BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL, DEHRADUN

Present: Sri V.K. Maheshwari

------ Vice Chairman (J)

&

Sri D.K. Kotia

------- Vice Chairman (A)

CLAIM PETITION NO. 103 OF 2008

Suraj, S/o Shri Navbhar Singh, Safai Karmi (Sweeper) Govt. Inter College, Siddhkhul Churani, District Pauri Garhwal

………Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Education, Secretariat, Uttarakhand, Derhadun,
2. District Inspectors of Schools, Pauri Garhwal (Now redesigned as District Education Officer, Paru Garhwal),
3. Principal, Govt. Inter College, Sidhkhal Churani, District Pauri Garhwal,
4. State of U.P. through Secretary, Education, Govt. of U.P., Lucknow, U.P.
5. Director of Intermediate Education Board, U.P. Allahabad,
6. Director, School Education, Uttarakhand, Dehradun.

…..…Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents No. 1,2, 3 & 6

None for the respondents No. 4 & 5

JUDGMENT

DATE: JULY 10, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The present claim petition has been filed for seeking the following relief:

> *"(i) To issue a suitable order and direction to quash the impugned order of termination dated 01.11.1999, 14.11.2008 and 17.11.2008 and to reinstate the petitioner in service as directed by the Hon'ble High Court in order dated 24.07.2000, with all consequential benefits.*
> *(ii) To issue order & direction to the respondents to make payment of salary current & in arrears since April 1999 to the petitioner.*
> *ii(A) Issue an order or direction to concerned respondents to appoint and regularize the petitioner in his service in pursuant to the order dated 04.07.2012, 10.12.2012 and 15.12.2012 (Annexure No. A-15, A-13 & A-14) of this petition.*
> *(iii) To issue any other order or direction, which this Hon'ble Court may deem fit & proper under the circumstances of the case.*
> *(iv) To award cost of the petition in favour of the petitioner."*

2. The relevant facts related to the case in brief are that the petitioner was appointed on 08.10.1998 as 'Safai Karmi' by the respondent no.2 and in pursuant to this, the petitioner

joined the duty on 12.12.1998 (Annexure: 4) at the College of the respondent No. 3. As a result of an inquiry conducted by the District Magistrate in respect of the appointments made by the then District Inspector of Schools (DIOS), Pauri Garhwal, the appointments of the petitioner along with others were found to be irregular and illegal. It was also found in the inquiry that the appointments of the petitioner (and others) were made by the then DIOS in spite of ban on new appointments vide Government Order dated 3.11.1997. The services of the petitioner along with others were terminated on 01.11.1999.

3. Aggrieved by the termination order, the petitioner filed a writ petition No. 18647 of 2000 before the Hon'ble High Court at Allahabad. The Hon'ble High Court passed an interim order on 21.4.2000 (Annexure: 6) which is reproduced below:

> *"Learned standing counsel prays and is allowed 3 weeks' time to file counter affidavit. List thereafter.*
> *If the work and post is available the petitioner shall be allowed to work and be paid salary."*

4. In pursuant to the above order of Hon'ble High Court at Allahabad, the petitioner again joined as 'Safai Karmi' on 07.06.2000. The petitioner continued in the service on the basis of above order.

5. After the creation of the Uttarakhand State, the Writ Petition of the petitioner (No. 18647 of 2000) before the Hon'ble High Court at Allahabad was transferred to the

Hon'ble High Court at Nainital (new No. 1819 of 2001). The Hon'ble Court at Nainital decided the writ petition on 24.09.2008 (Annexure: 9) and passed the following order:

> *"The petitioner has a remedy before the Public Service Tribunal, therefore, he is relegated to approach the Public Service Tribunal.*
>
> *Accordingly, writ petition is dismissed with observation that if the petitioner so desires, may avail remedy before the Public Service Tribunal."*

6. After the order of the Hon'ble High Court in para 5 above, the respondent No. 2 passed an order on 14.11.2008 that the original termination order dated 1.11.1999 has revived and come into effect as the Hon'ble High Court has dismissed the writ petition of the petitioner. As per order and direction of respondent No. 2, the petitioner was relieved by respondent No. 3 on 17.11.2008.

