

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

EXECUTION PETITION NO. 09/SB/2024

*(Arising out of judgment dated 17.10.2023,
passed in Claim petition No. 84/SB/2023)*

Dr. Arun Kumar Dey, aged about 65 years, s/o late Sri J.L. Dey, r/o 18/1,
Deeplok Colony, Ballupur.

.....Petitioner-applicant

VS.

1. Government of Uttarakhand through Secretary, Medical Health and Family Welfare, Secretariat, Subhash Road, Dehradun.
2. Director General, Medical Health and Family Welfare, Vill. Dandalakhond, Post Office Gujrada, Sahastradhara Road, Dehradun.
3. Chief Medical Officer, 105, Chander Nagar, Dehradun.
4. Medical Superintendent, Community Health Centre, Sahaspur, Dehradun.

..... Respondents

Present: Sri Rajesh Kumar Thapa, Advocate, for the petitioner-applicant.
Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: JANUARY 31, 2024

Justice U.C.Dhyani (Oral)

By means of present execution application, petitioner-applicant seeks to enforce order dated 17.10.2023, passed by this Tribunal in Claim Petition No. 84/SB/2023, Dr. Arun Kumar Dey vs. State & others.

2. The execution application is supported by the affidavit of Dr. Arun Kumar Dey, petitioner.

3. The decision rendered by this Tribunal on 17.10.2023, is reproduced herein below for convenience.

“Present claim petition has been filed by the petitioner for directing the respondents to pay the petitioner unpaid salary for the month of March, 2022 and salary for 17 days in the month of April, 2022. It is also prayed that the respondents be directed to pay interest @ 6 % p.a. on the unpaid salary till the salary is actually paid to the petitioner.

2. Petitioner was a Medical Officer on contract-basis in Community Health Centre, Sahaspur, Dehradun. He performed his duties from 01.05.2016 till 17.04.2022. Salary for the aforesaid period was not paid to the petitioner.

3. Director General, Medical Health and Family Welfare, Uttarakhand, appointed petitioner as Medical Officer on contractual basis under the Chief Medical Officer Dehradun. Respondent No. 4 recommended the name of some medical officers to respondent no. 2 for extension of contract. It is a practice in the department that the medical officers do not leave their job and wait till the formal orders of extension are issued. The petitioner, on the request and assurance of respondent no. 4 and for the sake of larger public interest and patients, continued his duty till 17.04.2022 without waiting for formal extension of contract. On 18.04.2020, respondent no. 1 asked the petitioner not to come. The petitioner stopped coming to the Community Health Centre, but respondent no. 4 did not release his salary to him. Hence, present claim petition.

4. Relevant documents have been filed support of the claim petition.

5. C.A./ W.S. has been filed on behalf of the respondents supported by the relevant documents.

5.1 It has been mentioned in para 9 of the counter affidavit that the petitioner served the department on the post of Medical Officer *w.e.f.* 01.03.2022 to 17.04.2022 without any extension/ renewal order issued by the competent authority. He has put in his signatures in the attendance register without any legal authority. He was the senior doctor and no one was there to stop him from making his signatures on the attendance register.

5.2 It has been indicated in para 10 of the C.A. that respondent no. 4 informed the petitioner regarding non-renewal/ non-extension of his contract. Respondent No. 4 directed the petitioner not to put in his signatures and not to come on duty without extension/ renewal order of the competent authority. If he discharges his duty, the same will be on his own risk. The petitioner shall not be paid honorarium for this period.

6. It is the submission of learned A.P.O. that the petitioner provided his services in the hope of renewal/ extension of contract order, *w.e.f.* 01.03.2022 to 17.04.2022, at his own risk. Learned A.P.O. also submitted that the petitioner is not legally entitled to get honorarium for the said period in the absence of extension/ renewal order of the competent authority. Financial Rules do not permit the respondents to pay honorarium to the petitioner in the absence of extension rules. The same has also been stated in para 11 of the C.A.

7. Photocopy of the attendance register for the month of March, 2022 and April, 2022 has been filed by the petitioner along with the claim petition. The copy of the attendance register would reveal that the petitioner, whose name is at serial no. 4, has appended his signatures from 01.03.2022 till 31.03.2022 regularly. Likewise, in the photocopy of the attendance register for the month of April, 2022, the petitioner has put in his signatures from 01.04.2022 till 18.04.2022.

