

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 84/DB/2018

Shoorvir Singh. s/o Shri Bishamber Singh, presently posted as Constable NO. 3511 at 'B' Dal, I.R.B. Bell Pandav, Ram Nagar, District Nainital permanent r/o Village Sadullapur, Post Mahalwala, P.S. Kithore, District Meerut.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary (Home), Secretariat, Subhash Road, Dehradun.
2. Commandant, P.A.C., Headquarters, Rajpur Road, Dehradun.
3. Commandant, India Reserve Vahini, 1st Vahini, Bell Pandav, Naintal..

.....Respondents.

Present: Sri J.P.Kansal, Counsel for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: NOVEMBER 18, 2019

Justice U.C.Dhyani (Oral)

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

“ (a) The impugned order (Annexure: A 1) be kindly held illegal, against rules, orders and principles of natural justice and be kindly quashed and set aside.

(b) The petitioner be kindly held entitled to get from the respondents all the benefits as would have been admissible to him had his services not terminated from 19.07.1998 and the respondents be kindly directed and ordered to allow all the benefits to the petitioner that would have been admissible had his services not terminated except the pay for the period of termination of services of the petitioner till the date of his rejoining on his reinstatement after setting aside the termination order and to pay to the petitioner difference of salary already paid and payable to the petitioner together with interest thereon @ 10% per annum from the date of accrual till the actual date of payment to the petitioner.

(c) The petitioner be kindly allowed against the respondents any other relief in addition to or in modification of the above reliefs as this Hon'ble Tribunal deems fit and proper in the context of the facts and law of this claim petition.

(d) Rs.20,000/- as costs of this claim petition be kindly awarded to the petitioner against the respondents.”

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

Petitioner was appointed against substantive post of Constable in the year 1987. His services were terminated *vide* order dated 09.07.1998 treating him to be a temporary Government servant. He filed the claim petition against his termination order. This Tribunal, *vide* order dated 18.01.2008, set aside the termination order and held that the petitioner is entitled for his reinstatement in service from the date of his termination order and also held that the petitioner shall be deemed to be in regular service from the date of such termination order. The judgment of the Tribunal was challenged before Hon'ble High Court of Uttarakhand. Hon'ble High Court, *vide* order dated 17.10.2011, upheld the judgment of the Tribunal and dismissed Writ Petition No. 55(SB) 2008 filed on behalf of the respondents/ State. On 20.05.2018, petitioner's services were reinstated *w.e.f.* 09.07.1998. Petitioner became entitled to all the benefits which he would have been (entitled), had his services not terminated. Petitioner made a representation for grant of the aforesaid benefits on 15.06.2018. *Vide* order dated 30.06.2018, representation of the petitioner was rejected by Respondent No.3. Hence, present claim petition

3. Respondents/ State has contested the claim petition by filing written statement stating therein that the petitioner is not entitled to the relief claimed in present claim petition.
4. Rejoinder affidavit has been filed by the petitioner reasserting his claim.
5. Since the genesis of present claim petition largely depends upon Tribunal's earlier order dated 18.01.2008, as affirmed by Hon'ble High Court on 17.10.2011, therefore, it will be apposite to quote relevant paras of judgment, herein below, for convenience:

"It is admitted fact that the petitioner was appointed by due procedure of law on a clear vacancy in 1987-88. As per the provisions of Police Regulation, he was deemed to be on probation. The respondents have not stated in any manner whether his probation was extended and therefore, as per well laid down law, the petitioner was entitled to become regular after completion of probation period. Further, if he was entitled for regularization, the nature of temporary service cannot be raised after a lapse of 10 years of service or so. The application of U.P. Temporary Govt. Servants (Termination of Service) Rules 1975 cannot be made applicable just because it is convenient to the respondents. The applicability of para 541 of U.P. Police Regulation under which the departmental proceedings should have been was not followed by the respondents. Learned counsel for the petitioner also relied upon the provisions of Police Regulations para 24, 28, 32, 33 and 34 and as upheld by Hon'ble Supreme Court in SLR SC, 2000(2) laying down the procedure for departmental proceedings. He further relied upon the judgment of Allahabad High Court, 2004 LAB/C 3757 in which it was held that order of termination simpliciter is illegal unless the employee is afforded opportunity of showing cause. Finally, learned counsel for the petitioner also relied upon the judgement of this Tribunal in claim petition No. 30/T/04 in which the termination of similarly placed employee namely Vijay Kumar was set aside relying upon para 541 of U.P. Police regulation and the judgement of Hon'ble High Court of Allahabad mentioned above. It is therefore, clear that the petitioner was not a temporary employee when he was appointed by a due process of law against the permanent

vacancy. It is also clear that the probation, if not extended is deemed to have been completed and the petitioner was a regular employee although such order was not made for 10 years of his service and the petitioner cannot be treated temporary after 10 years of service. The petitioner succeeded in establishing the facts that the procedure under para 541(2) was not followed and nor adequate opportunity was given to him under garb of Niyamawali of 1975. Therefore, it is clear that the respondents have violated the principles of natural justice and without affording opportunity a malafide order has been passed under Niyamawali of 1975. Further, despite termination order being made under the Niyamawali of 1975, the respondents have taken into consideration the earlier conduct of the petitioner as reflected in their W.S. The earlier conduct of the petitioner does not find reflection in the procedure adopted by the respondents and therefore, respondents' any reliance about past conduct of the petitioner is biased and remains illegal and irrelevant. The respondents have failed to comply with the provisions of Police Regulations and petitioner therefore, deserves to get the relief as claimed in para 8 of the claim petition.

