

**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)

**WRIT PETITION NO 1620 (S/S) OF 2017  
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 160/DB/2022]**

Smt. Sarita Pundir, w/o Sri Balbir Singh Pundir, r/o Mahar Sadan, 14 Bhigha,  
Muni-ki-reti, District Tehri Garhwal..

**.....Petitioner**

**vs.**

1. The State of Uttarakhand through Principal Secretary/ Secretary, (Elementary Education), Govt. of Uttarakhand, Dehradun.
2. The Director (Elementary Education) Govt. of Uttarakhand, Dehradun.
3. The District Education Officer, (Elementary Education), Tehri Garhwal, District- Tehri Garhwal.

**.....Respondents**

Present: Sri Amar Murti Shukla, Advocate, for the Petitioner (virtually)  
Sri V.P.Devrani, A.P.O., for Respondents .

**JUDGMENT**

**DATED: MARCH 29, 2023.**

**Justice U.C.Dhyani (Oral)**

Hon'ble High Court of Uttarakhand at Nainital, passed an order, in WPSS No. 1620/2017, Smt. Sarita Pundir vs. State of Uttarakhand and others, on 10.10.2022, as follows:

“The present Writ Petition has been filed with the following reliefs:-

- (i) Issue a writ, order or direction in the nature of certiorari quashing the termination order dated 17.06.2015 passed by respondent no. 3 (contained as Annexure no. 8 to this writ petition).
- (ii). Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents to reinstate the petitioner in service along with continuity of service for all practicable purposes.
2. Heard Mr. Amar Shukla, learned counsel for the petitioner and Mrs. Anjali Bhargava, learned Addl. C.S.C. assisted by Mr. Sushil Vashista, learned Standing Counsel for the State.
3. During the arguments, Mrs. Anjali Bhargava, Addl. C.S.C. for the State, submitted that the present matter relates to the conditions of service of a public servant, therefore, the petitioner has an alternate efficacious remedy to raise her grievances before the Uttarakhand Public Services Tribunal.
4. Mr. Amar Shukla, learned counsel for the petitioner, agrees to transfer the present matter to the Uttarakhand Public Services Tribunal.
5. As the disputes raised in the present writ petition can be effectively adjudicated by the Uttarakhand Public Services Tribunal, with the consent of both the parties, the complete record along with the writ petition, after retaining the copies thereof, is being transmitted to the Uttarakhand Public Services Tribunal for hearing the writ petition as a claim petition in accordance with law.
6. The Uttarakhand Public Services Tribunal is also requested to consider entertaining the present matter as a claim petition taking into consideration this fact that the present matter has been pending for past five years.
7. The present Writ Petition (S/S No. 1620 of 2017) stands disposed of accordingly”

2. Writ Petition No. 1620 (S/S) of 2017 is, accordingly, reclassified and renumbered as Claim Petition No. 160/DB/2022. Since the reference in this Tribunal shall be of the writ petition filed before the Hon'ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as 'petition' and petitioner shall be referred to as 'petitioner', in the body of the judgment.

3. Service termination order dated 17.06.2015 (Annexure- A 8) is in the teeth of present petition. According to such impugned order, petitioner an Assistant Teacher, posted in Government Primary School, Pipoladhar, District Tehri Garhwal, remained absent from duty from 03.07.2008, without sanction of any leave, for more than five years. Departmental proceedings were initiated against her as per provisions of the Uttarakhand Government Servant (Discipline and Appeal ) Rules, 2003 (as amended in 2010) (hereinafter

referred to as Rules of 2003) and Govt. Order No. 308/304/xxvii(3)/05 dated 27.07.2005.

3.1 A charge sheet was issued against the petitioner, she did not file any reply to the same. An advertisement was published in the newspaper. Petitioner was granted opportunity to place her case on 20.05.2015, but neither the petitioner filed her replies nor appeared before the concerned authorities to explain her absence. As per Fundamental Rule 18 of the Financial Handbook, Volume II, (part 2-4), since the petitioner continuously remained absent from 03.07.2008, her services as Assistant Teacher, Primary School, were terminated *w.e.f.* 03.07.2008 under Rule 3 (kha)(three) of the Uttarakhand Government Servant (Discipline and Appeal ) Rules, 2003 (as amended in 2010). Present petition has, therefore, been filed by her for quashing the termination order dated 17.06.2015 (Annexure: A-8) passed by respondent no. 3, and for direction to the respondents to reinstate the petitioner in service along with continuity of service for all practical purposes.

