

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

CLAIM PETITION NO. 171/SB/2022

Dinesh Chandra Gaur, s/o late Sri Vidhya Dutt Gaur, r/o 96-Gangotri Vihar, Dehradun, Uttarakhand, presently employed as Head of Department at State Institute of Educational Management and Training, Dehradun, Uttarakhand.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Education, Uttarakhand, Dehradun.
2. Director, Basic Education, Dehradun, Uttarakhand.

..... Respondents

Present : Sri Suryakant Maithani and Sri Vineet Negi,
Advocates, for the Petitioner
Sri V.P. Devrani, A.P.O., for the Respondent No. 1
Sri Harish Chandra Singh Rawat, Joint Director
(Primary Education), Directorate of Education,
Govt. of Uttarakhand, for the Respondent no. 2

JUDGEMENT

Dated: 22nd November, 2022

Justice U.C. Dhyani (Oral)

By means of present claim petition, the petitioner has challenged impugned order dated 12.10.2022 (Annexure: A1), whereby a sum of Rs. 2,17,392/- was directed to be realized from him in monthly installments with stoppage of two increments.

2. Facts giving rise to present claim petition, in brief, are as follows:

2.1 The Committee of Management, Janta Junior High School Boliadhar, Purwal Gaon, District Tehri Garhwal, issued an advertisement in the daily newspapers on 20.08.2006 for selection and appointment on the post of Assistant Teacher (Language) in the pay scale of Rs. 5500-9000/-. At that time, the school was an unaided recognized institution. The teachers and employees were paid their salary by the Committee of Management from their own resources.

2.2 After receipt of application forms, a Selection Committee was constituted by the Management Committee. The Selection Committee conducted the interviews and Sri Pramod Prasad was selected on the post of Assistant Teacher (Language). The Management Committee, in spite of the selection, on the aforesaid post, did not allow Sri Pramod Prasad to join as Assistant Teacher. The Selection Committee sent its recommendation for approval of the appointment of Sri Pramod Prasad on 12.09.2006, as Assistant Teacher, to the District Basic Education Officer, which was not granted.

2.3 Subsequently, the District Education Officer sent a letter on 05.09.2014 to the Chief Education Officer (petitioner herein) seeking approval for the appointment of Sri Pramod Prasad. The District Education Officer sent a reminder on 04.02.2015 to the petitioner. Director, Basic Education, Uttarakhand, sent a letter to the petitioner on 18.12.2015 inquiring about the progress in the matter. Petitioner sent a letter to the Block Education Officer on 20.01.2016 directing him to conduct an inquiry in the matter of appointment of Sri Pramod Prasad. Block Education Officer submitted his enquiry report on 17.02.2016 stating that since considerable time has been spent, therefore, there is no justification for grant of approval and consequently, the selection process initiated *vide* advertisement dated 20.08.2006 should be cancelled and fresh selection be made as per norms.

2.4 Sri Pramod Prasad filed a writ petition, on 06.09.2016, before Hon'ble High Court of Uttarakhand, *inter alia*, for quashing the inquiry report dated 17.02.2016 and issuing a writ of mandamus directing respondent no. 3 to issue appointment letter to the petitioner as per his selection dated 12.09.2006 with all consequential benefits.

2.5 Writ Petition filed by Sri Pramod Prasad was allowed *vide* order dated 07.04.2017. The petitioner was directed to take final decision in the matter while ignoring the inquiry report submitted by the Block Education Officer.

2.6 Subsequently, on 08.05.2017, in pursuance to the order dated 07.04.2017 of Hon'ble High Court of Uttarakhand, the petitioner granted approval to the appointment of Sri Pramod Prasad.

2.7 An appeal was filed before the Hon'ble High Court of Uttarakhand challenging the order passed in the writ petition. The Hon'ble Division Bench dismissed the appeal *vide* order dated 11.10.2018.

2.8 Thereafter, petitioner was warned by Director, Basic Education, Uttarakhand, *vide* letter dated 16.08.2019 for granting the approval to the appointment of Sri Pramod Prasad.

2.9 Subsequently, Director, Basic Education, wrote to the Secretary, School Education, Uttarakhand, on 17.08.2019 that the petitioner has been warned for 'prima facie negligence'.

2.10 A charge-sheet dated 17.10.2019 was served upon the petitioner with the allegation that the petitioner has misused his position in granting approval to the appointment of Sri Pramod Prasad. Petitioner submitted his response to

the allegations leveled in the charge-sheet *vide* representation dated 30.10.2019.

