

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

**CLAIM PETITION NO. 40/DB/2013**

Smt. Aruna Verma, W/o Sri Anil Kumar Dhiman, Typist Clerk,  
Govt. Institute of Hotel Management, Catering Technology &  
Applied Nutrition, 191, Saharanpur Road, Patel Nagar, Dehradun

.....Petitioner

**VERSUS**

1. State of Uttarakhand through Secretary, Department of Tourism, Secretariat, Dehradun,
2. Principal, Govt. Hotel Management and Catering Institute, 191, Saharanpur Road, Patel Nagar, Dehradun,
3. Director of Tourism, Uttarakhand, Deen Dayal Upadhaya Bhawan, Garhi Cantt, Dehradun.

.....Respondents

Present: Sri Jugal Tiwari, Counsel  
for the petitioner

Sri Umesh Dhaundiyal, P.O  
for the respondent No. 1  
Sri Rajeshwar Singh, Counsel  
for the respondents no. 2 & 3

### **JUDGMENT**

**DATE: SEPTEMBER 18, 2014.**

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

1. The petitioner has prayed for regularization w.e.f. 22.03.2012 along with the consequential benefits of Pay and Seniority etc.

2. The facts in brief are that in response to an advertisement published in Amar Ujala, the petitioner had applied for the post of Typist Clerk and Junior Accounts Clerk in the Directorate of Tourism in the year 1991 and after written examination and interview, the petitioner got selected and consequently was recruited in the year 1993. She had worked on that post up to 9<sup>th</sup> March, 1995, whereas her services were suddenly terminated without assigning any reason, but she was again appointed on the same post on 03.08.1995, but on a consolidated salary of Rs. 2000/- per month and on contractual basis along with two other persons. The word 'contract' used in the subsequent order of appointment was frivolous and of no use. In fact, the petitioner had continued in service since the year 1993 and she cannot be deprived benefits on the ground of word 'contract'. The

petitioner had approached to the Hon'ble High Court for regularization vide writ petition no. 1234 (S/S)/2001, which was decided by the Hon'ble High Court of Uttarakhand on 22.08.2005 with the following directions:

*“In the above circumstances, in case, there are posts vacant with the Department, the respondents’ authorities shall consider for providing the petitioner the minimum of pay-scale and shall consider the petitioner for regularization on the post held by her in accordance with Rules, keeping in view the long term of service rendered by her.”*

3. The respondents, in compliance of the order of the Hon'ble High Court, started paying the petitioner minimum revised pay of Rs. 3050/- w.e.f. January, 2002, but without any dearness allowance. However, the direction for considering the petitioner for regularization was not complied with and was rather refused taking support of the Hon'ble Apex Court's decision in Uma Devi's case. The petitioner however, made a representation stating that the directions in Uma Devi's case are not applicable to her and requested for regularization, but of no consequence. However, the pay scale of the petitioner was revised in accordance with the 6<sup>th</sup> Pay Commission w.e.f. 26.09.2009 and was fixed at Rs. 5200/- per month, but that too without any dearness allowance. The petitioner is thus deprived of the regular scale of pay, annual increment, dearness allowance and other allowances illegally.

4. Apart from the scale of pay, it is also significant that one Sri Bal Krishna, Typist, who is junior to the petitioner has been regularized with effect from 22.03.2012 but in violation and utter

disregard to the seniority of the petitioner. The petitioner again made a representation on 22.11.2012 and 04.05.2013 for regularization, but of no consequence. Hence this petition. The petitioner has prayed for the relief mentioned above.

5. The petition has been opposed on behalf of the respondent no. 2 and 3 and their counter has also been adopted by respondent no. 1. It has been stated on behalf of the respondents that the petitioner is now trying to challenge the order of her termination/non-extension of service done in the year 1995. The petitioner cannot be permitted to challenge that order after a period of about 18 years. In fact, her appointment on 27.03.1993 was for a short period and there was no illegality or irregularity in termination the service of the petitioner. It also becomes clear from the advertisement itself. The petitioner was reappointed on the same post, but simply on the contractual basis and in view of the judgment of Hon'ble Apex Court in Uma Devi, the petitioner is not entitled for regularization. However, the State Govt. had framed Rules in accordance with the directions of the Hon'ble Apex Court in Uma Devi's case for one time regularization of the employees appointed as adhoc, work-charged, contract or daily wages basis in the year 2011 known as Daily Wagers, Work-charged, Contract, Fixed Pay, Part-time and Adhoc Appointed Employees, Regularization Rules, 2011. The petitioner could not be considered for regularization under the aforesaid rules as she was not eligible for regularization. Thus, the petition is devoid of merit and is liable to be dismissed.

