

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. 09/DB/2022

Pawan Singh Negi, aged about 45 years s/o Late Sri Kamal Singh Negi, last posted as Senior Assistant, Doon Hospital, Dehradun, r/o 116/4-2, Chander Nagar, Dehradun

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Medical Health and Family Welfare, Uttarakhand Government, State Secretariat, Dehradun
2. Secretary, Medical Health and Family Welfare, Uttarakhand Government, State Secretariat, Dehradun
3. Director General, Medical Health and Family Welfare, Uttarakhand
4. Principal Medical Superintendent, Doon Hospital, Dehradun

..... Respondents

Present : Sri Deepak Singh, Advocate for the petitioner
Sri V.P. Devrani, A.P.O. for the respondents

JUDGEMENT

Dated: 13th January, 2022

Justice U.C. Dhyani (Oral)

1. Petitioner was given compassionate appointment under the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 (for short, the Rules) on the death of his father, who was working in the respondent department. When compassionate appointment was given to the petitioner, his mother was working as Assistant Teacher in the Education Department. Petitioner disclosed this fact, along with affidavit, while applying for appointment, under the Rules. The respondent department considered his application and he was given appointment. The file was sent upto Hon'ble Departmental Minister.

2. When similarly situated person moved writ petition before the Hon'ble High Court of Uttarakhand, the respondent state was directed to consider appointment of the writ petitioner also under the Rules. Other family member (mother) of the writ petitioner was also in service in the Govt. Department. This fact was brought to the notice of Hon'ble High Court by the writ petitioner that present claim petitioner has been given compassionate appointment despite the fact that his mother was in the Govt. service. The Hon'ble Court directed that similar treatment be given to the writ petitioner, as well.

3. The matter was scrutinized at the Govt. level. It was found that since the mother of the petitioner was already in the Govt. service, therefore the petitioner could not have been given compassionate appointment. The same was contrary to the Rules made in this behalf. Consequently, after serving the department for 16 years, the petitioner was shown 'exit door'.

4. The orders were passed under the directions of the State Govt. The petitioner has still the remedy of filing statutory representation, which he has not availed, as yet. Learned Counsel for the petitioner, therefore, seeks liberty to file such

statutory representation to the Govt. by closing the claim petition at this stage.

5. Learned Counsel for the petitioner brought following facts to the notice of this Tribunal:

(i) The file was sent upto Hon'ble Departmental Minister at the time of giving him appointment. The decision was taken at his level. But when decision was taken to 'remove' him, the file was not sent to the Hon'ble Departmental Minister/ Hon'ble Chief Minister for his approval. In other words, the decision to remove him was not taken at the highest level. According to the General Clauses Act, an authority who has the power to appoint anybody, has also the power to remove him. It is also the law that if some authority has given appointment to a Govt. servant, only he (or any authority above him) can remove him, which, probably, has not been done in the instant case.

(ii) Compassionate appointment under the Rules is a different kind of appointment. Its nature is different. The formalities of written test, interview, which are otherwise required for giving general appointment, are dispensed with in such type of appointment. The Rules say so. Further, there is a time prescribed for filing the application for compassionate appointment. The Govt. has the power to relax such duration.

(iii) Although the petitioner was given an opportunity of hearing, but due procedure of law has not been followed while 'removing' him from service. Procedure for 'major penalty' has not been adopted.

(iv) Jaspal Matura's case was similar. His brother was already in the Govt. employment, when his father died, yet, on his application, he was given compassionate appointment

after relaxing Rule 5(1) of the Rules in his case with the approval of the Hon'ble Chief Minister. The documents have been filed by the petitioner to show the same (Annexure: A19, Page 209). Had similar relaxation been obtained by the department in petitioner's case, there would have been no occasion for his removal after 16 years of service. Such *ex post facto* approval can be obtained by the respondent department, even now.

6. Rule 10 of the Rules, regarding the power to remove the difficulties, is reproduced herein below for convenience:

“10. Power to remove difficulties- The State Government may, for the purpose of removing any difficulty (of the existence of which it shall be the Sole Judge) in the implementation of any provision or these rules make any general or special order as it may consider necessary or expedient in the interest of fair dealing or in the public interest.”

[Emphasis Supplied]

7. Petitioner, who is present in person before the Tribunal along with his learned Counsel, stated that he should be granted liberty to move statutory representation to the Govt., with the prayer that his matter be sent to Hon'ble Chief Minister/ Hon'ble Departmental Minister, whosoever has power to remove the difficulty, to permit him to continue in the employment of respondent department, as he has already served the said department for 16 years. Petitioner also stated that the fact of employment of his mother as Assistant Teacher in the Education Department was disclosed by him in his affidavit (Annexure: A9). He has not concealed anything. State Govt. should exercise power under Rule 10 of the Rules, as was done in the case of Jaspal Singh Matura s/o late Ratan Singh Matura, whose brother was already in service (Annexure: A19 *colly*, Page 209).

8. In WPSS No. 166/2013, Ms. Meenakshi Tiwari vs. State of Uttarakhand and others, when Meenakshi Tiwari filed the writ petition before Hon'ble High Court (copy of the order Annexure: A13), the instance of Pawan Singh Negi (petitioner), was quoted before Hon'ble High Court. Direction was given by Hon'ble High Court to consider the case of the petitioner on the analogy of Pawan Negi (petitioner). Meenakshi Tiwari had lost her father and compassionate appointment was denied to her by the department on the ground that petitioner's mother was already in Govt. service (copy Annexure: A13).

9. It may be noted here that the petitioner of this case filed a writ petition before Hon'ble High Court. Counter-affidavit was filed. Rejoinder thereto was also filed. In other words, the pleadings were exchanged. These documents are already in the file of present claim petition (copy Annexure: A18 *colly*).

10. Hon'ble Court was pleased to direct that the nature of controversy involved from the order of removal would be amenable by Public Services Tribunal and, therefore, the petitioner has approached this Tribunal with the pleadings, documents and aforesaid submissions.

11. No useful purpose would be served, by directing learned A.P.O. to file the written statement/ counter-affidavit, for the same were already filed by the respondent department before the Hon'ble High Court and are part of record before this Tribunal also.

12. The claim petition is, therefore, disposed of, at the admission stage, by giving liberty to the petitioner, as orally prayed for by him, to move a statutory representation (against his removal) for permitting him to continue in the employment of the respondent department. If such (statutory) representation is filed by the petitioner, the respondent department is requested to take a decision on the same, in accordance with law, and in

the light of aforesaid submissions made by the petitioner in this regard.

13. One good thing about the petitioner is that he did not conceal, in his affidavit, that his mother is in Govt. service. He had already disclosed the fact that his mother was Assistant Teacher in Education Department.

14. In the backdrop of such facts, the petitioner can be permitted to continue in service in exercise of power under Rule 10 by relaxing Rule 5(1) in his case, for which the State Govt. is the sole judge. It has taken 16 years for the respondent department to notice the illegality/ irregularity, when other similarly placed persons approached the Hon'ble Court, who directed the State Govt. to give compassionate appointment to those writ petitioners.

15. After 16 years, a decision was although taken but the file was not sent to the Hon'ble Chief Minister/ Hon'ble Departmental Minister to take appropriate decision in accordance with law.

16. The file can now be sent to the appropriate authority for taking a decision, either way, in accordance with law, untrammelled by any of the observations made by us in the foregoing paragraphs of this judgement.

17. Claim petition thus stands disposed of, at the admission stage.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 13th January, 2022
DEHRADUN
RS