

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 03/NB/DB/2016

Shankar Dutt Bhatt, S/o Late Sri Keshav Dutt Bhatt, R/o Mohalla Talla Joshi
Khola, Almora, District Almora.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Department of School Education, Dehradun.
2. Director (Secondary), School Education, Uttarakhand, Nanoorkhera, Dehradun.
3. Additional Director of Education (Secondary), Kumaon Region, Nainital.
4. Chief Education Officer, Almora.
5. State of U.P. through Secretary, Basic Education, U.P., Lucknow.
6. Director of Basic Education U.P., 18-Park Road, Lucknow.

.....Respondents

Present: Sri Bhagwat Mehra, Ld. Counsel
for the petitioner.
Sri V.P. Devrani, Ld. A.P.O.
for the Respondents.

JUDGMENT

DATED: JANUARY 09, 2019

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

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

"A. To declare the inaction/omission on the part of the Respondents, particularly Respondent No. 1 to 4 in not

granting the benefit of past services rendered by the petitioner in Adult Education Scheme of Education Department itself, for the purpose of service benefits i.e. Selection Grade, Promotional Pay-Scale, as arbitrary and illegal.

B. To direct the Respondents, particularly Respondent No. 1 to 4 to give benefit of services to the petitioner rendered by him in the Adult Education Scheme of Education Department itself and also all the consequential benefits relating to Selection Grade and Promotional Pay-Scale from the date of joining i.e. 28.03.1984 in Adult Education Scheme of Education Department.

C. To direct the Respondents, particularly Respondent No. 2 to grant all consequential benefits to the petitioner.

D. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

E. To allow the claim petition with cost. "

2. Briefly stated, the facts are that the petitioner, who was possessing all educational and training qualifications and was fully qualified for appointment to the post of Assistant Teacher (L.T. Grade) in any Government run Schools, was initially appointed on the post of Supervisor on 23.03.1984 in the erstwhile State of U.P., under the Adult Education Scheme, in the pay scale of Rs. 550-940, after due selection by a State Level Selection Committee.

3. In the month of March, 1992, the State Government decided to close the aforesaid scheme vide G.O. No. 842 dated 27.03.1992. Consequently, all the posts, created under the project, came to an end w.e.f. 31.03.1992 and the persons serving on deputation basis, were repatriated to their parent department, whereas, the services of other employees were declared to be ceased w.e.f. 31.03.1992. But the State Government, on the same day, i.e. on 27.03.1992, issued another G.O. No. 844, providing that the retrenched

employees of the said scheme shall be entitled for some relaxation for appointment on the post of Assistant Teacher (L.T. Grade) and such relaxations were regarding upper age, exemption from selection process and relaxation in educational qualifications. It was further provided that this relaxation was admissible only to those employees who had worked on the post of Project Officer, Assistant Project Officer and Supervisors.

4. The petitioner had worked on the post of Supervisor in the National Adult Education Scheme. Consequently, on 21.04.1992, he was appointed/ reappointed/ adjusted on the post of Assistant Teacher (L.T. Grade), in the pay scale of Rs. 1400-2300 (revised). Pursuant to that order, the petitioner resumed his duty on 04.05.1992 and is still working accordingly.

5. In consequent of the order passed by the government, on the same day of discontinuing with the scheme, the petitioner was reappointed/merged on the post of Assistant Teacher (L.T. Grade) vide order/ letter dated 21.04.1994. As per Civil Service Regulations under rule 422, the interruption between retrenchment and joining on continuous appointment process was beyond the control of government servant, hence, in view of such Civil Service Regulations, there is no interruption in the services of the petitioner and he is entitled to get the benefit of continuation of service. As per Regulation 370 of Civil Service Regulations also, the petitioner should be treated to be in regular service and the entire staff of the parent department was to be merged in the education department. Consequently, all the members of the clerical staff are getting the benefit of ACP and other similar benefits, but the members of teaching staff are not given such benefit. The illegal and hostile discrimination adopted by the respondents towards teaching staff vis-à-vis other staff, is against the provisions of the Constitution.

6. Accordingly, the petitioner submitted representations with the prayer that the benefit of continuous service in the Adult Education Project should be granted in their present service, for the purpose of ACP, selection scale etc. The petitioner has also submitted that similarly situated persons in the State of U.P. have been granted such benefits, but the same is not being given to the petitioner, whereas, his HOD is also communicating with the Government for the same. The petitioner has also submitted that the benefit of past services has been given to the petitioner for counting the same for the purpose of petitioner's tenure in accessible places but on the other hand, contrary stands have been adopted for other financial benefits.

7. It is also contended that the petitioner has furnished all the details to the respondents and between different departments of the respondent, communications have been made, but till date there is no final decision of the Government, despite several reminders, although a period of various years has already been elapsed. The inaction/omission on the part of the education department cannot be justified, specifically in view of the fact that State of U.P. has already given the benefit of past services to the similarly situated persons in their department by means of various Government Orders. Hence, inaction/omission on the part of respondents is illegal and unjustified. Petitioner is running pillar to post, to get his legitimate claims which is being denied for no valid reasons, hence, this petition has been filed for the abovementioned reliefs.

