

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

**CLAIM PETITION NO. 103 OF 2008**

Suraj, S/o Shri Navbhar Singh, Safai Karmi (Sweeper) Govt. Inter College,  
Siddhkhul Churani, District Pauri Garhwal.

.....Petitioner

**VERSUS**

1. State of Uttarkahand through Secretary, Education, Secretariat, Uttarakhand, Dehradun.
2. District Inspectors of Schools, Pauri Garhwal (Now redesignated as District Education Officer, Pauri Garhwal).
3. Principal, Govt. Inter College, Siddhkhul Churani, District Pauri Garhwal.
4. State of U.P. through Secretary, Education, Govt. of U.P., Lucknow, U.P.
5. Director of Intermediate Education Board, U.P. Allahabad.
6. Director, School Education, Uttarakhand, Dehradun.

.....Respondents

Present: Sri S.K. Jain, Ld. Counsel  
for the petitioner  
Sri V.P.Devrani, Ld. A.P.O.  
for the respondents

**JUDGMENT**

**DATED: APRIL 27, 2019**

**Hon'ble Mr. Ram Singh, Vice Chairman (J)**

1. The petitioner has filed this claim petition for the following reliefs:

*“(i) To issue a suitable order and direction to quash the impugned order of termination dated 01.11.1999, 14.11.2008 and 17.11.2008 and to reinstate the petitioner in his service as directed by the Hon’ble High Court in order dated 24.07.2000, with all consequential benefits.*

*(ii) To issue an order & direction to the respondents to make payment of salary current & in arrears since April 1999 to the petitioner.*

*ii(A) Issue an order or direction to concerned respondents to appoint and regularize the petitioner in his service in pursuant to the order dated 04.07.2012, 10.12.2012 and 15.12.2012 (Annexure No. A-15, A-13 & A-14) of this petition.*

*(iii) To issue any other order or direction, which this Hon’ble Court may deem fit & proper under the circumstances of the case.*

*(iv) To award cost of the petition in favour of the petitioner.”*

2. The facts relating to the case in brief are that the petitioner was appointed on 08.10.1998 as ‘Safai Karmchari’ by respondent No. 2 and joined his duty on 12.12.1998 at the College of Respondent No. 3. As a result of an inquiry conducted by the District Magistrate, in respect of the appointment made by the then Deputy Inspector of School (DIOS), Pauri Garhwal, the appointment of the petitioner along with others, were found to be irregular and illegal. As such, the appointments were made by the then DIOS in violation of the G.O. dated 03.11.1997 about ban on new appointments, hence, the services of the petitioner alongwith other, were terminated on 01.11.1999.

3. Aggrieved by the termination order, petitioner filed a writ petition No. 18647 of 2000, before the Hon’ble High Court at Allahabad, wherein the following order was passed on 21.04.2000:

*“Learned standing counsel prays and is allowed 3 weeks’ time to file counter affidavit. List thereafter.*

*If the work and post is available the petitioner shall be allowed to work and be paid salary.”*

4. In pursuant to the above order of the Hon'ble High Court of Allahabad, petitioner again joined as 'Safai Karmchari' on 07.06.2000 and continued in the service, on the basis of the order of the Court.

5. After creation of the State of Uttarakhand, the Writ Petition (No. 18647 of 2000) of the petitioner, pending before the Hon'ble High Court of Allahabad, was transferred to the Hon'ble High Court of Uttarakhand at Nainital (New no. 1819 of 2001). The Hon'ble High Court at Nainital decided the writ petition on 24.09.2008, with the following order:-

*"The petitioner has a remedy before the Public Service Tribunal, therefore, he is relegated to approach the Public Service Tribunal.*

*Accordingly, writ petition is dismissed with observation that if the petitioner so desired, may avail remedy before the Public Service Tribunal."*

6. After the order of the Hon'ble High Court, the respondent No. 2 passed an order on 17.11.2008 that the original termination order of petitioner dated 01.11.1999, has revived and come into effect, as the writ petition of the petitioner, has been dismissed by the Hon'ble High Court. As per order of the respondent No. 2, the petitioner was relieved from service by respondent no. 3 w.e.f. 18.11.2008.

7. After the order of termination of services, passed as above, the petitioner in this petition, has challenged his termination order dated 01.11.1999, 14.11.2008 and 17.11.2008 on its merit and on the ground of maintainability and the petition was registered as Claim Petition No. 103/2008 before this Tribunal on 22.10.2008.

