

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

Present: Hon'ble Mr. Rajendra Singh
..... Vice Chairman (J)
Hon'ble Mr. A. S. Rawat
..... Vice Chairman (A)

CLAIM PETITION NO. 33/NB/DB/2023

Tejpal Singh (Male, aged about 62 years) S/o Late Gokul Singh, R/o
Pahadi Colony, ward No 11, Bazpur, Distt Udham Singh Nagar.

.....Petitioner

Vs

1. State of Uttarakhand through Secretary, Elementary Education, Dehradun, Govt. of Uttarakhand, Dehradun.
2. Director, School Education, (Elementary) Uttarakhand, Dehradun.
3. Additional Director (Elementary Education) Kumaun Mandal, Nainital.
4. Chief Education Officer, Udham Singh Nagar.
5. District Education Officer (Elementary Education), Udham Singh Nagar.

.....Respondents

Present: Sri Tribhuvan Chandra Pandey, Advocate for the petitioner
Sri Kishore Kumar, A.P.O. for the respondents

JUDGMENT

Dated: 18th December, 2024

Hon'ble Mr. A.S. Rawat, Vice Chairman (A)

This claim petition has been filed seeking the following reliefs:-

"1. To issue an order to quash/set-aside the impugned appellate order dated 24.02.2022 passed by the Addl. Director (Elementary Education) Kumaun Mandal Nainital/Respondent No. 3 (Annexure No. 1) as well as the impugned termination order dated 30.07.2020 passed by the

District Education Officer (Elementary Education), Udham Singh Nagar/respondent No. 5 (Annexure No. 2).

II. To issue an order directing the respondent authorities to forthwith to release the withheld salary of the petitioner w.e.f. 02.06.2016 till 31.01.2019 (the date of his retirement) and all the retiral dues along with admissible interest on delayed payment.”

III. An order or direction allowing the application with cost.

IV. Any other order or further order or direction which this Hon'ble Tribunal may deem just, fit and proper in the circumstances of the case in favour of the applicant.”

2. Brief facts of the case are as follows:

2.1 The petitioner was appointed as an Assistant Teacher in Govt. Primary School Thali (Okhalkanda). District Nainital vide appointment order No. 152 dated 02.03.1995. He was promoted on the post of Head Master in Govt. Primary School, Majra Khambari, Block Bazpur, District Udham Singh Nagar vide order dated 12.12.2008.

2.2 Due to anonymous complaint against the teachers the services of the petitioner were terminated vide order dated 02.06.2016 by the respondent No. 5 without due procedure of law on the ground that his BTC certificate is forged.

2.3 Aggrieved by the illegal termination order, the petitioner filed a writ petition WPSS 2094 of 2016 before the Hon'ble High Court of Uttarakhand whereby the termination order dated 02.06.2016 was quashed by the Hon'ble High Court vide its judgment & order dated 21.04.2017 and directed the respondents to reinstate the petitioner along with all consequential benefits.

2.4 Against the said judgment & order the respondents preferred Special Appeal No. 623 of 2017, whereby the Hon'ble Division Bench vide order dated 13.02.2019 modified the order of the Hon'ble Single Judge and directed that the petitioner would be placed under suspension and would be paid subsistence allowance and further directed the respondents to complete the disciplinary enquiry expeditiously as per law.

2.5 In compliance of the order dated 13.02.2019 passed in SPA No. 623 of 2017, the respondent No. 5 passed an order dated 21.05.2019 whereby the termination order of the petitioner was recalled and the petitioner was put under suspension till completion of the departmental enquiry.

2.6 After receiving the order dated 21.05.2019, the petitioner moved a representation dated 11.06.2019 to respondent No. 5 that the petitioner has been put under suspension whereas he has attained the age of superannuation on 17.01.2019, therefore, the order dated 21.05.2019 is unsustainable and requested to pay his retiral dues.

