

**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.56/NB/DB/2023

Rajkamal (Male), aged about 55 years, S/o Shri Meghnath Sharma, Resident of Ward No. 6,000,Gujaratiyan Jaspur, Udham Singh Nagar, Uttarakhand-244712.

.....Petitioner

Vs

1. State of Uttarakhand through Secretary, Elementary Education Department, Government of Uttarakhand, Dehradun.
2. Director (Elementary Education) Uttarakhand, Nanoor Kheda, Dehradun.
- 3, District Education Officer (Elementary Education), Udham Singh Nagar.
4. Mr. R. S. Negi (Male), S/o Not Known, Block Education Officer, Kashipur Udham Singh Nagar (Inquiry Officer).

.....Respondents

Present: Sri D.S.Patni, Senior Advocate, assisted by
Sri Mahendra Singh Rawat, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O., for the respondent no.1
Sri Jagdish Bisht, Advocate, for the respondents no. 2 & 3
Sri Harish Adhikari, Advocate, for the respondent no. 4

JUDGMENT

DATED: FEBRUARY 03, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN(A)

By means of present claim petition, the petitioner seeks the following reliefs:

“a) To set aside the impugned termination from service order dated 18-08-2021 passed by respondent No. 3 (Annexed as Annexure No. 1 to this claim petition.) and impugned order dated 02 December, 2021 passed by the Appellate Authority (Annexed as Annexure No. 2 to this claim

petition) and the impugned order dated 10.10.2022, served to petitioner in February 2023 along with compliance affidavit in contempt petition no. 349/2022 (wherein the Hon'ble High Court has given liberty to challenge the Revisional Authority order before appropriate forum). (Annexed as Annexure No.3 to this claim petition) passed by the Revisional Authority and further prays that direct the respondents to reinstate the petitioner in service alongwith all consequential benefits.

b) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

c) Award cost of the petition."

2. The brief facts of the case are that the petitioner has passed out Prathma (which is equivalent to 10th standard) in the year 1986 and 12th standard as Madhyama (Visharad) from Hindi Sahitya Sammelan, Allahabad in the year, 1987. The petitioner moved application for his appointment on 13.08.1991 under dying in harness before the respondent Department after the death of his father who was serving as Assistant Teacher. Considering the petitioner's application and verification of his documents, the respondent department vide appointment letter dated 13-08.1991 had granted appointment to the petitioner as Assistant Teacher in Primary School, Nandpur Narkatopa, District Nainital. The petitioner joined his services on 22-08-1991.

3. The appointment has been granted to the petitioner after due verification of the certificates as given in the instruction No. 2 of the appointment letter dated 13-08-1991 that "प्रतिलिपि प्रधान अध्यापक/अध्यापिका प्रा० प०/जू० हाई नन्दपुरन काटोपा, नैनीताल को इस आशय से प्रेषित कि उपर्युक्त सभी प्रमाणपत्रों की भली भांति जाँच करने के उपरान्त कार्यभार ग्रहण करवायें तथा प्रमाण-पत्रों का क्षेत्रीय निरीक्षक/निरीक्षिका से सत्यापित करवाकर प्रेषित करवायें". The respondent department conducted one month's training for the untrained teachers in the year 2001-2002 at Training Institute, Bhimtal, which the petitioner completed by passing the exam. A certificate in this regard was issued on 08-03-2002 in favour of the petitioner.

4. The respondent department issued show cause notice dated 04-09-2020, after 29 years of service, whereby respondent alleged that the petitioner has obtained his appointment on the basis Prathama i.e. 10th and Intermediate certificate/Madhyama (Visharad) passed from Hindi Sahitya Sammelan, Allahabad, Uttar Pradesh which is not recognized. By the show cause notice dated 04-09-2020 petitioner was asked to present before the District Education Officer, Primary Education, Udham Singh Nagar on 14-09-2020. Pursuant to the aforesaid show cause notice dated 04-09- 2020, the petitioner preferred his objection on 14-09-2020 along with supportive documents. Without considering petitioner's objection, the respondent department suspended the petitioner from the services vide suspension order dated 30-01-2021 and was attached in the office of Deputy Education Officer, Jaspur District- Udham Singh Nagar.