7. In pursuant to the order of the Hon'ble High Court in para 5 above, the petitioner in his petition before this Tribunal has challenged the termination order dated 1.11.1999, 14.11.2008 and 17.11.2008 on several grounds.

8. During the pendency of the claim petition, the question of the maintainability of the petition was raised by the Tribunal as the dismissal order of the petitioner (dated 1.11.1999) pertains to the period prior to the creation of the Uttrakhand State. It would be appropriate to discuss this issue first.

9. The petitioner was dismissed from the service on 1.11.1999 before the creation of the State of Uttarakhand. At

that time, the petitioner was in the service of the State of Uttar Pradesh and not in the service of the State of Uttarakhand. The petitioner had never been the employee of the State of Uttarakhand and therefore, he cannot be treated a public servant in Uttarakhand as defined under Section 2(b) of the Public Services (Tribunal) Act, 1976.

10. In our view, the termination of the petitioner on 1.11.1999 is entirely an issue of the State of Uttar Pradesh as at that time the State of Uttarakhand had not come into existence. It would be quite relevant to reproduce Para 11 of the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3984 of 2012, State of Uttarakhand and another Vs. Uma Kant Joshi (and two others civil appeals) 2012 (1) UD 583(Division Bench of Hon'ble G.S.Singhvi and Hon'ble Sudhansu Jyoti Mukhopadhaya):

> "*We have considered the respective submission. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K.Khare to Class-I posts with effect form 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect form*

9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K.Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No. 1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent no.1 "

11. Hon'ble High Court at Nainital has also dealt with a case where the employee had retired before the creation of Uttarakhand State. In this case also the Hon'ble High Court decided that the Uttarakhand Public Services Tribunal cannot adjudicate the claims of the employee as he was not public servant of the State of Uttarakhand. The Hon'ble High Court in this writ petition No.(S/B) 33 of 2007, State of Uttarakhand and others Vs. Public Services Tribunal Uttarakhand & others decided on 01.05.2012 has laid down as follows:

"*The private respondent was Store Keeper at ITI Piran Kaliyar, an institution, owned, controlled and managed by the State Government. He retired from his*

service no 31st July, 2000. There is no dispute that ITI, Piran Kaliyar is situate within the territory, which became the territory of the State of Uttarakhand, after the State of Uttarakhand was created by bifurcating a part of the State of Uttar Pradesh, by and under the Uttar Pradesh Re-organization Act, 2000. However, that bifurcation took place on 9th November, 2000, much prior thereto, the respondent retired. The respondent therefore, did not retire from ITI Prian Kaliyar, when the same came under the authority, management and control of the State of Uttarakhand. Because the respondent was not paid his dues, which became due and payable to him on his retirement, he approached the Public Services Tribunal, Uttarakhand, which was constituted after adoption of U.P. Public Services (Tribunal) Act, 1976. While the U.P. Public Services (Tribunal) Act, 1976 authorizes establishment of a Tribunal, the said Act was extended to the State of Uttar Pradesh and, accordingly, one Tribunal under the said Act could be established in any part of State of Uttar Pradesh. Accordingly, such a Tribunal was established at Lucknow. When the said Act was adopted by the State of Uttarakhand, it was made clear that the adopted Act will stand extended to the State of Uttarakhand and in terms of the adopted Act, the State of Uttarakhand too shall also be entitle to establish a Tribunal in the State of Uttarakhand. Public Servant in terms of the adopted Act, thus means a person in the pay or service of the State Government of Uttarakhand. The respondent was never in the pay or in the service of State of Uttarakhand. In the circumstances, the private respondent could not approach the Tribunal, constituted by the State of Uttarakhand, after adopting the said Act. Private respondent having been an employee of the State of

