

**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)

CONTEMPT PETITION NO. 01/NB/DB/2021

*(Arising out of Order dated 05.04.2021,
passed in Claim petition No. 19/NB/DB/2021)*

Smt. Kamla Sharma

.....Petitioner.

VS.

Shri A.K.Singh, presently posted as District Education Officer, Primary Education, Udham Singh Nagar.

.....Respondent/ Alleged Contemnor.

Present: Sri Mahendra Singh Rawat, Advocate, for the petitioner.
Sri Kishore Kumar, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: SEPTEMBER 28, 2021

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed under Section 5-A of the U.P. Public Services (Tribunal) Act, 1976 r/w Contempt of Courts Act, 1971, by Smt. Kamla Sharma, contempt petitioner (for short,

petitioner) against Sri A.K. Singh, District Education Officer, Primary Education, Udham Singh Nagar (for short, alleged contemnor), to punish him for committing willful disobedience of judgment and order dated 05.04.2021, passed in Claim Petition No. 19/NB/DB/2021, Smt. Kamla Sharma vs. State and others and for directing respondent to ensure compliance of the order passed by this Tribunal on 05.04.2021.

2. When Claim Petition No. 19/NB/DB/2021 was filed before this Tribunal on 05.04.2021, the following order was passed:

“By means of the present claim petition, the petitioner has sought the following reliefs:

“(a) To direct the respondents to amend the promotion order 17.03.2021 issued by the District Education Officer, Primary Education, Udham Singh Nagar (only with respect to petitioner’s promotion) and may be pleased to promote the petitioner’s services as Assistant Teacher in Upper Government Primary School in the Block Jaspur where there are 5 Upper Primary School with vacant posts of Assistant Teacher Language Hindi i.e. Bhasha. This Hon’ble Court may further be pleased to direct the respondents to forthwith grant the promotion to the petitioner in the aforesaid vacant school of Block Jaspur as per her preferential choice give in her application, otherwise the petitioner shall suffer irreparable loss and injury.

(b) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

(c) Award cost of the petition.”

The petitioner was initially appointed on the post of Assistant Teacher, Primary School, vide order dated 18.11.1999 and pursuant to order dated 17.03.2021, she was promoted to the post of Assistant Teacher (Language Hindi i.e. Vishay Bhasha) in Government Upper Primary School, Nakatpura Block Sitarganj, District Udham Singh Nagar. Despite the fact that in the petitioner’s own block Jaspur admittedly there are vacant positions in at least 5 Upper Primary School, which is confirmed by information furnished to the petitioner vide Right to Information Act. Before finalizing the promotional exercise, petitioner herself has made detail representation before the respondents mentioning therein the preference/option, which is still pending for consideration and, therefore, she confined her prayer to direct the respondents to consider and decide her representation by passing an appropriate order.

Learned Counsel for the petitioner has also submitted that the Hon’ble High Court vide order 24.06.2019, in Writ Petition No.1411 of 2019, on similar facts, necessary directions have been issued.

Ld. A.P.O. has no objection, if the representation is directed to be decided by the appropriate authority, in accordance with law.

Heard.

The claim petition is, accordingly, disposed of at the admission stage, by directing respondents to consider and decide the representation of the petitioner by a reasoned and speaking order, within a period of one month from the date of production of certified copy of this order. While deciding the representation, the respondents will also specifically decide whether the promotion and transfer of the petitioner at her choice place, is possible or not.

The claim petition stands disposed of at the admission stage.”

3. In compliance of the aforesaid order, representation dated 09.04.2021 of the petitioner was disposed of by the alleged contemnor *vide* order dated 03.05.2021. The alleged contemnor, in its order dated 03.05.2021, has disclosed the reasons as to why it is not possible to transfer the petitioner on promotion on any of the places, as desired by her. The representation was decided within one month of Tribunal's order dated 05.04.2021.
4. The Tribunal, in its order dated 05.04.2021, directed respondents to consider and decide the representation of the petitioner, which has been done. Respondents were directed to do so by a reasoned and speaking order within a period of one month from the date of production of certified copy of the order, which has been done. Order dated 03.05.2021 appears to be a reasoned and speaking order, although it may not be to the liking of the petitioner. The Tribunal also directed the respondents to specifically decide whether the promotion and transfer of the petitioner at the place of her choice is possible or not. A perusal of order dated 03.05.2021 would reveal that the same has also been done with reasons, by saying that it is not possible to post her on promotion at the place of her choice.
5. In order to bring the action of alleged contemnor within the realm of the Contempt of Courts Act, 1991, it should borne out from the record that there was willful or deliberate disobedience of the order of the Court. The facts, which are culled out from the record, do not indicate that there was willful or deliberate disobedience of Tribunal's order. The Tribunal, therefore, does not think it appropriate to initiate contempt proceedings against the alleged contemnor.

6. Contempt proceedings initiated at the behest of the petitioner against the alleged contemnor are, accordingly, dropped, leaving it open to the petitioner to pursue appropriate remedy before the appropriate forum, as per law.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 28, 2021
NAINITAL

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