

**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)

EXECUTION APPLICATION NO. 24 /DB/2022

*(Arising out of judgment dated 23.05.2022,
passed in Claim petition No. 54/DB/2021)*

Bhawani Lal, aged about 48 years, s/o Sheri Lal, r/o Uchhola, District Rudraprayag, Uttarakhand.

.....Petitioner-executioner

vs.

1. State of Uttarakhand through Secretary Education, Civil Secretariat, Subhash Marg, Dehradun, Uttarakhand.
2. Director General, School Education, Noonorkheda, Tapowan Marg, Dehradun, District Dehradun.
3. Divisional Additional Director, Secondary Education, Garhwal Mandal, Pauri.
4. District Education Officer, Rudraprayag, District Rudraprayag.
5. Chaudhary Charan Singh University, Meerut, Uttar Pradesh, Through its Registrar.

.....Respondents.

Present: Sri Akshay Latwal, Advocate, for the petitioner-executioner.
Sri V.P. Devrani, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: MARCH 22, 2023

Justice U.C.Dhyani (Oral)

Present execution application has been filed by the petitioner for enforcing the order dated 23.05.2022, which was passed by the Tribunal

while disposing of claim petition no. 54/DB/2022, Bhawani Lal vs. State of Uttarakhand and others.

2. Order dated 23.05.2022 reads as below:

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

- “a) To set aside the impugned termination order dated 19.07.2021 whereby the services of the petitioner have been terminated by the respondent no.4 and order dated 31.03.2022 whereby the appeal has been rejected by the respondent no.2.
- b) To issue an order or direction to the respondents to reinstate the petitioner in service along with all consequential benefits.
- c) To issue any other suitable order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.
- d) To award the cost of the petition to the petitioner”

2. At the very outset, Ld. Counsel for the petitioner submitted that the present claim petition is covered by the judgment dated 21.04.2022 rendered by Hon’ble High Court in WPSS No. 664 of 2020 and connected writ petition. The judgment reads as below:

“Mr. Lalit Samant, Advocate for the petitioner.

Mr. N.P. Sah, Standing Counsel and Mrs. Indu Sharma, Brief Holder for the State of Uttarakhand.

Heard learned counsel for the parties.

Since common questions of fact and law are involved in these writ petitions, therefore these petitions are clubbed together and are being heard & decided together. However, for the sake of convenience, facts of WPSS No. 664 of 2020 are being considered.

Petitioner was appointed as Assistant Teacher in a Government Primary School in the year 2005. Subsequently, based on a complaint, validity of petitioner’s B.Ed. mark sheet was enquired into and when it was found that petitioner’s B.Ed. mark sheet was not issued by Chaudhary Charan Singh University, Meerut, his services were terminated vide order dated 18.08.2018. Petitioner challenged the said order by filing Writ Petition (S/S) No. 952 of 2019. His writ petition was disposed of by this Court vide order dated 27.04.2019 in terms of judgment dated 13.02.2019 rendered in Special Appeal No. 543 of 2017. Pursuant to the judgment rendered in the said writ petition, Deputy Education Officer, Block Jakholi was appointed as Enquiry Officer and, based on the report submitted by the Enquiry Officer, services of the petitioner were again terminated vide order dated 05.10.2019. Petitioner challenged the said order by filing an Appeal. His Appeal has been dismissed by the Chief Education Officer on 31.12.2019.

In this writ petition, petitioner has challenged the aforesaid two orders passed by the Disciplinary Authority and also the Appellate Authority. Learned counsel for the petitioner has drawn attention of this Court to order dated 25.06.2019 passed by District Education Officer, Rudraprayag. By the said order, Deputy Education Officer, Jakholi was appointed as Enquiry Officer with a direction to submit Enquiry Report within one month, after serving charge sheet upon the petitioner under Discipline & Appeal Rules, 2003. Report submitted by Enquiry Officer is on record as Annexure No. 15 to the writ petition. Perusal of the same reveals that no enquiry as per Discipline & Appeal Rules, 2003 was held

and the defence taken by the petitioner was not considered at all. The Discipline & Appeal Rules applicable to Government Teachers is reproduced below:

“7. Procedure for imposing major punishment. Before imposing any major punishment on any Government Servant, an inquiry shall be conducted in the following manner:-

(1) Whenever the Disciplinary Authority is of the opinion that there are grounds to inquire into the charge of misconduct or misbehavior against the government servant, he may conduct an inquiry.

