

**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. 86/DB/2022**

Sri Itendra Kumar, s/o late Sri Balbir Singh, aged about 59 years,  
r/o 26-G, Avantika Suncity Vistaar, Bareilly, U.P.

.....Petitioner

versus

1. State of Uttarakhand through Principal Secretary, Training and Technical Education, Govt. of Uttarakhand, Dehradun.
2. Director (Training), Directorate of Training Uttarakhand, Haldwani, Nainital.

..... Respondents

Present: Sri Abhishek Chamoli and Sri V.P. Sharma (*online*),  
Advocates, for the Petitioner  
Sri V.P. Devrani, A.P.O. for the Respondents

**Judgement**

**Dated: 14<sup>th</sup> June, 2023**

**Justice U.C. Dhyani (Oral)**

Petitioner had filed writ petition being WPSB No. 430/2022, Itendra Kumar vs. State of Uttarakhand and others, before the Hon'ble High Court. The Hon'ble High Court has been pleased to dispose of the said writ petition on the ground of alternate remedy. The order dated 27.07.2022 of the Hon'ble High Court is reproduced herein under for convenience:

“The petitioner has preferred the present writ petition to assail the order dated 21.10.2021 passed by the respondents, whereby the petitioner's claim for regularization,

after he has rendered thirty-four years of service, has been rejected.

2. The case of the petitioner is that the said rejection is in utter breach of the principles of natural justice as he was not heard in the matter, and the facts and circumstances of this case have not been considered by the respondents. The petitioner also seeks a mandamus to the respondents to pass a formal order for confirmation and regularization of the petitioner, and to process his retiral benefits and grant the same.

3. It is not in dispute that the petitioner has an alternative efficacious remedy to approach the Uttarakhand Public Services Tribunal to raise his grievances as raised in the present writ petition

4 We, therefore, dispose of this petition with liberty to the petitioner to approach the said Tribunal to raise his grievances. In case the petitioner files his claim petition within next two weeks, considering the fact that the petitioner is about to superannuate, his petition may be heard and decided within a period of nine months.

5. In sequel thereto, pending application, if any, stands disposed of.”

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

“(i) The Hon’ble Tribunal may kindly graciously be pleased to quash the order dated 21-10-2021 (Annexure No. 1) of this claim petition.

(ii) The Hon’ble Tribunal may kindly be pleased to direct to the respondents to pass formal confirmation and regularization orders in favour of the petitioner and to process his retiral benefits and grant the same in light of regular, substantive, uninterrupted service of more than 34 years against vacant and substantive post.

(iii) To pass any suitable order or directions of any nature which this Tribunal may deem fit and proper in the present circumstances of the case.

(iv) Award the cost of the petition.”

3. Petitioner is aggrieved with decision dated 21.10.2021, which has been taken by the respondent authorities, in deferring his case for formal regularization even after putting more than 33 years of service, after being selected by a duly constituted selection committee through open advertisement. Copy of the

minutes of the meeting dated 21.10.2021 has been enclosed as Annexure No. 1 to the claim petition.

4. Pursuant to an open advertisement issued by the erstwhile State of U.P. for appointment on the post of Vice Principal, Industrial Training Institute (I.T.I.), the petitioner responded to the same and was appointed on the post of Vice Principal in the pay scale of Rs. 850-40-1050. Petitioner fulfilled the eligibility criteria for appointment to such post. His appointment order has been brought on record as Annexure No. 5 to the claim petition.

5. Since no action was taken by respondent no. 1 on formal regularization of the services of the petitioner, the petitioner preferred writ petition being no. WPSB No. 205/2015 before Hon'ble High Court, who *vide* order dated 01.07.2015 directed respondent no. 1 to consider and take a decision on regularization of petitioner, in accordance with law.

6. In compliance thereof, a meeting was held in the office of respondent no. 1 on 24.07.2015. It was resolved therein that disciplinary proceedings were initiated against the petitioner and after departmental enquiry, he was awarded major punishment of stoppage of two increments with cumulative effect *vide* order dated 13.12.2011. Such order was assailed by the petitioner before Public Services Tribunal, who *vide* order dated 28.02.2014, quashed the punishment order dated 13.12.2011. The Hon'ble High Court, *vide* judgement and order dated 20.08.2018 dismissed the petition filed by the State against the order of Public Services Tribunal (copy Annexure No. 14).

7. Benefits of recommendations of 6<sup>th</sup> Pay Commission and 7<sup>th</sup> Pay Commission were granted to the petitioner. Petitioner is continuously working as Govt. servant for the last 32 years without any break and therefore, only formal regularization orders were required to be passed, which were deferred in the year 2015.

8. Salary of the petitioner has been ordered to be stopped. Such decision dated 01.03.2021 was assailed by the petitioner by filing WPSB No. 150/2021. Hon'ble High Court has been pleased to stay the effect and operation of order dated 01.03.2021 *vide* order dated 05.04.2021.

9. Decision on the regularization of the services of the petitioner was deferred on two counts *i.e.* (i) at the relevant point of time, the matter before the Public Services Tribunal was pending; (ii) the petitioner was held responsible for giving illegal appointment on the post of *Prashikshan Mitra* (Temporary Instructor) in the teeth of judgement dated 07.08.2002, passed by the Hon'ble High Court in WPSB No. 1019/2002. The Hon'ble High Court was pleased to set aside the cancellation order of appointment of one Smt. Shanta Devi, passed by the then District Magistrate, Uttarkashi. However, the Hon'ble Court did not grant relief for continuation in service as her tenure of engagement came to an end on 31.07.2002. The petitioner engaged Smt. Shanta Devi as *Prashikshan Mitra* (Hindi Stenography) in deference to the judgement passed by the Hon'ble High Court. Her tenure was extended from time to time. Subsequently, the engagement of Smt. Shanta Devi was cancelled.

