

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

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

CLAIM PETITION NO. 97/DB/2023

Santosh Kumari, w/o Sri Naresh Chandra, r/o 586 Block 1st Dharampur,
Haridwar Road, Dehradun, Assistant Teacher, Government Primary School
Kairad, Block- Chakrata, District Dehradun. .

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Education, Uttarakhand, Dehradun.
2. Director General, School Education, Uttarakhand, Dehradun.
3. Director, Basic Education, Uttarakhand, Dehradun.
4. Additional Director, Primary Education, Garhwal Mandal, Pauri
5. District Education Officer(Basic Education), Dehradun.

.....Respondents

Present: Dr. N.K.Pant, Advocate, for the petitioner.

Sri V.P. Devrani, A.P.O. for State Respondents.

JUDGMENT

DATED: MARCH 10, 2025

Justice U.C.Dhyani (Oral)

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

“i) Issue an order or direction to set aside/ quash the impugned order 08-02-2023 passed by the District Education Officer, Primary Education, Dehradun as well as order 12.05.2023 passed by the District Education Officer, Dehradun.

ii) Issue an order or direction to grant the salary from the date of termination dated 19-11-2015 to 30-06-2021 in the light of decision made by the Hon'ble High Court vide his order dated 17-05-2017.

iii) To award the cost of the petition in favour of the applicant.”

2. The claim petition is supported by the affidavit of the petitioner. Relevant documents have been filed along with the claim petition.

3. Facts necessary for adjudication of the claim petition are as follows:

3.1 Petitioner completed her basic teacher course from the *Bhartiya Shiksha Parishad, U.P.*, through correspondence in the year 2000. The *Bhartiya Shiksha Parishad, U.P.* is an autonomous body, registered with the U.P. Govt. for conducting various courses, including Teachers' training programme. The BTC certificate issued by the *Bhartiya Shiksha Parishad, U.P.* is equivalent to the BTC certificate issued by the regular Govt. institution.

3.2 Pursuant to an advertisement, the petitioner participated in the process of selection, before the Selection Committee, on 10.08.2006 which, after examining the certificates, called her for interview. On being found suitable, she got selected and was appointed to the post of Assistant Teacher on 26.07.2007. On 27.08.2015, petitioner was served with a letter from the office of Respondent No.5, to submit her educational certificates for verification. She submitted all her certificates, including BTC certificate. Services of the petitioner were terminated vide order dated 19.11.2015, on the ground that the BTC certificate of the petitioner was not valid according to the NCTE for appointment as Assistant Teacher.

3.3 Order dated 19.11.2015 was assailed by the petitioner in WPSS No. 2567 of 2015 before the Hon'ble High Court of Uttarakhand. Ld. Single Judge of Hon'ble Court passed an order on 17.12.2015,

and stayed the impugned order dated 19.11.2015. Ld. Single Judge of Hon'ble Court was pleased to allowed the WPSS No. 2567/ 2015 *vide* order dated 17.05.2017. Appeal filed against the order dated 17.05.2017 was also dismissed by the Division Bench of Hon'ble High Court *vide* order dated 14.12.2019.

3.4 Petitioner preferred an appeal to the Secretary, Education, Govt. of Uttarakhand on 25.01.2021, which appeal was disposed of by the Secretary Education, by directing the Director, Primary Education to decide the appeal of the petitioner.

3.5 Pursuant to the order passed by the Hon'ble High Court on 14.12.2019, disciplinary proceedings were initiated against the petitioner and resulted in impugned order dated 30.06.2021, reiterating the stand taken by the District Education Officer, Primary Education, Dehradun.

4. Claim petition has been contested on behalf of the respondents. Sri Rajender Singh Rawat, District Education Officer (Basic Education), Dehradun, Uttarakhand, has filed Counter Affidavit on behalf of all the Respondents, denying relief to the petitioner. Relevant documents have been filed in support of Counter Affidavits.

4.1 In the C.A. it has been stated that, "in compliance with the judgment order of the Hon'ble Tribunal dated 07.09.2022, petitioner was reinstated on her previously held post of Assistant Teacher and the charge sheet was issued to the petitioner *vide* office letter no/R.P.B/7085-93/charge sheet/Hon'ble Justice/2022-23 dated 22 November 2022. The following charges were leveled against the petitioner -

1. That primary Teacher Training Certificate issued by Indian Education Council, Lucknow, Uttar Pradesh letter year 2000, Enrollment no. C-328/98, Due to not being valid for the appointment to the post of assistant teacher primary in the state of Uttarakhand and getting employment on the assistant primary teacher post on the basis of the invalid training certificate.

