

**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)

CONTEMPT PETITION NO. C-02 /DB/2022

*(Arising out of, Claim petition No. 121/DB/202, decided on
01.12.2021 and Execution Petition No. 05DB/2022 decided
on 01.02.2022)*

Virendra Singh Chauhan.

.....Petitioner

vs.

Smt. Himali Joshi Petwal.

.....Respondent

Present: Dr. N.K.Pant, Counsel, for the petitioner.

Sri V.P.Devrani, A.P.O., in assistance of the Tribunal.

JUDGMENT

DATED: MARCH 08, 2022

Justice U.C.Dhyani (Oral)

Present contempt petition has been filed by the petitioner, against the respondent for effective compliance of the orders dated 01.12.2021 and 01.02.2022, passed by this Tribunal in Claim Petition No. 121/DB/2021 and Execution Application No. 05/DB/2022, respectively.

It will be appropriate to reproduce the decision rendered by this Tribunal on 01.12.2021 in Claim Petition No. 121/DB/2021, Virendra Singh Chauhan vs. State and others herein below for convenience:

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

(i) To issue an order or direction calling for the records and directing the respondents to amend the 2nd ACP order dated 10.03.2014 (Annexure No. 1) and grant the 3rd ACP from the date of 03.09.2018.

(ii) To issue an order or direction calling for the records and directing the respondents which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) To award the cost of the petition in favour of the petitioner.

2. At the time of hearing on admission of the claim petition, learned A.P.O. has raised serious objection that the claim petition is highly time barred as the relief no. (i) relates to amending the 2nd ACP order dated 10.03.2014 (Annexure: 1) and grant of 3rd ACP from 03.09.2018.

3. In reply, learned Counsel for the petitioner submitted that the petitioner has made representations to the Deputy Secretary and State Election Commissioner, State Election Commission, Uttarakhand, Dehradun on 06.10.2021 and on 13.11.2021 respectively, but have not been decided. The same may kindly be directed to be decided at an early date.

4. Learned A.P.O. further replied that these representations are not statutory in nature, and therefore, claim petition is not maintainable.

5. Ld. Counsel for the petitioner, therefore, confined his prayer only to the extent that petitioner's representations may kindly be directed to be decided by the Respondents, as per law, at an early date. As has been noted above, learned A.P.O. objected to the maintainability of the claim petition, *inter-alia*, on the ground that the same is barred by limitation, but submitted, in response to the query of the Bench, that the limitation is for the Tribunal and not for the Govt., therefore, if the petitioner has moved representations to the Respondents, the same can be decided by the respondent authority/authorities, at any time, as per law.

6. Considering the facts of the case and oral submissions made in this behalf, this Tribunal is of the view that innocuous prayer made by learned Counsel for the petitioner should be accepted.

7. Without prejudice to rival contentions, the claim petition is disposed of at the admission stage by requesting Respondent no. 1 to consider petitioner's representation, in accordance with law, without unreasonable delay on presentation of certified copy of this order along with a copy of such representation.

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

It is made clear that we have not expressed any opinion on the merits of the case. No order as to costs.

2. It will also be useful to reproduce the judgment passed by this Tribunal on 01.02.2022 in Execution Application No. 05/DB/2022, Virendra Singh Chauhan vs. State and others, herein below for convenience:

“Present execution application has been moved by the petitioner-executioner being aggrieved with the inaction on the part of Respondent No.1, for not considering petitioner's representation. Claim Petition No. 121/DB/2021 was filed by the petitioner, which was disposed of, at the admission stage, on 01.12.2021, as follows:

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

(iv) To issue an order or direction calling for the records and directing the respondents to amend the 2nd ACP order dated 10.03.2014 (Annexure No. 1) and grant the 3rd ACP from the date of 03.09.2018.

(v) To issue an order or direction calling for the records and directing the respondents which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(vi) To award the cost of the petition in favour of the petitioner.

9. At the time of hearing on admission of the claim petition, learned A.P.O. has raised serious objection that the claim petition is highly time barred as the relief no. (i) relates to amending the 2nd ACP order dated 10.03.2014 (Annexure: 1) and grant of 3rd ACP from 03.09.2018.

10. In reply, learned Counsel for the petitioner submitted that the petitioner has made representations to the Deputy Secretary and State Election Commissioner, State Election Commission, Uttarakhand, Dehradun on 06.10.2021 and on 13.11.2021 respectively, but have not been decided. The same may kindly be directed to be decided at an early date.

11. Learned A.P.O. further replied that these representations are not statutory in nature, and therefore, claim petition is not maintainable.