10. The petitioner has filed documents in support of his claim petition.

11. Written statements have been filed on behalf of the respondents. C.A. has been filed by Sri Vinod Giri Goswami, Director, Training and Employment, Haldwani. It has been mentioned in the C.A. that the petitioner has been held guilty by the District Magistrate and the enquiry proceedings were pending against him in the year 2011 when the Regularization Rules, 2011, were notified. He was not found fit and suitable for regularization on the post of Principal, Grade-II, under the Regularization Rules, 2011. Petitioner challenged the order of stoppage of increment with cumulative effect before the Tribunal in claim petition no.

78/2012, Itendra Kumar vs. State of Uttarakhand and others. The said order has been set aside by the Tribunal against which the respondent department has filed a writ petition before the Hon'ble High Court of Uttarakhand. Hon'ble High Court has dismissed the writ petition on 20.08.2018 and has affirmed judgement and order dated 28.02.2014 passed by the Tribunal. Petitioner was not found fit for regularization under the Regularization Rules, 2013.

12. The other facts regarding petitioner's joining and working in the department have not been denied in the W.S. Petitioner's status as regular Govt. servant has, however, been denied along with the fact that as on date, he is not entitled to regularization and therefore, consideration of the matter of his regularization was deferred.

13. It is the submission of learned Counsel for the petitioner that the decision was taken behind the back of the petitioner without granting him any opportunity of hearing. The impugned decision was not even communicated to the petitioner. It was only when the petitioner enquired about preparation of his papers with respect to retiral dues, he was orally informed that the decision has been taken for deferring his case for consideration of regularization. Thereafter, he sought information under the RTI Act (copy Annexure No. 2).

14. It is also the submission of learned Counsel for the petitioner that several other persons were appointed along with the petitioner, out of whom 25 persons have already been regularized in the State of U.P.

15. Learned Counsel for the petitioner also submitted that periodical increments were regularly granted to the petitioner (copy Annexure No. 19 *colly*). Petitioner's case for grant of promotional pay scale and grade pay on completion of 25 years of service was forwarded to respondent no. 1 (copy Annexure No. 11). The petitioner has finally been allocated to the State of Uttarakhand.

16. It is the submission of learned Counsel for the petitioner that neither any punishment order survives against the petitioner nor any departmental enquiry is pending against him and therefore, there is no legal impediment in taking a decision on regularization of his services.

17. It is also the submission of learned Counsel for the petitioner that Regularization Rules were promulgated in the year 2002. Subsequent Regularization Rules came into force in the year 2011 and 2013. Stay of Regularization Rules of 2013 will not have any effect inasmuch as, admittedly, similarly situated persons have already been given regularization under the previous Regularization Rules.

18. It is the submission of learned A.P.O. that after coming into force of the Regularization Rules, 2013, Regularization Rules, 2011, stand superseded.

19. It is also the contention of learned A.P.O. that the judgement of the Tribunal was passed on 28.02.2014 and Hon'ble High Court affirmed the same on 20.08.2018. He could not be considered for regularization under the Regularization Rules, 2011, because of pendency of cases against him (adverse material on service record) and when the judgements were passed, the Regularization Rules, 2011, were no longer in vogue. Regularization Rules, 2013, were framed but have been stayed by the Hon'ble High Court on 04.02.2018 in WPSB No. 616/2018, Narendra Singh vs. State of Uttarakhand and others. Regularization Rules, 2016, have already been set aside by the Hon'ble High Court of Uttarakhand.

20. The Tribunal finds force in the submission of learned A.P.O. that the benefit of Regularization Rules may be given only when an employee works continuously for a certain period and has satisfactory service. It is a fact that when judgement was given in favour of the petitioner in the year 2014, which (judgement) was affirmed by the Hon'ble High Court in the year 2018, the

Regularization Rules, 2011, were already superseded by the Regularization Rules, 2013. When orders were passed in his favour, he could only have been considered under the Regularization Rules, 2013, which have been stayed by the Hon'ble High Court *vide* order dated 04.02.2018 in WPSB No. 616/2018, Narendra Singh vs. State of Uttarakhand and others. Further, Regularization Rules, 2016, have already been quashed by the Hon'ble High Court and therefore, in fact, there are no Regularization Rules in existence, at present, to consider regularization of *ad-hoc* services of the claim petitioner.

21. It is true that Regularization Rules, 2011, have been superseded by Regularization Rules, 2013, which have been stayed by the Hon'ble High Court on 04.02.2018 in WPSB No. 616/2018, Narendra Singh vs. State of Uttarakhand and others. Regularization Rules, 2016, have been quashed earlier. In effect, there are no Regularization Rules in existence to consider the regularization of the *ad-hoc* services of the petitioner as of now.

22. No interference is called for in the decision taken in the meeting dated 21.10.2021(copy Annexure No. 1) holding that presently it is not possible to consider regularization of the petitioner in the absence of any Rules. Claim Petition, therefore, fails and is dismissed. No order as to costs.

23. This will, however, not preclude the respondent department to consider regularization of the petitioner on a subsequent occasion if and when some Regularization Rules are shown to be in existence by the petitioner.

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

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

DATE: 14<sup>th</sup> June, 2023  
DEHRADUN  
RS