2. That under the provisions contained in Uttar Pradesh/ UK Basic Education (Teacher) Service Rules 1981 as amended in year 1998. (eight amendment) Rules the education prescribe for Assistant Teacher Primary Schools is on the basis of intermediate certificate lower than graduation for the post of Assistant Teacher primary getting employment.

4.2 In relation to charge no.1 a copy of the govt. order dated 27 march 1998 was made available to the petitioner Service rules 1998 and copy of application form were made available to the petitioner as evidence of charge no.2.

4.3 In relation to the charge sheet issued to the petitioner, the hearing date was fixed for her written reply/personal hearing on 12.12.2022 at 11:00 am in the office of the District Education Officer (Basic), Dehradun. In case of non- receipt of the petitioner's appearance in the hearing on the scheduled date/ letter dated 12 December 2022 in relation to the charge sheet issued to the petitioner again on 23.12.2022 at 11:00 am for her written statement reply/personal hearing date was fixed in the office of District Education Officer (Basic), Dehradun. The petitioner on due date appeared in the hearing and made her representation regarding the charge sheet available to the District Education Officer (Basic), Dehradun. Examine the reply provided by the petitioner the matter was inquiry by the undersigned District Education Officer (Basic), Dehradun. In the inquiry report dated 18.01.2023 by the inquiry officer it was observed that 'According to the due study/examination of all the evidence/records available in the file and the reply dated 23.12.2022 against the charge sheet of the petitioner it is clearly established that at the time of appointment according to the provision given in the notification published for selection to the posts of primary the petitioner did not possess the requisite educational and training qualification as stipulated in the relevant services rules for the selection to the posts of Assistant Teacher. Therefore, as per the provisions mentioned in the Uttarakhand Government Servants (Discipline and Appeal) rules 2003

and as amended in 2010, the charges levelled against the petitioner are found proved in a just fair and impartial enquiry proceeding conducted against the petitioner by the department as per rule and law relevant to it.

4.4 District Education Officer (Basic), Dehradun's letter no. P.G.B/8630-31/investigation/2022-23 dated 19 January 2023, in view of Principle of natural justice while providing the enquiry report to the petitioner representation, instructions were given to provide point wise answers or to appear for personal hearing (contained in annexure- 24). On the scheduled date January 30, 2023 the petitioner appeared in the office of the District Education Officer (Basic), Dehradun and representation was given regarding the enquiry report provided to the petitioner has not made any new information in her favour. Evidence was not provided. Hence the charges leveled against the petitioner was found proved enquiry.

4.5 Therefore, in the advertisement published in the year 2006 for the appointment to the posts of Assistant Teacher Primary for the district Dehradun, under the provisions contained in the Uttar Pradesh (now Uttarakhand Basic Education Rules) 1981 and the rules and by laws amended from time to time, the original residents of the District Dehradun who have done special BTC Training from DIET Dehradun should have been obtained in the year 2006 and the previous BTC trained candidates of the District could also apply for appointment. It is clear from the provisions that only those candidates of the district could apply for appointment to the above posts, who had completed the special BTC training from DIET Dehradun in the year 2006 and under section 19 of the Uttar Pradesh Basic Education Act, 1972, Uttar Pradesh Basic Education (Teachers) Service (eight amendment) Rules 1998, amending the Service Rules 1981 in which "educational qualification" means a graduate degree from a university established by law in India or a degree recognized as equivalent thereto by the government along with having training certificate, it is clear that the educational qualification in the said advertisement was graduation

whereas the primary teacher training obtained by the petitioner from the Bhartiya Shiksha Parishad, Uttar Pradesh, Lucknow in the year 2000, enrolment no. C-128/98 was conducted by Distance reaching Education system certificate and at the time of appointment of the petitioner the educational qualification was less than the prescribed educational qualification was Intermediate. Therefore both the allegations leveled against the petitioner by letter dated 22 November 2022 from District Education Officer (Basic), Dehradun are found proved. In such situation the petitioner should be punished under clause 3(6) (4) of the Uttarakhand Government Servants (Discipline and Appeal) Rules 2003 and amended in year 2010.

4.6 Therefore, on the basis of all the evidence/records available at the time of inquiry under section 3-b (4) Uttarakhand Government Servants (Discipline and Appeal) Rules 2003 amended 2010 the competent authority /District Education Officer (Teacher) Dehradun has imposed impugned punishment order no. P.R.B-1/771/2022-23 dated 8 February 2023 by the petitioner was dismissed from service due to not found eligible for government service as an Assistant Teacher Primary for want of the accordance educational qualification as well as the training certificate herein after referred as B.T.C certificate”.

