

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

EXECUTION APPLICATION NO. 07/NB/DB/2023

[Arising out of claim petition no. 86/NB/DB/2020 along with
connected claim petitions no. 43/NB/DB/2021 & 115/NB/DB/2021]

Rajeev Nigam s/o Sri M.B. Nigam (Lecturer Biology) Govt. Inter College,
Kaflogair, District Bageshwar (petitioner no. 2 in Claim petition No.
86/NB/DB/2020).

.....Petitioner-executioner

vs.

1. State of Uttarakhand through the Secretary, Secondary Education,
Government of Uttarakhand at Dehradun.
2. Director of Secondary Education, Govt. of Uttarakhand at Dehradun.

.....Respondents

Present: Sri B.D.Upadhyay, Senior Advocate, assisted by
Sri Tushar Upadhyay, Advocate, for the Petitioner-Executioner
Sri Kishore Kumar, A.P.O., for the Respondents.

JUDGMENT

DATED: FEBRUARY 27, 2023

Justice U.C.Dhyani (Oral)

Present execution petition has been filed by the petitioner-executioner (petitioner no. 2 in claim petition no. 86/NB/DB/2020) being aggrieved against non-compliance of order dated 23.02.2022, passed by this Tribunal in Claim Petition no. 86/NB/DB/2020 along with connected claim petitions no. 43/NB/DB/2021 & 115/NB/DB/2021.

2. Instead of narrating the facts of the claim petition and orders thus passed, it will be apposite to reproduce the judgment herein below for convenience:

“Since the issue involved in the abovementioned claim petitions is the same, therefore, these claim petitions are being decided by a common

judgment and order, for sake of brevity and convenience. The claim petition No. 86/NB/DB/2020 shall be the leading case.

2. In claim petition No. 86/NB/DB/2020, the petitioners seek the following reliefs:

1. To direct the respondents to place the petitioner no. 1 and 2 against the selection year 2001-02 and petitioners No. 3 and 4 against the selection year 2003-04 and accordingly fix their seniority in the Lecturer's grade.

2. To direct the respondent No. 2 to decide the representations of the petitioners dated 30.09.2010, 23.10.2017, 04.06.2018, 27.02.2019 and 09.06.2020, contained in Annexure 9, 11 and 12 of the claim petition.

3. In Claim Petition No. 43/NB/DB/2021, the petitioners seek the following reliefs:

"1. To direct the respondents to prepare the seniority list of the Lecturers working in the Govt. Inter Colleges of the State strictly in accordance with the provisions laid down in the Uttarakhand Special Subordinate Education (Lecturers Cadre) Service Rules, 2008, as well as Uttarakhand Govt. Servants Seniority Rules, 2002 after following the catch-up rule.

2. To direct the respondent no. 2 to fix the seniority of the petitioner on the basis of their seniority in the feeding cadre after following the catch-up rule.

3. To direct the respondents to consider the case of the petitioners for promotion on the next higher post on the basis of the seniority to be finalized by the respondent no.2."

4. In Claim Petition No. 115/NB/DB/2021, the petitioners seek the following reliefs:

"To direct the respondents to prepare the seniority list of the L.T. Grade teachers strictly in accordance with the decision passed by the Hon'ble High Court of Uttarakhand in writ petition No. 734 (S/S) of 2015, as confirmed by the division bench by the Hon'ble High Court in Special Appeal as well as by the Hon'ble Apex Court in special leave to appeal and restore the seniority of the petitioners as it was in the seniority list issued in the year 2001."

5. At the very outset, learned A.P.O. objected to the maintainability of the claim petition, *inter-alia*, on the ground that the same is barred by limitation. According to learned A.P.O., limitation for filing claim petition before this Tribunal is one year in view of Section 5(1)(b)(i) of the U.P. Public Services (Tribunal) Act, 1976. Learned A.P.O. further submitted that the petitioners no. 1 and 2 (of claim petition No. 86/NB/DB/2020) seek placement against the selection year 2001-02 and the petitioners no. 3 and 4 (of claim petition No. 86/NB/DB/2020) seek placement against the selection year 2003-04 and accordingly they seek fixing their seniority in the selection grade, which reliefs are barred by limitation.

