

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

CONTEMPT PETITION NO. C-11 /SB/2024

*(Arising out of judgment dated 15.05.2023,
passed in Claim petition No. 108/DB/2019)*

1. Swaraj Singh s/o Shri Sunehra Singh aged about 42 years r/o N- 124, Shivalik Nagar, BHEL Haridwar, District Haridwar presently posted as Workshop Instructor Government Polytechnic Quanshi Chakrata, Dehradun, District Dehradun.
2. Dinesh Kumar Sharma s/o Late Anand Prakash Sharma aged about 49 years r/o Hanuman Gari, Kankhal, Haridwar, District Haridwar presently posted as Workshop Instructor Government Polytechnic Narendranagar, Tehri Garhwal, District Tehri Garhwal.
3. Manoj Joshi s/o Shri Liladhar Joshi aged about 2 years r/o M-6 Shivlok Colony Ranipur, Haridwar, District Haridwar presently posted as Workshop Instructor Government Polytechnic Srinagar, Pauri Garhwal, District Pauri Garhwal.
4. Kaviraj s/o Late Shri Atama Ram aged about 43 years r/o Village Dharmochak, Post Doiwala, Dehradun, District Dehradun presently posted as Workshop Instructor Government Polytechnic Garhi Shyampur, Rishikesh Dehradun, District Dehradun.
5. Dinesh Joshi s/o Shri Satyaprasad Joshi aged about 45 years r/o 38- B Block Pragatinagar, Race Course, Dehradun presently posted as Workshop Instructor Government Polytechnic Narendranagar, Tehri Garhwal, District: Tehri Garhwal.

.....Petitioners/applicants

vs.

1. Sri Dilip Javalkar, Secretary Finance, Government of Uttarakhand, Civil Secretariat, Dehradun.
2. Sri Ravinath Raman, Secretary Technical Education, Government of Uttarakhand, Civil Secretariat, Dehradun.
3. Sri R.P.Gupta, Director, Technical Education, Uttarakhand, Srinagar, Pauri Garhwal.

.....Respondents/O.Ps.

Present: Sri Shashank Pandey, Advocate, for the petitioners/ applicants. (online)
Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

No notices were issued to the alleged contemnors/ O.Ps.

JUDGMENT

DATED: MAY 27, 2024

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed on behalf of the petitioners/applicants against alleged contemnors/ opposite parties, for summoning the contemnors & punishing them for deliberately and blatantly flouting the judgment and order dated 15.05.2023 passed by the Tribunal in Claim Petition No. 108/DB/2019, Swaraj Singh & others vs. State of Uttarakhand & others, so that it may act as a deterrent precedent for the other erring officials.

2. One of the petitioners/ applicants, namely, Sri Swaraj Singh has filed affidavit in support of the contempt petition.

3. Relevant documents have been filed on behalf of the petitioners/ applicants along with the contempt petition.

4. The Tribunal has requested Sri V.P.Devrani, Ld. A.P.O., to assist the Bench in disposing of present contempt petition.

5. Rule 50 of the Uttar Pradesh Public Services (Tribunal) Rules, 1992, reads as below:

“50. Initiation of proceedings.—(1) Any petition, information or motion for action being taken under the Contempt shall, in the first instance, be placed before the Chairman.

(2) The Chairman or the Vice-Chairman or such other Members as may be designated by him of this purpose, shall determine the expediency or propriety of taking action under the Contempt Act.”

[Emphasis supplied]

6. Sri Shashank Pandey, Ld. Counsel for the petitioners/applicants drew attention of the Tribunal towards paragraph 16 of the judgment dated 15.05.2023 and submitted that whereby the Tribunal was pleased to direct the respondents to look into the matter and to grant the pay scales to the

petitioners, alleged contemnors/O.Ps. have not considered the order passed by the Tribunal and rejected the representation of the petitioners *vide* office order dated 02.04.2024 (Annexure: A-4). Ld. Counsel for the petitioners/applicants also submitted that O.P. No.3 (Sri R.P. Gupta, Director, Technical Education, Uttarakhand, Srinagar, Pauri Garhwal) refused to comply with the order of the Tribunal on the basis of some other order of the Tribunal which was passed on 31.10.2020 in Claim Petition No. 157/DB/2019, Keshav Lal Todariya & others vs. State of Uttarakhand & others, which case has no bearing on the facts of present petition. O.P. No.1 wrote letter on 21.06.2023 to O.P. No. 2, mentioning therein that the salary can be raised only from the date from which G.O. permits to do so and directed O.P. No.2 to act accordingly (Copy of letter dated 21.06.2023: Annexure- A 2). Petitioners/applicants made representation(s) to Respondents/ O.Ps. on 28.07.2023 (Annexure: A-3), which was rejected by O.P. No.3, on the basis of order passed in Keshav Lal Todariya's decision (*supra*). Thus the O.Ps. have not considered the order passed by the Tribunal on 15.05.2023 in Claim Petition No. 108/DB/2019, Swaraj Singh & others vs. State of Uttarakhand & others and have wrongfully rejected the representation of the petitioners *vide* office order dated 02.04.2024 (Annexure: A-4).

