

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

Present: Hon'ble Mr. Rajendra Singh

.....Vice Chairman (J)

Hon'ble Mr. A.S.Rawat

.....Vice Chairman (A)

CLAIM PETITION NO. 37/NB/DB/2024

Mukesh Kumar (Male) aged about 58 years, S/O Late Sri Haribansh Singh, presently serving as Assistant Teacher, Government Primary School, Sitarganj-First, Block Sitarganj, District Udham Singh Nagar.

.....**Petitioner**

Vs.

1. State of Uttarakhand through Secretary, Department of School Education, Government of Uttarakhand, Dehradun.
2. Director, Elementary Education, Uttarakhand Dehradun.
3. Chief Education Officer, District Udham Singh Nagar.
4. District Education Officer, (Basic), District Udham Singh Nagar.
5. Sri Harendra Kumar Mishra S/o Not known, presently serving as District Education Officer, (Basic), District Udham Singh Nagar.
6. Deputy Education Officer, Block Bazpur, District Udham Singh Nagar.

.....**Respondents**

Present: Sri Bhagwat Mehra, Advocate for the petitioner

Sri Kishore Kumar, A.P.O. for the Respondents No. 1 & 3

Sri Jagdish Singh Bisht, Advocate for the respondents no. 2, 4 & 6

JUDGMENT

DATED: JUNE 04, 2025

HON'BLE MR. A.S.RAWAT, VICE CHAIRMAN (A)

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

I. To set-aside the impugned punishment order dated 29-04-2024 passed by the Respondent No. 4 (Annexure No. 1 to Compilation-I).

ii. To set aside the impugned appellate order dated 03-10-2024 (Annexure No. 2 to Compilation-I)

III. To direct the Respondents, particularly Respondent No. 3 to grant the petitioner all consequential benefits and also to forthwith post him in Block Bazpur, District Udham Singh Nagar on the post of Assistant Teacher, Government Primary School.

IV. To pass any other suitable order as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

V. To allow the claim petition with cost.

2. The brief facts of the case are that-

2.1 The petitioner, was appointed on the post of Assistant Teacher, Government Polytechnic School in District Udham Singh Nagar w.e.f. 22.10.2009 on regular and substantive basis. On completion of 10 years service, the petitioner was granted benefit of Selection Grade of Pay in the Grade Pay of Rs. 4600/- w.e.f. 22.10.2019. On 29.09.2023 during school timing, employee of the school, Bhojan Mata namely Smt. Deepa Devi suffered serious health issue and her medical condition was very serious and, the petitioner took her to the Hospital as no one except petitioner was there. The Doctors in the hospital got various tests of the said employee and it was found that she was suffering from very high C-Reactive Protein (in short CRP) in blood and her CRP was 09 times above the upper limit.

2.2 The petitioner returned to the school after about 02 hours at 12:30 PM. The Respondent No. 6 visited the school, the petitioner apprised him about the non-presence of students. The Respondent No. 4 vide order No. 202 dated 11.10.2023 suspended the petitioner on flimsy charges. The Respondent No. 4 issued charge sheet to the petitioner leveling as many as 05 charges. In the said charge sheet, the Respondent No. 4 has referred some letter/report No. 629 dated 09.10.2023 submitted by Respondent No. 6, but, copy of the same was never furnished to the petitioner, either with the suspension order, or even with the aforesaid charge sheet dated 11.10.2023 and even till date.

2.3 By means of the aforesaid suspension order dated 11.10.2023, the Deputy Education Officer, Jaspur was appointed as Enquiry Officer in the matter and he was directed to submit the enquiry report within 07 days, while after suspension order, the charge sheet

was issued in which the petitioner was directed to submit his response within a period of 15 days. The enquiry officer was appointed even before the reply to the charge sheet was submitted by the petitioner, so the entire proceedings stand vitiated on this count alone.

2.4 The petitioner submitted his reply to the Respondent No. 4 on 26.10.2023, refuting all the charges. In the alleged enquiry report dated 24.02.2024, regarding Charge No. 3, it is mentioned that some list of 09 pages is annexed on the basis of which the said charge stands proved, but, the copy of the alleged list of 09 pages was never furnished to the petitioner. Similarly in the enquiry report dated 24.02.2024, lastly a document containing 18 pages has been shown as annexed, however, copy of the said 18 pages was also never furnished to the petitioner, along with the copy of the enquiry report.

