

**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. 100/DB/2021

Yashdev Singh Rawat, Head Master, Govt. Purva Madhyamik Vidyalaya, Kathur, Vikas Khand, Kot, Pauri Garhwal, Uttarakhand.

.....Petitioner

vs.

1. Govt. of Uttarakhand through its Secretary, Secretariat, Subhash Road, Govt. of Uttarakhand, Dehradun.
2. Director, Primary Education, Govt. of Uttarakhand, Dehradun.
3. Additional Director, Primary Education, Garhwal Region, Pauri.
4. District Education Officer (Primary), Pauri Garhwal.
5. Deputy Director, Primary Education, Development Division, Kot, Pauri Garhwal.

.....Respondents

Present: Dr. N.K.Pant, Advocate, for the petitioner (online)
Sri V.P.Devrani, A.P.O. for the respondents (online)

JUDGMENT

DATED: MARCH 07, 2023

Mr. Rajeev Gupta, Vice Chairman(A)

This claim petition has been filed seeking the following reliefs:

“(i) Issue an order or direction calling for the record and directing the respondents to quash and set aside the order no. 04-Basic-Misc/352/reinstatement of suspension/2015 dated 21-01-2016 and 114 dated 16-09-2021 and grant all consequential benefits.

(ii) Issue an order or direction calling for the record and to direct the respondent to pay all the increment with interest, which are stopped due to aforesaid order, dated 21.01.2016.

(iii) Issue any suitable claim, order of direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award the cost of claim petition in favour of the Petitioner.”

2. Brief facts as per the claim petition are as follows:

The petitioner was appointed as Head Master in the Govt Purva Madhyamik Vidyalaya, Kathur, Vikas Khand-Kot, Pauri Garhwal in the year 2012-2013. A Kitchen-Store was constructed by the Institution School Management Committee/ Teacher-Parents Association, for which Rs 135000/- were sanctioned by the Department. After the construction of the said kitchen-cum-store, the Junior Engineer of the SarvaSiksha Abhiyan, Pauri issued a competition certificate and utilization certificate. The Deputy Education Officer (Primary Education), Kot, Pauri Garhwal required written explanation vide letter dated 16.05.2015 from the petitioner on certain points while the competition and utilization certificates were provided to the department on 02.10.2014. It is also pertinent to mention here that according to competition and utilization certificates all work has been done within the technical directions and the store-cum-kitchen has also been handed over on 02.10.2014. No recovery was made by the department in this matter from the petitioner. The petitioner submitted his explanation to the Deputy Education Officer (Primary Education), Kot, Pauri Garhwal *vide* his letter dated 19.12.2015. However, without any prior show cause notice, an order of suspension-cum-charge sheet was issued to the petitioner on 26.11.2015. *Vide* order no.04-Basic-Misc/352/reinstatement of suspension/2015 dated 21.01.2016, the petitioner was reinstated with full salary by the order of District Education Officer, Primary Education, Pauri, but one increment was stopped with permanent effect and in the same being major penalty, the prescribed procedure was not followed in the petitioner's matter. The petitioner's appeal against the punishment order was not entertained as the same was filed beyond the period of 90 days.

The petitioner filed a claim petition bearing no. 47/SB/2021 before this Tribunal which condoned the delay in filing the appeal in the interest of justice and directed appellate authority to decide the departmental appeal of the petitioner against permanent stoppage of one increment on merit. The petitioner placed above mentioned judgment dated 07.06.2021 before the appellate authority. The appellate authority rejected the plea

of the petitioner without any facts and figures. It is submitted that the penalty was imposed only on the petitioner while for the construction work of kitchen-cum-store only petitioner is not liable but unfortunately only petitioner was penalized by the respondents. It is also pertinent to mention that the copy of the inquiry report was not supplied to the petitioner. In this way, no opportunity was given to the petitioner to say something on inquiry report, which is against the principle of natural justice.

Hence this petition.

3. C.A. has been filed on behalf of Respondent no.3, mainly stating that during the posting as Head Master, Govt. Junior High School, Kathud Block, Kot, Pauri Garhwal, the petitioner has committed serious financial irregularities in construction of kitchen-cum-store of the said school. Being secretary of the school management committee, disciplinary inquiry was conducted against the petitioner as per provisions of the Uttarakhand Govt. Servant (Discipline and Appeal) Rules, 2003 as amended in 2010. The charge sheet containing as many as 5 charges was served upon the petitioner for furnishing the reply to the same. The petitioner furnished the reply to the same which was found unsatisfactory against the real facts & law, therefore, the regular inquiry officer *i.e.* Block Education Officer, Kot was appointed who conducted a just, fair, impartial inquiry by giving reasonable opportunity of defence to the petitioner. The charges were found proved against the petitioner in inquiry as such the petitioner was rightly punished by the competent authority *i.e.* respondent no. 4 vide order dated 21.01.2016 by which one increment was stopped with cumulative effect. After the condonation of delay in filing the appeal by this Tribunal, Respondent no.3 has considered the appeal of the petitioner and after full application of mind, has rejected his appeal on 16.09.2021 by a speaking and reasoned order. C.A. filed on behalf of Respondents no. 4 and 5 states, in addition, that the regular inquiry officer, *i.e.*, Block Education Officer (B.E.O.), Kot had submitted his enquiry report dated 19.12.2015 to the disciplinary authority in which it was held that as the

petitioner has himself admitted the charges levelled against him and further requested and assured that such mistake will not be repeated in future, there was no need to conduct further inquiry. Thereafter, affording second opportunity of defense to the petitioner, a show cause notice dated 31.12.2015 along with inquiry report was given to the petitioner to furnish reply to the same. The petitioner submitted his reply vide letter dated 13.01.2016, which was found unsatisfactory. Hence, the punishment order dated 21.01.2016 has rightly been issued by the Respondent no. 4.