2.11 On 25.02.2020, Ms. Seema Jaunsari, Director, Academic Research and Training, Uttarakhand was appointed as inquiry officer. She sent a notice to the petitioner on 03.03.2020. Petitioner responded to such notice on 04.05.2020. Inquiry Officer submitted her enquiry report to the Secretary, School Education, Uttarakhand, on 13.07.2020.

2.12 *Vide* letter dated 15.02.2022, the Secretary, Higher Secondary Education, Uttarakhand, gave a notice to the petitioner proposing the penalty and requiring the petitioner to submit his representation. Petitioner submitted representation on 14.03.2022. He, thereafter, received an order dated 12.10.2022, passed by the Secretary, Education, Uttarakhand, on 30.10.2022, which order (Annexure: A1) is under challenge in present claim petition.

3. Various grounds have been mentioned by the petitioner in support of his claim petition. The petitioner has filed affidavit in support of his claim petition. Petitioner has also filed relevant documents in support of his case.

4. The imputation against the petitioner is that he recommended the case of Sri Pramod Prasad for the post of Assistant Teacher (Language) on the basis of a *Shiksha Alankar*, which was equivalent to B. Ed., but is not a recognized degree. The imputation thus was that the name of ineligible person was recommended by the petitioner for the post of Assistant Teacher (Language).

5. Copy of the writ petition filed on 06.09.2016 by Sri Pramod Prasad has been brought on record as Annexure: A8. Sri Pramod Prasad, in the said writ petition, prayed for the following:

- “i) Issue a writ of certiorari to quash the impugned Inquiry Report dated 17.2.2016 (Contained as Annexure No.11 to this writ petition).
- ii) Issue a writ order or direction in the nature of mandamus directing the respondent no.3 to issue appointment letter to the Petitioner consequent to his selection as per the merit list dated 12.09.2006.
- iii) Issue a writ order or direction in the nature of mandamus directing the respondents to issue appointment letter to the petitioner as per the selection dated 12.9.2006 with all consequential benefits.
- iv) Issue any other or further writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.
- v) To award the cost of the petition in favor of the petitioner.”

[Emphasis Supplied]

6. The following averments made in the counter affidavit of the present petitioner, as respondent no. 4, in WPSS No. 1820 of 2016, Pramod Prasad vs. State of Uttarakhand and others, filed before Hon'ble High Court of Uttarakhand, are very relevant in the context of present claim petition and therefore, these averments are reproduced herein below for convenience:

“

3 ii) That after receipt of the application forms, a Selection Committee was constituted by the Management Committee. **The Selection Committee conducted the interviews and the petitioner was selected on the post of Assistant Teacher (Language). The Respondent Nos. 6 & 7 in spite of the petitioner being selected on the aforesaid post did not allow the petitioner to join as Assistant Teacher.**

iii) That it is relevant to state here that at that relevant time the School in question was an un-aided recognized institution. The teachers and employees were paid their salary by the Committee of Management on their own resources. **It is submitted here that neither the petitioner was given any appointment letter by the Manager/ Head**

Master, nor he was allowed to join in the institution in question. For approval of the petitioner's appointment correspondence were made with the respondent no. 5 by the Manager on 12th September 2006, but the then District Basic Education Officer did not grant approval to the petitioner's appointment as the training qualification of the petitioner was not a recognized qualification (*Shiksha Alankar*).

iv) That it is submitted that **the respondent no. 5 vide its letter dated 5th September 2014 and 4th February 2015 again wrote letters to the respondent no. 4 for approving the petitioner's appointment and in turn the respondent no. 4 directed the Block Education Officer, Bhilangana to inquire into the matter inasmuch as the interviews were conducted in the year 2006 and after a lapse of 08 years correspondence was made for grant of approval.**

.....

vi) That it is once again reiterated that **the petitioner was neither given any appointment letter by the Manager/ Head Master of the Institution** nor he was allowed to join in the Institution. The petitioner has never done any teaching work in the Institution.

.....

