

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

Present: Hon'ble Mr. Rajendra Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 132/DB/2021

Ashish Rana, aged about 35 years, s/o Sri Sri Kalam Singh Rana, Assistant Teacher (Science), Sri Kedarnath Sanatan Dharam Sanskrit Mahavidyalaya Vidhyapeeth, District Rudraprayag, Uttarakhand.

.....Petitioner

vs.

1. The Secretary, Dharmaswa Department, Govt. of Uttarakhand.
2. The Chief Executive Officer, Chaar Dham Devasthanam Board, Lane no. 7, Rajpur Road, Dehradun now the Uttar Pradesh Shri Badrinath and Shri Kedarnath Temple Committee.
3. Principal, Shri Kedarnath Sanatan Dharam Sanskrit Mahavidhyalaya Vidhyapeeth, District Rudraprayag.

.....Respondents

Present: Dr. N.K.Pant, Advocate for the Petitioner

Sri V.P.Devrani, A.P.O., for the Respondents

JUDGMENT

DATED: DECEMBER 01, 2022

Mr. Rajeev Gupta, Vice Chairman (A)

Present claim petition has been filed by the petitioner for the following reliefs:

“(i) Issue an order or direction calling for the record and directing the respondents to quash the cancellation order dated 08.07.2021 and revive the adjustment order dated 04.10.2018.

(ii) Issue an order or direction calling for the record and to direct the respondent to pay the admissible monthly salary from the date of adjustment with interest.

(iii) Issue any suitable claim, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) Award the cost of claim petition in favour of the petitioner.”

2. Brief facts according to the claim petition are as below:-

2.1 The petitioner was appointed as Yoga Instructor on monthly consolidated pay of Rs. 8,000/- by the orders of the Chairman of the Badrinath Kedarnath Temple Committee (BKTC). Subsequently, vide order dated 20.10.2011, he was posted as Teacher for Yoga and modern subjects in the Sanskrit Mahavidyalaya Vidyapeeth, Guptkashi, Rudraprayag being run under BKTC, in continuation of his working on the post of Yoga Instructor from 19.08.2010, on the same consolidated monthly pay of Rs. 8,000/-. The post of Science Teacher fell vacant in this Sanskrit Mahavidyalaya Vidyapeeth after the death of Assistant Teacher (Science). The petitioner was qualified for this post as his qualification is B.Sc., M.A., B.Ed., Yoga Diploma and M.P.Ed. and the petitioner is also holder of one year diploma in computer from IIT, Roorkee. Under the provisions of G.O. dated 07.02.1991, the G.O. dated 30.03.1998 with the recommendations of the then Executive Officer, BKTC and the approval dated 04.10.2018 of the then Administrator, BKTC/Additional Secretary, Govt. of Uttarakhand, the petitioner was adjusted (*Samayojit*) on the post of Assistant Teacher (Science) with the pay scale of Rs. 9300-34800, grade pay of Rs. 4600/- vide order dated 08.10.2018 of the BKTC.

2.2 Due to non-payment of the above admissible monthly pay of the post of Assistant Teacher, the petitioner made representations to the higher authorities. Unfortunately, in place of payment of the admissible monthly salary, the order dated 08.10.2018 was cancelled according to the direction given by the Chief Executive Officer of the Uttarakhand Char Dham Devasthanam Board (hereinafter referred to as the 'Board') vide order dated 08.07.2021. In his letter dated 13.10.2020 to the Executive Officer of the Board, SDM (*Up Ziladhikari*), Ukhimath has stated that the adjustment (*Samayojan*) of the petitioner on the post of Assistant Teacher (Science) has been done according to the prescribed procedure and provisions mentioned in the Govt. Orders regarding the BKTC. All working/retired employees/officers in the BKTC have been adjusted according to the procedure mentioned in Govt. Orders dated 07.02.1991 and 30.03.1998 while in the case

of the petitioner, his adjustment order has been cancelled and the admissible monthly salary as per adjustment order has not been paid to him.

Hence the claim petition.

