

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

Present : Hon'ble Mr. Rajendra Singh

..... Vice-Chairman (J)

&

Hon'ble Mr. Rajeev Gupta

..... Vice-Chairman (A)

Claim Petition No. 10/NB/DB/2020

Virendra Kumar (Male), aged about 60 years, S/o Shivsahay Singh, R/o House No. 55, Village Aurangabad Tehsil Chandpur, District Bijnore, U.P.

..... Applicant/Petitioner

Versus

1. State of Uttarakhand through Secretary, Elementary Education, Dehradun.
2. Director, Elementary Education, State of Uttarakhand, Dehradun.
3. District Education Officer, Elementary Education, District Udham Singh Nagar.
4. Deputy Education Officer, Elementary Education, Bazpur, District Udham Singh Nagar.

..... Respondents

Present: Sri N. K. Papnoi, Advocate for the petitioner

Sri Kishore Kumar, Ld. A.P.O. for the respondents

JUDGMENT**DATED : 25th July, 2022****Mr. Rajeev Gupta (Oral)**

This claim petition has been filed against the impugned order dated 27.01.2020 passed by the respondent No. 3 District Education Officer, Elementary Education, District Udham Singh Nagar, according to which the petitioner has been dismissed from service.

2. Brief facts of the case are as follows:-

The Deputy District Education Officer, Bazpur, Udham Singh Nagar vide his letter dated 10.12.2019 informed the District Education Officer, Elementary Education, District Udham Singh Nagar that the petitioner has got appointment in the department on the basis of a fake B.T.C. Certificate. A charge-sheet dated 10.01.2020 was issued to the petitioner asking him to submit his written reply within 15 days. The petitioner submitted his reply on 22.01.2020 stating that the charge-sheet mentions enclosed enquiry reports but copies of enquiry reports have not been received by the petitioner alongwith charge-sheet and requested that their copies may be provided to him so that he can submit his reply. On 27.01.2020, respondent No. 3 District Education Officer, Elementary Education, District Udham Singh Nagar has issued the impugned order dismissing the petitioner, stating that the petitioner has not produced any evidence to prove that his B.T.C. certificate is correct and on perusal of file, it is clear that the petitioner's B.T.C. certificate is fabricated on the

basis of which he has got appointment on the post of Assistant Teacher in the department. As he has not produced any evidence or satisfactory reply, it is proved that the charge against him is correct and he deserves a major penalty and according to provisions of Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended) [hereinafter referred to as the Rules of 2003], it has been decided to terminate the services of the petitioner and, therefore, he is dismissed from service with immediate effect.

3. It is further stated by the learned Counsel for the petitioner that the petitioner was dismissed just 03 days before his retirement and procedure for imposing major penalty has not been followed.

4. C.A./W.S. filed on behalf of the respondents states that after the application dated 22.01.2020 of the petitioner, the office of Deputy Education Officer, Bazpur had immediately given the copy of enquiry report to the petitioner but the petitioner did not submit any reply within the time fixed.

5. In his letter dated 22.01.2020, the petitioner had prayed for 15 days' time for submitting reply after getting the copy of enquiry report, but the disciplinary authority in utter haste passed the impugned order on 27.01.2020. Even if the petitioner's reply was not received or was not satisfactory, an inquiry officer was required to be appointed or the disciplinary authority should have himself done the inquiry and other

provisions of Rules of 2003 should have been followed before conclusion of departmental enquiry.

6. Learned Counsel for the petitioner has filed an order of Hon'ble High Court dated 28.03.2017 passed in WPSS Nos. 1152/16, 2149/15, 83/16, 82/16, 93/16, 618/16, 621/16 and 650/16. The following extract of this order is reproduced as under:-

“Petitioners were appointed as Basic Teacher on the various dates. The petitioner in WPSS No. 1152 of 2016 was put under suspension on 05.03.2016. Charge-sheet was issued to the petitioner on 05.03.2016. Petitioner was granted 10 days’ time to file reply against the charge-sheet. Petitioner submitted his reply to the charge-sheet.

Thereafter, the services of the petitioner were terminated on 02.06.2016 without holding any regular inquiry. The petitioner is a permanent employee. The services of the petitioner could only be terminated inconformity of Article 311 of the Constitution of India. It was expected from the State Government being a model employer to complete the inquiry instead of abruptly terminating the services of the petitioners. There is non application of mind by the District Education Officer, Primary Education.”

Hon'ble High Court allowed the above writ petitions. The impugned termination orders passed in all the connected writ petitions were quashed and set-aside. However, liberty was reserved to the

respondents-State to proceed with the matter in accordance with law. The State of Uttarakhand challenged the above order of learned Single Judge in WP No. 650 of 2016, in Special Appeal No. 543 of 2017 before the Hon'ble High Court in which the Division Bench has held as below:-

“7. While we find no error in the order under appeal necessitating interference in so far as the order of punishment was set aside by the learned Single Judge, the fact however remains that the learned Single Judge has also directed that the respondent-writ petitioner be reinstated into service with all consequential benefits.

8. As noted hereinabove, the petitioner was placed under suspension on 4.1.2015, and continued to remain under suspension when he was dismissed from service by proceedings dated 6.1.2016. Setting aside the order of punishment would only require that the order of suspension be continued, and for the disciplinary enquiry to be completed early.

9. In such circumstances, we consider it appropriate to modify the order of learned Single Judge and direct the appellants-respondents to continue to pay the petitioner subsistence allowance, which he is entitled to during the period of suspension, till the completion of departmental enquiry initiated against him.

10. As a charge memo was issued to the petitioner as early as on 11.3.2014 i.e. nearly 5 years ago, the appellant-respondent is directed to complete the departmental enquiry with utmost expedition and, in any event, not later than four months from the date of production of a certified copy of this order.”

7. Learned A.P.O. also agrees that procedure of imposition of major penalty has not been properly followed in the case of Sri Virendra Kumar, the present claim petitioner.

8. In view of the above, the Tribunal, hereby set-asides the impugned punishment order dated 27.01.2020 (**Annexure No. 1** to the claim petition) and holds that the disciplinary proceeding initiated against the petitioner vide charge-sheet dated 10.01.2020, shall be deemed to be still pending. The disciplinary authority may himself do the inquiry or appoint an inquiry officer and complete disciplinary proceeding following the procedure prescribed for imposing major penalty under the Rules of 2003, within a period of four months hereafter. Petitioner is also directed to cooperate in the departmental enquiry.

9. The claim petition is disposed of as above. No orders as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

DATED : 25th July, 2022

NAINITAL

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