

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

Present: Hon'ble Mr. Rajendra Singh
-----Vice Chairman (J)

REVIEW APPLICATION NO. 01/NB/SB/2024
In
CLAIM PETITION NO. 58/NB/SB/2022

State of Uttarakhand & others

.....**Review Applicants**

vs.

Dr. Lalit Kumar Singh

.....**Petitioner (Respondent)**

Present: Sri Kishore Kumar, A.P.O., for the review applicants
Sri Piyush Tiwari, Advocate for the petitioner (respondent herein)

JUDGMENT

DATED: MAY 02, 2024

This review application has been filed by the State, to review the judgment and order dated 21.04.2023, passed by this Tribunal in Claim Petition No. 58/NB/SB/2022, Dr. Lalit Kumar Singh vs. State of Uttarakhand & others.

2. The review application has been filed by the State, for reviewing the judgment and order dated 21.04.2023 in view of the earlier judgment dated 31.10.2020 of the Division Bench of this Tribunal passed in Claim Petition No. 157/DB/2020, Keshav Lal Todariya and others vs. State of Uttarakhand and others, in which the Hon'ble Tribunal in paragraph no. 13 has held that "According to the petitioners, cut-off date, in the instant case, is illegal. We are not persuaded to accept such contention of Ld. Counsel for the petitioners, for the very reason that, deciding a cut-off date is a policy matter and is within the domain of the Executive. The question is,

can a Court issue a direction to any authority to say that such cutoff date is not proper. If such directions are given by the Court, the same will amount to entering into the realm of Executive, unless the Court finds that it is violative of Article 14 of the Constitution, or contrary to (some other) Rules of the Govt. One person will come and say, for example, that 01.01.2016, as cut-off date, is not proper. Another will come and say 01.01.2015 is not proper. The third one will say 01.01.2014 is not proper. Person, to whom, that date does not suit, will always say that such a date is illegal. There is no end to it. This Tribunal is, therefore, of the view that no direction regarding a cut-off date can be given to the Executive.”

3. Learned A.P.O. on behalf of State (review applicants) further submitted that the aforesaid judgment passed by the Division Bench of this Tribunal was not placed before this Court in which the Hon'ble Tribunal has specifically held that policy matter is within domain of the Executive and if a Court issue any direction to any authority in policy matter, the same will amount to entering into domain of Executive, unless the court finds that the act is violative to Article 14 of the Constitution or contrary to (some other) Rules of the Govt. He further submitted that since in the present matter, the Govt. under his policy has decided to withdraw the non-practicing allowance from the petitioner and thereafter decided to grant the same, thus it is the domain of executive and in view of the aforesaid judgment, the directions given by this Court are contrary to the decision and judgment and order dated 21.04.2023 is liable to be reviewed.

4. Learned Counsel for the petitioner (respondent herein) objected to the applicability of judgment dated 31.10.2020, passed in claim petition no. 157/DB/2020 in the present case and submitted that in the case of Keshav Lal Todariya, the prayer of the petitioner was that they should be given the upgraded pay of the Superintendent Engineer under ACP scheme either from the date of issue of O.M. dated 17.10.2012 or from the date of implementation

of seventh pay recommendations i.e. 01.01.2016. In the present case, petitioner's claim of NPA is neither from the date of OM issued by the Govt. of India nor from the recommendation of Seventh Pay Commission i.e. 01.01.2016. Para 13 of the judgment dated 31.10.2020 in Keshav Lal Todariya, on which respondents are relying also carve an exception of Article 14.

5. The case of the petitioner was decided on merits in the light of precedent set by Hon'ble Supreme Court and on violation of Article 14 & 16 of the Constitution of India. The operative portion of the judgment dated 21.04.2023 is as under:

