

**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. 131/DB/2022

Bheem Singh, aged about 44 years, s/o Late Sri Bachan Singh, r/o Nagjhala, Post Office- Gundiayat Gaon, Tehsil- Purola, District Uttarkashi, presently residing at Rana Bhawan, Near MDS School, Tiloth, Police Station- Kotwali, Uttarkashi, District- Uttarkashi.

.....Petitioner

vs.

1. The State of Uttarakhand through Secretary, School Education, Dehradun..
2. Director of Secondary Education, Uttarakhand Shashan, Nanoorkheda, Dehradun.
3. Deputy Director of Secondary Education, Uttarakhand, Nanoorkheda, Dehradun.
4. Addl. Director of Education (Secondary Education), Garhwal Mandal, Pauri, District Pauri Garhwal.
5. Chief Education Officer, Chamoli
6. Principal, Government Inter College, Savaad, Deval, Chamoli.

.....Respondents

Present: Sri M.C.Pant & Sri Abhishek Chamoli, Advocates, for the petitioner.
Sri V.P.Devrani, A.P.O., for the respondents.

JUDGMENT

DATED: MAY 04, 2023

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks the following reliefs:

“i. To issue an order or direction to quash the impugned orders dated 21.01.2021 along with order dated 19.03.2021 and order dated 18.11.2021 of the respondents declaring the same as arbitrary, malafide, void and a nullity with its effects and operation, after calling entire records from the respondents, or to mould the relief appropriately, keeping in view the facts highlighted in the body of the petition.

ii. To issue an order or direction to reinstate the petitioner to his service along with all consequential benefits and service benefits and arrear of pay to the petitioner with 18% interest as if there had been the impugned order was never in existence.

iii. To issue an order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.

iv. To award the cost of petition.”

2. When the petitioner was posted as Lecturer (Hindi) in Govt. Inter College, Savaad, District Chamoli, he was convicted under Section 376(2) IPC and was sentenced to undergo 10 years' rigorous imprisonment along with fine of Rs.01 lakh *vide* order dated 28.02.2019, passed by Ld. Sessions Judge, Uttarkashi. As a consequence thereof, petitioner was dismissed from service for the misconduct under Rule 3(2) of the Uttarakhand Government Servants' Conduct Rules, 2002, Rule 3 (b) (4) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010) (for short, Rules of 2003) and Rule 11 of the *Uttarakhand Vishesh Adhinasth (Pravakta Sanwarg) Sewa Niymawali, 2008*, *vide* order dated 21.01.2021 of Director, Secondary Education, Dehradun (Annexure: A-1).

3. The petitioner preferred a criminal appeal against his conviction and sentence. After his conviction and before his dismissal from service, he obtained interim bail, during pendency of the criminal appeal, *vide* order dated 07.03.2019 of Hon'ble High Court of Uttarakhand.

4. The most important fact, for the purpose of adjudication of present claim petition is the order dated 26.02.2021, passed by the Hon'ble High Court of Uttarakhand in criminal appeal No. 81/ 2019 (Annexure: A-14). The same is excerpted here in below for convenience:

“The appellant has filed the miscellaneous application for suspension of the conviction order dated 28.02.2019 passed by the Sessions Judge, Uttarkashi in Sessions Trial No.3 of 2017, State vs. Bheem Singh.

On perusal of the record, this is an admitted appeal and the appellant has been enlarged on bail and the suspension of fine is also stayed vide order dated 07.03.2019 by the Coordinate Bench of this Court. It will take time to hear the appeal on merit. Since no paper book is prepared by the registry, hence the matter is listed on 07.04.2021.

In the meantime, the operation of the impugned order dated 28.02.2019 will remain suspended and learned counsel for the appellant will provide the translated copy of the FIR along with the statement of the star witnesses also.”

[Emphasis supplied]

5. It is the submission of Sri M.C. Pant, Ld. Counsel for the petitioner that order dated 26.02.2021 is still continuing.

6. This is second round of litigation between the parties. In the first round of litigation, since the petitioner had not filed a departmental appeal against the dismissal order dated 21.01.2021, therefore, he was directed to file departmental appeal and upon filing such appeal, Respondent No. 2 (Director, Secondary Education) was directed to decide the appeal of the petitioner, in accordance with law, *vide* order dated 31.08.2021 passed by this tribunal in Claim Petition No. 81/DB/2021.

