

**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. 16/NB/DB/2016

Smt. Shobha Rawat, W/o Sri Harendra Singh Bisht, R/o 51 Bodyguard,
Rajpur Road, Dehradun.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Department of School Education, Government of Uttarakhand, Dehradun.
2. Director (Elementary Education) Uttarakhand, Nanoorkhera, Dehradun.
3. District Education Officer (Elementary Education), Pauri Garhwal.

.....Respondents.

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioner

Sarvashri U.C. Dhaundiyal &
V.P.Devrani, Ld. A.P.Os.
for the respondents

JUDGMENT

DATED: APRIL 03, 2018

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

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

- “i) To quash and set aside the impugned order of removal dated 25.04.2015 passed by Respondent No. 3 (Annexure-I).*
- ii) To issue direction to the respondents to forthwith permit the applicant to resume her duties as Assistant Teacher, Government Primary School with all consequential benefits including seniority and arrears of salary.*
- ii) To pass any other suitable order as this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.*
- iii) To award the cost of the petition in favour of the applicant.”*

2.1 The petitioner was appointed as Assistant Teacher on 24.01.2009 (Annexure: A2) and in pursuant to the appointment order, she joined Government Primary School, Jamal, Block Dwarikhal, District Pauri Garhwal on 02.02.2009.

2.2 Due to birth of child and other health issues, she was sanctioned medical leave for 82 days from 02.07.2009 to 21.09.2009. On 23.06.2011, the petitioner submitted an application to Block Education officer, Dwarikhal for sanction of leave without pay due to health and family circumstances (Annexure: A4).

2.3 Thereafter, a Press Release was published on 16.12.2014 (Annexure: A5) showing that the petitioner continuously remained absent since 24.06.2011 and she was asked to report on duty within 10 days.

2.4 In pursuant to the Press Release, the petitioner admittedly, reported on duty on 23.12.2014 (Annexure A6). Thereafter, the respondent No. 3, vide letter dated 24.01.2015 (Annexure: A7) referring earlier letters, sought a report from Deputy Education Officer so that the decision regarding joining by the petitioner may

be taken. There is no report (which was to be sent by the Deputy Education Officer) on record.

2.5 Thereafter, respondent No. 3 issued the termination order (Annexure: A1) of the petitioner on 25.04.2015. The termination order was issued under Fundamental Rule 18 (Financial Hand Book- Volume-2 Part II-IV). The said rule reads as under:-

*“18. Unless the Government, in view of the special circumstances of the case, otherwise, determine, after five years’ continuous absence from duty elsewhere than on foreign service in India, whether with or without leave, no Government servant shall be granted leave of any kind. **Absence beyond five years will attract the provisions of rules relating to disciplinary proceedings.**”*

3. The petitioner has contended that no departmental inquiry was conducted against the petitioner as prescribed under Fundamental Rule 18. It has further been submitted by the petitioner that “termination” is a major punishment and a proper inquiry should have been conducted under “The Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003” as amended in 2010. The petitioner was not issued any charge sheet and no opportunity of hearing was provided to the petitioner and, therefore, termination order cannot sustain in the eye of law.

4. Respondents No. 1 to 3 have opposed the claim petition and submitted that the termination of the petitioner is in accordance with Fundamental Rule 18; the Press Release was also issued for joining the duty; and the petitioner has been terminated in accordance with the G.O. No. 308/304/XXV(3)/05 dated 25.07.2005 and Rule 30 of “उत्तराखण्ड राजकीय (शिक्षक) प्रारंभिक शिक्षक सेवा नियमावली, 2012” as the joining of the petitioner (in pursuant to the Press

Release) was not found proper. However, G.O. dated 25.07.2005 and the Rules of 2012 were not produced before the Tribunal.

5. The petitioner has also filed the rejoinder affidavit and the same averments have been reiterated in it which were stated in the claim petition.

6. We have heard both the parties and perused the record.

7. After arguing for a while, learned A.P.Os. also admitted that it is compulsory to conduct the departmental inquiry while taking action under Fundamental Rule 18 (reproduced in paragraph 2.5 of this order). In fact, in the termination order (Annexure: A1) itself, the disciplinary authority has clearly mentioned that the departmental inquiry is required before the termination under Fundamental Rule 18. It was admitted by both the parties that no departmental inquiry has been conducted under "The Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003" as amended in 2010. Admittedly, no charge sheet was issued to the petitioner and no opportunity of hearing was provided to the petitioner. We find that Rule 7 of the said Rules of 2003 (as amended in 2010) which prescribes the procedure for imposing major punishment has not at all been followed. Rule 7(17) of the Discipline Rules of 2003 as amended in 2010 provides the cases where inquiry is not required to be conducted. Rule 7(17) reads as under:-

"(17) This rule shall not apply in the following case;-- i.e. there is no necessity to conduct an inquiry in such cases:-

(a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably

practicable to hold an inquiry in the manner provided in these rules; or

- (c) *Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry in the manner provided in these rules."*

It is not the case of the respondents that above Rule 7(17) applies to the case in hand.

8. In view of above, the termination order (Annexure: A1) is patently illegal and in gross violation of law, rules and principles of natural justice.

9. For the reasons stated above, the petition deserves to be allowed.

ORDER

The claim petition is hereby allowed. The impugned order dated 25.04.2015 (Annexure: A1) is hereby set aside. The petitioner would be reinstated within a period of 6 weeks from the date of presentation of this order to respondent No. 3. However, it would be open to the competent authority to proceed afresh against the petitioner in accordance with law. The question regarding payment of salary from the period of termination to the period of reinstatement would be decided by the competent authority at the appropriate time during the inquiry or after the inquiry as per law. Before parting with the matter, it is clarified that no opinion has been expressed on the merits of the case. No order as to costs.

(RAM SINGH)
VICE CHAIRMAN (J)

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

DATE: APRIL 03, 2018

DEHRADUN

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