8. The main contentions of petition, are that the petitioner was initially appointed on the post of *Safai Karmchari*, subject to regular appointment, but till date, no regular appointment has been made, hence, such dismissal by the respondents, is illegal, arbitrary and without jurisdiction. The petitioner was dismissed orally and before his dismissal,

no notice, information and opportunity of hearing was given to him, which is against the principles of natural justice. It has also been contended that the petitioner was appointed against a clear and substantive vacancy and without written order of dismissal, the act of interference with the services of the petitioner by the respondents, is wholly illegal, erroneous and not permissible in the eyes of law. The petitioner, is still performing his duties, but his services are not being recognized by the respondents and as such, the action of respondents is full of *malafide*, as the dismissal is made on the basis of circular issued by the DIOS. The petitioner was employed against a leave vacancy on substantive and vacant post and his services cannot be terminated without giving any opportunity of hearing.

9. The petition was opposed by the respondents, on the ground that the then DIOS, Sri Ramesh Chandra Premi, made the appointment of the petitioner in violation of the G.O. dated 03.11.1997, whereby a clear ban on the appointments was made effective. After the inquiry, the DIOS was found guilty of causing loss to the government and was also punished and all the appointments, made by him, were terminated, being illegal and against the government order.

10. It is also contended that the petitioner was rightly dismissed on 01.11.1999. His writ petition before the Hon'ble High Court, was later on decided and dismissed on 24.09.2008, although, the petitioner continued his services and was paid salary in compliance of the order of the Court, but after dismissal of the writ petition, the dismissal order dated 01.11.1999, automatically revived and relieving order of petitioner was passed, as per the rules. The petitioner has no right to file this petition, neither he has any right to continue in service. The petition deserves to be dismissed. An objection was also raised that the dismissal was made at the time of U.P. Government, hence, this court has no jurisdiction to entertain this petition.

11. The claim petition of the petitioner was heard by this Tribunal and the same was decided by this Tribunal vide judgment dated 10.07.2015. In the judgment of the Tribunal, the question of maintainability was decided against the petitioner and the fact of 10 years of service, availability of vacant post, the claim of the petitioner for reinstatement and regularization was also considered by this Court. After considering the concept of 'legitimate expectation' of the petitioner, it was found that there was no express promise to provide regular appointment to the petitioner so as to make out a case of legitimate expectation, hence, the petition was dismissed.

12. The judgment of this Tribunal was challenged in writ petition No. 405 (S/B) of 2015, before the Hon'ble High Court of Uttarakhand at Nainital, whereby, the petition was allowed vide order dated 25.09.2018 with the following order:-

*"Accordingly, all the writ petitions are allowed. Impugned order (s) under challenge are quashed and set aside. Uttarakhand Public Services Tribunal is directed to hear and decide the matter on merits within a period of three months from today."*

13. On the basis of the judgment of the Hon'ble High Court, the petition was again heard before the Tribunal on its merit, without considering the question of maintainability, on the ground of jurisdiction, as it was finally settled by the Hon'ble High Court.

14. We have heard both the sides and perused the record.

15. It is an admitted fact that the petitioner was employed as 'Safai Karmchari' in the Institution of respondent no.3, vide order dated 06.1.1998 in place of another employee, Sri Jaipal, who was absent from his duty. Petitioner was employed just to fill up the leave vacancy for a temporary period. It is also proved that there was a ban on fresh appointment, vide G.O. dated 03.11.1997 (Annexure: R1), which reads as under:-

“चतुर्थ वर्ग कर्मचारी सेवा नियमावली, 1985  
संख्या 20-1/91-कार्मिक-2/1997

प्रेषक-

श्री सुधीर कुमार,  
सचिव,

सेवा में,

- 1- समस्त प्रमुख सचिव/सचिव,  
उत्तर प्रदेश शासन।
- 2- समस्त विभागाध्यक्ष एवं प्रमुख,  
कार्यालयाध्यक्ष, उत्तर प्रदेश।

कार्मिक अनुभाग-2

दिनांक 3 नवम्बर 1997

विषय- सभी प्रकार की नई नियुक्तियों पर प्रतिबन्ध।

महोदय,

शासन द्वारा निर्णय लिया गया है कि निम्नलिखित स्थितियों को छोड़कर अग्रिम आदेशों तक किसी भी विभाग में कोई नियुक्ति न की जाए और नियुक्ति किये जाने के सम्बन्ध में जो प्रक्रिया प्रारम्भ की गयी हो उसे स्थगित कर दिया जाय।