Uttar Pradesh and, having retired from the services of the Uttar Pradesh, could only approach the Public Services Tribunal established by the State of Uttar Pradesh under the 1976 Act, which is situate at Lucknow. "

12. In the case of State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna (S/B) No. 71/2013, the Hon'ble High Court at Nainital has also held that due to re-organization of the State, if the Government Servant only serves in Uttarakhand and he has some grievances with the erstwhile undivided State of U.P., the employee can file the claim petition before the Uttar Pradesh Tribunal or before the Hon'ble High Court at Allahabad, who had the jurisdiction at the time of the accrual of the cause of action. If the claim petition is filed in Uttarakhand Tribunal, no direction can be given or order can be passed by the Uttarakhand Tribunal against the State of Uttar Pradesh. It would be appropriate to reproduce the relevant part of the order of Hon'ble High Court in this case:

"………..Thereafter, with a large number of claims, she came before the Public Services Tribunal, Uttarakhand. The State of Uttar Pradesh as well as the State of Uttarakhand were made parties to the claim petition. The Tribunal held that the State of U.P. is required to decide the pending matters regarding grant of voluntary retirement and consequential benefits, including sanction of leave to her.

We are of the view that the Tribunal at Uttarakhand had no power or jurisdiction to issue orders as have been issued by it by the impugned order dated 17th February, 2009 passed on Claim Petition No. 13 of 2002 against the State of Uttar

Pradesh. We, accordingly, allow the writ petition and set aside the order of the Public Services Tribunal, Uttarakhand impugned in the writ petition with liberty to Mr. Vinod Kumar Bahuguna, the husband of Smt.Pushpa Bahuguna, to approach the Tribunal at Lucknow or the Allahabad High Court as he may be advised pertaining to settlement of all claims of his wife, namely, Dr. Smt. Pushpa Bahuguna, who is since deceased."

13. In the light of the principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court at Nainital in the above cases, we reach to the following conclusion in respect of the case in hand:-

(i) The services of the petitioner were terminated by the Government of Uttar Pradesh on 1.11.1999 before the creation of the State of Uttarakhand and therefore, the petitioner has never been a public servant of the Government of Uttarakhand.

(ii) Total cause of action arose in the State of Uttar Pradesh and no part of the cause of action has arisen in the State of Uttarakhand.

(iii) The petitioner is not entitled to prefer the petition before this Tribunal against the order of his termination dated 1.11.1999.

(iv) The interim order of the Hon'ble High Court at Allahabad on 21.4.2000 (writ petition No. 18647 of 2000) was passed before the creation of the State of Uttarakhand. The petitioner was a public servant of

U.P. and not a public servant of the State of Uttarakhand at that time.

(v) Since the termination order has been passed by the government of Uttar Pradesh, only that State is competent to redress the grievances of the petitioner.

(vi) The order passed by the DIOS on 14.11.2008 and the Principal of the College on 17.11.2008 are the consequential orders after the order of the Hon'ble High Court at Nainital in writ petition No. 1819 of 2001 on 24.09.2008 and these orders simply revive the original termination order dated 1.11.1999. These consequential orders do not entitle the petitioner to be a public servant of the Government of Uttarakhand. In fact, the petitioner was dismissed form the service before the creation of the State of Uttarakhand, therefore, he cannot be treated to be a public servant belonging to the State of Uttarakhand.

(vii) The Hon'ble High Court at Nainital (Writ Petition No. 1819 of 2001) on 24.09.2008 has dismissed the petition on the ground of alternative remedy. The Hon'ble High Court has not considered the point of jurisdiction. The petitioner continues to remain a public servant of U.P. and does not become a public servant of Uttarakhand by this decision of the Hon'ble High Court.

