

**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. 86/DB/2021

Satish Kumar s/o Shri Ghasi Ram, aged about 51 years, r/o Satwala Grant,
P.O. Buggawala, Tehsil Bhagwanpur, Haridwar.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Departmental of Primary Education, Civil Secretariat, Dehradun.
2. Director, Primary Education, Uttarakhand, Dehradun.
3. Additional Director (Primary Education), Garhwal Division, Pauri Garhwal.
4. District Education Officer (Primary Education), Haridwar, District Haridwar.
5. Deputy Education Officer (Primary Education), Bhagwanpur, District Haridwar.
6. Uttarakhand School Education Board, Ramnagar, Nainital, through its Secretary.

.....Respondents.

Present: Sri Shashank Pandey, Advocate, for the Petitioner.

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

JUDGMENT

DATED: SEPTEMBER 07, 2021

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks the following reliefs:

- i. To issue order or directions to call for records and quash the order dated 26.02.2021 enclosed as Annexure: A1 to the claim petition.*
- ii. To direct the respondents to reinstate the petitioner in service.*
- iii. To give the cost of the petition to the petitioner.*

iv. *To give any other relief this Hon'ble Court may deem fit and proper in the circumstances of the case.*

2. At the very outset, Ld. A.P.O. objected to the maintainability of the claim petition *inter alia* on the ground that the same is premature in view of Section 4(5) of the Uttar Pradesh Public Services (Tribunal) Act, 1976, which reads as below:

4(5) The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances.

3. Ld. A.P.O. further pointed out towards Rule 11 of the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 to submit that, "Except the orders passed under these rules by the Governor, the Govt. servant shall be entitled to appeal to the next higher authority from an order passed by the disciplinary authority".

4. Ld. A.P.O., therefore, submitted that the petitioner has not filed the departmental appeal against the impugned dismissal order dated 26.02.2021 (Annexure: A1), which was passed by the District Education Officer, Primary Education, Haridwar/disciplinary authority (Respondent no. 4). The departmental appeal ought to have been filed to Chief Education Officer, Haridwar or Additional Director, Primary Education, Garhwal Division, Pauri Garhwal (Respondent No.3).

5. Sri Shashank Pandey, Ld. Counsel for the petitioner conceded the fact that the departmental appeal has not been filed against the impugned dismissal order dated 26.02.2021 (Annexure: A1). He, therefore, seeks liberty to file the departmental appeal to Additional Director, Primary Education, Garhwal Division, Pauri Garhwal (Respondent No.3) against the order dated 26.02.2021, which has been passed by District Education Officer, Primary Education, Haridwar.

6. Ld. Counsel for the petitioner submitted that the delay of approx 103 days in filing the departmental appeal may be condoned. Ld. A.P.O. submitted that the appeal ought to have been filed within 90 days from the date of impugned dismissal order, but this Tribunal has condoned the delay

in filing departmental appeals, in the spirit of decision rendered by Hon'ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others*, AIR 1987 SCC 107 and scores of other decisions.

7. Considering the sufficiency of reasons thus orally explained by Ld. Counsel for the petitioner and law governing the field, the delay in filing the departmental appeal may be condoned, as prayed for by Ld. Counsel for the petitioner, in the interest of justice, in view of SUO MOTU WRIT PETITION (CIVIL) No(s).3/2020, in which Hon'ble Supreme Court, while taking suo motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that might be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and State), has passed an order that period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended *w.e.f.* 15th March 2020 till further order/s to be passed by Hon'ble Supreme Court.

8. The Tribunal does not feel it necessary to narrate the facts of present claim petition, for they are already part of record. While upholding the objections raised by Ld. A.P.O. on the maintainability of claim petition, and at the same time, accepting the prayer of Ld. Counsel for the petitioner to grant liberty to the petitioner to file the departmental appeal, after condoning the delay in filing the same, the claim petition is disposed of at the admission stage by granting liberty to the petitioner to file departmental appeal to Additional Director, Primary Education, Garhwal Division, Pauri Garhwal (Respondent No.3) against the impugned dismissal order dated 26.02.2021, passed by District Education Officer, Primary Education, Haridwar (Respondent no. 4).

9. If such departmental appeal is filed, Respondent No. 3 is directed to decide the same at an early date, but not later than 10 weeks of presentation of certified copy of this order along with departmental appeal,

in accordance with law. The delay in filing such appeal shall not come in the way of Respondent No. 3 in deciding such appeal.

10. Needless to say that decision so taken shall be communicated to the petitioner soon thereafter.

11. It is made clear that we have not expressed any opinion on the merits of the case.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 07, 2021
DEHRADUN
KNP