8. Respondents have opposed the petition on the ground that the appointment of the petitioner as Supervisor in the National Adult Education Project w.e.f. 23.03.1984 to 31.03.1992 was purely temporary in the erstwhile State of U.P. which came to an end on 31.03.1992. Thereafter, in view of another G.O., he joined his services on 04.05.1992. The petitioner's appointment was on ex-cadre post and he accepted his fresh appointment under the G.Os. No. 842 and 844

dated 27.03.1992, without any protest. Hence, the petitioner cannot agitate the matter after a long gap of 24 years. There is a gap of 34 days between the period of first posting and start of other service. The claim of the petitioner is time barred. He is not entitled for any benefits of seniority, selection grade, promotion and promotional scale. He is also not entitled to get the benefit of relevant provision of Civil Service Regulations. The ex-cadre service could not be counted for the purpose of pay protection and financial benefits and other service conditions on a cadre post. The petitioner was given re-appointment on sympathetic ground. He cannot claim the benefit contrary of his prior service in the erstwhile State of U.P. At the time of his appointment on the post of Assistant Teacher (L.T. Grade), the petitioner did not raise the plea of counting of his past services rendered by him in the Project from 1983 to 1992 and the benefit of merger of his past services, rendered by him, if any, can only be granted by the then State of U.P. and the State of Uttarakhand cannot take such decision now because it is beyond its powers. The petitioner's contention that there was no interruption in his service, is not correct because there is an interruption of 34 days between prior and subsequent services. Furthermore, the grant of ACP to the teachers of Primary and Secondary institution is not admissible as per the relevant financial rules. The reliefs claimed by the petitioner are vague, the petition has no legal force and the same is devoid of any legal merit and is liable to be dismissed with exemplary cost.

9. The petitioner by filing Rejoinder Affidavit has denied the contentions of the respondents and stated that they were appointed through direct recruitment by proper selection process in the project and the department itself granted the benefit to some of the employees after the judgment of the Hon'ble Court. All the representations made by the petitioner were submitted to the authority in the State of U.P. also and there is no decision at all till date. Petitioner reiterates his facts of the petition and submitted that the

respondents have counted his earlier services rendered by him in the National Adult Education Project for the purpose of transfer etc. and also the examples were cited but for financial benefits, the continuity is denied. The petitioner at the last date of hearing, deleted his relief about his seniority and promotion and confined their prayer only for grant of financial benefits, by adding his past services.

10. We have heard both the parties and perused the record.

11. Referring to the G.O., issued by the Government on 27.03.1992 and as per Rule 422 and 370 of the CSR Rules, as well as parity with the other employees of the same department, working in U.P., the petitioner has prayed that the benefit of their past service, rendered by him under National Adult Education Scheme of the education department, should be granted to him for the purpose of financial benefit i.e. selection scale, promotional scale etc. and, inaction and omission on the part of the respondents should be declared as arbitrary, illegal and against the provisions of the Constitution.

12. It is admitted to both the parties that the petitioner was duly appointed through a selection process in the National Adult Education Scheme, which was abolished in the erstwhile State of U.P. vide order No. 842, dated 27.03.1992 (Annexure: 3) w.e.f. 31.03.1992 but simultaneously on the same day, another G.O. No. 844 dated 27.03.1992 (Annexure: 4) was also issued to absorb/appoint the retrenched employees on the post of Teachers (L.T. Grade) giving them relaxation about age, educational qualification as well as from the selection process.

13. The court is of the view that as both the G.Os. were issued simultaneously on the same date, hence, it shows the intention of the government that all the retrenched employees were to be adjusted in the department from the very first day of end of their services in the Scheme.

14. The petitioners were given appointment in compliance of G.O. No. 844/15(13)92-1(24)/91, dated 27.03.1992, vide order No. 140, dated 21.04.1992 (Annexure: 5) and after a gap of 34 days, they joined their services on 05.04.1992. The question between the parties is now, how this gap should be considered for counting their previous service for the purpose of financial benefits.

15. The petitioner has submitted that this gap cannot be treated as interruption in their service because of the reasons that this was beyond their control. The intention of the Government was very much clear to continue their service, as both the G.Os. about terminating their services and to give fresh appointment, were issued on 27.03.1992 and there was nothing to be done on the part of the petitioner and the appointment letters were to be issued only by the respondents. The court agrees with this argument because of the reason that in view of the G.O. dated 27.03.1992, petitioner's service was to be continued through re-appointment, without any further selection process and the time gap for issuing the appointment was beyond the control of petitioner. In view of that, the petitioner has referred to the provisions of Rule 422 and 370 of the Civil Service Regulations, which read as under:-

"422- Interruption in service, either between to spells of permanent and temporary service or between spell of temporary service and permanent service or vice versa may be condoned by the pension sanctioning authority subject to the following conditions, namely-

- (1) The interruptions should have been caused by reasons beyond the control of the Government servant concerned."*
- (2) Service preceding the interruptions should not be less than of five years duration, and in case where there are two or more such interruption the total service, pensionary benefits in respect of which will be lost if the interruption are condoned should not be less than five years.*
- (3) Interruptions should not be more than of one year's duration and the cases where there are two or more such interruptions the total period of interruptions sought to be condoned, should not exceed one year."*

(The amendment takes effect from the date of publication in the Gazette.)