5. Thereafter, the respondent No. 3 issued charge sheet dated 01-02-2021 with the allegation that petitioner had obtained appointment in primary cadre of the Government Primary School on the basis of Prathama, Madhyama (Visharad) passed examination from Hindi Sahitya Sammelan, Allahabad. No specific allegation has been made in the charge sheet, therefore the charge sheet had been issued in clear violation of Rule 7 (iii) and (v) of the Uttarakhand Government (Discipline and Appeal) Rules, 2003. The charge sheet dated 01-02-2021 had been specifically denied by the petitioner by his objection dated 09.02.2021. in which, the petitioner had specifically mentioned that at the time of appointment, he had not concealed any fact from the department, after due verification of the certificates, the department granted the appointment. The petitioner further stated that the Government Order dated 22-08-1998 has been issued by the Uttar Pradesh Government, by which Government recognized the Prathama and Madhyama equivalent to High School and Intermediate (Annexure-11 of the claim petition).

6. Without considering the aforesaid objection filed by the petitioner, the District Education Officer, Primary Education, Udham Singh Nagar in clear violation of provisions contained in Rules, 2003 has passed the termination order dated 18.08.2021. The petitioner preferred appeal before the Additional Director, Primary Education, Kumaon Mandal, District Nainital on 09.09.2021 against the termination order dated 18.08.2021. The Appellate Authority has also not considered the grounds taken by the petitioner and dismissed the appeal of the petitioner vide its order dated 02-12-2021, which is also a clear violation of provisions contained in Rules, 2003.

7. The Division Bench of Hon'ble High Court in the matter of Gajendra Singh Bisht Vs. Sri Dhurendra Pal and others, reported in 2010 (1) U.D. page 273, where the facts of the case were that none of the appellants, who were promoted under the said quota had High School qualification and had only their "Prathama" qualification from Hindi Sahitya Sammelan observed that *"Be that as it may, the present appointment/promotion of the appellants has been challenged after a gap of several years in the year 2002 inasmuch as the appointments/promotions of the appellants were made between 1990-99. We are already in the year, 2010. Considering the long passage of time, and also, considering the fact that the post on which the appellants have been promoted is not such a sensitive post it may not be proper or equitable to unsettle what now stands settled. This Court is also conscious of the fact that it is also nobody's case that the appellants had taken appointment by concealing any material fact or by any fraud or forgery, Mistake, if any, was on the part of the appointing authority. After rendering service for so many years, it is not only a legitimate expectation of the appellants, who are the bread winners of their family but a legitimate expectation of all those in the family who are dependent on these appellants, that they will not be disturbed in their service. Therefore, this Court is not looking into the issue of "qualification" of these appellants for the peculiar facts and circumstances of the case. The inordinate delay in raising the issue of qualification goes to the root of the present matter,*

and this is what will go against the present respondents and the petitioners in the writ petition. For these reasons that is for the delay in raising the dispute, the petitioners are not liable to succeed."

Further the Hon'ble High Court in the similar matter vide its Judgment and order dated 02-01-2018 passed in writ petition No. 533 of 2017 (S/S) "Udairaj Singh Vs. State of Uttarakhand and others" *"directed the department to conclude the pending inquiry within a period of three months of presentation of certified copy of this order, in the light of decision rendered by Hon'ble Division Bench of this Court in Special Appeal No. 161/2007 & connected writ petition, on 17-03-2010, and in accordance with law, the department has reinstated the services of similarly situated persons, i.e. petitioner in writ petition No. 533 of 2017 (S/S) "Udairaj Singh Vs. State of Uttarakhand and others"*.

8. Against the order dated 02-12-2021 passed by the Appellate Authority, the petitioner preferred Revision before the State Government i.e. respondent No. 1 under Rule 13 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003. The revisional authority upheld the appellate order dated 02.12.2021 after the order of the Hon'ble High Court passed in writ petition No., 1536 of 2022 (S/S) "Rajkamal Vs. State of Uttarakhand and others.

