

BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN

Present: Hon'ble Mr. Justice J.C.S.Rawat
----- Chairman

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 24/DB/2014

- 1 Ganesh Singh, S/o Badri Singh, aged about 50 years, R/o village and post Bakeli, Thailisain Pauri Garhwal.
- 2 Baldev Singh, S/o Sri Manveer Singh Negi, aged about 48 years, R/o Qukaleshwar, Mohalla Circuit House, Pauri Garhwal.
- 3 Dinesh singh, S/o Sri Manveer Singh Negi, aged about 48 years, R/o Qukaleshwar, Mohalla Circuit House, Pauri Garhwal.
- 4 Smt. Nirmla Devi, W/o Late Sri Anandmani, aged about 50 years, R/o Pold House, Pauri Garhwal.
- 5 Karan Pal Singh, S/o Sri Bhopal Singh, aged about 38 years, R/o Qukaleshwar, Mohalla Circuit House, Pauri Garhwal.

.....Petitioners.

VERSUS

1. State of Uttarakhand through its Secretary, Secondary Education, Govt. of Uttarakhand, Dehradun.
2. Chief Education Officer, District Pauri Garhwal.

.....Respondents

Present: Sri V.P.Sharma, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiya, Ld. P.O.
for the respondents .

JUDGMENT

DATED: MAY 13, 2015.

(Hon'ble Mr. Justice J.C.S. Rawat, Chairman)

1. Petitioners have filed this claim petition for seeking following relief:-

"In view of facts and reasons stated in foregoing paras, the petitioner most respectfully prays for the following relief:

- (i) To issue order or direction to quash the impugned order dated 13.2.2014 passed by the respondent No.2 and the Respondent No.2 be directed to regularize the services of the petitioners and to be continued on class IV post in their respective institutions.*
 - (ii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.*
 - (iii) To award cost of this petition to the petitioner."*
2. The petitioners were appointed as Class-IV employees in different Education Institutions vide orders dated 27.12.1996, 10.01.1997, 12.12.1998 and 22.01.1999 respectively. The petitioners services were dispensed with on 1.11.1999. They preferred a writ petition before the Hon'ble Allahabad High Court in which the Hon'ble High Court granted interim relief to the petitioners by staying the operation of the impugned order. Thereafter the State of Uttarakhand was carved out from the State of U.P. and the matter was transferred from the Hon'ble Allahabad High Court to the Hon'ble Uttarakhand High Court. The Hon'ble Uttarakhand High Court decided the matter in writ petition No. 622/2008 holding that the petitioners had not been given reasonable opportunity before passing the impugned order as such the order was quashed and a liberty was given to the respondents' department to pass a fresh order if they so desire in accordance with law after giving an opportunity of hearing to the petitioners. Thereafter the respondents issued a notice and petitioners placed the relevant documents and reply before the competent authority but the respondents were not convinced and hence passed the impugned order dated 13.2.2014 by which their appointment was dispensed with indicating therein that the petitioners were appointed against the provisions of the Government orders dated 17.7.1991 and 3.11.1997 by which the State Government had directed to its subordinate officers, not to make any appointment in any of the establishment. The impugned order also contains that the appointments made of the petitioners were in complete violation of the Government Orders.

