

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

Present: Hon'ble Mr. Ram Singh
----- Vice Chairman (J)

Hon'ble Mr. D.K.Kotia
-----Vice Chairman (A)

CLAIM PETITION NO. 04/SB/2017

Sarla Singh, D/o Late Sri Ram Shankar, R/o 1077/2, Vyomprasth, G.M.S. Road,
Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Medical Education, Government of Uttarakhand, Dehradun.
2. State of Uttarakhand through Secretary, Medical, Health and Family Welfare, Government of Uttarakhand, Dehradun.
3. Director General, Medical, Health and Family Welfare Department, Dehradun.
4. Director, Medical Education Directorate, 107-Chandar Nagar, Dehradun.
5. Principal, State School of Nursing, Dehradun.
6. Incharge Medical Officer, Community Health Centre, Vikasnagar, Dehradun.

.....Respondents.

Present: Smt. Sanjana Madan, Ld. Counsel
for the petitioner
Sri Umesh Dhaundiyal, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: FEBRUARY 6, 2018

(HON'BLE MR. D.K.KOTIA, VICE CHAIRMAN (A))

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

“(1) यह कि विपक्षी सं0 4 व 5 द्वारा पारित कार्यमुक्ति आदेश दि0 28-11-2016 को अपास्त कर प्रार्थिनी का संवीलियन चिकित्सा स्वास्थ्य विभाग से चिकित्सा शिक्षा विभाग में सभी परिणामी लाभों (Consequential Benefits) सहित किया जाये।

(2) यह कि अन्य कोई अनुतोष जो माननीय न्यायालय उचित समझे, वह भी प्रार्थिनी को दिया जाये एवं वाद व्यय भी प्रार्थिनी को प्रतिवादीगण से दिलवाया जाये।”

2. The petitioner was initially appointed on the post of Staff Nurse in the Department of Medical and Health under the CMO, Dehradun in 1999. The petitioner was posted at Community Health Centre, Vikas Nagar, Dehradun in 2004. Thereafter, she was attached to the Government State Nursing School, Dehradun on the post of Tutor in 2011.

3. The Medical Education Department of the Government of Uttarakhand under the proviso to article 309 of the Constitution framed the Absorption Rules, 2016 on 02.05.2016 to absorb (apart from other staff) tutors who were attached to the State School of Nursing, Dehradun in the Nursing Teachers Service Cadre in the Medical Education Department. In pursuant to the absorption rules, the principal of State School of Nursing, Dehradun invited applications on 04.06.2016 from those who were interested in absorption. The petitioner applied for absorption on 28.06.2016 and submitted the option form to the respondent No. 4. The respondent No. 3 issued the “No Objection Certificate” for absorption of the petitioner on 03.10.2016. The respondent No. 5 asked respondent No. 6 to send the ACRs of the petitioner for last 10 years on 10.08.2016. The respondent No. 6 sent the ACRs of the petitioner for 11 years (2001-02 to 2011-12) to respondent No. 5 on 03.09.2016. The ACRs of the petitioner for the years 2012-13 to 2015-16 (attachment period) were also available. The contention of the petitioner is that in spite of her eligibility and fulfillment of all the conditions of Absorption Rules, 2016, the petitioner

was not absorbed on the post of Tutor in the State School of Nursing, Dehradun by respondent No. 3 vide order dated 28.11.2016. Respondent No. 3 in his order dated 28.11.2016 has stated that the petitioner was not found suitable for absorption due to non-availability of ACRs of the petitioner for 5-10 years. The petitioner also submitted representations dated 02.01.2016 and 16.02.2017 against the order dated 28.11.2016 to the respondent No. 3 but the same remained undecided. The petitioner has, therefore, filed this claim petition praying for her absorption in the Department of Medical Education.

4. Respondent No. 4 has opposed the claim petition and filed the written statement which is very cursory. The only point stated in the written statement is that the petitioner is not entitled for merger of her services in Medical Education Department. Respondents No. 1 to 3 have not filed any written statement.

5. Smt. Hansi Negi, Principal, State School of Nursing, Dehradun was made a party by the petitioner in her personal capacity as respondent No. 5. Later on, the petitioner amended her petition and deleted the name of Smt. Hansi Negi and the Principal, State School of Nursing, Dehradun was made a party by designation as respondent No. 5. Smt. Hansi Negi filed the W.S. before amendment in the petition. The W.S. filed by Smt. Hansi Negi has no relevance after deletion of her name as a party. After the amendment in the claim petition, the Principal of State School of Nursing, Dehradun has not filed any W.S.

6. The petitioner has also filed rejoinder affidavit and the same averments have been reiterated in it which were stated in the claim petition. The petitioner has also filed the documents through supplementary affidavits.

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

8. Learned counsel for the petitioner in her arguments has raised the same points which are stated in paragraph 3 of this order. Learned A.P.O. on behalf of the respondents has raised the points that the petitioner was found unsuitable for absorption because of unavailability of ACRs of the petitioner and her case was not recommended by the competent authority.

9.1 For the absorption of tutors (and others) in the Medical Education Department, the State Government framed the Absorption Rules, 2016 (Annexure: A 19). Rule 4 of the Absorption Rules, 2016 provides the qualification for eligibility of Tutor for absorption. Admittedly, the petitioner fulfils the qualification for eligibility.

9.2 It has also been prescribed under Rule-4 of the Absorption Rules that the tutor for absorption must be attached to the Nursing Teachers Service Cadre of Medical Education Department upto 30.11.2015. Admittedly, the petitioner was attached from 2011 and continued to be attached upto 30.11.2015 and thereafter also the petitioner continued to be attached upto 28.11.2016.

