

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

WRIT PETITION NO 483 (S/B) OF 2019

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 122/NB/DB/2022]

Laxmi Tamta, aged about 56 years, w/o Shri Mukesh Tamta, r/o Village Chorpani Manila Vihar, Ramnagar, District Nainital.

.....**Petitioner**

vs.

1. State of Uttarakhand through Principal Secretary, Women Empowerment and Child Development Department, Government of Uttarakhand, Dehradun.
2. Director, ICDS, Uttarakhand (Women Empowerment & Child Development Department) Uttarakhand, Dehradun.
3. District Programme Officer, Udham Singh Nagar, District Udham Singh Nagar.

.....**Respondents**

Present: Sri Amar Murti Shukla, Advocate for the petitioner (Virtual)
Sri Kishore Kumar, A.P.O. for the respondents (Virtual)

JUDGMENT

DATED: NOVEMBER 30, 2022

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 29.09.2022 in WPSB No. 483/2019, Laxmi Tamta vs. State of Uttarakhand and others, which reads as under:

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

“i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 03-09-2019 passed by

respondent no. 2 (contained as Annexure no. I to this writ petition).

ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to reinstate the petitioner in service with all consequential benefit including continuity of service.”

The petitioner is a public servant. The Uttarakhand Public Service Tribunal has the jurisdiction to deal with the issue raised in this writ-petition.

Considering the fact that the petition is pending since 2019, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

We request the Tribunal to endeavor to expedite the hearing of the petition, considering that the writ-petition is pending since 2019.

This petition stands disposed of.”

2. The original record of the writ petition has been transferred to this Tribunal *vide* Letter No. 14623/UHC/Service (S/B) 2022 dated 14.10.2022 of the Registrar (Judicial) of the Hon’ble High Court. The writ petition has been registered as Claim Petition No. 122/NB/DB/2022.

3. Brief facts giving rise to the present petition, are as follows:

The petitioner is PANT by birth. She married to TAMTA and thereafter obtained employment under the SC Category. A person made a complaint. District Magistrate, Almora made an enquiry and found that the ‘Caste Certificate’ was invalid. In other words, whereas, she was a woman of General Category, she obtained employment under the S.C. Category. She was removed from service, which compelled her to file present petition.

4. Counter Affidavit has been filed on behalf of the respondents stating that the petitioner’s removal from service is legal, inasmuch as, she obtained employment under S.C. category, whereas, in fact, she belonged to General Category by birth.

5. Whereas, according to the petitioner no proper inquiry was conducted against her, the respondents have averred in their Counter Affidavit that she was removed from service after due inquiry.

6. The petitioner was working as *Mukhya Sewika* when she was removed from service. It is definitely a major penalty.

7. In response to a query of the Tribunal, learned Counsel for the petitioner replied that since the petitioner is PANT by birth, she will remain a General Category candidate, if she applies for public employment, notwithstanding the fact that she married to TAMTA.

8. In response to another query of the Tribunal, learned Counsel for the petitioner clarified that the inquiry which was conducted by the District Magistrate, Almora, was relating to the validity of the 'Caste Certificate' and it was not an inquiry under the service law.

9. Learned Counsel for the petitioner submitted that no notice of inquiry was given to the petitioner. The same was conducted at her back. Copy of the inquiry report was not given and second show cause notice was not given. Learned A.P.O., on the other hand, made an endeavor to justify the departmental-action with vehemence.

10. The law is clear that a woman will continue to belong to the same caste in which she took birth for the purpose of public employment. Even if she (a general category person) marries a reserved category person, her status in service law, will continue to be of the same caste in which she was born.

11. The only point for determination in present petition, therefore, is-whether principles of natural justice have been complied with? Whether due procedure, meant for major punishment, has been followed in the instant case or not?

12. A perusal of the material brought on record, indicates that Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, has, in its entirety, not been followed. It will not be out of place to mention the said provision herein below for convenience.