9. The procedure for imposing Major Penalty as laid down in Section-7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 has not been followed in the present case. Therefore, the impugned termination orders dated 18.08.2021, 02.12.2022 and 10.10.2022 are nullity and void. The petitioner has been fortified in catena of judgments rendered by the Hon'ble Supreme Court of India including the judgments reported in (2009) 2 SCC 570 in re: Roop Singh Negi V. Punjab National Bank and reported in (2006) 5 SCC 88 in re: M.V. Bijlani vs. Union of India, wherein it has been held that in the matter of disciplinary

proceedings against employees, each of the charges need to be proved independently and separately by the witnesses. It is further submitted that it is settled principle of law that in case the quantum of punishment is so disproportionate to the gravity of the offence that it shocks the conscience of the Hon'ble Court, it is liable to be set aside. It is a law settled by the Hon'ble Supreme Court of India that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary and thus would violate the mandate of Article 14 of the Constitution, hence being illegal, it cannot be enforced. The aforesaid contention of the Petitioner is based on a catena of judgments, few of which, are reported in (1983) 2 SCC 442 in re: Bhagat Ram v. State of Himachal Pradesh; 4 SCC 611 in re: Ranjit Thakur v. Union of India and 20/1987) Ors.; 1994 Supp (3) SCC 755 in re: Union of India v. Giriraj Sharma; 1995 Supp (3) SCC 519 in S.K. Giri re: v. Home Secretary, Ministry of Home Affairs and Ors.; (1995) 6 SCC 749 in re: BC Chaturvedi v. Union of India and (1996) 10 SCC 461 in re: Bishan Singh and Ors. v. State of Punjab.

10. C.A./W.S. has been filed on behalf of the respondents no. 2 & 3, in which, it has been stated that on 22.10.2018, a complaint was forwarded by one Akhtar Hasnaini Rizvi regarding the educational certificates of the petitioner. The Deputy Education Officer, Jaspur, Udham Singh Nagar vide office letter dated 13.7.2020 forwarded an inquiry report to the office of respondent no. 3 stating therein that the educational certificates of the petitioner are not valid. The respondent no. 3 vide letter dated 4.9.2020 provided an opportunity to the petitioner to place his version and fixed the date for hearing on 14.9.2020. The petitioner placed his version on the said date by personally appearing before the office of respondent no. 3. The respondent no. 3 vide office order dated 01.02.2021 submitted a charge sheet against the petitioner. The petitioner was placed under suspension by the respondent no. 3 vide office order dated 30.01.2021. The petitioner forwarded his reply to the charge sheet on 15.2.2021 before the office of respondent no. 3 and later on

an additional objection was forwarded on 19.2.2021, which was received in the office of respondent no. 3 through registered post on 25.2.2021. The petitioner denied the contents of the charge sheet, as a consequence thereof in pursuance of provisions contained in Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 (as amended), the respondent no. 3 vide office letter dated 22.2.2021 appointed the respondent no. 4 as an inquiry officer in the matter, who inquired into the matter and vide office letter dated 1.7.2021 submitted the inquiry report before the office of respondent no. 3. The respondent no. 3 vide office letter dated 30.7.2021 forwarded the inquiry report to the petitioner and provided time till 17.8.2021 for placing his objection, if any, against the enquiry report. On 13.8.2021 the petitioner submitted his representation/objection against the enquiry report in the office of respondent no. 3. Based upon the letter dated 16.5.2018 issued by the Secretary, Uttarakhand School Education Board, Ramnagar (Nainital), letter dated 24.10.2002 issued by the Director Education, Uttaranchal Camp Office, Dehradun, letter dated 30.7.2020 issued by the Secretary, Secondary Education Board, Uttar Pradesh Allahabad, inquiry report dated 13.7.2020 of Deputy Education Officer, Jaspur (Udham Singh Nagar) based upon the inquiry report dated 1.7.2021, the respondent no. 3 vide order dated 18.8.2021 terminated the petitioner from service on the ground of taking appointment through invalid educational certificates.

11. It is submitted that the petitioner produced the certificates of Prathama and Madhyama (Visharad) issued by Hindi Sahitya Sammelan Allahabad at the time of appointment. Based on a complaint dated 22.10.2018, the Deputy Education Officer, Jaspur, Udham Singh Nagar vide office letter dated 13.7.2020 forwarded an inquiry report to the office of respondent no. 3 stating therein that the educational certificates of the petitioner are not valid.

12. The petitioner was given opportunity to place his version and allowed to appear personally also. He was placed under suspension and issued charge sheet. The enquiry was conducted against the petitioner and he was given opportunity to file objections against the inquiry report, which was filed by him on 13.08.2021. The petitioner was terminated vide order dated 18.08.2021 from the service on the ground of taking appointment through invalid educational certificates.