7. The petitioner has sought quashing of order dated 21.01.2021, along with order dated 19.03.2021 which, in fact, is a communication by Additional Director, Secondary Education to Shri Vinod Sharma, former Deputy Advocate General, who obtained order dated 26.02.2021 in criminal appeal No. 81/ 2019 and order dated 18.11.2021, which is the order of Director, Secondary Education, Uttarakhand, on the representation of the petitioner.

8. Ld. Counsel for the petitioner drew attention of this Tribunal towards an order passed by the Hon’ble High Court on 26.04.2023 in WPSS No. 278/2023, which order reads as under:

“2. Petitioner has been dismissed from service on the ground of his conviction by Criminal Court.

3. It is contended by petitioner that provision contained in Rule 19 of Central Civil Services (Class, Control and Appeal) Rules, 1965 was not followed. Rule 19 of the aforesaid Rules is extracted below:

“19. Special procedure in certain cases-

Notwithstanding anything contained in Rule 14 to Rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit: Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.”

4. The first proviso to Rule 19 provides that in case a penalty is imposed upon an employee on the ground of his conviction by a Criminal Court, then he shall be given an opportunity by making representation on the penalty proposed.

5. It is admitted position that opportunity, as contemplated in first proviso, was not given to petitioner. The impugned order of dismissal from service passed against petitioner refers to a conviction order by Criminal Court and, thereafter, refers to opinion given by District Government Counsel. Perusal of the impugned order thus reveals that it has been passed by Principal without application of mind. There is nothing in the impugned order to indicate that opportunity, as contemplated in Rule 19, was given.

6. On this short point alone, the writ petition is allowed and the impugned orders are set aside. The matter is remitted back to Principal to pass appropriate order afresh, as per law, within a period of eight weeks’ from the date of production of certified copy of this order.”

[Emphasis supplied]

9. Ld. A.P.O. submitted that such order of the Hon’ble Court relates to Central Govt. employes, on whom Central Civil Services (Class, Control and Appeal) Rules, 1965, apply and the present petitioner is governed by the Rules of 2003. Ld. Counsel for the petitioner further submitted that there is a provision in Police Regulations that the decision on the judicial appeal should be awaited before taking any departmental action. He also submitted that the impugned order should be set aside and the matter should be remitted to the authority below to pass a proper order afresh, as per law, only after giving an opportunity of making representation on the proposed penalty imposed. Para 492 of the Police Regulations reads as below:

“492- Whenever the Police Official has been judicially tried, the Superintendent must await the decision of the judicial appeal, if any, before deciding whether further departmental action is necessary.”

10. In reply, Ld. A.P.O. submitted that the present petitioner is governed by the Rules of 2003 and not the Police Regulations, therefore, Para 492, Police Regulations will not apply.

11. The Tribunal finds that there is a basic flaw in order dated 18.11.2021 (Annexure: A- 3). Such flaw is that, purportedly, this is an order on representation of the petitioner, whereas the appellate authority was directed to decide the departmental appeal of the petitioner. Departmental appeal is different from the representation. Representation has been decided as per the guidelines laid down in the G.O. No. 1178/Karmik-2/2005 dated 30.05.2005. The substance of such G.O., which has been referred to in order dated 18.11.2021 of Director, Secondary Education, Uttarakhand, is that when a convict is released on bail and realization of fine is stayed, the conviction order remains in existence (until and unless criminal appeal itself is allowed by the appellate Court). The Director, Secondary Education *vide* order dated 18.11.2021 has rightly stated that enlargement of a convict of interim bail will not tantamount to acquittal, but there is very important aspect of present matter, which has not been considered by Ld. Appellate Authority and which has been observed by the Tribunal in para 4 of this judgment, that the conviction order has been suspended by the Hon'ble High Court *vide* its order dated 26.02.2021. The fact is that the impugned order dated 28.03.2019 (conviction order), according to the order dated 26.02.2021 of Hon'ble High Court of Uttarakhand is suspended (in the *interregnum*).The said fact requires to be considered by Ld. Appellate Authority for proper decision of the appeal. Ld. Counsel for the petitioner has submitted that the criminal appeal has not been heard and the interim order dated 26.02.2021 continues even today.