6. In reply, learned Senior Counsel for the petitioners submitted that the petitioners continued to send their representations to the Respondent No. 2 on 30.09.2010, 23.10.2017, 04.06.2018, 27.02.2019 and 09.06.2020 (Copies: Annexures 9, 11 and 12 of the claim petition), yet the representations remained undecided. Learned Senior Counsel further submitted that the petitioners have continuously been agitating their grievance, which has not been redressed so far.

6.1 Learned Senior Counsel for the petitioners, however, made an innocuous prayer that the representations of the petitioners be directed to be decided by the Respondent No. 2 by reasoned and speaking order, in the light of Paras 17 and 18 of the judgment, rendered by Hon'ble High Court in Writ Petition (S/S) No. 734/2015 and Uttarakhand Special Subordinate Education (Lecturers Cadre) Service Rules, 2008, after affording an opportunity of personal hearing to the petitioners.

7. Learned A.P.O. drew attention of this Court towards the judgment rendered by Hon'ble High Court of Uttarakhand in WPSS No. 1031 of 2019 (Copy Annexure: 13), to argue that the writ petition was dismissed on the ground of delay and laches. Petitioners challenged the same before the Division Bench in Special Appeal No. 895 of 2019. The Division Bench of Hon'ble High Court *vide* order dated 06.11.2019 observed as below:

"The delay of 103 days in preferring the Special Appeal is not opposed by Sri Vikas Pandey, learned Standing Counsel for the State Government, and the Application (CLMA No. 13298 of 2019) seeking condonation of delay is, therefore, ordered, and the delay is condoned.

2. The appellants herein are the petitioners in Writ Petition (S/S) No. 1031 of 2019, wherein they sought a mandamus directing the respondents to decide their representation.

3. In the order under appeal dated 08.05.2019, the learned Single Judge non-suited the appellants-writ petitioners on the ground of undue delay and laches holding that the seniority list, issued in the year 2009, was subjected to challenge after ten years.

4. Sri B.D. Upadhyay, learned Senior Counsel appearing on behalf of the appellants-writ petitioners, would draw our attention to Paragraph-13 of the writ affidavit to submit that, since the appellants-writ petitioners were not provided any opportunity of hearing, they were not aware of the seniority list as they had already been promoted as Lecturers, and as they were working in the remote areas of Pauri Garhwal district, they could not gather information about the said seniority list.

5. While the above assertion in Paragraph-13 may necessitate inquiry, we are satisfied that the appellants-writ petitioners ought to have been nonsuited on the ground that they had an effective and efficacious alternative remedy of approaching the Public Services Tribunal under the provisions of the Uttar Pradesh Public Services (Tribunal) Act, 1976.

6. Sri B.D. Upadhyay, learned Senior Counsel, would fairly state that, since such a remedy is available, the appellants-writ petitioners be permitted to approach the Public Services Tribunal.

7. Sri Vikas Pandey, learned Standing Counsel for the State Government, would submit that the limitation for approaching the Public Services Tribunal is one year.

8. It is not in dispute that the Public Services Tribunal has the power to condone the delay in invoking its jurisdiction, if it is satisfied that the applicants before it were justified in invoking its jurisdiction belatedly.

9. Suffice it, in such circumstances, to set aside the order under appeal, restore the writ petition to file, and dismiss it on the ground that the petitioners have an effective alternative remedy of approaching the Public Services Tribunal.

10. We make it clear that we have not expressed any opinion on whether the writ petition, as filed, is hit by undue delay and laches, or whether the Tribunal should entertain the writ petition questioning the seniority list after several years, for these are all matters for the Public Services Tribunal to examine in accordance with law.