2.7 The petitioner attained age of superannuation on 31.01.2019 and the respondent No. 5 has passed the termination order dated 30.07.2020 (Annexure No. 2) without adhering to the provisions contained in Uttarakhand Government Servant (Disciplinary and Appeal) Rules, 2003 and terminated the services of the petitioner by upholding the earlier termination order dated 02.06.2016 as valid.

2.8 Against the impugned termination order dated 30.07.2020, the petitioner filed a writ petition WPSS 1383 of 2021 before the Hon'ble High Court. The Hon'ble High Court vide its judgment & order dated 28.10.2021 dismissed the writ petition with the observation that "Since the termination too, herein, would fall to be within the ambit of the provisions contained under the Disciplinary and Appeal Rules of 2003, it would yet again be an order, which would be appealable before the competent next superior appellate authority, to the authority, who has passed the impugned order of termination. Hence, this writ petition is dismissed with the liberty left open for the petitioner to prefer an appeal under Rule 11 of the Rules of the 2003.

2.9. However, it is provided, that if the petitioner prefers an appeal, as directed above, within a period of three weeks' from today. The same would be decided by the competent appellate authority, within a period of three months from the date of its presentation subject to the above exception of preference of an appeal under Rule 11 of the Rules of 2003, the writ petition is dismissed.

2.10 In pursuance to the judgment and order dated 28.10.2021 passed in writ petition No. 1383 of 2021, the petitioner preferred a departmental appeal under section 11 of Uttarakhand Government Servant (Disciplinary and Appeal) Rules of 2003 before the respondent No. 3 on 16.11.2021.

2.11 The departmental appeal has been disposed of and rejected by the respondent No. 3 vide its decision dated 24.02.2022 which was never communicated to the petitioner and he sought information under Right to Information Act on 16.01.2023, which is replied along with rejection order passed in departmental appeal vide its letter dated 31.01.2023.

2.12 There is no such report that the petitioner's BTC certificate is forged, however, the petitioner personally visited the office of the respondent No. 5 and submitted his original BTC certificate having Roll No. 539 of 1983 but without conducting any departmental enquiry the respondent No. 5 passed impugned termination order 02.6.2016.

3. C.A./W.S. has been filed on behalf of respondent no. 5, in which, it has been stated as follows:

3.1 याची बी.टी.सी. अनुक्रमांक 21025 वर्ष 1983 के आधार पर कार्यालय जिला बेसिक शिक्षा अधिकारी, नैनीताल के आदेश संख्या 152 दिनांक 02.03.1995 द्वारा विभाग में प्राथमिक विद्यालय, थली (ओखलकाण्डा) में सहायक अध्यापक के पद पर सेवा योजित हुए थे। याची के साथ 27 अन्य शिक्षकों के विरुद्ध फर्जी प्रमाणपत्रों के आधार पर सेवा योजित होने की शिकायत विभिन्न श्रोता से इस कार्यालय को प्राप्त हुई जिनके प्रमाणपत्रों के सत्यापन हेतु विशेष वाहक के माध्यम से जाँच पत्रांक 6077-79 दिनांक 21.12.2015 द्वारा सचिव, परीक्षा नियामक प्राधिकारी उ०प्र०, इलाहाबाद को प्रेषित किया गया। कार्यालय, सचिव, परीक्षा नियामक प्राधिकारी उ०प्र०, इलाहाबाद के पत्रांक 5189 दिनांक 21.01.2016 द्वारा अवगत कराया गया कि अनुक्रमांक आवंटित नहीं है।

3.2 निदेशक, प्रारम्भिक शिक्षा के निर्देश के क्रम में इस कार्यालय के आदेश संख्या 319 दिनांक 10.03.2016 के द्वारा याची को निलम्बित किया गया तथा पत्रांक 8013-15 दिनांक 10.03.2016 द्वारा आरोप पत्र दिया गया।

