

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

Claim Petition No. 06/N.B./2009

Udai Veer Singh, S/o Sri Chet Ram, Cane Development Inspector, Sitarganj,
District Udham Singh Nagar presently posted as Cane Development
Inspector/Secretary, Bisalpur, District Pilibhit (UP)

..... Petitioner

Versus

1. State of Uttarakhand through Secretary Cane & Sugar, Dehradun.
2. Cane Commissioner, Uttarakhand, Kashipur.
3. Joint Cane Commissioner, Uttarakhand, Kashipur
4. Assistant Cane Commissioner, Udham Singh Nagar at Rudrapur.
5. Uttar Pradesh through Secretary, Cane and Sugar, Lucknow.
6. District Cane Officer, Kasganj, U.P.
7. Deputy Cane Commissioner, Bareilly, U.P.
8. Cane Commissioner, Lucknow, Uttar Pradesh.

..... Respondents

Coram: **Hon'ble Justice J. C. S. Rawat**

..... **Chairman**

&

Hon'ble Sri U. D. Chaube

..... **Member (A)**

Present : Sri Vinod Tiwari, Advocate for the petitioner.

Sri V.P. Devrani, A.P.O. for the respondent nos. 1 to 8

JUDGMENT**DATE: 17-06-2015****Justice J.C.S. Rawat (Oral)**

The petitioner has filed this petition for seeking the following relief:-

“I. to set aside the impugned order dated 16-04-1999 passed by respondent no. 2 and the order dated 20-09-1999 passed by respondent no. 1 and the order of recovery dated 05-10-1999 passed by respondent no. 3.

II. to pass an order to the respondents to reimburse the amount illegally deducted from the salary of the petitioner with interest up-to-date.

III. to pass any other suitable order as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.

IV. to allow the claim petition with cost.”

2. In nut shell, the petitioner was found guilty by the Criminal Court for the charges levelled against him on 16-04-1999 and then detailed punishment order was passed by the appointing authority. Thereafter the petitioner preferred an appeal against the departmental punishment before the competent authority which was also dismissed on 20.09.1999. Thereafter he preferred a writ petition before the Hon’ble Allahabad High Court Writ Petition No. 46810/1999 which was transferred to the Hon’ble High Court of Uttarakhand after the State of Uttarakhand had come into existence and writ petition was numbered as 6782 (S/S) of 2001. The Hon’ble High Court of Uttarakhand at Nainital relegated the matter to this Tribunal on 14.02.2008 on the ground that the petitioner has an alternative remedy available before the Public Service Tribunal.

3. The petitioner has challenged both the orders of the punishment awarded by the respondents. The petitioner has alleged that the proper enquiry has not been conducted and he has been wrongly punished by the punishing authority and the appellate authority has not applied his mind to decide the said appeal. The respondents have taken a specific plea that the State of Uttarakhand Public Services Tribunal has no jurisdiction to decide the matter as it relates prior to creation of State of Uttarakhand and the petitioner is not a public servant of the State of Uttarakhand and he is a public servant of State of Uttar Pradesh and he had already been relieved and he is working in the State of Uttar Pradesh.

4. The respondents stated that at the time of filing of the claim petition the petitioner had been posted in the erstwhile State of Uttar Pradesh in Bisalpur, District Pilibhit. It is clearly indicated in the array of petition. It is also undisputed that he is not a public servant of the State of Uttarakhand or its company. The rejoinder filed by the petitioner also indicate in the deponent's address in affidavit that he had been working in the State of U.P. in District Pilibhit on 27-07-2011.

5. Undisputedly, the impugned orders have been passed prior to creation of Hon'ble High Court of Uttarakhand and the State of Uttarakhand.

6. We have heard the learned counsel for the parties and perused the record.

7. We have to decide as to whether this petition is maintainable before this Tribunal or not? To proceed further, we will like to quote the Section 4 (1) of the Uttarakhand Public Services Tribunal Act, as under:-

“ 4. **Reference of claim to Tribunal.**--- (1) Subject to the other provisions of this Act, *a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal*, may make a reference of claim to the Tribunal for the redressal of his grievance.