5. It is submitted that pursuant to the advertisement dated 20th August 2006, the Committee of Management constituted the Interview Committee/ Selection Committee. The said interview Committee after conducting the interview selected the petitioner for appointment on the post of Assistant Teacher, Language and at that relevant time the institution was unaided recognized institution and the payment of salary and other allowances to the teachers and other staffs were made by the Management Committee on its own sources. The petitioner was neither issued any appointment letter by the Manager/ Head Master of the Institution nor he was allowed to join on the selected in the Institution. **The documents and papers of the petitioner's**

appointment were forwarded by the Management Committee on 12th September 2006 to the respondent no. 5 for approval, but the then District Basic Education Officer rejected the case of the petitioner as the petitioner was not having requisite training qualification (*Shiksha Alankar*).

.....

7. It is submitted that the petitioner was not having the requisite training qualification to be appointed as Assistant Teacher (Language) and therefore, the recommendation sent by the Committee of Management for grant of approval for appointment of the petitioner on the post of Assistant Teacher (Language) was rejected by the then District Basic Education Officer. This fact is also admitted by the Manager of the Institution in its communication dated 29th June 2016.

.....

10. It is submitted that the petitioner was not having the requisite training qualification to be appointed as Assistant Teacher (Language) and therefore, the recommendation sent by the Committee of Management for grant of approval for appointment of the petitioner on the post of Assistant Teacher (Language) was rejected by the then District Basic Education Officer. It is also pertinent to mention here that neither the Manager/ Head Master of the Institution issued any appointment letter in favour of the petitioner nor the petitioner was allowed to join on the post in question. Moreover, the petitioner had never done any teaching work on the selected post in the institution.

11. It is submitted that the selection of the petitioner was made by the Management Committee of the Institution and when the documents of the petitioners for grant of approval for appointment on the post of Assistant

Teacher (Language) were forwarded by the Management before the respondent no. 5, in the year 2006 itself **the then District Basic Education Officer refused to grant such approval on the ground that the training qualification (*Shiksha Alankar*) possessed by the petitioner was not a recognized qualification.** It is also relevant to point out here that according to Section 38 of the Uttarakhand School Education Act, 2006, it is incumbent upon the Management of the Institution to submit the documents to the Regional Director of Education immediately and who shall give its decision within a period of two months and only thereafter the Management shall issue appointment letter in favour of the selected candidate and the selected candidate shall submit his joining. For ready reference of this Hon'ble Court, Section 38 of the School Education Act, 2006 is being reproduced as hereunder:-

38- Saving as to minority institution: (1) Notwithstanding anything in sub-section (4) of Section 36 and in Section 37, the selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution "shall consist of five members (including its Chairman) nominated by the Committee of Management:

Provided that one of the members of the Selection Committee shall-

(a) In the case of appointment of the Head of an institution, be an expert selected by the Committee of Management for a panel of experts prepared by the Director:

(b) In the case of appointment of teacher, be the head of the Institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be prescribed. (3) No person selected under this selection shall be appointed unless-

(a) in the case of the Head of Institution the proposal of appointment has been approved by the Regional Additional Director of Education; and

(b) in case of a teacher such proposal has been approved by the District Education Officer.

(4) The Regional Additional Director of Education or the District Education Officer may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualification prescribed and is otherwise eligible.

(5) Whereas the Regional Additional Director of Education or the District Education Officer, as the case may be, does not approve of candidate selected under this section the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of the Head of Institution, and to the Regional Additional Director of Education in the case of teachers.

(6) Every order passed by the Director or the Regional Additional Director of Education on a presentation under sub-section (5) shall be final.

It is submitted that in the present case the Institution Janta Junior High School Boliadhar, Tehri Garhwal neither issued any appointment letter in favour of the petitioner nor the petitioner was allowed to join on the selected post. Moreover, the petitioner had never done any teaching work in the Institution.

12. It is submitted that the interview for the post in question was conducted on 12th September 2006 and thereafter the documents of the petitioner were sent to the then District Basic Education Officer for grant of approval, **but the District Basic Education Officer refused to grant approval to the appointment of the petitioner as the petitioner was not having requisite training qualification.** Thereafter, on receipt of documents of the petitioner in the office of the District Education Officer (Basic) on 15th August 2014, *vide* letter dated 5th September 2014 and 4th February 2015 the documents were forwarded to the office of the Chief Education Officer for approval. On receipt of the documents, an inquiry was conducted through Block Education Officer and the Block Education Officer submitted its report to the Chief Education Officer, in which he has mentioned that the Clerk of the Institution Sri Vishal Singh (on behalf of the Management Committee) informed that the original documents relating to the selection made in the year 2006 on the post of Assistant Teacher kept by Sri Om Prakash Tiwari, who was the Head Master of the Institution and Sri Tiwari is missing since 6th August 2013 and further on 23rd January 2015 some miscreants had broken the locks of the School and the documents of the Institution were found missing. The select list dated 12th September 2006 of

