

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**RECALL APPLICATION NO. 05/RECALL/DB/2019
IN
CLAIM PETITION NO. 69/2011**

Dinesh Chandra Dhasmana, s/o Late Shambhu Prasad Dhasmana, r/o Village Mandliya (Nai), Post Bounderkhali Via Naugaonkhali, District Pauri Garhwal.

.....Applicant/Petitioner.

vs.

1. State of U.P. through Principal Secretary, Dairy Development, Govt. of Uttar Pradesh, Secretariat, Lucknow.
2. Milk Commissioner, Dairy Development, U.P., Lucknow.
3. Secretary, Dairy Development Department, State of Uttarakhand, Secretariat, Dehradun.
4. Director, Dairy Development Department, Uttarakhand, Haldwani, District Nainital.

.....Respondents.

Present: Sri L.K.Maithani, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents.

JUDGMENT

DATED: JUNE 24, 2019

Justice U.C.Dhyani (Oral)

By means of present review application, recall applicant/petitioner seeks following reliefs:

“ It is most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to allow this application and recall the judgment and order dated 03.03.2014 passed by the Hon'ble Tribunal in claim

petition no. 69/2011 (D.C.Dhasmana vs. State & others) and hear and decide the claim petition on merits in view of the judgment dated 25.09.2018 of Hon'ble High Court, that only the Hon'ble Tribunal, Uttarakhand is competent to entertain the claim petition, transferred from the Hon'ble Tribunal, U.P., under Section 91 of U.P. Reorganization Act, 2000, and/ or to pass such other and further order or direction, which this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. In claim petition No.69/2011, this Tribunal, *vide* order dated 03.03.2014, passed the following order:

"10. In the light of the discussion made above, we are of the considered opinion that the petition is not maintainable before this Tribunal for adjudicating the matter in controversy involved in this petition. So, we have no option except to return the petition to the petitioner. At the same time, we also want to make an observation that the petitioner has been pursuing this petition before this Tribunal bonafidely and there is no fault on his part.

11. Let the petition be returned to the petitioner for presentation before the proper Court, authority or forum."

3. Petitioner seeks to recall the order dated 03.03.2014 in view of judgment dated 25.09.2018, passed by Hon'ble High Court of Uttarakhand in WPSB No. 436/2015 and connected writ petitions (Copy Annexure- A 3). It may be noted here that present petitioner/ recall applicant was not the petitioner in any of the writ petitions, which have been indicated in Annexure- A 3. Order dated 25.09.2018, passed by Hon'ble High Court indicates that the petitioner of WPSB No.436/2015 was an employee of U.P. State Electricity Board, he was posted at Srinagar in District Pauri Garhwal, his services were terminated in the year 1994 and he filed the claim petition before this Tribunal for setting

aside the termination order. Hon'ble High Court in its order dated 25.09.2018 ruled as below:

“The view taken by the Uttarakhand Public Services Tribunal is not within the scope of sub-section (1) of Section 91 of the Act. The judgment relied upon by the Uttarakhand Public Services Tribunal in the case of State of Uttarakhand and another vs. Uma Kant Joshi and others reported in 2012(1) UD 583 was not applicable in this case. There is no reference to sub-section (1) of Section 91 of the Act in the judgment.

Since the petitioner was working at Srinagar in District Paur Garhwal, the matter is required to be heard after its transfer vide order dated 11th January, 2013 by the Uttarakhand Public Services Tribunal.

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.”

4. Recall applicant, in claim petition No. 69/2011, was dismissed from the post of Government Milk Supervisor by Milk Commissioner, Dairy Development U.P., vide order dated 05.12.1996. This Tribunal, therefore, relying upon the decision rendered by Hon'ble Apex Court in *State of Uttarakhand & others vs. Umakant Joshi, 2012 (1) UD 583*, directed that the petition be returned to the petitioner for presentation before appropriate Court, authority or forum.
5. The order dated 25.09.2018 was passed by Hon'ble High Court in writ petitions of different people. Recall applicant/ petitioner here was not a party to those writ petitions. We do not know, in the absence of copies of writ petitions, as to what were the facts before Hon'ble High Court in those writ petitions.

6. Even assuming that the facts are identical, the recall applicant is not likely to succeed in his recall application. The reasons are not far to seek. Firstly, recall applicant was not a party to the writ petitions, in which judgment, Annexure- A 3, has been pronounced. Secondly, the order sought to be recalled was delivered on 03.03.2014, more than five years ago. Thirdly, the judgment, on the basis of which order dated 03.03.2014, passed by this Tribunal is sought to be recalled, was delivered on 25.09.2018. There is a time limit for filing review application. Present review application has not been filed within time. Fourthly, the review applicant might argue that this is not a review application, but is a recall application. In that event also, the application is not likely to succeed, on merits. Fifthly, the ground taken by the recall applicant that the order dated 25.09.2018, passed in some other writ petitions, came to his knowledge only in the second week of May, 2019, hardly helps the recall applicant. Sixthly, recall applicant has also taken another ground that he received a copy of plaint on 13.03.2019 [order was delivered on 03.03.2014] and in the meanwhile it came to his knowledge that Hon'ble High Court has passed an order in some other writ petitions, holding that the claim petitions which are transferred to the State of Uttarakhand under Section 91 of Reorganization Act, 2000, will be heard and decided by Tribunal at Uttarakhand, and not by the Tribunal in Uttar Pradesh. Presuming that this statement is also correct, the recall applicant will not succeed in recall application, for, the same is hardly a ground for the recall applicant to succeed in securing recall of order dated 03.03.2014. Even if the provisions of C.P.C., as such, are not applicable on the Tribunal, and only the principles underlying would apply, the fact remains that even the recall application be termed as Review application, the recall applicant is not likely to succeed inasmuch as he has failed to show that the same is result of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when order was passed. The order on which the recall applicant has placed reliance,

was passed after the order sought to be recalled came into being. Further, he has failed to show that there is some mistake or error apparent on the face of record. He has also failed to show any other sufficient reason to obtain recall of order dated 03.03.2014. Explanation appended to Order – XLVII, CPC, if applicable to present case, brings death-knell to the application of the review applicant. The spirit of explanation is the decision on a question of law (as in the instant case), on which the judgment of the Court is based, has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.

7. The recall application, therefore, fails and is dismissed, at the admission stage itself.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JUNE 24, 2019
DEHRADUN

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