

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

CLAIM PETITION NO. 18/SB/2017

Suresh Chand Sharma, Retired Principal/ Lecturer, R/o Chandra Bani, Amar
Bharti, P.O.- Mohabewala, Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Education Department (Secondary.
2. Mukhya Shiksha Adhikari, Mayur Vihar, Dehradun.
3. Director of Education, Nanoor Kheda, Dehradun.
4. Director, Treasury, Pension & Haqdari, State of U.K., Pritam Road, Dehradun.
5. Management Committee, Hindu National Inter College, Dehradun through its
Chairman/ Manager.
6. Principal, Hindu National Inter College, Dehradun.

.....Respondents.

Present: Sri L.D.Dobhal, Counsel
for the petitioner.

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents No. 1 to 4.

Sri Sunil Kumar Jain, Counsel
for Respondents No. 5 & 6.

JUDGMENT

DATED: MARCH 08, 2018

Justice U.C.Dhyani(Oral)

Present claim petition has been filed by the petitioner for
following reliefs:

“ (A) That a declaration or any other order or direction be issued
in favour of the applicant and against the respondents to the
effect that they pay to the applicant the interest @ 12% on late
payment of his retiral dues.

(B) That a declaration or any other order or direction be issued in
favour of the applicant and against the respondents to the effect
that they pay to the applicant the revised pay scale of the post of

Principal for the period for which he worked as Principal along with interest @ 12%.

(C) That any other order or direction, which the Hon'ble Tribunal thinks fit, be also awarded.

(D) Costs of the petitioner be also awarded”.

2. As usual, this Tribunal would have first adverted to the facts of present claim petition, but Ld. Counsel for Respondents, at the very outset challenged the maintainability of present claim petition, submitting that this Tribunal has no jurisdiction to decide this petition. The very premise of such an argument of Ld. Counsel for respondents is that petitioner is not a 'public servant' . .
3. Before proceeding further, let us see, whether this Tribunal has jurisdiction to decide present claim petition or not ?.
4. Section 4 (1) of the U.P. Public Services (Tribunal) Act, 1976 (for short, Act of 1976) provides as under:-

“4. Reference of claim to Tribunal- Subject to the other provisions of this Act, a person who is or has been a public servant and is aggrieved by an order pertaining to a service matter within the jurisdiction of the Tribunal, may make a reference of claim to the Tribunal for the redressal of his grievance.

Explanation- For the purpose of this sub section “order” means an order or omission or in-action of the State Government or a local authority or any other Corporation or company referred to in clause (b) of Section 2 or of an officer, committee or other body or agency of the State Government or such local authority or Corporation or company:

Provided that no reference shall, subject to the terms of any contract, be made in respect of a claim arising out of the transfer of a public servant:

Provided further that in the case of the death of a public servant, his legal representative and where there are two or more such representative, all of them jointly, may make a reference to the “Tribunal for payment of salary, allowances, gratuity, provident fund, pension and other pecuniary benefits relating to service due to such public servants.”

5. The petitioner is admittedly retired Principal/ Lecturer of the College run by Respondents No 5 and 6. It is admittedly a Grant In Aid Institution. It may also be said that it is a Government Aided College. In such a situation, the question is, whether the petitioner can be termed as 'public servant' or not ?

6. The word 'public servant' has been defined in Section 2(b) of the Act of 1976 as follows:

“Public servant’ means every person in the service or pay of

- (i) the State Government; or
- (ii) a local authority not being a Cantonment Board; or
- (iii) any other corporation owned or controlled by the State Government (including any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty percent of paid up share capital is held by the State Government) but does not include

(1) a person in the pay or service of any other company; or

(2) a member of the All India Services or other Central Services:”

7. It is the submission of Ld. Counsel for the petitioner that Learned Single Judge of Hon'ble High Court, vide order dated 12.05.2016 in **Second Appeal No. 103/15 Laxmi Chand Sharma Vs. Deputy Director Education and others** (Copy Annexure- A 13) has relegated similar matter to Public Services Tribunal. It will be pertinent to quote the findings of Ld. Single Judge here in below for convenience:

“The premise behind allowing such appeal was that the plaintiff Laxmi Chand Sharma was a public servant, as is envisaged u/s 2(b) of the U.P. Public Services (Tribunal) Act, 1976 [hereinafter to be referred as 'the Act']. This provision contemplates that a 'public servant' means every person in the service or pay of

- (i) the State Government; or
- (ii) a local authority not being a Cantonment Board; or
- (iii) (iii)

.....

