

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

Present: Hon'ble Mr. Ram Singh

-----Vice Chairman (J)

Hon'ble Mr. A.S.Nayal

-----Member (A)

CLAIM PETITION NO. 04/2012

Smt. Rajani Bhatt, W/o Sri Bihari Lal Bhatt, R/o Collectorate Colony, Upper Bazar, Pauri, District Pauri Garhwal.

.....Petitioner

VERSUS

1. State of Uttarakhand through Secretary, Revenue, Civil Secretariat, Dehradun.
2. Board of Revenue of Uttarakhand through its Secretary, Dehradun.
3. District Magistrate, Pauri, Pauri Garhwal.
4. Secretary, Board of Revenue, U.P. Anubhag-XII, Lucknow.
5. State of U.P. through Secretary, Finance, Lucknow, U.P.

.....Respondents

Present: Sri M.C.Pant &
Sri L.K.Maithani, Ld. Counsel
for the petitioner.
Sri V.P.Devrani, Ld. A.P.O.
for the respondents

JUDGMENT

DATED: JULY 31, 2019

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioner has filed this claim petition for the following reliefs:

“(i) To issue order or direction quashing the impugned order dated 20.04.1992 and impugned order dated 07.05.2012 (Annexure No. A1 and A-11) along with its effect and operation also after calling the entire

records from the respondents and further to quash the impugned order dated 27.03.1992 and declare the same as a nullity.

(ii) To issue order or direction to the respondents to reinstate the petitioner in his service along with all consequential benefits had it been the impugned orders were not in existence.

(ii) (a) To issue order or direction to the respondents to consider the case of the petitioner for relaxation of age in terms of the rules in vogue for the purpose of granting of relaxation in age and allow the same to the petitioner keeping in view her companionate ground and continuous service of 23 years and further to treat the aforesaid 23 years of service as a regular service for all practical purposes including pensionary benefits and allow her all such benefits including all arrears.

(iii) Any other relief which the court deem fit and proper in the circumstances of the case.

(iv) Cost of the petition be awarded to the petitioner.”

2. Briefly stated, the petitioner was appointed as Lower Division Clerk on temporary basis in the Collectorate, Pauri Garhwal on 04.12.1989, on humanitarian ground. The petitioner was over age at the time of her appointment and a complaint was received in the department that her appointment was not valid. Then, respondent No. 3 sent a proposal to respondent No. 4 on 28.09.1991, to grant age relaxation to the petitioner. The respondent No. 4 rejected the proposal on 27.03.1992. Thereafter, the services of the petitioner were terminated by the respondent No. 3 on 20.04.1992 (Annexure: A-1).

3. Aggrieved by the termination order dated 20.04.1992 (Annexure: A-1), the petitioner filed a writ petition (No. 22935 of 1992) before the Hon'ble High Court at Allahabad and obtained an interim order in her favour and in compliance of which, she continued in the services. After creation of the State of Uttarakhand, the above writ petition was transferred to the Hon'ble High Court of Uttarakhand at Nainital (New No. 6188 of 2001). The Hon'ble High Court at Nainital

dismissed the writ petition on 26.09.2008 (Annexure: A3), on the ground of alternative remedy before the State Public Services Tribunal.

4. The petitioner filed an application on 28.11.2011 for recalling the above mentioned order of the Hon'ble High Court at Nainital dated 26.09.2008 (Annexure: A-3). The Hon'ble High Court vide order dated 30.11.2011 (Annexure: A-4), passed the following order:-

“Considering the submission of the learned counsel for the petitioner, the delay in filing the recall application is condoned. The recall application is treated as modification application. The order-dated 26.09.2008 passed by this Court is modified to the extent that in case, petitioner files the Claim Petition before the Tribunal within a period of one month from today, the said Claim Petition shall not be dismissed on the ground of laches.”

