



2025:UHC:7231-DB

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE MR. G. NARENDAR, C.J.

HON'BLE MR. ASHISH NAITHANI, J

31st July, 2025

SPECIAL APPEAL NO. 52 of 2025

Smt. Kakuli Mandal ...Appellant

Versus

State of Uttarakhand and Others ...Respondents

Counsel for the Appellant : Mr. Amar Murti Shukla,
Advocate.

Counsel for the State : Mr. P.C. Bisht, learned
Additional Chief Standing
Counsel.

JUDGMENT (Per Hon'ble Mr. Ashish Naithani, J)

The Appellant, Smt. Kakuli Mandal, aged about 52 years, is a resident of Rudrapur, District Udham Singh Nagar. She was engaged in service under the State of Uttarakhand and was appointed as an Assistant Teacher in a Government Primary School. Her appointment was made pursuant to a regular selection process undertaken by the competent authority of the Education Department, and she entered service after fulfilling the eligibility conditions prescribed under the relevant service rules.

2. The record reflects that the Appellant continued in service for a considerable period. She successfully completed her probation and was confirmed in service. Thereafter, she discharged her duties in the Department of Education for more



than two decades. During this tenure, she was also granted selection grade pay on completion of ten years of continuous service, which is a benefit extended only to permanent and confirmed employees. These milestones unmistakably establish that her status as a government servant stood duly recognized by the Department itself and that she was treated as a regular member of the service.

3. However, after several years of service, certain complaints were received by the Department regarding the Appellant's appointment and continuance. The complaints alleged that her entry into service was tainted with irregularities and, more particularly, that the documents and certificates produced by her at the time of appointment were of doubtful authenticity. These allegations triggered departmental scrutiny into the validity of her appointment.

4. It is pertinent to mention that this was not the first occasion when the Appellant's appointment and service had come under challenge. In an earlier round of litigation, the Appellant had been terminated from service, which order she assailed by filing Writ Petition (S/S) No. 952 of 2019. By judgment dated 14.07.2020, a Coordinate Bench of this Court set aside the said termination and directed the authorities to conduct the disciplinary proceedings strictly in accordance with Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003, as amended in 2010. This background assumes significance, for it cast a clear obligation upon the disciplinary authority to thereafter adhere scrupulously to the statutory safeguards before taking any punitive action.



5. Pursuant to the complaints and notwithstanding the earlier directions of this Court, fresh disciplinary proceedings were again initiated against the Appellant. A charge sheet was issued to her, and the inquiry was entrusted to the Deputy Education Officer, Gadarpur, District Udham Singh Nagar. The Inquiry Officer considered the written reply submitted by the Appellant and, thereafter, submitted his report dated 11.02.2021 to the disciplinary authority.

6. According to the Appellant, the said inquiry report was wholly unsatisfactory, inasmuch as it merely reproduced the contents of her reply without recording any independent findings on the charges framed against her. Following the receipt of this report, the District Education Officer (Elementary Education), Udham Singh Nagar, issued a show cause notice dated 27.02.2021, requiring the Appellant to submit her response by 15.03.2021. The Appellant complied within the stipulated time and filed a detailed reply contesting the report and asserting her defence on facts as well as on law.

7. Notwithstanding the reply so filed, the disciplinary authority proceeded to pass an order dated 18.03.2021, terminating the services of the Appellant. The termination order recorded that the Appellant was guilty of the charges levelled against her and observed that her continuance in service was impermissible.

8. Aggrieved by the said termination order, the Appellant preferred Writ Petition No. 514 of 2021 (S/S) before this Court. She assailed the order of termination primarily on the ground that the inquiry proceedings culminating in her dismissal had been conducted in complete disregard of the



mandate of Rule 7 of the 2003 Rules and in violation of the settled principles of natural justice.

