

**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)

EXECUTION PETITION NO. 12/NB/DB/2023

(Arising out of order dated 18.08.2022,
passed in Claim Petition No. 62/NB/DB/2022)

Nidhi Pandey (Kandpal) w/o Sri Girja Shankar Pandey, at present serving
as Assistant Clerk in the Finance Office of School Education, Almora.

.....Petitioner-executioner

vs.

1. State of Uttarakhand through Secretary, School Education, Govt. of Uttarakhand, Dehradun.
2. Director, School Education, Govt. of Uttarakhand, Dehradun.
3. Additional Director, School Education, Kumaon Mandal, Nainital.

.....Respondents

Present: Sri Maneesh Bisht, Advocate for the Petitioner-executioner
Sri Kishore Kumar, A.P.O., for the Respondents

JUDGMENT

DATED: AUGUST 03, 2023

Mr. Rajeev Gupta, Vice Chairman(A) (Oral)

This execution petition has been filed with the request to direct the Secretary, School Education, Govt. of Uttarakhand to forthwith comply the judgment and order dated 18.08.2022, passed by this Tribunal in Claim Petition No. 62/NB/DB/2022. The order of this Tribunal is reproduced hereunder:

“RELIEFS PRAYED FOR

Present claim petition has been filed by the petitioner for the following reliefs:

i) Issue order or direction, directing the respondents to include the petitioner in combined seniority list of clerical cadre prepared under the department, and thereafter to consider the case of petitioner for promotion in next higher post, by counting her past satisfactory services rendered in department.

Or

To treat the petitioner at par with the “Assistant Account Clerk, inasmuch as the nature and work of “Assistant Account Clerk” is same as of “Assistant Clerk” and thereafter to promote her in next higher post by counting her past satisfactory services rendered in department.

ii) Issue any other order or direction, which this Hon’ble Tribunal may deem fit in the circumstances of the case.

iii) Award the cost of the petition in favour of the applicant.”

PETITIONER’S VERSION

2. Brief facts giving rise to the present claim petition, are as follows:

2.1 The petitioner was initially appointed *vide* order dated 26.06.2004 as Assistant/Junior Clerk on compassionate ground under the Dying in Harness Rules in the Finance and Account Office (Elementary Education). After rendering almost more than 16 years of satisfactory service in the department, the respondent department has not considered the candidature of petitioner for promotion. Moreover, the respondent department is neither including the Assistant Clerks who are working under the roof of finance/audit structure in combined seniority list of clerical cadre, prepared under the department nor they are treating the petitioner *at par* with the Assistant Account Clerk inasmuch as the work and duties of Assistant Clerks and Assistant Account Clerk are same.

2.2 It has been submitted by learned Counsel for the petitioner that the Junior/Assistant Clerk and Typist appointed under the roof of finance/audit structure, in respondent department, were not included in the combined seniority list of clerical cadre and in consequence thereof, there are no promotional avenues available to the petitioner as well as other similarly situated employees. On the other hand, the incumbents discharging the same duties as of Assistant Clerk working as Assistant Account Clerk in finance/audit structure are having the next promotional post of Assistant Accountant.

2.3 It has further been submitted by learned Counsel for the petitioner that the case of the petitioner as well as other similarly situated incumbents is creating great hardship for them, resulting in

hostile discrimination, therefore, a letter/recommendation dated 06.01.2011 has been issued by Finance Controller, School Education, Uttarakhand to Additional Director, School Education, highlighting the fact that as the incumbents working as Assistant Clerk under the roof of finance/audit structure in respondent department are not getting the place in combined seniority list of clerical cadre, therefore, they are being deprived from promotion. Director, School Education has already given his consent to State Level Promotional Committee to include these incumbents in joint seniority list. Since, Director, Elementary Education, made an endorsement on official notebook, as 'policy matter', therefore, it can be determined at Government level only. No decision has been taken on the said recommendation.