the post of Assistant Teacher (Language) was provided by Sri Pramod Joshi S/o Sri Teeka Ram Joshi, which is also a photocopy of the original documents and is not an attested copy. Therefore, **the Block Education Officer recommended that since long time has passed and nothing has been done in the matter, so the entire selection process initiated in the year 2006 be cancelled and fresh selection be conducted.**

.....

14. It is submitted that in the year 2006 the School in question was unaided and the salary and other allowance of the Teachers and other staff was paid by the Management on its own sources. It is submitted that **in the year 2006 the Selection Committee conducted the interviews and since the petitioner's qualification i.e. *Shiksha Alankar* was not a recognized training qualification, therefore, the then District Basic Education Officer has rightly rejected the approval of the petitioner.**

15. It is submitted that no fundamental right of the petitioner has been infringed. The reasons for not giving appointment to the petitioner have been stated in detail in the preceding paragraphs of this counter affidavit, which are repeated here. Therefore, **in the light of the facts and circumstances stated above, the grounds taken by the petitioner in the writ petition are not tenable in the eyes of law and the writ petition being devoid of merit is liable to be dismissed with cost.**"

[Emphasis Supplied]

7. WPSS No. 1820 of 2016 was disposed by Hon'ble High Court of Uttarakhand, *vide* order dated 07.04.2017, as follows:

"Heard

Petitioner participated in the selection process in pursuant to the advertisement dated 20.08.2006. The District Education Officer has sent a communication to the Chief Education Officer on 05.09.2014 for approval.

Thereafter, a reminder was sent 04.02.2015. However, till date no final decision has been taken by the Chief Education Officer qua approval.

The fact of the matter is that as per counter affidavit some inquiry was held against the eligibility of the petitioner.

However, the fact of the matter is that the petitioner was not associated during the course of the inquiry. It was *ex parte* inquiry.

Accordingly, the writ petition is allowed. The Chief Education Officer is directed to take a final decision for approval on the communication dated 05.09.2014 and reminder dated 04.02.2015, by ignoring the inquiry held against the petitioner within a period of ten weeks from today.”

[Emphasis Supplied]

8. Case of Sri Pramod Prasad was, accordingly, recommended vide letter dated 08.05.2017.

9. Thereafter, Special Appeal No. 372 of 2018, Pravin Tiwari vs. Pramod Prasad and others, against order dated 07.04.2017 (passed by Hon'ble Single Judge), was preferred before the Hon'ble Court.

10. Special Appeal No. 372 of 2018, Pravin Tiwari vs. Pramod Prasad and others, was decided by the Division Bench of Hon'ble High Court of Uttarakhand *vide* order dated 11.10.2018, as follows:

“For the reasons started in the Application for Leave to Appeal, the same is allowed. Accordingly, leave is granted.

2. There is delay of 378 days in filing this special appeal. Mr. Anil Anthwal, learned counsel for respondent no. 1 does not seriously oppose the delay condonation application. Cause shown in the delay condonation application is sufficient to condone the delay. Accordingly, the delay condonation application is allowed and the delay caused in filing this special Appeal is hereby condonation.

3. This Special Appeal is directed against the judgement and order dated 07.04.2017 passed by learned Single Judge of this Court in writ petition (S/S) No. 1830 of 2016, whereby, the writ petition filed by respondent no. 1 was allowed and the chief Education officer, Tehri Garhwal was Directed to take final decision regarding approval to appointment of respondent no.1.

4. Key facts necessary for adjudication of the present special appeal are that pursuant to advertisement dated 20.08.2006 respondent no.1 participated in. Selection process for appointment to the post of Assistant Teacher (Language) in a recognised institution namely, Janta Junior High School, Boliadhar Block Ghansali, District Tehri Garhwal. The Selection Committee found respondent No.1 suitable for appointment and, accordingly, recommendation was made in his favour on 12.09.2006. However, the District Education Officer, Tehri Garhwal did not pass any order either granting or refusing approval in terms of Regulation 17 (g) of Chapter 11 of the Regulations framed under Uttarakhand School Education Act, 2006.