3.3 याची के द्वारा समयान्तर्गत पुष्ट साक्ष्य प्रस्तुत न करने के कारण पुनः इस कार्यालय के पत्रांक 41-43 दिनांक 04.04.2016 द्वारा याची को 15 दिन का अन्तिम अवसर प्रदान किया गया। याची के द्वारा सपुष्ट साक्ष्य प्रस्तुत न करने के कारण इस कार्यालय आदेश संख्या 42 दिनांक 02.06.2016 द्वारा सेवा से बर्खास्त किया गया।

3.4 याची के द्वारा बर्खास्तगी आदेश संख्या 42 दिनांक 02.06.2016 के विरुद्ध मा० उच्च न्यायालय उत्तराखण्ड, नैनीताल में रिट याचिका संख्या 2094/याची के सेवा अभिलेखों में बी०टी०सी० अनुक्रमांक 21025 वर्ष 1983 का प्रमाणपत्र धारित है। उक्त याचिका का विरोध इस कार्यालय द्वारा प्रतिशपथपत्र दाखिल करते हुए किया गया एवं सभी तथ्यों से मा० न्यायालय को अवगत कराया गया।

3.5 मा० न्यायालय द्वारा रिट याचिका संख्या 2094/एस०एस०/2016 दिनांक 21.04.2017 स्वीकार की गई। शासन के दिशा निर्देशानुसार इस कार्यालय द्वारा प्रकरण में विशेष अपील संख्या 623/2017 उत्तराखण्ड राज्य व अन्य बनाम तेज पाल सिंह योजित की गई जो मा० न्यायालय द्वारा दिनांक 13.02.2019 को निस्तारित की गई। याची द्वार अपने प्रार्थना पत्र दिनांकित 04.04.2019 के द्वारा निदेशक, प्रारम्भिक शिक्षा, उत्तराखण्ड, देहरादून के पत्रांक 27590 दिनांक 30 मार्च 2019 का अनुपालन करने की याचना की गई।

3.6 मा० न्यायालय द्वारा विशेष अपील संख्या 623/2017 उत्तराखण्ड राज्य अन्य बनाम तेज पाल सिंह में पारित निर्णय दिनांक 13.02.2019 एवं निदेशक, प्रारम्भिक शिक्षा उत्तराखण्ड, देहरादून के पत्रांक 1747—दिनांक 07 मई 2019 के अनुपालन में इस कार्यालय के आदेश संख्या 44 दिनांक 21.05.2019 के द्वारा श्री तेज पाल सिंह के बर्खास्तगी आदेश संख्या 42 दिनांक 02.06. 2016 को स्थगित करते हुए निलम्बन आदेश संख्या 319 दिनांक 10.03.2016 को यथावत् रखा गया।

3.7 याची के द्वारा इस कार्यालय क आदेश संख्या 44 दिनांक 21.05.2019 का अनुपालन नहीं किया गया एवं दिनांक 12.06.2019 का अपने प्रार्थना पत्र के माध्यम से अवगत कराया गया कि उनकी जन्मतिथि 17.01.1959 है एवं वह दिनांक 17.01.2019 को अधिवर्षता आयु पूर्ण कर चुका है एवं सेवानिवृत्त लाभों यथा फंड, जी०पी०एफ०, पेशन, ग्रेच्युटी इत्यादि का भुगतान करने की माँग की गई।