12. In such a situation, it is desirable on the part of this Tribunal to set aside the order dated 18.11.2021 (Annexure: A-3) and to direct the competent authority to decide the appeal of the petitioner, in accordance with law. The petitioner has also an option to file the revision under Rule 13 of the Rules of 2003. Rule 13 is reproduced herein below for convenience:

“13. Revision - Notwithstanding anything contained in these rules, the Government may on its own motion or on the representation of concerned Government Servant call for the record of any case decided by an authority subordinate to it in the exercise of any power conferred on such authority by these rules; and

- (a) confirm, modify or reverse the order passed by such authority, or
- (b) direct that a further inquiry be held in the case, or (c) reduce or enhance the penalty imposed by the order, or
- (d) make such other order in the case as it may deem fit.”

13. The competent authority will specifically deal, among other things, with the fallout of Hon’ble Court’s order dated 26.02.2021 in CRLA No. 81 of 2019 (Annexure: A 14). In other words, the quasi-judicial authority is requested to discuss the consequence of suspension of the conviction order. What will be the consequences? The petitioner has already been enlarged on bail and realization of fine, imposed on him, is also stayed.

14. If the Hon’ble Court has suspended the impugned conviction order dated 28.02.2019, whether the petitioner should be reinstated, awaiting the final decision in the criminal appeal or should it be otherwise? If the criminal appeal is allowed and the convict (petitioner) is acquitted, then, in any case he will be reinstated in service because he was dismissed from service only on account of the fact that he has been convicted in a criminal charge involving moral turpitude. If the petitioner is reinstated and subsequently his criminal appeal is dismissed resulting in affirmation of conviction and sentence, as ordered by the Trial Court, then of course, the accused will have to surrender and undergo punishment in that case. A fresh order will have to be passed, dismissing the petitioner from service. In any case, the competent authority is required to go into such vital question, as per law. This Tribunal cannot usurp the jurisdiction of the disciplinary authority/ appellate authority/ revisional authority and substitute its own discretion. The Tribunal can enter into the realm of judicial scrutiny only when some order is passed by the learned quasi-judicial authority below and the said order is put to challenge before this Tribunal.

15. The competent authority should be directed accordingly.

16. The Tribunal deems it proper to provide some guidance to the Ld. Authority below, which is based on the past precedent, to effectively deal with such a situation. Hon’ble High Court of Kerala at Ernakulam in a decision rendered on 25.01.2023 in CrI.M Appl. No. 1/2023, (1) Sayed Mohammed Noorul Ameer, (2) Mohd. Faizal, (3) Mohd. Hussain Thangal (4) Mohd.

Basheer Thangal vs. U.T. Administration of Lakshadweep and another, ,
observed as under:

“6. On an appreciation of the legal principles laid down in the various decisions cited, starting from K.C.Sareen v. CBI, Chandigarh [(2001) 6 SCC 584], Ravikant S.Patil v. Sarvabhooma S.Bagali [(2007) 1 SCC 673], Navjot Singh Sidhu v. State of Punjab and Another [(2007) 2 SCC 574], Sanjay Dutt v. State of Maharashtra through CBI, Bombay [(2009) 5 SCC 787], Lily Thomas v. Union of India and Others [(2013) 7 SCC 653], Shyam Narain Pandey v. State of Uttar Pradesh [(2014) 8 SCC 909], Lok Prahari through its General Secretary, S.N.Shukla v. Election Commission of India and Others [(2018) 18 SCC 114] the following six principles can be culled out.

- (i) Suspending the sentence and suspending the conviction are two different aspects, and the said powers can be traced to section 389(1) Cr.P.C.,
- (ii) When a statutory appeal is filed against a conviction with a sentence for a fixed period, suspension of sentence can be liberally considered unless there are exceptional circumstances.
- (iii) The power to suspend conviction should be exercised only in very exceptional cases, and while suspending a conviction, the court has a duty to look at all aspects, including the ramifications of keeping such conviction in abeyance.
- (iv) Stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case.
- (v) The power to stay conviction must be exercised only in circumstances where failure to stay the conviction would lead to injustice and irreversible consequences, and
- (vi) The person seeking a stay of conviction should specifically draw the attention of the appellate court to the consequences that may arise if the conviction is not stayed and unless the attention of the court is drawn to the specific consequence that would follow on account of the conviction, the persons convicted cannot obtain an order of stay of conviction.

