

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

Through Audio Conferencing

ORDER IN INTERIM RELIEF APPLICATION

In Claim Petition No. 22/DB/2020

Arun Kumar Goel aged about 57 years. s/o shri Pooran Mal Goel, r/o Mahadev Vihar General Mahadev Singh Road, Dehradun, employed as Superintending Engineer A.D.B. Circle. Public Works Department, New Tehri.

.....Petitioner

vs.

1. State of Uttarakhand through Addl. Chief Secretary, Public Works Department, Govt. of Uttarakhand, Secretariat Dehradun.
2. Engineer-in-Chief and Head of the Department, Public Works Department, Uttarakhand, Yamuna Colony, Dehradun.

..... Respondents

Present: Sri L.K.Maithani, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for Respondents.

DATED: AUGUST 19, 2020

Justice U.C.Dhyani(Oral)

A claim petition No. 22/DB/2020 has been filed by the petitioner against State of Uttarakhand through Addl. Chief Secretary, P.W.D., Govt. of Uttarakhand and Engineer-in-Chief, P.W.D. , for the following reliefs:-

“(i) This Hon’ble Tribunal may graciously be pleased to declare that the petitioner is eligible and entitled for consideration for promotion on the post of Chief Engineer Level-2 and accordingly issue an order or direction to the respondents to convene a review DPC and consider the petitioner on the post of Chief Engineer Level-2 considering his annual character rolls and service records in accordance to the Uttaranchal Government Servants (Disposal of Representation against Adverse

Annual confidential Reports and Allied Matters) Rules, 2002 and Uttarakhand Government Servants (Disposal of Representation against Adverse, Bad, Satisfactory, Good, Very Good and Outstanding Annual Confidential Reports and Allied Matters) Rules, 2015 with all consequential benefits on the post of Chief Engineer Level-2 w.e.f. 25.04.,2020.

(ii) This Hon'ble Tribunal may further graciously be pleased to take the action against the respondents and other persons who have made exploitation and gross injustice against the petitioner.

(iii) This Hon'ble Tribunal may further graciously be pleased to pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

(iv) This Hon'ble Tribunal may further graciously be pleased to allow this petition with cost as quantified Rs.51,000/-."

2. The claim petition was admitted on 18.05.2020. Ld. A.P.O. accepted notice on behalf of Respondent No.1. He sought and was granted six weeks' time to file C.A./W.S. In addition, notice was also issued to Respondent No.2 to file C.A./W.S. by 30.06.2020 [*Note: on 30.06.2020, time to file W.S. was extended*]. Petitioner was directed to take steps within a week, through Email.

3. Ld. A.P.O. stated that draft W.S./C.A. has been prepared and submitted to the authority concerned, but the same has not been returned to him, as yet, for submission in the Tribunal. He was granted six weeks' further time to file W.S./C.A., *vide* order dated 14.08.2020.

4. According to Ld. Counsel for the petitioner, respondents are delaying the disposal of the claim petition. Ld. A.P.O., in reply, submitted that the claim petition has been admitted only on 18.05.2020 and W.S. is likely to take some time during pandemic Covid-19. He has submitted that a similar petition, like this, has also been filed by the claim petitioner in U.P. Public Services Tribunal, Lucknow.

5. Ld. Counsel for the petitioner, therefore, pressed his interim relief application. Objections have already been filed by the respondents on the same.

6. By means of present interim relief application, petitioner seeks the following relief:

“Considering the facts, reasons and circumstances narrated in the claim petition, Hon’ble Tribunal kindly be pleased to grant the interim relief by issuing an order or direction or command to the respondents to pass the order for posting of the petitioner as officiating Chief Engineer Level-2 till the regular promotion, or pass any such other order of direction or further order which this Court may deem fit and proper in the circumstances of the case, otherwise petitioner will suffer irreparable loss, which cannot be compensated by any means.”

[Emphasis supplied]

7. A perusal of the reliefs claimed in the claim petition and the interim relief application would reveal that almost the same reliefs have been sought for by the petitioner in the claim petition as well as in the interim relief application. A broad spectrum of the *lis* is reflected in the relief clauses of the petition and interim relief application. This Tribunal, therefore, does not think it necessary to narrate entire facts of the claim petition at the stage of disposal of interim relief application, for, the facts are already part of record.

