

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL  
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 48/NB/DB/2023

Yogesh Upadhyaya (Male) aged about 53 years, S/o Sri Jagdish Chandra Upadhyaya, R/o House No. 53, Ward No. 56, Village and Post Office Maanpur West, Haldwani, District Nainital.

.....Petitioners

VERSUS

1. State of Uttarakhand, through Secretary, Medical Health and Family Welfare, Dehradun.
2. Director General, Medical Health and Family Welfare, Uttarakhand, Danda Lakhund, Post Office Gujrada, Sahatradhara Road, Dehradun.
3. Director, Medical Health and Family Welfare, Kumoun Region, Nainital.
4. Principal, Regional Medical and Health Training Centre, Motinagar, Haldwani, Nainital.

.....Respondents

Present: Sri Harish Adhikari, Advocate, for the petitioner  
Sri Kishore Kumar, A.P.O. for respondents

**JUDGMENT**

**DATE: JUNE 20, 2023**

**HON'BLE MR. RAJEEV GUPTA, VICE CHAIRMAN (A) (Oral)**

This claim petition has been filed seeking the following reliefs:-

- “(i) To issue order or direction appropriate in nature by directing the respondent to release the salary of the petitioner from 01.07.2022 to 14.09.2022 alongwith 18% forthwith pursuant to

the recommendation of the respondent no. 3 dated 29.03.2023 (Annexure No. 1) and further to pay the honorarium for the year of 2022-23 to the petitioner after calling the entire records from the respondents or in alternate pass any appropriate orders keeping in view of the facts highlighted in the body of the petition or mould the relief appropriately.

(ii) To issue any other order or direction, which this Court may deem fit and proper in the circumstances of the case.”

2. Brief facts of the case according to the claim petition are as below:-

The petitioner was appointed in the respondent department as regular Driver against permanent and substantive vacancy and after his appointment he is continuously discharging the duties of Driver in District Nainital and his record is unblemished. Even his higher authorities have given certificate of excellence to him from time to time and now the petitioner has completed more than 27 years of service but for the first time, the respondent no. 4 has not released his salary from 01 July 2022 to 14 September 2022 despite various directions of higher authorities. The petitioner was attached vide order dated 16.04.2022 to Government Women Hospital Haldwani by Director (Respondent no. 3) and pursuant to the directions of the Director the petitioner given his joining at Government Women Hospital Haldwani w.e.f. 20.04.2022. In this attachment order it was clearly mentioned that the salary of the petitioner will be drawn from his original place of posting i.e. Regional Medical and Health Training Centre, Motinagar, Haldwani, Nainital (Respondent no. 4) and the Government Women Hospital Haldwani forwarded the attendance of the petitioner from 20.04.2022 onwards and the Principal Regional Medical and Health Training Centre Motinagar, Haldwani, Nainital has paid the salary from 20.04.2022 to 30.06.2022 regularly but when Mr. D. K. Chakrapani joined as Incharge Principal and D.D.O. of Regional Medical and Health Training Centre, Motinagar, Haldwani, Nainital then he has not passed the salary of the petitioner from 01.07.2022 and thus the salary of the petitioner for the month of July 2022 was not prepared despite his attendance having been forwarded by Government Women Hospital Haldwani. Similarly for the month of August 2022 when his salary had not

been passed then the petitioner submitted application to the respondent no. 3 and stated all the facts, on which the respondent no. 3 repatriated the petitioner from Government Women Hospital to Regional Medical and Health Training Centre, Motinagar, Haldwani, Nainital. Pursuant to the order, the petitioner joined his service at Regional Medical and Health Training Centre, Motinagar, Haldwani, Nainital on 15.09.2022 and the respondent no. 4 paid his salary from 15.09.2022 onwards but has not paid the salary of the petitioner from 01.07.2022 to 14.09.2022, though the respondents No. 2 & 3 have directed the respondent No. 4 to release the salary of the petitioner for this period.

3. Counter affidavit filed on behalf of the respondents No. 2 & 3 also states that the respondent No. 4 has been directed by Director to release the salary of the petitioner for the above period.

