

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

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. D.K. Kotia

-----Vice Chairman (A)

CLAIM PETITION NO. 08/NB/DB/2014

Dr. Chandra Shekhar Pathak, S/o Badri Dutt Pathak, R/o Naya Bazar,
Berinag, District Pithoragarh, at present Principal, Government Inter
College, Jabukathal, Berinag, District Pithoragarh.

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Secondary Education, Subhash Road, Dehradun.
2. Director General, Secondary Education, Uttarakhand, Nanoorkhera, Dehradun.
3. Director Secondary Education, Uttarakhand, Nanoorkhera, Dehradun.

.....Respondents

Present: Sri J. C. Pandey, Ld. Counsel
for the petitioner

Sri V.P. Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT**DATED : AUGUST 23, 2017****(HON'BLE MR. D.K. KOTIA, VICE CHAIRMAN (A))**

1. The petitioner has filed the present claim petition for seeking the following relief:

“i) To issue an order or direction directing the respondent no. 1 to include the name of the petitioner/claimant in the promotion list of Principal Class II in the pay band Rs. 15600-39100 grade pay 7600 issued by the respondent no. 1 on 26-07-2013 being treated him recommended as such by the D.P.C. in his meeting held on 02-07-2013 for the said purpose.

ii) To issue an order or direction, directing the respondent no. 1 to give all consequential benefit to the petitioner/claimant treating him as Principal Class II in the pay band Rs. 15600-39100 grade pay 7600 w. e. f. 26-07-2013, the date on which his juniors were promoted on the same post.

iii) Issue any other or further, order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case..”

2. The petitioner was initially appointed as Assistant Teacher in the Department of Education and promoted on the post of Head Master on 01.07.2008. The petitioner was awarded Shalesh Matiyani State Award for his outstanding achievement in the field of education in the year 2008. The petitioner retired on 30.04.2012. The petitioner was allowed two years of additional service after his retirement (vide order dated 21.06.2012-Annexure: A5) as he was a recipient of State Award. A DPC was held on 02.07.2013 for the promotion on the post of the Principal

Grade II (Annexure: A7) and the promotion orders were issued on 26.07.2013. The petitioner was not considered for promotion as he had already retired on 30.04.2012 and his work for two more years in the Department after the retirement was additional service allowed to him as per the G.O. dated 29.08.2005 (Annexure: A10) due to the State Award received by him. The contention of the petitioner is that as he had received Shalesh Matiyani State Award, he was allowed extension for 2 years service and continued to be in the service when promotions were made in July, 2013. It has further been contended by the petitioner that the reason given by the respondents for not considering him for promotion that he was allowed two more years of additional service only after the retirement is not tenable as the G.O. dated 29.08.2005 nowhere mentions that during the two years period of additional service, the awardee of Shalesh Matiyani State Award will not be entitled to get promotion. The petitioner also submitted a representation to the respondents on 13.01.2014 (Annexure: A15) but of no avail. Hence, the petition.

3. Respondent Nos. 1 to 3 have opposed the claim petition and it has been stated in their joint written statement that while the DPC for considering the promotion was held on 02.07.2013, the petitioner had already retired on 30.04.2012. The petitioner was allowed "अतिरिक्त सेवा" for two years after his retirement as per the G.O. dated 29.08.2005 as he received the State Award. The additional two years of service were allowed to the petitioner from 01.05.2012 after his retirement on 30.04.2012. When the petitioner had retired on 30.04.2012, he could not be considered for promotion on 02.07.2013. Though, the petitioner worked in the department upto 30.04.2014 but his service for two years

was “अतिरिक्त सेवा” after the retirement and the G.O. dated 20.08.2005 does not provide that the awardee will also be entitled to get promotion after the retirement during the period of “अतिरिक्त सेवा”. It has been contended by the respondents at the end that the petitioner is not entitled for any relief and the claim petition is liable to be dismissed.

4. The petitioner has also filed the rejoinder affidavit and the same averments have been reiterated in it which were stated in the claim petition. Additionally, it has been contended that the minimum required service for promotion is five years and the petitioner had completed the service of five years on the post of Head Master on 30.06.2013. It has been further mentioned by the petitioner that the department relaxed the minimum required service by 50% from 5 years to 2½ years by office order No. 1127(I)/xxiv-2/2013-29 (08)/2010 dated 26.06.2013. The contention of the petitioner is that even if the period of two years of additional service is not counted for the purpose of calculation of minimum required service of five years, he becomes eligible for considering by the DPC for promotion as relaxation of 50% period should have been allowed to him also as has been allowed to other persons vide office order dated 26.06.2013.

5. The petitioner as well as respondents have also filed various documents.

6. We have heard learned counsel for the petitioner as well as learned A.P.O. on behalf of respondents and perused the record.

