

**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. 139/DB/2022

Mahesh Chandra Purohit, aged about 75 years, s/o Late Sri Bachi Ram Purohit, r/o 261/3, Pithuwala, Van Vihar, Shimla Road, Post Office Majra, District Dehradun. .

.....Petitioner

vs.

1. State of Uttarakhand through its Principal Secretary, Medical, Health and Family Welfare Department, Uttarakhand, Dehradun.
2. Director General, Medical and Health Services, Uttarakhand, Dehradun.
3. Finance Officer, Medical and Health Services, Uttarakhand, Dehradun.
4. State of U.P. through its Director General, Medical, Health and Family Welfare Department, Lucknow, U.P.

.....Respondents

Present: Sri V.P.Shrama & Sri Abhishek Chamoli, Advocates,
for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondent No.1.

JUDGMENT

DATED: NOVEMBER 24, 2022

Justice U.C.Dhyani (Oral)

In this claim petition, the petitioner has, basically, sought the same reliefs, which were prayed for by him, while filing the writ petition before the Hon'ble High Court of Uttarakhand.

2. Petitioner filed WPSS No. 4246/2018 before Hon'ble High Court of Uttarakhand. Writ petition was dismissed by the Hon'ble Court *vide* judgment and order dated 17.08.2022 (Copy: Annexure- A 7). Aggrieved against the same, the petitioner filed Special Appeal, which was dismissed as withdrawn to approach the appropriate forum for redressal of his grievance *vide* order dated 01.10.2022 (Copy: Annexure- A 1).

3. As has been stated above, the petitioner has filed present claim petition for the same reliefs, which were sought for by him in the writ petition before Hon'ble High Court. Petitioner has added one more relief before this Tribunal [Relief: 8 (v)]. Petitioner has also filed copies of judgments rendered by this Tribunal in claim petitions filed by the petitioner earlier. Judgment rendered by Hon'ble High Court of in WPSS No. 4246/2018 on 17.08.2022, reads as below:

“The petitioner has filed the present writ petition for the following reliefs:-

- i) Issue a writ order or direction in the nature of certiorari to quash the order dated 11.07.2018 passed by respondent no.2 by which the respondents rejected representation of the petitioner (Contained as Annexure rejected the No.1 to this writ petition).
- ii) Issue a writ order or direction in the nature of mandamus directing the respondents to fully comply the learned Tribunal order dated 13.11.2006 holding that "petitioner shall be entitled for all service benefit from the date of initial appointment (01.03.1958) for counting total length of service for the purpose of pension and retiral benefits.
- iii) Issue a writ order or direction in the nature of mandamus directing the respondents to calculate the entire service period of the petitioner from 01.03.1968 as one cadre and re-fixed the salary of the petitioner as per his service tenure.
- iv) Issue a writ order or direction in the nature of mandamus directing the respondents to grant the pension and other retiral dues as per the re-fixation of his salary at the time of retirement as per his services rendered in the department in clerical cadre from 01.03.1968.
- v) 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.
- vi) To award the cost of the petition in favor of the petitioner.

2. Brief facts of the case are that, raising certain claims, the petitioner had approached before the learned Public Service Tribunal, for adjudication of his rights, which stood determined by the learned Public Service Tribunal *vide* its judgement and award dated 13th November 2006, as it was rendered in Claim Petition No. 63/T/04, M.C. Purohit Vs. State of Uttarakhand and others.

3. Accordingly, by virtue of an adjudication made by the learned Public Service Tribunal, the claim petition of the petitioner was allowed and impugned order, which was under challenge before it, i.e. dated 31st August 2019, was quashed, and it was observed that the petitioner would be entitled for all the service benefits from the date of his initial appointment i.e. 1st March 1968.

4. Be that as it may be. This judgement and award of the learned Public Service Tribunal dated 13th November 2006 was sought to be modified by the petitioner by filing a Miscellaneous Application No. 15 of 2007, which was decided by an order dated 14th March 2007.