8. In his letter dated 07.11.2022, which has been addressed to the Medical Superintendent, Community Health Centre, Sahaspur, Dehradun, the petitioner has stated that he was on duty from 01.05.2016 to 18.04.2022 in Community Health Centre, Sahaspur, Dehradun, as Medical Officer on contract. His service was extended in the month of February every year. In the year 2022 also, he resumed his duties after three days' break as per duty list. On 18.04.2022 only, the Medical Superintendent, Community Health Centre, asked him that if he continues to do his duty and his contract is not extended/ renewed, then he would do duty at his own risk and he will not be entitled to the salary. The petitioner, therefore, stopped doing duty *w.e.f.* 19.04.2022. He is, therefore, entitled to the salary for the entire month of March, 2022 and 18 days of April, 2022. The petitioner has categorically stated that had he been stopped from doing duty in the beginning of March, he would not have come for duty. The copies of such letters were sent to Director General, Medical Health and Family Welfare, Uttarakhand and Chief Medical Officer, Dehradun.

9. Dr. Pradeep Uniyal, Medical Superintendent, Community Health Centre, in his letter dated 16.12.2022 addressed to C.M.O., Dehradun wrote that the petitioner was orally informed that his service contract has come to an end on 28.02.2022 but nowhere it has come on record that when the petitioner resumed his duty in the beginning of March, 2022, which continued till 18.04.2022, he was stopped from doing so. It was covid period. Moreover, why was the petitioner permitted to append his signatures on the attendance sheet. It has nowhere come on record that the petitioner did not, in fact, rendered his services as contractual Medical Officer for the period he is claiming his salary. If the respondent department was not interested in renewing the contractual period of the petitioner, he ought not to have been permitted to work as such in Community Health Centre, Sahaspur, during difficult times of pandemic. He was permitted to do duty and put in his signatures on the attendance register of March, 2022 and month of April till 18.04.2022. The petitioner himself stopped coming to Community Health Centre from 19.04.2022 when the Medical Superintendent asked him not to come. Not only various other Medical Officers have put their signatures in the attendance register and, probably, they might have been released the salary for the period they remained on duty in the Community Health Centre at Sahaspur.

10. The Tribunal finds that the petitioner has, in fact, worked with Community Health Centre, Sahaspur, on contractual basis for the month of March, 2022 and month of April till 18.04.2022. Had the petitioner been telling a lie, he would have claimed the salary of a larger duration. Why only 1 month and 18 days? The petitioner's version is believable. The petition is to be decided on the basis of preponderance of probability. The petitioner has been able to establish his case on the basis of documentary evidence, therefore, he is entitled to the salary for the period of 1 month and 18 days.

10. Learned Counsel for the petitioner, on seeking instructions from his client, 'did not press' the interest on delayed payment of salary. The Tribunal feels, on the basis of evidence on record, that the petitioner should get salary from 01.03.2022 till 18.04.2022.

11. The claim petition is disposed of by directing the respondents to pay the salary to the petitioner for 1 month and 18 days during the period he worked as contractual Medical Officer at Community Health Centre, Sahaspur, Dehradun, without unreasonable delay. No order as to costs."

4. Ld. Counsel for the petitioner submitted that respondent department is not complying with the aforesaid order. It is the submission of Ld. Counsel for the petitioner that he sent legal representations dated 30.10.2023 (Annexure: B to the claim petition) to (i) Medical Superintendent, Community Health Centre, Sahaspur, Dehradun, Uttarakhand, (ii) Chief Medical Officer, Dehradun, Uttarakhand and (iii) Director General, Medical, Health and Family Welfare, Dehradun, Uttarakhand, but to no avail.

5. Ld. A.P.O. placed copy of letter dated 20.11.2023, sent by Medical Superintendent, Community Health Center, Sahaspur, addressed to Chief Medical Officer, Dehradun; copy of letter dated 12.12.2023, written by Chief Medical Officer, Dehradun to Director General, Medical, Health and Family Welfare, Uttarakhand, Dehradun; and copy of letter dated 15.12.2023, written by Director General, Medical, Health and Family Welfare, Uttarakhand, Dehradun to the Addl. Secretary to the Government in Medical, Health and Medical Education, Uttarakhand, to seek direction of the Government in implementing the order (dated 17.10.2023) of the Tribunal. Ld. A.P.O., on seeking further instructions from the respondent department, submitted that the orders of the Tribunal shall be complied with, no sooner respondents no. 2, 3 & 4 receive guidance from respondent no.1.

6. The Tribunal records the aforesaid statement of Ld. A.P.O., with a direction to the respondents to implement the orders of the Tribunal, without further loss of time, failing which, the respondents may be liable to face appropriate action under the law governing the field.

7. Petitioner/ applicant is directed to place copy of this order before the authority(ies) concerned to remind that a duty is cast upon said authority to do something, which has not been done.

8. Execution application is, accordingly, disposed of at the admission stage, with the consent of Ld. Counsel for the parties. No order as to costs.

9. Ld. Counsel for the petitioner is, however, given liberty to make a mention, if the orders are not implemented within four weeks from today.

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

DATE: JANUARY 31, 2024.
DEHRADUN

VM