- 1- लोक सेवा आयोग, उत्तर प्रदेश द्वारा की जा रही चयन की कार्यवाही।
- 2- मा0 उच्च न्यायालय, इलाहाबाद के अधिकार क्षेत्र में आने वाले पदों पर नियुक्ति/चयन की कार्यवाही।
- 3- उत्तर प्रदेश सेवाकाल में मृत सरकारी सेवकों के भर्ती नियमावली 1974 के अधीन नियुक्तियां।
- 4- विभिन्न नियमों/परियोजनाओं आदि के छठनीशुदा कर्मिकों का समायोजन।

अस्तु मुझे यह कहने का निर्देश हुआ है कि कृपया उपरोक्त आदेशों से अपने अधीनस्थों को अवगत कराते हुए उसका कड़ाई से अनुपालन सुनिश्चित करें।

भवदीय

सुधीर कुमार  
सचिव।

16. When petitioner was given a temporary appointment, against a leave vacancy, the ban on appointment was in force, hence, on complaint, an inquiry was conducted against DIOS and vide order dated 01.11.1999, the services of the petitioner was terminated, as it was illegal and was made in contravention of the government directions. It is not in dispute that petitioner was not employed against any post with a substantive lien and his appointment was of such a nature, that such appointment could be terminated as per the provisions of “the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975”. Following the procedure, services of the petitioner were rightly terminated, after a period of 13 months. However, in view of the direction of the Hon’ble High Court issued on 21.04.2000, he was re-employed and was allowed to serve with salary. That writ petition was

dismissed on 24.09.2008 and his dismissal order was automatically revived by the department vide order dated 17.11.2008. This court finds that on the basis of service, from 07.06.2000 to 17.11.2008 under the cover of the stay order of the Hon'ble High Court at Allahabad, the petitioner is not entitled to claim any regularization, and in view of the judgment of the Hon'ble High Court and Hon'ble Apex Court, in Secretary, State of Karnataka and others vs. Umadevi and others (2006) 4 SCC1, we do not find any merit in the plea of learned counsel for the petitioner about any right for legitimate expectation of the petitioner to continue in service. Hence, in no circumstances, the petitioner can claim his regularization as a matter of right and on that basis, he deserves no relief on this count, from the court.

17. During hearing of the petition, petitioner also filed an application that 44 Class IV employees, whose services were terminated and out of them 18 employees are still employed due to court's orders, 26 employees are out of employment, the details of which, were sent to the government. The matter of *ad hoc* employees, appointed before 30.06.1998, on 89 days/leave vacancies/contractual basis, was considered for regularization by the Government.

18. According to the petitioner, the Deputy Secretary of the State Government vide letter dated 10.12.2012, addressed to the Director, Intermediate Education, in respect of his letter dated 01.12.2012, informed the decision of the government, to give preference to Class IV employees, on contractual basis, whose services were terminated, in case of availability of the posts. The name of the present petitioner also figured in the list of those employees. It is also contended that the Director, Intermediate Education, informed and directed the Chief Education Officer, Pauri Garhwal vide letter dated 15.12.2012, to comply with the order of the Government.

19. It has been submitted by the petitioner that since the process of regularization of daily wagers, ad hoc and contractual employees are in progress and the posts are still available, hence, the case of the petitioner

must be considered by the respondents for appointment, pursuant to the aforesaid facts and order of the Government. Learned counsel for the petitioner has requested that the Government should be directed to consider their case for appointment, in view of the said direction of the Government.

20. We are of the view that the petitioner may submit his request to the Government separately for this purpose and the respondents may be directed to decide the same, and if any unfilled/vacant post of *Safai Karmchari* is available then the petitioner be given the benefit of appointment to the post, considering his length of service and the fact that he has suffered owing to an irregularity committed by a senior officer of the education department and for which, the petitioner should not be made to suffer the consequences as far as possible. Hence, except necessary order, for such relief, the claim of the petitioner for the relief asked for, in the petition, deserves to be dismissed and the following order is hereby passed.

#### **ORDER**

The claim petition, for the relief as sought in the petition, is hereby dismissed. However, the petitioner may submit his representation to the respondents, within one month, for considering him for appointment on contractual basis, against the available post of *Safai Karmchari*, in view of the government order dated 10.12.2012, referred in the body of the judgment and respondents are directed to pass an appropriate order on the same, with detail reasons, within a period of three months, thereafter.

No order as to costs.

**(A.S.NAYAL)**  
MEMBER (A)

**(RAM SINGH)**  
VICE CHAIRMAN (J)

*DATED: APRIL 27, 2019*  
*DEHRADUN*  
*KNP*