

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

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 44/DB/2014

Anil Kumar S/o Shri Raghuvir Dutt Jadly, R/o Village Bharat Gaon
Jayahari Khal, Pauri Garhwal.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, School Education
Government of Uttarakhand- Secretariat Subhash Road,
Dehradun.
2. Chief Education Officer, Distt, Pauri Garhwal, Pauri.
3. Principal, Government Inter College, Amola Dhangu, Pauri
Garhwal.

.....Respondents

Present: Sri B.B.Naithani, Counsel,
for the petitioner
Sri U.C.Dhaundiyal, A.P.O.
for the respondents .

JUDGMENT

DATE: SEPTEMBER 16, 2015

DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The present claim petition has been filed for seeking the following
reliefs:-

*“1. (a) This Hon’ble Tribunal may be pleased to quash the impugned
order dated 15.01.2014(Annexure No.. A-1) which has been passed
with reference to nonexistent order dated 01.11.1999 which had*

already been quashed by Hon'ble High Court, Uttarakhand vide its order dated 26.09.2013 (Annexure No. A04).

(b) Further to quash order dated 05.07.2014 (Annexure No. A-2) by which the petitioner had been refused to join his original post of class IV on which the petitioner was posted and serving before the impugned order dated 01.11.1999 was passed.

(c) further to issue direction to allow the petitioner to join his original post/place of posting and to treat the petitioner continuing in service as if his services were never terminated and to grant all consequential benefits since the dated 01.11.1999 when the illegal order of termination was passed by respondent No.2 to the date he is allowed to resume duty.

(d) Further to issue direction to consider the case of the petitioner for the purpose of regularization of his temporary services as per provision of Regularization Rules, 2013.

2. To issue any order or direction which this Hon'ble Tribunal may deem fit and proper under circumstances of the case.

3. To grant any other relief/reliefs which this Hon'ble Tribunal deem fit and proper to pass in consequences of this petition.

4. To award cost to the petitioner.”.

2. The relevant facts in brief are that that the petitioner was appointed as class IV employee on 27.1.1999 by the Respondent No.2. He joined his duty on 29.1.1999. The appointment letter of the petitioner was as under (Annexure: A-6).

“कार्यालय जिला विद्यालय निरीक्षक

आदेश सं0 409 सेवा 5/98-99 दिनांक 27/1/99

अस्थाई व्यवस्था

कार्यभार ग्रहण करने की तिथि से श्री अनिल कुमार पुत्र रघुवर दत्त ग्राम भरत गॉव पो0 सेधीखाल पौड़ी गढ़वाल को वेतनकम 2550-320 में इस कार्यालय की अग्रिम व्यवस्था होने तक नितान्त अस्थाई व्यवस्था के अन्तर्गत नियुक्ति प्रदान की जाती है। यह नियुक्ति इससे पूर्व भी बिना नोटिस के कभी भी समाप्त की जा सकती है। कार्यभार ग्रहण करने हेतु इन्हें किसी प्रकार का मार्ग व्यय देय नहीं होगा।

रमेश चन्द्र प्रेमी
जिला विद्यालय निरीक्षक
पौड़ी गढ़वाल”

3. The services of the petitioner were terminated by the Respondent No.2 vide order dated 01.11.1999 (Annexure: A-3) which is reproduced below:-

“कार्यालय जिला विद्यालय निरीक्षक, पौड़ी गढ़वाल
आदेश सं० शि० सं०: 363/99-2000 दिनांक 01.11.1999

विज्ञप्ति / निरस्तीकरण

श्री अनिल कुमार द्वारा प्रधानाचार्य/प्रधानाध्यापक रा०इ०का०/रा०मा०वि० पौड़ी गढ़वाल आपकी नियुक्ति रा०इ०का०/रा०मा०वि० पौड़ी गढ़वाल में इस कार्यालय के आदेशानुसार तत्कालीन जिला विद्यालय निरीक्षक श्री रमेश चन्द्र प्रेमी द्वारा की गई थी।