3. Counter Affidavit has been filed on behalf of the respondents mainly stating that the petitioner was appointed purely on temporary basis as Yoga Instructor on fixed remuneration of Rs. 8,000/- per month without adopting due selection process. As per Section 15(5) of the U.P. Shri Badrinath Kedarnath Temples Act, 2019, the appointment could be made with the approval of the State Govt. while no approval has been obtained in the case of the petitioner. On the wrong interpretation of the G.O. dated 30.03.1998, a proposal was sent to the Additional Secretary, Uttarakhand Govt./Administrator, BKTC for granting benefits of regular pay scale to the petitioner on which the Additional Secretary/Administrator has given the conditional approval to the Executive Officer, BKTC but without following the 'as per rule' directions given by the Additional Secretary/Administrator, the Executive Officer, BKTC has erroneously issued the order dated 08.10.2018. On a complaint regarding illegal appointment of teachers in the schools/Vidyapeeth run by the BKTC, SDM, Ukhimath was appointed as inquiry officer in the matter who submitted his report vide his letter dated 20.08.2019 mentioning that the appointments of the teachers are patently irregular/illegal. Against the inquiry report of the SDM, the petitioner preferred a representation to the Chief Executive Officer of the Board who held that the appointment of the petitioner as Assistant Teacher (Science) is illegal/irregular and the said adjustment order is against the law laid down in the landmark judgment of Hon'ble Apex Court in the matter of State of Karnataka vs. Uma Devi and others, hence the cancellation order dated 08.07.2021 has been issued under the orders of the competent authority i.e. the Chief Executive Officer of the Board.

4. Rejoinder affidavit has been filed by the petitioner mainly stating that in the judgment of Uma Devi, the Hon'ble Apex Court has allowed one time settlement and it is pertinent to mention that the G.O. dated 30.03.1998 has

clearly provided that new teachers shall not be appointed on the newly created posts and the teachers already working shall be adjusted. The petitioner was working as a teacher at that time and as per this G.O., his adjustment was correct. Unfortunately, respondents have terminated the services of the petitioner *dehors* the rules. The Administrator/Additional Secretary, Govt. of Uttarakhand was fully entitled to approve the proposal of the Chief Executive Officer of the BKTC. No opportunity of hearing was given to the petitioner before cancellation of the adjustment order which is also a violation of Article 14 of the Constitution of India and principles of natural justice.

5. After hearing arguments and perusing the record, the Tribunal desired to know as to which authority after, promulgation of the Uttarakhand Char Dham Devasthanam Management Act, 2019 (hereinafter referred to as the 'Act of 2019') was exercising the powers of Administrator of the erstwhile BKTC. This Act does not clearly specify as to which authority was working in place of the Administrator, BKTC. Understandably, the Board was exercising these powers unless they were delegated to the CEO of the Board or some other authority by a resolution of the Board or given to the CEO of the Board or some other authority by a Govt. notification. The Tribunal directed learned A.P.O. to produce the relevant resolution of the Board or Notification of the Govt, if any, about assigning the functions of the Administrator or Chairman of the BKTC to the CEO of the Board or some other authority. In subsequent hearing, learned A.P.O. stated that the respondents do not want to file any further C.A. Learned A.P.O. also stated that he has been verbally informed by the respondents that the Commissioner/C.E.O. of the Board was exercising the powers of the C.E.O. of BKTC, and there is no resolution of the Board or notification of the Govt. authorizing him to exercise the powers of the Administrator of BKTC or the Chairman, BKTC.

6. The Tribunal observes that the proposal about adjustment of the petitioner on the post of Assistant Teacher (Science) was submitted for approval of the then Administrator, BKTC/Additional Secretary, Govt. of

Uttarakhand, recommending that he is the only qualified teacher for adjustment on this post on which after perusal of the G.O. dated 30.03.1998, the then Administrator gave his approval dated 04.10.2018 with the condition 'if it is as per rules'. Consequently, the adjustment order dated 08.10.2018 was issued.

7. The Tribunal also observes that these orders of the Administrator of BKTC could only be altered by the authority performing the functions of BKTC or its Administrator after promulgation of the Act of 2019. It is clear that functions of BKTC/its Administrator or even Chairman, BKTC were not assigned to the C.E.O. of the Board and, therefore, the C.E.O. of the Board was not empowered to order cancellation of the adjustment order dated 08.10.2018.

8. After the abolition of the Act of 2019, BKTC has again come into existence and it is for the BKTC now to take suitable decision in the matter of the petitioner.

9. On the basis of the above, the impugned order dated 08.07.2021 by which the adjustment order of the petitioner dated 08.10.2018 was cancelled, is hereby quashed. BKTC shall be at liberty to take suitable decision in the matter of adjustment of the petitioner after giving him an opportunity of hearing. With these observations, the claim petition is disposed of. No order as to costs.

10. It is made clear that we have not expressed any opinion on the merits of the case.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(RAJEEV GUPTA)
VICE CHAIRMAN(A)

DATED: DECEMBER 01, 2022
DEHRADUN
KNP