

**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. 113/DB/2023

Santosh Kumar Negi, aged about 43 years, s/o Sri Prem Singh Negi, r/o Village Shivpur Near Resham Farm, Haridwar Road, Kotdwar, District Pauri Garhwal.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Education, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun, Uttarakhand.
2. Director, Education (Secondary), Uttarakhand, Dehradun.
3. Regional Additional Director Education(Secondary) Garhwal Mandal, Pauri, Pauri Garhwal
4. District Education Officer (Secondary) Pauri Garhwal.
5. Block Education Officer (Secondary) Ekeshwar, Pauri Garhwal

....Respondents.

Present: Sri Shivanand Bhatt, Advocate,for the petitioner. (*virtually*)
Sri V.P.Devrani, A.P.O., for the Respondent No.1.

JUDGMENT

DATED: JULY 31, 2023

Justice U.C.Dhyani (Oral)

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

“a) Set aside impugned order dated 17.01.2023 (Annexure: A 1) issued by Additional Director, Madhyamik Shiksha, Garhwal Mandal, Pauri..

b) Direct the respondents to grant leave without pay to the petitioner w.e.f. 15.12.2015 to 26.11.2020 and he may be treated as joined on the post of Lecturer Chemistry w.e.f. 27.11.2020, i.e. the date when he was compelled to join as Assistant Teacher L.T. Grade and petitioner may be granted the pay scale and other admissible benefits to the post of Lecturer.

c) Award cost of the petition in favour of petitioner.”

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

2.1. The petitioner had joined as Assistant Teacher L.T. Grade (Mathematics/ Science) on 04.10.2005. *Vide* order dated 31.10.2013, he was granted promotion as Lecturer Chemistry. In other words, he was promoted from the post of Assistant Teacher L.T. Grade to the post Lecturer Chemistry and was posted in Government Inter College Badadada, Pauri. Subsequently, his promotion order was amended and the place of posting was changed to G.I.C., Bagiali, Pauri. He joined there on 21.02.2014.

2.2 The problem with the petitioner arose when due to his personal family reasons, he moved resignation letter on 15.09.2015. He again moved another resignation letter on 16.12.2015 (True copy of resignation letter dated 09.04.2015: Annexure- A 4). Although the petitioner moved second resignation letter dated 16.12.2015, but later on his family problems were sorted out and as such, he moved a representation to Addl. Director, Secondary Education, praying that he may be permitted to join his duties. He also requested for sanction of leave without pay for the period when the petitioner did not work pursuant to his resignation letter. (Copy of resignation letter: Annexure- 5).

2.3 On 22.05.2018, petitioner sent another letter to Director, Secondary Education, that since his resignation letter has not been accepted and his family problem has been sorted out, therefore, he may be permitted to join his duty and the leave without pay may be sanctioned from 16.12.2015 till the date of his joining. The Principal, G.I.C., Bagiali, Pauri, recommended the representation of the petitioner informing the Director, Secondary Education, that one Sri Ravikant was working as Lecturer Chemistry since 30.12.2016. Representation of the petitioner for rejoining on the post of Lecturer Chemistry was forwarded by the Block Education Officer, Pauri to the Chief Education Officer, Pauri *vide* letter dated 23.05.2018 (Annexure: A 7).

2.4 *Vide* letter dated 26.05.2018, the Addl. Director, Secondary Education, Garhwal Division, Pauri, forwarded the representation of the petitioner along with records to the Director, Secondary Education for necessary action. *Vide* letter dated 25.07.2018, the Chief Education Officer, Pauri Garhwal wrote to Block Education Officer, Ekeshwar, Pauri Garhwal, requiring certain information (Copy: Annexure- A 8). The information was supplied to the competent authority of the department through proper channel. (Annexure: A 9). The Addl. Director, Secondary Education, *vide* letter dated 30.10.2018, wrote to Chief Education Officer, Pauri Garhwal, that as per the Uttarakhand Government Servant Resignation Rules, 2003, if any incumbent, by giving notice of three months, tenders his resignation and if such resignation is not declined within 90 days, then such resignation is deemed to be accepted automatically. (Copy of letter dated 30.10.2018: Annexure- A 10). The Chief Education Officer, Pauri Garhwal communicated the above direction of the Directorate to the Block Education Officer, Ekeshwar, Pauri Garhwal.