4. The petitioner has filed R.As. to these C.As. mainly stating that the higher officers had pressurized the petitioner for admission of having committed irregularities in the construction, whereas the technical officer namely, Junior Engineer and the Committee have issued completion certificate and utilization certificate; then no one can question about the construction of the Kitchen-cum-Store, in which no irregularities have been made by the petitioner. He has also reiterated many averments made in the claim petition in these R.As.

5. We have heard Learned Council for the petitioner and Learned A.P.O. Learned Council for the petitioner has also filed written arguments.

6. The tribunal observes as below:-

(i) Reply dated 13.01.2016 of the petitioner to the show cause notice dated 31.12.2015 is annexed as annexure C.A.-R4 to the C.A. of Respondents no. 4 and 5. This reply addressed to the District Education Officer, Primary Education, Pauri Garhwal, acknowledges the receipt of the inquiry report of the Block Education Officer/ inquiry officer and outlines the case of the petitioner against the five charges. Regarding the first charge about irregularities in the construction of the Kitchen-cum-Store, he states that some shortcomings were there because he did not have full technical knowledge of the construction work which has been accepted by the inquiry officer and he made proper efforts on the basis of his experience that the construction work is done with quality according

to the standards and Junior Engineer (Civil), *Sarva Shiksha Abhiyan*, Pauri Garhwal has verified the construction to be according to the standard. It is further stated that for the construction work not being as per the standard, whatever recovery is imposed upon him as penalty, he is ready to pay the same and he assures that in future there will be no repetition and that he has apologized in past also for the same. Regarding second charge about withdrawal of the last installment of Rs. 13,500/- without permission, it has been stated that the petitioner did not have full knowledge about the permission to be granted by the senior officer and withdrawal was made due to lack of knowledge and repeated pressure of the contractor. Afterwards, this amount was deposited by the petitioner in the concerned account. About 3rd charge regarding carelessness about work responsibilities and non-maintenance of teacher diary, cheque issue register and ledgers and use of whitener in M.D.M register, the reply states that the petitioner was having mental tension due to the illness of his wife and such work has been completed by him afterwards, which has been verified in the inquiry report. About 4th charge regarding reaching school late on 12.09.2015 at the time of inspection, the reply states that the petitioner got late due the technical defect in the passenger vehicle on 12.09.2015 for which he submits apology. For the delay on that day, he has already been punished by deduction of one day's salary and it is not fair to make a charge against him on this point. About 5th charge regarding carelessness, irregularities in government responsibilities and showing indiscipline, the reply states that the petitioner has always tried to carryout his work responsibilities with dedication and honesty, if by mistake, some carelessness or indiscipline has been shown, the petitioner begs pardon for the same and same will not be repeated in future. On this reply, he has been punished vide order dated 21.01.2016 with the punishment of permanent stoppage of one increment.

7. The Tribunal observes that:

(i) The procedure prescribed for imposing major penalty has been properly followed in the case of the petitioner and copy of the inquiry

report has been provided to him with the second show cause notice dated 31.12.2015 which has been acknowledged by the petitioner and reply to the same has also been submitted by the petitioner. The inquiry report and the order of punishment both are passed on the petitioner's admission of the short comings and apology for the same. Therefore, the Tribunal holds that there has been 'misconduct' on the part of the petitioner for which punishment has been awarded following proper procedure.

(ii) The Tribunal simultaneously observes that the punishment imposed should be proportionate to the 'misconduct' of the charged government servant. It is notable that the completion certificate and utilization certificate have also been signed by the Junior Engineer (Civil) who was the technical officer. The petitioner can be given some relief keeping in view that he is a non-technical person and is rarely deputed for any construction work. Further there has been no embezzlement of money and no recovery has been ordered against the petitioner. Therefore, a case is made out for reviewing the quantum of punishment imposed upon the petitioner which should be done by the disciplinary authority.

8. In view of the above, the disciplinary authority (respondent no.4) is directed to review the punishment imposed upon the petitioner and make it commensurate with the misconduct of the petitioner by passing reasoned and speaking order in this regard, within a period of 8 weeks from the date of presentation of certified copy of this order. Till the time such order is passed, the punishment imposed upon the petitioner *vide* order dated 21.01.2016 shall remain in abeyance.

9. With the above directions, the claim petition is disposed of. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 07, 2023
DEHRADUN
KNP