7.1 Learned counsel for the petitioner has argued that the petitioner was awarded Shalesh Matiyani State Award in 2008 and

as per the G.O. dated 29.08.2005, he was given two years extension in service from 01.05.2012 to 30.04.2014. The G.O. prescribes that the benefit of extended period will not be taken into account for the purpose of retiral benefit. The G.O. does not provide that the petitioner will not be allowed the benefit of promotion during the extension period. The petitioner was given the benefit of annual increments for the extension period. In the absence of specific denial of the benefit of promotion in the G.O., the petitioner is entitled for considering for promotion by the DPC which was held on 02.07.2013 when the petitioner was in regular and continuous service on an extension for two years after his retirement on 30.04.2012.

7.2 Learned A.P.O. in his counter argument has submitted that the petitioner was not given the extension in service. The G.O. dated 29.08.2005 was allowed the benefit of “अतिरिक्त सेवा” for two years and the same was given to the petitioner after his retirement and it was not “continuation ” or “extension” of the service but only a benefit in the form of additional service as the petitioner was a State awardee. The petitioner retired on 30.04.2012 and after his retirement, his additional service for two years does not entitle him for a regular promotion. He further argued that the age of retirement as 60 years has been fixed under the Fundamental Rule 56 of the Fundamental Rules of the Government. The benefit envisaged in the G.O. dated 29.08.2005 pertains to the period after the petitioner had retired after attaining the age of 60 years on 30.04.2012. The G.O. has not amended (and it could not amend) the Fundamental Rule 56. The G.O. only provides the benefit of additional service for two years after the retirement on the existing post.

7.3 It would be appropriate to look at the G.O. dated 29.08.05 (Annexure: 5) which reads as under:

“प्रेषक,
डी0के0 कोटिया,
सचिव,
उत्तरांचल शासन।

सेवा में,
शिक्षा निदेशक,
विद्यालयी शिक्षा,
उत्तरांचल, देहरादून।

शिक्षा अनुभाग-2 देहरादून।: दिनांक 29 अगस्त, 2005

विषय: राष्ट्रीय/ राज्य पुरस्कार प्राप्त बेसिक /माध्यमिक विद्यालयों के अध्यापकों को उनकी अधिवर्षता आयु के पश्चात् दो वर्ष की अतिरिक्त सेवा का लाभ।

महोदय,
उपर्युक्त विषयक आपके पत्र संख्या- प्रबन्ध-1/एल0टी0/9047, दिनांक 13 जून, 2005 के संदर्भ में मुझे यह कहने का निदेश हुआ है कि श्री राज्यपाल महोदय प्रदेश के बेसिक/माध्यमिक विद्यालयों के राष्ट्रीय/ राज्य पुरस्कार प्राप्त अध्यापकों/प्रधानाध्यापकों/प्रधानाचार्यों को उनकी अधिवर्षता अधिवर्षता आयु के पश्चात् दो वर्ष की अतिरिक्त सेवा दिये जाने की सहर्ष स्वीकृति प्रदान करते हैं, बशर्ते कि संबंधित शिक्षक शारीरिक रूप से पूर्णतः स्वस्थ हों और सेवाकाल में संबंधित शिक्षक का कार्य एवं आचरण संतोषजनक रहा हो।

2- अतिरिक्त सेवा के प्रत्येक मामले पर शासन स्तर पर शिक्षा विभाग के संबंधित अनुभाग द्वारा विचार किया जायेगा तथा आदेश निर्गत किए जायेंगे।

2- अतिरिक्त सेवा की अवधि का लाभ सेवा निवृत्तिक लाभों के लिए अनुमन्य नहीं होगा।

3- यह आदेश वित्त विभाग के अशासकीय संख्या- 77/वित्त अनु0-4/2005, दिनांक 02 अगस्त, 2005 में प्राप्त उनकी सहमति से निर्गत किये जा रहे हैं।

भवदीय,
(डी0के0 कोटिया)
सचिव।”

7.4 A careful perusal of the above G.O. dated 29.08.2005 reveals that a provision has been made to provide the benefit of

additional service of two years after the retirement to the national/State Awardees. **The G.O. does not provide for “extension of the service” or it does not enhance the age of retirement.** The subject of the G.O. dated 29.08.2005 reads as under:

“विषय:- राष्ट्रीय/ राज्य पुरस्कार प्राप्त बेसिक/माध्यमिक विद्यालयों के अध्यापकों को उनकी अधिवर्षता आयु के पश्चात दो वर्ष की अतिरिक्त सेवा का लाभ”