5. Thereafter, respondent no. 3 vide order dated 07.05.2012 (Annexure: A-11) revived the termination order dated 20.04.1992 with the following words:-

“चूंकि श्रीमती रजनी भट्ट, कनिष्ठ लिपिक का सेवा सम्बन्धी प्रकरण मा० उच्च न्यायालय, उत्तराखण्ड, नैनीताल द्वारा अन्तिम रूप से निस्तारित किया जा चुका है और मा० लोक सेवा अधिकरण, देहरादून से वर्तमान में याची श्रीमती भट्ट को कोई राहत नहीं दी गई है। अतएव श्रीमती रजनी भट्ट, कनिष्ठ लिपिक, जिला कार्यालय, पौड़ी के विरुद्ध पूर्व में जारी सेवा समाप्ति आदेश संख्या-297/9-139 (91-92), दिनांक 20.04.1992 को तत्काल प्रभाव से लागू किया जाता है। ”

6. The petitioner challenged the orders dated 20.04.1992 (Annexure A-1), 27.03.1992 (Annexure: A-2) and 07.05.2012 (Annexure: A-11) on several grounds in the claim petition No. 04/2012, which was opposed by the respondents No. 1, 2 & 3. Amongst other grounds on merits, the respondents raised the question of maintainability of the petition before this Tribunal on the ground that the termination order of the petitioner dated 20.04.1992 was passed by the State of Uttar Pradesh before creation of the State of Uttarakhand.

7. That petition was heard and decided by this Tribunal vide order dated 29.09.2015 and it was held that this Tribunal of Uttarakhand has no jurisdiction, as the services of the petitioner were terminated by the Government of Uttar Pradesh on 20.04.1992 i.e. before creation of the State of Uttarakhand and therefore, the petitioner had never been a public servant in the State of Uttarakhand. It was also held that the cause of action wholly arose in the State of Uttar Pradesh and not in the State of Uttarakhand. Hence, petitioner was not held entitled to prefer the petition before this Tribunal against her termination order dated 20.04.1992, passed by the Government of Uttar Pradesh and only relevant authority of that State is competent to redress the grievances of the petitioner.

8. It was also contended that the order passed by respondent No. 3 on 07.05.2012 (Annexure: A-11) is the consequential order, passed after the order of the Hon'ble High Court at Nainital in writ petition No. 6188 of 2001 on 26.09.2008 and 30.11.2011, by which the original termination order dated 20.04.1992 was revived. This consequential order does not entitle the petitioner to become a public servant of the Government of Uttarakhand. It is also contended that the question of jurisdiction was not considered by the Hon'ble High Court and dismissed the petition on the ground of alternative remedy.

9. The claim petition No. 04/2012 was decided vide order dated 29.09.20015 and it was held that the petitioner continues to remain a public servant of U.P. and does not become a public servant of Uttarakhand and this Tribunal has no jurisdiction and competence to adjudicate upon the issue of the termination of the petitioner on 20.04.1992 hence, it was held that the petition is not maintainable before this Tribunal.

10. The judgment of this Tribunal was challenged before the Hon'ble High Court in WP No. 519 of 2015, which was decided by the

Hon'ble High Court vide order dated 25.09.2018 and the order of the Tribunal was set aside and a direction was issued to hear and decide the petition on merits and the question of jurisdiction was decided in favour of the petitioner.

11. On the basis of the order of the Hon'ble High Court, the claim petition was again restored and parties were allowed to argue on its merits.

12. We have heard both the sides and perused the record.

13. Learned A.P.O. on behalf of the respondents further raised the question of jurisdiction. We find that the question of jurisdiction has already been settled by the Hon'ble High Court so, there is no need to take up this issue again.

14. On the basis of the merits of the petition, the petitioner has contended that she was appointed to the service on 04.12.1989 (Annexure: A-5). The appointment order of the petitioner is reproduced as below:-

“कार्यालय जिला अधिकारी, गढ़वाल

संख्या- 112 अधिष्ठान (89-90), दिनांक पौड़ी दिसम्बर 4, 1989

आदेश

घूमाकोट तथा थलीसैण में नव सृजित तहसीलों में विभिन्न पदों की स्वीकृति प्राप्त होने के फलस्वरूप निम्न नियुक्तियों/प्रोन्नतियों के स्थानान्तरण किये जाते हैं:-

वेतनमान 1200-2040

क्र०सं०	कर्मचारी का नाम	कहाँ से	कहाँ को	अभियुक्ति
1.	श्री केदार सिंह, लिपिक कार्यालय पौड़ी	पौड़ी	वरिष्ठ सहायक तहसील थलीसैण	स्थानान्तरित
2.	श्री गिरीश प्रसाद चमोली, लिपिक जिला कार्यालय पौड़ी	पौड़ी	शिकायत लिपिक, जिला कार्यालय पौड़ी	प्रोन्नति से
3.	श्री नरेन्द्र सिंह रावत, लिपिक जिला कार्यालय पौड़ी।	पौड़ी	वरिष्ठ सहायक तहसील घूमाकोट	प्रोन्नति से
4.	श्री साबर सिंह नेगी वृ०पे०लि० जिला कार्यालय पौड़ी	पौड़ी	आशुलिपिक तहसील घूमाकोट
5.	श्री खुशाल सिंह, लिपिक जिला कार्यालय पौड़ी	पौड़ी	आशुलेखक तहसील थलीसैण