5. As against the decision rendered on the Modification Application, filed by the petitioner and decided on 14th March 2007, the matter was carried before the Division Bench of this Court at the behest of the State by filing a Writ Petition being Writ Petition (S/B) No. 283 of 2007, State of Uttarakhand and others Vs. M.C. Purohit and another, which was decided by the judgement dated 1st September 2010 with the following observations:-

“2. It is not in dispute that at the time when the respondent was converted from Basic Health Worker to Clerk, there was no rule authorizing grant of promotion to a Basic Health Worker to the post of Clerk. On the other hand, there was at that time no impediment in doing so. At the request of the respondent, he was, while being converted from Basic Health Worker to Clerk, was treated to have been promoted and not transferred. The respondent thus joined the cadre of Clerks from the date he was thus promoted. While a person is promoted he does not carry any seniority to the promoted post, inasmuch as, seniority earned in the feeder post is no seniority to be counted in the promotional post. We accordingly, think that the modification order dated 14th March, 2007 passed by the Tribunal though seem to be innocuous but thereby a substantial claim, which is otherwise not sustainable, pertaining to seniority could be and infact had been made by the respondent. We accordingly, allow the writ petition and set aside the order of the Tribunal dated 14th March, 2007. It is made clear that we have not interfered with the order of the Tribunal dated 13th November, 2006.

6. In fact, while declining to entertain the writ petition qua the order passed on 14th March 2007, in Miscellaneous Application preferred by the petitioner, the Division Bench of this Court has observed that the Division Bench has not interfered with the learned Public Service Tribunal's principal judgement of 13th November 2006.

7. During the intervening period, the petitioner had been pursuing his execution proceedings before the learned Public Service Tribunal, seeking an enforcement of the judgement and award dated 13th November 2006, which admittedly stood dismissed by an order dated 31st October 2014. So far as the rejection of the execution proceedings by the judgement dated 31st October 2014 is concerned, that has attained finality and has not been put to challenge.

8. In all the legal consequences, which would flow is that as a result of dismissal of the execution proceedings, by the judgement dated 31st October 2014, in fact, all issues and rights which stood determined by the judgement dated 13th November 2006, qua the petitioner was laid to rest and that too if it is read in the context of the judgement of the Division Bench dated 1st September 2010, which was much prior to the decision taken in the execution proceedings, the observations made by the Division Bench in para 2 of the judgment, extracted above, saving the implications of the judgment of the learned Public Service Tribunal dated 13th November, 2006, will have no bearing, as such, as of now as a consequence of the dismissal of the execution proceedings by the judgement dated 31st October 2014.

9. In that eventuality, filing of the present writ petition by the petitioner for the aforesaid reliefs, would not be tenable for the reason being, that in fact the latitude expressed by September 2010, will lose its significance, as soon as the petitioner has acceded to the order of 31st October 2014, rejecting his execution proceedings, to execute the award of the learned Public Service Tribunal and in that eventuality, without putting a challenge to the same and seeking relief No. 2, to comply with the judgement of the learned Public Services Tribunal dated 13th November 2006, would in principle be barred by the provisions contained under Order 2 Rule 2 sub-Rule (3).

10. In that eventuality, when the U.P. Public Service Tribunal Act of 1976 which is a self contained provision, which has got an inbuilt procedure for enforcement of its award and which stood culminated by the rejection of the execution proceedings, there cannot be a writ petition under Article 226 of the Constitution of India for seeking a writ of mandamus to enforce the judgment/award dated 13th November 2006, as of now and that too after the dismissal of the execution proceedings on 31st October 2014, and that too by preferring a writ petition at a much belated stage in 2018.

11. Thus the writ petition lacks merit and the same is accordingly dismissed.”

4. Judgment rendered by Hon'ble High Court in Special Appeal No.323/ 2022 on 01.10.2022, reads as below:

"According to the appellant, he was appointed in 1968 as Health Worker in Medical Department in erstwhile State of Uttar Pradesh; he was subsequently promoted as Junior Clerk in the year 1978, and, in 2009, he retired from service.

