

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN AT BENCH NAINITAL**

Present: Sri V.K. Maheshwari

----- Vice Chairman (J)

&

Sri U. D. Chaube

----- Member (A)

Claim Petition No. 22/N.B./2009

Har Singh Bohra, S/o Late Mohan Singh Bohra,
R/o Bintola Bhawan, No. 7, Mallital, Nainital,
District Nainital.

.....Petitioner

Vs.

1. Kumaon Mandal Vikas Nigam Ltd., Oak Park,
Nainital through its Managing Director,
2. Personnel Officer, Kumaon Mandal Vikas Nigam Ltd.,
Oak Park, Mallital, Nainital,
3. State of Uttarakhand, through Secretary, Tourism, Govt. of
Uttarakhand, Dehradun.

.....Respondents

Present: - Sri Vinod Tewari, Advocate for the
petitioner
A.P.O. for the respondent no. 3
Sri Sandeep Kothari, Advocate for
the respondent nos. 1 & 2

JUDGMENT

Date: May 7, 2013

DELIVERED BY SRI V.K. MAHESHWARI, VICE-CHAIRMAN (J)

Relief for the payment of arrears of salary, bonus, selection grade, annual increment, promotional pay scale and consideration for promotion to the post of Group-‘C’ has been sought in this claim petition.

2. The relevant facts as stated in this petition are that the petitioner joined service in Kumaon Mandal Vikas Nigam Ltd. on 02-05-1979 on the post of Peon. Subsequently, the petitioner was transferred from Nainital to Rosin & Turpentine Unit, Champawat. The petitioner made several representations for cancellation of his transfer on personal grounds but of no consequence, therefore, the petitioner was compelled to serve a legal notice on 08-11-1990 and to institute a Civil Suit No. 11/1991 seeking permanent injunction against the implementation of transfer orders. During the pendency of the above mentioned suit, the respondent no. 1 had published a notice in daily News Paper “Amar Ujala” on 14-04-1992 asking the petitioner to join at Champawat within a period of 15 days failing which, there will be presumption that petitioner is not interested to continue in service and his services shall be deemed to have been terminated without further notice. Thereafter, respondent no. 1 had terminated the services of the

petitioner vide order dated 30-06-1992. The petitioner challenged the said termination order before the Hon'ble Allahabad High Court by way of Writ Petition No. 35170/1992, which was later on transferred to Uttarakhand High Court and it was finally allowed vide order dated 26-06-2003 and termination orders dated 30.6.1992 passed by respondent no 1 were quashed. Thereafter, the petitioner filed 2 appeals under Section 33-C(2) of Industrial Dispute Act for payment of salary for the period of 01-08-1990 to 30-06-1991 and 01-07-1991 to 30-06-1992, but due to misrepresentation of facts by the Employer both these appeals were dismissed on unreasonable grounds. In fact, the petitioner has been reinstated in compliance of the order of the Court so he is entitled for the salary of the aforesaid period. But in this regard, it is also stated that as the Hon'ble High Court has ordered to not to make payment of any salary for the period of absence thus the petitioner is not claiming any salary for the period of absence i.e. 01-07-1991 to 30-06-1992, but the petitioner was on medical leave from 01-08-1990 to 07-01-1991 so he is entitled for the salary for the above mentioned period which is claimed in this petition.

3. It has further been stated that the petitioner has been reinstated at the initial scale of pay which is not justified, in fact the petitioner is entitled for all the increments which the petitioner was drawing. It has further been stated that the

petitioner has not been afforded the benefit of 5th Pay Commission.

4. It has further been stated that junior employees have been promoted and the petitioner is ignored, while the petitioner should also be considered for promotion for the post of Group-‘C’ post. For the above mentioned reliefs the present petition is preferred.

5. Written Statement has been filed on behalf of all the respondents and it has been admitted that the petitioner had challenged his termination before the Hon’ble High Court vide Writ Petition No. 6991/2001 (SS) which was decided on 26-03-2003. The order of termination was set-aside but Hon’ble High Court categorically ordered that “for absence no wages shall be paid to him” and it has further been held that “it will be open for the Corporation to proceed in accordance with law”. In view of the orders of the Hon’ble High Court the petitioner is not entitled for the salary for the period of his absence.

6. It has further been stated that the petitioner had also moved a Contempt Petition bearing No. 86 of 2004 alleging that selection grade, increment, D.A. and promotion in Class-III has not been afforded to him. The said petition was also dismissed by the Hon’ble High Court vide order dated 10-02-2006 and the

petitioner was not found entitled for any relief. Moreover, the petitioner has moved two petitions before the Labour Court which were also dismissed. Thus, the petitioner is not entitled for any relief and petition is liable to be dismissed.