5. It transpires that the district Education officer, Tehri Garhwal held a discreet inquiry regarding eligibility of respondent no.1. However, the fact remains that respondent no.1 was not heard during the course of the said inquiry. Respondent no. 1, therefore, filed a writ petition challenging the of the said discreet inquiry and also sought a direction to the authorities to grant him appointment in terms of recommendation of the Selection Committee. The writ petition was allowed by learned Single Judge by holding that since respondent no.1 was not associated during the course of the enquiry and it was an ex parte inquiry, therefore, a direction was issued to the chief Education officer, Tehri Garhwal to take final decision regarding approval of appointment of respondent no.1 by ignoring the report of the ex parte inquiry.

6. Heard learned counsel for the parties and perused the material available on record.

7. We are of the view that since respondent no.1 was selected and recommended by a duly constituted selection duty to take appropriate decision within a period of two months from the date of receipt of recommendation of the Selection Committee, in terms of Regulation 17 (g) of Chapter 11 of the regulation framed under Uttarakhand School Education Act, 2006 moreover, the chief Education officer could not have withheld approval to appointment of respondent no.1 on the strength of report of the some inquiry, which held ex parte against respondent no.1.

8. In such view of the matter, we concur with the view taken by learned Single Judge. There is no infirmity or perversity whatsoever in the judgement passed by learned single Judge. Accordingly, we affirm the judgement passed by learned Single Judge.

9. Consequently, this special Appeal would stand dismissed. However, liberty is given to appellant to raise the question of eligibility of respondent no.1 by making a representation to the competent authority i.e. Chief Education Officer, Tehri Garhwal within a period of three weeks from today, which shall be considered in accordance with law.

10. There will be no order as to cost."

[Emphasis Supplied]

11. It may be noted here that the liberty was given to the appellant, Sri Pravin Tiwari to raise the question of eligibility of respondent no. 1, Sri Pramod Prasad, by making a representation to the competent authority i.e. Chief Education Officer, Tehri Garhwal, which (question) was to be considered in accordance with law. Instead, departmental action was initiated against the present petitioner.

12. Thereafter, in WPSS No. 2189 of 2018, Arvind Lal vs. State of Uttarakhand and others, an interim order was passed by the Hon'ble Court on 08.07.2019, which (order) reads as below:

“The Director, School Education Uttarakhand would submit that the order dated 07.04.2017 could not be challenged in appeal by the Department for lack of legal advice. He would submit that Mr. Pramod Prasad is not entitled to get his appointment and the order passed by Coordinate Bench should have been challenged in the appeal. He assured this Court that he will take action against Mr. Pramod Prasad under Sub-Section 10 of Section 36 of Uttarakhand School Education Act, 2006.

On his request, one month time is granted to the Director, School Education, Uttarakhand to submit his report.

List this matter on 08.08.2019.

Personal appearance of officers concerned is exempted at this stage.”

[Emphasis Supplied]

13. It may be noted here that the then Director, Primary Education, Uttarakhand, in his office order dated 16.08.2019 (Annexure: A12) gave strict warning to the petitioner for future. Director, Primary Education, sent the same to the Secretary, School Education, on 17.08.2019. The then Secretary, Secondary Education, *vide* letter dated 17.10.2019 (Annexure: A14), issued charge-sheet to the petitioner, holding him *prima facie* guilty of carelessness in the light of the judgement dated 08.07.2019 rendered by the Hon'ble High Court in WPSS No. 2189 of 2018, Arvind Lal vs. State of Uttarakhand and others.

Ironically, no such order was passed by the Hon'ble Court holding the petitioner *prima facie* guilty of any carelessness.

14. Be that as it may, the allegation was again leveled against the petitioner that he recommended the case of one Sri Pramod Prasad for the post of Assistant Teacher (Language) on the basis of degree of *Shiksha Alankar*, which was not a recognized degree. Show cause notice was given to him *vide* letter dated 17.10.2019 (Annexure: A14), which (show cause notice) was replied to by the petitioner on 30.10.2019 (Annexure: A15).

15. It was categorically stated by the petitioner, in his reply dated 30.10.2019 (Annexure: A15), that the selection process was conducted by the then Headmaster, Manager and Block Education Officer, under the direction of the then District Education Officer (Basic). The decision was taken in the year 2006, but the decision was not acted upon which compelled Sri Pramod Prasad to file writ petition before the Hon'ble High Court of Uttarakhand.