3.8 इस कार्यालय के पत्रांक 3107 दिनांक 08.07.2019 द्वारा याची के प्रार्थनापत्र अदिनांकित पर निदेशक प्रारम्भिक शिक्षा उत्तराखण्ड देहरादून से दिशानिर्देश चाहे गये। निदेशक, प्रारम्भिक शिक्षा, उत्तराखण्ड देहरादून के पत्रांक 8738 दिनांक 27.07.2019 द्वारा प्रकरण में शासनादेश संख्या 391 दिनांक 28.04.2003 एवं अनुच्छेद 351—। के अनुसार अग्रेत्तर कार्यवाही करने के निर्देश दिये गये हैं। निदेशक, प्रारम्भिक शिक्षा, उत्तराखण्ड, देहरादून के पत्रांक 8954—57 दिनांक 30.07.2019 के अनुपालन में विकास खण्ड, बाजपुर में गठित जाँच समिति द्वारा फर्जी प्रमाणपत्रों के आधार पर कार्यरत शिक्षकों की जाँच कर कार्यालय पत्रांक 808 दिनांक 10.12.2019 के द्वारा जाँच आख्या एवं सत्यापन मुख्य शिक्षा अधिकारी, ऊधम सिंह नगर को प्रेषित की गई है (संलग्नक—07)। याची का बी०टी०सी० प्रमाणपत्र अनुक्रमांक 21025 वर्ष 1983 फर्जी पाये जाने के कारण इस कार्यालय के आदेश संख्या 251 दिनांक 31.07.2020 द्वारा पूर्व पारित आदेश संख्या 42 दिनांक 02.06.2016 को यथावत् रखने के आदेश निर्गत किये गये (याचिका का संलग्नक—2)।

3.9 याची के द्वारा रिट याचिका संख्या 2094/एस०एस०/2016 में मा० न्यायालय द्वारा पारित निर्णय दिनांक 21.04.2017 का अनुपालन न करने के सम्बन्ध में अवमानना याचिका संख्या 316/2017 तेजपाल सिंह बनाम अशोक गुसाई (जिला शिक्षा अधिकारी, प्रा०शि०,

ऊधम सिंह नगर) योजित की गई थी जो मा०न्यायालय द्वारा दिनांक 12.08.2021 को खारिज कर दी गई। याची द्वारा विभागीय अपीलीय अधिकारी, मण्डलीय अपर निदेशक, प्रा० शि० कुमाऊँ मण्डल, नैनीताल के सम्मुख उत्तराखण्ड सरकारी सेवा (अनुशासन एवं अपील) नियमावली 2003 यथा संशोधित की धारा 11 के क्रममें विभागीय अपील प्रस्तुत की गई जो कार्यालय मण्डलीय अपर निदेशक, प्रा० शि० कुमाऊँ मण्डल, नैनीताल के आदेश संख्या 140 दिनांक 24.02.2022 के द्वारा याची के बर्खास्तगी आदेश को उचित ठहराया गया।

3.10 विभिन्न श्रोतों से प्राप्त शिकायतों के आधार पर याची सहित 27 अन्य शिक्षकों के बी०टी०सी० प्रमाण-पत्रों की जाँच हेतु विशेष वाहक कार्यालय, सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र०, इलाहाबाद भेजा गया था। कार्यालय सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र०, इलाहाबाद के पत्रांक 5189 दिनांक-21.01.2016 द्वारा अवगत कराया गया कि याची के बी०टी०सी० प्रमाणपत्र का अनुक्रमांक आवंटित नहीं है। जिसके आधार पर निदेशक, प्रा०शि०, उत्तराखण्ड के पत्रांक-29803 दिनांक-16.02.2016 के अनुपालन में याची का आरोपपत्र देने के उपरान्त दिनांक 02.06.2016 को सेवा से बर्खास्त किया गया था। विशेष अपील संख्या 623/2017 में मा० न्यायालय द्वारा पारित निर्णय दिनांक-13.02.2019 एव निदेशक, प्रा० शि०, उत्तराखण्ड के पत्रांक-27590 दिनांक 30.03.2019 के अनुपालन में कार्यालय के आदेश संख्या-44 दिनांक-21.05.2019 द्वारा याची के बर्खास्तगी आदेश दिनांक-02.06.2016 को स्थगित कर निलम्बन आदेश दिनांक-10.03.2016 को यथावत् रखा गया। याची द्वारा अधिवर्षता आयु पूर्ण होने के सम्बन्ध में प्रार्थनापत्र प्रस्तुत किये जाने पर इस कार्यालय के पत्रांक 3107 दिनांक-08.07.2019 द्वारा निदेशक, प्रा०शि० उत्तराखण्ड, देहरादून से दिशानिर्देश चाहे गये निदेशालय के पत्रांक-8738 दिनांक-27.07.2019 द्वारा प्रकरण में शासनादेश सं० 391 दिनांक-28.04.2003 एव अनुच्छेद 351-ए के अनुसार अग्रेतर कार्यवाही करने के निर्देश दिये गये। पुनः जाँच में याची के बी०टी०सी० प्रमाणपत्र कूट रचित पाये गये। उप शिक्षा अधिकारी, बाजपुर की जाँच आख्या दिनांक-10.12.2019 के आधार पर इस कार्यालय के आदेश दिनांक-31.07.2020 द्वारा पूर्व पारित आदेश दिनांक-02.06.2016 को यथावत् रखा गया। अतः याची की याचिका खारिज होने योग्य है।

