

**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. 14/SB/2015

Smt. Geeta Rani, aged about 59 years, W/o Shri Rajveer Singh R/o 30/1 B, Patel Nagar, Ganeshpur, (Near maldive Chawk), Roorkee, Haridwar.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Education, Secretariat, Dehradun.
2. Addl. Director (Garhwal Circle) (Primary Education), Pauri.
3. Director Education (Primary Education), Uttarakhand, Dehradun.
4. The Treasurer, Haridwar.
5. District Education Officer (Primary Education) Haridwar, Uttarakhand, Dehradun.
6. Block Education Officer, Bhagwanpur, Haridwar.
7. Block Education Officer, Roorkee, Haridwar.

.....Respondents

Present: Smt. Anupama Gautam &
Sri A.S.Bisht, Ld. Counsel
for the petitioner.
Sri Umesh Dhaundiyal, Ld. A P.O.
for the respondents.

JUDGMENT

DATED: NOVEMBER 27, 2015

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

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

“ a. That the punishment order dated 2.2.2012 be kindly quashed discarding the inquiry it being violative of Constitution of India.

b. Full cost of the petition.

c. Any other relief to which the petitioner is found entitled may very kindly be granted.

2. The facts in brief are that the petitioner was an Assistant Teacher in the Primary School, Village Sunehra, Block Roorkee, District Haridwar. The petitioner was promoted and posted as Assistant Teacher in the Junior High School, Village Behadaki Saidabad, Block Bhagwanpur, District Roorkee in November, 2007.
3. Due to clerical mistake of the Education Department, the petitioner's salary for the month of December, 2007 was paid through transfer in her bank account at both the places (Primary School, Sunehra as well as Junior High School, Behadaki Saidabad). Thus, the petitioner received salary for the month of December, 2007 twice for which she was not entitled.
4. The contention of the petitioner in the claim petition is that for 4 years, she was not informed about the excess payment. The petitioner came to know about payment of the salary for the month of December, 2007 from Bhagwanpur as well as Roorkee through a newspaper item in the year 2011. Thereafter, the petitioner checked her bank accounts and found that the payment of one month's salary has been credited to her bank account at both the places. She refunded the excess payment by depositing it in the Treasury on 1.12.2011.
5. The respondents in the meantime conducted an inquiry for double payment to several teachers on their transfer/promotion. The petitioner on 9.1.2012 informed the respondents in her reply/explanation the circumstances of the excess payment and also about the refund of the same by her. Respondents did not find the explanation satisfactory and by a common order on 2.2.2012 (impugned order-Annexure: A-3) awarded minor penalties of (i) censure entry and (ii) withholding of one increment to all such teachers including the petitioner.

6. The petitioner made an appeal on 8.4.2013 to respondent No.1 against the punishment to the petitioner. Further, a notice/ reminder was given by the petitioner to decide the appeal on 12.10.2013. The appeal was not decided even after that. Hence, the petition.
7. The main grounds on the basis of which the punishment has been challenged by the petitioner are that she was never informed about the payment of December, 2007 salary twice; the petitioner deposited the excess payment on 1.12.2011 as soon as it came to her notice; double payment of salary was the mistake of the Education Department; and it was not due to fault of the petitioner as she was unaware of the payment of one month's salary twice till 2011.
8. Respondent No.4, the Treasury Officer, Haridwar has filed a written statement in which it has been stated by him that the Education Department and not the Treasury is responsible for the excess payment to the petitioner. It would be appropriate to reproduce Paragraph 4 of the written statement filed by the Respondent No.4:-

“4— शासनादेश सं० 235/21/ वि०अनु०-1/2001 वित्त अनुभाग-1 देहरादून दिनांक 06 दिसम्बर, 2001 की व्यवस्थानुरूप सरकारी कर्मचारियों को समय से वेतन भुगतान तथा प्रभावी लेखा प्रणाली हेतु कोषागारों में एकीकृत भुगतान एवं लेखा प्रणाली के बिन्दु-7 के प्रस्तर (ज)- कार्यालायध्यक्ष/ विभागीय/ आहरण वितरण अधिकारी द्वारा प्रतिमाह कोषागार के निर्देशानुसार 20 से 23 तारीख के मध्य वेतन अथवा तद्संबंधी भत्ते में होने वाले परिवर्तन तथा उपस्थिति, निलम्बन/ सेवानिवृति/ स्थानान्तरण/ सेवा मुक्ति/ कटौतियों /किशतों की संख्या आदि की यथावश्यक सूचना प्रपत्र -2(1) एवं प्रपत्र-2(2) पर भेजा जाय। प्रपत्र-2(1) तथा प्रपत्र 2(2) पर सूचना न भेजने के कारण अधिक/कम भुगतान के लिये कार्यालायध्यक्ष उत्तरदायी होंगे। कोषागार स्तर पर नियमानुसार कार्मिकों का वेतन संशोधन विवरण के अनुसार भुगतान किया गया

