

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

CLAIM PETITION NO. 128/2008

Smt. Pushpa Ramola, W/o Sri Vijay Pal Chand Ramola, R/o
Village Chinyali Sor, District Uttarkashi, Wool Grader,
Carpet Centre, Uttarkashi, Uttarakhand,

.....Petitioner

VERSUS

1. State of Uttarkahand through Secretary, Small and Rural Industries, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun,
2. Development Commissioner, Small & Rural Industries, Uttarakhand, Srinagar Garhwal, Uttarakhand,
3. General Manager, District Industries Centre, Uttarkashi, Uttarakhand,

.....Respondents

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

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT**DATE: JULY 22, 2015****DELIVERED BY SRI V.K.MAHESHWARI, VICE CHAIRMAN (J)**

1. This petition has been preferred against the order dated 07.5.1996 passed by the General Manager, District Industries Centre, Uttarkashi, by which the petitioners were reverted back to the lower post and pay scale. During the pendency of this petition, the petitioner no. 2 had died and petition in his reference stood abated.

2. The facts in brief are that the present petitioner Smt. Pushpa Ramola was initially appointed as Assistant Master Craftsman, Galicha in District Industries Centre, Uttarkashi on 18.02.1987 on fixed salary of Rs. 300/-, which was later on revised to Rs. 400/-. The Petitioner, Smt. Pushpa Ramola was subsequently promoted to the post of Wool Grader vide order dated 13.07.1993 in the regular pay scale of Rs. 900-1500/- under the Wool Development Scheme, Uttarkashi and continuously worked on that post till 09.05.1996. However, without any opportunity of hearing or show cause or assigning any reason, the petitioner was reverted back to the post of Master Craftsman vide order dated 09.05.1996. The said order was passed under compulsion and pressure from the Development Commissioner, Small and Rural Industries, and the said order or reversion is illegal, unconstitutional, vindictive, discriminatory, motivated, malafide, without jurisdiction and clear violation of the

rules and thus, is liable to be set aside and petitioner is entitled to continue on the promoted post .

3. The petitioner along with one another had challenged the impugned order before the Hon'ble High Court of Allahabad by way of writ petition. After the creation of the State of Uttarakhand the writ petition was transferred to the Hon'ble High Court of Uttarakhand, but was dismissed on 31.7.2008 on the ground of availability of the alternative remedy before the Tribunal. However, by way of interim order the Hon'ble High Court had permitted the petitioner to get the minimum scale of pay and further issued a direction to consider her case for regularization subject to availability of vacancy. The petitioner had filed this petition before this Tribunal on 12.01.2009 after rejection of the petition by the Hon'ble High Court.

4. The petition has been opposed on behalf of the respondents and it has been stated that the petitioner was appointed on contractual basis on a fixed pay and her promotion to the post of Wool Grade operator was illegal as the said post cannot be filled by way of promotion and it can only be filled by direct recruitment. Therefore, the order of reversion is valid. It is further stated that according to rules, the General Manager, District Industries Centre was not even competent to promote the petitioner. Therefore, the impugned order is just, valid and legal and require no interference by this Tribunal. Thus the petition is liable to be dismissed.

5. No rejoinder has been filed on behalf of the petitioner.

6. We have heard both the parties at length and perused the record carefully.

7. During the hearing of this petition, an initial objection was raised on behalf of the respondents regarding the maintainability of this petition, which was decided vide order dated 03.03.2014 and petition was treated to be maintainable.

8. As regards the facts are concerned, the facts are admitted to both the parties. First of all, it has been contended on behalf of the petitioner that order of reversion has been passed without affording any opportunity of hearing to the petitioner, which is a clear violation of Article 311 of Constitution of India and principals of natural justice. On the other hand, it has been stated on behalf of the respondents that the order of promotion was itself illegal, which was passed by an incompetent authority, therefore, the petitioner cannot claim any advantage on the basis of an illegal order. In this context, it is also contended that the post of Wool Grade Operator can only be filled by direct recruitment and there is no provision for promotion to the post of Wool Grade Operator under the relevant rules known as Uttar Pradesh Industries Department (Handloom and Clothing Directorate) Subordinate Service Rules, 1992. In this context, we have gone through the relevant rules,

which reveal that the post of Wool Grade Operator can only be filled by direct recruitment through Uttar Pradesh Subordinate Service Commission on the basis of interview. Apart from it, the Appointing Authority to the said post is Joint Director, Handloom. In the present case, the promotion of the petitioner was made by the General Manager, District Industries Centre and that too by way of promotion. From these facts, it becomes clear that promotion of the petitioner was de-hors the rules; therefore, the petitioner is not entitled to claim protection of the said promotion on the ground of non availability of opportunity of hearing. We are of the clear view that there is no violation of principal of natural justice and no right of the petitioner is violated.