9. The learned Single Judge, by judgment and order dated 03.10.2024, dismissed the writ petition. The learned Judge observed that the allegations against the Appellant were grave in nature, and further held that the deficiencies pointed out by her did not constitute such substantial lapses as would vitiate the disciplinary proceedings. It was also recorded that, in view of the material on record, the Appellant could not legitimately claim the protection of Article 311 of the Constitution of India, since her appointment itself was under a cloud and liable to be treated as invalid.

10. Challenging the aforesaid judgment, the present Special Appeal has been filed under Chapter VIII, Rule 5 of the High Court Rules. By way of this appeal, the Appellant prays for setting aside the judgment dated 03.10.2024 as well as the termination order dated 18.03.2021, and for issuance of directions to reinstate her in service with all consequential benefits.

11. Heard learned counsel for the parties and perused the records.

12. Learned counsel for the Appellant opened his submissions by contending that the impugned termination order dated 18.03.2021, as well as the judgment of the learned Single Judge dated 03.10.2024, are wholly unsustainable in law and on facts. It was urged that the disciplinary proceedings culminating in the dismissal of the Appellant were conducted in flagrant violation of the mandate



of Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010).

13. Learned counsel for the Appellant submitted that Rule 7 lays down the statutory procedure to be followed before imposing a major penalty such as dismissal or removal from service. This includes the framing of specific charges, production and proof of documents relied upon, recording of oral evidence, affording the delinquent employee an opportunity of cross-examination, and finally, the rendering of a reasoned report by the Inquiry Officer on each article of charge. In the instant case, none of these requirements were adhered to, and the inquiry was reduced to a hollow formality.

14. It was specifically urged that the Inquiry Officer's report dated 11.02.2021 is no inquiry in the eyes of law. Instead of analysing the evidence, examining witnesses, or arriving at independent findings, the report merely reproduced the reply of the Appellant in a mechanical fashion. Such a report, it was submitted, cannot be treated as a valid inquiry report and is incapable of sustaining a major penalty.

15. Learned counsel for the Appellant further submitted that the show cause notice dated 27.02.2021, purportedly issued after receipt of the inquiry report, was also dealt with in a perfunctory manner. The Appellant filed her detailed reply on 15.03.2021, raising serious factual and legal objections to the inquiry report and contesting the charges levelled against her.

16. However the learned counsel for the Appellant contended, within three days, the disciplinary authority passed



the termination order dated 18.03.2021, without even adverting to her defence. This sequence clearly demonstrates that the authority had pre-determined the penalty of dismissal and that the opportunity granted to the Appellant was an empty formality.

17. It was also urged that the learned Single Judge erred in brushing aside these glaring lapses as “minor deficiencies.” According to the learned counsel, non-consideration of the reply of the delinquent employee and non-recording of independent findings by the Inquiry Officer strike at the root of the proceedings and render them void. Such defects cannot be categorized as minor, for they constitute a serious infraction of both the statutory rules and the principles of natural justice.

18. It was emphasized that denial of a meaningful inquiry and non-consideration of her reply caused manifest prejudice to the Appellant. The principles of natural justice are not empty formalities but guarantees of fairness in decision-making. Once prejudice is demonstrated, the proceedings cannot be saved on the ground of “substantial compliance.”

19. Learned counsel for the Appellant highlighted that the Appellant had rendered more than twenty years of continuous service, during which her probation had been completed, she was confirmed, and she was granted selection grade pay. These service milestones, it was submitted, establish her status as a permanent and confirmed employee, entitled to the full safeguards of Article 311 of the Constitution of India. The learned Single Judge, in holding that she was disentitled to such protection on the ground of alleged fraud,



committed a grave error, as neither the termination order nor the counter affidavit filed by the State contains any categorical finding that her initial appointment was fraudulent.