The writ petition was decided only on the ground of availability of alternative remedy, so the petitioner cannot take any benefit on the basis of this order of the Hon'ble High Court.

(viii) This Tribunal has no jurisdiction and competence to adjudicate upon the issue of the termination of the petitioner on 1.11.1999.

(ix) The petition against the termination of the petitioner is therefore, not maintainable before this Tribunal.

14. During pendency of the claim petition, the petitioner amended the petition and also prayed for regularization of his services. Learned counsel for the petitioner stated that in order to rehabilitate 44 Class IV employees (including the petitioner), the State Government asked the information which was provided by the Director, School Education, Uttarakhand vide letter dated 4.3.2009 (Annexure: 11) written to the Secretary, Education. He has further submitted a letter of the State Government dated 10.12.2012 (Annexure: 13) by which the Director, School Education has been directed to give preference to engage Class IV employees (whose services were terminated) on contract basis if vacancies are available. The Director, School Education has forwarded this G.O. to the Chief Education Officer, Pauri Garhwal on 15.12.2012 (Annexure: 14) for further necessary action as per rules. We have perused these letters and find that all the letters deal with the appointments made by the then District Inspector of Schools, Pauri Garhwal in 1996-97. The appointment of the petitioner as stated in the claim petition was made on 08.10.1998 and he joined on 12.12.1998. Thus, we do not find letters in Annexures 11, 13 and 14 relevant in the case of the petitioner. Learned counsel of the petitioner has also

filed a letter of the District Education Officer, Tehri Garhwal written by him to his subordinate officers on 4.7.2012 (Annexure:15) asking details of Class IV employees appointed before 30.6.1998 on ad-hoc basis for the purpose of regularization under 'Regularization of Ad-hoc Appointment Rules, 2002'. As this letter is related to Tehri Garhwal district (while the petitioner's case falls in Pauri Garhwal district) and it deals with the ad-hoc appointments made prior to 30.6.1998, we do not find any relevance of this letter also in the present case.

15. Learned counsel for the petitioner also contended that the petitioner had put in more than 10 years of service and the posts are vacant and available therefore, the petitioner should be re-instated and regularized. We have examined as to whether the petitioner is entitled to be regularized. It is admitted case of the parties that the services of the petitioner were terminated on 1.11.1999 and thereafter, he discharged his service till 17.11.2008 under the cover of the order passed by the Hon'ble High Court at Allahabad on 21.4.2000. 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."*

16. Admittedly, from 7.6.2000 to 17.11.2008, the petitioner continued in the service under 'litigious 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."

17. In the light of the decision of the Hon'ble Apex Court as described in paragraphs 15 and 16 above, we reach the conclusion that the petitioner is not entitled to claim regularization as he worked from 7.6.2000 to 17.11.2008 under the cover of the stay order of the Hon'ble High Court at Allahabad.

18. The counsel for the petitioner has also contended that it is a 'legitimate expectation' of the petitioner that

until the regular appointment is made the services of the petitioner may continue. After due consideration, we are of the view that the situation in the case in hand cannot be covered under the doctrine of ‘legitimate expectation’. There was no express promise to provide regular appointment to the petitioner in order to make out a case of legitimate expectation. The legitimate expectation is different from a wish, desire or hope. It would be appropriate here to reproduce the following paragraph of the decision of the Hon’ble Supreme Court in Secretary, State of Karnataka and others Vs. Umadevi and others, (2006) 4 SCC 1,

> “***47.*** *When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.****”***.

In the light of above, we do not find any merit in the plea of the learned counsel for the petitioner that it is the legitimate expectation of the petitioner to continue in the service

19. For the reasons stated above, we do not find any force in the claim petition and the same is liable to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

Sd/-	*Sd/-*
V.K.MAHESHWARI	**D.K.KOTIA**
VICE CHAIRMAN (J)	VICE CHAIRMAN (A)

DATE: JULY 10, 2015
DEHRADUN

KNP