2.5 On 07.03.2019, the petitioner submitted an affidavit before the respondent department that he being unaware of the departmental process, he has worked on temporary basis as guest faculty in the Higher Education and during this period he has not received any salary of his substantive post. In the Higher Education, his services were purely temporary. He further stated that as his resignation has not been accepted, therefore, as per Rule 7 of the Uttarakhand Government Servant Resignation Rules, 2003, he may be

permitted to join his substantive post and also prayed for sanction of leave without pay of the said period. (Copy: Annexure- A11). On 15.03.2019, the petitioner again moved representation to the Addl. Director, Secondary Education, narrating the above mentioned circumstances praying that since his resignation has not been accepted, therefore, he may be given permission to join his duty and also prayed for grant of leave without pay when (for the period) he did not perform his duties.

2.6 The Director, Secondary Education, passed an order on 26.09.2020, holding that the resignation of the petitioner was deemed to be accepted and as he has not completed the probation period on the post of Lecturer, therefore, he was demoted to his substantive post of Assistant Teacher L.T. Grade (Science/Mathematics) (Copy of letter dated 26.09.2020: Annexure- A 14).

2.7 The petitioner joined on 27.11.2020 as Assistant Teacher L.T. Grade in G.I.C. Chakyusain Dwarikhal, District Pauri Garhwal (Copy: Annexure- A 16). He moved a representation along with application in prescribed performa to the Regional Addl. Director, Secondary Education, Garhwal Division, Pauri, praying that he may be sanctioned leave without pay from 15.12.2015 to 26.11.2020. The Regional Addl. Director, Secondary Education, Garhwal Division, Pauri, *vide* order dated 29.03.2022, rejected the representation of the petitioner, showing the reason that from 15.12.2015 to 26.11.2020 the petitioner worked as guest faculty in Higher Education and received salary for the same, therefore, leave without pay for the aforesaid period cannot be granted to him. (Copy of order dated 29.03.2022: Annexure- A 17).

2.8 Petitioner preferred WPSS No. 1072/ 2022 before the Hon'ble High Court, who was pleased to allow the writ petition *vide* order dated 21.06.2022 and quash the order dated 26.09.2020 and remit back the matter to Director, Secondary Education to pass a fresh order after affording reasonable opportunity of hearing to the petitioner (True copy of order dated 21.06.2022: Annexure- A 19).

2.9 In compliance of the order of Hon'ble High Court, the Director, Secondary Education, *vide* order dated 17.08.2022 gave posting to the

petitioner as Lecturer Chemistry in G.I.C. Chakyusain Dwarikhal, Pauri Garhwal.

2.10 Petitioner moved a representation before Addl. Director, Secondary Education and sought extra ordinary leave from 15.12.2015 to 26.11.2020 (04 years 348 days). The representation of the petitioner was rejected *vide* order dated 17.01.2023. Various reasons have been given in the petition as to why his claim petition should be allowed. The Tribunal does not think it necessary to reproduce those reasons. Aggrieved by the rejection of his representation *vide* impugned order dated 17.01.2023 (Annexure: A 1), the petitioner has filed present claim petition.

3. At the very outset, Ld. A.P.O. objected to the maintainability of the claim petition *inter alia* on the ground that there is no provision for granting salary for the period when the petitioner absented from service of the respondent department, because he was drawing salary from another source. Ld. A.P.O. submitted that a public servant is not permitted to draw salary from two sources. In the present case, the petitioner is seeking salary for the period when he remained absent from the service of respondent department and during which period he obtained salary as guest faculty from other department.

