

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

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

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

CLAIM PETITION NO. 02/SB/2017

Smt. Vinesh W/o Sh. Sanjay Nagyan, Assistant Teacher, L.T. Grade (English) presently posted and working as Officiating Principal in government Girls Higher Secondary School, Laknota, Narsan Block, District Haridwar.

.....Petitioner

vs.

State of Uttarakhand and Others.

.....Respondents.

Present: Sri L.K.Maithani, Counsel
for the petitioner.
Sri U.C.Dhaundiyal, A.P.O.
for the Respondents

JUDGMENT

DATED: APRIL 27, 2018

Justice U.C.Dhyani (Oral)

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

“ (a) To quash the impugned order dated 15.09.2011 (Annexure No. A-1) and Office Order dated 27.03.2017 (Annexure: A-11) up to the extent where it relates to the order of denial of leave to the petitioner for the period 02.04.2008 to 28.12.2008; 29.12.2008 to 10.05.2009; 02.08.2009 to 26.08.2009 and 07.11.2009 to 15.09.2011

(the date of the impugned order) and order of treating the same as break in service of the petitioner.

(b) To Issue an order or direction to the concerned respondent No.3 to sanction the leave to the petitioner with continuity of the service for the period 02.04.2008 to 28.12.2008; 29.12.2008 to 10.05.2009; 02.08.2009 to 26.08.2009 and 07.11.2009 to 24.11.2011 as directed by the respondent No.2 vide his order dated 19.06.2006 (Annexure No. A-10 to the petition) with all consequential service benefits.

(c) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case

(d) To award the cost of the petition to the petitioner.”.

2. Brief facts, giving rise to present claim petition, are as follows:

The petitioner was appointed on the post of Assistant Teacher (L.T. Grade) on 15.09.2005 in Government Girls Inter College, Thal, District Pithoragarh. On 01.04.2008 petitioner applied for medical leave on account of her illness due to pregnancy, and came to her home district for treatment. Petitioner gave birth to a child on 29.12.2008, therefore, she sent information to the then Principal of the School, for maternity leave w.e.f. 29.12.2008 to 10.05.2009. Petitioner resumed her duty on 11.05.2009 (Annexure: A 2)

On 07.11.2009, petitioner applied for leave on the ground of her and her child's illness, which was accepted (Annexure: A-3). Petitioner, due to their continuing illness, could not join her duties till 07.11.2010. She moved an application for further three months' leave without pay on 01.10.2010.

Petitioner was suspended *vide* order dated 30.10.2010 (Annexure: A-4), which was challenged by the petitioner before the Hon'ble High Court of Uttarakhand by way of W.P. No. 154/2011(S/S). Hon'ble High Court, in its order dated 01.03.2011(Annexure: A-5) passed in W.P. No. 154/11(S/S), directed the petitioner to move application for revocation of suspension order and also directed the authority concerned to decide such application within a period of two weeks, if filed. Respondent No. No.3 *vide* impugned order dated

15.09.2011 (Annexure: A 1), revoked the suspension of the petitioner, but, on the other hand, denied the leave for the period w.e.f. 2.4.2008 to 28.12.2008; 29.12.2008 to 10.05.2009; 02.08.2009 to 26.08.2009 and from 07.11.2009 till date.

After revocation of suspension order, petitioner was not permitted to join her duties by the Principal of the School on 07.10.2011. It is averred in the petition that after moving an application on 14.10.2011 to respondent No.3, in this regard, petitioner was given joining by the Principal on 25.11.2011, after receipt of the letter of the respondent No.3 dated 17.10.2011 (Annexure: A-8) by the Principal.

With regard to non-sanction of leave for the period of absence, *vide* impugned order dated 15.09.2011, petitioner made representation dated 19.06.2013 (Annexure: A-9) to respondent No.2. Respondent No.2, on the representation of petitioner, directed respondent No.3, *vide* order dated 19.06.2013 (Annexure: A-10), to sanction the leave for the period of absence, mentioned in the impugned order dated 15.09.2011. But inspite of direction given by respondent No.2, representation of the petitioner has not been decided by respondent No.3 so far.

3. A new factual plea has been raised by Ld. Counsel for the petitioner during the course of arguments that petitioner is a permanent employee of Uttarakhand Education Department and, therefore, her services shall be governed by Rule 81(b) of U.P. Fundamental Rules. The submission is that the petitioner's services shall not be governed by Subsidiary Rule 157, which is meant for temporary and officiating employees.
4. After arguing the claim petition at some length, Ld. Counsel for the petitioner has confined his prayer only to the extent that petitioner's representation may kindly be directed to be decided by Respondent No. 3 after affording opportunity of personal hearing.

5. Ld. A.P.O. has no objection to such innocuous prayer. Considering the facts of the case, we think that the innocuous prayer made by the petitioner, is worth accepting.
6. Claim petition is, accordingly, disposed of by directing petitioner to move a fresh representation before the Additional Director, Secondary Education, Kumaun Mandal, Respondent No.3, along with a copy of this Order. Respondent No.3, thereafter, is directed to decide such representation of the petitioner, after affording opportunity of personal hearing to her, by a reasoned and speaking order, in accordance with law, at an earliest possible but not later than ten weeks of presentation of certified copy of this order along with a copy of representation .
7. Needless to say that the decision so taken, shall be communicated to the petitioner soon thereafter.
8. It is made clear that we have not expressed any opinion on the merits of the claim petition.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: APRIL 27, 2018
DEHRADUN

VM