आपको व अन्य उक्तवत की गई नियुक्तियां अनियमित होने की शिकायतों के आधार पर जिलाधिकारी पौड़ी गढ़वाल द्वारा जांच कराई गई। जांच अधिकारी द्वारा जांच करने पर पाया गया कि उक्त प्रदत्त नियुक्ति के सम्बन्ध में शासनादेशों के अनुरूप विधिवत नियुक्ति प्रक्रिया नही अपनाई गई। नियुक्ति व प्रक्रिया के तहत कोई बुलावा पत्र भी निर्गत नही किये गये और ना ही आप का चयन नियमों के तहत कोई निर्धारित चयन समिति के द्वारा सम्पन्न कराया गया। इतना ही नही शासनादेश संख्या 20-1-91-क-2-1991 दिनांक 17.07.1991 तथा शासनादेश संख्या 20-1-1-91-क-2-1997 दिनांक 03.11.1997 के द्वारा नियुक्तियों के प्रतिबन्ध होने के बावजूद आपको अनियमित नियुक्ति प्रदान की गई है।

आपकी नियुक्ति नितान्त अनियमित एवं विधि शून्य पाये जाने की पुष्टि होने के फलस्वरूप आपको इस कार्यालय द्वारा प्रदत्त अनियमित नियुक्ति का तत्काल प्रभाव से समाप्त किया जाता है।

ह०/अस्पष्ट/
(नेपाल सिंह खड़ाई)
जिला विद्यालयी निरीक्षक
पौड़ी गढ़वाल।”

4. Feeling aggrieved by the above termination order, the petitioner approached the Hon’ble High Court at Allahabad and the Hon’ble High Court on 10.12.1999 stayed the operation of the order dated 01.11.1999. The petitioner continued in the service on the basis of the interim order of the Hon’ble High Court.
5. After creation of the State of Uttarakhand, the writ petition filed before the Hon’ble High Court at Allahabad was transferred to the Hon’ble High Court at Nainital (No. writ petition S/S 4097 of 2001). The Hon’ble High Court at Nainital dismissed the petition on 11.12.2007 holding that the appointment of the petitioner was made

dehors the Rules and in violation of Article 16 of the Constitution of India and, therefore, it was void ab-initio (Annexure: A-7). Thereafter, the services of the petitioner were discontinued (Annexure A-8 and Annexure: A-9) w.e.f. 23.05.2009.

6. The petitioner filed a Review Application (No. 471 of 2009) against the above said order dated 11.12.2007 and the Hon'ble High Court at Nainital allowed the Review Application and passed the following order on 26.9.2013 (Annexure: A-4):-

“Heard.

The petitioner challenged the order dated 01.11.1999 passed by the respondent no.2, by which the appointment of the petitioner was cancelled. By the same order, the respondent no.2 also cancelled the appointment of other Class IV employees appointed along with the petitioner. All the employees filed writ petition before this Court on the ground that the said order was illegal, inasmuch as, no opportunity of hearing was afforded to them before passing the cancellation order. Almost all the petitions were allowed by this Court by holding that the order was in violation of principles of natural justice. The writ petition of the present petitioner/review applicant was dismissed by this Court on 11.12.2007, by observing that the cancellation order itself reveals that the appointment of the petitioner was made dehors the rule and in violation of Article 16 of the Constitution of India and, therefore, it was void-ab-initio. Now, the petitioner has filed the present review application seeking review of the order dated 11.12.2007.

The petitioner was appointed by the respondent no.2 as Class IV employee on 27.01.1999. He joined the post as Class IV employee in Rajkiya Uchchatar Madhyamik Vidhalya, Amola, Pauri Garhwal on 29.01.1999. He continued to work on the

said post till 01.11.1999 when the order for cancelling the appointment was passed. The said order was passed in a cyclostyle manner. The petitioner filed writ petition before the Allahabad High Court, in which interim order was passed and the petitioner continued to work on the basis of interim order passed by the High Court.

In paragraph no.11 of the Writ Petition, the petitioner has stated that the impugned order dated 01.11.1999 and the consequential order dated 19.02.2000 have been passed without any notice and without affording opportunity of hearing to the petitioner. The petitioner was neither given any show cause notice nor he was informed about any such order prior to 19.02.2000. He received impugned cancellation order on 19.02.2000 and thereafter, he came to know about the impugned order dated 01.11.1999.