8. The Hon'ble Apex Court consistently has been emphasizing that the Court while dealing with the case at an interim stage cannot grant a relief which amounts to final relief. (Vide *Titaghur Paper Mills Co. Ltd. v. State of Orissa*, AIR 1983 SC 603 ; *Siliguri Municipality v. Amalendu Das*, AIR 1984 SC 653 ; *Union of India v. Oswal Woolen Mills Ltd.*, AIR 1984 SC 1264 ; *Assistant Collector, Central Excise v. Dunlop India Ltd.*, AIR 1985 SC 330 ; *Samarias Trading Company Pvt. Ltd. v. S. Samuel*, AIR 1985 SC 61 ; *State of Rajasthan v. Swaika Properties*, AIR 1985 SC 1289 ; *State of West Bengal and Ors. v. Calcutta Hardware Stores and Ors.*, AIR 1986 SC 614 ; *State of Jammu and Kashmir v. Mohammad Yakoob Khan and Ors.*, (1992) 4 SCC 167 ; *U. P. Junior Doctors' Action Committee and Ors. v. Dr. B. Sheetal Nandwani*, AIR 1992 SC 671 ; *Guru Nanak Dev University v. Parminder Kumar Bansal and Anr.*, AIR 1993 SC 2412 ; *St. John's Teachers Training Institute (for Women) and Ors. v. State of Tamil Nadu and Ors.*, (1993) 3 SCC 595 ; *Dr. B.S. Kshirsagar v. Abdul Khalik Mohd. Musa*, 1995 Suppl (2) SCC 593 ; *Bank of Maharashtra v. Race Shipping and Transport Company (P.) Ltd.*, AIR 1995 SC 1368 ; *Commissioner/Secretary, Government Health and Medical Education*

Department v. Dr. Ashok Kumar Kohli, 1995 Suppl (4) SCC 214 ; Visakhapatnam Dock Labour Board v. E. Atchanna and Ors., (1996) 2 SCC 484 ; Union of India v. Shree Ganesh Steel Rolling Mills Ltd., (1996) 8 SCC 347 ; State of Madhya Pradesh v. M. V. Vyavsaya & Co., 1997 (1) AWC 2.132 (SC) (NOC) : AIR 1997 SC 993 ; Council for Indian School Certificate Examination v. Isha Mittal and Anr., (2000) 7 SCC 521 and Union of India v. Modi (Luft) Ltd., (2003) 6 SCC 65)

9. It has, therefore, been held in catena of decisions that the **interim relief, which is in the nature of final relief, cannot be granted at the interim stage**. Further, the nature of relief sought in interim relief application is *mandatory* in nature, which relief cannot be granted as an interim measure. Had it been *prohibitory* in nature, the Tribunal would have thought of granting it, provided *prima facie* case was made out in favour of the petitioner.

10. Mandamus differs from prohibition and certiorari. While the former can be issued against administrative authorities as well, the latter are available against judicial and quasi-judicial authorities. Mandamus acts were the Courts and Tribunals usurp jurisdiction vested in them or exceed their jurisdiction. Whereas, mandamus reminds activity, prohibition commands inactivity. While mandamus compels, certiorari corrects.

11. A writ of mandamus is an extraordinary remedy. It is not a writ of right. It is intended to supply deficiency in law and is thus discretionary remedy. A Court may refuse to issue mandamus unless it is shown that there is a clear right of the applicant or statutory or common law duty of the respondents and there is no alternative remedy available to the petitioner. The petitioner, in the instant case has not been able to show that a mandate should be issued to the respondents at this interim stage. Needless to say that, this Tribunal has no jurisdiction to issue prerogative writs. It can, however, grant mandatory relief and also stay illegal orders. The claim petitioner, here, has not been able to show *prima facie* case, on the basis of documents on record and further, has not been able to show as to why final relief should be granted at the interim stage. Mandamus should be issued on well established legal principles. Petitioner's case does not satisfy those legal principles at the

interim stage. No order in the nature of mandamus, therefore, can be issued in favour of the petitioner at the interim stage.

12. Interim relief sought for by the petitioner, therefore, cannot be granted at the interim stage.

13. Interim relief application is bereft of merits and is, therefore, dismissed.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 19, 2020
DEHRADUN

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