(2) The facts constituting the misconduct on which it is proposed to take action shall be reduced in the form of definite charge or charges to be called charge sheet. The charge sheet shall be signed by the Disciplinary Authority. Provided that where the appointing authority is Governor, the chargesheet may be signed by the Principal Secretary or the Secretary, as the case may be, of the concerned department.

(3) The charges framed shall be so precise and clear as to give sufficient indication to the charged Government Servant of the facts and circumstances against him. The proposed documentary evidences and the name of witnesses proposed to prove the same along with oral evidences, if any, shall be mentioned in the charge-sheet.

(4) The chargesheet, along with the copy of documentary evidences mentioned therein and list of witnesses and their statements, if any, shall be served on the charged Government Servant personally or by registered post at the address mentioned in the official records. In case the chargesheet could not be served in aforesaid manner, the chargesheet shall be served by publication in a daily newspaper having wide circulation; Provided that where the documentary evidence is voluminous, instead of furnishing its copy with chargesheet, the charged Government Servant shall be permitted to inspect the same.

(5) The charged Government servant shall be required to put in a written statement in his defence in person on a specified date which shall not be less than 15 days from the date of issue of charge-sheet and to clearly inform whether he admits or not all or any of the charges mentioned in the chargesheet. The charged government servant shall also be required to state whether he desires to cross examine any witness mentioned in the chargesheet whether he desires to give or produce any written or oral evidence in his defence. He shall be also be informed that in case he does not appear or file the written statement on the specified date, it will be presumed that he has none to furnish and ex-parte inquiry shall be initiated against him.

(6) Where on receipts of the written defence statement and the government servant has admitted all the charges mentioned in the charge sheet in his written statement, the Disciplinary Authority in view of such acceptance shall record his findings relating to each charge after taking such evidence he deems fit if he considers such evidence necessary and if the Disciplinary Authority having regard to its findings is of the opinion that any penalty specified in Rule 3 should be imposed on the charged government servant, he shall give a copy of the recorded findings to the charged government servant and require him to submit his representation, if he so desires within a reasonable specified time. The Disciplinary Authority shall, having regard to all the relevant records relating to the findings recorded related to every charge and representation of charged Government Servant, if any, and subject to the provisions of Rule 16 of these rules, pass a reasoned order imposing one or more penalties mentioned in Rule 3 of these rules and communicate the same to the charged Government servant.

(7) If the government servant has not submitted any written statement in his defence, the Disciplinary Authority may, himself inquire into the charges or if he considers necessary he may appoint an Inquiry Officer for the purpose under sub rule (8).

(8) The Disciplinary Authority may himself inquire into those charges not admitted by the government servant or he may appoint any authority subordinate to him at least two stages above the rank of the charged Government servant who shall be Inquiry Officer for the purpose.

(9) Where the Disciplinary Authority has appointed Inquiry Officer under sub rule (8) he will forward the following to the Inquiry Officer, namely: (a) A copy of charge sheet and details of misconduct or misbehavior; (b) A copy of written defence statement, if any submitted by the government servant; (c) Evidence as a proof of the delivery of the documents referred to in the chargesheet to the government servant; (d) A copy of statements of evidence referred to in the charge-sheet.