Explanation : For the purpose of this sub-section “order” means an order or omission or in-action of the State Government or a local authority or any other Corporation or company referred to in clause (b) of Section 2 or of an officer, committee or other body or agency of the State Government or such local authority or Corporation or company.

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant;

Provided further that in the case of the death of a public servant, his legal representative, and where there are two or more such representatives, all of them jointly, may make a reference to the Tribunal for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to service due to such public servant.”

From the perusal of the said Section, it is clear that the petitioner must be a public servant and he must be aggrieved by an order pertaining to the service matter of State of Uttarakhand. To ascertain who is the public servant, is defined in clause (b) of Section 2 of U.P. Public Services Tribunal applicable to Uttarakhand, we have to see the provisions of clause (b) of Section 2 of the Act which is defined as under :-

“ 2. [(b) “public servant” means every person in the service or pay of---

- (i) the State Government ; or
- (ii) a local authority not being a Cantonment Board; or
- (iii) any other corporation owned or controlled by the State Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty per cent of paid up share capital is held by the State Government) but does not include—

- (1) a person in the pay or service of any other company ; or
- (2) a member of the All India Services or other Central Services;]

(bb) “service matter” means a matter relating to the conditions of service of a public servant]”

Thus, the provision of sub-section 2 (b) clearly provides that he must have been in the pay of State Government. The State Government means the State Government of Uttarakhand. Thus, this Tribunal can only entertain the petition of a public servant of the State of Uttarakhand. Now, we have to see whether the petitioner is the public servant of State of Uttarakhand or of the State of Uttar Pradesh. Undisputedly, the petitioner after creation of State is not a member of service of Uttarakhand as such. He did not fulfill the criterion provided under the aforesaid Section 4(1) hence his petition cannot be entertained before this Tribunal.

8. Apart from that, undisputedly both the punishment orders have been passed prior to creation of State of Uttarakhand and creation of this Tribunal.

9. Learned A.P.O. referred to the following judgments of Hon'ble High Court of Uttarakhand :-

“i. W.P. (S/B) No. 33 of 2007, State of Uttarakhand and others Vs. Public Services Tribunal, Uttaranchal & others,

ii. W.P. No. 261 (SB) of 2006, U.P. Jal Nigam through its Chief Managing Director Vs. State of Uttarakhand State Public Services Tribunal & others,

iii. W.P. (S/B) No. 71 of 2013, State of U.P. and another Vs. Dr. Vinod Kumar Bahuguna,

iv. W.P. (S/B) No. 56 of 2005, The State of Uttar Pradesh and others Vs. Khushal Singh Patwal and another.

In all these judgments it has been held that the impugned orders in which cause of action arose prior to creation of State of Uttarakhand could not be challenged before the Uttarakhand Public Services Tribunal.

10. The Hon'ble Supreme Court of India in Civil Appeal No. 3984 of 2012 State of Uttarakhand and another Vs. Umakant Joshi 2012 (1) U.D., 583, in para-11 it has been observed by Hon'ble Supreme Court:-

“11. We have considered the respective submissions. It is not in dispute that at the time of promotion of Class-II officers including Shri R.K. Kahre to Class-I posts with effect from 16.11.1989 by the Government of Uttar Pradesh, the case of respondent No. 1 was not considered because of the adverse remarks recorded in his Annual confidential Report and the punishment imposed vide order dated 23.1.1999. Once the order of punishment was set aside, respondent No. 1 became entitled to be considered for promotion to Class-I post with effect from 16.11.1989. That exercise could have been undertaken only by the Government of Uttar Pradesh and not by the State of Uttaranchal (now the State of Uttarakhand),