The respondents filed counter affidavit. In the counter affidavit, the respondents have simply said that since the said appointment was wholly illegal, therefore, there was no legal justification for issuing separate notice to the person concerned.

Mr. B.P.S. Mer, Brief Holder for the State relied upon the judgment passed by this Court in Special Appeal No.30 of 2011 and submitted that in view of the said judgment, the petitioner is not entitled for any relief.

I have carefully examined the judgment relied by the State counsel. Both the cases are different from each other. In that petition, appointment was only for 89 days, whereas in the case in hand, the regular appointment was made and no period was assigned in the appointment order.

The stand taken by the respondents in the counter affidavit is totally incorrect. If civil right accrued to any person, then in that event before passing any adverse order against the person concerned, the authority competent is required to give proper notice to such person. It is not denied by the State counsel that the petitions filed by other persons, whose appointment was also cancelled, were allowed by this Court.

I find that in case review application filed by the petitioner is dismissed, then in that event, gross injustice will be done to the petitioner, inasmuch as, several petitions filed by the other persons whose appointment was also cancelled on the same day, in the same manner, by way of a cyclostyle order, were allowed by this Court.

Considering all these facts and considering the judgment passed by this Court in several petitions filed by other persons whose appointment was also cancelled and also considering the fact that the order under review is reviewable and having reviewed the same, I allow the review application and recall the order dated 11.12.2007. Consequently, the writ petition filed by the petitioner is allowed. Orders impugned passed by the respondents are quashed. However, it would be open for the respondents to pass fresh order in accordance with law.

No order as to costs."

7. After the said order of the Hon'ble High Court at Nainital dated 26.09.2013, the petitioner gave an application to the respondent No. 2 on 5.10.2013 (Annexure: A-10) and requested to allow him to join the service. Respondents did not take any action on this application. However, respondent No. 2 in compliance of the order of the Hon'ble High Court at Nainital dated 26.09.2013 (Annexure:A-4) after allowing opportunity of hearing to the petitioner, passed a

fresh order dated 15.1.2014 (Annexure A-1) holding that the termination order of the petitioner dated 1.11.1999 (Annexure: A-3) was a right and justified order. The said order of respondent No. 2 is reproduced below:-

“मा० उच्च न्यायालय, नैनीताल में योजित रिट याचिका संख्या- 4097/2001, रिब्यू एप्लीकेशन संख्या- 471/2009 तथा डिले कन्डोलेशन अपील संख्या-5395/2009 में पारित निर्णय दिनांक 26.09.2013 के अनुपालन में निर्णय:

याचिकाकर्ता:-

श्री अनिल कुमार, पूर्व परि०रा०इ०का०अमोला,पौ०ग०

तत्कालीन जिला विद्यालय निरीक्षक, पौड़ी गढ़वाल श्री रमेश चन्द्र पमी द्वारा उत्तर प्रदेश शासन के शासनादेश दिनांक 17-07-91 एवं दिनांक 03-11-97 द्वारा चतुर्थ श्रेणी कर्मचारियों की नियुक्ति पर लगी रोक की उपेक्षा करते हुये जनपद के विभिन्न राजकीय माध्यमिक विद्यालयों में नियुक्ति प्रदान की गयी जिसमें श्री अनिलकुमार को दिनांक 27-01-1999 को रा०इ०का०अमोला,पौड़ी गढ़वाल में चतुर्थ श्रेणी के पद पर नियुक्ति भी सम्मिलित है। इस अनियमित नियुक्ति का विभाग में संज्ञान आने पर शासन द्वारा तत्कालीन जिला विद्यालय निरीक्षक, पौड़ी गढ़वाल द्वारा चतुर्थ श्रेणी के पदों पर की गयी समस्त नियुक्तियों की जाँच जिलाधिकारी गढ़वाल से करवाये जाने पर जॉचोपरान्त नियुक्तियों अनियमित एवं अवैधानिक पायी गयी थी, जिसक फलस्वरूप तत्कालीन जिला विद्यालय निरीक्षक, पौड़ी गढ़वाल श्री रमेशचन्द्र प्रेमी को उत्तर प्रदेश शासन द्वारा निलम्बित किया गया तथा शासन के पत्र संख्या- शिक्षा अनुभाग-3/27151-13-2001(2)/99 दिनांक 28-03-2001 द्वारा श्री प्रेमी को दोषी मानते हुये रू० 32,66,397-00 (रू० बत्तीस लाख छियासठ हजार तीन सौ सत्तानब्बे मात्र) की वित्तीय हानि के परिपेक्ष्य में सम्पूर्ण ग्रेच्युटी की धनराशी जब्त करने तथा पेंशन से 25 प्रतिशत स्थायी कटौती किये जाने के आदेश पारित किये गये।