20. Learned counsel for the Appellant emphasized that fraud cannot be presumed; it must be established on cogent material. In the present case, there is no finding recorded by the disciplinary authority that the Appellant had procured her appointment by fraudulent means. Absent such a finding, the learned Single Judge was not justified in equating the Appellant's case with cases of proven fraud, such as those involving forged degrees or false caste certificates. The Appellant's appointment, it was urged, was made after due selection process, and her long and unblemished service record militates against any such presumption.

21. Learned counsel for the Appellant further submitted that the punishment imposed upon the Appellant is wholly disproportionate. Having served the Department for more than two decades without any blemish, her sudden termination, founded on a defective inquiry, is arbitrary and inequitable. It was urged that in service jurisprudence, the punishment must be commensurate with the misconduct proved, and in absence of any proven charge, dismissal from service is unsustainable.

22. On these submissions, learned counsel for the Appellant prayed that the impugned judgment of the learned Single Judge dated 03.10.2024 be set aside, that the termination order dated 18.03.2021 be quashed, and that the Appellant be reinstated in service with continuity and all consequential benefits.



23. Per contra, learned Additional Chief Standing Counsel appearing for the State defended both the impugned judgment dated 03.10.2024 as well as the termination order dated 18.03.2021. It was submitted that the Appellant was never entitled to the relief she seeks, as her very entry into service was tainted and irregular.

24. Mr. P. C. Bisht, learned Additional Chief Standing Counsel, urged that the case of the Appellant cannot be viewed in isolation but must be seen in the wider context of systemic irregularities uncovered in the Education Department. Several appointments of Assistant Teachers were secured through forged or fabricated documents, and the Appellant, according to the Department, falls within the same class of employees. It was submitted that permitting such appointments to subsist would not only undermine the credibility of public employment but would also send a damaging message to honest candidates who secure posts through legitimate means.

25. It was argued that the principle of law is firmly settled that if the foundation of an appointment is illegal, such appointment confers no legal right. An appointee whose entry into service itself is vitiated by fraud or illegality cannot claim the protection of Article 311 of the Constitution, nor can he or she claim to have acquired any vested right by virtue of length of service. In this regard, learned counsel relied on the well-established principle that fraud vitiates all solemn acts and no equity can be claimed by an employee whose very foundation is unlawful.



26. Learned Additional C. S. C submitted that the disciplinary proceedings against the Appellant were, in fact, conducted strictly in accordance with the prescribed procedure. A charge sheet was served upon her, an Inquiry Officer was duly appointed, and she was afforded an opportunity to file her written reply.

27. Thereafter, a show cause notice was issued, providing her with an additional chance to explain why punishment should not be imposed. According to the State, these steps clearly demonstrate that the principles of natural justice were complied with in substance, and the Appellant cannot be heard to complain merely because she is dissatisfied with the conclusions drawn.

28. It was further urged that the lapses highlighted by the Appellant, such as the brevity of the inquiry report or the non-discussion of her reply in the termination order, are at best procedural irregularities that did not cause any prejudice.

29. The learned Single Judge, therefore, correctly held that these deficiencies were not substantial enough to vitiate the proceedings. Learned counsel for the Respondent submitted that the courts must take a pragmatic view, especially where the allegations are grave and go to the root of eligibility, and that hyper-technical objections cannot be allowed to defeat the ends of justice.

30. Emphasising the position of teachers in society, learned counsel for the Respondent submitted that an individual entrusted with shaping the minds of children must be above suspicion. Once doubts arose about the genuineness



of the Appellant's appointment documents, her continuance in service became untenable. The Department, it was urged, could not be compelled to retain in its fold an employee whose very entry was under a cloud.

31. Learned counsel for the Respondent further submitted that sympathy or equitable considerations have no place when the question is one of fraudulent or illegal entry into public service. The Supreme Court has repeatedly held that long years of service cannot legitimize an appointment that was void at inception. To permit otherwise would amount to perpetuating illegality and erode public confidence in recruitment to government service.

32. On these submissions, learned counsel for the State prayed that the judgment of the learned Single Judge dated 03.10.2024 be upheld, and that the present appeal be dismissed as devoid of merit.

