

**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. 40/DB/2016

Smt. Kiran Bahuguna aged about 45 years r/o 153/1, Haridwar Road, Behind CMI Hospital Dehradun.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, Education, Government of Uttarakhand, Secretariat, Dehradun.
2. Add. Director Primary Education, Garhwal Mandal, Pauri.
3. Chief Education Officer, Narendra Nagar, Tehri Garhwal.
4. District Education Officer, Primary Education, Tehri Garhwal, New Tehri.

.....Respondents.

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

Sri U.C.Dhaundiyal, A.P.O.
for the Respondents

JUDGMENT

DATED: MAY 17, 2018

Justice U.C.Dhyani (Oral)

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

“(i) To quash the impugned punishment order dated 21.05.2015 (Annexure No. A-1), Order dated 05.09.2016 of Respondent No.2 (Annexure No. A-9), order dated 13.10.2016 of Respondent No.4 (Annexure No. A-10) and order dated 14.10.2016 for Respondent No.2 (Annexure No. A-11) along with charge sheet dated 27.01.2015 (Annexure No. A-5) declare the same as illegal and non-est in the eyes of law..

(ii) To issue an order or direction to the respondent to reinstate the petitioner in her service, with continuity, with all consequential benefits...

(iii) to issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

(iv) To award the cost of the case .”

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

Petitioner was initially appointed on the post of Assistant Teacher on 07.12.1990. She was thereafter promoted in the year 2004. After begetting a child, she was on leave without pay from 11.09.2004 to 12.03.2007. Such leave was sanctioned to her by respondent No.3, *vide* letter dated 31.03.2007. Due to family problems, she could not attend her duty and applied for leave again from 25.05.2007 to 30.10.2008. Such leave was also sanctioned to her without pay, *vide* order dated 30.07.2007, by respondent No.3. She joined her duties on 31.10.2008. Again she applied for medical leave w.e.f. 01.11.2008. Due to poor health, she could not join her duties till June, 2015. When she went to School to join her duties, she came to know that her services have been dismissed.

She preferred departmental appeal against impugned punishment order. Respondent No.2, *vide* letter dated 09.05.2016, directed respondent No.3 to hear the petitioner and take decision on her appeal, but no decision had been taken on the same. In the meanwhile, she approached this Tribunal, who directed the respondents to decide her appeal, which was decided by adopting a strange procedure. This court need not elaborate such facts, as these

are contained in para iv-A of the claim petition. She has challenged the punishment order on several grounds, which grounds have been delineated in Para iv to xv of the claim petition.

In a nutshell, punishment order and other subsequent orders, arising therefrom, along with charge sheet, are under challenge in present claim petition.

3. C.A./W.S. has been filed on behalf of respondents. It has been averred in C.A. that charge sheet was served upon the petitioner, as per law and the impugned orders were passed after complying with due procedure. There are three principal submissions of Ld. Counsel for the petitioner. **These are- (i) impugned punishment order has been passed without taking recourse to departmental proceedings; (ii) charge sheet was never served upon her; and (iii) even if the charge sheet was served upon her, it was blank on material contents.**

4. Admittedly, impugned order was passed without taking recourse to departmental proceedings. Services of the petitioner were dismissed on the ground that she continuously remained absent for five years, without intimation. **The question which arises for consideration of this Court is, whether departmental proceedings in such case were necessary or not?**

5. Termination order, in the instant case, was admittedly 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.**”*

6. Ld. Counsel for 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 Servants (Discipline and Appeal) Rules, 2003” as amended in 2010. The petitioner was not issued any charge sheet and no opportunity of hearing was given to the petitioner and, therefore, termination order cannot sustain in the eye of law.

7. It is clear that departmental inquiry is *sine qua non* for taking action under Fundamental Rule 18 (Financial Hand Book-Volume-2 Part II-IV), which has been quoted in Para 5 of this judgment hereinabove. Departmental proceedings should have been conducted after the amendment in Rule-18 of Financial Hand Book was incorporated. Such amendment came into force in 1989. Secretary to the Government in Finance Department, has also clarified, while issuing Office Memorandum on 25.07.2005, that even if, an employee remains absent from duty continuously for five years, his/ her services are to be dispensed with, but only after adopting due procedure. It further clarified that services of such an employee may be terminated only after serving charge sheet to him/ her, after giving him/ her due opportunity of hearing.
8. Further, documents have been filed to show that the petitioner was never served with the charge sheet. Even if it be conceded for the sake of arguments that the charge sheet was served upon her, admittedly, no further proceedings ever took place. Even a novice, in service jurisprudence, knows that after service of charge sheet, reply is to be sought. Thereafter, appointing officer himself may hold inquiry or he may appoint an inquiry officer. Evidence, against him, is adduced by the department, followed by evidence, if any, in defence. Inquiry report is filed, followed by show cause notice and then only termination order could be passed. In the instant case, nothing has been done.
9. There is yet another aspect of the case. A perusal of copy of charge sheet, dated 27.01.2015 (Annexure: A 5) will reveal that the

inaugural sentence of the charge sheet is blank. It has not been mentioned, from which to which date, the petitioner was posted in that particular School. Her post has also not been mentioned. Charge sheet, it appears, has been issued, without application of mind.

10. In the decision of *Dinesh Kumar Gandhi vs. Director Family Planning/ Family Welfare, UP L.C.D. 1994 (12) 1096*, which was based upon the decisions rendered by Hon'ble Apex Court in *Deokinandan Prasad vs. State of Bihar AIR, 1971 SC 1409*; *State of Assam vs. Akshaya Kumar Dev, AIR 1976 SC 376*; and *Jai Shankar vs. State of Rajasthan, AIR 1966 SC 492*, Hon'ble High Court of Judicature at Allahabad has held that where no opportunity of hearing was given to the petitioner before passing the order of dismissal on the ground of 10 years' absence from service without leave, the order is unsustainable in law.
11. Hon'ble Supreme Court in the case of *Deokinandan Prasad vs. State of Bihar (supra)* has held that though Rule 76 of Bihar Services Code, which is similar to Rule 18 of UP Fundamental Rules, prescribes automatic termination of services of continuous absence for 5 years, but the order passed to that effect, without an opportunity to the Government Servant, offends Article 311 of the Constitution of India and cannot be sustained. Similar view has been taken by the Hon'ble High Court of Allahabad in the case of *Dinesh Kumar Gandhi vs. Director (supra)*
12. In the case of *State of U.P. vs. Gurmukh Singh, L.C.D. 1994 (12) 1094*, it has been held by the Lucknow Bench of Hon'ble High court of Allahabad that termination of services due to long absence can be effective only when a person has been given opportunity to show cause before terminating his services.
13. The above noted three grounds are sufficient to set aside the order of termination.
14. Order accordingly.

15. The claim petition is hereby allowed. Impugned punishment orders dated 21.05.2015 (Annexure No. A-1), 05.09.2016 of Respondent No.2 (Annexure No. A-9), 13.10.2016 of Respondent No.4 (Annexure No. A-10) and order dated 14.10.2016 of Respondent No.2 (Annexure No. A-11) along with charge sheet dated 27.01.2015 (Annexure No. A-5) are hereby set aside. The petitioner would be reinstated within a period of 10 weeks from the date of presentation of this order, to respondent No. 2. It would, however, 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 an appropriate stage, during the inquiry or after the inquiry, as per law. It is clarified that the Court has not expressed any opinion on the merits of the case. No order as to costs.

D.K.KOTIA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MAY 17, 2018
DEHRADUN

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