श्री अनिलकुमार की नियुक्ति को भी अनियमित मानते हुये इस कार्यालय द्वारा दिनांक 01-11-1999 को श्री अनिल कुमार की सेवायें समाप्त कर दी गयी। सेवा समाप्ति आदेश के विरुद्ध श्री अनिल कुमार द्वारा मा० उच्च न्यायालय, उ०प्र० इलाहाबाद के में रिट याचिका संख्या- 12167/2000 योजित करने पर मा० न्यायालय द्वारा सेवा समाप्ति आदेश के विरुद्ध दिनांक 10-12-1999 को स्थगनादेश पारित किया गया, जिसके फलस्वरूप याची सेवारत रहे हैं। उक्त स्थगन आदेश के विरुद्ध विभाग द्वारा मा० न्यायालय में शपथपत्र योजित किया गया।

उत्तराखण्ड राज्य गठन के फलस्वरूप उक्त रिट याचिका मान० उच्च न्यायालय उत्तराखण्ड नैनीताल में याचिका संख्या- 4097/एस०एस०/2001 के रूप में योजित मानी गयी। मा० उच्च न्यायालय,

उत्तराखण्ड नैनीताल द्वारा याचिका की सुनवाई करते हुये पारित आदेश दि० 11-12-207 द्वारा शासन के आदेश दिनांक 03-11-97 द्वारा नियुक्तियों पर रोक के बावजूद की गयी नियुक्ति को नियम विरुद्ध मानते हुये तत्कालीन जिला विद्यालय निरीक्षक, पौड़ी गढ़वाल द्वारा श्री अनिल कुमार की सेवा समाप्ति आदेश दिनांक 01-11-1999 को वेध मानते हुये रिट याचिका खारिज कर दी गयी। फलस्वरूप सम्बन्धित परिचालक द्वारा प्राप्त स्थगनादेश दिनांक 10-12-1999 निष्प्रभावी हो गया है तथा इस कार्यालय द्वारा पूर्व में श्री अनिलकुमार,परि० की सेवा समाप्ति आदेश दिनांक 01-11-1999 स्वतः प्रभावी होने के फलस्वरूप इस कार्यालय के आदेश दिनांक 06-05-2009 के द्वारा प्रधानाचार्य रा०इ०का०अमोला, को याची को सेवामुक्त किये जाने के आदेश निर्गत किया गया, फलस्वरूप प्रधानाचार्य, रा०इ०का०अमोला के आदेश दिनांक 23-05-09 को याची को सेवामुक्त कर दिया गया।

तत्पश्चात याची श्री अनिल कुमार द्वारा मा० न्यायालय में रिब्यू एप्लीकेशन संख्या- 471/2009 योजित किये जाने पर मान० न्यायालय द्वारा पारित आदेश दिनांक 26-09-2013 द्वारा इसी प्रकार नियुक्त अन्य अपीलार्थियों के सम्बन्ध में पारित निर्णयों के अनुसार कार्यवाही करने क निर्देश दिये गये। जिसके फलस्वरूप श्री अनिल कुमार को अपना पक्ष रखने हेतु दिनांक 11-11-2013 को इस कार्यालय में बुलाया गया। उक्त निर्धारित तिथि को याची द्वारा इस कार्यालय में उपस्थित होने पर उनकी नियुक्ति के सम्बन्ध में 05 बिन्दुओं की एक प्रश्नावली प्राप्त करवायी गयी। जिसमें उनकी नियुक्ति से पूर्व दैनिक समाचार पत्रों में विज्ञप्ति प्रकाशित होने, सेवायोजन कार्यालय द्वारा बुलावा पत्र प्राप्त होने, चयन समिति द्वारा साक्षात्कार के आधार पर चयनित होकर नियुक्ति पत्र द्वारा पत्र प्राप्त होने तथा नियुक्ति के सम्बन्ध में अन्य साक्ष्य प्रस्तुत करने हेतु निर्देशित किया गया। सम्बन्धित के द्वारा लिखित रूप से अपना पक्ष रखा गया, किन्तु नियुक्ति के सम्बन्ध में स्पष्ट साक्ष्य उपलब्ध नहीं कराये गये।