2.4 It is also submitted by learned Counsel for the petitioner that the result of several observations and discussions is that the respondent concerned has denied to include the 'Assistant Clerks' working under the roof of finance/audit in combined seniority list of clerical cadre, ignoring the vital aspect of the matter that if these incumbents would not get a place in seniority list, they would never be promoted on next promotional post. It is further submitted that there are two posts in the same pay scale in account/audit structure of respondent department *i.e.* 'Assistant Clerk' and 'Assistant Account Clerk'. For the 'Assistant Account Clerk', the respondents admit that they have a promotional avenue on the post of 'Assistant Account', but for the 'Assistant Clerks', there are no promotional avenues. Therefore, it is apparent that the incumbents working as 'Assistant Clerks' have been deprived from consideration for promotion, as these 'Assistant Clerks' are not getting the place in combined seniority list of clerical cadre nor they have any available promotional avenue in finance/audit structure of respondent department.

2.5 Learned Counsel for the petitioner also submitted that the act of the respondent authorities by not including the incumbents working as Assistant Clerk under the roof of finance/audit structure in combined seniority list of clerical cadre or by not treating them *at par* with Assistant Account Clerk, despite performing same duties, is hostile discrimination, based on the whims of concerned authorities and as well as against the principles of natural justice.

2.6 Aggrieved by the arbitrary and whimsical act of the respondent authorities, the petitioner has moved several representations to the authorities concerned, but to no avail.

PRAYER RESTRICTED

3. After arguing the claim petition at some length, Ld. Counsel for the petitioner confined his prayer only to the extent that since petitioner's representation has not been decided so far, therefore, a direction be given to the respondent no.1 to decide fresh representation of the petitioner by a reasoned and speaking order, at an earliest possible, in accordance with law, to which Ld. A.P.O. has no objection.

ORDER

4. Without prejudice to rival contentions, the claim petition is disposed of, at the admission stage, by directing Respondent No.1 to decide fresh representation of the petitioner by a reasoned and speaking order, in accordance with law, without unreasonable delay, on presentation of certified copy of this order, along with fresh representation.

5. Needless to say that the decision so taken be communicated to the petitioner soon thereafter.

6. It is made clear that the Tribunal has not expressed any opinion on the merits of the claim petition.”

2. Learned Counsel for the petitioner-executioner has submitted that pursuant to the above order of the Tribunal, the applicant/claimant preferred detailed representation through proper channel i.e. Chief Education Officer, Almora, who vide his letter dated 05.09.2022 forwarded it to the respondent no. 2 i.e. Director, School Education. The petitioner-executioner has further come to know that a Six Member Committee was constituted in her case by the Director, Elementary Education vide order dated 12.01.2023 which has given its report dated 28.01.2023 recommending that the petitioner be put on the seniority list of Ministerial cadre (Clerical Cadre) at suitable place and to provide her promotion accordingly. However, till date no decision has been taken by the Secretary, School Education (Respondent no. 1) in the case of the applicant/petitioner.

3. Learned A.P.O. submitted that the petitioner-executioner should have moved representation straight away to the Secretary (Respondent no. 1) as directed in this Tribunal's order dated 18.08.2022 and it is quite possible that the representation of the petitioner-executioner has not yet reached the Secretary so far. Learned A.P.O. further submitted that the Secretary, School Education is not the appointing authority of the petitioner and in the earlier order passed by this Tribunal, this fact might have been overlooked.

4. In the circumstances of the case, the Tribunal deems it proper that the petitioner may make a fresh representation directly to the Secretary, School Education (Respondent no. 1) along with certified copy of this order and the Secretary, School Education (Respondent no.1) shall ensure that suitable decision is taken on the representation of the petitioner-executioner by the appropriate authority within a period of three months thereafter.

5. With these directions, the execution petition is disposed of at the admission stage itself.

(RAJENDRA SINGH)
VICECHAIRMAN(J)

(RAJEEVGUPTA)
VICE CHAIRMAN (A)

DATE: AUGUST 03, 2023
DEHRADUN
KNP