4. Sri Sudarshan Singh Bisht, District Education Officer (Elementary Education), Tehri Garhwal, has filed Counter Affidavit on behalf of Respondents. Each and every material averment in the claim petition has been denied, save and except as specifically admitted. Rejoinder Affidavit thereto has been filed by the petitioner. Supplementary C.A. has also been filed on behalf of Respondent No. 3.

5. Ld. A.P.O., defending the action of the department, submitted that the procedure, as laid down in the Rules, has been followed by the disciplinary authority and the Court should not interfere with the punishment awarded to the petitioner by the appointing authority/ disciplinary authority. Ld. Counsel for the petitioner, on the other hand, assailed order under challenge with vehemence.

6. Ld. Counsel for the petitioner submitted that the matter is squarely by the decision rendered by Hon'ble High Court on 01.03.2019 in WPSB No. 86/2019, State of Uttarakhand and others vs. Smt. Shobha Rawat. In reply, Ld. A.P.O. submitted that the facts of Smt. Shobha Rawat's case and present case are different. In Shobha Rawat's case (*supra*) Hon'ble High Court has given a decision on the basis that petitioner's services were terminated after conducting

inquiry in view of Rule 7(17), therefore, the matter has been remitted back to conduct a fresh inquiry. Ld. Counsel for the petitioner reiterated that the matter is squarely covered by the decision rendered by Hon'ble High Court in Shobha Rawat's case. Decision passed by Hon'ble High Court in Shobha Rawat's case (*supra*) on 01.03.2019, reads as below:

“This writ petition is filed against the order passed by the Public Services Tribunal in Claim Petition No. 16/NB/DB/2016 dated 03.04.2018.

2. The respondent-claim petitioner invoked the jurisdiction of the Tribunal seeking to have the order of removal dated 25.04.2015, passed by the authorities, quashed; and to direct the petitioners herein to permit the respondent-claim petitioner to resume her duties as Assistant Teacher, Government Primary School with all consequential benefits.

3. Facts, to the limited extent necessary, are that the respondentclaim petitioner was appointed as an Assistant Teacher on 24.01.2009 and, pursuant thereto, joined the Government Primary School, Jamal, Block Dwarikhal, District Pauri Garhwal on 02.02.2009. She was sanctioned maternity leave for eighty-two days from 02.07.2009 to 21.09.2009. Thereafter, she submitted an application to the Block Education Officer, Dwarikhal on 23.06.2011 seeking sanction of leave without pay due to health and family circumstances. A press-release was issued on 16.12.2014 to the effect that the petitioner was continuously absent since 24.06.2011, and she was asked to report to duty within ten days. The respondent-claim petitioner claims to have reported to duty on 23.12.2014. By letter dated 24.01.2015, a report was sought from the Deputy Education Officer regarding the respondent-claim petitioner having joined duty. Thereafter, an order of termination was issued on 25.04.2015 under Fundamental Rule 18, which stipulates, among others, that absence beyond five years will attract the provisions of the rules relating to disciplinary proceedings.

4. In the order, impugned in the writ petition, the Tribunal has held that, though FR 18 only stipulates that the Rules relating to disciplinary proceedings were applicable, neither was a charge sheet issued to the respondent-writ petitioner, nor were disciplinary proceedings held against her; and Rule 7(17), of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as amended in 2010, was not attracted.

5. With regards the petitioners' contention that Rule 7(17) was attracted, the Tribunal extracted Rule 7(17) in its entirety, and held that Rule 7(17) had no application to the case on hand. Consequently, the order of termination dated 25.04.2015 was declared illegal and set aside. While directing the petitioners herein to reinstate the respondent-claim petitioner within a period of six weeks from the date of presentation of the order, the Tribunal made it clear that it was open to the competent authority to proceed afresh against the respondent-claim petitioner in accordance with law; the question regarding payment of salary, for the period from the date of termination till the date of reinstatement, would be decided by the competent authority at the appropriate time during the inquiry, or after the inquiry, as per law; and they had not expressed any opinion on the merits of the case.

6. As noted hereinabove, the petitioner was appointed on 24.01.2009, and joined duty on 02.02.2009. It is not in dispute that the 2003 Rules are applicable to her. Consequently, she could only have been removed from service on a charge-sheet being issued to her for an act of misconduct, (which, in the present case, would be absence from duty without leave),

and after a disciplinary inquiry was held against her. On this short ground, the order of termination, which was subjected to challenge in the claim petition, was quashed by the Tribunal.

7. The petitioners' interest was adequately safeguarded by the Tribunal, leaving it open to them to take action afresh against the respondent-claim petitioner, which would mean that it was open to the petitioners herein to issue a charge-sheet, conduct a disciplinary inquiry, and thereafter impose such penalty, as they considered appropriate, in accordance with law. The petitioners herein have also not been mulcted with payment of back-wages to the respondent-claim petitioner. The Tribunal has held that the question regarding payment of salary, for the period from the date of termination till the date of reinstatement, was required to be decided by the appropriate authority either during, or after, the disciplinary inquiry.