26. मा० सर्वोच्च न्यायालय के द्वारा एक अन्य मामला मिजोरम राज्य एवं अन्य बनाम मिजोरम इंजीनियरिंग सर्विस एसोसियेशन (2004) 6 Supreme Court Cases 218 में भी समान कार्य के लिए समान वेतन के बावत सिद्धांत प्रतिपादित किया गया। अतः मा० सर्वोच्च न्यायालय द्वारा पारित उपरोक्त विधि व्यवस्थाओं के आलोक में निःसंदेह उत्तराखण्ड राज्य के चिकित्सा स्वास्थ्य एवं परिवार कल्याण विभाग एवं कारागार विभाग के नियमित सरकारी चिकित्सकों को कर्मचारी राज्य बीमा योजना के तहत श्रम विभाग में कार्यरत याचिकर्ता को दिनांक 01.02.2019 से दिनांक 28.09.2020 (अप्रैल, 2019 व मई 2019 को छोड़ कर जो पूर्व एरियर दिया जा चुका है) को राज्य के अन्य स्वास्थ्य एवं परिवार कल्याण व कारागार के चिकित्सकों से भिन्न प्रैक्टिस बंदी भत्ता भुगतान बाबत पारित आदेश दिनांकित 29.09.2020 संलग्नक-15 एवं दिनांकित 08.06.2022 संलग्न 1 पुरी तरह विधि विरुद्ध हैं तथा जो भारतीय संविधान के अनुच्छेद 14 व 16 का उल्लंघन करता है। ऐसी स्थिति में याचिकर्ता को देय निजी प्रैक्टिस बंदी भत्ते के बावत पारित आदेश दिनांकित 29.09.2020 एवं दिनांकित 08.06.2022 केवल याचिकर्ता को देय प्रैक्टिस बंदी भत्ता एरियर के हित लाभ तक अपास्त किया जाता है तथा प्रतिवादी सं० 1 को निर्देशित किया जाता है कि राज्य के स्वास्थ्य एवं परिवार कल्याण तथा कारागार चिकित्सकों के समान याचिकर्ता को देय निजी प्रैक्टिस बंदी भत्ता दिनांक 01.02.2019 से दिनांक 28.09.2020 (अप्रैल व मई, 2019 को छोड़कर जो पूर्व में याचिकर्ता को दिया जा चुका है) के बाबत न्यायोचित आदेश पारित कर उक्त अवधि का एरियर, आदेश प्राप्ति के अन्दर 30 दिन में भुगतान करना सुनिश्चित करें।

6. Learned Counsel for the petitioner placed reliance on the judgment of Hon'ble Supreme Court passed in Review Petition (Civil) no. 1620 of 2023 in Civil Appeal No. 1661 of 2020 and other

connected review petitions, in which, in para 16 has given the gist on the scope of review petition, on the basis of various precedent which is as under:

(i) A judgment is open to review inter alia if there is a mistake or an error apparent on the face of the record.

(ii) A judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

(iii) An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of record justifying the court to exercise its power of review.

(iv) In exercise of the jurisdiction under Order 47 Rule 1 CPC, it is not permissible for an erroneous decision to be "reheard and corrected."

(v) A Review Petition has a limited purpose and cannot be allowed to be "an appeal in disguise."

(vi) Under the guise of review, the petitioner cannot be permitted to reargue and reargue the questions which have already been addressed and decided.

(vii) An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-drawn process of reasoning on the points where there may conceivably be two opinions.

(viii) Even the change in law or subsequent decision/ judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review.

7. Learned Counsel for the petitioner (respondent herein) also relied upon the judgment of Hon'ble High Court, passed in Writ Petition (M/S) No. 1192 of 2018, Dr. Vishal Pratap Singh vs. State of Uttarakhand & others. Para 6 of the judgment is reads as under:

"6. When this writ petition was filed, the respondents were directed to seek instructions, and later on they were directed to file their counter affidavit(s). In the counter affidavit(s), which has been filed by the respondents, the fact, which has come on record is that after the selection of the petitioner dated 05.04.2018, he would have to serve thereafter, wherever 22 ESI centers run and managed by the State are situated in Uttarakhand, where the petitioner is supposed to discharge his services as a consequence of his posting. Since these

centers too fall to be an agency and under an instrumentality of the State of Uttarakhand and being regulated and managed by State as its agency to provide medical facilities to the patients, who approached the center, it would also amount to be rendering the medical services to the public of the State of Uttarakhand itself for which the Bond was executed when petitioner was doing his M.B.B.S. The purpose of Bond was that the Medical Hands should be retained in the State.”