2.5 The enquiry officer itself has recommended punishment to be imposed upon the petitioner as against the provisions of Discipline and Appeal Rules, 2003. In this view of the matter also the entire enquiry proceedings stand vitiated. The Respondent No. 4 issued a second show cause notice in the matter, annexing the copy of the enquiry report (without enclosures) to the petitioner and without any satisfaction recorded about the agreement with the enquiry report or disagreement with enquiry report, the petitioner was required to submit his reply to the said enquiry report. The petitioner was again required to submit his reply to the 05 charges leveled against him and it has been held that if the petitioner did not submit his version in the matter, disciplinary proceedings will be conducted on the basis of the said enquiry report submitted by Deputy Education Officer, Bazpur, District Udham Singh Nagar, while the fact remains that the enquiry report of the Deputy Education Officer, Bazpur was only a preliminary enquiry report.

2.6 The enquiry was not conducted as required under the law. Since the petitioner was required to submit his reply again to the charges contained in the charge sheet, as such, the petitioner submitted his reply dated 20.03.2024 to the Respondent No. 4 denying the charges and in support of his contentions, he has also submitted copies of relevant documents and it was also clearly mentioned in the

said reply that the enquiry was not conducted as required under law, as - such, it was also requested to re-enquire the matter. The petitioner submitted a supplementary reply on 02.04.2024 in response to the aforesaid notice dated 13.03.2024.

2.7 In pursuance of the aforesaid impugned order, the petitioner was relieved from Government Primary School, Majhera, Khushalpur, Block Bazpur, District Udham Singh Nagar, vide relieving order dated 06.05.2024 passed by Respondent No. 6. The petitioner joined duties on 21.05.2024 without filing appeal against the punishment order. Due to the pressure exerted by Respondent No. 5, the concerned Deputy Education Officer, Sitarganj, District Udham Singh Nagar vide letter dated 29.05.2024 directed the petitioner to immediately deposit Rs. 15,829.90 in the government account. The petitioner deposited the said amount of Rs. 15829/- on 01.06.2024.

2.8 Feeling aggrieved, the petitioner submitted statutory appeal against the aforesaid impugned punishment order dated 29.04.2024 passed by the Respondent No. 4, before Respondent No. 3 on 20.08.2024. The Respondent No. 5, himself has decided the said departmental appeal against his own order, vide order dated 03.10.2024. The impugned punishment order suffers from bias and malice, both in facts and law and deserves to be set-aside.

3. C.A./W.S. has been filed only on behalf of respondents no. 4, in which, it has been stated that-

3.1 दिनांक 29.09.2023 को रा०प्रा०वि० मझरा खुशालपुर में अपराहन 12:30 बजे विद्यालय के निरीक्षण करने पर कोई भी छात्र उपस्थित नहीं पाया गया। जबकि अभिलेखानुसार विद्यालय में 17 छात्र-छात्रायें पंजीकृत हैं। श्री मुकेश कुमार, स०अ० से जब इस बारे में जानकारी प्राप्त की गयी तो श्री मुकेश कुमार, स०अ० के द्वारा अवगत कराया गया कि आज मासिक परीक्षा होने के कारण सभी छात्र परीक्षा के उपरान्त घर जा चुके हैं। परन्तु मासिक परीक्षा की उत्तर पुस्तिकायें मॉगने पर श्री मुकेश कुमार, स०अ० कोई उत्तर नहीं दे सके और न ही श्री मुकेश कुमार, स०अ० के द्वारा उत्तर पुस्तिकायें दिखायीं गयीं।

3.2 श्री मुकेश कुमार, स०अ० के द्वारा दिनांक 01 सितम्बर 2023 से छात्र उपस्थिति पंजिका में छात्र-छात्राओं की उपस्थिति दर्ज नहीं की गयी है। जिससे ऐसा प्रतीत होता है कि विद्यालय में छात्र नामांकन में अनियमितता की गयी है। श्री मुकेश कुमार, स०अ० के

