

**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)

CLAIM PETITION NO. 72/DB/2020

Dr. Anupam Chaturvedi s/o Late Sri S.N. Chaturvedi, presently working as Senior Cardiologist, HMG District Hospital, Haridwar, Uttarakhand.

.....Petitioner

vs.

1. State of Uttarakhand through its Secretary, Medical, Health and Family Planning Department, Govt. of Uttarakhand.
2. Director General, Medical, Health and Family Planning Department, Danda Lakhond Post Gujrada, Sahastradhara Road, Uttarakhand, Dehradun.
3. Superintendent, HMG District Hospital, Haridwar, Uttarakhand.

.....Respondents

Present: Dr. N.K.Pant, Counsel, for the petitioners.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: JANUARY 15, 2021

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks to quash the impugned order dated 28.08.2019 (Annexure: A-5) and *inter alia*, also seeks to direct consequential benefits to him.

2 Facts, which appear to be necessary, for proper adjudication of present claim petition, are as follows:

The petitioner was appointed on *ad-hoc* basis in UP PMHS Cadre on 15.12.1990. Later on, he was selected in UP PMHS Cadre by UP Public Service Commission in 1994. The petitioner was subsequently allotted Uttarakhand Cadre.

The parents of the petitioner were living in Lucknow. They were suffering from cancer. The petitioner had to go to Lucknow to take care of his parents, who passed away subsequently. Petitioner also fell sick and, therefore, he could not render his services regularly.

The petitioner remained absent from time to time. He, therefore, applied for extraordinary leave for the following periods:

- (i) 01.09.1998 to 27.11.1998- 88 days
- (ii) 02.12.1998 to 18.02.2000- 444 days
- (iii) 11.04.2000 to 21.04.2000- 11 days
- (iv) 24.04.2000 to 25.04.2000- 02 days
- (v) 28.04.2000 to 29.04.2000- 02 days
- (vi) 01.06.2001 to 15.05.2006- 1810 days.

Director General, Medical, Health and Family Welfare, forwarded the case of the petitioner *vide* letter dated 20.06.2018 (Annexure: A 3) to Secretary, Medical, Health, with the recommendation that he should be granted extraordinary leave for the above periods. Govt. Order No. 2085 dated 13.12.1977 (Annexure: A 4) provided that, if extraordinary leave is sanctioned on medical grounds, then the same shall be counted towards qualifying service of pension. But, the respondent no. 1 passed an order on 28.08.2019 that the petitioner's period of absence shall be deemed to be 'break in service' and he shall not be entitled to any financial or service related benefits. Order dated 28.08.2019 (Annexure: A -5) is under challenge in present claim petition.

3. Order dated 28.08.2019 (Annexure: A 5) issued on behalf of Respondent No.1 is in the teeth of present claim petition. It was in reference to letter dated 20.06.2018 (Annexure: CA-R 16) that the Additional Secretary to the Govt. in the department of Medical Health and Health Education issued Office Memorandum dated 28.08.2019 (Annexure: A 5).

4. *Vide* letter 20.06.2018 (Annexure: CA-R 16/ Annexure: A-3), Director General , Health, requested the Secretary to the Govt. in Medical Health Department to sanction extraordinary leave (leave without pay) to the petitioner. The details of his absence have been mentioned in Annexure: CA-R 16.

5. By impugned order dated 28.08.2019 (Annexure: A 5), the unauthorized absence of the petitioner was declared to be 'break in service'. It was also mentioned that the petitioner shall not be provided any financial or service benefits for the period of his absence.

6. It is the submission of Ld. Counsel for the petitioner that unauthorized absence of the petitioner cannot be declared to be 'break in service'. Ld. Counsel for the petitioner relied upon Govt. order *No. Sa-3-2085/ Dus-907/76, ¼Vitt-Sa Anu-3½ Dated 13th December, 1977* (Annexure: A 4) issued by the Govt. of U.P. According to Ld. Counsel for the petitioner, this G.O. is applicable to the State of Uttarakhand in view of Sections 87 and 88 of the U.P. Reorganization Act, 2000. Section 87 and 88 of the U.P. Reorganization Act, 2000 are reproduced herein below for convenience:

"87. Power to adapt laws.- For the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttaranchal of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. Explanation.- In this section, the expression " appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

88. Power to construe laws.- Notwithstanding that no provision or insufficient provision has been made under section 87 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Uttar Pradesh or Uttaranchal, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority."