वेतनमान 950-1500				
1.	श्रीमती रजनी भट्ट पत्नी श्री बिहारी लाल भट्ट किंगकालेश्वर मो० पौड़ी	स०न०रा० लेखाकार (श्री गिरीश प्रसाद खमोली के स्थान पर) जिला कार्यालय पौड़ी	अस्थाई	नियुक्ति दि: 11.12.89 को पूर्वान्ह में चार्ज लिया।
2.	श्री गोविन्द सिंह नेगी पुत्र स्व० प्रेम सिंह नेगी द्वारा क्षेत्रीय संसाधन पौड़ी	वृ०पे०लिपिक, (श्री साबर सिंह नेगी के स्थान पर) जिला कार्यालय पौड़ी	अस्थाई	नियुक्ति
3.	श्री सुभाष चन्द्र गुसाई लिपिक सब रजि०का० कोटद्वार (प्रतिनियुक्ति पर)	कोटद्वार	प्रतिलिपिकार न्या० अभिलेखागार पौड़ी	स्थानान्तरित
4.	श्री गणेश प्रतिलिपिकार	व्यापिक अभिलेखागार	टंकण तहसील थलीसैण	स्थानान्तरित

5. श्री झबरू लाल, जो आयुक्त, गढ़वाल पौड़ी, द्वारा सेवा में पुर्नस्थापित किये गये हैं, को टंकक के पद पर तहसील धूमाकोट में नियुक्त किया जाता है।

क्रम संख्या- 5 के अतिरिक्त समस्त कर्मचारी मुख्यालय में अपनी उपस्थिति तत्काल देंग और अग्रिम आदेशों तक मुख्यालय में तैनात रहेंगें। वेतनमान 950-1500 में क्रमांक 1 व 2 पर अंकित कर्मचारियों के सेवायें पूर्णतया अस्थाई हैं एवं बिना पूर्व सूचना के किसी भी समय समाप्त की जा सकती हैं।

नोट:- श्री खुशाल सिंह रावत तथा श्री साबर सिंह नेगी, आशुलिपिक आदेशों तक क्रमशः जिलाधिकारी शिविर कार्यालय तथा परगनाधिकारी, कोटद्वार के कार्यालय से सम्बद्ध किया जाता है।

ह०/- अपटित
2.12.89
जिलाधिकारी, गढ़वाल।”

15. This order clarifies that the appointment of the petitioner does not mention for any Rule nor any selection process was followed. Furthermore, it was specifically mentioned that the services of the employees in the pay scale of Rs. 950-1500 (to which petitioner belongs) is purely temporary and it can be terminated at any time, without any notice.

16. Petitioner was appointed on the post of clerk in Collectorate Office, Pauri Garhwal. The concerned Rules, governing the services in Collectorate at that time were **the Uttar Pradesh District Officers (Collectorates) Ministerial Service Rules, 1980** and for the appointment of a person to the service, Rule 10 prescribes for the condition of age and a candidate for direct recruitment to the posts in the category, must be within the age limits as prescribed in the Subordinate Officers

Ministerial Staff (Direct Recruitment) Rules, 1975. Rule 11 of such Rules of 1975 provides that for direct recruitment of an employee to the post in subordinate offices, he or she must be within the age of 18 to 28 years. Later on, the age of 28 was relaxed to 30 years.