6. A rejoinder affidavit along with Regularization Rules framed by the State of Uttarakhand in the year 2013 has been filed on behalf of the petitioner. The facts stated in the main

petition have been reiterated. It has further been clarified that use of word 'Contract' in the appointment letter is simply a farce and it does not make the appointment as contractual. In fact, the nature of appointment is important and not the word used therein. The appointments were made against vacant posts under the compelling circumstances which continued for a long time which does not occurs in case of contractual appointment. It is further stated that one Sri Bal Krishna similarly situated as that of the petitioner, has been regularized on 22.03.2012, while the petitioner has been deprived from regularization. It is further stated that in view of the new Rules framed by the State of Uttarakhand in the year 2013, the case of the petitioner becomes more strong.

7. A supplementary affidavit along with report of Departmental Promotion Committee has also been filed on behalf of the respondents.

8. We have heard the learned counsel for the petitioner and Learned A.P.O. No oral arguments have been made on behalf of respondents no. 2 and 3. However, written arguments have been filed. We have considered these arguments and perused the record carefully.

9. First of all, it has been contended on behalf of the petitioner that she was selected after adopting the valid procedure of appointment in the year 1993 and her termination in the year 1995 and reappointment in the same year showing her to be on contractual basis is not tenable in the eye of law. The termination and reappointment is simply an eye wash and cannot be treated as break in service, so the petitioner should be treated to be continuing in service since the initial appointment. This

contention has been rebutted on behalf of the respondents on the ground that the initial appointment of the petitioner was for a short term and her reappointment in the year 1995 was clearly on contractual basis and it cannot be challenged after a period 18 years. In support of this contention, a copy of the advertisement issued on behalf of the respondents for the initial appointment has been filed as paper no. 43/5 (Annexure CA-1). It has clearly been mentioned in the advertisement that the appointment is for a short period, though, it may be extended. Apart from the advertisement, the appointment letter (copy Annexure A-3) also makes it clear that the appointment was purely temporarily, which may have come to an end at any time without notice. Thereafter, the services of the petitioner had come to an end on March 09, 1995. The petitioner had not challenged this termination order then. Had she been aggrieved by this termination, she should have taken legal course within a period of limitation or within a reasonable time. She had challenged this order only in the year 2013 i.e. after a period of about 18 years. It is also pertinent to mention that the petitioner had earlier preferred a writ petition before the Hon'ble High Court for regularization of her services. She should have raised this point before the Hon'ble High Court, but in the absence of any material available on record, we are unable to find as to whether she had raised the same contention before the Hon'ble High Court or not, but copy of the judgment passed by the Hon'ble High Court in the writ petition are available on record as Annexure A-7 and A-8, which reveals that the Hon'ble High Court has not given any relief to the petitioner regarding her termination in the year 1995. Under the above circumstances, it becomes clear that petitioner had raised the question of her termination after a period of 18 years and no relief was granted to

her in respect of her termination in earlier round of litigation. The appointment of the petitioner was for a short period, so we do not find any illegality in the order of termination of the petitioner in the year 1995. Moreover, the petitioner is even not entitled to raise this point after a period of 18 years. Thus, the contention raised on behalf of the petitioner is devoid of force.