समीक्षापरान्त निर्णय:-

याची श्री अनिल कुमार द्वारा मा० उच्च न्यायालय नैनीताल में योजित रिट याचिका संख्या- 4097/2009, रिब्यू एप्लीकेशन संख्या- 471/2009 तथा डिले कन्डोलेशन अपील सं० 5395/2009 में पारित आदेश दिनांक 26-09-2013 एवं निदेशक, विद्यालयी शिक्षा उत्तराखण्ड, देहरादून के पत्रांक/वाद/35986/2005-06 दिनांक 10-10-2005 द्वारा प्राप्त निर्देशों के अनुपालन में श्री अनिल कुमार की नियुक्ति से सम्बन्धित प्रकरण को उनकी उपस्थिति एवं लिखित व मौखिक बयानों को सुना गया। याची के लिखित एवं मौखिक बयान तथा विभागीय अभिलेखों के आधार पर स्पष्ट हुआ है कि तत्कालीन जिला विद्यालयी निरीक्षक, पौड़ी गढ़वाल द्वारा उत्तर प्रदेश शासन के शासनादेश दिनांक 17-07-1991 व 13-11-97 की अवहेलना कर याची की चतुर्थ श्रेणो के पद पर की गयी अनियमित नियुक्ति प्रदान की गयी थी, जिसे इस कार्यालय के आदेश संख्या- शि०स०/363/99-2000 दिनांक

01-11-1999 द्वारा निरस्त किया गया, जो कि विभागीय आदेशों के अनुरूप सही था।

अतः प्रकरण पर अन्तिम रूप से विचार करते हुये याची की पूर्व में निरस्त की गयी नियुक्ति न्यायोचित है।

मुख्य शिक्षा अधिकारी,
पौड़ी गढ़वाल।”

8. The petitioner filed a writ petition No. 385 of 2014 against the said order of respondent No. 2 dated 15.1.2014 (Annexure: A-1) before the Hon'ble High Court at Nainital. Later on, the petitioner withdrew the writ petition. The Hon'ble High Court vide order dated 01.04.2014 (Annexure: A-5) permitted the petitioner to withdraw this writ petition with liberty to approach the State Public Services Tribunal. Thereafter, the petitioner has filed the claim petition before this Tribunal on 2.9.2014.
9. The contention of the petitioner in the claim petition is that the Hon'ble High Court vide order dated 26.9.2013 (Annexure: A-4 reproduced in para 6 of this order) had quashed the termination order dated 01.11.1999 (Annexure: A-3) and in spite of that the petitioner was not allowed by the respondents to join the service. It has also been contended in the claim petition that the respondent No. 2 vide order dated 15.1.2014 (Annexure: A-1) could not justify the termination order dated 01.11.1999 which had been quashed by the Hon'ble High Court vide order dated 26.09.2013.
10. Petitioner has also contended in the petition that Shri Ganesh Singh Rawat, Shri Dharam Singh, Shri Yogendra Kumar and Shri Narendra Singh Panwar who were similarly situated employees of Education Department (as they were also terminated on 1.11.1999 on similar ground) are continuing in service after the similar orders of the Hon'ble High Court at Nainital. Thus, the petitioner has been subjected to hostile discrimination and has been illegally denied the joining of service.
11. It has also been pleaded by the petitioner that the Government of Uttarakhand has issued Regularization Rules, 2013 on 30.12.2013(Annexure:A-14) for the purpose of regularization of services of daily wage, work-charge, contract, part time and adhoc employees. The case of the petitioner is fully covered under the

Regularization Rules, 2013 but the respondents have not allowed the joining of the petitioner so that his services are not regularized under the said Rules.