17. It is an admitted fact to the parties that the date of birth of the petitioner is 15.07.1955 and on the date of appointment to the service in 1989, she was more than 34 years of age. Hence, according to the conditions of service, she was not eligible for appointment to the post, which was assigned to her. The record reveals that after taking the petitioner into service in December, 1989, a complaint was made by one Sri Balwant Singh against the petitioner about her eligibility for appointment, being over age. Then, the District Magistrate, Pauri Garhwal sent a proposal to the Secretary, Board of Revenue on 28.09.1991 for granting her a relaxation in the age. It has been contended that under Rule 29 of the concerned Rules of 1980, the relaxation can be granted by the State Government. Rule 29 reads as under:-

“29. Relaxation from the conditions of service- *Where the State Government is satisfied that the operation of any Rule regulating the conditions of service of person appointed to this service causes undue hardship in any particular case it may, notwithstanding anything contained in the rules applicable to his case by order, dispense with or relax the requirements of that rule to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner. ”*

18. Vide order dated 27.03.1992 (Annexure: A2), a proposal for relaxation about maximum age was rejected by the Board. Thereafter, vide order dated 20.04.1992 (Annexure: A1), the services of the petitioner were terminated after giving one month's salary. Learned A.P.O. on behalf of respondents has submitted that as the petitioner was purely working on temporary basis, hence, her services were terminated in accordance with the Uttar Pradesh Temporary

Government Servants (Termination of Service) Rules, 1975. The relevant Rule of the same is Rule- 3, which reads as under:-

“3. Termination of service.(1) Notwithstanding anything to the contrary in any existing rules or orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant.

(2) The period of notice shall be one month:

Provided that the services of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice or as the case may be, period for which such notice falls short of one month at the same rates at which he was drawing them immediately before the termination of his services:

Provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice.

Provided also that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated shall be effective only if it is accepted by the appointing authority, provided in the case of a contemplated disciplinary proceeding, the Government servant is informed of the non-acceptance of his notice before the expiry of that notice.”

19. This court finds that the services of the petitioner were rightfully terminated after giving her a notice with one month’s salary and till the date of termination of the services of the petitioner on 20.04.1992, she was neither regularized nor was appointed to the services as per the procedure set out in the concerned Rules. Furthermore, she did not fulfill the required age for appointment to the service. This court finds that the order of termination of service of the petitioner was within the law.

20. Learned counsel for the petitioner made a submission that the proposal for relaxation of the conditions must have been sent to the

State Government, as this power lies with the State Government under Rule 29 of the concerned Service Rules of 1980. Learned A.P.O. has contended that the relaxation for conditions of service is a discretionary power of the Government and granted only for the person, who was already appointed to the service and undue hardship is being caused to a particular person. It has been argued that such relaxation cannot be granted to a person before his entry to the service.

21. We find that the benefit of these rules can be granted only to the persons, who are appointed to the service and are facing undue hardship by the operation of any rule, relating to the conditions of service. Whereas, the matter of the petitioner is different, as her appointment to the service was not made in accordance with the procedure set out in the rules and the basic condition for entry to the service cannot be relaxed under these Rules. Moreover, this power is discretionary and it lies with the Government and the petitioner cannot claim her entry into service in violation of the conditions set out for her entry into service by taking the benefit of these Rules. The petitioner is not entitled to claim that her matter must necessarily be sent to the State Government, neither the State Government is bound to grant any such relaxation.

22. This court also finds that for taking the benefit of this relaxation, the person must be a member of the service according to the Rules. Whereas, the petitioner was neither fulfilling the conditions for entry into service nor she was appointed in accordance with the procedure set out in Part-V of the concerned Rules of 1980 and the procedure set out in the Subordinate Officers Ministerial Staff (Direct Recruitment) Rules, 1975, according to which, there was a need of determination of vacancies, constitution of committee for recruitment and for conducting examination. The petitioner was appointed to the service in total violation of the concerned Service Rules. Hence, she will be treated purely a temporary employee as per the conditions set out in

her appointment letter and her services were rightly terminated in accordance with the Uttar Pradesh Temporary Government Servants (Termination of Service) Rules, 1975.

23. By amending her petition, the petitioner also claimed that she had put more than 23 years of service and she must be reinstated and regularized with all benefits, including pensionary benefits. This question was also raised before this Court in claim petition No. 4/2012 and was specifically discussed by this Court on its merit. We further examined this point, whether the petitioner is entitled to be regularized or not?

24. It is admitted case to the parties that the services of the petitioner were terminated on 20.04.1992, but she discharged her services till 07.05.2012, under the cover of the stay order, passed by the Hon'ble High Court of Allahabad. Later on, the said writ petition was transferred to the Hon'ble High Court of Uttarakhand and it was decided and dismissed on 30.11.2011, on the ground of alternative remedy. Thereafter, respondent No. 3 passed an order dated 07.05.2012, simply reviving the original termination order of the petitioner, hence, the termination order of the petitioner dated 20.04.1992 was made effective accordingly. The services of the petitioner from 20.04.1992 to 07.05.2012 were continuing, under the cover of the order passed by the Hon'ble High Court at Allahabad.