10. The second contention of the petitioner is that the use of word 'contract' in the subsequent appointment of the petitioner is simply a farce and her appointment was a regular appointment and not on contractual basis. In support of this contention, it has also been stated that had the appointment been on contractual basis, it would have been for a short period, but the petitioner is continuing since 1995 rather since 1993, therefore, it becomes clear that her appointment on regular basis and use of word 'contract' has no meaning. On the other hand, it has been stated on behalf of the respondents that the reappointment of the petitioner was clearly on contractual basis and she has been continued accordingly since then and now the petitioner cannot be permitted to agitate that she was not appointment on contract basis. We have given considered thought and reach to the conclusion that the petitioner was appointed on contractual basis which has clearly been mentioned in her appointment letter and she had been continuing accordingly since then. Moreover, she had approached the Hon'ble High Court for regularization of her service. She did not claim to be declared as a regular employee in the writ petition preferred before the Hon'ble High Court and the Hon'ble High Court had also directed the respondents to consider the petitioner for regularization, so there is no force in the contention of the petitioner that she is a regular employee and use of word 'contract' in her appointment letter has no meaning.

11. The important contention of the petitioner is that despite the direction of the Hon'ble High Court, the petitioner had not been considered for regularization while an employee named Sri Bal Krishna who was junior to her, has been regularised. This is clearly a discrimination with the petitioner and the petitioner is entitled for regularization since the initial appointment. This contention has been opposed on behalf of the respondents on the ground that they are willing to consider the petitioner for regularization, but as there is no vacancy, so it could not be possible to consider the petitioner for regularization. As soon as vacancy arises, the petitioner shall be considered for regularization, but in our opinion, the petitioner is entitled for regularization because of the following facts:

- a. That in view of the judgment passed by the Hon'ble Apex Court in Uma Devi's case, the State of Uttarakhand had framed the rules for regularization for those employees who were initially appointed on Contract basis, Adhoc or Daily wages basis and had completed 10 years of regular and satisfactory service. Undoubtedly, the petitioner was appointed on contract basis in the year 1995 and in the year 2011, she had completed more than 10 years of service and there is nothing on record, which could reveal that there was any break or any other impediment in her service,
- b. That State of Uttarakhand had again framed Rules for regularization of service of the similar categories of employees in the year 2013 and the petitioner fulfils all the criteria for regularization under these Rules also. Nothing has been said on behalf of the respondents that petitioner is



not entitled for consideration for regularization under the above Rules,

- c. That Hon'ble High Court had categorically directed the respondents to consider the petitioner for regularization subject to availability of the post,
- d. That a person named, Bal Krishna has already been regularized, who was similarly situated.

12. The above facts make it crystal clear that the petitioner is entitled for regularization, but her regularization is refused for non-availability of the vacancy, but this contention of non-availability of vacancy is not tenable as still there are two vacancies available as per the report of DPC filed with the Supplementary Affidavit on behalf of the respondents. But it has been mentioned that the two vacancies have been kept vacancies for the promotion of Class-IV, but it is not appropriate, proper and legal. The respondents should have mentioned as to whether any employee of Class-IV is entitled for promotion, which has not been made clear, so denying the regularization of the petitioner on this ground does not seem to be reasonable and proper. The petitioner could be considered for promotion on any of the two posts and when any other vacancies arise, the Class-IV employee may be considered for promotion. So, we are of the considered view that the petitioner is entitled for regularization and also the consequential benefits. One another question is important as from which date, the petitioner is entitled for regularization? In fact, one employee named Bal Krishna has been regularized in the year 2012, so the petitioner is also entitled for regularization w.e.f. the date of regularization of Mr. Bal Krishna. Though, the Bal

Krishna belongs to Schedule Caste, but it will make no defence as there is no contest between Bal Krishna and petitioner. The petitioner is claiming regularization against the vacant post. As the posts are lying vacant, the petitioner is entitled for regularization. She cannot be deprived regularization on the ground for reservation of posts for future.

13. Under the above circumstances, we reach to the conclusion that the petitioner is entitled for regularization w.e.f. the date of regularization of Bal Krishna with all consequential benefits just as, salary, allowances, arrears and seniority etc. The petitioner is not entitled for any other relief. The petition is deserves to be allowed accordingly.

### **ORDER**

The petition is partly allowed and the respondents are directed to regularize the petitioner w.e.f. the regularization of Mr. Bal Krishna and to extend her all consequential benefits such as Pay, Allowances, Arrears and Seniority etc. No order as to costs.

Sd/-

Sd/-

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

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

DATE: SEPTEMBER 18, 2014  
DEHRADUN

KNP