द्वारा रा०प्रा०वि० मझरा खुशालपुर में छात्र-छात्राओं का फर्जी नामांकन किया गया है। विद्यालय में फर्जी नामांकन करने के कारण पी०एम०पो० योजना, गणवेश धनराशि, जूता एवं बैग की धनराशि के दुरुपयोग की भी पूर्ण सम्भावना प्रतीत होती है। रा०प्रा०वि० मझरा खुशालपुर, में शौचालय एवं विद्यालय परिवेश बहुत ही खराब स्थिति में पाया गया। श्री मुकेश कुमार, स०अ० के द्वारा विद्यालय अनुदान का समुचित सदुपयोग नहीं किया गया है, जिसके कम में इस कार्यालय के आदेश संख्या: 202 दिनांक 11.10.2023 द्वारा याची को निलम्बित करते हुए उप शिक्षा अधिकारी जसपुर को प्रकरण में जांच अधिकारी नामित किया गया तथा पत्रांक: 5419-21 दिनांक 11.10.2023 द्वारा आरोप पत्र दिया गया। याची को आरोप पत्र पर 15 दिन के भीतर अपना पक्ष प्रस्तुत करने के निर्देश दिये गये। याची के द्वारा दिनांक 26.10.2023 को अपना पक्ष प्रस्तुत करते हुए आरोपों से इनकार किया गया।

3.3 कार्यालय उप शिक्षा अधिकारी जसपुर के पत्रांक: 1783 दिनांक 24.02.2024 द्वारा प्रकरण की जांच आख्या इस कार्यालय में प्रेषित की गई। उक्त जांच आख्या में याची के ऊपर आरोपित आरोप संख्या 1 लगायत 3 की पुष्टि जांच अधिकारी द्वारा की गई। आरोप संख्या 4 में पी०एम० पोषण मद में दर्शाया गया व्यय मु० 5029.90 रु० एवं 92.200 कि०ग्रा० चावल तथा गणवेश पर व्यय की गई धनराशि मु० 10800.00 रु० की वसूली याची से अपेक्षित बताई गई तथा आरोप संख्या 5 की भी पुष्टि जांच अधिकारी द्वारा करते हुए उक्त की वसूली की संस्तुति की गई। याची को कड़ी चेतावनी देते हुए सवेतन सेवा में बहाल करने की संस्तुति की गई। वित्तीय अनिमितता हेतु याची की 'एक वेतनवृद्धि असंचयी प्रभाव से रोकने की संस्तुति की गई तथा याची का स्थानान्तरण/समायोजन अन्य विद्यालय में करने की संस्तुति भी की गई। इस कार्यालय के पत्रांक: 9600-01 दिनांक 13.03.2024 द्वारा याची को नोटिस प्रेषित कर पाँचों आरोपों पर अपना पक्ष साक्ष्य सहित 15 दिन के भीतर इस कार्यालय में प्रेषित करने के निर्देश दिये गये। श्रीमती मंजू भट्ट स०अ० दिनांक 14.09.2023 को रा०प्रा०वि० मझरा खुशालपुर (याची को विद्यालय) में पहुंचने पर विद्यालय बन्द पाया गया तथा आस-पास उनके द्वारा जानकारी लेने पर उनके संज्ञान में आया कि विद्यालय में कोई बच्चा नहीं आता है। याची द्वारा आरोप पत्र दिनांकित 11.10.2023 का प्रतिउत्तर इस कार्यालय में अपने प्रत्यावेदन दिनांकित 26.10.2023 द्वारा इस कार्यालय में 04.11.2023 को प्रेषित किया गया परन्तु उनके द्वारा उप शिक्षा अधिकारी, बाजपुर की जांच आख्या दिनांकित 09.10.2023 अप्राप्त होने एवं उसकी प्रतिलिपि प्राप्त करने का निवेदन नहीं किया गया।

3.4 याची द्वारा फर्जी नामांकन कर विद्यालय संचालित किया जा रहा था। प्रकरण तत्काल निस्तारित करने के उद्देश्य से उप शिक्षा अधिकारी जसपुर, को जांच अधिकारी नामित किया गया था। जांच अधिकारी द्वारा सभी आरोपों के सम्बन्ध में विधिवत जांच की गयी है। उत्तराखण्ड सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 2003 यथा संशोधित की धारा 7(8) के अधीन नियुक्त जांच अधिकारी की आख्या प्राप्त होने के उपरान्त पुनः जांच कराये जाने का कोई प्रावधान वर्णित नहीं है। याची द्वारा राजकीय प्राथमिक विद्यालय मझरा खुशालपुर, बाजपुर में कार्यरत रहते हुए अन्य विद्यालयों में नामांकित छात्रों को अपने