which was formed on 9.11.2000. Therefore, the High Court of Uttarakhand, which too came into existence with effect from 9.11.2000 did not have the jurisdiction to entertain the writ petition filed by respondent No. 1 for issue of a mandamus to the State Government to promote him to Class-I post with effect from 16.11.1989, *more so because the issues raised in the writ petition involved examination of the legality of the decision taken by the Government of Uttar Pradesh to promote Shri R.K. Khare with effect from 16.11.1989 and other officers, who were promoted to Class-I post vide order dated 22.1.2001 with retrospective effect.* It appears to us that the counsel, who appeared on behalf of the State of Uttarakhand and the Director of Industries did not draw the attention of the High Court that it was not competent to issue direction for promotion of respondent No. 1 with effect from a date prior to formation of the new State, and that too, without hearing the State of Uttar Pradesh and this is the reason why the High Court did not examine the issue of its jurisdiction to entertain the prayer made by respondent No. 1. ”

The Hon’ble Apex Court has clearly provided that the cause of action arose prior to the date of creation of State of Uttarakhand hence the petitioner was allowed to approach the competent courts within the jurisdiction of the State of Uttar Pradesh. On this ground also the petition is not maintainable before this Tribunal. The Hon’ble High Court in Writ petition No. 71 (S/B) of 2013 State of U.P. & another Vs. Dr. Vinod Kumar Bahuguna has held that-

“After having had noticed the said judgment of the Hon’ble Supreme Court, the Tribunal at Lucknow exclusively applied its mind, whether she had complied with the requisites of the subject Rule. It was contended by her that if her service from 15th February, 1972 to 20th November, 1975, when she worked as Demonstrator, is taken into account, then, she has

served for 20 years as on 22nd October, 1993. It was contended by the State of U.P. that the said period cannot be counted, inasmuch as, provident fund amount was not transferred as is the mandate of the Government Notification dated 10th October, 1974. The Tribunal found that she had not served for 20 years on or before 1st November, 1993 and, accordingly, dismissed the claim petition filed by her with cost of Rs. 200/-. It appears that the members of the Tribunal signed the order dismissing the claim petition on 4th February, 1998. She did not challenge the finding of the Tribunal. Therefore, her claim that she voluntarily retired with effect from 31st January, 1994 came to be decided finally against her. She also accepted the same and, accordingly, on 15th April, 1998, sought permission to join her service. That was not granted. She made a number of representations. On 26th April, 2000, a letter was written by or on behalf of the State of Uttar Pradesh to her stating that she may deposit Rs. 7186.15 towards PF Account. On 5th May, 2000, she deposited the said sum with the Treasury. Thereafter, with a large number of claims, she came before the Public Services Tribunal, Uttarakhand. The State of Uttar Pradesh as well as the State of Uttarakhand were made parties to the claim petition. The Tribunal held that the State of U.P. is required to decide the pending matters regarding grant of voluntary retirement and consequential benefits, including sanction of leave to her.

2. *We are of the view that the Tribunal at Uttarakhand had no power or jurisdiction to issue orders as have been issued by it by the impugned order dated 17th February, 2009 passed on Claim Petition No. 13 of 2002 against the State of Uttar Pradesh. We, accordingly, allow the writ petition and set aside the order of the Public Services Tribunal, Uttarakhand impugned in the writ petition with liberty to Mr. Vinod Kumar Bahuguna, the husband of Smt. Pushpa Bahuguna, to approach the Tribunal at*

Lucknow or the Allahabad High Court as he may be advised pertaining to settlement of all claims of his wife, namely, Dr. Smt. Pushpa Bahuguna, who is since deceased.”

11. Thus, in view of the facts that the petitioner is not the public servant of the State of Uttarakhand and he is the public servant of State of Uttar Pradesh and the punishment orders as well as appellate orders have been passed when the State of Uttarakhand had not been carved-out from the State of Uttar Pradesh. As such, the said petition is not maintainable before this Tribunal. The petitioner may seek his remedy before the competent authority.

ORDER

The petition is dismissed with a liberty to the petitioner to approach before the Uttar Pradesh Public Services Tribunal at Lucknow, as he may be advised pertaining to the settlement of his claims. The parties shall bear their own costs.

Sd/-

U.D. Chaube
Member (A)

Sd/-

Justice J.C.S. Rawat
Chairman

B.K.

Dated :- 17-06-2015