12. Ld. Counsel for the petitioner, therefore, confined his prayer only to the extent that petitioner's representations may kindly be directed to be decided by the Respondents, as per law, at an early date. As has been noted above, learned A.P.O. objected to the maintainability of the claim petition, *inter-alia*, on the ground that the same is barred by limitation, but submitted, in response to the query of the Bench, that the limitation is for the Tribunal and not for the Govt., therefore, if the petitioner has moved representations to the Respondents, the same can be decided by the respondent authority/authorities, at any time, as per law.

13. Considering the facts of the case and oral submissions made in this behalf, this Tribunal is of the view that innocuous prayer made by learned Counsel for the petitioner should be accepted.

14. Without prejudice to rival contentions, the claim petition is disposed of at the admission stage by requesting Respondent no. 1 to consider petitioner's representation, in accordance with law, without unreasonable delay on presentation of certified copy of this order along with a copy of such representation.

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

It is made clear that we have not expressed any opinion on the merits of the case. No order as to costs."

2. It is the submission of Ld. Counsel for the petitioner that a copy of judgment dated 01.12.2021 was although served on 16.12.2021, still petitioner's representation has not been decided.

3. In reply, Ld. A.P.O. submitted that the execution application is not maintainable, inasmuch as no time frame was given by the Tribunal while passing order on 01.12.2021. According to Ld. A.P.O., the words used by the Tribunal were, ".....by requesting Respondent no. 1 to consider petitioner's representation, in accordance with law, without unreasonable delay on presentation of certified copy of this order along with a copy of such representation."

4. Ld. A.P.O. drew attention of the Bench towards order dated 09.10.2020 passed by Hon'ble High Court of Uttarakhand in WPSS No. 1162/2020, which reads as under:

"By means of present writ petition, the petitioners have sought following reliefs:

(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 24.09.2020 (Annexure No.11 (Colly) to the writ petition) and 17.09.2020 (Annexure No.7 to the writ petition) related to petitioner no.4 and 17.09.2020 (Annexure No.9 to the writ petition) related to petitioner no.5.

(ii) Issue a writ, order or direction in the nature of mandamus restraining the respondents to not start any adverse recovery order against the petitioners and further restrain the respondents to not rivert/to not disturb the present position of petitioner no.4 and 5 as Assistant District Election Officer (Ad-hoc) till completion of the regular selection of the petitioner no.4 and 5.

(iii) Issue a writ or direction in the nature of mandamus directing the respondents to give the regular promotion to the petitioner no. 4 and 5 on the post of Assistant District Election Officer looking the length of service and suitability of the post as per Uttarakhand State Election Commission Subordinate Rule 2015 (as per rule 5).

Similar controversy has come up before this Court in WPSS No. 1114 of 2020 and 1121 of 2020, Mohan Chandra vs. State Election Commission & Ramesh Chandra Kandpal vs. State Election Commission respectively, wherein, this Court having considered the fact and circumstances of the case, the petitioners should have not been reverted back on a basic pay scale for the post of Junior/Assistant Clerk.

Till the next date of listing, the effect and operation of the impugned order dated 24.09.2020 shall remain stayed.

Interim relief application no. 8107 of 2020 stands disposed of accordingly.”

5. Ld. A.P.O. also drew attention of this Bench towards Order No. 808/Ra.Ni.Aa.-1/1173/20211 dated 13.01.2022 (Annexure: 3 to the execution application) issued by the State Election Commission to submit that since WPSS No. 1162/2020 Virendra Singh Chauhan vs. State Election Commission is pending before Hon’ble Court, therefore, it was not possible to dispose of representations dated 06.10.2021 and 13.11.2021 of the petitioner.

6. In reply, Dr. N.K.Pant, Ld. Counsel for the petitioner-executioner submitted that WPSS No. 1162/2020, Virendra Singh Chauhan vs. State Election Commission was regarding quashing of reversion order dated 24.09.2020, which has no connection with the representation (dated 07.12.2021, received in the office of Respondent No.1 on 16.12.2021) moved for amending the date of 2nd ACP and to grant 3rd ACP, which was the subject matter of Claim Petition No. 121/DB/2021, Virendra Singh Chauhan vs. State & others, disposed of by this Tribunal on 01.12.2021.

7. Considering the above noted submissions of Ld. Counsel for the parties, Respondent No.1 is requested to decide the pending representation of the petitioner, one way or another, at an earliest possible, but in accordance with law.