3. The petitioners have challenged the said impugned order before this Tribunal on the ground that while making the appointment of the petitioners, the respondents pasted information regarding vacancies on the notice board and the petitioners were fully qualified, therefore they made application and got selected. The petitioners have further alleged that the land of the villagers were given to the respondents for constructing their office and residential building of the Education Department and a preference was given to the villagers as such their appointments were made on the said ground. The petitioners have further alleged that the petitioners had been working on the post of Class-IV employees for last 15 years without any break, therefore they are entitled to be regularized under the दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप से नियुक्त कार्मिकों का विनियमितीकरण नियमावली, 2013 (hereinafter referred to as Regularization Rules 2013). It is further alleged that the ban was on the regular appointments of the employees by the Government and it was never applicable to the temporary appointments. Petitioners have challenged the impugned order on the ground also that some similarly situated persons; Sri Balbir Singh and others, whose services were also terminated and the Hon'ble High Court had set aside those orders and reinstated them in the service and allowed them to continue as Class IV employees. Petitioners have given the name of Sri Balbir Singh only in the claim petition and the copy of the judgment has been annexed with the claim petition and copies of the judgment of rest of the persons of writ petition have been annexed with rejoinder affidavit as Annexure-16 to Annexure-20. Other persons, whose case is said to be similar, is of Smt. Durga Devi, Sri Subodh Rawat, Sri Dharam Singh Bisht, Sri Yogindera Kumar and Sri Rakesh Nautiyal. The petitioners alleged that if similarly situated persons have already been reinstated, their case is squarely covered by those judgments and in view of that, they are also entitled to be reinstated and the impugned order be set aside accordingly.
4. Respondents have filed their counter affidavit and it is alleged in the counter affidavit that the petitioners have alleged that their case is

similar to the case of Sri Balbir Singh but Sri Balbir Singh was a retrenched employee whose appointment was an adjustment under the relevant rules so the case of Sri Balbir Singh is not applicable in the said case. The State has further averred in the written statement that the appointments of the petitioners were made in utter violation of the Government orders dated 17.7.1991 and 3.11.1997 by which the Government had completely prohibited the recruitments and appointments of Class-IV employees in the State Government establishments. In spite of that the DIOS had made appointments of the petitioners. It is further alleged that the petitioners had been appointed in utter violation of the Rules applicable for the appointment of Class-IV employees promulgated by the State Government, so the appointment is in utter violation of the Rules and the judgment in the case of **Secretary State of Karnataka Vs. Uma Devi 2006(4)SCC 1** strictly holds that if the appointment has been made in utter violation of the Constitution and the Service Appointment Rules, the said appointment would be illegal and they cannot get the right of regularization as well as they cannot be regularized in service and they have no right to bring the claim petition before the Court.

5. The similarly situated persons viz Smt. Durga Devi, Sri Subodh Rawawt, Sri Dharam Singh Bisht, Sri Yogindera Kumar and Sri Rakesh Nautiyal have been reinstated by the judgment of Hon'ble High Court annexed as Annexure Nos. 16, 17, 19 & 20 to the claim petition, though its reply was not made by the State Government but the judgments in those cases are self explanatory and no further reply was required from the State Government.
6. Ld. Counsel for the petitioner at the outset contended that the services of other similarly situated persons, namely Sri Balbir Singh, Smt. Durga Deiv, Sri Subodh Rawawt, Sri Dharam Singh Bisht, Sri Yogindera Kumar and Sri Rakesh Nautiyal were also terminated by the respondents and they preferred a writ petition and their termination orders were quashed. The copies of judgment of Hon'ble High Court are annexed as Annexure-15 and from Annexure 17 to Annexure -20 to the claim

petition. Ld. A.P.O. refuted the contention and contended that the judgments annexed as Annexure- 15 and from Annexure 17 to Annexure -20 clearly reveal that these employees were retrenched employees from other establishments and they were given appointment by the respondents as their services were retrenched. Ld. A.P.O. further contended that in all the judgments, the Hon'ble Court has given a finding that the petitioners in those cases were the retrenched employees and that aspect has been considered by the Hon'ble Court, so the orders were set aside. Ld. A.P.O. further contended that under the relevant Rules and Government orders, if an employee has been retrenched from a Government department and if any vacancy falls in any of the department, he could be adjusted against the said post because he had already completed the process of appointment in the earlier parent department and due to certain contingency if the existence of the post could not be continued in that establishment, the persons so retrenched, can be adjusted in any of the department without any process and procedure. Ld. A.P.O. contended that perusal of all the judgments makes it clear that the Hon'ble Court has first held that the petitioners in those cases were the retrenched employees so on the similar grounds these writ petitions have been allowed and they had been reinstated. Ld. A.P.O. also contended that the petitioners of the claim petition are not retrenched employees, their appointment letters are evident for the same and no document has been filed by the petitioners to show that they were retrenched employees of any of the department and they were appointed on the basis of said retrenchment.

