

**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. 17/DB/2018

Laxmi Prasad Bahuguna, s/o Sri Rajendra Prasad Bahuguna, aged about 40 years, presently working and posted on the post of Reader/ Senior Assistant in the Office of District Consumer Forum, Champawat.

.....Petitioner

VS.

1. State of Uttarakhand through Principal Secretary, Food and Civil Supply, and Department of Consumer matters, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Registrar/ Appointing Authority, State Consumer Dispute Redressal Commission, Uttarakhand, Dehradun.
3. President/ District Judge, District Consumer Dispute Redressal Forum, Champawat.

.....Respondents.

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

Sarvsri U.C.Dhaundiyal and V.P.Devrani, A.P.Os., for the Respondents.

JUDGMENT

DATED: JULY 11, 2018

Justice U.C.Dhyani (Oral)

By means of present claim petition, petitioner seeks to declare that he is entitled to be regularized in service under the Uttarakhand Regularization of Ad hoc Appointments (on Posts Outside the Purview

of Public Service Commission) Rules, 2002. He also seeks a direction to the respondents to reconsider his regularization under the Rules of 2002 and modify his regularization order dated 06.09.2017 along with all consequential benefits.

2. Brief facts, necessary for adjudication of present claim petition, are as follows:

Petitioner was appointed as Reader in District Consumer Forum, Tehri Garhwal, on *ad hoc* basis, by District Magistrate, Tehri Garhwal, on 27.06.1994. On 24.07.1994, he was transferred to District Consumer Forum, Dehradun. On the basis of an anonymous complaint, petitioner's salary was reduced *vide* order dated 19.10.2006, of Respondent No.2. Petitioner moved representations to the said respondent for regularization and for giving him the benefit of 6th Pay Commission. Respondent No. 2 sent the matter to Respondent No.1 for taking action on his representation. Respondent No.1 gave a reply of the same to Respondent No.2. Respondent No.1 also informed Respondent No.2 that *Uma Devi's* case will not come in the way of regularization of the petitioner. Thereafter, correspondence took place between Respondent No.1 and Respondent No.2. In the meanwhile Regularization Rules, 2011 came into force. Respondent No.2 sought guidance of Respondent No.1, as to which Regularization Rules would apply to the petitioner. Respondent No.1, thereafter, directed Respondent No.2 to regularize the petitioner as per Rule 4(1) of Regularization Rules, 2002. No such decision was taken in the matter. Petitioner moved several representations. He was informed that the matter is under consideration before a Committee. After a long delay, petitioner was informed that his services have been regularized *w.e.f.* 06.09.2017 under the Regularization Rules, 2013, whereas the petitioner, as per pleadings, was entitled to be regularized under the Regularization Rules, 2002. Feeling aggrieved against the same, he has filed present claim petition.

3. Registrar, State Consumer Dispute Redressal Commission, Uttarakhand (Respondent No.2) addressed a letter on 30.12.2010 (Annexure: A 5) to Secretary to the Government, in the Department of Food & Civil Supplies, seeking action on the application for regularization of the petitioner, who was an *ad-hoc* appointee till then, and who was subsequently regularized on 06.09.2017, on the basis of Regularization Rules, 2013.
4. The Government in the Civil Supplies Department sent a reply on 17.11.2011 (Annexure: A 6) to Respondent No.2, clarifying that petitioner's regularization is not covered by the decision of Hon'ble Apex Court in Appeal (Civil) No. 3595-2612 of 1999, State of Karnataka vs. Uma Devi and others. Respondent No. 2 was requested to proceed with the regularization of the petitioner as per Sub-Para (1) of Para 4 of The Regularization Rules, 2002. It was clearly indicated, in Government's letter dated 17.11.2011 that all the benefits arising from the regularization of the petitioner shall be effective from the date the orders are passed.
5. It, therefore, follows that regularization of the petitioner was to be considered, as per Government's letter dated 17.11.2011, as per Para 4(1) of The Regularization Rules, 2002 and benefits arising therefrom, were required to be given from the date of order (to be passed by Respondent No.2). This was not done.
6. In furtherance of letter dated 17.11.2011 (Annexure: A 6), another clarification was sought by the Respondent No.2 from Respondent No.1, as to whether the regularization of the petitioner was to be done as per the Regularization Rules, 2002 or Regularization Rules, 2011 ? It was brought to the notice of Respondent No.1, by Respondent No.2, *vide* letter dated 26.06.2012 (Annexure: A 7), that, on that date, Regularization Rules, 2011 have come into force.