विद्यालय में पंजीकृत करते हुए बिना छात्रों के विद्यालय संचालित कर राजकीय धन का दुरुपयोग करने का गम्भीर अपराध करने के कारण याची को इस कार्यालय के आदेश संख्या 15 दिनांक 29.04.2024 द्वारा अन्यत्र विकास खण्ड के एकल विद्यालय रांप्रांवि० सितारगंज प्रथम में पदस्थापित किया गया। दिनांक 14.09.2023 से दिनांक 19.09.2023 तक रांप्रांवि० मझरा खुशालपुर में याची के एफ०एल०एन० प्रशिक्षण में जाने पर रांप्रांवि० खम्बारी, बाजपुर से श्रीमती 2003 मन्जू भट्ट, स०अ० की शिक्षण व्यवस्था लगायी गयी थी परन्तु कोई भी छात्र उपस्थित नहीं होने पर वह मूल विद्यालय में वापस आ गयी। याचिकाकर्ता के द्वारा योजित की गयी वर्तमान याचिका असत्य एवं भ्रामक तथ्यों पर आधारित है, जिस कारण उक्त याचिका खारिज होने योग्य है।

4. R.A. has also been filed on behalf of the petitioner reiterating the averments made in the claim petition.

5. We have heard learned Counsel for the petitioner and learned A.P.O. for the respondents and perused the records presented.

6. Learned Counsel for the petitioner has argued that the enquiry has not been conducted as per the provisions of the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (as amended by the Amendment Rules 2010). The enquiry officer has been appointed before the reply of the charge-sheet submitted by the petitioner. The enquiry officer has recommended the punishment in the enquiry report itself. The appeal was submitted by the petitioner to the Respondent No 3, Chief Education Officer against the impugned punishment order dated 29-04-2024 passed by the Respondent No. 4 on 20-08-2024 through the District Education Officer. The District Education Officer (Disciplinary Authority) instead of forwarding the appeal to the Appellate Authority, without going through the subject matter of the appeal decided the appeal at his level vide order dated 03.10.2024. The said action of the Respondent No. 4 is totally arbitrary, illegal and without jurisdiction. Impugned orders dated 29.04.2024 and 03.10.2024 are liable to be set aside.

7. Learned A.P.O. argued that the enquiry has been conducted as per the provisions of the Uttarakhand Government Servants (Discipline and Appeal) Rules 2003, and there is no violation of the provisions of the Rules mentioned above as alleged by the

petitioner in the claim petition. The appeal of the petitioner has been disposed of as per the directions of the Appellate Authority. The claim petition is liable to be dismissed.

8. Based on the arguments of both the parties and the documents presented, we find that the enquiry has not been conducted as per the provisions of Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (as amended by the Amendment Rules 2010). The enquiry officer has been appointed before receiving the reply on the charge sheet from the petitioner. In fact, the appointment of the enquiry officer and the charge sheet issued to the petitioner are of the same date. The Inquiry officer has recommended the punishment in the enquiry report itself. The respondent No. 4 instead of forwarding the special appeal to the Appellate Authority (Respondent No 3) decided the appeal in a cursory manner at his level. He has acted on it without having any jurisdiction. So the entire proceedings against the petitioner are illegal and against the rules. The impugned order dated 29.04.2024 passed by the Disciplinary Authority (respondent no. 4) and his decision dated 03.10.2024 on the special appeal of the petitioner are liable to be set aside and the claim petition is liable to be allowed.

ORDER

The claim petition is hereby allowed. The impugned order dated 29.04.2024 and letter dated 03.10.2024 are hereby set aside. The respondents are directed to pay all the consequential benefits to the petitioner. However, the respondent authorities are at liberty to reinstate the disciplinary proceedings against the petitioner as per the Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 (as amended in 2010). No order as to costs.

(RAJENDRA SINGH)
VICE CHAIRMAN (J)

(A.S.RAWAT)
VICE CHAIRMAN (A)

DATED: JUNE 04, 2025
DEHRADUN
KNP