

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 04/2012

Smt. Rajani Bhatt, W/o Sri Bihari Lal Bhatt, R/o Collectorate
Colony, Upper Bazar, Pauri, District Pauri Garhwal

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Revenue, Civil Secretariat, Dehradun,
2. Board of Revenue of Uttarakhand through its Secretary, Dehradun,
3. District Magistrate, Paur Garhwal,
4. Secretary, Board of Revenue, U.P. Anubhag-XII, Lucknow,
5. State of U.P. through Secretary, Finance, Lucknow, U.P.

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiya, A.P.O.
for the respondents

JUDGMENT**DATE: SEPTEMBER 29, 2015****DELIVERED BY SRI D.K.KOTIA, VICE CHAIRMAN (A)**

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

“ (i) To issue order or direction quashing the impugned order dated 20.04.1992 along with its effect and operation also after calling the entire records from the respondents and further to quash the impugned order dated 27.03.1992 and declare the same as a nullity.

(ii) To issue order or direction to the respondents to reinstate the petitioner in his service along with all consequential benefits had it been the impugned orders were not in existence.

(ii)(a) To issue order or direction to the respondents to consider the case of the petitioner for relaxation of age in terms of the rules in vogue for the purpose of granting of relaxation in age and allow the same to the petitioner keeping in view her companionate ground and continue service of 23 years and further to treat the aforesaid 23 years of service as a regular service for all practical purposes including pensionary benefits and allow her all such benefits including all arrears.

(iii) Any other relief which the court deem fit and proper in the circumstances of the case.

(iv) Cost of the petition be awarded to the petitioner.”

2. The relevant facts in brief are that the petitioner was appointed on temporary basis as Lower Division Clerk in the

Collectorate, Pauri Garhwal on humanitarian ground on 4.12.1989 (Annexure: A-5).

3. On a complaint that the appointment of the petitioner was not valid because of her being over-age at the time of appointment, the respondent No. 3 sent a proposal to respondent No. 4 to grant the age relaxation to the petitioner on 28.09.1991 (Annexure: A-7). Respondent No. 4 rejected this proposal on 27.03.1992 (Annexure: A-2). Therefore, the services of the petitioner were terminated by the respondent No. 3 on 20.04.1992 (Annexure: A-1).

4. Aggrieved by the termination order dated 20.04.1992 (Annexure: A-1), the petitioner filed a writ petition (No. 22935 of 1992) at Hon'ble High Court at Allahabad and obtained an interim order in her favour. The petitioner continued in service on the basis of the interim order of the Hon'ble High Court.

5. After creation of the State of Uttarakhand above writ petition (No. 22935 of 1992) was transferred to the Hon'ble High Court at Nainital (New No. 6188 of 2001). The Hon'ble High Court at Nainital dismissed the writ petition on 26.09.2008 on the ground of alternative remedy before the State Public Services Tribunal (Annexure: A-3).

6. The petitioner filed an application on 28.11.2011 for recalling the above mentioned order of the Hon'ble High court at Nainital dated 26.09.2008 (Annexure: A-3). The relevant part of the order passed by the Hon'ble High Court on 30.11.2011 (Annexure: A-4) is as under:

“Considering the submission of the learned counsel for the petitioner, the delay in filing the recall application is condoned. The recall application is treated as modification application. The order-dated 26.09.2008 passed by this Court is modified to the extent that in case, petitioner files the Claim Petition before the Tribunal within a period of one month from today, the said Claim Petition shall not be dismissed on the ground of laches.”

7. In pursuant to the above order, the claim petition has been filed before the Tribunal.

8. Thereafter, the respondent no. 3 vide order dated 07.05.2012 (Annexure: A-11) revived the termination order dated 20.04.1992 (Annexure; A-1). The paragraph 4 of this order is reads as under:

“4- चूंकि श्रीमती रजनी भट्ट, कनिष्ठ लिपिक की सेवा सम्बन्धी प्रकरण मा0 उच्च न्यायालय, उत्तराखण्ड, नैनीताल द्वारा अन्तिम रूप से निस्तारित किया जा चुका है। और मा0 लोक सेवा अधिकरण, देहरादून से वर्तमान में याची श्रीमती भट्ट को कोई राहत नहीं दी गई है। अतएव श्रीमती रजनी भट्ट, कनिष्ठ लिपिक, जिला कार्यालय, पौड़ी के विरुद्ध पूर्व में जारी सेवा समाप्ति आदेश संख्या-297/9-139(91-92), दिनांक 20.04.1992 को तत्काल प्रभाव से लागू किया जाता है।”

9. The petitioner has challenged orders dated 20.04.1992 (Annexure A-1), 27.03.1992 (Annexure: A-2) and 07.05.2012 (Annexure: A-11) on several grounds.

