

**BEFORE THE PUBLIC SERVICES TRIBUNAL
UTTARAKHAND, DEHRADUN**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri D.K.KOTIA

----- Vice Chairman (A)

CLAIM PETITION NO. 69/2011

Dinesh Chandra Dhasmana, S/o Sri Shambhu Prasad
Dhasmana, R/o Village Mandliya (Nai) Post Bunderkhal via
Naugaon Khal, District Pauri Garhwal

.....Petitioner

VERSUS

1. State of U.P. through Principal Secretary, Dairy
Development, Govt. of Uttar Pradesh, Secretariat,
Lucknow,
2. Milk Commissioner, Dairy Development, U.P., Lucknow,
3. Secretary, Dairy Development Department, State of
Uttarakhand, Secretariat, Dehradun,
4. State of Uttarakhand, Dairy Development Department,
Haldwani, District Nainital

.....Respondents

Present: Sri M.C.Pant, &
Sri L.K.Maithani, Advocates
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

ORDER

DATE: MARCH 03, 2014

1. This petition has been preferred against the order
dated 05.12.1996 passed by the Milk Commissioner, Dairy

Development, U.P. by which the petitioner was dismissed from the post of Govt. Milk Supervisor.

2. The petitioner had challenged the impugned order before the Public Services Tribunal, U.P. which was transferred to this Tribunal and this Tribunal had disposed of the transferred petition bearing no. 41/T/2005 vide its order dated 28.6.2010 with the following direction:

“In view of the above, the petitioner is permitted to withdraw the petition. He may file an appeal against the impugned order, if he so desires, within three weeks from today. The delay, if any, in filing the appeal shall be condoned by the appellate authority. The appellate authority shall endeavor to dispose off the appeal expeditiously preferably within six months from date of filing the appeal. The petition is accordingly disposed off.”

3. Thereafter, the petitioner preferred an appeal which was dismissed by the Principal Secretary, Govt. of U.P. vide order dated 15.7.2011. Aggrieved by that order, the petitioner had preferred this petition.

4. The learned counsel for the respondents raised the point of maintainability and we also think it proper to decide the point of maintainability first before going into the merit of the case.

5. We have heard both the parties at length and also perused the written submissions filed on behalf of the petitioner.

6. It has been contended on behalf of the respondents that the petitioner had been dismissed before the creation of the State of Uttarakhand and at that time the petitioner was in the service of the State of U.P. and not in the service of the State of Uttarakhand. The petitioner had never been the employee of the State of Uttarakhand and as per the provisions contained in Section-2(b) of Uttarakhand Public Services Tribunal Act, 1976 only those persons are entitled to prefer the petition before the Tribunal who are public servants i.e. employee of the State of Uttarakhand. As the petitioner has never been in the service of the State of Uttarakhand, he cannot be treated to be public servant as per the provisions mentioned above; therefore he is not entitled to prefer this petition before this Tribunal. On the other hand, it has been contended that in pursuance of the judgment passed by this Tribunal, the appeal of the petitioner has been disposed of by an authority belonging to the State of U.P. Thus this Tribunal has admitted the jurisdiction therefore, it had issued direction for disposal of appeal.

7. We have carefully considered the rival contentions raised by the parties. In this case, the respondents have disposed of the departmental appeal in pursuance of the direction of this Tribunal, but simply because the appeal has been disposed of by an authority as per direction does

not mean that the petitioner had been employee of the State of Uttarakhand. In fact, the petitioner was dismissed from the service before the creation of the State of Uttarakhand. He had never been an employee of State of Uttarakhand, therefore, he cannot be treated to be public servant belonging to State of Uttarakhand.