33. Having heard learned counsel for the parties and upon careful perusal of the record, this Court finds that the disciplinary proceedings culminating in the termination order dated 18.03.2021 suffer from fundamental procedural defects. The first and foremost question that arises is whether the inquiry proceedings conformed to the statutory requirements of Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (hereinafter, "the 2003 Rules"), as amended in 2010, and whether the Appellant was afforded a meaningful opportunity of defence.



34. Rule 7 of the 2003 Rules prescribes the mandatory procedure for imposing major penalties. The scheme envisages:

Sub-rule (2): framing of definite and distinct articles of charge, accompanied by a statement of imputations, a list of witnesses, and documents proposed to be relied upon;

Sub-rule (4): granting the delinquent employee a reasonable opportunity to submit a written statement of defence;

Sub-rules (6) to (12): conducting a regular inquiry, which requires—

production of evidence by the Department,

examination of witnesses in support of the charges,

opportunity of cross-examination to the delinquent,

liberty to adduce defence evidence, and

submission of a report by the Inquiry Officer with findings on each article of charge.

This statutory framework is not directory but mandatory, since it embodies the safeguards enshrined in Article 311(2) of the Constitution of India, ensuring that no government servant is dismissed or removed without due process.

35. In the present case, the inquiry report dated 11.02.2021 does not satisfy even the minimum requirements of Rule 7. Instead of analysing the oral or documentary evidence, examining witnesses, or recording independent findings, the Inquiry Officer merely reproduced the reply furnished by the Appellant. There is no discussion of whether



the charges stood proved, no evaluation of the documents, and no reasoning on the merits of the allegations. An inquiry report which fails to return findings on the articles of charge is, in the eye of law, no inquiry report at all.

36. The Supreme Court has consistently held that an Inquiry Officer functions as a quasi-judicial authority and is duty-bound to record clear and reasoned findings. In *Union of India v. H.C. Goel*, AIR 1964 SC 364, the Court emphasised that an inquiry report must contain a definite conclusion on whether the charges are proved, supported by reasons and reference to evidence. The report in the present case, being a mechanical reproduction of the delinquent's defence without evaluation, stands squarely condemned by these principles.

37. Equally significant is the manner in which the Appellant's reply to the show cause notice dated 27.02.2021 was dealt with. The Appellant submitted a detailed reply on 15.03.2021, raising substantive objections to the inquiry report and pointing out specific factual and procedural infirmities. Yet, within three days, the disciplinary authority passed the termination order dated 18.03.2021.

38. The order is silent on the contentions raised by the Appellant and does not record any reasons as to why her defence was rejected. The requirement of considering the delinquent's representation is a substantive safeguard. The right to make a representation against the inquiry report and to have it considered by the disciplinary authority is a facet of the principles of natural justice. These rulings underscore that consideration of the employee's reply is not a matter of form but of substance.



39. The sequence of events in the present case namely, the filing of the Appellant's reply on 15.03.2021 and the passing of the termination order on 18.03.2021 without any engagement with her defence betray undue haste and reveal a pre-determined mind. This is contrary to the doctrine of *audi alteram partem*, which requires that the authority must apply its mind to the explanation offered and assign reasons for its rejection before imposing a major penalty.

40. In light of these deficiencies, this Court is constrained to hold that the inquiry proceedings against the Appellant were not conducted in accordance with Rule 7 of the 2003 Rules. Both the inquiry report dated 11.02.2021 and the termination order dated 18.03.2021 are unsustainable, being in breach of statutory mandate as well as the principles of natural justice.

41. The next contention raised by the State is that the Appellant's appointment was tainted and therefore void ab initio, disentitling her from the protection of Article 311 of the Constitution of India. This Court is unable to accept the said submission for the reasons that follow. Article 311(2) of the Constitution mandates that no person who is a member of a civil service of the Union or of a State, or who holds a civil post under the Union or a State, shall be dismissed, removed, or reduced in rank except after an inquiry in which he or she has been informed of the charges and given a reasonable opportunity of being heard.