16. District Education Officer (Basic) again sent the matter of Sri Pramod Prasad on 05.09.2014 and then on 04.09.2015 to the Chief Education Officer, Tehri, for approval. The petitioner sent the matter to Block Education Officer, Bhilangana, for enquiry. The petitioner did not recommend the case of Sri Pramod Prasad on the basis of inquiry report. It has also been clearly stated by the petitioner, in reply dated 30.10.2019 (Annexure: A15), that counter affidavit was filed to indicate that the approval for appointment of Sri Pramod Prasad could not be given. But when the order was passed by the Hon'ble Court on 07.04.2017, conditional approval was given for appointment of Sri Pramod Prasad, who was holding B. Ed. degree at that point of time. Now, according to reply dated 30.10.2019, the appointment has been cancelled. It has also been categorically stated, in the reply, by the petitioner

that the proceedings for giving appointment to Sri Pramod Prasad in the year 2006 were not conducted by him. Rather, when the approval was given under the directions of Hon'ble Court, Sri Pramod Prasad possessed B. Ed. degree. Unfortunately, it seems that such reply (Annexure: A15) of the petitioner has not been considered before passing the impugned order. Further, the petitioner gave detailed reply/representation to Director, Academic, Research and Training, on 04.05.2020 (Annexure: A17). It appears that the same has also not been taken into consideration while passing the impugned order. The replies of the petitioner are not reflected in letter dated 13.07.2020 (Annexure: A18) written by the Director, Research and Training, to the Secretary, School Education, Uttarakhand.

17. Punishment was proposed to the petitioner *vide* letter (Annexure: A19) which (proposal) was received by the petitioner on 07.03.2022. He gave a representation dated 14.03.2022 (Annexure: A20) to the Secretary, School Education, Govt. of Uttarakhand, in which he clearly stated that he did not recommend the case of Sri Pramod Prasad for appointment (para 3), which compelled Sri Pramod Prasad to file writ petition before the Hon'ble High Court. Petitioner has given reasons *vide* representation dated 14.03.2022 as to why he is aggrieved with the report of the inquiry officer.

18. A perusal of impugned order dated 12.10.2022 (Annexure: A1) would reveal that relevant and material facts, which have been highlighted by the petitioner in various representations have not been dealt with in the said order. Such vital facts go to the root of the matter. Had such facts been taken into consideration, probably, the story would have been different and no charge-sheet would have been issued against him. Disciplinary proceedings would have been closed.

19. The Tribunal, *prima facie*, finds that the petitioner did not recommend the case of Sri Pramod Prasad in the year 2006. He did the needful only under the orders of the Hon'ble High Court. Had he not done so, he would have been guilty of Contempt of Court. Moreover, when the petitioner recommended the case of Sri Pramod Prasad, he had obtained B. Ed. degree. Order under challenge does not reflect upon the relevant and material replies of the petitioner. Impugned order, therefore, cannot sustain, in the peculiar facts of the case.

20. The petitioner cannot be victimized indirectly on the basis of an act, which was done by him in compliance of Hon'ble Court's order.

21. The petitioner brought all the relevant documents on record. Sri Harish Chandra Singh Rawat, Joint Director (Primary Education), Directorate of Education, Govt. of Uttarakhand, brought the departmental file and appreciably assisted the Tribunal. The Tribunal does not think it necessary to call the respondents to file the counter affidavit(s), as no useful purpose would be served by doing so.

22. **Annexure: A19** nowhere mentions as to how the explanation given by the petitioner is not satisfactory. No reasons have been assigned. The case against the petitioner cannot rest upon surmises and conjectures. A sum of Rs. 2,17,392/- has been directed to be realized from the petitioner *vide* impugned order. How such sum has been computed is not known. Considering the facts disclosed in the claim petition, along with documents, no 'misconduct' appears to be made out against the petitioner, but the Tribunal should not usurp the jurisdiction of the appointing authority and the matter should better be left to his/ her discretion.

23. Impugned order is, accordingly, set aside. The claim petition is disposed of, at the admission stage, by remitting the matter to the appointing authority to pass a reasoned and speaking order, after considering the relevant and vital explanations/ replies furnished by the petitioner, as have been noted by the Tribunal in the body of the judgement, in accordance with law, if the appointing authority is so advised. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 22nd November, 2022
DEHRADUN
RS