4. Counter Affidavit of the respondent No. 4 levels certain allegations against the petitioner. Para Nos. 5, 6 & 10 of the Counter Affidavit of the respondent No. 4 are reproduced as below:-

“5. The contents of paragraph no. 4.4 of the claim petition are wrong. So far as in which is stated that the answering respondent disobeyed orders of superiors as Treasury Officer Haldwani termed deliberate and wilful violation of orders of government and D.G. as a financial irregularity in his letter dated 19.11.22. This is again a service rule violation as gross discipline. Treasury instructed the answering respondent to present the salary bills only on getting necessary approvals from D.G. in consultation with Director Finance as no salary can be disbursed in violation of the order dated 28<sup>th</sup> May 2022 and G. O. No. 543/XXVIII-121-01 (15)2017 T.C. dated 09.06.2022 from D.G. & Secretary Health respectively. Further respondent no. 2 gave no relaxation and has insisted on payment as per rules, vide letter dated 14.03.2022, as there is no provision of salary against the deliberate wilful misconduct of petitioner, by acting in violation of service conduct rules and

disobeying order of the government, in sheer insubordination, thereby the referred period shall be considered as service break.

6. That in reply to the contents of paragraph no. 4.5 and 4.6 of the claim petition it is stated that several communications were written to respondent 1, 2 and 3 with DM-Nainital and Commissioner-Kumaon. Therefore, neither salary nor honorarium shall be paid to him as unruly, disobedient petitioner has failed to obey self-terminating conditional attachment. Therefore, averments made by petitioner on affidavit in para 4.3, 4.4, 4.5 & 4.6 are not true as stated and hence they are not admitted and denied for being false statements on oath and affidavit, produced by concealing documents and facts, amounting to perjury.....
  
10. That in reply to the contents of ground no. 5 (c) of the claim petition it is stated that the salary paid until 30.6.22 is also an illegality for being in violation of the order: 2 प/रा.पु. /विविध/77/2019/12287, dated 28.5.2022 by Respondent 2/DGMH&FW-Dehradun and GO: 543/XXVIII-I/21-01(15) 2017T.C. dated 9<sup>th</sup> June 2021 from the Respondent 1/Secretary-Health Go UK. Further, the order भी-1/2022-23/874-76 dated 16.4.2022 by Respondent 3 with conditional attachment is null and void ab initio on the date 18.7.222, once the answering respondent joined as Principal DHFWTC on 19.7.22, as pre-determined self-terminating condition, terming his stay at Mahila Chikitsalay as illegal and hence no salary is admissible to the erring employee.”

5. Petitioner has filed Rejoinder Affidavit to the Counter Affidavit of the respondent No. 4 mainly stating that the contents of paragraph no. 3 to 19 of the counter affidavit are misconceived, false and concocted and thus are vehemently denied and are not admitted. In reply it is stated that the answering respondent by using his power and position and for humiliating

the petitioner, who is a low paid employee (Driver), has withheld the salary of the petitioner w.e.f. 01 July 2022 to 14 September 2022 which is very precious to the petitioner and his family and the petitioner for his legal and justified right has been forced to file the present claim petition.

6. We have heard learned Counsel for the parties and perused the record.

7. The Tribunal observes that for the misconduct of the petitioner, the respondents are free to take departmental action against him. It is not the case of any party that the petitioner has not worked at place of attachment in the period from 01.07.2022 to 14.09.2022. Therefore, he is entitled to be paid the salary for this period. The Tribunal hereby directs the respondent No. 4 shall draw the salary of the petitioner for the period from 01.07.2022 to 14.09.2022 and ensure the payment of the same to the petitioner within two weeks of this order, failing which, the respondent No. 4 shall be liable to pay interest at the rate of 6% p. a. for further period of delay.

8. The claim petition is disposed of as above. No order as to costs.

**(RAJENDRA SINGH)**  
VICE CHAIRMAN (J)

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

*DATE: JUNE 20, 2023*

*NAINITAL*

*BK*