

**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. 81/DB/2021

Bheem Singh, aged about 44 years, s/o Late Sri Bachan Singh, r/o Nagjhala, Post Office- Gundiayat Gaon, Tehsil- Purola, District Uttarkashi, presently residing at Rana Bhawan, Near MDS School, Tiloth, Police Station-Kotwali, Uttarkashi, District Uttarkashi.

.....Petitioner

VS.

1. State of Uttarakhand through Secretary, School Education, Dehradun.
2. Director of Secondary Education, Uttarakhand Govt. Nanoorkheda, Dehradun.
3. Deputy Director of Secondary Education, Uttarakhand, Nanoorkheda, Dehradun.
4. Additional Director of Education (Secondary Education), Garhwal Mandal, Pauri, District Pauri Garhwal.
5. Chief Education Officer , Chamoli.
6. Principal, Government Inter College, Savaad, Deval, Chamoli.

....Respondents.

Present: Sri Abhishek Chamoli, Advocate, for the petitioner.
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: AUGUST 31, 2021

Justice U.C.Dhyani (Oral)

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

- i. To quash the impugned dismissal order dated 21.01.2021, along with subsequent order dated 19.03.2021 [*copy not filed*], passed by Respondent No.3, i.e. Deputy Director of Education, Nanoorkheda, Dehradun, after calling the entire record from the respondents and declaring the same as arbitrary, malafide, void and a nullity keeping in view the facts highlighted in the body of the petition.
- ii. To issue an order or direction to the respondents to reinstate the services of the petitioner and then permit him to perform his duties as Lecturer Hindi (General Branch) at his posting place from the date of passing of the impugned order with all consequential benefits along with arrears of salary as if had it been the impugned orders were not in existence.
- iii. To pass any other order or direction which this Hon'ble Tribunal may deem fit and proper in the present circumstances of the case.
- iv. To award the cost of petition.

2. At the very outset, Ld. A.P.O. objected to the maintainability of the claim petition *inter alia* on the ground that the same is premature in view of Section 4(5) of the Uttar Pradesh Public Services (Tribunal) Act, 1976, which reads as below:

4(5) The Tribunal shall not ordinarily admit a reference unless it is satisfied that the public servant has availed of all the remedies available to him under the relevant service rules, regulations or contract as to redressal of grievances.

3. Ld. A.P.O. further pointed out towards Rule 11 of the Uttarakhand Government Servant (Discipline & Appeal) Rules, 2003 to submit that, "Except the orders passed under these rules by the Governor, the Govt. servant shall be entitled to appeal to the next higher authority from an order passed by the disciplinary authority".
4. Ld. A.P.O., therefore, submitted that the petitioner has not filed the departmental appeal against the dismissal order dated 21.01.2021, which was passed by the disciplinary authority (Addl. Director, Secondary Education, Uttarakhand). The departmental appeal ought to have been filed to Director, Secondary Education, Uttarakhand, Dehradun, Respondent No.2.
5. Sri Abhishek Chamoli, Ld. Counsel for the petitioner conceded the fact that the departmental appeal has not been filed against the

impugned order dated 21.01.2021. He, therefore, seeks liberty to file the departmental appeal to Director, Secondary Education, Uttarakhand, Dehradun against the order dated 21.01.2021, which has been passed by Addl. Director , Secondary Education, Uttarakhand.

6. Ld. Counsel for the petitioner submitted that the delay of approx 04 months in filing the departmental appeal may be condoned. Ld. A.P.O. submitted that the appeal ought to have been filed within 90 days from the date of dismissal order, but this Tribunal has condoned the delay in filing departmental appeal, in the light of decision rendered by Hon'ble Apex Court in *Collector Land Acquisition Anant Naag & another vs. MST Katiji & others, AIR 1987 SCC 107* and several other decisions.
7. Considering the sufficiency of reasons thus explained by Ld. Counsel for the petitioner and law governing the field, the delay in filing the departmental appeal may be condoned, as prayed for by Ld. Counsel for the petitioner, in the interest of justice
8. The Tribunal does not feel it necessary to narrate the facts of present claim petition, for they are already part of recor. While upholding the objections raised by Ld. A.P.O. on the maintainability of claim petition, and at the same time, accepting the prayer of Ld. Counsel for the petitioner to grant liberty to the petitioner to file the departmental appeal, after condoning the delay in filing the same, the claim petition is disposed of at the admission stage by granting liberty to the petitioner to file departmental appeal to Director, Secondary Education, Uttarakhand (Respondent No.2) against the order dated 21.01.2021, passed by Addl. Director , Secondary Education, Uttarakhand.
9. If such departmental appeal is filed, Respondent No.2 is directed to decide the same at an early date, but not later than 8 weeks of presentation of certified copy of this order along with departmental appeal, in accordance with law. The delay in filing such appeal shall not come in the way of Respondent No.2 in deciding such appeal.

10. Needless to say that decision so taken shall be communicated to the petitioner soon thereafter.

11. It is made clear that we have not expressed any opinion on the merits of the case.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: AUGUST 31, 2021
DEHRADUN

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