

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
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. 05/NB/SB/2020

Dinesh Chandra Sati, aged about 53 years, s/o Late Sri M.N.Sati, r/o Talli Haldwani, Industrial State, Bareilly Road, Haldwani, District Nainital, presently posted as Principal, District Education and Training Institute, Didihat, District Pithoragarh.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Secondary Education, Dehradun.
2. Director General, School Education, Uttarakhand, Dehradun.
3. Director, Secondary Education, Government of Uttarakhand, Dehradun.
4. Director, Elementary Education, Government of Uttarakhand, Dehradun.
5. Chief Education Officer, Udham Singh Nagar.

.....Respondents.

Present: Sri T.P.S. Takuli, Advocate for the petitioner.
Sri Kishore Kumar, A.P.O. for the Respondents.

JUDGMENT

DATED: SEPTEMBER 28, 2021.

Justice U.C.Dhyani (Oral)

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

“(i) To quash the impugned order no. 723/XXIV-2/2019-05(09)/2016 Dehradun, dated 03.09.2019 passed by respondent no.1,

which was communicated to the petitioner vide letter no. 5883/2019-20/Vivid/Raj. Dated 16.09.2019 by the Chief Administrative Officer, Office District Education Officer, Elementary Education, Udham Singh Nagar, by which the respondent no.1 has rejected the representation dated 25.10.2017 submitted by the petitioner and further be pleased to quash the impugned order no. Pra.Shi./Vidhi Prakoshth-5/208/2016-17 dated 10.08.2016 passed by respondent no.4 (which was communicated to the petitioner vide letter dated 15.08.2016 by the Chief Education Officer, Udham Singh Nagar) by which the Special Adverse Entry was awarded to the petitioner for complying the judgment and order passed by Hon'ble High Court, without affording any opportunity of hearing or without issuing any show cause (Annexure: A 1 to this petition).

(ii) Be pleased to direct the respondents not to bring the aforesaid impugned orders (Annexure No. 1 to the writ petition) in the way of promotion of the petitioner on the post of Deputy Director and further be pleased to direct the respondents to promote the petitioner on the post of Deputy Director as the juniors to the petitioner have been promoted on the post of Deputy Director, however the petitioner has been denied on the basis of aforesaid Special Adverse Entry, however the same was not countable for his promotion, else the petitioner shall suffer irreparable loss and injury and the same cannot be compensated by any means.

(iii). To award the cost of the petition in favour of the petitioner.”

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

2.1 On the date of filing of present claim petition, petitioner was posted as Principal, District Education and Training Institute, Didihat, District Pithoragarh. In the year 2014, the applications were invited for the posts of Assistant Teachers (Primary) in the State of Uttarakhand. One candidate Smt. Nootan Kumari filed Writ petition No. 594/SS/2016, captioned as Nootan Kumari vs. State of Uttarakhand and others, for allotment of her School in Block Jaspur. She was directed to join Government Primary School, Patoati in Block Bajpur, District Udham Singh Nagar *vide* order dated 26.02.2016. She could not join at that place due to her personal problems. She made a representation for change of her School. Hon'ble High Court *vide* judgment and order dated 23.03.2016, directed the petitioner of present claim petition (hereinafter referred to as claim petitioner) to decide representation of Smt. Nootan Kumari (hereinafter referred to as, writ petitioner) within three weeks from the date of production of certified copy of the order. Writ petitioner submitted her representation on 23.03.2016. During

consideration of her representation, the writ petitioner joined the allotted School on 31.03.2016. The Director, Elementary Education, Uttarakhand *vide* letter dated 16.05.2016, directed the claim petitioner to comply with the order passed by Hon'ble High Court. The claim petitioner sought information from the concerned Block. The Block Education Officer *vide* letter dated 25.05.2016 informed the claim petitioner that in compliance of judgment and order dated 27.09.2013 passed in Writ Petition No. 1376/SS/2013, Gulsanovar Ali vs. State of Uttarakhand and others, *vide* letter dated 29.10.2013 issued by District Education Officer, Elementary Education, Udham Singh Nagar, Govt. Primary School Meghawala, Block Jaspur, was categorized as Remote Category and in the said School one post was vacant. Recommendation was made for allotment of Govt. Primary School, Meghawala, Block Jaspur to the writ petitioner. Letter dated 25.05.2016 indicated that by mistake wrong School has been allotted to the writ petitioner. At the time of counseling, such vacancy could not be pointed out. But on the same day, *i.e.* 25.05.2016, after receiving the report of Block Education Officer, Jaspur and after receiving the representation of writ petitioner, the claim petitioner sought legal opinion of DGC (Civil). The claim petitioner *vide* letter dated 02.06.2016, amended the posting of writ petitioner by posting her at Govt. Primary School, Meghawala, Block Jaspur, District Udham Singh Nagar.