8. I have heard learned Counsel for the parties and have gone through the records available on file.

9. The main ground on behalf of the review applicants is that the aforesaid judgment passed by the Division Bench of this Tribunal, in which the Hon'ble Tribunal has specifically held that policy matter is within domain of the Executive and if a Court issue any direction to any authority in policy matter, the same will amount to entering into domain of Executive, unless the Court finds that the act is violative to Article 14 of the Constitution or contrary to (some other) Rules of the Govt. Further, since in the present matter, the Govt. under his policy has decided to withdraw the non-practicing allowance from the petitioner and thereafter decided to grant the same, thus it is the domain of executive and in view of the aforesaid judgment, the directions given by this Court are contrary to the decision and judgment and order dated 21.04.2023 is liable to be reviewed.

10. This Tribunal vide judgment and order dated 21.04.2023 decided the claim petition on merits in the light of precedent set by Hon'ble Supreme Court and on violation of Article 14 & 16 of the Constitution of India and had observed that 'मा० सर्वोच्च न्यायालय के द्वारा एक अन्य मामला मिजोरम राज्य एवं अन्य बनाम मिजोरम इंजीनियरिंग सर्विस एसोसियेशन (2004) 6 Supreme Court Cases 218 में भी समान कार्य के लिए समान वेतन के बावत सिद्धांत प्रतिपादित किया गया। अतः मा० सर्वोच्च न्यायालय द्वारा पारित उपरोक्त विधि व्यवस्थाओं के आलोक में निःसंदेह उत्तराखण्ड राज्य के चिकित्सा स्वास्थ्य एवं परिवार कल्याण विभाग एवं कारागार विभाग के नियमित सरकारी

चिकित्सकों को कर्मचारी राज्य बीमा योजना के तहत श्रम विभाग में कार्यरत याचिकर्ता को दिनांक 01.02.2019 से दिनांक 28.09.2020 (अप्रैल, 2019 व मई 2019 को छोड़ कर जो पूर्व एरियर दिया जा चुका है) को राज्य के अन्य स्वास्थ्य एवं परिवार कल्याण व कारागार के चिकित्सकों से भिन्न प्रैक्टिस बंदी भत्ता भुगतान बाबत पारित आदेश दिनांकित 29.09.2020 संलग्नक-15 एवं दिनांकित 08.06.2022 संलग्न 1 पुरी तरह विधि विरुद्ध हैं तथा जो भारतीय संविधान के अनुच्छेद 14 व 16 का उल्लंघन करता है।'

11. I have gone through the contents of review application and the objections filed on behalf of the petitioner (respondent herein) and find that there is no error at all in the judgment and order dated 21.04.2023. In the instant case, there is no question of policy matter, but there is discrimination between petitioner, who is serving in ESIS Department with other doctors, serving in State Health & Family Welfare Department. The petitioner (respondent herein) was getting NPA at par with the doctors of the Medical Health Department. The NPA was stopped on the ground that the Govt. vide G.O. dated 23.01.2019 had issued orders for NPA for the doctors of Medical, Health and Family Welfare Department, which was applicable from 01.02.2019, but no orders were issued for the NPA for the employee's department. The petitioner (respondent herein) was further paid NPA for the months of April and May, 2019, which was again discontinued. Further, the Government in the Labour Department had issued G.O. dated 29.09.2020, vide which regular doctors of the ESIS have also been sanctioned NPA @ 20% of the basic pay from the date of issuance of the Government Order. The petitioner's claim is for NPA for the intervening period from 01.02.2019 to 28.09.2020 like doctors of the Medical, Health and Family Welfare Department, who have got NPA continuously without any break and there has been absolute parity in the matter of NPA of doctors of ESIS with the doctors of Medical, Health and Family Welfare Department. The Tribunal had rightly decided the case of the petitioner after considering all the facts and circumstances of the

case available on file, in the light of the precedent set by Hon'ble Supreme Court on violation of Article 14 & 16 of the Constitution of India. In the case law cited above, while analyzing the scope of review the Hon'ble Apex Court held that-'A review petition has a limited purpose and cannot be allowed to be an appeal in disguise. Under the guise of review, the petitioner cannot be permitted to re-agitate and reargue the questions which have already been addressed and decided. An error on the face of record must be such an error which, mere looking at the record should strike and it should not require any long-term process of reasoning on the points where there may conceivable be two opinions.' In view of this, I find that judgment and order dated 21.04.2023 has been passed on merits after considering all the facts and circumstances of the case and there is no any error apparent on the face of record. Hence, the review petition has no force and is liable to be dismissed.

12. Accordingly, the review application is dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

DATE: MAY 02, 2024
DEHRADUN
KNP