8. It has further been contended that the petition was transferred from U.P. and as per the provisions contained in Section 91 of the U.P. Reorganization Act, 2000. This Tribunal is vested jurisdiction to decide this petition and it cannot go to re-examine the point of jurisdiction as this right vest only in the Hon'ble High Court, Allahabad as per the provisions of Section 91 of the U.P. Reorganization Act. In fact, the provisions of Section 91 of the Reorganization Act would have been applicable in the present case only in case the matter related to the State of Uttarakhand had been pending before the Public Services Tribunal, Uttar Pradesh, at the time of creation of the State of Uttarakhand, but in our opinion, the matter was not at all related to the State of Uttarakhand as the petitioner had already been dismissed from the service before the creation of the State of Uttarakhand. In case, the petitioner has any grievance regarding the service conditions that is concerned to the State of U.P. only and not to the State of Uttarakhand as the petitioner had never been in the employment of the State of Uttarakhand, therefore, provisions of Section 91 of U.P. Reorganization Act are not attracted in the present case. The learned counsel for the petitioner relies upon the principle laid down by the Hon'ble Supreme Court in Bihar

State Electricity Board and another Vs. Ram Deo Prasad Singh and others, (2011)12 S.C.C., 632. We have carefully gone through the above mentioned case and reach to the conclusion that the principle laid down in the abovementioned case, is not applicable in the present case as no cause of action had ever arisen in the State of Uttarakhand. The matter relating to jurisdiction has also been set at rest by the Hon'ble Supreme Court in State of Uttarakhand & others vs. Umakant Joshi, 2012 (1) U.D. 583. It has clearly been laid down that in the matter of orders passed before the creation of the State of Uttarakhand only the State of U.P. has authority to grant any relief and not the State of Uttarakhand, therefore, in view of the principle laid down by the Hon'ble Supreme Court, this Tribunal does not have any jurisdiction to adjudicate any controversy and petitioner cannot take any benefit of the provisions of Section 91 of the U.P. Reorganization Act, 2000. The similar principle has been laid down by the Hon'ble High court of Uttarakhand in writ petition (SB) No. 33 of 2007, State of Uttarakhand & others vs. Public Services Tribunal & others.

9. The learned counsel for the petitioner has also referred Section 12 of the Uttarakhand Public Services Tribunal Act, which contains the transitory provisions and is quoted below:

“12. Transitory provisions: (1) Any reference of claims, applications or other incidental or ancillary proceedings pending before any Tribunal constituted under Section 3 of the

Principal Act, as it stood immediately before the commencement of this Act (hereinafter referred to as the old Tribunal) shall, upon constitution of the Tribunal under Section 3 of the Principal Act as amended by this Act, stand transferred to such newly constituted Tribunal which shall thereupon hear and decide the cases in the same manner as if they were referred to it under Section 4 of the Principal Act or were matters arising out of such claims, as the case may be.

Explanation- It shall be lawful for such newly constituted Tribunal to commence the proceeding from the stage at which the case was so transferred the proceeding from the stage at which the case was so transferred and to deal with any pleading presented or evidence produced before such transfer as if the same were presented or produced before itself.

(2) Any reference of claims, applications or documents addressed to any of the old Tribunals received by the newly constituted Tribunal shall be entertained and disposed of by the newly constituted tribunal as if it were addressed to it.

(3) All applications for certificate under sub-section (7) of Section 5 of the Principal Act as it stood immediately before the commencement of this Act, pending on the date of such commencement shall stand abated.

(4) Any certificate under sub-section (7) of Section 5 of the Principal Act as it stood

immediately before the commencement of this Act, issued by any of the old Tribunal shall continue to be valid and enforceable notwithstanding that such old tribunal is no more in existence.

(5) Subject to the provisions of sub-section (4) all orders of the old Tribunals shall be executed in accordance with the provisions of the Principal Act as amended by this Act as if such orders were passed by the newly constituted Tribunal.”

But this provision does not relate to the present controversy as these provisions were related to those cases, which were pending at the time of enactment of the Act.

10. In the light of the discussion made above, we are of the considered opinion that the petition is not maintainable before this Tribunal for adjudicating the matter in controversy involved in this petition. So, we have no option except to return the petition to the petitioner. At the same time, we also want to make an observation that the petitioner has been pursuing this petition before this Tribunal bonafidely and there is no fault on his part.

11. Let the petition be returned to the petitioner for presentation before the proper court, authority or forum.

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

Sd/-

V.K.MAHESHWARI
VICE CHAIRMAN (J)

DATE: MARCH 03, 2014
DEHRADUN

KNP