13. The petitioner preferred a Departmental Appeal against the impugned order dated 18.08.2021, which was rejected by the Appellate Authority (Regional Additional Director, Primary Education, Kumaun Mandal, Nainital) vide order dated 02.12.2021. The revision preferred by the petitioner against the appellate order too was rejected by the respondent no. 1 vide order dated 10.10.2022. The petitioner has been given reasonable opportunity of hearing before passing the termination order dated 18.8.2021 in accordance with law. It is further submitted the respondents have duly followed the provisions of Government Servant (Discipline & Appeal), Rules, 2003 in the present matter. It is also submitted that the petitioner got the appointment on the basis of the qualification/certificates which are not valid in the eyes of law, thus, played fraud with the department and it is a settled law that the fraud vitiates everything. The claim petition filed by the petitioner is liable to be dismissed.

14. R.A. has also been filed on behalf of the petitioner and he denied the contents made in the C.A/W.S. and reiterated the averments made in the claim petition.

15. C.A./W.S. has also been filed on behalf of respondent no. 4, stating therein that the enquiry was conducted as per rules and the petitioner was afforded full opportunity to defend each and every charge against him and he has only discharged his duties as enquiry officer and conducted the enquiry was per procedure. In reply to the C.A/W.S. filed on behalf of respondent no. 4, the petitioner also filed

R.A. reiterating the facts that he has not been given reasonable opportunity to defend charge levelled against him.

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

17. Learned Counsel for the petitioner has pleaded that the Hon'ble Supreme Court in the matter of Dr. M.S.Madhool and another vs. S.D.Halegkar and others, (1993) 3 SCC passed the judgment, the relevant paras of the judgment are as under:

"6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, inspite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequities to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the Court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the Court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.

8. However, we must make it clear that in the present case the 2nd respondent, Director of Education had committed a clear error of law in approving the academic qualifications of the 1st respondent when he was not so qualified. As pointed out above, the interpretation placed by him and the other respondents on the requisite

educational qualifications was not correct and the appointments made on the basis of such misinterpretation are liable to be quashed as being illegal. Let this be noted for future guidance.

9. In the circumstances, we decline to interfere with the appointment of the 1st respondent and dismiss the petition. There will be no order as to costs.”

18. The petitioner has served in the department for 29 years. He was trained, his certificates were verified at the time of appointment and no misrepresentation & fraud in seeking appointment has been established against the petitioner in the enquiry. Based on the aforesaid judgment of the Hon'ble Supreme Court, the claim petition is liable to be allowed.

19. Learned Counsel for the respondents has pleaded that the petitioner has been appointed on the basis of the qualification (Prathma & Madhyama) which are not recognized by the U.P. Board, which is the sole authority to decide the issue of equivalence of Prathama & Madhyama with High School and Intermediate. The petitioner has been given adequate opportunity to present his case and also to defend himself. There are numerous cases of such appointments in the Education Department which were enquired by the department and many persons who got appointment through misrepresentation and fraudulent means were dismissed from the service. Learned Counsel for the respondents has cited the judgment of the Hon'ble High Court of Uttarakhand at Nainital, passed in Writ Petition (S/S) No. 254 of 2023, Vikram Singh Negi vs. State of Uttarakhand & others along with various writ petitions filed by the similarly situated persons. The relevant paragraphs of the judgment are as under:

“33. From the rival submissions made by learned counsel for the parties, it is apparent that charge sheet was issued to petitioners alleging that the educational certificates/ degree produced by them at the time of appointment was found to be fake. Petitioners now allege that the disciplinary inquiry was not done strictly as per the Discipline & Appeal Rules, applicable to State employees, and there were some lapses here & there. The question is whether a person, who is not eligible for appointment for want of necessary qualification, if manages to get appointed by playing fraud, can claim protection of Article 311 of

the Constitution. Hon'ble Supreme Court in the case of R. Vishwanatha Pillai (Supra) and various other judgments referred to above has held that a person, who has secured appointment under the State by playing fraud, cannot claim protection of Article 311.

34. A Division Bench of this Court in Writ Petition (PI L) No.37 of 2020 has taken judicial notice of the alarming situation prevailing in the State of Uttarakhand, where scores of persons have managed to get appointed as Teacher, even though they lack the basic qualification needed for such appointment. Learned State Counsel is right in submitting that petitioners have not shown the courage of making a statement on personal knowledge that all educational certificates produced by them for securing appointment are genuine and the statement, if any, made in one or two petitions, is evasive and based on record.