5. Rejoinder Affidavit has been filed by the petitioner, reiterating the facts mentioned in the claim petition.

6. Relevant paragraphs of the decision rendered by the Tribunal on 07.09.2022 in Claim petition No. 22/D/B/2022, are excerpted herein below for convenience:

“2.1 The petitioner completed the basic teacher course from the *Bhartiya Shiksha Parishad*, U.P., through correspondence in the year 2000, which is an autonomous body registered with the U.P. Government for conducting various courses including teachers training programme *i.e.* BTC/D.Ed./B.Ed./M.Ed. etc. The BTC certificate issued by the *Bhartiya Shiksha Parishad*, U.P., is equivalent to the BTC certificate issued by the regular Govt. Institution.

2.2 The petitioner was appointed as Assistant Teacher, Govt. Primary School *vide* order dated 26.07.2007, after facing interview and after due scrutiny of her certificates. After eight years of joining the service as Assistant Teacher, the petitioner was served letter dated 27.08.2015 from the office of respondent no.5,

asking the petitioner to submit her educational certificate for verification. Petitioner, on 02.09.2015, submitted her entire educational certificates including certificate of BTC training before respondent no.5, in compliance of order dated 27.08.2015.

2.3 Services of the petitioner were terminated by respondent no.5 *vide* order dated 19.11.2015 (Copy-Annexure: 13) without issuing any show cause notice to her or without affording an opportunity of being heard. Petitioner's services were terminated on the ground that her BTC certificate is not valid according to National Council of Training Education (for short, NCTE) for appointment as Assistant Teacher in Uttarakhand.

2.4 Petitioner approached the Hon'ble High Court of Uttarakhand by way of WPSS No. 2567 of 2015, which writ petition was allowed by the Hon'ble Court *vide* judgment and order dated 17.05.2017. State of Uttarakhand preferred Special Appeal No. 967 of 2017 against order dated 17.05.2017. Hon'ble High Court dismissed the Special Appeal on 14.12.2019, as below:

“.....

7. We find no error, much less any patent illegality, in the order under appeal. Suffice it, while dismissing the writ petition, to observe that neither the order passed by the learned Single Judge nor the order now passed by us shall disable the appellant-respondent from initiating disciplinary proceedings, against the respondent-writ petitioner in accordance with law; and, thereafter, to take action including imposition of appropriate punishment on the respondent-writ petitioner. Needless to state that the respondent-writ petitioner's entitlement for back wages shall be subject to the outcome of the enquiry, which the appellant-respondent shall initiate and complete within a period of six months from the date of production of a copy of this order.

8. Subject to aforesaid observations, the special appeal fails and is, accordingly, dismissed. No costs.”

2.5 Petitioner preferred an appeal to the Secretary, Education, Govt. of Uttarakhand on 25.01.2021. The Secretary, Education *vide* order dated 18.02.2021 disposed of the said appeal by directing the Director, Primary Education to decide the appeal of the petitioner dated 25.01.2021.

2.6 The Director, Education, in compliance of order dated 18.02.2021 of Secretary, Education, Govt. of Uttarakhand, directed the Addl. Director, Primary Education, Garhwal Mandal, Pauri. The Addl. Director, in view of the order of Hon'ble Court dated 14.12.2019, initiated disciplinary proceedings against the petitioner and concluded the same by passing impugned order dated 30.06.2021. Hence, present claim petition.

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3.1 On the basis of declaration made by the petitioner, she was appointed as Assistant Teacher, Govt. Primary School Alshi Khera, Block Chakrata, Dehradun and subsequently her posting was amended and she was posted in the Basic Primary School, Kairad, Chakrata, Dehradun. Pursuant to the direction of respondent no.3, on the special enquiry conducted for the purpose of verification of the documents like educational certificates and training certificates, produced by the Assistant Teachers serving in the Basic Education Department of Uttarakhand, the certificate of BTC from Bhartiya Shiksha Parishad, Lucknow, U.P., produced by the petitioner, was not found valid as the institution was not recognized by the NCTE, as such services of the petitioner were terminated.