7. Relevant paragraphs of the judgment dated 15.05.2023 passed in Claim Petition No. 108/DB/2019, Swaraj Singh & others vs. State of Uttarakhand & others are reproduced herein below for convenience:

“2. The case of the petitioners in brief is that (i) the posts of junior engineers of Govt. departments (ii) workshop instructors of ITI (iii) workshop instructors of polytechnics had the same necessary qualification while for the post of workshop instructors of polytechnics, additional 3 years of work experience was necessary. In the 3rd and 4th pay commission, the pay scales of the workshop instructors of Govt. polytechnics were higher than the pay scales of junior engineers of Govt. departments and workshop instructors of ITI. In the 5th pay commission, the pay scales of junior engineers of Govt. departments were revised to Rs. 4500-7000/- while the pay scales of workshop instructors of polytechnics and workshop instructors of ITIs were revised to Rs. 5000-8000/-. Later, on 11.02.2003, the pay scales of junior engineers in Govt. departments were also upgraded to Rs. 5000-8000/-. The scale of Rs. 5000-8000/- was revised to Rs. 9300-34800/-, grade pay Rs. 4200/- for the above three posts. However, pay scale of junior engineers of Govt. departments was upgraded to Rs. 9300-34800, grade pay Rs. 4600/- notionally from 01.01.2009 and actually from 01.03.2013 while the pay scale of workshop instructors of polytechnics was upgraded to Rs. 9300-34800, grade pay Rs. 4600/- *vide* G.O. dated 31.01.2018 with immediate effect.

2.1 The demand of the workshop instructors of polytechnics is that the 6th commission pay scale of Rs. 9300-34800/-, grade pay Rs. 4600/- be made effective for them, notionally from 01.01.2009 and actually from 01.03.2013 as has been done in the case of junior engineers of Govt. departments.

6. The above affidavits imply that the upgraded grade pay of Rs. 4600/- cannot be given to the workshop instructors of Govt. polytechnics notionally from 01.01.2009 and actually from 01.03.2013 because ordinarily all the G.O.s regarding revision of pay scale are issued with immediate effect. It is further stated that in case, the pay scale of junior employee becomes higher than the pay scales of senior employee, then there is provision in part 2 to 4 of Vol. 2 of Financial Handbook to increase the pay scale of the senior employee so that the pay scale of both the employees becomes equivalent. However, if on a certain given date, the pay of senior employee becomes equal to the pay of junior employee, then there is no provision of increasing the pay of the senior employee on the basis of his seniority. It is also stated that the pay scale of the junior engineers of Govt. departments has been upgraded as the pay scale of the feeding cadre post i.e. *Manchitrakar* became equivalent to the pay scale of promotional post i.e. junior engineer; moreover, 75 % posts of junior engineer were created in the name of Addl. Assistant Engineer in the pay scale of 9300-34800, grade pay Rs. 4800/-, which again led to an anomaly.

7. The Tribunal observes that the reasons as stated in para 6 above were not compelling circumstances for the Govt. to increase the pay scale of junior engineers of Govt. departments from grade pay Rs. 4200/- to Rs. 4600/- and for this increase having made notional from 01.01.2009 and actually from 01.03.2013. This has been according to the will of the Govt. and as per the decisions taken in various meeting with the office bearers of Diploma Engineers Mahasangh. The Govt. at that time did not consider that granting this enhanced pay scale notionally from 01.01.2009 and actually from 01.03.2013 would cause similar demands to be made by other similarly placed persons or that Govt. Orders regarding upgradation or amendment of pay scale are issued with immediate effect only. Therefore, these arguments cannot hold ground in the case of petitioners.

8. Further contention of the respondents is that the service rules of the junior engineers and workshop instructors of Govt. departments and workshop instructors of ITI are different and no parity can be claimed between unequal cadres. The Tribunal notes that the service rules being different is not an issue as the 6th pay commission grade pay of the workshop instructors of the polytechnics has already been enhanced to Rs. 4600/-. The issue before this Tribunal is whether this enhancement of grade pay of workshop instructors of polytechnics should be done notionally from 01.01.2009 and actually from 01.03.2013.

9. The respondents have also taken the plea that the petitioners were not appointed on 01.01.2009 as such the question of granting the upgraded grade pay of Rs. 4600/- w.e.f. 01.01.2009 to them does not arise. Learned Counsel for the petitioners contended that the justification is of granting notional pay for the post and not for the person. Therefore, the petitioners are entitled to upgraded grade pay of Rs. 4600/- from the dates of joining the service which are in subsequent months of 2009 and actually from 01.03.2013 as has been done for the junior engineers of the Govt. departments.