The subject of the G.O. itself makes it clear that the benefit of additional two years of the service is to be given after the retirement. Thus, the petitioner stood retired on 30.04.2012 after attaining the age of superannuation and after that he was provided the benefit of “अतिरिक्त सेवा”. The said G.O. also provides that “.....उनकी अधिवर्षता आयु के पश्चात दो वर्ष की अतिरिक्त सेवा दिये जाने की सहर्ष स्वीकृति प्रदान करते हैं, बशर्ते कि संबंधित शिक्षक शारीरिक एवं मानसिक रूप से पूर्णतः स्वस्थ हों और सेवाकाल में संबंधित शिक्षक का कार्य एवं आचरण संतोषजनक रहा हो।” By this, a condition has been stipulated that the work and conduct should be satisfactory during the “service period” of the concerned teacher. This also makes it clear that the benefit under the G.O. has been provided after the “service period” of the teacher is over. The petitioner completed his “service period” on 30.04.2012 and was retired on that date. As his work and conduct during the service period was satisfactory, he was given the benefit of the G.O. vide order dated 21.06.2012 (Annexure: A5). The G.O. also stipulates “अतिरिक्त सेवा की अवधि का लाभ सेवा निवृत्तिक लाभों के लिए अनुमन्य नहीं होगा।” This also means that the additional service period has been differentiated from the normal service period as the same is not to be counted for the purpose of calculating the retiral benefits. This condition implies that the petitioner had

already retired on 30.04.2012 and the benefit of additional service is not to be taken into account for the purpose of retiral benefits.

7.5 It is clear from the analysis in 7.4 above that the petitioner stands retired from the service on 30.04.2012. The benefit provided to him under the G.O. dated 29.08.2005 pertains to the period after the retirement in the form of an additional service for two years with certain conditions. Under these circumstances, it is difficult to agree with the argument of learned counsel for the petitioner that the petitioner is entitled for the promotion in July, 2013 as the G.O. dated 29.08.2005 does not specifically denies it. After hearing both the parties and perusal of record, we are of the view that the petitioner retired from the regular service on 30.04.2012 and after retirement he ceases to be entitled for considering for the promotion in spite of the fact that he was given the benefit of additional service for two years.

8. Learned counsel for the petitioner has also argued that the petitioner was promoted to the post of Head Master on 01.07.2008 and for next promotion on the post of Principal Grade II, minimum length of service required is five years on the post of Head Master which he completed on 30.06.2013. The contention of learned counsel for the petitioner is that the Department relaxed the minimum five years requirement by 50 per cent vide Office Order dated 26.06.2013 and while others were given this relaxation, the petitioner was not considered for the same. Had the petitioner given this relaxation, he would have become eligible for promotion prior to 30.04.2012, the date of his retirement. It would be appropriate to look at the office order dated 26.06.2013 which reads as under:

“उत्तराखण्ड शासन
माध्यमिक शिक्षा अनुभाग-2
संख्या – /xxiv-2/ 2013-29 (08)/2010
देहरादून : दिनांक 26 जून, 2013

कार्यालय ज्ञाप

माध्यमिक शिक्षा अनुभाग-2 के कार्यालय-ज्ञाप संख्या-347/ xxiv-2/ 2012-29 (08)/2010 दिनांक 12 जुलाई, 2012 को अतिक्रमित करते हुए एतद्द्वारा चयन वर्ष 2012-13 में संलग्न सूची अनुसार 65 प्राधानाध्यापकों एवं 41 प्रधानाध्यापिकाओं को प्रधानाचार्य/प्रधानाचार्या/समकक्ष पदों पर प्रोन्नति हेतु निर्धारित पात्रता अवधि में 50 प्रतिशत की सीमा तक शिथिलीकरण प्रदान किये जाने की श्री राज्यपाल महोदय सहर्ष स्वीकृति प्रदान करते हैं।

यह छूट कार्मिक विभाग की अधिसूचना संख्या-1674/xxiv(2)/ 2010 दिनांक 23 नवम्बर, 2010 के प्राविधानानुसार पूरे सेवाकाल में एक बार के लिए ही अनुमन्य होगी।

(मनीषा पंवार)
सचिव”

The perusal of above office order reveals that the relaxation in the minimum length of service for promotion was granted for the recruitment year 2012-2013 which begins on 01.07.2012 and ends on 30.06.2013. As the petitioner had already retired on 30.04.2012, he was not covered by the office order dated 26.06.2013 and, therefore, the argument of learned counsel for the petitioner has no force and cannot be accepted.

9. For the reasons stated above the petition is devoid of merit and the same is liable to be dismissed.

ORDER

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

(RAM SINGH)
VICE CHAIRMAN (J)

(D.K. KOTIA)
VICE CHAIRMAN (A)

DATE: AUGUST 23, 2017
NAINITAL

KNP