

**BEFORE THE UTTARAKHAND PUBLIC SERVICES
TRIBUNAL AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 05/2009

Dinesh Singh Rawat, S/o Sri Soban Singh, R/o Near Circuit
House, Pauri, District Pauri Garhwal

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, School Education, Government of Uttarakhand, Dehradun,
2. Director of School Education, Government of Uttarakhand, Mayur Vihar, Dehradun, Uttarakhand,
3. District Education Officer, District Pauri Garhwal, Uttarakhand.
4. State of U.P. through Secretary, Education, Govt. of U.P. , Lucknow, U.P.
5. Director of Intermediate Education Board, U.P. Allahabad.

.....Respondents

Present: Sri M.C.Pant, & Sri L.K.Maithani, Counsel for the petitioner
Sri Umesh Dhaundiya, A.P.O. for the respondents No. 1, 2 & 3
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 order or direction to quash the impugned order dated 21.5.2008(Annexure No.-1) along with its effect and operation also, and further to held that the impugned order is not sustainable in the eyes of law in view of the judgment and order dated 14.2.2006 passed in writ petition No. 1285(SS) of 2001 Vikaram Singh & others Vs. District Inspector of School, Pauri Garhwal & others as the issue between the parties have been finally decided and operates res-judicata.

(ii) To issue order or direction to the respondents to treat the petitioner in service along with all consequential benefits, seniority pay and promotional benefits had it been the impugned order was not in existence.

ii(A) Issue 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 order suitable order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iv) To award cost of this petition to the petitioner.”

2. The relevant facts in brief are that the petitioner was initially appointed as Class-IV employee by the respondent No. 3 in district Pauri Garhwal on 4.12.1998 (Annexure: 2). The appointment of the petitioner was cancelled on 1.11.1999 as the same was found illegal because it was made in violation of the G.O. dated 3.11.1997 (Annexure: A5/1) which had prohibited any new appointment. The termination order was challenged before the Hon'ble High Court at Allahabad (W.P. No. 48101 of 1999) and the operation of the termination order was stayed by the Hon'ble High Court on 17.11.1999. The petitioner continued in the service because of this stay order.

3. After the creation of Uttarakhand State, the aforesaid Writ Petition was transferred to the Hon'ble High Court at Nainital (No. 1285 (S/S) of 2001). The Hon'ble High Court disposed of the petition on 14.2.2006 (Annexure: 3). The relevant part of the order is reproduced below:

“ The petitioners have relied upon the judgment dated 30th August, 2005 passed in Writ Petition No. 5300(SS) of 2001 Raghuveer Singh Bisht Vs. Joint Director of Education and others. Relevant observations are quoted below:

“Admittedly, in this case, notice was not been given to the petitioner before holding that his appointment is irregular or unauthorized and ordering termination of his service. The Apex Court in the case of Basudeo Tewari vs. Sido Kanhu University and ors., reported in 1998 (6) Judgment Today, Page 464 has held that prior to terminating the services of an employee on the ground that the appointment of the employee is not in accordance with law, notice should have been issued to the person concerned and opportunity of hearing must be given to him.

In the present case, no opportunity of hearing has been given to the petitioner and without giving notice; his services have been terminated. Thus the order impugned dated 01.11.1999 terminating the services of the petitioner is liable to be quashed.

According, the writ petition is allowed. The impugned order dated 01.11.1999 passed by District Inspector of Schools, Pauri Garhwal, is hereby quashed. No order as to costs”

The order of termination shows that the petitioners have been terminated vide order dated 01.11.1999. There was a stay order dated 17.11.1999 passed in Writ Petition No. 48101 of 1999 Vikram Singh and others Vs. DIOS and others.

As will appear from the order of stay date 17.11.1999 that the petitioners are still working in the department.

Considering the length of the service of the petitioners and stay order granted in their favour, it

is desirable in the interest of justice that an opportunity be given to the petitioners and the respondent No.1 may pass the order afresh after taking into consideration the judgment of this Court dated 30th August, 2005 passed in Writ Petition No. 5300(SS) of 2001 Raghuvir Singh Bisht Vs. Joint Director of Education, Garhwal Mandal, Pauri and others.