Provided that the above power may be exercised by the pension sanctioning authority in case in which the qualifying service even otherwise is not less than of ten year's duration.

Decision of the State Government

It has been decided, in relaxation of the provisions of Articles 422, that in case of re-appointment of a retrenched person on the same or any other post, the interruption between the date of retrenchment and re-appointment shall be treated as condoned but the period of interruption shall not be included in qualifying service.

370- *An officer may count continuous temporary or officiating service under the Government of Uttar Pradesh without interruption by confirmation in the same or any other post except-*

- (i) Periods of temporary or officiating service in a non-pensionable establishment;*
- (ii) Periods of service in a work charged establishment; and*
- (iii) Periods of service in a post paid from contingencies.*

16. The above provisions give powers to the Government to condone the delay, if any, between these two services and then the benefit of prior service can be granted to the employees. The petitioner has also cited and filed the papers that in the State of U.P., similar benefits have been granted to the employees of this department by treating the gap in their services as a period of "forced leave" (Annexures No. 13 and 14.).

17. The petitioner, who was allotted State of Uttarakhand, similarly represented for continuation of his service and the Director, *Madhyamik Shiksha* referred their matter to the government, but vide letter No. 73/*Chaubis*-2-2012-28(1)/2011, dated 15.02.2012 (Annexure: 17) referring the Rule, simpliciter, their request was not accepted. Thereafter, vide letter No. 84, dated 10.04.2015 (Annexure: 19), the matter was again referred to the Government by the HOD, Director, *Madhyamik Shiksha* to consider the matter, in view of the treatment given by the State of U.P. to the similarly situated employees. The matter was also referred to the government by Director General, School Education, Uttarakhand vide his letter dated 31.05.2013

(Annexure: 27). By referring to the Rule 422 of CSR Rules, it was requested that like U.P., the matter may kindly be again considered. The order of the Hon'ble High Court of Allahabad as well as order of the Govt. of U.P. was also annexed (Annexure: 30).

18. The record further reveals that vide letter No. 648/xxiv/Navsrajit/15-28(1)/2011 dated 27.10.2015 (Annexure: 34), certain queries were made by the Government from the HOD, Director *Madhyamik Shiksha*, in compliance of which certain correspondence have been made, but neither the petitioner nor the respondents have been able to clarify the status about the decision of the Government in this respect. It shows that the matter for giving such relaxation in accordance with CSR Regulations 422 and 370 on the lines of U.P., is still under consideration of the Government, upon which, the State Government is yet to take a decision.

19. Learned A.P.O. on behalf of the respondents admitted that the Government has not decided the matter, after it was again referred by the HOD vide their letters dated 31.05.2013 and 10.04.2015.

20. The court finds that both the G.Os. dated 27.03.1992, reflect the intention of the Government to continue the services of the retrenched employees in the same education department. Learned counsel for the respondents has contended that their services cannot be treated in continuation because of the reasons that there was a gap of 34 days, but court is of the view that this was not on account of the petitioner and it was beyond their control. The record also reveals that the government has considered their past services for the purpose of transfer etc. in Sugam and Durgam areas.

21. Learned counsel for the petitioner has also argued that the clerical staff, working in the said Scheme was given the benefit of continuity of their service but the teaching staff was arbitrarily

debarred from such treatment which is against the principles of natural justice and against the provisions of the Constitution. It is very strange that the government on the one hand, is counting their past services for the purpose of transfer but on the other hand, for the purpose of financial benefits, their past services are not being considered.

22. Admittedly, there is a gap of 34 days, but the Government is having power to treat this period as forced leave to grant them the benefit of past service for financial benefits. Learned counsel for the petitioner during hearing, confined their relief only for the purpose of financial benefits, without claiming any seniority.

23. As the matter is yet to be decided by the Government and the Government has to take a decision on the matter referred by the HOD to the Government to condone the gap of interruption in the services of petitioner by exercising their powers under the rules hence, in view of the above circumstances, there is a need for a direction to the Government.

ORDER

The petition is disposed of with the direction to the Government to take a decision on the representations of the petitioner and the letters dated 31.05.2013 (Annexure No. 27) and 29.06.2015 (Annexure No. 33) sent by the HOD to the Government, in view of the principles of natural justice, by exercising their powers as per the Rules, within a period of four months from today. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: JANUARY 09, 2019
NAINITAL

KNP