7. This letter too was replied by Respondent No.1 on 21.09.2012 (Annexure: A 9) that regularization of the petitioner was to be done as per Regularization Rules, 2002.
8. In Para 2 of Annexure: A 9, it was clarified by Respondent No.1 that since petitioner was appointed on 27.06.1994 and cut-off date prescribed in the Regularization Rules, 2002 was 30.06.1998, therefore, Para 4(1) of The Regularization Rules, 2002 is applicable to the petitioner. Simultaneously, it was also clarified that Para 4 of the Regularization Rules, 2011 is also applicable on the petitioner. Therefore, it was directed that, first of all Regularization Rules, 2002 shall be applied on the petitioner. Instead of doing the same, the committee comprising of Respondent No.2 and two other Judicial Officers, opined that since Regularization Rules, 2002 have been repealed by Regularization Rules, 2011, therefore, regularization of the petitioner shall only be considered as per the latter and not the former. The reason assigned for doing so, was that an administrative order cannot override the provisions contained in Rules. Copy of Meeting Committee has been enclosed as Annexure: R-8.
9. As per Annexure: A 9, a direction was given by Respondent No.1 to Respondent No.2 to proceed with the regularization of the petitioner, as per Regularization Rules, 2002, since he was appointed on 27.06.1994 and cut-off date in the Regularization Rules, 2002 was 30.06.1998. Such a direction was given by Respondent No.1 to Respondent No.2 on 21.09.2012, on a query of Respondent No.2 made on 26.06.2012. Much time was consumed in complying with the Government's direction dated 21.09.2012 (Annexure: A 9) on one pretext or another, may be, for valid reasons, or reasons beyond Committee's control. The committee held its meeting on 22.05.2013 (Annexure: R-8). Regularization Rules, 2011 had already come on 21.11.2011, when a direction was given by Respondent No.1 to Respondent No.2, in response to latter's query, on 21.09.2012, it will be presumed that Regularization Rules, 2011 were in the knowledge of

Respondent No.1 when directions contained in Annexure: A 9 were given to Respondent No.2. Still, when Respondent No.2 was making queries and seeking guidance of Respondent No.1, on one pretext or another, why the guidance was not sought for the third time ? Had Respondent No.2 not raised query on previous two occasions, which consumed a lot of time, the petitioner, probably, would have been regularized much before the date he was regularized. Probably, he would have been regularized under the Regularization Rules, 2002, even before Regularization Rules, 2011 saw the light of the day. Why did Respondent No.2 wait till Regularization Rules, 2011 came into force, which superseded Regularization Rules, 2002 ? what is the fault of the petitioner if his regularization was not decided as per Regularization Rules, 2002 well in time? It was not necessary for the petitioner to have applied for granting him the benefit of Regularization Rules, 2002. It was incumbent upon Respondent No.2 to have prepared a list, as per Rules, and consider his regularization. Petitioner must have heaved a sigh of relief by looking at Annexure: A 12 when he was regularized although *w.e.f.* 06.09.2017.

10. Had petitioner's services been regularized under Regularization Rules, 2002, as per direction dated 17.11.2011 (Annexure: A 6), probably, Regularization Rules, 2011, which became effective from 21.11.2011, would not have come in the way of Respondent No.2 for regularization of the petitioner, in accordance with Regularization Rules, 2002. The Government insisted, time and again, that petitioner's case be considered as per Para 4(f) of Regularization Rules, 2002, without yielding any result.
11. There is yet another aspect of the case. It has been pointed out that 17 employees, who were working with Respondent No.2 or in District Forums at different places, either on fixed pay or on contract, were regularized on different dates, in the absence of any Regularization Rules. Annexure: A 15 is a copy of such information, gathered under R.T.I., Act, 2005. Since this is not the subject matter of

present claim petition, therefore, this Court has no occasion to comment upon such action of Respondent No.2. This Court is only ventilating the grievance of the petitioner that his claim for regularization, despite the fact that he was appointed on *ad hoc* basis much before 17 employees were engaged, has been ignored on flimsy grounds. Whereas, these employees, who were engaged on fixed pay/contract, much after him, were regularized on different dates in the year 2004 (barring one employee, who was regularized in the year 2005), *de hors* Regularization Rules, his claim for regularization, on the basis of Regularization Rules, 2002, was ignored.

12. We gathered an impression, on the basis of submissions of Ld. Counsel for the respondents, that petitioner is not an obedient Government servant and he is prone to commit mischief. Even if such a submission is accepted, on its face value, the fact remains that there is a procedure laid down in law for properly treating such a delinquent and showing him the 'door'. That should not be the basis, in the hind sight, for not giving him the benefit of Regularization Rules, even after the directions of the Government. At present, we are not dealing with the antecedents of the petitioner, for the same is also not the subject matter of adjudication, in present claim petition.
13. When a review DPC is held, such DPC considers promotion of any employee from the date earlier DPC (which is to be reviewed), was held. Instant case of the petitioner, appears to be on similar footing. We are, therefore, inclined to request Respondent 2 to reconsider the case of the petitioner for regularization, as if the proceedings are taking place in 2002, on the analogy of Review D.P.C.
14. *Res ipsa loquitor*. A case for reconsideration of petitioner's matter, for regularization, under Regularization Rules, 2002, is, therefore, made out, subject to his eligibility and availability of vacancy. The matter is remitted, with a request to Respondent No.2, to reconsider petitioner's case for regularization under Regularization Rules, 2002, as per law, untrammelled by any of the observations made

by us, in the foregoing paragraphs of this judgment, at an earliest possible but not later than 12 weeks of presentation of certified copy of this order.

15. Observations made in Annexure: R-8, that petitioner's case shall not be considered under Regularization Rules, 2002, is kept in abeyance till fresh decision is taken in the matter.

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

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: JULY 11, 2018
DEHRADUN

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