8. The relief, sought for in this writ petition, is for a writ of certiorari to quash the order passed by the Tribunal. Such a writ is issued only when the order, impugned in the writ petition, suffers from an error apparent on the face of record (Syed Yakoob vs. K.S. Radhakrishnan and others : AIR 1964 SC 477). We find no such infirmity in the order of the Tribunal warranting interference in proceedings under Article 226 of the Constitution of India.

9. The writ petition fails and is, accordingly, dismissed. No costs."

7. Ld. Counsel for the petitioner further drew attention of this Tribunal towards copy of charge sheet dated 12.07.2010 (Annexure- A 3) to submit that there are inherent contradictions in the impugned order (Annexure- A 8) and the averments made by the respondents in the C.A. with supporting documents.

8. In the C.A. filed before the Hon'ble High Court, it has been stated that, whereas in the impugned order dated 17.06.2015 (Annexure: A 8) it has been mentioned that the petitioner neither replied to the show cause notice nor appeared before the disciplinary authority to present her case, but in the last few lines of para 04, it has been indicated that she filed a reply on 16.05.2015. The language used in such C.A. is as follows:

"4..... In her reply dated 16-05-2015 the petitioner averred that permission for leave without pay would be granted to her till she recovers from her illness while the petitioner is already absent from the school for more than 6 years without any sanctioned leave. Thereafter the matter of the petitioner was examined by respondent no. 3, in which the petitioner was found guilty of continuous absence for the period of about 6 years. Thereafter, as per the G.O. dated 27-07-2005 and as per the Rule mentioned in Uttarakhand Government Servant (Discipline and Appeal), Rules 2003 amended Rules 2010, the order of termination from 03-07-2008 was issued to the petitioner on 17- 06-2015.

11. In reply to the charge sheet the petitioner stated that she wants permission of leave without pay due to her ailment and after considering the ailment and reply and the fact that the petitioner was absent for a period which is less than

5 years then District Education Officer suspended the disciplinary proceeding against the petitioner.

12. It is submitted that the petitioner in her reply dated 02-09 2010 averred that she will only be present to take her duties when she will be healthy, but since 02-09-2010 neither she joined her duties nor she informed about her ailment to the department, due to the reason that the petitioner had not joined her duties for a period of more than 6 years, a charge sheet dated 27-01-2015 was issued to the petitioner as per the disciplinary proceeding as provided in the Uttarakhand Government Office Memorandum No. 308/304/ XXVII(3)/05 dated 27-07-2005. But the petitioner did not respond to the aforesaid charge sheet thereafter an advertisement was published in the daily newspaper Hindustan on 13-05-2015 whereby the petitioner along with 16 other absent teachers have been called upon personally for their submission/reply on or before 20- 05-2015 as a last opportunity.

13. .... But the petitioner did not present personally before the respondent no. 3, in her reply dated 16-05-2015 the petitioner averred that permission for leave without pay would be granted to her till she recovers from her illness, while the petitioner is already absent for more than 6 years without any sanctioned leave.

14. It is submitted that the petitioner's services were terminated on 17-06-2015 on the ground of more than 6 years continuous absence as per the provision provided in the Uttarakhand Government Officer Memorandum Nu 308/304/XXVII(3)/05 dated 25-07-2005 and a copy of the termination order has been immediately sent to the petitioner. It is further submitted that the petitioner's averment that the petitioner was orally informed about the termination of services by the respondent no. 3 on 21-06-2017 are totally wrong and misconceived.”

9. Ld. Counsel for the petitioner further pointed out that the Govt. itself has issued a G.O. subsequently that even if a Govt. servant remains absent without sanctioned leave for more than five years, he/she will not be terminated from service without proper departmental inquiry.

10. In the instant case, no proper departmental inquiry has been conducted, and the case in hand is squarely covered by the decision rendered by Hon'ble High Court in Shobha Rawat's case (*supra*). The Tribunal, therefore, observes that the petition should be decided in the same terms.

11. The claim petition is disposed of by setting aside the impugned order dated 17.06.2015 (Annexure: A 8), leaving it open to the competent authority to proceed afresh against the petitioner in accordance with law. The question regarding payment of salary from the period of termination to the

period of reinstatement would be decided by the competent authority at the appropriate time during the inquiry or after the inquiry as per law. Before parting with the matter, it is clarified that no opinion has been expressed on the merits of the case. No order as to costs.

**RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: MARCH 29, 2023*  
*DEHRADUN*

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