7. Ld. A.P.O. further contended that in the case of Smt. Durga Devi, Annexure-16 to claim petition, she was the war widow of soldier of the Garhwal Rifles of Indian Armed Forces, who had sacrificed his life fighting terrorists in Jammu and Kashmir. Such women were treated as war widows under the orders of the State Government. Ld. A.P.O. further contended this Government order empowers to appoint the war widow like an appointee under the Dying in Harness Rules. It is

settled principle that the Government can carve out any exception for the special category; the Government by making Rules Dying in Harness has carved out a general exception of employment to say goodbye to the regular rules. Ld. A.P.O. further contended that likewise employment for the war widows has to be given, similar Government order was issued in the year 1996, thus the case of the petitioners is not similar to the case of Smt. Durga Devi, annexed as Annexure 16 to the claim petition. The judgment of the Hon'ble Court clearly depicts the above position.

8. We are completely in agreement with the submissions of Ld. A.P.O.. It is apparent from the perusal of the appointment of the petitioners that those appointment letters nowhere depict that they have been retrenched from any of the department and the petitioners have been appointed purely on temporary basis and the appointment letter is self-explanatory. Apart from that in the judgment of the Hon'ble Court it has been held that petitioners in those cases, referred to as Annexure Nos. 15 and from Annexure 17 to Annexure -20, were the retrenched employees. The claim petitioners had not filed any documents that they had been any retrenched employee from any of the department so the petitioners cannot claim parity on the basis of the judgment rendered by the Hon'ble Uttarakhand High Court in the matters. Ld. Counsel for the petitioner could not demonstrate us that the said G.O. did not carve out an exception like dying in harness rules. Thus, we do not find any force in the contention of the Ld. Counsel for the petitioner.
9. Ld. Counsel for the petitioner further contended that the petitioners were fully qualified for the posts and they made application for the post and they were selected. Ld. Counsel further contended that they were given a preference as they being villagers, donated their land for constructing office and residential building of the Education Department. Ld. A.P.O. refuted the contention and contended that no such document has been filed in support of this contention. After due consideration of the submissions made by Ld. Counsel for both the parties, we are not agreeable to the contention of Ld. Counsel for the

petitioner because the petitioners have not filed any agreement between the respondents and petitioners, that the claim petitioners had donated their land with an undertaking of the Government, if respondents constructed the office and residences for the department, a preference would be given in the appointment of recruitments. Apart from that where such situation occurs, while making the recruitment, preference is given in a direct recruitments in accordance with law. The claim petitioners cannot be appointed straightaway de-hors the applicable Rules. Even if such agreement is there, that violates Article 16 of the Constitution of India because similarly situated persons had no right to appear in the examination for selection process and the single right even by contract of a person cannot prevail over the mandate of the Constitution. The petitioners have not even filed the copy of Khasara & Khatauni in which their names have been given over the land in which the construction for the office and residential building has been made by the respondents. It is not amply established that the petitioners have ever given their land to the department concerned and the pleading in the petition in Para 4(7) is also vague as to who had donated the land; whether the petitioners were part of it and they have also not specified the Khasara, Khatauni and other details by which respondents could have replied properly. Thus, we are completely in agreement with the arguments of the Ld. A.P.O.

10. The petitioner No. 1 has claimed that he was a dependent of the freedom fighter, as such his appointment was made on the said quota. Perusal of the reservation order issued by the State Government of U.P. as well as State of Uttarakhand clearly reveals that for the dependents of the freedom fighters a certain quota has been allotted but this quota can only be applied when the recruitment process has been conducted and after final list, the reservation regarding SC/ST/OBC and dependents of freedom fighters is provided in the select list. The general exception has not been carved out regarding the appointment of dependent of freedom fighters. The claim petitioners had not been appointed by due process of law and no select list was prepared by the

respondents, hence he cannot claim any post on the ground of being a dependent of freedom fighter.