(10) The Disciplinary Authority or the Inquiry Officer, whosoever is conducting the inquiry shall proceed to call the witnesses proposed in the charge-sheet and record their oral evidence in presence of the charged Government Servant who shall be given opportunity to cross-examine such witnesses after recording the aforesaid evidences. After recording the aforesaid evidences, the Inquiry Officer shall call and record the oral evidence which the charged Government servant desired in his written statement to the produced in his defence. Provided that the Inquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(11) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry may summon any witness to give evidence before him or require any person to produce documents before him in accordance with the provisions of the Uttar Pradesh Departmental Inquiries (Enforcement of Attendance of Witness and Production of Documents) Act, 1976 which is enforced in the State of Uttarakhand under the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000.

(12) The Disciplinary Authority or the Inquiry Officer whosoever is conducting the Inquiry Officer may ask any question, he pleases, at any time from any witness or person charged with a view to find out the truth or to obtain proper proof of facts relevant to charges.

(13) Where the charged Government Servant does not appear on the date fixed in the inquiry or at any stage of the proceeding inspite of the service of the notice on him or having knowledge of the Date, the Disciplinary Authority or the Inquiry Officer whosoever is conducting the inquiry shall record the statement of witnesses mentioned in the chargesheet in absence of the charged government servant.

(14) The Disciplinary Authority, if it considers it necessary to do so, may, by an order, appoint a Government Servant or a legal practitioner, to be known as "Presenting Officer" to present on his behalf the case in support of the charge.

(15) The charged Government Servant may take the assistance of any other Government Servant to present the case on his behalf but not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority is a legal practitioner of the Disciplinary Authority, having regard to the circumstances of the case, so permits:

(16) Whenever after hearing and recording all the evidences or any part of the inquiry jurisdiction of the Inquiry Authority ceases and any such Inquiry Authority having such jurisdiction takes over in his place and exercises such jurisdiction and such successor conducts the inquiry such succeeding Inquiry Authority shall proceed further, on the basis of evidence or part thereof recorded by his predecessor or evidence or part thereof recorded by him:

Provided that if in the opinion of the succeeding Inquiry Officer if any of the evidences already recorded further examination of any evidence is necessary in the interest of justice, he may summon again any such evidence, as provided earlier, and may examine, cross examine and re-examine him.

(17) This rule shall not apply in the following case:- i.e. there is no necessity to conduct an inquiry in such cases:- (a) Where any major penalty is imposed on a person on the ground of conduct which has led to his conviction on a criminal charge; or (b) Where the Disciplinary Authority is satisfied, that for reasons, to be recorded by it in writing, it is not reasonably practicable to hold an inquiry in the manner provided these rules; or (c) Where the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry in the manner provided in these Rules."

Rule 7 (2) of the aforesaid Rules provides that charge sheet has to be signed by Disciplinary Authority, meaning thereby, he cannot authorize the Enquiry Officer to issue the charge sheet. In the present case, charge sheet was issued by Deputy Education Officer, who is not a Disciplinary Authority, as Disciplinary Authority is District Education Officer, who passed the termination order. This aspect was dealt by Division Bench of this Court in the case of Ram Lal Vs. State of Uttarakhand and others (SPA No. 300 of 2015) in its judgment dated 03.07.2015. Para no.6 of the said judgment is reproduced below for convenience:

"6. As far as the appointment of an Inquiry Officer is concerned, it is settled law, by virtue of the Rules prevailing in the State and decisions of the court interpreting them, that an Inquiry Officer can be appointed only after the disciplinary authority issues a charge-sheet calling upon the delinquent officer to submit his explanation and, if, after considering the explanation of the delinquent officer, it is found necessary to hold an inquiry, only at that stage, an Inquiry Officer can be appointed. As far as the charge-sheet is concerned, after the amendment to the Rules in 2010, it is not disputed that the charge-sheet is to be

signed by the disciplinary authority. The power of issuing the charge-sheet cannot be delegated to the Inquiry Officer. Therefore, in the light of these settled principles, if we examine the impugned order; it is clear that it is afflicted by two vices. Firstly, even without issuing a charge-sheet and calling for an explanation, an Inquiry Officer has been appointed. This part of the order cannot be sustained. Equally without legal foundation and contrary to law is the direction to the Inquiry Officer to serve the charge-sheet upon the appellant. These portions are clearly unsustainable and, therefore, they deserve to be quashed.”