10. We have perused the copies of the note-sheets of the Govt. file annexed along with supplementary affidavit of respondent no. 2 and according to the same, the grade pay of workshop instructors of Govt. polytechnics has been upgraded to Rs. 4600/- keeping in view the recommendation of the pay committee and acceptance of the same by the Finance Department and accordingly the G.O. dated 31.01.2018 has been

issued vide which the enhanced grade pay of Rs. 4600/- has been given to workshop instructors of Govt. polytechnics with immediate effect. The further notings are about the demand for granting the upgraded grade pay notionally w.e.f. 01.01.2009 and actually w.e.f. 01.03.2013, which state that similar demands can be raised by other Govt. departments which will lead to excessive financial burden on the State and there is no opportunity for accepting such request in view of the limited financial resources of the State; the benefit of 7th pay commission pay scales have been granted and unless some anomaly comes to light with the upgraded pay scales of 5th and 6th pay commission, they cannot be considered to be made effective from back date. Accordingly, the representation of the petitioners was rejected vide G.O. dated 12.10.2018 (copy Annexure: A2). After the order of this Tribunal dated 06.02.2019 passed in claim petition no. 22/DB/2019, the petitioner no. 1 again gave a representation, which has been rejected vide Office Memorandum dated 07.05.2019 (copy Annexure: A1).

11(12). The Tribunal observes that while granting enhanced grade pay of Rs. 4600/- to junior engineers of Govt. departments notionally from 01.01.2009 and actually from 01.03.2013, the issue of limited financial resources of the State and burden thereon, and the fact that normally the grade pays are given with immediate effect and not from back date were not considered by the Govt. The Tribunal further observes that in the 3rd, 4th and 5th pay commission, the pay scale of the workshop instructors of Govt. polytechnics was more than the pay scale of the junior engineers of Govt. departments and it was only in 2003 that the pay scale of junior engineers of Govt. departments was made equal to the pay scale of workshop instructors of Govt. polytechnics. Therefore, on the basis of equality, the petitioners are entitled to be considered to be granted the upgraded grade pay Rs. 4600/- notionally from their date of joining the services in 2009 and actually from 01.03.2013 in parity with the junior engineers of the Govt. departments.

15 (16). In view of the above, the Tribunal directs that the respondents shall consider the case of the petitioners for granting them grade pay of Rs. 4600/- since their dates of joining in 2009 notionally and actually from 01.03.2013 as has been done for the junior engineers of Govt. departments. Accordingly, the Office Memorandum dated 07.05.2019 (copy Annexure: A1) and G.O. dated 12.05.2018 (copy Annexure: A2) are hereby set aside. The petitioners shall make a fresh representation to the respondents with the certified copy of this order within a period of two weeks, on which respondents will take suitable decision by passing a reasoned and speaking order in consonance with the observations made in this order of the Tribunal within a period of three months thereafter.”

8. An act or omission attracts contempt action only when there is willful disobedience of any judgment, order, direction etc. of the Court.

9. It is difficult for the Tribunal to ascertain, without issuing notice or calling upon the replies of the O.Ps., that the disobedience, if any, is willful or not. At present, the Tribunal is not entering into the merits of the contempt petition for the reasons indicated in the following paragraphs of the judgment.

10. Since it has been argued by Ld. Counsel for the petitioners/applicants that respondents/ opposite parties, by passing order dated 02.04.2024 have flouted the observations of the Tribunal, as contained

in para 15 (16) of the decision dated 15.05.2023 passed in Claim Petition No. 108/DB/2019, Swaraj Singh & others vs. State of Uttarakhand & others, the Tribunal deems it appropriate that instead of issuing notices to the O.Ps. or calling upon them to file their replies, should direct them to comply with, if they have not complied with the observations and directions of the Tribunal, as contained in judgment/order dated 15.05.2023 passed in Claim Petition No. 108/DB/2019, inasmuch as one of the objectives of the contempt action is to secure or enforce the compliance of the orders of the Court.

11. Ld. Counsel for the petitioners/applicants submitted that such a direction shall serve the purpose of contempt petition, as of now. The Tribunal is of the view that the O.Ps. should be given opportunity to consider, if they have not considered the judgment of the Tribunal, in its correct perspective, so far.

12. In the circumstances, as have been narrated above, the Tribunal does not feel it proper or expedient to take action against the alleged contemnors/ opposite parties under the Contempt of Court Act, at this stage.

13. The contempt petition is disposed of at the admission stage, with the observations, as above.

14. Let copies of this order be served in the offices of the respondents/ opposite parties by one of the petitioners/ applicants to enable the opposite parties to relook into the matter and do the needful.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 27, 2024
DEHRADUN

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