11. The Special Appeal stands disposed of. No costs."

8. In paras 17 and 18 of the judgment rendered by Hon'ble High Court, in Writ Petition (S/S) No. 734 of 2015, Sher Singh Rawat vs. State of Uttarakhand & others and other connected writ petitions, the following was observed:

"17. In view of the above, the writ petitions stand disposed with a direction to the State Government that since the Government Order dated 09.01.1992, which prescribed ten years of service as C.T. Grade teacher has already been quashed by the High Court of Judicature of Allahabad (Lucknow Bench) and the requirement is now only of five years of satisfactory service in C.T. Grade teacher to merge them to L.T. Grade Teacher on 19.02.1991. All the petitioners shall be treated to be Assistant Teachers (L.T. Grade) w.e.f. 19.02.1991 or as and when they completed five years of satisfactory service in the C.T. Grade.

18. All the same, it is clarified that this determination shall not affect in any manner the settled seniority of the Assistant Teachers (L.T. Grade) whose services stood merged from C.T. Grade to L.T. Grade (such as the petitioners) vis-à-vis the directly appointed Assistant Teachers (L.T. Grade) who are so far always shown to be senior to the petitioners. They shall continue to remain senior to the petitioners, as they have been shown senior to them all along, and this order would not affect their seniority against the petitioners or similarly situated persons."

[Emphasis supplied]

9. In special Appeal No. No. 573 of 2015, Om Prakash Kotnala and others vs. State of Uttarakhand & others (Copy Annexure: RA-5), the Division Bench of Hon'ble High Court observed as below:

"7. Accordingly, appeal is allowed in part. Judgment of learned Single Judge is modified. The writ petition is disposed of in terms of Writ Petition No.734 (S/S) of 2015 and connected cases directing that the appellants will be given same relief as was granted in Writ Petition No.734 (S/S) of 2015 and connected cases. In all other respects, the relief is refused."

10. It will also be relevant to reproduce paras 9 to 14 of the judgment rendered by Hon'ble High Court in Special Appeal No. 157 of 2016, Govind Ballabh Pant vs. State of Uttarakhand & others and other connected Special Appeals, on 02.06.2016, as below:

"9. The learned counsel for the appellants would submit that the learned Single Judge was not justified in denying the benefit of seniority and also promotion on the basis of the directions, which were issued by the Allahabad High Court and which were, in fact, followed by him; that is to say, after finding that the appellants are entitled to be merged in the LT Grade from 19.02.1991 or from the date they have completed five years, the learned Single Judge should not have denied the benefit of seniority and promotion to the appellants. It was, in fact, submitted that the appellants were ready to implead the affected persons and, even before us, the learned counsel for the appellants would submit that, granted an opportunity, the appellants will bring on board the affected parties.

10. There is no period of limitation for a writ petition. Therefore, the question whether a case should be dismissed on the ground of delay is, essentially, decided on the principle of laches. A day's delay can be fatal; whereas, several years' delay may be explained by an applicant in the facts of the case. More importantly, the issue of laches must be resolved with reference to the impact of the grant of relief on others, who are not before the court; that is to say, there may be cases, where, by the grant of the relief, no third party rights would be affected and it may be a matter of action. It will be open to a court to mould the relief by bearing in mind the effect of delay on the past. But, in this case what is pressed before us is the relief relating to rights to seniority and, therefore, the consequential right to promotion to the next higher post. Appellants, as already noted, were appointed as Assistant Teachers (CT Grade). Under the earlier Rules, the appellants were entitled to be promoted to the next higher cadre, namely, Assistant Teacher (L.T. Grade). The next higher post is the post of Lecturer. There is no dispute that from the post of Assistant Teacher (C.T. Grade), there were two methods of appointment, one by promotion and the other by way of direct recruitment. 30 per cent posts were reserved for persons from CT Grade to be promoted as LT Grade. The other source of recruitment was direct recruitment (50 per cent by way of direct recruitment and 20 per cent was reserved for persons, who were teaching in Primary, namely, classes 1 to 5).

11. As noted by the learned Single Judge, appellants were actually merged in the LT Grade, apparently, following the order, which was impugned in 1992 in the Allahabad High Court, on completion of 10 years. The learned Single Judge has thought it fit to grant the benefit, which was due to them on the basis of the general mandamus issued by the Allahabad High Court. But, when it came to the aspect of seniority and promotion, the learned Single Judge took care to mould the relief by protecting the interest of the persons, who were always treated as senior to the appellants and who were, apparently, appointed to the LT Grade from other sources.