10. The respondents No. 1 to 3 in their joint written statement have opposed the claim petition.

11. Despite sufficient service, respondents No. 4 and 5 did not appear and also did not file any written statement.

12. The petitioner also filed rejoinder and in which same averments have been reiterated which were made in the claim petition.

13. Learned A.P.O. (for respondents No. 1 to 3) raised the question of maintainability of the petition as the termination order of the petitioner dated 20.04.1992 pertains to the period prior to the creation of the Uttarakhand State.

14. Before going into the merit of the case, we also think it appropriate to discuss the issue of maintainability of the petition first.

15. The petitioner was dismissed from the service on 20.04.1992, before the creation of the State of Uttarakhand. At that time, the petitioner was in the service of the State of Uttar Pradesh and not in the service of the State of Uttarakhand. The petitioner had never been the employee of the State of Uttarakhand and therefore, she cannot be treated a public servant in Uttarakhand as defined under Section 2(b) of the Public Services (Tribunal) Act, 1976.

16. In our view, the termination of the petitioner on 20.04.1992 is entirely an issue of the State of Uttar Pradesh as at that time the State of Uttarakhand had not come into existence. It would be quite relevant to reproduce Para 11 of the Judgment of the Hon'ble Supreme Court in Civil Appeal No. 3984 of 2012, State of Uttarakhand and another Vs. Uma Kant Joshi (and two other civil appeals) 2012 (1) UD 583(Division Bench of Hon'ble G.S.Singhvi and Hon'ble Sudhansu Jyoti Mukhopadhaya):

“We have considered the respective submission. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K.Khare to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No.1 was not considered because of the adverse remarks recorded in his Annual Confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No.1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand), which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No.1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, more so because the issues raised in the writ petition involved examination of the legality of

the decision taken by the Government of Uttar Pradesh to promote Shri R.K.Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect. It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No. 1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent no.1 ”

17. Hon’ble High Court at Nainital has also dealt with a case where the employee had retired before the creation of Uttarakhand State. In this case also the Hon’ble High Court decided that the Uttarakhand Public Services Tribunal cannot adjudicate the claims of the employee as he was not public servant of the State of Uttarakhand. The Hon’ble High Court in this writ petition No.(S/B) 33 of 2007, State of Uttarakhand and others Vs. Public Services Tribunal Uttarakhand & others decided on 01.05.2012 has laid down as follows:

“The private respondent was Store Keeper at ITI Piran Kaliyar, an institution, owned, controlled and managed by the State Government. He retired from his service no 31st July, 2000. There is no dispute that ITI, Piran Kaliyar is situate within the territory, which became the territory of the State of

Uttarakhand, after the State of Uttarakhand was created by bifurcating a part of the State of Uttar Pradesh, by and under the Uttar Pradesh Re-organization Act, 2000. However, that bifurcation took place on 9th November, 2000, much prior thereto, the respondent retired. The respondent therefore, did not retire from ITI Prian Kaliyar, when the same came under the authority, management and control of the State of Uttarakhand. Because the respondent was not paid his dues, which became due and payable to him on his retirement, he approached the Public Services Tribunal, Uttarakhand, which was constituted after adoption of U.P. Public Services (Tribunal) Act, 1976. While the U.P. Public Services (Tribunal) Act, 1976 authorizes establishment of a Tribunal, the said Act was extended to the State of Uttar Pradesh and, accordingly, one Tribunal under the said Act could be established in any part of State of Uttar Pradesh. Accordingly, such a Tribunal was established at Lucknow. When the said Act was adopted by the State of Uttarakhand, it was made clear that the adopted Act will stand extended to the State of Uttarakhand and in terms of the adopted Act, the State of Uttarakhand too shall also be entitle to establish a Tribunal in the State of Uttarakhand. Public Servant in terms of the adopted Act, thus means a person in the pay or service of the State Government of Uttarakhand. The respondent was never in the pay or in the service of State of Uttarakhand. In the circumstances, the private

respondent could not approach the Tribunal, constituted by the State of Uttarakhand, after adopting the said Act. Private respondent having been an employee of the State of Uttar Pradesh and, having retired from the services of the Uttar Pradesh, could only approach the Public Services Tribunal established by the State of Uttar Pradesh under the 1976 Act, which is situate at Lucknow.”

18. In the case of State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna (S/B) No. 71/2013, the Hon’ble High Court at Nainital has also held that due to re-organization of the State, if the Government Servant only serves in Uttarakhand and he has some grievances with the erstwhile undivided State of U.P., the employee can file the claim petition before the Uttar Pradesh Tribunal or before the Hon’ble High Court at Allahabad, who had the jurisdiction at the time of the accrual of the cause of action. If the claim petition is filed in Uttarakhand Tribunal, no direction can be given or order can be passed by the Uttarakhand Tribunal against the State of Uttar Pradesh. It would be appropriate to reproduce the relevant part of the order of Hon’ble High Court in this case:

“.....Thereafter, with a large number of claims, she came before the Public Services Tribunal, Uttarakhand. The State of Uttar Pradesh as well as the State of Uttarakhand were made parties to the claim petition. The Tribunal held that the State of U.P. is required to decide the pending matters regarding grant of voluntary retirement and

consequential benefits, including sanction of leave to her.