Writ Petitions are disposed of. No order as to costs.”

4. After the aforesaid order of the Hon’ble High Court, the respondent No. 3 passed an order on 21.5.2008 terminating the service of the petitioner (Annexure: 1). Aggrieved by this order, the petitioner filed a writ petition No. 570 (SS) 2008 before the Hon’ble High Court which was disposed of on 11.9.2008 on the ground of alternative remedy and the matter was relegated to the Tribunal (Annexure: 4).

5. The main grounds on the basis of which the impugned order (Annexure: 1) has been challenged in the claim petition are:

- (i) The impugned order has been passed without opportunity of hearing to the petitioner in gross violation of the ‘principle of natural justice’.
- (ii) The impugned order is not sustainable in view of the order of the Hon’ble High Court at Nainital dated 14.2.2006 (W.P. No. 1285 SS 2001) as the

issue between the parties have been finally decided and operates res-judicata.

- (iii) The appointment of the petitioner was not covered under the G.O. dated 17.7.1991 and 3.11.1997 hence the impugned order is illegal and void.
- (iv) The Government have now started the process of regularization and the petitioner is legally entitled to be re-instated and regularized.
- (v) It is a legitimate expectation of the petitioner that until the regular appointment is made the services of the petitioner may continue.

6. Respondents No. 1, 2 and 3 have opposed the petition and stated in their Written Statement that the services of the petitioner have been legally terminated by impugned order dated 21.5.2008 after giving opportunity of hearing as per the order of the Hon'ble High Court dated 14.2.2006. As the appointment of the petitioner was illegally done by the then District Inspector of Schools, Pauri Garhwal (now known as District Education Officer) inspite of ban on appointments vide G.O. dated 3.11.1997 (Annexure A-5/1), the services of the petitioner were rightly terminated. The actions have been taken from time to time complying with the orders of the Ho'ble High Court at Allahabad and Hon'ble High Court at Nainital. The petitioner is not entitled to be re-instated or regularized and therefore, the petition is liable to be dismissed.

7. Despite the sufficient service, respondents No. 4 and 5 have not filed any Written Statement.

8. We have heard learned counsel for the petitioner and learned APO on behalf of respondents No. 1, 2 and 3 and also perused all record carefully.

9. Learned counsel for the petitioner has argued that the impugned order (Annexure: 1) was passed by the respondent No. 3 ex-parte and the services of the petitioner were illegally terminated on 21.5.2008. The petitioner was not provided proper opportunity of hearing and therefore, the 'principle of natural justice' is grossly violated. Learned APO refuted this allegation and contended that after the order of the Hon'ble High Court dated 14.2.2006, the respondent No. 3 vide letter No. Seva-5/60541-43/Vad/07-08 dated 17.3.2008 informed the petitioner to be present on 10.4.2008 at 11 AM in his office for a hearing and to put up his case but the petitioner did not turn up. The contention of the learned counsel for the petitioner is that the petitioner had visited the office of respondent No. 3 on 10.4.2008 but the respondent No. 3 was not in the office. While there are different versions with respect to the opportunity provided on 10.4.2008, it is admitted to both the parties that the petitioner was again asked to be present on 7.5.2008 and on this date the petitioner presented himself in the office of respondent No. 3. The petitioner was also asked answers to the 4 questions in writing in regard to his appointment (R-4). These questions were as given below:

“1- तत्कालीन जिला विद्यालयी निरीक्षक, पौडी गढ़वाल द्वारा आपको नियुक्ति निर्गत किये जाने के दिनांक से पूर्व उक्त नियुक्ति हेतु क्या कोई विज्ञापन समाचार पत्रों में प्रकाशित किया गया था ?

2- आपको उक्त नियुक्ति पत्र निर्गत करने से पूर्व क्या जिला रोजगार कार्यालय द्वारा आपको इस विभाग में रिक्त पदों के सम्बन्ध में कोई सूचना प्रेषित की गई थी?

3- क्या आपको निर्गत नियुक्ति पत्र के पूर्व जिला चयन समिति द्वारा आपका साक्षात्कार लिया गया था? और आप साक्षात्कार के आधार पर चयनित होकर आपको नियुक्ति पत्र निर्गत किया गया था?