3.2 In compliance of Hon'ble Court's order dated 14.12.2019, petitioner was reinstated into service on 28.12.2019 in Govt. Primary School. Respondent No. 5, pursuant to Hon'ble Courts direction, initiated the departmental enquiry and in accordance with Rule 7 (i) (ii) of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in the year 2010), issued and served a memorandum of charge dated 27.02.2020, containing two charges. Petitioner submitted her reply to the charges levelled against her but the respondent was not convinced with the reply of the petitioner. The respondent vide letter dated 08.06.2020 gave the petitioner an opportunity to submit documentary or oral evidence on her behalf. Petitioner on 08.06.2020 submitted the reply but did not file the cogent evidence [Copy: Annexure- CA-R-3 (i) (ii)]. Charges levelled against the petitioner were proved and her services were terminated. Therefore, the claim petition has no force and is liable to be dismissed.

13. In view of the above observations of Hon'ble Supreme Court, this Tribunal is of the opinion that the impugned punishment order and consequently the appellate order also are liable to be set aside and are, accordingly, set aside, leaving it open to the disciplinary Authority to proceed afresh, if he is so advised, against the delinquent petitioner, in accordance with law. No order as to costs.

14. It is made clear that the Tribunal has not gone into other aspects of the claim petition.”

7. Punishment order was again passed on 08.02.2023, departmental appeal against which was dismissed on 12.05.2023. Both the orders are under challenge in present claim petition.

8. Dr. N.K.Pant, Ld. Counsel for the petitioner submitted that the respondents may kindly be directed to decide the case of the petitioner in the light of the following decisions:

(i) In *M.S. Mudhol and another vs. S.D. Halegkar and others*, (1993) 3 SCC 591, decided on 13.07.1993, Hon'ble Apex Court has observed 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.”

(ii) Decision rendered by Hon'ble Apex Court in *Pramod Kumar vs. U.P. Secondary Education Services Commission and others*, (2008) 7 SCC 153, in which following was held by the Hon'ble Court:

“The qualification for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity. It is a matter of concern that appointments are being offered by the authorities of the State without verifying the fact as to whether the degree(s) possessed by the candidate(s) are valid or not. It was an ad hoc appointment. Why despite the same, he was allowed to obtain degree from another university is not known if the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute term says so.”

9. Ld. A.P.O. relied upon the decision rendered by Hon'ble High Court of Calcutta in *W.P. 8291 (W)/2017, Mohammad Abu Naser vs. State of West Bengal and others*. Para 2 of the decision runs as below:

“Mr. Gupta draws attention to the Court at page 7 paragraph (e) of the affidavit-in -opposition wherefrom it reveals as follows:-
"The Bharatiya Shiksha Parishad, Lucknow Uttar Pradesh is not approved by the University Grants Commission and also not by the National Council for Teacher Education. The UGC included the name of Bhartiya Shiksha Parishad, Uttar Pradesh in the list of fake universities as on 10th August, 1994. Photocopy of the UGC List of Fake Universities as on 10th August, 1994 is annexed hereto and marked with the letter "R-2".”

10. Ld. A.P.O. also relied upon the decision rendered by Hon'ble Supreme Court in *Pramod Kumar (supra)* in support of respondents' case. Ld. A.P.O. has filed a list issued by the University Grant Commission to submit that the certificate/ degree issued by the Bharatiya Shiksha Parishad, U.P. is not a valid certificate/degree.

11. Ld. Counsel for the petitioner prayed that the Chief Education Officer, Dehradun may kindly be directed to decide the case of the petitioner in the light of the decisions rendered by Hon'ble Supreme Court in *M.S. Mudhol and another vs. S.D. Halegkar and others (supra)* and in *Pramod Kumar vs. U.P. Secondary Education Services Commission and others (supra)*. Ld. A.P.O. supplemented

that the decision rendered by Hon'ble Calcutta High Court in *Mohammad Abu Naser (supra)* and the liste issued by the University Grant Commission be also taken into consideration while taking the decision.

12. Such innocuous prayer should be accepted, considering the backdrop of the case.

13. Claim petition is disposed of by directing Chief Education Officer, Dehradun, to decide the case of the petitioner in the light of the decisions rendered by the Hon'ble Supreme Court in *M.S. Mudhol and another vs. S.D. Halegkar and others(supra)*, *Pramod Kumar vs. U.P. Secondary Education Services Commission and others (supra)* and decision rendered by Hon'ble Calcutta High Court in *Mohammad Abu Naser vs. State of West Bengal and others (supra)*, as expeditiously as possible, without unreasonable delay, preferably within 12 weeks of presentation of certified copy of this order, enclosing the documents in support of her case.

No order as to costs.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 10, 2025.
DEHRADUN

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