ORDER

In the light of discussion above, the impugned order dated 19.7.1998 does not stand scrutiny of law and it is hereby set aside. The petitioner is entitled for the reinstatement from the date of his termination order and he shall be deemed to be in regular service from the date of termination order. There is no order to the salary on the basis of no work no pay and also no order to the cost."

6. Relevant para of the decision of Hon'ble High Court in WP(SB) No. 55/2008, reads as below:

"Before this Court, the learned Standing Counsel invited the attention to the written statement filed by them before the Tribunal indicating that the respondent no. 1 Constable was a habitual absentee and in this regard, invited the attention of paragraph 4 of the written statement which indicated that the respondent no. 1 had absented himself on various days without authorized leave between the period 1995 to 1998. The learned counsel, consequently, submitted that the simpliciter order of

termination was justified in the facts and circumstances of the case.

We are not impressed by the aforesaid submission of the learned Standing Counsel. The law contemplates that a person duly appointed on a substantive post can only be removed by adopting the procedure contemplated under the Rules and Regulations. The petitioners have invoked the provision of Section 3 of U.P. Temporary Government Servants (Termination of Service) Rules, 1975 by holding that the respondent no. 1 was a temporary employee and that his services were no longer required and accordingly, gave one month's pay in lieu of notice while terminating his services. Rule 2 of the Rules of 1975 defines temporary service to mean officiating or substantive service on a temporary post, or officiating service on a permanent post under the Government. In the present case, there is a clear finding that the respondent no. 1 was appointed on a vacant post under Section 2 of the Police Regulations as per the procedure. There is no averment in the writ petition that the respondent no. 1 was appointed only on a temporary basis nor anything has been indicated that the respondent no. 1 was appointed on an officiating or on a substantive service on a temporary post. The finding given by the Tribunal that the respondent no. 1 was appointed by due procedure of law on a clear vacancy under the Police Regulations has not been questioned.

In the light of the aforesaid, we find no reason to interfere in the impugned order. The writ petition fails and is dismissed."

7. The Tribunal had, therefore, held the petitioner entitled for reinstatement from the date of his termination order. He was to be deemed in regular service from the date of termination order. Petitioner was not held entitled to salary on the principle of 'no work no pay'.

8. Hon'ble High Court, while affirming the order of the Tribunal, did not grant any other relief to the petitioner. It was open to the petitioner to have prayed for all these reliefs which he has claimed here, before Hon'ble High Court (even if he was respondent there). It is not open for this Tribunal, now, to travel beyond what was observed by the Hon'ble High Court. Tribunal's

earlier order has to be kept in the backdrop, while deciding present claim petition.

9. The import of Tribunal's earlier order, as we understand, is that there will be no break in service of the petitioner. He has been reinstated and shall be deemed to be in regular service from the date of termination order. Even if salary has not been ordered to be paid to him on the principle of 'no work no pay', the effect of Tribunal's earlier order would be that he will be deemed to be in continuous service from the date on which the order of termination of his services was issued.

10. In the circumstances, how can other benefits be given to him? It is beyond one's comprehension to infer that he would be entitled to annual increment, ACP, Selection Grade, Leave, Pay Revision during the period he did not work and the Tribunal did not order salary to be paid to him during the period his services were terminated.

11. It is not open for us to travel beyond what was held by the Tribunal in its earlier order and what has been directed by the Hon'ble High Court in writ petition.

12. Ld. Counsel for the petitioner placed decision rendered by Hon'ble Apex Court in *Shanti Niketan, Hindi Primary School vs. Pal Hariram*, 2010 SCLJ 762. Pal Hariram's case is distinguishable from the facts of present case, in the sense that the Tribunal, in that case had quashed the impugned order passed by Shanti Niketan School and directed reinstatement of Pal Hariram with full salary and other benefits from the date of termination till the date of the order. In the instant case, the Tribunal had withheld salary of the petitioner. He was simply reinstated and direction was given that he shall be deemed in regular service from the date of termination order. There was no direction for payment of salary in the instant case, whereas in Pal Hariram's case, full salary and other benefits were directed to be granted.

13. Ld. Counsel for the petitioner also placed reliance upon the decision rendered by Hon'ble Apex Court in *State of Uttaranchal vs. Khadag Singh*, 2008 (5) SLR 586. Again, the facts of such decision are distinguishable from the facts of present case. Hon'ble Supreme Court did interfere in the finding

given by Hon'ble High Court in Khadag Singh's decision , in which Hon'ble High Court had directed the appellant to reinstate the respondent in service with all consequential benefits, which consequential benefits were conspicuous by their absence in the instant case. The words used by this Tribunal in its earlier order were— “there is no order to the salary on the basis of no work no pay.....”

14. The same is the situation in the decision of State of U.P. and others vs. Saroj Kumar Sinha, 2010 SCLJ 634, in which Hon'ble Apex Court did not interfere with the judgment of Hon'ble High Court, who had directed the employee to be reinstated in service with all consequential benefits. Here the Tribunal, in the earlier order, did not do so. Hon'ble High Court of Uttarakhand did not add anything to the relief granted to present petitioner by the Tribunal.

15. Reliance has also been placed upon a few Government Orders, relating to grant of Time Bound Pay Scale and Assured Career Progression Scheme (for short, ACP). These Government Orders would have been relevant when this Tribunal heard the petition for the first time and decided the matter. When the Tribunal had passed the order and such order was affirmed by the Hon'ble High Court, it is not open to us to reconsider what was not granted to the petitioner by the Tribunal.

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

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: NOVEMBER 18, 2019
DEHRADUN

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