

**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. 127/DB/2023**

Smt. Seema Malhotra, w/o Sri Manish Malhotra, r/o Lane No. 05 Hanumant  
Puram, Ganga Nagar, Rishikesh.

.....Petitioner.

**VS.**

1. State of Uttarakhand through its Secretary, School Education, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun, Uttarakhand.
2. Director General, School Education, Govt. of Uttarakhand.
3. Director Elementary Education/ Primary Education, Nanukheda, Tapovan, Dehradun, Uttarakhand.
4. Additional Director, Elementary Education/ Primary Education, Nanukheda, Tapovan, Dehradun, Uttarakhand.

.....Respondents.

Present: Sri Abhishek Chamoli, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for Respondent No.1.

**JUDGMENT**

**DATED: JULY 19, 2023**

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

Petitioner has filed present claim petition, *inter alia* for directing the respondents to grant her promotion on the available vacant posts of Lecturer- Mathematics as has been granted to similarly situated persons of different branches, according to prevailing service rules.

2. In the year 2020, when the petitioner was posted at Govt. Girls Inter College, Narendra Nagar, Tehri, she along with other similarly situated persons, was given opportunity to accept promotion on the post of Lecturer. Petitioner had foregone the promotion and transfer at that time due to her family problems. Some other similarly situated employees had also foregone the promotion citing various reasons. But some similarly situated employees made representations before the respondents to grant the promotion and amend the posting according to the list in order dated 28.10.2020. *Vide* order dated 05.01.2022, respondents granted the promotion and amended posting of thirteen similarly situated persons, those who earlier relinquished the promotion in the year 2020. It is the submission of Ld. Counsel for the petitioner that no action has been taken by the respondents in the case of the petitioner.

3. At the very outset, Ld. A.P.O. objected to maintainability of the claim petition on the ground that under the garb of present relief, the petitioner is, in fact, seeking the stay of his transfer order, which is not permissible before this Tribunal in view of *proviso* to sub-section (1) of Section 4 of the Pradesh Public Services (Tribunal) Act, 1976, (as applicable to State of Uttarakhand). Ld. A.P.O. objected to the maintainability of the claim petition on the ground of delay also, in view of Section 5(1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976.

4. Sub-section (1) of Section 4 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 along with its *proviso*, reads as under:

“4. **Reference of claim to Tribunal-** (1) Subject to the other provision of this Act, a person who is or has been a public servant and is aggrieved by an the order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

.....

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant.”

*[Emphasis supplied]*

5. No reference before this Tribunal can, therefore, be made in respect of a claim arising out of the transfer of a public servant, according to Ld. A.P.O., who also submitted that under the garb of amending the promotion order dated 28.10.2020, the petitioner seeks to stay her transfer order. The claim in respect of such reference is not maintainable before this Tribunal, according to Ld. A.P.O.

6. In reply, Ld. Counsel for the petitioner submitted that since similarly placed L.T. Teachers have been given promotion as Lecturer, therefore, similar treatment should be given to the petitioner also. It is also the submission of Ld. Counsel for the petitioner that some L.T. Teachers of different subjects have been promoted in the year 2022, but no action has been taken in respect of promotion of the petitioner, despite his representation.

7. It is trite law that jurisdiction of a petition is seen by the pleadings and the relief claimed. Judging by this yardstick, the Tribunal appears to have jurisdiction over the subject matter, inasmuch as the relief claimed in the claim petition is:

(i) To issue direction to the respondents to grant promotion to the petitioner on the available vacant posts of Lecturer- Mathematics as granted to similarly situated persons of different branches, as per the prevailing service rules after calling the entire record from the respondents.

8. But, it is also the settled position of law that the Tribunal can lift the veil and peep through in order to ascertain the maintainability and jurisdiction. If the claim petition is looked into from this point of view, the jurisdiction of the Tribunal is ousted inasmuch as the petitioner is seeking change of place of her transfer under the garb of relief that she may be treated like similarly situated L.T. Teachers. Issue of maintainability and jurisdiction may be interpreted either way. The Tribunal may hold that the claim petition is maintainable and it has jurisdiction to try a claim petition. It might also hold that the claim petition is not maintainable and the Tribunal

has no jurisdiction to try the claim petition in present form, in the final analysis. But Tribunal does not think it necessary to enter into further details because Ld. Counsel for the petitioner submitted that the petitioner, at this juncture, wants her representation to be decided by the competent authority, as per law.

9. We think that the Claim petition should be disposed of, at the admission stage by accepting the innocuous prayer of Ld. Counsel for the petitioner that suitable decision should be taken by the competent authority on Annexure: A- 5 and Annexure: A-6. Annexure: A-5 is copy of letter dated 25.11.2022, by Addl. Secretary, School Education to Director General, School Education and Annexure: A-6 is copy of letter dated 07.12.2022 by Director General School Education to Director , Secondary Education.

10. The claim petition is disposed of at the admission stage by directing the competent authority(ies) to take suitable informed decision in the matter, as per law, under intimation to the petitioner, without unreasonable delay, on presentation of certified copy of this order by the petitioner along with photocopies of relevant documents

11. It is made clear that the Tribunal has not made any opinion regarding maintainability of the claim petition, jurisdiction of the Tribunal and merits of petitioner's case. It has gone into some length only because the petitioner has staked her claim under Article 14 and Article 16 of the Constitution (equality of law and equal protection of laws) .

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

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

*DATE: JULY 19,2023*  
*DEHRADUN*

*VM*