11. Ld. Counsel for the petitioner further contended that the petitioners had been working for the last 15 years as such they are entitled to be regularized under the Regularization Rules, 2013. Ld. Counsel for the petitioner further contended that the impugned order passed by the respondents, is against the principle of equity and they had been serving the department without any break of service for last 14 years, as such they should be regularized under the said Rules otherwise the petitioners would have no livelihood. The petitioners were treated to be an employee of the respondent's department and their GPF etc. was deducted from their salary and they were granted loan also, so the respondents cannot disown their responsibility to regularize their services. Ld. A.P.O. refuted the contention.

12. The first and the foremost question arises as to whether the petitioners are entitled to be regularized under the Regularization Rules, 2013. It is admitted case of the parties that the petitioners' services were terminated on 1.11.1999 and thereafter they had been discharging their duties under the cover of the stay order passed by the Hon'ble Allahabad High Court in which the Hon'ble Court stayed the operation of the order dated 1.11.1999. As such the continuance of the petitioners in service was under the cover of the stay order. In the case of Secretary State of Karnataka Vs. Uma Devi (supra), the Hon'ble Apex Court in Para 53 has clearly laid down,

“ One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA, R.N. NANJUNDAPPA (supra), and B.N.NAGARAJAN (supra), and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to **regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular**

recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.”

13. From the year 1999 to 2014 the petitioners had been continuing in service, if at all reinstated after 1999 order under the heading litigation employment. The Hon’ble Apex Court in the above case in Para 43 has held as under:-

“.....It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

14. Thus, the petitioners were working at the strength of the stay order, as such the petitioners are not entitled to claim regularization under the Regularization Rules, 2013.

15. From the perusal of the above, it is clearly established that the petitioners were appointed purely on the ad-hoc basis and no process for the appointment as contemplated in the Rules had been adhered to

and other similarly situated persons had not been given an opportunity to seek the appointment and as such it is a backdoor appointment. Hon'ble Apex Court in the case of Secretary State of Karnataka Vs. Uma Devi (supra) in Para 12 has held as under:-

“.....This right of the Union or of the State Government cannot but be recognized and there is nothing in the Constitution which prohibits such engaging of persons temporarily or on daily wages, to meet the needs of the situation. But the fact that such engagements are resorted to, cannot be used to defeat the very scheme of public employment. Nor can a court say that the Union or the State Governments do not have the right to engage persons in various capacities for a duration or until the work in a particular project is completed. Once this right of the Government is recognized and the mandate of the constitutional requirement for public employment is respected, there cannot be much difficulty in coming to the conclusion that it is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme.”

In view of the above observations of the Hon'ble Apex Court, the impugned order cannot be set aside.

16. Perusal of the entire matter also leads us to discuss whether the petitioners had a right to file a petition to seek their claim to be reinstated or not. In the case of Secretary State of Karnataka Vs. Uma Devi (supra) this aspect has also been considered in Para 52 which runs as under:-

“.....This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent.”

17. In the case of certiorari also , petitioners had to establish a legal right to maintain the petition and to seek the quashing of the order. If the petitioners had no legal right to remain and continue on the post, they cannot maintain a petition to seek the quashing of the order of their termination from the service. In view of the above extracted observations of the Hon'ble Apex Court, the petitioners being ad-hoc employees, have no enforceable legal right to seek mandamus or direction to be reinstated in the department by setting aside the impugned order. In view of the above, we do not find any force in the claim petition and the claim petition is liable to be dismissed.

ORDER

The claim petition is dismissed. Parties shall bear their own costs.

(D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATED: MAY 13, 2015
DEHRADUN

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