4- इसके अतिरिक्त अपनी नियुक्ति के सम्बन्ध में आपको अन्य कुछ कहना है ता लिखित रूप से प्रस्तुत करें। एवं इस सम्बन्ध में कोई साक्ष्य हो तो उसे भी संलग्न करें।”

Learned counsel for the petitioner contended that the opportunity of hearing which was provided is in fact no opportunity of hearing in the eyes of law as it was meaningless in as much as petitioner should have been provided a lawyer or at least a family member to represent the petitioner. Learned APO stated that the petitioner was provided due opportunity on 7.5.2008, he was also asked to provide his version on 4 questions but he did not answer till 21.5.2008 and therefore, it was decided to pass ex-parte order against him.

10. It is clear from para 9 above that the petitioner did get the opportunity for hearing and to present his case on 7.5.2008 but he did not present his case or answer the questions given to him in writing. After 7.5.2008 till 21.5.2008, he did not give his response though he got sufficient time to reply. Apart from 3 specific questions, the

4th question was an open question to the petitioner for any point which he would like to mention regarding his appointment and if any evidence is to be given may also be submitted by him. The petitioner did not reply to the respondent No. 3 till 21.5.2008. He did also not seek any further time/opportunity in this regard. Nor he requested for any help of a lawyer or a family member to present his case. He did also not object to the questions or asked for any clarification in regard to any question. He also did not explain his appointment or reply to the question No. 4. Nor he produced any evidence while giving opportunity as per question No. 4. Under these circumstances, we do not find any infirmity in proceeding ex-party by the respondent No. 3 against the petitioner as reasonable opportunity had been provided to the petitioner for hearing and to present his case.

11. Learned counsel for the petitioner has also contended that the Hon'ble High Court at Nainital vide its order dated 14.2.2006 (Annexure: 3) had quashed the order dated 1.11.1999 by which the services of the petitioner were terminated. Thus, there was no occasion for the respondents to terminate the services of the petitioner in the garb of the impugned order dated 21.5.2008 without complying the operative portion of the Hon'ble High Court's order. He further stated that the impugned order amounts to supersession of the judgment of the Hon'ble High Court which is not permissible. The judgment passed by the Hon'ble High Court on 14.2.2006 is res-judicata between the parties.

12. We have carefully gone through the judgment of the Hon'ble High Court dated 14.2.2006(relevant part reproduced in para 3 of this order). We find it difficult to agree with the contention of the learned counsel for the petitioner in para 11 above. The Hon'ble High Court had only directed the respondent to pass the order afresh after taking into consideration the judgment of Hon'ble High Court dated 30th August 2005 passed in Writ Petition No. 5300(S/S) of 2001, Reghuveer Singh Bisht Vs. Joint Director of Education, Garhwal Mandal, Pauri and others. The Hon'ble High Court in its order dated 14.2.2006 has not quashed the order dated 1.11.1999 in respect of the petitioner as pleaded by the learned counsel for the petitioner. It would be appropriate to again re-produce the operative part of the judgment of the Hon'ble High Court dated 14.2.2006:

“The order of termination shows that the petitioners have been terminated vide order dated 01.11.1999. There was a stay order dated 17.11.1999 passed in Writ Petition No. 48101 of 1999 Vikram Singh and others Vs. DIOS and others.

As will appear from the order of stay date 17.11.1999 that the petitioners are still working in the department.

Considering the length of the service of the petitioners and stay order granted in their favour, it is desirable in the interest of justice that an opportunity be given to the petitioners and the respondent No.1 may pass the order afresh after taking into consideration the judgment of this Court dated 30th August, 2005 passed in Writ Petition No. 5300(SS) of 2001 Raghuvir Singh Bisht

Vs. Joint Director of Education, Garhwal Mandal, Pauri and others.

Writ Petitions are disposed of. No order as to costs.”

We find that while passing the impugned order, respondent No. 3 has complied with the direction of the Hon'ble High Court. The contention of the learned counsel for the petitioner in para 11 above is therefore, not acceptable.