4. Petitioner has filed R.A. to the C.A/W.S. on behalf of respondent no. 5 and denied the contention made in C.A./W.S. and it has been stated that-

4.1 On 02.03.1995, the petitioner was appointed as an Assistant Teacher Govt. Primary School and on 12.12.2008 he was promoted on the post of Head Master and he worked in the education department for about 23 years with utmost satisfaction of the senior authorities and all the documents of the petitioner were verified by the respondent department and no complaint was received that any of the certificate of the petitioner is forged. The respondent authorities are duty bound to verify all the documents of the newly appointee before giving him

joining and as per service law when an employee is appointed, subsequent thereto, the documents are verified in order to ensure its sanctity and authenticity, more so, the petitioner was promoted on the post of head master and at this stage the documents are also verified and scrutinize. Hence, after retirement of the petitioner no defect in it could have been pointed out based on private complaint without any force.

4.2 Therefore, it is totally oppressive and arbitrary behavior of the respondents toward the petitioner. The petitioner attained age of superannuation on 31.01.2019 and the respondent No. 5 have passed the termination order dated 30.07.2020 without adhering to the provisions contained in Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 and terminated the services of the petitioner by upholding the earlier termination order dated 02.06.2016 as valid.

4.3 There is no such law to terminate the service of an employee after his retirement and no departmental proceedings could have been initiated against the petitioner after his superannuation as master and Servant relation ceased to exist after 31.01.2019.

4.4 Therefore, entire proceeding of termination of the petitioner after superannuation of the petitioner is illegal and void.

4.5 It is submitted that though the remedy of revision is provided under Rule 13 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 but the same is just camouflage for an aggrieved employee because the respondent authorities have terminated the services of the petitioner twice without due procedure of law and further the appellate authority uphold the illegal termination order. The petitioner attained the age of superannuation and retired from service then no disciplinary action under the Rule, 2003 is applicable. Even the G.O. date 28.04.2003 (Annexure No. 6 of counter affidavit) clearly says it should be ensured prior to three years before of the retirement of an employee that any disciplinary proceeding is to be initiated against him.

4.6 It is further submitted that there is no such report the petitioner's BTC certificate is forged, however, the petitioner personally

visited the office of the respondent No. 5 and submitted his original BTC certificate having Roll No. 539 of 1983 but without conducting any departmental enquiry the respondent No. 5 passed impugned termination order. In the facts and circumstance stated above, the Claim Petition deserved to be allowed.

5. We have heard learned Counsel for the parties and perused the record carefully.

6. Learned Counsel on behalf of the petitioner has pleaded that termination order dated 30/7/2020 has been passed by confirming the earlier order 02/06/2016. The petitioner has retired on 30/01/2019 before passing the impugned judgement dated 30/7/2020. No departmental proceeding can be initiated against the petitioner after retirement. The provisions of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 were not followed. The documents of the petitioner have been verified after 21 years of the service, whereas the documents are verified at the time of appointment. No defect has been found in the certificate on the complaint.