Since the Basic School where the appellant rendered his initial service, was also a grant-in-aid institution and the salary was paid by the State Government with a supervisory control on the same, hence he is covered within the definition of a 'public servant'. Thus, he could not have filed the Suit, as is barred by Section 6(1) of the Act. Such provision reads as under:

6. Bar of suits- (1) No suit shall lie against the State Government or any local authority or any statutory corporation or company for any relief in respect of any matter relating to employment at the instance of any person who is or has been a public servant, including a person specified in [clauses (a) to (g)] of sub-section (4) of Section 1.

(2)

On the other hand, learned counsel for the appellant has urged that since the grant-in-aid schools are controlled by the private societies and the President and Manager whereof are duly elected by the Members of such Society, hence the appellant cannot be said to be a public servant, rather he is the employee of such society. I am unable to agree with this contention for the reason that even if the Rules are formulated by any such Society for running the school administration, those rules have no value until and unless approved by a competent officer of the State. It is difficult to accept that when the Government is involved in paying the salary of any employee right from Class IV to the Principal, then for the purpose of management of such institution, it may be kept aside. The management can be run by the President/Secretary of the Society but for every material decision, the approval is sought from the State Government. The rules for a public servant as regards their leaves viz. casual, earned, medical, maternity etc. as also pension, the State Government frames the rule which, by and large, are applicable to these employees akin to other public servants who are straightway under the direct control of the State.

So, in view of what has been set forth above, I do agree with the view, as adverted by the First Appeal Court, and thus, find no force in this appeal. It is, accordingly, dismissed. Both the substantial questions of law are answered accordingly”.

8. Ld. Counsel for respondents, on the other hand, placed decision rendered by Division Bench of Hon'ble High Court of

Uttarakhand on 24.07.2014 in W.P.(SB) No. 339/16 State of Uttarakhand and others vs. Vedprakash Verma and another, to submit that this Tribunal has no jurisdiction to entertain present claim petition. It will also be useful to reproduce relevant portion of said judgment herein below for ready reference:

“2. Respondent No.1 was initially appointed as Teacher in Public Inter College Doiwala, Dehradun, which is run by the Committee of Management and the same is granted aid by the State Government. The respondent no.1 was superannuated on 30.06.1991. At the time of his superannuation, the respondent no.1 was working as Senior Lecturer, English. After his retirement, he was given pension. Later, it was found by the respondent no.1 that his pension was not fixed correctly and lesser amount of pension was being paid to him. He made a representation on 15.06.2012 for revising his pension. He also submitted reminder; but, nothing was done. Therefore, he filed claim petition before the Uttarakhand Public Services Tribunal, Dehradun with the following reliefs:

“a) To review the pension payment order dated 28.07.1995 (Annexure No. A-1) and to correctly re-fix the pension as per Rules since 28.07.1995.

b) To make payment of arrears of pension arising after re-fixation of pension since 28.07.1995.

c) To make payment of interest @ rate of 18% per annum up to the date of actual date of payment of amount/ arrears of pension withheld since 28.07.1995 because of short / lesser payment of pension on account of wrong fixation of pension.

▪ To grant any other relief/ reliefs which this Hon'ble Tribunal deem fit and proper to pass in consequences of this petition.

▪ This Hon'ble Tribunal may be pleased to quash the said order dated 04.07.2015 by which the representation filed by the petitioner has been rejected without application of mind. ”.

3....

4. It is submitted by the learned counsel for the petitioner that the services of the respondent no.1 is under a school run by committee of Management, therefore, the claim petition filed by the respondent no.1 before the Public Services Tribunal is not maintainable and the Tribunal had no jurisdiction to entertain the said claim petition. He further submitted that the first question involved in the writ petition is whether the dispute, pertaining to the private educational institution run by

the Committee of Management, can be adjudicated by the Public Services Tribunal and second question involved is that whether the person, who has been retired from service before the appointed day, can maintain a claim petition before the Public Service Tribunal situated in State of Uttarakhand because the Public Services Tribunal situated in State of Uttarakhand has no jurisdiction to entertain the claim petition of those persons who stood retired from service prior to the appointed day.

