

**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. 10/SB/2014

Smt. Poonam Lata, Assistant Teacher, Govt. Junior School, Village,
Bahede Ki Saidabad, Block Bhagwanpur Tehsil Roorkee, District
Hardwar

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary Education, Secretariat,
Dehradun,
2. Additional Director, Basic School Education, Garhwal Manadal,
Pauri,
3. Chief Education Officer, District Hardwar,
4. District Basic Education Officer, District Hardwar.

.....Respondents

Present: Sri Brij Bhushan, Counsel
for the petitioner

Sri Umesh Dhaundiya, P.O
for the respondents

JUDGMENT**DATE: OCTOBER 07, 2014.****DELIVERED BY SRI V.K. MAHESHWARI, VICE CHAIRMAN (J)**

1. The petitioner has challenged the adverse remark recorded in her service book in the year 2012 and also the order of stoppage of increment.

2. The facts in brief are that the petitioner was an Assistant Teacher in a Govt. Primary School, Village Nanera Anantpur, Block & Tehsil, Roorkee, District Hardwar and was promoted as Assistant Teacher in the Govt. Junior High School, Village Bahedeki Saidabad, Block Bhagwanpur Tehsil Roorkee, District Hardwar in the year 2007. However, due to clerical mistake, the salary for two months i.e. for a period of December, 2007 and January, 2008 were drawn from both the places (from Primary School Nanera Anantpur as well as from Junior High School, Village Bahedeki Saidabad) and were deposited in the Saving Bank Account of the petitioner. The salary is drawn by the DDO and is directly deposited in the bank account. This fact was revealed to the petitioner through newspapers in the year 2011. The petitioner immediately checked her account and refunded the excess amount of 24,606.00 on 21.09.2011. There is no fault of the petitioner as the salary is drawn by the DDO, but an adverse remark was recorded in her character roll without affording any opportunity of hearing to the petitioner. The adverse remark reads as under:-

“श्रीमती पुनम लता स0अ0 रा0 उ0 प्रा0वि0 बेहडेकी सैदाबाद के द्वारा माह दिसम्बर-2007 से जनवरी-2008 तक दोहरा वेतन प्राप्त करने के आरोप में जिला शिक्षा अधिकारी, हरिद्वार के आदेश सं0- बेसिक/1429-36/लेखा/2011-12 दिनांक 02.02. 2012 के अनुपालन में प्रतिकूल प्रविष्टि अंकित की जाती है। तथा वर्ष-2011 में देय वेतन वृद्धि रोकी जाती है।”

3. The petitioner has sought for expunction of this adverse remark. Hence this petition.

4. The petition has been opposed on behalf of the respondents stating that the petitioner had received double pay for the month of December, 2007 and January, 2008, which was refunded back by her after a period of 45 months, which amounts misconduct by the petitioner. The petitioner was afforded opportunity of hearing and thereafter, the impugned order was passed. There is no merit in the petition, which is liable to be dismissed.

5. No rejoinder has been filed on behalf of the petitioner.

6. We have heard both the parties and gone through the record carefully.

7. The fact of withdrawal is admitted to both the parties. We have to see whether it was due to the fault on the part of the petitioner? In fact, the salary is drawn by the DDO and is directly deposited in the bank account of the concerned employee. In the present case also, the salary was drawn by the DDO and was directly deposited in the bank account of the petitioner. The petitioner did not have any to say in the drawl of the salary. As the petitioner does not have any say in the drawl of the salary, she

cannot be held liable for drawl of double salary for the period mentioned above. Apart from it, the petitioner had already refunded back the excess amount before the impugned adverse remark was recorded in her service book, which reveals the bonafide on the part of the petitioner. Moreover, the Hon'ble High Court in a similar case had expunged the adverse remark awarded to another employee. The learned counsel for the petitioner has referred the judgment of Hon'ble High Court passed in writ petition no. 1278(S/S) of 2012; Smt. Shanti Devi & Others Vs. State of Uttarakhand & others (dated 27.05.2014). The relevant extract of the judgment is as follows:-

“The stand taken by the Government is that the petitioners only deposited the amount when they received a notice. Moreover, certain teachers who deposited the amount promptly prior to 1st September, 2012, no action has been taken against them but since there was delay on the part of the petitioners, the action has been taken against them. Be that as it may, the fact of the matter remains, as already referred that there is no fraud or concealment of facts on the part of the petitioners or deceit which have entitled them to excess payment of salary. In any case, the matter is extremely trivial and to impose a punishment, no matter how minor does not seem to be justified. ”

8. On the basis of the above facts and circumstances, it becomes clear that there was no fault or misconduct on the part of the petitioner and the matter was trivial in nature, so adverse remark or stoppage of increment is not proper so the petition

deserves to be allowed and impugned adverse remark and order of stoppage of increment is liable to be set aside.

ORDER

The claim petition is allowed. The impugned adverse remark recorded in the character roll of the petitioner as well as the order of stoppage of increment vide order dated 02.02.2012 is hereby set aside. The respondents are directed to make entry in the character roll of the petitioner to that effect. The petitioner will be entitled for all service benefits, if any. No order as to costs.

Sd/-

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: OCTOBER 07, 2014.
DEHRADUN

KNP