है। कोषागार स्तर पर अधिक वेतन भुगतान नहीं किया गया है।
(शासनादेश की छाया प्रति संलग्न है)

इसी के साथ तत्समय निर्गत शासनादेश सं० 212/वि०अनु०-4 /2004 वित्त अनुभाग-4 देहरादून दिनांक 09 जुलाई, 2004 के बिन्द-5 में व्यवस्था थी कि यदि किसी आहरण वितरण अधिकारी/ कार्यालयाध्यक्ष के यहां से कोई कर्मचारी स्थानान्तरित हो तब अंतिम वेतन प्रमाण पत्र पर संबंधित कोषागार अधिकारी द्वारा भी प्रति हस्ताक्षरित करा लिया जाये ताकि उक्त कोषागार से ऐसे कर्मचारी का नाम आहरण सूची से हटा दिया जाय अन्यथा दो कोषागारों से भुगतान होने की सम्भावना हो सकती है। शिक्षा विभाग द्वारा जारी अंतिम वेतन प्रमाण पत्र कोषागार से प्रतिहस्ताक्षरित नहीं कराये गये है। (शासनादेश की छाया प्रति संलग्न है)

9. Respondent Nos. 1 to 3 and 5 have opposed the claim petition and have stated in their joint written statement that the petitioner should have the knowledge of the payment of December, 2007 salary twice at that time itself as the money had reached her both the bank accounts. The petitioner deposited the excess payment made to her only after the publication of double payment to teachers in the newspapers in 2011. It has also been stated in the written statement that a 3-member inquiry committee was constituted and the explanation of teachers, who were paid excess amount, was sought. The minor penalties have been imposed on the petitioner on the basis of the recommendation of the inquiry committee. It has further been stated that the inquiry committee had recommended the action against those teachers who did not deposit excess payment before 1.9.2011. Since the petitioner deposited excess payment after 1.09.2011 on 1.12.2011, she has been found guilty and, therefore, punished. The punishment has been given to the petitioner as per rules and law and, therefore, the claim petition is devoid of merit and the same is liable to be dismissed.

10. In spite of service and sufficient opportunity, respondent Nos. 6 and 7 did not file any written statement and, therefore, it was decided to proceed ex-parte against them.
11. No rejoinder has been filed on behalf of the petitioner.
12. We have heard both the parties and gone through the record carefully.
13. It is admitted to both the parties that the excess payment of one month's salary was made to the petitioner. It is also admitted to both the parties that the excess payment was refunded by the petitioner on 1.12.2011. The only point we have to see is whether there is any fault or misconduct on the part of the petitioner for the excess payment.
14. Respondent No.4 (Treasury Officer, Haridwar) in his written statement has stated the Government Orders and procedure regarding payment of salary as mentioned in paragraph 8 of this order. It is clear from this that it was the duty of the Head of the Office(of the Education Department) to send the correct bills and details to the Treasury so that over-payment to any employee is not made. It has also been prescribed by the Government that the last pay certificate to the employee in case of change of place of posting is required to be counter signed by the Treasury Officer to prevent any double payment. It is very clear that the office of the petitioner did not follow the prescribed procedure and is, therefore, responsible for the payment of December, 2007 salary twice.
15. It is also clear that the salary of the petitioner was drawn by the Drawing and Disbursing Officer (DDO) of the Education Department and not by the petitioner. In fact, the salary drawn by the DDO was directly deposited in the bank account of the petitioner at both the places. It is, therefore, clear that the petitioner did not have any say in the drawl of salary. The

petitioner had also refunded the excess amount immediately after it came to her knowledge and before the punishment order passed against her which shows bonafide on the part of the petitioner.

