

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

Through audio conferencing

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 26/NB/SB/2021

Pooran Singh, aged about 44 years, s/o Sri Sukhdeo Singh, r/o Village Ughai, Sabad, District Hathras.

.....Petitioner

vs.

1. State of Uttarakhand through its Secretary, Revenue, Secretariat, Dehradun.
2. Consolidation Commissioner, Udham Singh Nagar, Rudrapur District Udham Singh Nagar.
3. Settlement Officer, Consolidation, Kichha, District Udham Singh Nagar.

.....Respondents

Present: Sri C.K.Sharma, Advocate for the Petitioner.

Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: SEPTEMBER 17, 2021

Justice U.C.Dhyani (Oral)

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

- i) *To set aside the impugned order dated 01.04.2021 Bandobast Adhikari, Chakbandi District Udham Singh Nagar and the oral order whereby the services of the petitioner was terminated by oral order dated 28.12.2000.*
- ii) *To issue a writ order or direction in the nature of mandamus directing the respondents to allow the petitioner to work and pay the salary continuously during the pendency of this claim petition as he was continuously being allowed to work and paid salary pursuant to the interim order dated 10.01.2001 passed by Hon'ble High Court in W.P. (S/S) No. 17 /2001.*
- iii) *To award the cost of the present claim petition in favour of the petitioner.*

2. Brief facts, giving rise to the present claim petition, are as follows:

2.1 Petitioner was working in the office of Respondent no. 3. His services were terminated by an oral order dated 28.12.2000. He filed a writ petition being WP(S/S) No. 17 of 2001 before the Hon'ble High Court of Uttarakhand. *Vide* interim order dated 10.01.2001, the Respondent no. 3 was directed to allow the petitioner to work and pay him minimum of pay scale, if post was available. Petitioner continued to work in the office of Respondent no. 3, on the strength of interim order of Hon'ble High Court. Thereafter, regular pay scale was also given to him.

2.3 In the year 2010, writ petition filed before the Hon'ble High Court was dismissed in default. Neither the petitioner nor the respondent department were aware of such order. Petitioner was promoted from Class-IV to Class III, as Junior Clerk in the year 2018. Subsequently, petitioner's writ petition was restored, but his matter was relegated to this Tribunal. Since he was directed to approach the Tribunal, therefore, petitioner filed present claim petition.

3. C.A./W.S. has been filed on behalf of the respondents.

4. Sri C.K. Sharma, learned Counsel for the petitioner and Sri Kishor Kumar, learned A.P.O. apprised the Bench that after regular pay scale was granted to the petitioner, he was also given promotional pay scale, which was subject to the decision of the Hon'ble High Court in WP (S/S) No. 17 of 2001.

5. It is the submission of learned Counsel for the petitioner that all those who joined with the petitioner are working in the respondent department, either in State of U.P. or in Uttarakhand. Petitioner served in Uttarakhand. Learned Counsel for the parties also apprised the Bench that petitioner was stopped from coming to the office *vide* oral order dated 28.12.2000. This fact is under no dispute that interim order was passed by the Hon'ble High Court on 10.01.2001 in WP(S/S) No. 17 of 2001, when the petitioner approached the Hon'ble High Court against his oral termination order dated 28.12.2000. This fact is also not disputed that petitioner was continuously working with the respondent department on the strength of the

interim order of Hon'ble High Court. It is also true that regular pay scale was given to the petitioner and subsequently, promotional pay scale was also granted to him, which was subject to the decision of the Hon'ble High Court in WP(S/S) No. 17 of 2001.

6. The impugned order dated 01.04.2021 was passed by the respondent department without affording opportunity of hearing to the petitioner. There was no allegation of misconduct against the petitioner. Impugned order dated 01.04.2021 was, probably, passed because petitioner's writ petition was dismissed in default and he survived in the respondent department on the strength of the interim order dated 10.01.2001, passed by the Hon'ble High Court in WP (S/S) No. 17 of 2001.

7. The order impugned dated 01.04.2001 is clearly in violation of the principles of natural justice. Definitely, no opportunity of hearing was given to the petitioner before passing the impugned order dated 01.04.2021. It is settled law that petitioner ought to have been given an opportunity of hearing, if respondent department was of the view that petitioner should be shown 'exit door', as he was working in the respondent department, on the strength of the interim order dated 10.01.2001, passed by the Hon'ble High Court, in a writ petition, which was, subsequently, dismissed in default. The respondent department cannot lose sight of the fact that petitioner was given regular pay scale and subsequently, he was given promotional pay scale also, although subject to the final decision of the writ petition.

8. Order impugned dated 01.04.2021 cannot be allowed to sustain. It is, therefore, set aside. Petitioner shall be restored to the same position, as he was immediately before passing the impugned order on 01.04.2021. Legal consequences shall follow.

9. Claim petition is, accordingly, allowed but no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 17, 2021
DEHRADUN.
KNP