12. As already noted, there is no long delay in the appellants' approaching this Court. They were merged in the LT Grade on completion of 10 years. If this is in violation of the order of the Allahabad High Court, they immediately had a cause of action to approach the court. They have not challenged the orders by which they were merged in the LT Grade on completion of 10 years. It is after a long time, relying on the judgment of this Court in Writ Petition (M/B) No. ... they have approached this Court. Nearly 15 years have gone by after the date of the judgment by the Allahabad High Court. The grant of any relief by way of seniority would, undoubtedly, affect the rights of the others. Not only would it be afflicted by the vice of laches; but, the further insuperable obstacle in the path of the appellants is the non-joinder of the affected parties. Therefore, we would think that the learned Single Judge has granted the benefit even though it was found, in fact, that there was delay on the part of the appellants in approaching this Court. Even in the matter of grant of financial benefits, the learned Single Judge has ordered that the benefits under the judgment will be taken into consideration at the time of retirement. We would think that this is a clear case, where the grant of

the relief of seniority and the consequential promotion has been rightly declined by the learned Single Judge, as it is well settled that, when a person seeks to impugn a seniority, insofar as it would affect the rights of others, he is expected to approach the Court without any delay. In this case, there is an enormous delay and that disentitles the appellants from the grant of relief.

13. Even though an oral submission is made at the time of hearing by the learned counsel for the appellants that, given an opportunity, they will implead the affect parties, but, even in the appeals, there is no application to implead the affected parties.

14. We, accordingly, see no merit in these appeals. Consequently, the appeals will stand dismissed without any order as to costs.”

[Emphasis supplied]

11. Om Prakash Kotnala and others filed SLP against the order passed by Hon'ble High Court of Uttarakhand on 04.07.2016 in Special Appeal No. 573 of 2015. Such SLP was dismissed vide order dated 07.07.2017 by Hon'ble Apex Court.

12. The Tribunal observes that the reliefs sought for by the petitioners in the present claim petition are barred by limitation. Hence, the Tribunal is unable to pass any direction. The limitation is for the Tribunal and not for the Government. The Government may, therefore decide the representation(s) of the petitioners, which representations have been pending there for a long time, in the light of Uttarakhand Special Subordinate Education (Lecturer Cadre) Service Rules, 2008 and paras 17 and 18 of the judgment, rendered by Hon'ble High Court in Writ Petition (S/S) No.734 of 2015, Sher Singh Rawat vs. State of Uttarakhand & others. The Government in Secondary Education Department may do so after giving opportunity of personal hearing to the petitioners (as submitted by learned Senior Counsel), as also to the affected respondents (as submitted by learned A.P.O.), within a period of three months from the presentation of certified copy of this order and fresh representation, enclosing copy of the judgment of Hon'ble High Court, rendered in W.P. S/S) No. 734 of 2015 and the Rules governing the field.

13. The claim petitions thus stand disposed of. No order as to costs.

14. Let copies of this order be placed on the files of Claim Petitions No. 43/NB/DB/2021 and 115/NB/DB/2021.”

4. It is the submission of Ld. Counsel for the petitioner that in compliance of the directions given by Hon'ble Tribunal, the petitioner submitted combined representation dated 11.03.2022 (along with others) to the respondents no. 1 & 2, but the same has not been decided. It is the submission of learned counsel for the petitioner/executioner that casual approach on the part of opposite parties/respondents should not be tolerated and strict action should be initiated against them.

5. This Tribunal, therefore, instead of issuing notices to the respondents, reiterates the order dated 23.02.2022, passed by this Tribunal and requests the authorities concerned to comply with the same without further delay, to avoid further legal complications.

6. Petitioner-executioner is directed to send copies of this order, as also the order dated 23.02.2022, to the authorities

concerned, within a period of two weeks, to remind them that a duty was cast upon them to do something, which has not been done. The same should be done now, at an earliest possible, without unreasonable delay, preferably within six weeks of receipt of copies of the orders.

7. The execution petition is, accordingly, disposed of at the admission stage. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: FEBRUARY 27, 2023

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