We are of the view that the Tribunal at Uttarakhand had no power or jurisdiction to issue orders as have been issued by it by the impugned order dated 17th February, 2009 passed on Claim Petition No. 13 of 2002 against the State of Uttar Pradesh. We, accordingly, allow the writ petition and set aside the order of the Public Services Tribunal, Uttarakhand impugned in the writ petition with liberty to Mr. Vinod Kumar Bahuguna, the husband of Smt. Pushpa Bahuguna, to approach the Tribunal at Lucknow or the Allahabad High Court as he may be advised pertaining to settlement of all claims of his wife, namely, Dr. Smt. Pushpa Bahuguna, who is since deceased.”

19. In the light of the principles laid down by the Hon’ble Supreme Court and the Hon’ble High Court at Nainital in the above cases, we reach the following conclusions in respect of the case in hand:-

- (i) The services of the petitioner were terminated by the Government of Uttar Pradesh on 20.04.1992 before the creation of the State of Uttarakhand and therefore, the petitioner had never been a public servant in the State of Uttarakhand.
- (ii) Total cause of action arose in the State of Uttar Pradesh and no part of the cause of action has arisen in the State of Uttarakhand.

- (iii) The petitioner is not entitled to prefer the petition before this Tribunal against the order of her termination dated 20.04.1992.
- (iv) The interim order of the Hon'ble High Court at Allahabad (writ petition No. 22935 of 1992) was passed before the creation of the State of Uttarakhand. The petitioner was a public servant of U.P. and not a public servant of the State of Uttarakhand at that time.
- (v) Since the termination order has been passed by the Government of Uttar Pradesh, only that State is competent to redress the grievances of the petitioner.
- (vi) The order passed by the respondent No. 3 on 7.05.2012 (Annexure: A-11) is the consequential order after the order of the Hon'ble High Court at Nainital in writ petition No. 6188 of 2001 on 26.09.2008 and 30.11.2011 and this order simply revives the original termination order dated 20.04.1992. This consequential order does not entitle the petitioner to be a public servant of the Government of Uttarakhand. In fact, the petitioner was dismissed from the service before the creation of the State of Uttarakhand, therefore, she cannot be treated to be a public servant belonging to the State of Uttarakhand.
- (vii) The Hon'ble High Court at Nainital (Writ Petition No. 6188 of 2001) on 26.09.2008 and 30.11.2011 has dismissed the petition on the ground of alternative remedy. The Hon'ble High Court has not considered the point of jurisdiction. The petitioner continues to remain a public servant of U.P. and does not become a

public servant of Uttarakhand by these decisions of the Hon'ble High Court. The writ petition was decided only on the ground of availability of alternative remedy, so the petitioner cannot take any benefit on the basis of these orders of the Hon'ble High Court.

(viii) This Tribunal has no jurisdiction and competence to adjudicate upon the issue of the termination of the petitioner on 20.04.1992.

(ix) The petition against the termination of the petitioner is therefore, not maintainable before this Tribunal.

20. During pendency of the claim petition, the petitioner amended the petition and also contended that the petitioner had put in more than 23 years of service and, therefore, the petitioner should be re-instated and regularized with all benefits including pensionary benefits.

21. We have examined as to whether the petitioner is entitled to be regularized. It is admitted case of the parties that the services of the petitioner were terminated on 20.04.1992 and thereafter, she discharged her service till 07.05.2012 under the cover of the order passed by the Hon'ble High Court at Allahabad. In the case of Secretary State of Karnataka Vs. Uma Devi and others (2006)4 SCC 1, the Hon'ble Apex Court in Para 53 has clearly laid down: Secretary, State of Karnataka and others Vs. Umadevi and others, (2006)4 SCC 1:

“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.***

22. Admittedly, from 1992 to 2011, 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.”

23. In the light of the decision of the Hon’ble Apex Court as described in paragraphs 21 and 22 above, we reach the conclusion that the petitioner is not entitled to claim regularization as she worked from 1992 to 2012 under the cover of the stay order of the Hon’ble High Court at Allahabad.

24. In view of above, we do not find any merit in the contentions of the petitioner that she is entitled to be regularized or her entitlement for any other benefit including the pensionary benefit as the petitioner had never been a public servant in Uttarakhand.

25. For the reasons stated above, we do not find any merit in the claim petition and the same is liable to be dismissed. The petitioner may approach the appropriate authority, if so advised.

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 29, 2015
DEHRADUN

KNP