5.....

6. In reply, Mr. Sahilendra Nauriyal, learned counsel for the respondent no.1 submitted that the question of maintainability was not raised by the petitioner before the Public Services Tribunal, therefore, petitioner cannot raise this question before this Court. He submitted that once the case of the respondent no.1 is decided on merit, the same should be decided on merit. He further submitted that the respondent no.1 is a retired teacher and he is 85 yrs old, and in case, his claim petition is dismissed on the ground of maintainability, he would suffer irreparable loss. He prayed that the claim of the respondent no.1 may be decided on its own merit.

7. This Court has to decide the question whether the Tribunal was legally justified in entertaining the claim petition of claimant-respondent, who has worked as teacher in an Institution run by the Committee of Management.

8. Section 4(1) of the Public Services Tribunal Act about the claim petition to be filed by the employees reads as follows:

Excerpted in Para 5 of this judgment above.

9. Thus, only that person can approach the Tribunal, who is or has been a public servant.

10. It is undisputed that the institution where the respondent no.1 had worked i.e. Public Inter College, Doiwala, is a Government Aided Institution being run by the Committee of management. This institution gets aid from the government. Simply grant of aid to the institution itself does not change the status of the institution. By getting government aid such institution does not become a government institution. Similarly, the status of employee is also not changed. Therefore, in our view, the teacher of a Government Aided Institution being run by the Committee of Management is not a public servant/ government servant. The respondent no.1 worked as a teacher and retired as Senior Lecturer on 30.06.1991 from Public Inter College, Doiwala, Dehradun. Therefore, he cannot prefer a claim petition before the Public Services Tribunal for the redressal of his grievances. In our considered view, the Uttarakhand Public Services Tribunal

had erred in law by entertaining the claim petition of the petitioner. Consequently, the writ petition is allowed. Order dated 19.01.2016, passed by the Public Services Tribunal, Dehradun in claim petition No. 14(S/B) of 2014, Vedprakash Verma vs. State of Uttarakhand and others is hereby set aside. The claim petition moved by the claimant/ respondent is hereby dismissed as not maintainable.” [Emphasis Supplied]

9. The issue in present claim petition is identical to the one which has been raised in Vedprakash Case (*supra*). Whereas Ld. Single Judge passed the order on 12.05.2016, Hon’ble Division Bench gave the judgment on 27.04.2017, which is later in point of time, besides being numerically higher in strength. Judicial discipline requires that a judgment rendered by Hon’ble Division Bench should be followed, even if Ld. Single Judge has taken a contrary view.
10. In view of the undisputed fact that petitioner is a retired Principal/ Lecturer in Government Aided/ Grant in Aid College, run by Respondents No. 5 and 6, this Tribunal has no option but to hold, in view of decision rendered by Hon’ble Division Bench in Vedprakash Case (*supra*), that petitioner is not a public servant within its definition under the Act of 1976 and, therefore, present claim petition moved by him, before this Tribunal, is not maintainable.
11. It is made clear that this court has not gone into the merits of the claim petition.
12. At this stage of dictation, Ld. Counsel for the petitioner submitted that petitioner’s representation may kindly be directed to be decided by Respondent No.3. It may be noted here that, even after dismissing the writ petition, Hon’ble Division Bench, vide order dated 27.04.2017 had directed the competent authority to decide the representation of the petitioner, in accordance with law. Taking a leaf out of the judgment of Hon’ble Division Bench, this Tribunal is also inclined to pass a similar order, purely in the interest of justice, that in case the petitioner represents before the competent authority, such authority is requested to decide the representation of the petitioner, in

accordance with law, at an earliest, considering the fact that the petitioner has retired in 2013 and is running from pillar to post for claiming interest on his retiral dues.

13. The claim petition, thus stands disposed of. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 08, 2018
DEHRADUN

VM