7. This Tribunal has been informed that G.O. dated 13.12.1977 has not been withdrawn by the Govt. of Uttarakhand. It has not been replaced by a fresh G.O. either. This Tribunal, therefore, is in agreement with the

submissions of Ld. Counsel for the petitioner that G.O. dated 13.12.1977 is applicable to the State of Uttarakhand by virtue of Sections 87 and 88 of the U.P. Reorganization Act, 2000.

8. G.O. dated 13.12.1977 has reference of Article 422 of the Civil Services Regulations. Such Article reads as below:

“422. Interruptions in service either between two spells of permanent and temporary service or between a spell of temporary 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 year's duration, and in cases where there are two or more such interruptions, the total service, pensionary benefits in respect of which will be lost if the interruptions are not condoned should not be less than five years, and
- (3) Interruptions should not be more than of one year's duration and in cases where there are two or more such interruptions the total period of interruptions sought to be condoned, should not exceed one year.”

9. The Govt. of U.P. [Read: Govt. of Uttarakhand] by virtue of G.O. dated 13.12.1977 has decided that- (4) Interruption in service: According to Article 422 of the Civil Service Regulations, if the interruption/ interruptions between two periods of service are not condoned, then the service preceding the interruption/ interruptions is not included in the qualifying service. Now it has been decided that in the absence of any specific indication in the service record, the interruption/ interruptions between two periods of service rendered under the State Government will be automatically deemed condoned and the service preceding the interruption/ interruptions will be deemed to be qualifying service for pension, except where it is otherwise known that the interruption has been due to resignation from service, dismissal or removal from service or participation in some strike. In any case, the period of interruption/ interruptions will not be counted as qualifying service for pension.

10. The duration, for which the petitioner remained absent, according to the Directorate, is as follows:

- (i) 01.09.1998 to 27.11.1998- 88 days
- (ii) 02.12.1998 to 18.02.2000- 444 days
- (iii) 11.04.2000 to 21.04.2000- 11 days

- (iv) 24.04.2000 to 25.04.2000- 02 days
- (v) 28.04.2000 to 29.04.2000- 02 days
- (vi) 01.06.2001 to 15.05.2006- 1810 days

11. It may be noted here that in the intervening periods, the petitioner was present on his duty. None of these periods exceeds 5 years i.e., 1825 days. This Tribunal finds that the petitioner had made a request on 24.06.2005 (Letter enclosed as Annexure: CA-R 4) to give him joining. It took about 11 months for the Govt. to take a decision on such request. Finally, the petitioner was given joining on 15.05.2006. This Tribunal is of the view that the last unauthorized absence of the petitioner should be demonstrated as 01.06.2001 to 24.06.2005. The period between 24.06.2005 to 15.05.2006 should be held to be pensionable service, although the petitioner is not entitled to salary for the period (between 24.06.2005 to 15.05.2006) on the basis of the principle of 'no work no pay'.

12. We can give a reference of Article 18 of the Civil Services Regulations, which is highly relevant for this case. Such article reads as below:

"18. Unless the Government, in view of the special circumstances of the case, shall otherwise determine, after five years' continuous absence from duty elsewhere than on foreign service in India, whether with or without leave, a government servant ceases to be in Government employment."

13. The continuous absence of the petitioner from duty was less than 5 years, therefore, he does not cease to be in the Govt. employment. According to the respondent department, his longest continuous absence was for 4 years, 11 months and 15 days, which was below 5 years. We have reduced the aforesaid period by reckoning his presence from 24.06.2005 till 15.05.2006, not for the purposes of salary, but for computation of this period for the purpose of pension. In any case, continuous absence of the petitioner was below 5 years.

14. Article 67 of the Civil Services Regulations provides that, leave cannot be claimed as of right. It envisages that when the exigencies of public service so require, discretion to refuse and revoke leave of any description is reserved to the authority empowered to grant it. Director General, Medical, Health and Family Welfare made a request to the

Government to sanction extraordinary leave (LWP) to the petitioner, which request was not acceded to by the Respondent No.1 by issuing Annexure: A 5 to declare that the petitioner's absence shall be deemed to be 'break in service' and he will not be entitled to any financial or service benefits for the duration, as mentioned in letter dated 20.06.2018 (Annexure: CA-R 16).