35. National Council for Teacher Education (for short "NCTE") has been established by a Parliamentary Legislation (Act No. 73 of 1993). NCTE is the regulatory body which lays down qualification necessary for appointment as Teacher in Primary and Secondary Schools. Anyone, who does not possess the qualification prescribed by NCTE is not eligible for appointment as Teacher and appointment of such ineligible person, if made due to mistake on the part of the Authorities, will be void ab initio and no benefit will ensue to the person so appointed.

36. In the present case, petitioners were appointed not because of any mistake on the part of the Authorities, but due to the fake educational certificate(s) produced by them. As per provision of The National Council For Teacher Education Act, 1993, anyone, who does not possess a qualification prescribed by NCTE, cannot be appointed as Teacher, and if appointed, his appointment would be illegal. There is yet one more requirement of law that Teacher's Training Qualification, e.g. B.Ed., D.El.Ed. etc. must be obtained from a University/ Institute recognised by NCTE. Petitioner, who does not possess a valid B.Ed. Degree, is ineligible for appointment as Teacher and the challenge thrown by him to termination of his services is thus unsustainable. Law is settled that there cannot be any estoppel against Statute.

37. In such view of the matter, this Court does not find any reason to interfere with the order of termination passed against the petitioners."

20. The aforesaid judgment of the Hon'ble High Court as relied upon by the respondents is related to the Teachers who got appointment on misrepresentation and by fraud. But in the case of the petitioner, no misrepresentation and fraud has been established. So, the above judgment as cited by the respondents is not applicable in the instant case.

21. Based on the documents and the arguments of learned Counsel for the parties, we are of the opinion that the petitioner has

been appointed on the post of Assistant Teacher on compassionate ground after due verification of his educational qualifications. The letter dated 22.08.1998 of the Joint Secretary, Department of Employment clearly mentions that the examination of Pratham and Madhyama conducted by the Hindi Sahitya Sammelan, Allahabad are recognized equivalent to High School and Intermediate. He has given the reference of the instructions contained in the letter dated 12.08.1998 of Govt. of India. A letter dated 30.07.2006 written by the Secretary, Madhyamik Siksha Parishad, U.P. that “हिन्दी साहित्य सम्मेलन, इलाहाबाद संचालित प्रथमा, मध्यमा अथवा अन्य कोई भी उच्चतर परीक्षा इस परिषद को हाईस्कूल / इण्टरमीडिएट के समकक्ष न तो कभी पूर्व में मान्य श्री और न वर्तमान में ही मान्य है” is contradictory to the above mentioned letters of the Govt. of U.P. and Govt. of India.

22. The respondent did not show the qualification required for the post of Assistant Teacher at the time when the petitioner has been appointed. Moreover, even if it is assumed that the petitioner was not eligible for appointment to the post of Assistant Teacher as he did not have the requisite educational qualification, he has plainly submitted his certificates for seeking appointment and no act of misrepresentation or use of fraudulent means has been established against the petitioner by the respondents in the enquiry. In fact, the article of charge issued to the petitioner was itself wrong, the blame for appointing the petitioner lies on the respondents. The Hon'ble Supreme Court in the matter of Dr. M.S. Mudhol and another vs. S.D. Halegkar and others (supra) has decided that 'when despite disclosing the qualification possessed by the respondent selection committee wrongly selected him and Director of Education acquiesced the appointment and thereafter respondent continuing in the post for 9 years till filing of the petition and still continuing (for 12 years till now), held, his appointment need not be disturbed at this late stage'.

23. Keeping in view of the facts and the decision of the Hon'ble Apex Court, we hold that terminating the services of the petitioner on the basis of invalid qualification, after 29 years long service in the department, which has never been interfered in the past is itself wrong. The impugned termination order dated 18.08.2021, appellate order dated 02.12.2021 and revisional order dated 10.10.2022 are liable to be quashed and the petitioner is entitled to be reinstated in the service with immediate effect.

ORDER

The claim petition is hereby allowed. The impugned termination order dated 18.08.2021, appellate order dated 02.12.2021 and revisional order dated 10.10.2022 are hereby quashed. The respondents are directed to reinstate the petitioner in the service with immediate effect. No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 03, 2025
DEHRADUN
KNP