2.2 As per petitioner's version, when he issued order dated 02.06.2016, Respondent No.4, without issuing any show cause notice to the claim petitioner, without affording any opportunity of hearing and without having power to award 'Special Adverse Entry' as per Govt. Order dated 15.07.2013, awarded Special Adverse Entry to the petitioner on 10.08.2016 (Copy: Annexure- A 1), which is under challenge in present claim petition.

3. Counter Affidavit has been filed on behalf of Respondent No.3, in which the action taken by the respondents authorities has been defended. An endeavour has been made in the C.A. filed by Sri R.K.Kunwar, Director, Elementary and Intermediate Education,

Uttarakhand to justify the award of Special Adverse Entry to the claim petitioner. Rejoinder Affidavit to such Counter Affidavit has been filed by the petitioner.

4. It is the submission of Ld. Counsel for the petitioner that no show cause notice was given to the claim petitioner before passing the impugned order dated 10.08.2016 (Annexure: A 1). It is also the submission of Ld. Counsel for the petitioner that Respondent No.4 has no power to record Special Adverse Entry as per G.O. dated 15.07.03 (Copy of G.O.: Annexure- A 7), in which it has specifically been mentioned that the Recommending Officer for such entry is Chief Education Officer, Scrutiny Officer is Director, Elementary Education and Sanctioning Officer is Director General, School Education, Uttarakhand. Sri T.P.S.Takuli, Ld. Counsel for the petitioner also submitted that after the impugned order dated 10.08.2016, one DPC was conducted for promotion to the post of Deputy Director, Education. Name of the claim petitioner along with his colleagues including his juniors, was considered for promotion, but the petitioner was not promoted. Juniors to the claim petitioner have been promoted on the post of Deputy Director. Special Adverse Entry given to the claim petition is for the year 2016-17. For the purpose of promotion, only the entries up to 2015 was required to be seen. The promotion to the petitioner has been denied. He made representations to Respondents No. 2 and 4 for deletion of adverse entry awarded to him. Respondent No.1 affirmed the impugned order dated 10.08.2016 *vide* order dated 02.11.2018, which too has been passed without affording opportunity of hearing to the petitioner, which is in violation of Rule 15 of the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003.
5. The impugned order dated 10.08.2016 passed by Respondent No.4 and order dated 02.11.2018 passed by Respondent No.1 were challenged by the claim petitioner before Hon'ble High Court by filing WPSB No. 622/2018, captioned as Dinesh Chandra Sati vs. State of Uttarakhand and others. Hon'ble Court *vide* judgment and order dated 11.06.2019 set aside the impugned order dated 02.11.2018 and directed

the Respondent No.1 to consider petitioner's representation dated 25.10.2017 afresh, in accordance with law. Respondent No.1 rejected the representation of the claim petitioner and did not consider the provisions of Uttarakhand Educational (General Education Cadre) Service Rules, 2006. Ld. Counsel for the claim petitioner also submitted that the conduct of the claim petitioner, while amending the School of the writ petitioner, was *bonafide* and in compliance of Hon'ble High Court's order. The School of the writ petitioner was changed after an inquiry conducted by the claim petitioner on receiving the judgment and order passed by Hon'ble Court, on the mistake being pointed out by Block Education Officer, Jaspur and after seeking legal opinion of DGC(Civil). In his claim petition, the petitioner has made an endeavour to justify his action of amending the School of the writ petitioner, where she was to give her joining.

6. Against the arbitrary action of the respondents, the claim petitioner preferred WPSB No. 572/2019, titled as Dinesh Chandra Sati vs. State of Uttarakhand and others, which was dismissed on the ground of alternate remedy.
7. Ld. Counsel for the claim petitioner has, therefore, prayed that not only Annexure: A1 should be set aside, a direction should be given to the respondents to promote the petitioner on the post of Deputy Director, as his juniors have already been promoted earlier, otherwise the claim petitioner shall suffer irreparable loss and injury which cannot be compensated by any means.
8. Before proceedings further, the Tribunal deems it proper to reproduce Para 6 of the Rejoinder Affidavit, which has been filed in response to the C.A. filed on behalf of respondents, to justify the action of claim petitioner whereby he corrected the posting of the writ petitioner where she was to join. Para 6 of the R.A. reads as under:

“..... After receiving the judgment and order dated 23.03.2016 passed by Hon'ble High Court by the petitioner, the petitioner sought information from the concerned Block and the Block Education Officer, Jaspur, Block Jaspur, district Udham Singh Nagar vide its letter No. 68/Vidhi/2016-17 dated 25.05.2016 informed the petitioner that in compliance of the judgment and order dated 27.09.2013 passed in one writ petition no. 1376/SS/2013,

Gulsanovar Ali vs. State of Uttarakhand & others, vide letter no. 27836-39/Vad/2013-14 dated 29.10.2013 issued by District Education Officer, Elementary Education Udham Singh Nagar, Government Primary School Meghawala, Block Jaspur, District Udham Singh Nagar was categorized as Remote category, and in the said school one post was vacant and further recommended for allotment of Govt. Primary School, Meghawala, Block Jaspur, District Udham Singh Nagar to Smt. Nootan Kumari. It is pertinent to mention herein that the letter dated 25.05.2016 indicates that by mistake the wrong school has been allotted to Smt. Nootan Kumari and at the time of counseling such vacancy could not be traced/ pointed out. On the same day i.e 25.05.2016 after receiving the report of the Block Education Officer, Jaspur and after receiving the representation of Smt. Nootan Kumari, the petitioner sought the legal opinion of the District Govt. Counsel (Civil) and on the same day he received the opinion from the DGC (Civil). In compliance of the Hon'ble Court's order dated 23.03.2016 and in compliance of the direction issued by the respondent no. 3 vide its letter dated 16.05.2016 and in view of the report/ recommendation dated 25.05.2016 submitted by the Block Education Officer, Jaspur, District Udham Singh Nagar and in view of the legal opinion of the DGC (Civil) District Udham Singh Nagar, the petitioner vide its letter no. 1443-48/Sthapana/ Seva-4/2016-17 dated 02.06.2016 amended the name of the joining school of Smt. Nootan Kumari from Bazpur Block to Govt. Primary School, Meghawala, Block Jaspur, District Udham Singh Nagar, which was just and proper and the petitioner has not violated any of the rules as the petitioner has to comply with the order passed by the Hon'ble High Court but the respondents have awarded the adverse entry to the petitioner and the same was affirmed by the appellate authority, which is not tenable in the eyes of law and the same is liable to be quashed and set aside."

9. It will be appropriate to quote the observations of Hon'ble Supreme Court in Vijay Singh vs. State of U.P. and others (2012) 5 SCC 242, herein below for convenience:

"15. Imposing the punishment for a proved delinquency is regulated and controlled by the statutory rules. Therefore, while performing the quasi-judicial functions, the authority is not permitted to ignore the statutory rules under which punishment is to be imposed. The disciplinary authority is bound to give strict adherence to the said rules....."

10. The representation of the claim petitioner was dismissed by Respondent No.1 vide order dated 03.09.2019, which is also under challenge in present claim petition. The claim petitioner was awarded Special Adverse Entry for changing the work place of the writ petitioner. Nowhere during the proceedings, it has been indicated that the claim petitioner was ever served with a show cause notice. The Tribunal is unable to gather, even on a perusal of W.S./C.A. filed on behalf of respondents, that a show cause notice or opportunity of hearing was ever given to the claim petitioner before passing impugned order, Annexure: A1. Departmental appeal and representation against

such Special Adverse Entry were dismissed. One thing is, therefore, certain that no opportunity of hearing was given to the claim petitioner before awarding the Special Adverse Entry, which has been given as a punishment and has civil consequences. The same is liable to be set aside on this ground alone that order dated 10.08.2016 (Annexure: A 1) has been passed in violation of principles of natural justice.

11. Impugned order dated 03.09.2019 which was communicated *vide* letter dated 16.09.2019, order dated 10.08.2016 which was communicated *vide* letter dated 15.08.2016, are hereby set aside, leaving it open to the disciplinary authority to conduct an inquiry, if it so desires, after giving a show cause notice to the petitioner, in accordance with law at an earliest possible, and in any case before 31.12.2021.
12. Since the order impugned has been set aside leaving it open to the disciplinary authority to pass a fresh order in accordance with law, on or before 31.12.2021, therefore, a direction is given to the respondents to hold DPC for the post of Deputy Director, Education, latest by 15.01.2022.
13. The claim petition thus stands disposed of. No order as to costs.

RAJEEV GUPTA
VICE CHAIRMAN (A)

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: SEPTEMBER 28,2021
DEHRADUN.

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