13. Learned counsel for the petitioner also contended that the reason for termination of the petitioner was that he was appointed when there was ban on appointment/recruitment vide G.Os. dated 17.7.1991 (Annexure: A-5) and 3.11.1997 (Annexure: A-5/1). The contention of the learned counsel for the petitioner is that the petitioner was appointed in an officiating arrangement and therefore, G.O. dated 17.7.1991 was not applicable in the case of the petitioner. We find that in para 26 of the petition while stating about the G.O. dated 17.7.1991, the petitioner though mentioned about G.O. dated 3.11.1997 also but the para is silent about the applicability of G.O. dated 3.11.1997. Perusal of impugned order dated 21.5.2008 (Annexure: 1) clearly shows that the appointment of the petitioner was terminated because the appointments were banned by the Government order dated 3.11.1997. Thus, the services of the petitioner were not terminated because of G.O. dated 17.7.1991 but his services were terminated because the appointment was made in violation of G.O. dated 3.11.1997.

It would be appropriate to look at the G.O. dated 3.11.1997, which is reproduced below:

“चतुर्थ वर्ग कर्मचारी सेवा नियमावली, 1985
संख्या 20-1/91-कार्मिक-2/1997

प्रेषक—

श्री सुधीर कुमार,
सचिव,

सेवा में,

- 1— समस्त प्रमुख सचिव/सचिव,
उत्तर प्रदेश शासन।
- 2— समस्त विभागाध्यक्ष एवं प्रमुख,
कार्यालयाध्यक्ष, उत्तर प्रदेश।

कार्मिक अनुभाग-2

दिनांक 3 नवम्बर 1997

विषय— सभी प्रकार की नई नियुक्तियों पर प्रतिबन्ध।

महोदय,

शासन द्वारा निर्णय लिया गया है कि निम्नलिखित स्थितियों को छोड़कर अग्रिम आदेशों तक किसी भी विभाग में कोई नियुक्ति न की जाए और नियुक्ति किये जाने के सम्बन्ध में जो प्रक्रिया प्रारम्भ की गयी हो उसे स्थगित कर दिया जाय।

- 1— लोक सेवा आयोग, उत्तर प्रदेश द्वारा की जा रही चयन की कार्यवाही।
- 2— मा0 उच्च न्यायालय, इलाहाबाद के अधिकार क्षेत्र में आने वाले पदों पर नियुक्ति/चयन की कार्यवाही।
- 3— उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के भर्ती नियमावली 1974 के अधीन नियुक्तियां।
- 4— विभिन्न नियमों/परियोजनाओं आदि के छठनीशुदा कार्मिकों का समायोजन।

अस्तु मझे यह कहने का निर्देश हुआ है कि कृपया उपरोक्त आदेशों से अपने अधीनस्थों को अवगत कराते हुए उसका कड़ाई से अनुपालन सुनिश्चित करें।

भवदीय

सुधीर कुमार
सचिव।”

The petitioner was appointed as a Class IV employee on 4.12.1998 against a vacancy till the regular arrangement is made (Annexure: 2). It is crystal clear that the case of the petitioner is not covered under 4 exceptions permitted by above G.O. dated 3.11.1997. Therefore, we find that the petitioner was appointed in violation of the G.O. dated 3.11.1997 as stated in the impugned order.

14. Learned counsel for the petitioner also 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: A-6) written to the Secretary, Education. He has further submitted a letter of the State government dated 10.12.2012 (Annexure: A-8) 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: A-9) 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 in paragraph 4.1 was made on 4.12.1998. This appointment letter dated 4.12.1998 has also been filed as Annexure: 2 to the claim petition. Thus, we do not find letters in Annexures A-6, A-8 and A-9 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:A-10) 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 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 21.5.2008 under the cover of the stay order passed by the Hon'ble High Court at Allahabad on 17.11.1999. 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 17.11.1999 to 21.5.2008, the petitioner continued in the service under ‘litigious employment’. The Hon’ble Apex Court in the above case in Pare 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 17.11.1999 to 21.5.2008 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
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: JULY 10, 2015
DEHRADUN

KNP