9. The petitioner has also prayed for the relief of an order or direction to the respondents for making payment to the petitioner the regular pay along with all consequential benefits including the arrears with interest. In fact, this relief means that the petitioner is seeking regularization. The petitioner has also referred the Rules framed by the State Government in 2011 regarding the regularization of Dailywagers, Work-charge, Contractual, Fixed Pay, Part-time and Adhoc Employees. The petitioner has referred the Rule-4 of the aforesaid Rules, which reads as under:

“4. इस नियमावली के अधीन ऐसा कार्मिक विनियमितीकरण हेतु अर्ह होगा:—

(1) जो दिनांक 01.11.2011 से 10 वर्ष पूर्व अर्थात् 01.11.2001 तक दैनिक वेतन, कार्यप्रभारित, संविदा, नियत वेतन,

अंशकालिक तथा तदर्थ रूप में नियुक्ति हुआ हो और इस नियमावली के प्रारम्भ के दिनांक को, उस पद या समकक्ष पद पर, निरन्तर सेवारत हो;

(2) जो उपनियम (1) में सन्दर्भित ऐसी नियुक्ति के समय रिक्त/स्वीकृत पद के विरुद्ध नियुक्त किया गया हो और नियुक्ति के समय पर पद हेतु प्रचलित सेवा नियमों में निर्धारित शैक्षिक एवं अन्य योग्यताएं तथा आयु सीमा सम्बन्धी शर्तें पूर्ण करता हो; तथा

(3) जिसका विनियमित करने हेतु इस नियमावली के प्रख्यापन की तिथि को उस संवर्ग में पद स्वीकृत एवं रिक्त हो।

(4) उप नियम (1) में निर्धारित तिथि तक पात्रता सूची में अंकित सभी कार्मिकों को पद रिक्त होने तक विनियमित किया जायेगा। ”

Apart from it, the judgment of the Hon'ble High Court in Writ Petition (S/S) No. 108 of 2008, Smt. Padma Arya Vs. State of Uttarakhand & others has also been referred. This writ petition was preferred by a Co-employee of the petitioner and Hon'ble High Court has laid down as follows:

“Learned Standing Counsel for the State has submitted before this Court that in view of the constitution Bench judgment namely State of Karnataka and others Vs Uma Devi (2006) 4 SCC 1 the prayer made by the petitioner cannot be granted and the petitioner cannot be regularized. The submissions of the learned State Counsel are correct, however, where a law exists for regularization or where there is a scheme by the Government, an exception has already been carved in paragraph 53 of Uma Devi case. It reads as follows:

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa, R.N. Nanundappa and B.N.Nagarajan 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”

On the basis of the facts that the petitioner is a woman and has been working as a Master Craftsman in District Almora for the last almost 30 years, this writ petition is disposed of with the following direction:

The Secretary, Industries, Government of Uttarakhand shall consider the case of the petitioner sympathetically inasmuch as the petitioner has a legitimate expectation from the State Authorities. In case she can be regularized on the post on which she has been working treating her to be an ad hoc employee under the Uttarakhand Regularization of Adhoc Appointments (On posts outside the purview of the Public Service Commission) Rules, 2002 it must be considered but if this cannot be done, the Secretary will also explore other avenues for absorbing her in the Department of Industries, Government of Uttarakhand shall consider the case of the petitioner as referred above as expeditiously as possible but

in any case before three months from the date a certified copy of this order is produced before him. No order as to costs”

10. On the other hand, it has been stated on behalf of the respondents that the petitioner was appointed only on contractual basis to the post of Craftsman and no such post exists or ever existed in the department. The relevant extract of the written statement of the respondents reads as under:

“वास्तविक तथ्य है कि वादी सं० 1 की नियुक्ति शासनादेश सं० 158/2-6-38-20-1-74 दिनांक 13 जनवरी, 1977 (संलग्न-1) से स्वीकृत पर्वतीय क्षेत्र में कालीन बुनाई केन्द्रों की स्थापना योजनान्तर्गत संविदा के आधार पर क्राफ्ट मैन नियत वेतन रू० 300/- प्रति माह पर हुई थी। उक्त वर्णित शासनादेश दिनांक 13 जनवरी, 1977 के प्रस्तर-2 के क्रमांक 2 एवं 3 के अनुसार मास्टर क्राफ्ट मैन के पद नियत मासिक वेतन पर स्वीकृत थे तथा प्रस्तर-3 में स्पष्ट इंगित नियत वेतन के अतिरिक्त कोई भी भत्ता देय नहीं होगा। चूँकि वादी द्वारा धारित पद संविदा एवं नियत वेतन का पद था। अतः वादी सं० -1 पर सरकारी सेवकों हेतु निर्धारित सेवा शर्तें लागू नहीं होती हैं।”