7. Learned Counsel for the petitioner has further pleaded that as on today, no departmental proceeding is pending against the petitioner and it can be initiated only under article 351 -A of Civil Services Regulations. Nothing is pending against him except the SIT enquiry. The retiral benefits cannot be withheld on the basis of this enquiry. He has relied on the judgement of this Tribunal in the claim petition No 159/SB/2022, wherein the petitioner relied on the judgement of the Hon'ble Tribunal in the claim petition 159/ SB/2022. The relevant portion of the judgement is as below:

"It is pointed out Government order No 979/ XXVII(#)/Pay/ 2004 dated 10/8/2004 has been issued by the Government of Uttarakhand to regulate the interest on delayed payment of gratuity etc. as admissible and the amount of gratuity which has been already paid to the petitioner as per GO dated 10/08/2004. The rate of interest pay able on the General Provident fund till the date of actual payment.

8. Learned Counsel for the petitioner has further argued that in the light of aforesaid Tribunal's order, the Tribunal directed the

respondents to release the retiral benefits, withheld salary with admissible interest without unreasonable delay.

9. Learned A.P.O. pleaded that the departmental proceedings against the petitioner were started against in 2016, the petitioner did not reply the show-cause notice issued by the respondent no 4 within the stipulated time, then respondents no. 4 passed order of termination of the petitioner. The termination order was quashed by the Hon'ble High Court by the order passed in the WPSS 2094 dated 21.04.2017. Subsequently on the Special Appeal No. 643/2017 of the respondents, the Hon'ble High Court ordered on 13/02/2019 that while the termination order is set aside, the petitioner will remain under suspension and the respondents will complete the departmental enquiry expeditiously. In the meantime, the petitioner superannuated on 31/01/2019. In compliance of Hon'ble High Court's order dated 13.02.2019, respondent authority has constituted a departmental enquiry under Deputy Education Officer, Bajpur. Learned A.P.O. has further argued that the SIT investigating the complaint of forged certificates in the appointment of the teachers has submitted their report and informed that no certificate has been issued in favour of the petitioner by the number mentioned in the BTC certificate of the petitioner. So based on the report of the SIT and also DEO, Bajpur dated 21/5/2019, the petitioner was terminated vide the order dated 20/ 07/2019. In view of the facts mentioned, the petitioner cannot be given the pension, gratuity and other benefits as the petitioner was under suspension and was subjected to the department enquiry was going on against him.

10. Based on the documents presented and the arguments of the learned Counsel for the parties, we are of the opinion that the petitioner was terminated in 2016. The termination order was quashed by the order dated 2017 of the Hon'ble High Court in the WPNo.2094 of 2017. The Court ordered for reinstatement and payment of consequential benefits. The respondents appealed against the aforesaid judgement of the Single Bench and the Division Bench modified the order of the Single Bench and ordered that the petitioner will be paid subsistence allowance and will remain under suspension till departmental enquiry

is completed. The respondents were directed to complete the enquiry expeditiously. The department issued the order of suspension vide order dated 10.03.2016. So the petitioner remained under suspension on the date of retirement on 30.01.2019. The departmental proceedings against the petitioner have been initiated before retirement. So the retiral dues has been withheld by the respondents.

In these circumstances, the aforesaid judgment of this Tribunal in claim petition no. 159/SB/2022, as relied upon by the petitioner, is not applicable in the instant case, as the petitioner was under suspension on the date of retirement and departmental proceeding was going on against him. So, the petitioner is not entitled to be paid the pension, gratuity, GPF and interest on the retiral dues.

ORDER

The claim petition is dismissed. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(A.S .RAWAT)
VICE CHAIRMAN (A)

DATE: 18TH DECEMBER, 2024
DEHRADUN
KNP