4. Ld. Counsel for the petitioner fairly conceded that the petitioner is not entitled to the salary for the period he remained absent from the service of the respondent department, inasmuch as a public servant is not entitled to draw salary from two sources. But, Ld. Counsel for the petitioner submitted that the petitioner prays that he may be granted extraordinary leave so that the services rendered by him in the respondent department may be counted for the purpose of his service as Lecturer Chemistry.

5. In response to the query of the Tribunal, Ld. Counsel for the petitioner submitted that the Hon'ble High Court has been pleased to set aside the order dated 26.09.2020 passed by Director, Secondary Education, Uttarakhand. The petitioner's service was, accordingly, restored as Lecturer Chemistry and, therefore, it does not lie in the mouth of the respondent department to say that he was on probation during the period when he was promoted as Lecturer Chemistry.

6. It will be useful to reproduce the decision rendered by Hon'ble High Court on 21.06.2022 in WPSS No. 1072/ 2022, herein below for convenience:

“Admittedly, petitioner was not given any notice or hearing whatsoever. It is also not in dispute that the order, reverting petitioner from the post of Lecturer to the post of Assistant Teacher, L.T. Grade, amounts to major penalty, therefore, such order could not have been passed before initiating departmental enquiry against the petitioner.

On this short point alone, the writ petition is allowed and the impugned order dated 26.09.2020 is set aside. The matter is remitted back to Director, Secondary Education to pass fresh order, after affording reasonable opportunity of hearing to the petitioner.”

7. The Tribunal finds substance in the contention of Ld. Counsel for the petitioner that the respondent department, while complying with the orders of the Tribunal is estopped from agitating the point that the petitioner was on probation while working as Lecturer Chemistry in the respondent department. Once the respondent department has complied with the orders of Hon'ble High Court, it does not lie in the mouth of the respondents to say something which is contrary to the text of the orders of the Hon'ble High Court.

8. Ld. Counsel for the petitioner submitted that the respondent department may be directed to order that although petitioner is not entitled to salary for the period he absented from the working of the respondent department, but such period may be counted for granting other service benefits to him. Ld. A.P.O. also opposed such prayer and submitted that such relief has not been sought by the petitioner in present claim petition.

9. In reply, Ld. Counsel for the petitioner submitted that the petitioner will file a representation to the competent authority for the said relief and the appropriate authority may be directed to decide such representation of the petitioner within a stipulated time, as per law. Ld. A.P.O. has no objection to such innocuous prayer.

10. Considering the facts noted above, the Tribunal deems it appropriate to dispose of the claim petition at the admission stage, as no useful purpose will be served by granting time to the respondents to file written

statement. The version of the respondent department has already come on record through the text of the impugned order. Ld. A.P.O. was also requested to seek instructions in this regard. He obtained written instructions from the respondent department and submitted the same to the Tribunal on 27.07.2023. It may be noted here that the instructions are the same which have been reflected in the impugned order by the respondent department.

11. It is trite law that the respondent department cannot stretch its case beyond what has been written in the impugned order. It will be quite useful to reproduce the observations of Hon'ble Mr. Justice Vivian Bose in *Commissioner of Police, Bombay vs. Gordhandas Bhanji, AIR 1952 SC 16*, herein below for convenience:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he Intended to do Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older”

12. In nutshell, what the Tribunal wants to emphasize that, no useful purpose will be served by giving time to the respondent department to file written statement, specially when Ld. Counsel for the petitioner has forwarded an innocuous prayer that the petitioner will be filing his representation, which may kindly be directed to be decided by the appropriate authority, as per law.

13. The claim petition is disposed of, at the admission stage, by holding that the petitioner is not entitled to the salary for the period during which he did not work with the respondent department and drew salary from other sources from another department. He is not entitled to the same, yet, so far as counting his services for the period during which he did not work, should be directed to be considered by the appropriate authority, in accordance with law within a stipulated period.

14. The claim petition is thus disposed of by directing the competent authority to decide the representation of the petitioner, as per law, by a reasoned and speaking order, on petitioner's moving the representation before

such authority, within 12 weeks of presentation of certified copy of this order along with representation enclosing the documents in support thereof.
No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 31, 2023.
DEHRADUN

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