7. A rejoinder affidavit and a supplementary rejoinder affidavit have been filed on behalf of the petitioner and it has been stated that the judgment of the Hon'ble High Court has wrongly been construed by the respondents and the proceeding before the Labour Court are summary in nature and are not binding upon this Tribunal and the petitioner cannot be deprived the reliefs claimed by him.

8. We have heard the petitioner and the learned Counsel for the respondents. We have also perused the material available on record carefully.

9. First of all, the petitioner has claimed the salary for the period of medical leave, i.e. with effect from 01-08-1990 to 07-01-1991 which is said to be the period prior to his absence and it has been stated that the petitioner was not absent in the aforesaid period, rather he was on medical leave so he is entitled for the salary of the aforesaid period and the order of the Hon'ble High Court does not create any bar in the payment of salary for the above mentioned period. On the other hand, it has

been contended that the question of salary for the aforesaid period also arose before the Hon'ble High Court and Hon'ble High Court did not find the petitioner entitled for the payment of salary for the above mentioned period. Not only this, the petitioner had preferred the petition before the Labour Court for the salary of the above mentioned period which has also been dismissed. We have sincerely considered the rival contentions. In fact, the burden of proving the fact that he was on medical leave lies upon the petitioner but no material has been made available by which it could be inferred that the petitioner was on medical leave for the aforesaid period. It is also not on record as to whether the said medical leaves were ever sanctioned to the petitioner. Apart from it, it is also important that the matter of payment of salary for the aforesaid period also was involved before the Hon'ble High Court and the Hon'ble High Court has specifically ordered that the petitioner will not be entitled for the wages for the period of absence. So there is no point to re-agitate this point. The petitioner has also claimed the salary for period w.e.f. the date of his termination till the date of his reinstatement but it is clear from the record that the petitioner was absent during this period also. This period is also covered as the period of absence. So the petitioner can not be said to be entitled for the salary or wages for this period. Moreover, the petitioner had preferred a petition for payment of salary for this period before the Labour Court which was dismissed after

hearing both the parties and thereafter, there is no occasion to reconsider or re-agitate the matter of the payment of salary for the aforesaid period. Though, it has also been contented that the proceedings before the Labour Court were summary in nature and so there is no bar in granting the salary to the petitioner, but in our opinion there is no substance in the contention of the petitioner, the decision of the Labour Court is based on merit which has been passed after hearing of both the parties. On being unsuccessful in these proceedings the petitioner can not be permitted to challenge the validity of that order in the second round of litigation. Apart from every fact as we have said earlier that the petitioner did not work during this period so he can not be held entitled for the salary of this period.

10. The petitioner has further claimed the benefit of the increments. The order of reinstatement of the petitioner in compliance of the order of the Hon'ble High Court is on record as R-2 which reveals that the petitioner was placed at lowest scale on his reinstatement which can not be said to be proper. There is no justification to place the petitioner on lowest scale. It has also been contended on behalf of the respondents that a contempt petition was moved by the petitioner before the Hon'ble High Court for this relief which was dismissed so petitioner can not claim the increments now. We have gone through the order of the Hon'ble High Court but Hon'ble Court

has treated it to be a new cause of action so it can not be inferred that the prayer of increments was declined by the High Court. Not granting the increments is certainly the injustice with the petitioner. In the interest of justice, we think it proper to direct the respondents to grant the due increments to the petitioner as were available to him in due course.

11. It has also been contented by the petitioner that his educational qualification has wrongly been shown so that he may be deprived of the promotion but we don't find any force in the contention as the record can be corrected by the respondents in case there is any discrepancy in it at present there is no dispute regarding the promotion so we don't want to make any observation in this regard but in case of any injustice, the petitioner will be at liberty to bring action before the appropriate authority.

12. On the basis of above discussion, we find that the petition deserves to be partly allowed and petitioner is found entitled for increments but not the arrears of increments. The petitioner is not entitled for any other reliefs.

ORDER

The petition is partly allowed and respondents are directed to grant the annual increments to the petitioner as were due to him on the date of reinstatement, but the petitioner will not be

entitled for any arrear. The petition is dismissed for other reliefs.

No order as to costs.

Sd/-
U. D. CHAUBE
MEMBER (A)

Sd/-
V. K. MAHESHWARI
VICE-CHAIRMAN (J)

DATE: May 7, 2013