12. Respondent Nos. 1 to 3 in their joint written statement have opposed the claim petition. It has been stated in the written statement that in pursuant to order of the Hon'ble High Court at Nainital dated 26.09.2013 (Annexure: A-4), a fresh order was passed on 15.1.2014 (Annexure: A-1) after providing opportunity of hearing to the petitioner and the earlier termination order of the petitioner dated 1.11.1999 was found to be a right and justified order. The respondents have averred in the written statement that the appointment of the petitioner on 27.1.1999 was made in utter violation of the Government Order dated 3.11.1997 by which the Government had prohibited the new appointment/recruitment of employees in the State Government establishments. In spite of that the then District Inspector of Schools had appointed the petitioner. It is further alleged that the petitioner was appointed in complete violation of the service Rules framed by the State Government for the recruitment of Class IV employees. In compliance with the order of the Hon'ble High Court dated 26.9.2013, the petitioner was issued a notice by the respondent no. 2 to put up his case. The petitioner presented himself before the respondent No.2 and put up his case in writing. After due examination of the record and written/ oral statements of the petitioner, the respondent No.2 passed a fresh order on 15.01.2014 (Annexure: A-1) and found that the termination order of the petitioner dated 1.11.1999 was right and justified. The respondents have also refuted the allegation that the similarly situated employees are continuing after the similar orders of the Hon'ble High court at Nainital. It has been stated in the written statement that the services of Shri Ganesh Singh Rawat has already been terminated. It has further been mentioned that other three employees mentioned by the petitioner namely, Shri Dharam Singh, Shri Yogendra Kumar and Shri Narendra Singh Panwar were retrenched employees and they were adjusted under the relevant Rules of the Government and the petitioner who is admittedly not a

retrenched employee cannot be compared with them. Respondents have also stated that the petitioner is not covered under the Regularization Rules, 2013 of the State Government and, therefore, not entitled for regularization under the said Rules.

13. The petitioner also filed a rejoinder affidavit in which averments made in the claim petition have been reiterated and elaborated.
14. We have heard learned counsel for the petitioner and learned APO on behalf of the respondents and also perused all record carefully.
15. Learned counsel for the petitioner has argued that the Hon'ble High Court at Nainital while deciding the Review Application on 26.9.2013 (Annexure A-4) has quashed the earlier termination order dated 1.11.1999 (Annexure: A-3). Thereafter, respondent No. 2 passed another order dated 15.1.2014 (Annexure: A1) in which he has held that the earlier termination order is right and justified. The learned counsel for the petitioner contended that the respondent No. 2 had no competence to decide the termination order dated 1.11.1999 as justified when the same had already been quashed by the Hon'ble High Court. Learned APO contended that the Hon'ble High Court vide order dated 26.9.2013 (Annexure: A-4) while quashing the order dated 1.11.1999 has also held that it would be open for the respondents to pass fresh order in accordance with law. He further contended that respondent No.2 after giving opportunity of hearing to the petitioner passed the order dated 15.1.2014 (Annexure: A-1) and held that the earlier termination order dated 1.11.1999 was in order and justified. We have gone through the order passed by the Hon'ble High Court dated 26.9.2013 (reproduced in para 6 of this order). The Hon'ble High Court in the first paragraph of the said order has observed that "*The petitioner challenged the order dated 01.11.1999 passed by the respondent no.2, by which the appointment of the petitioner was cancelled. By the same order, the respondent no.2 also cancelled the appointment of other Class IV employees appointed along with the petitioner. All the employees filed writ petition before this Court on the ground that the said order was illegal, inasmuch as, no opportunity of hearing was afforded to them before passing the cancellation order. Almost*

all the petitions were allowed by this Court by holding that the order was in violation of principles of natural justice". It has also been observed by the Hon'ble High Court that *"If civil right accrued to any person, then in that event before passing any adverse order against the person concerned, the authority competent is required to give proper notice to such person"*. In the operative part, the Hon'ble High Court has held that *"I allow the review application and recall the order dated 11.12.2007. Consequently, the writ petition filed by the petitioner is allowed. Orders impugned passed by the respondents are quashed. However, it would be open for the respondents to pass fresh order in accordance with law"*. In the light of the order of the Hon'ble High Court, we find that the termination order dated 1.11.1999 was quashed by the Hon'ble High Court on the ground of violation of the principles of natural justice and at the same time the respondents were allowed by the Hon'ble High Court to pass fresh order in accordance with law. In compliance of the order of the Hon'ble High Court, a fresh order dated 15.1.2014 was passed by the respondent No.2 after giving opportunity of hearing to the petitioner and after examination of record, it has been held by Respondent No.2 that the order dated 1.11.1999 was in order and the same was justified.