11. As regards the regularization of the petitioner under the Rules of 2011 is concerned, it has been clarified on behalf of the respondents that there is no scope for the regularization of the petitioner and an affidavit of Sudhir Chandra Nautiyal, Additional Director, Industries, Govt. of Uttarakhand has been filed in this regard in which it has been stated that the petitioner is not entitled for regularization under the Rules framed in 2011. The relevant statement made in the affidavit reads as under:

“यह कि शपथकर्ता निम्न कथन करता है कि शासनादेश सं०-158/2-6-38-20-1-74 दिनांक 13 जनवरी 1977 द्वारा क्राफ्टमैन के पद संविदा/नियत वेतन में स्वीकृत है और इन पदों हेतु अन्य राज्य कर्मचारियों की भांति वेतनमान स्वीकृत नहीं हैं। तदनुसार विभाग में क्राफ्टमैन का पद वेतनमान में स्वीकृत न होने के कारण इन पदों के सापेक्ष कार्यरत नियत वेतन/संविदा में तैनात कार्मिक उत्तराखण्ड शासन कार्मिक विभाग की अधिसूचना संख्या 1412/XXX(2)/2011-2013(1)/2006, दिनांक 21 नवम्बर 2011 से विनियमितीकरण हेतु आछादित नहीं होते हैं। तदनुसार ही विभाग में कार्यरत अवशेष 14 क्राफ्टसमैनों का विनियमितीकरण करने के सन्दर्भ में निदेशालय के पत्र संख्या 3477/उ०नि०(एक)-15/2011-12, दिनांक 01.11.2012 द्वारा इन पदों को समूह “ग” के प्रथम स्तर के पद के समान वेतन बैंड- 1, रुपये 5,200-20,200, ग्रेड वेतन रू० 1,900/- अनुमन्य करते हुए, इन पदों को मृत संवर्ग में रखने का प्रस्ताव शासन को प्रेषित किया गया था, ताकि तदनुसार इनका विनियमितीकरण उक्त वर्णित अधिसूचना दिनांक 21.11.2011 के तहत किया जा सके, किन्तु शासन स्तर पर प्रकरण में हुई विवेचना के आधार पर इनका विनियमितीकरण सम्भव न होने तथा इनका मासिक नियत वेतन वर्तमान मानकों के अनुसार बढ़ाये जाने हेतु प्रस्ताव भेजने की सूचना शासन से प्राप्त होने पर निदेशालय के पत्र संख्या 2296 उ०नि०(एक)-15/2011-12, दिनांक 22-08-2013 द्वारा शासन की अपेक्षानुसार सूचना प्रेषित की गई और तदनुसार शासनादेश संख्या 1570/ VII-2-14 /05- रिट/2008, दिनांक 29 जनवरी, 2014 द्वारा इन्हें शासनादेश संख्या 323/XVII-3/13-09(17)/2004, दिनांक 12 जून, 2013 के परिशिष्ट के आधार पर नियत वेतन दिये जाने के आदेश पारित किये गये और शासन के निर्देशों के क्रम में निदेशालय के आदेश संख्या 5896-सी/उ०नि०(एक)-96/2011-12, दिनांक 31 जनवरी, 2014 द्वारा इनका मासिक नियत वेतन रू० 3050/- से बढ़ाकर रू० 10,951/- कर दिया गया है। ”

12. We have given a considerable thought regarding the claim of the petitioner for regularization and reach to the

conclusion that as no post ever exists or ever existed in the department, therefore, the petitioner is not entitled for regularization. Under the above set of circumstances, no benefit can be extended to the petitioner on the basis of the judgement of the Hon'ble High Court. An employee is entitled for regularization only if the post exists and is vacant. Apart from it, the State Govt. has also considered the matter of the petitioner and has raised the pay of the petitioner vide order dated 03.01.2014. Therefore, the petitioner is not even entitled for this relief also.

13. On the basis of the above discussion, the petitioner is not entitled for any relief and the petition is liable to be dismissed.

ORDER

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

D.K.KOTIA
VICE CHAIRMAN (A)

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: JULY 22, 2015
DEHRADUN

KNP