15. The resignation of the petitioner was not accepted; his service was not terminated; he was not removed or dismissed from service; and he did not participate in any strike, therefore, by virtue of G.O. dated 13.12.1977, his periods of absence will be deemed to be automatically condoned and the preceding as well as intermittent periods of service shall be counted as qualifying service for pension. He will not be entitled to salary or other financial benefits for the periods of his absence, which are condoned by virtue of G.O. dated 13.12.1977, but will be entitled to these benefits for the service rendered in the intermittent periods.

16. The petitioner has also made a prayer for regularization of his *ad-hoc* services from 15.12.1990 to his regular appointment in 1994, but the said relief is time barred, for the reasons indicated herein below:

Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976 provides for limitation in respect of claim petitions filed before the Tribunal. It will be useful to reproduce Section 5 herein below for convenience:

"5.Powers and procedure of the Tribunal- (1) (a) The Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908), or the rules of evidence contained in the Indian Evidence Act, 1872 (Act 1 of 1872), but shall be guided by the principles of natural justice, and subject to the provisions of this section and of any rules made under Section 7, the Tribunal shall have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private):

Provided that where, in respect of the subject-matter of a reference, a competent court has already passed a decree or order or issued a writ or direction, and such decree, order, writ or direction has become final, the principle of *res judicata* shall apply;

(b) The provisions of the Limitation Act, 1963 (Act 36 of 1963) shall *mutatis mutandis* apply to the reference under Section 4 as if a reference were a suit filed in civil court so, however, that-

(i) notwithstanding the period of limitation prescribed in the Schedule to the said Act, the period of limitation for such reference shall be one year;

(ii) in computing the period of limitation the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition (not being a memorial to the Governor), in accordance with the rules or orders regulating his conditions of service, and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded.

Provided that any reference for which the period of limitation prescribed by the Limitation Act, 1963 is more than one year, a reference under Section 4 may be made within the period prescribed by that Act, or within one year next after the commencement of the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985 whichever period expires earlier:

Provided further that nothing in this clause as substituted by the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1985, shall affect any reference made before and pending at the commencement of the said Act.

(2)

(3).....”

[Emphasis supplied]

17. The period of limitation, therefore, in such references is one year. In computing such period, the period beginning with the date on which the public servant makes a representation or prefers an appeal, revision or any other petition and ending with the date on which such public servant has knowledge of the final order passed on such representation, appeal, revision or petition, as the case may be, shall be excluded. Such representation should be statutory representation.

18. Since specific time period has been provided in the Act to file a claim petition (a reference) and the petitioner has not filed the same within that time (one year), therefore, admittedly, the claim petition is barred by limitation, in so far as relief for regularization of petitioner's ad-hoc services from 15.12.1990 to 18.12.1994 is concerned. The extent of applicability of Limitation Act, 1963 is self contained in Section 5 of the Uttar Pradesh Public Services (Tribunal) Act, 1976. Section 5 of the Act of 1976 is the sole repository of the law on limitation in the context of claim petitions before this Tribunal.

19. Order accordingly.

20. The claim petition is partly allowed to the following extent:

The entire service period after the regular appointment of the petitioner in 1994 till his retirement shall be counted for pension except the following periods:

- (i) 01.09.1998 to 27.11.1998
- (ii) 02.12.1998 to 18.02.2000
- (iii) 11.04.2000 to 21.04.2000
- (iv) 24.04.2000 to 25.04.2000
- (v) 28.04.2000 to 29.04.2000
- (vi) 01.06.2001 to 24.06.2005

The petitioner will not be entitled to any salary for the above periods and for the period 24.06.2005 to 15.05.2006. The salary for other intermittent periods of his working, if not paid to him so far, shall be paid to him within a period of 90 days from the date of presentation of certified copy of this order.

The prayer for regularization of petitioner's *ad hoc* service from 15.12.1990 to 18.12.1994 is dismissed, as time barred.

21. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JANUARY 15, 2021
DEHRADUN

VM