In such view of the matter, the enquiry is vitiated and the punishment order, which is based on the strength of such enquiry, cannot be sustained in the eyes of law.

The enquiry is vitiated for yet another reason, namely, the Enquiry Officer had recommended the punishment to be imposed, which he would not have done, as provided in Rule 8 of Uttarakhand Government Servants (Discipline & Appeal) Rules, 2003.

In such view of the matter, the impugned punishment orders are liable to be set aside and are hereby set aside. The writ petitions are allowed. However, the Competent Authority will be at liberty to hold Disciplinary Enquiry afresh as per the relevant provision of Uttarakhand Government Servants (Discipline & Appeal) Rules, 2003.

3. Ld. Counsel for the petitioner further submitted that the controversy in hand has been dealt with by this Tribunal *vide* judgment dated 19.04.2022 in Claim Petition No. 70/DB/2021, Malak Raj vs. State and others and connected claim petitions, which is based upon the judgment dated 13.02.2019 rendered by Hon’ble High Court of Uttarakhand in Special Appeal No. 543/2017, State of Uttarakhand vs. Krishan Pal Singh. The judgment rendered by Hon’ble High Court is extracted herein below:

“Heard Mr. C.S. Rawat, learned Additional Chief Standing Counsel for the State/appellants and Mr. Kishore Kumar, learned Counsel for the respondent.

2. This appeal is preferred against the order passed by the learned Single Judge in Writ Petition (S/S) No.650 of 2016 dated 28.3.2017.

3. The aforesaid writ petition was heard along with other writ petitions and, by a common order dated 28.3.2017, the learned Single Judge held that the services of the petitioners were terminated without holding a regular enquiry; and the petitioners were permanent employees and their service could only have been terminated in conformity with Article 311 of the Constitution of India. Following the judgment of the Supreme Court, in ‘D.K. Yadav v. J.M.A. Industries Ltd.’ 1993 (3) SCC 259, the learned Single Judge directed the appellant-respondents to reinstate the petitioner with all consequential benefits, reserving liberty to the State to proceed with the matter in accordance with law.

4. Facts, to the limited extent necessary, are that, relying on a Basic Training Certificate produced by him as proof of his possessing the prescribed qualifications, the petitioner was appointed as an Assistant Teacher on 12.3.1996. On a complaint made against him, that the Basic Training Certificate produced by him was fake and false, a charge-sheet was issued to the petitioner on 11.3.2014, calling upon him to show cause why action should not be taken against him for submitting a fake Basic Training Certificate. The petitioner submitted his reply to the chargesheet on 28.3.2014 denying the charge. In his reply to the charge-sheet, the petitioner stated that, while he had failed in one paper in the main examination, he had appeared for the supplementary examination with the

very same roll number and, on his having passed the supplementary examination, he was awarded the Basic Training Certificate.

5. No departmental enquiry was held thereafter. The petitioner was placed under suspension on 4.12.2015, and continued to remain under suspension till he was dismissed from service by order dated 6.1.2016.

6. The appellant-respondent should have conducted a departmental enquiry, in as much as the respondent-writ petitioner had denied the charges levelled against him. They should have also afforded the petitioner a reasonable opportunity of defending himself in such an enquiry and, thereafter, should have furnished him a copy of the enquiry report calling for his objections. It is only thereafter, could a punishment have been imposed on the petitioner. Instead, the appellant has straightway, after receipt of the petitioner's reply to the charge-sheet denying the charges, dismissed him from service.

7. While, we find no error in the order under appeal necessitating interference in so far as the order of punishment was set aside by the learned Single Judge, the fact however remains that the learned Single Judge has also directed that the respondent-writ petitioner be reinstated into service with all consequential benefits.