9.3 It is also admitted that the petitioner applied for absorption and submitted the Option Form on 28.06.2016 for absorption in accordance with Rule-8 of the Absorption Rules, 2016.

9.4 Rule-9 of the Absorption Rules provides that for absorption in Medical Education Department, it will be essential that the "No Objection Certificate" is issued by the Department of Medical, Health and Family Welfare. Admittedly, the petitioner was issued the NOC by the Director General Medical, Health and Family Welfare on 03.10.2016.

9.5 Apart from the conditions mentioned in paragraphs 9.1 to 9.4, there is no other condition/requirement to be fulfilled by the petitioner for absorption under the Absorption Rules, 2016.

10. The perusal of record reveals that in spite of the fact that the petitioner fulfilled all the conditions prescribed under Absorption Rules,

2016, the petitioner was not absorbed in the Medical Education Department.

11. The Director of Medical Education, Government of Uttarakhand (respondent No. 4) vide letter dated 28.11.2016 rejected the application of the petitioner for absorption. The said letter reads as under:

“प्रेषक,

निदेशक,
चिकित्सा शिक्षा निदेशालय,
107-चन्द्र नगर, देहरादून।

सेवा में,

महानिदेशक,
चिकित्सा, स्वास्थ्य एवं परिवार कल्याण विभाग,
डाण्डा लखौण्ड, सहस्रधारा रोड, देहरादून।

पत्रांक- 26प/चि0शि0/65/भाग-2/5946

दिनांक: 28 नवम्बर, 2016

विषय: श्रीमती सरला सिंह, सिस्टर, सी0एच0सी0 विकासनगर, देहरादून को चिकित्सा शिक्षा विभाग में ट्यूटर के पद पर समायोजन किये जाने के सम्बन्ध में।

महोदया,

उपरोक्त विषयक अवगत कराना है कि श्रीमती सरला सिंह, सिस्टर, सी0एच0सी0 विकासनगर, देहरादून जो कि वर्तमान में स्टेट स्कूल ऑफ नर्सिंग 107-चन्द्र नगर, देहरादून में ट्यूटर के पद पर दिसम्बर 2011 से सम्बद्ध हैं। उक्त के सम्बन्ध में अवगत करना है कि श्रीमती सरला सिंह की सक्षम स्तर से संस्तुति न होने तथा महानिदेशालय से उक्त नर्सिंग कार्मिक की 05-10 वर्ष की गोपनीय आख्या अप्राप्त होने के कारण श्रीमती सरला सिंह को चिकित्सा शिक्षा विभाग में समायोजन/संवीलियन हेतु अनुपयुक्त पाया गया है।

अतः उक्त के क्रम में अवगत करना है कि श्रीमती सरला सिंह (सिस्टर) सी0एच0सी0, विकासनगर, देहरादून को उनके मूल विभाग (चिकित्सा, स्वास्थ्य एवं परिवार कल्याण) में वापस भेजे जाने की संस्तुति की जाती है।

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(डॉ0 आशुतोष सयाना)
निदेशक”

12. The Director Medical Education has stated two reasons for rejection of absorption application of the petitioner. The first reason is that there was no recommendation of the competent authority for absorption. Neither in the above letter dated 28.11.2016 nor in the

written statement filed by the Director, Medical Education (respondent No.4) nor at the time of hearing, it has been made clear as to who was the competent authority to recommend the absorption. The perusal of Absorption Rules, 2016 reveals that there is no provision for recommendation by any competent authority for absorption of the petitioner. On the contrary, perusal of Absorption Rules, 2016 and the available record reveals that the petitioner fulfils all the conditions laid down in Absorption Rules as has been mentioned in paragraphs 9.1 to 9.5 of this order. There is, of course, condition of NOC by the Medical, Health and Family Welfare Department which admittedly was issued for the absorption of the petitioner.

13. The second reason which has been mentioned by the Director, Medical Education for rejection of petitioner's absorption in the letter dated 28.11.2016 is non-availability of petitioner's ACRs of 5-10 years. This reason is also beyond the conditions prescribed under the Absorption Rules, 2016. There is no mention of ACRs in the Absorption Rules, 2016 for the absorption. The condition of issuing "No Objection Certificate" by the Medical and Health Department for absorption has only been prescribed under Rule-9 of the Absorption Rules, 2016 and admittedly, the same has been fulfilled by the petitioner as the Director General, Medical, Health and Family Welfare issued the NOC for absorption of the petitioner in Medical Education Department on 03.10.2016. However, the petitioner has stated in the claim petition that her ACRs for the years 2001-02 to 2015-16 were available and there is no adverse ACR and the same has not been denied by the respondent in the written statement. In any case, as has been mentioned earlier, the Absorption Rules, 2016 do not provide any condition related to ACR. The Absorption Rules only provide the condition of NOC by the Medical, Health and Family Welfare Department which has been fulfilled by the petitioner.

14. For the reasons stated above, the rejection of absorption application of the petitioner is not in accordance with the Absorption Rules and, therefore, the order of respondent No. 3 dated 28.11.2016 is liable to be set aside and the petition deserves to be allowed.

ORDER

The petition is hereby allowed. The order of the respondent No. 4 dated 28.11.2016 by which the petitioner is not found suitable for absorption is set aside. The case is remanded to respondent No. 4 for considering the absorption of the petitioner afresh in accordance with the Absorption Rules, 2016 and pass a reasoned order within a period of six weeks from today. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: FEBRUARY 06, 2018
DEHRADUN

KNP