In view of this, we incline to agree with the contention of the learned APO and do not find any force in the argument of the learned counsel for the petitioner that the respondent No. 2 was not competent to pass the impugned order. In our view, respondent No.2 has complied with the order of the Hon'ble High Court and passed a fresh order in accordance with law after giving opportunity of hearing to the petitioner.

16. The counsel for the petitioner has also contended that after quashing the termination order dated 1.11.1999 by the Hon'ble High Court on 26.9.2013, the respondents should have allowed the petitioner to join the service but the respondents did not do so inspite of the request by the petitioner for the same. Learned APO contended that after quashing of the order dated 1.11.1999, respondent No.2 has passed a fresh order on 15.1.2014 in accordance with law and adhering to the

principles of natural justice as directed by the Hon'ble High Court. After going through the order of the Hon'ble High Court at Nainital carefully, we find that the Hon'ble High Court has not given any specific direction for re-instatement or rejoining of the petitioner. Therefore, we do not find any force in the contention of the learned counsel for the petitioner that the respondents were bound to allow rejoining of the petitioner .

17. Learned counsel for the petitioner also contended that one Shri Ganesh Singh who is similarly situated is continuing in service. The learned APO has stated that the services of Shri Ganesh Singh have been terminated on 13.2.2014 (Annexure R-2 to the written statement) and after that his claim petition (No. 24.DB/2014) in which he challenged the termination order of 13.2.2014 has also been dismissed by this Tribunal on 14.5.2015. Learned counsel for the petitioner has also mentioned three another employees who are similarly situated but they are continuing in service. Learned APO pointed out that these three employees are not similarly situated. They were retrenched employees and, therefore, they were adjusted in service as per Rules of the State Government. Learned counsel for the petitioner could neither demonstrate that these three employees were not retrenched employees nor he could show that the petitioner was a retrenched employee. We, therefore, do not find any force in the contention of the learned counsel for the petitioner that the petitioner has been subjected to hostile discrimination and has been illegally denied to continue in the service.
18. Learned counsel for the petitioner also contended that the petitioner had put in more than 10 years of service and the posts are vacant and available, therefore, the petitioner should be re-instated and regularized under Regularization Rules, 2013 notified by the State Government on 30.12.2013 (Annexure: A-14). We have examined as to whether the petitioner is entitled to be regularized or not. It is admitted case of the parties that the services of the petitioner were terminated on 1.11.1999 and thereafter, he discharged his service till 22.5.2009 under the cover of the stay order passed by the Hon'ble High Court at Allahabad on 10.12.1999. In the case of **Secretary,**

State of Karnataka Vs. Uma Devi, 2006 (4) SCC 1, the Hon'ble Apex Court in Para 53 has clearly laid down as under:

“One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V.NARAYANAPPA, R.N. NANJUNDAPPA (supra), and B.N.NAGARAJAN (supra), 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.”

19. Admittedly, from 29.1.1999 to 22.5.2009, the petitioner continued in the service under ‘litigious employment’. **The Hon'ble Apex Court in the above case in Para 43** has held as under:-

“.....It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. **Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief,** it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.”

20. In the light of the decision of the Hon’ble Apex Court as described in paragraphs 18 and 19 above, we reach the conclusion that the petitioner is not entitled to claim regularization as he worked from 29.1.1999 to 22.5.2009 under the cover of the stay order of the Hon’ble High Court at Allahabad.

21. For the reasons stated above, we do not find any force in the claim petition and the same is liable to be dismissed.

Order

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

V.K.MAHESHWARI
VICE CHAIRMAN (J)

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: SEPTEMBER 16, 2015
DEHRADUN

KNP