16. Learned counsel for the petitioner has referred the judgment of the **Hon'ble High Court at Nainital in writ petition No. 1278(S/S) of 2012 Smt. Shanti Devi and others Vs. State of Uttarakhand and others (dated 27.5.2014)**. In this case, the similar matter of the Education Department has been adjudicated upon. The judgment is reproduced below:-

“1. The petitioners, before this Court, are Assistant Teachers in Junior High School. The issue before this Court is simple. In all cases, petitioners were teaching in Government Primary School in Block-Roorkee and Block Laksar, District Haridwar. Thereafter, they were transferred to Government Junior High School in Block-Bahadarabad, District Haridwar.

2. The allegations against all the petitioners is that although due to inadvertence and mistake on the part of the Treasury Department and Education Department, even while, the petitioners were transferred to a new school, for a period of two to three months in some cases, their salary was paid both in their earlier account and also at the present account at new place of posting. In short, for a period of two to three months, the petitioners were given twice the salary, for which they were not entitled.

3. The petitioners were given a notice as to why this fact was not brought to the notice of the department and thereafter hearing their representation, a punishment of “stoppage of one increment” and “adverse entry” in their service record was imposed. It is this order which is presently under challenge before this Court.

4. The admitted fact before this Court is that as soon as the petitioners had the knowledge that the salary which is being credited to their account is more than what they are actually entitled, they

promptly informed the department and the excess salary was deposited by the petitioners by way of a "challan", a fact which is not disputed by the respondents. There is also no allegation that the amount was given to the petitioner by way of any concealment of fact or fraud or deceit. The mistake, if any, was on the part of the Treasury Department or Education Department. What offence the petitioners have committed is also not clear as there is no act on the part of the petitioners which can be defined even as an improper conduct. On the other hand, as soon as the petitioners became aware of the fact that the excess salary has been given to them, they informed the department and salary was deposited. The period of time when this excess salary was given varies between two to four months in some cases, therefore, it is not the case where such excess amount was kept by the petitioners even for a long duration of time.

5. The stand taken by the Government is that the petitioners only deposited the amount when they received a notice. Moreover, certain teachers who deposited the amount promptly prior to 1st September, 2012, no action has been taken against them but since there was delay on the part of the petitioners, the action has been taken against them. Be that as it may, the fact of the matter remains, as already referred that there is no fraud or concealment of facts on the part of the petitioners or deceit which have entitled them to excess payment of salary. In any case, the matter is extremely trivial and to impose a punishment, no matter how minor does not seem to be justified.

6. In view thereof, the writ petition succeeds and is hereby allowed. The order passed by the District Education Officer, Haridwar imposing the penalty of "stoppage of one increment" and "adverse entry" and subsequent order dated 23rd May, 2012 (Annexure No.12 to 15) giving information to the petitioners regarding the punishment are hereby quashed.

7. No order as to costs."

17. On the basis of discussion in paragraph 13 to 15 and the judgment of the Hon'ble High Court in paragraph 16 above, it becomes clear that there was no fault or misconduct on the part of the petitioner. There is no allegation of concealment of facts, fraud or deceit against the petitioner. It is also clear and admitted that the petitioner deposited the excess amount in the Treasury as soon as it came to her knowledge. Clearly, the mistake was on the part of the Education Department in making payment twice. In any case, as has been held by the Hon'ble High Court at Nainital above, the matter is extremely trivial. The punishment of censure entry and withholding of one increment is, therefore, not justified.
18. For the reasons stated above, the petition deserves to be allowed and the penalties of censure entry and withholding of one increment are liable to be set aside.

ORDER

The claim petition is allowed. The impugned order dated 2.2.2012 (Annexure: A-3) passed by the District Education Officer, Haridwar in respect of the petitioner imposing penalties of '*withholding of one increment*' and '*censure entry*' is, hereby quashed. The petitioner will be entitled for service benefits, if any, which were due to the petitioner and which were not provided to her because of the punishment order dated 2.2.2012. No order as to costs.

(V.K.MAHESHWARI)
VICE CHAIRMAN(J)

(D.K.KOTIA)
VICE CHAIRMAN(A)

DATED: NOVEMBER 27, 2015
DEHRADUN

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