8. As noted hereinabove, the petitioner was placed under suspension on 4.12.2015, and continued to remain under suspension when he was dismissed from service by proceedings dated 6.1.2016. Setting aside the order of punishment would only require that the order of suspension be continued, and for the disciplinary enquiry to be completed early.

9. In such circumstances, we consider it appropriate to modify the order of learned Single Judge and direct the appellants-respondents to continue to pay the petitioner subsistence allowance, which he is entitled to during the period of suspension, till the completion of departmental enquiry initiated against him.

10. As a charge memo was issued to the petitioner as early as on 11.3.2014 i.e. nearly 5 years ago, the appellant-respondent is directed to complete the departmental enquiry with utmost expedition and, in any event, not later than four months from the date of production of a certified copy of this order.

11. Subject to the aforesaid modification, the appeal is disposed of. No costs. Pending application, if any, also stands disposed of."

4. Ld. A.P.O. fairly submitted that the present claim petition is squarely covered by the aforesaid decisions and may, therefore, be decided in terms of judgments rendered in WPSS No. 664/2020 and connected writ petition, Claim Petition No. 70/DB/2021, Malak Raj vs. State and others and connected claim petitions and Special Appeal No. 543/2017, State of Uttarakhand vs. Krishan Pal Singh.

5. This Tribunal had decided Claim Petition No. 70/DB/2021, Malak Raj vs. State and others and connected claim petitions, as below:

“Taking a leaf out of Hon’ble Court’s order, this Tribunal finds that the petitioner was placed under suspension and continued to remain under suspension when his services were terminated. The order of punishment is set aside. The Tribunal also finds that setting aside the order of punishment would only require that the orders of suspension be continued and for the disciplinary enquiry to be completed early.”

6. Present claim petition is, accordingly, disposed of in terms of the aforesaid decisions.

7. Respondents are directed to continue to pay the petitioner subsistence allowance which he is entitled to during the period of suspension till the completion of departmental enquiry initiated against him. The respondents are directed to complete the departmental enquiry in accordance with law, with utmost expedition and, in any event, not later than four months from the date of production of certified copy of this order.

8. In the circumstances, no order as to costs.”

3. It is the submission of learned Counsel for the petitioner that five orders were passed by this Tribunal on 19.04.2022, having the same facts and circumstances with the present claim petition, and all the orders have been complied with by the respondent department, but this is one such case in which the order of the Tribunal has not been complied with, for the reasons best known to respondent no. 3, Divisional Additional Director, Secondary Education, Garhwal Mandal, Pauri.

4. Petitioner was directed to take steps for service of notice upon respondent no. 3 to show cause as to why the present execution application be not admitted. Steps were taken, but there is no response from such respondent.

5. Learned A.P.O. submitted that he has no instructions in the matter.

6. Learned Counsel for the petitioner further submitted that casual approach on the part of respondent no. 3 should not be tolerated and strict action should be taken against him for non-compliance of Tribunal’s order dated 23.05.2022. It may be noted here that the Tribunal has jurisdiction to

initiate contempt proceedings against the erring officials, if they don't comply with the directions of the Tribunal, but the Tribunal feels that the same should be resorted to as the last alternative.

7. Instead of issuing notice to respondent no. 3 to show cause why contempt proceedings be not imitated against him for willful disobedience for Tribunal's order dated 23.05.2022, the Tribunal feels that one last opportunity should be given to him for complying the orders of the Tribunal.

8. Respondent No. 3 is directed to comply with the order dated 23.05.2022 of the Tribunal passed in claim petition no. 54/DB/2022, Bhawani Lal vs. State of Uttarakhand and others, without further loss of time, failing which he may be liable to face appropriate action under the law governing the field.

9. Petitioner is directed to serve a copy of this judgment upon respondent no. 3 within 2 weeks from today.

10. Execution application is, accordingly, disposed of.

11. If the orders of the Tribunal are not complied with within a reasonable period, liberty is granted to learned Counsel for the petitioner to make a mention of the same.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)
[virtually from Nainital]

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 22, 2023
DEHRADUN
RS