“7. Procedure for imposing major penalties- Before imposing any major penalty on a Government Servant, an inquiry shall be held in the following manner :--

(i) The Disciplinary Authority may himself inquire into the charges or appoint an Authority subordinate to him as Inquiry Officer to inquire into the charges.

(ii) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The chargesheet shall be approved by the Disciplinary Authority:

Provided that where the Appointing Authority is Governor, the chargesheet may be approved by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(iii) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same alongwith oral evidences, if any, shall be mentioned in the chargesheet.

(iv) The charged Government Servant shall be required to put in a written statement of his defence in person on a specified date which shall not be less than 15 days from the date of issue of chargesheet and to state whether he desires to cross examine any witness mentioned in the chargesheet and whether desires to give or produce evidence in his defence. He shall also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and Inquiry Officer shall proceed to complete the inquiry exparte.

(v) The chargesheet, alongwith the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records in case the chargesheet could not be served in aforesaid manner, the chargesheet shall be served by publication in a daily news paper having wide circulation:

Provided that where the documentary evidence is voluminous, instead of furnishing its copy with chargesheet, the charged Government Servant shall be permitted to inspect the same before the Inquiry Officer.

(vi) Where the charged Government Servant appears and admits the charges, the Inquiry Officer shall submit his report to the Disciplinary Authority on the basis of such admission.

(vii) Where the charged Government Servant denies the charges the Inquiry Officer shall proceed to call the witnesses proposed in the chargesheet and record their oral evidence in presence of the charged Government Servant who shall be given opportunity to cross examine such witnesses. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government Servant desired in his written statement to be produced in his defence:

Provided that the Inquiry Officer may for reasons to be recorded in writing refuse to call a witness.

(viii) The Inquiry Officer may summon any witness to give evidence or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in Uttaranchal under provisions of Section-86 of the Uttar Pradesh Reorganization Act, 2000.

(ix) The Inquiry Officer may ask any question, he pleases, at any time of any witness or from person charged with a view to discover the truth or to obtain proper proof of facts relevant to charges.

(x) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding in spite of the Service of the notice on him or having knowledge of the Date the Inquiry Officer shall proceed with the inquiry *exparte*. In such a case the Inquiry Officer shall record the statement of witnesses mentioned in the chargesheet in absence of the charged Government Servant.

(xi) The Disciplinary Authority, if it Considers it necessary to do so, may, by an order, appoint a Government Servant or a legal practitioner, to be known as "Presenting Officer" to present on its behalf the case in support of the charge.

(xii) The Government Servant may take the assistance of any other Government Servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority having regard to the circumstances of the case so permits:

Provided that this rule shall not apply in following case:--

(i) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) Where the Disciplinary Authority is satisfied, that for reason to be recorded by it in writing, that it is not reasonably practicable to held an inquiry in the manner provided in these rules; or

(iii) Where the Governor is satisfied that, in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules."

13. When the petitioner applied for and was given employment under the respondent department, she nowhere concealed the fact that she is PANT by birth. It is a different matter that she obtained the employment under reserved category, inasmuch as, she was married to TAMTA. Had somebody not made complaint against the petitioner, probably, such fact would not have been noticed by the respondent department. The contents of the Counter Affidavit, as also documents brought on record, suggest that the procedure for major penalty was not followed before removing the petitioner from service.

14. The impugned order, therefore, calls for interference, granting liberty to the Disciplinary Authority to initiate fresh departmental proceedings against the petitioner, in accordance with law. Order accordingly.

15. The impugned order dated 03.09.2019 (Annexure no. 1) passed by the respondent no. 2 is hereby set aside, granting liberty to the Disciplinary Authority/Appointing Authority to initiate fresh departmental proceedings against the petitioner, in accordance with law and the petitioner be reinstated in service.

16. The claim petition is, accordingly, disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATED: NOVEMBER 30, 2022
DEHRADUN.
KNP