9. During the course of arguments, it was submitted that the second petitioner has been disqualified by notification dated 13.01.2023, and a press note was issued on 18.01.2023 calling for elections to the Constituency, which was occupied by the second petitioner. It was also submitted that though the notification for the election has not yet been issued, the date of election is proposed to be 27.02.2023. The defacto complainant, in his impleading petition, has produced the notification dated 13-01-2023, which states that the second petitioner stands disqualified from 11-01-2023 consequent upon his conviction.

13. However, If once the stay or suspension of conviction is granted by the appellate court and it does not relate back to the date of order of conviction, it would lead to an incongruous and illogical situation as for a brief period of few days the member remained disqualified and thereafter, his disqualification becomes ineffective. Such an absurd and dissonant consequence could not have been in the contemplation of the Legislature at all. In fact, the said issue needs no elaboration as the Supreme Court had, in the decision in Lok Prahari, Through its General Secretary S.N Shukla v. Election Commission of India and Others (AIR

2018 SC 4675), held as follows: “Upon the stay of a conviction under S.389 of the Cr.P.C., the disqualification under S.8 will not operate. The decisions in Ravi Kant Patil and Lily Thomas conclude the issue. Since the decision in Rama Narang, it has been well-settled that the appellate court has the power, in an appropriate case, to stay the conviction under S.389 besides suspending the sentence. The power to stay a conviction is by way of an exception. Before it is exercised, the appellate court must be made aware of the consequence which will ensue if the conviction were not to be stayed. Once the conviction has been stayed by the appellate court, the disqualification under sub-sections 1, .2 and 3 of Section 8 of the Representation of the People Act 1951 will not operate. Under Article 102(1)(e) and Article 191(1)(e), the disqualification operates by or under any law made by Parliament. Disqualification under the above provisions of Section 8 follows upon a conviction for one of the listed offences. Once the conviction has been stayed during the pendency of an appeal, the disqualification which operates as a consequence of the conviction cannot take or remain in effect. In view of the consistent statement of the legal position in Rama Narang and in decisions which followed, there is no merit in the submission that the power conferred on the appellate court under Section 389 does not include the power, in an appropriate case, to stay the conviction. Clearly, the appellate court does possess such a power. Moreover, it is untenable that the disqualification which ensues from a conviction will operate despite the appellate court having granted a stay of the conviction. The authority vested in the appellate court to stay a conviction ensures that a conviction on untenable or frivolous grounds does not operate to cause serious prejudice. As the decision in Lily Thomas has clarified, a stay of the conviction would relieve the individual from suffering the consequence inter alia of a disqualification relatable to the provisions of sub-sections.1, 2 and 3 of Section 8.

20. Accordingly, I allow this application in part as follows:

(i) The conviction and sentence of imprisonment imposed upon the second petitioner as second accused in S.C. No.1/2017 on the files of the Sessions Court, Kavarthi, Union Territory of Lakshadweep, shall stand suspended until disposal of the appeal on condition that the said petitioner deposits the amount of fine imposed upon him within two weeks from today.”

16.1 *Vide* Notification dated 29.03.2023 of Lok Sabha Secretariat, issued by Sri Utpal Kumar Singh, Secretary General , the following order was passed:

“2. In view of order dated 25.01.2023 of the High Court of Kerala, the disqualification of Shri Mohammed Faizal P. P., notified vide Gazette Notification no. 21/4(1)/2023/TO(B) dated the 13th January, 2023 in terms of the provisions of Article 102(1)(c) of the Constitution of India read with Section 8 of the Representation of the People Act, 1951, has ceased to operate subject to further judicial pronouncements.”

[Emphasis supplied]

17. The claim petition is disposed of by setting aside order dated 18.11.2021 (Annexure: A-3) with the direction to the appellate authority to pass a fresh order in accordance with law, without unreasonable delay. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 04, 2023
DEHRADUN

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