25. In the case of **Secretary State of Karnataka Vs. Uma Devi and others (2006)4 SCC 1**, the Hon'ble Apex Court in Para 53 has clearly laid down certain observations for regularization of the services of those employees who have put 10 years service on duly sanctioned post but without the intervention of orders of courts or of tribunals and as per directions passed by the Hon'ble Apex Court, for regularization, one time measure could have been undertaken within a period of six months from the date of the order.

26. Admittedly, from 1992 to 2012, the petitioner continued in the service under 'litigious employment'. The Hon'ble Apex Court in the above case in Para 43 has held as under:-

".....It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.".....

27. In the light of the decision of the Hon'ble Apex Court as described above, we reached to the conclusion that the petitioner is not entitled to claim regularization as she worked from 1992 to 2012 under the cover of the stay order of the Hon'ble High Court at Allahabad.

28. Besides this, learned A.P.O. on behalf of the respondents has also contended that the petitioner is also not entitled to be regularized under the Regularization Rules 2002 or 2013 because of the reasons that at the time of her temporary appointment too, she was not fulfilling the essential requirement for the entry into service.

29. We agree with the argument of learned A.P.O. on behalf of the respondents that Rule 4 of the Uttaranchal Regularization or Ad-hoc Appointments (on posts outside the purview of the Public Service Commission) Rules, 2002, laid down as under:-

“4.(1) किसी व्यक्ति को (एक) जो सेवा में 30.06.1998 के पूर्व तदर्थ आधार पर सीधे नियुक्त किया गया हो और इस नियमावली के प्रारम्भ के दिनांक को, उस रूप में निरन्तर सेवारत हो:

(दो) जो ऐसी तदर्थ नियुक्ति के समय नियमित नियुक्ति के लिये विहित अपेक्षित अर्हतायें रखता हो; और

(तीन) जिसने तीन वर्ष की सेवा पूरी कर ली हो; या

यथास्थिति, पूरी करने के पश्चात् किसी स्थायी या अस्थायी रिक्ति में जो उपलब्ध हो, नियमित नियुक्ति के लिए, ऐसी रिक्ति में, संगत सेवा नियमों या आदेशों के अनुसार कोई नियमित नियुक्ति करने के पूर्व, उसके अभिलेख और उपर्युक्तता के आधार पर विचार किया जायेगा।

.....”

Hence, as per the conditions of regularization, the person should have fulfilled all the eligibility criteria for entry into the service whereas, petitioner did not fulfill the criteria of age. Similarly, Rule 4 of the Regularization Rules of 2011 provides as under:-

“4. दैनिक वेतन, कार्यभारित, संविदा, नियत वेतन, अंशकालिक तथा तदर्थ रूप में नियुक्त कार्मिकों के विनियमितीकरण के लिए शर्तें— इस नियमावली के अधीन ऐसा कार्मिक विनियमितीकरण हेतु अर्ह होगा:-

(1).....

(2) जो उपनियम (1) में सन्दर्भित ऐसी नियुक्ति के समय रिक्त/स्वीकृत पद के विरुद्ध नियुक्त किया गया हो और नियुक्ति से समय पर पद हेतु प्रचलित सेवा नियमों में निर्धारित शैक्षिक एवं अन्य योग्यताएं तथा आयु सीमा सम्बन्धी शर्तें पूर्ण करता हो; तथा

.....”

The petitioner did not fulfill the required criteria of age as per the above Regularization Rules, 2011. Similarly, Rule 4(2) of the Regularization Rules, 2013 also mentions the same condition.

30. Hence, court also finds that for consideration of regularization of a temporary employee, she/he must fulfill the requirement of Rule 4 of the Regularization Rules, according to which, eligibility criteria about educational qualification and age must be fulfilled. The petitioner did not fulfill the criteria of age at the time of her entry to the service.

31. Hence, court finds that petitioner is neither entitled to be considered for regularization under the Rules, nor she can be considered as per length of her service, which she completed as “litigious employment” and as per the dictum of the Hon’ble Apex Court, she is also not entitled for regularization.

32. Considering all these circumstances of the matter, this court finds that the petitioner is not entitled for any relief and the claim petition deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(A.S.NAYAL)
MEMBER (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATED: JULY 31, 2019
DEHRADUN
KNP