42. The protection of Article 311 can only be denied if the very foundation of employment is conclusively shown to be



fraudulent or illegal. In the present case, neither the termination order dated 18.03.2021 nor the counter affidavit filed in Writ Petition No. 514 of 2021 (S/S) records any categorical finding that the Appellant procured her appointment by fraudulent means. Allegations were indeed made about the authenticity of her documents, but no definitive conclusion was reached in the disciplinary proceedings on the basis of cogent evidence. Absent such a finding, it is not permissible to hold that her appointment was fraudulent.

43. Fraud, as a legal concept, vitiates every solemn act, but it must be specifically pleaded, strictly proved, and clearly recorded. The Supreme Court in ***A.P. Public Service Commission v. B. Sarat Chandra, (1990) 2 SCC 669***, held that a finding of fraud cannot be inferred on mere suspicion.

44. No such proof has been established in the present case. On the contrary, the record demonstrates that the Appellant was duly selected by the competent authority, was appointed as an Assistant Teacher, successfully completed her probation, and was thereafter confirmed in service. She was also granted the benefit of selection grade pay upon completion of ten years of service. These milestones reflect recognition by the Department itself of her status as a permanent government servant. Once such status is conferred, the Appellant became entitled to the full safeguards of Article 311, and her removal could only have been effected after a procedurally valid inquiry.

45. The contention of the State that the lapses in the inquiry process were minor and did not cause prejudice also



cannot be sustained. As discussed earlier, the inquiry report was devoid of findings, and the Appellant's reply was not considered at all. These are not minor irregularities but defects going to the very root of the disciplinary process.

46. In ***State of Uttar Pradesh v. Saroj Kumar Sinha, (2010) 2 SCC 772***, the Supreme Court observed that an inquiry conducted in violation of mandatory procedure and without affording adequate opportunity is a nullity. Applying the same principle here, the present proceedings are liable to be quashed. This Court is further guided by the doctrine of proportionality, which has been firmly entrenched in service jurisprudence.

47. The Appellant had rendered more than two decades of service, and there is nothing on record to suggest that her service record was blemished. To visit her with the extreme penalty of dismissal, based not on proven misconduct but on a procedurally flawed inquiry, is grossly disproportionate and arbitrary. This Court is mindful that sympathy cannot override legality in service matters.

48. However, once the statutory rules and constitutional safeguards under Article 311 have been violated, the termination order cannot be sustained. Equity and proportionality support the view that a confirmed government servant cannot be removed without adherence to due process.

49. For the reasons stated above, this Court concludes that the finding of the learned Single Judge that the Appellant was disentitled to the protection of Article 311 because her appointment was tainted is not borne out from the record. In



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the absence of a categorical finding of fraud, the Appellant is entitled to invoke Article 311. Her removal from service without compliance with Rule 7 of the 2003 Rules and the principles of natural justice is therefore unsustainable.

ORDER

In view of the foregoing discussion, this Court finds that the termination of the appellant's services by order dated 18.03.2021 was passed in breach of Rule 7 of the Uttarakhand Government Servant (Discipline and Appeal) Rules, 2003 (as amended in 2010) and in violation of the principles of natural justice. The disciplinary inquiry, being no inquiry in the eyes of law, could not form the basis for imposing a major penalty.

The impugned judgment and order dated 03.10.2024 rendered by the learned Single Judge in Writ Petition No. 514 of 2021 (S/S) is accordingly set aside. The termination order dated 18.03.2021 passed by the District Education Officer, Udham Singh Nagar, is quashed.

The appeal is, accordingly, allowed. No order as to costs.

G. NARENDAR, C.J.

ASHISH NAITHANI, J.

Dt:31st July, 2025

SB
SHRISHA
BIRUOLA