide on the part of the Govt. in issuing the fresh order dated 4.8.2006. In fact, the Govt. has simply modified the order and the Govt. has right to modify the order. Unless there is some malafide on the part of the Govt.

it cannot be said is bad or illegal. As we have already said there appears no malafide on the part of the Govt., therefore, it cannot be said the order suffers from any illegality or irregularity. It is admitted that the post of Scientific Order comes within the purview of Public Service Commission and the petitioner could not be selected from the Public Service Commission, therefore, it cannot be permitted to claim the promotion to the post of Scientific Officer. Its' true that at one point of time, the petitioner was also granted the salary available to the post of Scientific Officer, but on the other hand, its' also clear that the petitioner was asked to function to the post of Scientific Officer, but simply on temporary basis and petitioner did not have any lien to that post. The petitioner cannot be permitted to take any benefit merely on the ground of sanction of the salary to the post of Scientific Officer.

19. On the basis of the above discussion, we are of the considered view that the petitioner is not entitled for any benefit and the petition is liable to be dismissed.

### **ORDER**

The petition is dismissed. No order as to costs.

Sd/-

**D.K.KOTIA**  
VICE CHAIRMAN (A)

Sd/-

**V.K.MAHESHWARI**  
VICE CHAIRMAN (J)

DATE: APRIL 15, 2014  
DEHRADUN

KNP