8. Execution Application thus stands disposed of at the admission stage.”

3. It may be noted here that office order dated 13.01.2022 (Copy: Annexure- C-3) was issued by the respondent in compliance of order dated 01.12.2021 and office order dated 03.03.2022 (Copy: Annexure- C-7) was issued by the respondent in compliance of order dated 01.02.2022 of the Tribunal.

4. It is the submission of Ld. Counsel for the petitioner that no effective compliance of the order has been done by the respondent. In reply, Sri V.P. Devrani, Ld. A.P.O., who is assisting the Tribunal, submitted that the respondent, while issuing the office order dated 03.03.2022, has clearly disposed of the representation of the petitioner. What else is required for ensuring the compliance of the order dated 01.12.2021, which was not even a

direction, but was in the form of request to the respondent authority to decide the representation of the petitioner, according to learned A.P.O.

5 Office order dated 13.01.2022 (Annexure: C-3) and subsequent office order dated 03.03.2022 (Annexure: C-7) may not be to the liking of the petitioner, who wanted direction to the respondents to amend the 2nd ACP dated 10.03.2014 and grant 3rd ACP *w.e.f.* 03.09.2018. During the course of hearing of Claim Petition No. 121/DB/2021, Ld. Counsel for the petitioner made a submission that the petitioner has made representations to the Deputy Secretary, State Election Commission and State Election Commissioner, Uttarakhand, but those representations have not since been decided so far, a direction be given to decide those representations. Accordingly, a request was made to Respondent No. 1 to consider petitioner's representation, in accordance with law. Consequently, the respondent issued office order dated 13.01.2022 (Annexure: C-3), which prompted the petitioner to file Execution Application no. 05/DB/2022. The submission of Ld. Counsel for the petitioner and reply of Ld. A.P.O. have already been mentioned by the Tribunal in its order dated 01.02.2022. Considering the submissions of Ld. Counsel for the parties, Respondent No.1 was again requested to decide the representation of the petitioner, one way or other, but in accordance with law, which followed office order dated 03.03.2022 (Annexure: C-7). The petitioner was still not satisfied with the same, and has, therefore, filed present contempt petition.

6. The Tribunal directed the respondent to decide petitioner's representation. Such representation has been disposed of. As has been noted above, the contents of the representation might not be to the liking of the petitioner, but the fact remains that the same has been disposed of with reasons. The Tribunal nowhere directed the respondent to decide the representation to the liking of the petitioner or in favour of the petitioner. It was mentioned that the representation shall be decided in accordance with law. Whereas, according to learned A.P.O., the office order dated 03.03.2022, Annexure: C-7, is as per law, Ld. Counsel for the petitioner argued otherwise holding that the same does not amount to the compliance of the order of the Tribunal. But, one thing is certain, and that is, the representation has been disposed of with reasons.

7. The bone of contention, it appears, is that whereas according to the petitioner, subject matter of WPSS No. 1162/2020 and Claim Petition No. 121/DB/2021 is different, according to the respondent, the subject matter of WPSS No. 1162/2020 and Claim Petition No. 121/DB/2021 is similar. According to the respondent, since WPSS No. 1162/2020 is pending adjudication before Hon'ble High Court, who has passed an order on 09.10.2020 (Copy: Annexure- C-4), whereby effect and operation of order dated 24.09.20 has been stayed, therefore, the decision on the representation of the petitioner is possible to be taken only after the decision of WPSS NO. 1162/2020. Since the facts of WPSS NO. 1162/2020 are not in the knowledge of the Tribunal, therefore, it is not in a position to ascertain whether the subject matter of WPSS No. 1162/2020 and (subject matter of) Claim Petition No. 121/DB/2021 is the same or not. Further, it is possible that the decision of WPSS No. 1162/2020 might have bearing on the subject matter of Claim Petition No. 121/DB/2021. If that be so, respondent appears to be justified in saying that the decision at the level of State Election Commission can only be taken after adjudication of WPSS No.1162/2020, which is pending before Hon'ble High Court. There appears to be sense in such reasoning of the respondent. If the subject matter is the same, this Tribunal should restrain itself from passing any order. The decision of the Constitutional Court will prevail.

8. Contempt jurisdiction is invoked only when there is willful disobedience of the direction or order of the Tribunal or Court, which does not appear to be so in the instant case.

9. The Tribunal does not think it expedient or proper to initiate any proceedings against respondent under the Contempt of Court Act, 1971.

10. Contempt petition is, accordingly, closed, leaving it open to the petitioner to pursue appropriate remedies available to him, in law.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 08, 2022

DEHRADUN

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