He filed a claim petition before Public Service Tribunal Uttarakhand in 2006 claiming that services rendered by him as Health Worker between 10.02.1968 to 26.07.1978 be taken into account for calculating his pension and other retiral dues.

It is further his case that the said claim petition was allowed by learned Tribunal vide judgement dated 13.11.2006 and it was held that petitioner shall be entitled for all service benefits from date of his initial appointment for counting total length of service for the purpose of pensionary benefits.

It is not in dispute that for execution of the said judgment, petitioner filed an application, and, in the execution proceedings, an affidavit was filed on behalf of the department that the judgment rendered by learned Tribunal has been complied with and the services rendered between 1968 to 1978 have been taken into account for calculating his pension and gratuity.

It is further the case of petitioner that through an office note dated 14.11.2017, he came to know that full compliance of the judgment rendered by learned Tribunal have not been made, and, he immediately, filed a representation claiming benefits in terms of the judgment rendered by learned Tribunal. The said representation was rejected, which was challenged in a writ petition. The said writ petition has been dismissed by the impugned order, which is under challenge in this appeal.

After arguing for a while, learned counsel for the petitioner seeks permission to withdraw the writ petition and also the appeal with liberty to move the Tribunal by making an appropriate application.

The prayer, so made, is not opposed by learned State Counsel.

In such view of the matter, the Writ Petition is permitted to be withdrawn. Consequently, the appeal is also dismissed as withdrawn with liberty as sought by petitioner. Petitioner shall be at liberty to approach the appropriate forum for redressal of his grievance."

5. Brief facts of the case have been mentioned by the Hon'ble Single Judge in his judgment. The same have also been mentioned by the Hon'ble Division Bench in its judgment.

6. Present claim petition has been filed by the petitioner on the same facts, for almost similar reliefs.

7. In view of the decision rendered by Honb'ble Supreme Court in *State of Uttarakhand and another vs. Umakant Joshi, 2012(1) UD 583*, and subsequent judgment delivered by Hon'ble High Court of Uttarakhand in *Dr. Kamaljeet Singh and another vs. State of Uttarakhand and others, 2018(1) UD, 337*, Ld. A.P.O. at the very outset, vehemently opposed the maintainability of the claim petition, *inter alia* on the grounds that (i) this Tribunal lacks jurisdiction and (ii) the claim petition is barred by limitation in view of Clause (b) to sub-section (1) of Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976. In reply, Ld. Counsel for the petitioner confined his prayer only to the extent that a direction be given to the Govt. in

Medical, Health & Family Welfare Department to decide fresh representation of the petitioner.

8. Ld. A.P.O. submitted that direction may be given to the Govt. to decide the representation of the petitioner in accordance with law. Ld. A.P.O. further pointed out that the Hon'ble Division Bench has granted liberty to the petitioner to approach the appropriate forum for redressal of his grievance. Government, in the instant case, may be the appropriate forum, and not this Tribunal, inasmuch as the Tribunal cannot grant any relief which has earlier been denied by the Hon'ble High Court.

9. Government in the Medical, Health and Family Welfare Department is the appropriate forum to look into the grievance of the petitioner. The Govt. never lacks jurisdiction in such matters. Limitation Act is not applicable to it. It has vast discretion in administrative matters.

10. Innocuous prayer of Ld. Counsel for the petitioner is worth accepting.

11. The claim petition is disposed of , at the admission stage, by directing the Govt. in Medical, Health and Family Welfare Department to decide the representation of the petitioner by a reasoned and speaking order, without unreasonable delay, in accordance with law, if the petitioner moves a fresh representation within a reasonable time citing facts and reasons, along with a certified copy of this order. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
(virtually from Nainital)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 24, 2022
DEHRADUN

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