2026:UHC:10688-DB

HIGH COURT OF UTTARAKHAND AT NAINITAL

HON'BLE THE ACTING CHIEF JUSTICE SRI MANOJ KUMAR TIWARI

AND

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

WRIT PETITION (S/B) NO. 710 OF 2026

21ST NOVEMBER, 2026

Isam Singh .....Petitioner.

Versus

State of Uttarakhand & another ....Respondents.

Counsel for the Petitioner	:	Mr. Vinay Kumar, learned counsel.
Counsel for the State	:	Mr. Rajeev Singh Bisht, learned Deputy Advocate General with Mr. M.S. Bisht, learned Brief Holder.

The Court made the following:

JUDGMENT:(per Hon'ble The Acting Chief Justice Sri Manoj Kumar Tiwari)

This writ petition is directed against judgment and order dated 16.07.2026, passed by learned Public Service Tribunal, Dehradun *(for short "Tribunal")*, in Claim Petition No.76/DB/2026.

2. By the said judgment, petitioner's claim petition challenging termination of his service *vide* order dated 31.05.2023, was dismissed by holding that B.Tech degree obtained by petitioner through distance mode is not valid and B.Tech/ Bachelor in Engineering qualification is necessary for appointment as Assistant Engineer.

3. Petitioner has challenged the judgment rendered by learned Tribunal on the ground that the provisions contained in Uttarakhand Government Servants (Discipline and Appeal) Rules, 2003 were not followed, inasmuch as formal disciplinary enquiry in terms of Rule 7 of the said Rules was not held. Another ground taken by petitioner is that learned Tribunal has held that claim petition filed by petitioner is barred by estoppel, while the principle of estoppels is not attracted in the matter at all.

4. The facts, on which, there is no dispute are that petitioner was appointed as Assistant Engineer in Irrigation Department on the recommendation of Utttarakhand Public Service Commission *vide* order dated 22.01.2014; petitioner obtained B.Tech (Mechanical) degree through distance mode from Rajasthan Vidyapeeth deemed to be University in the year 2007, which was neither approved by All India Council for Technical Education (AICTE), nor by Distance Education Council (DEC); Hon'ble Supreme Court, in the case of ***Orissa Lift Irrigation Corporation Ltd. vs. Rabi Sankar Patro & others,*** reported in ***(2018) 1 SCC 468***, held that B.Tech/ B.E.

degree obtained from deemed to be Universities through distance mode shall not be valid, especially when AICTE has not granted approval for imparting instructions through distance mode to such deemed to be Universities and directed AICTE to formulate modalities for holding examination for candidates possessing such degree through distance mode. Relevant extract of said judgment is reproduced below:-

> *"58. AICTE is directed to devise within one month from the date of this judgment modalities to conduct appropriate test(s) both in written examination as well as in practicals for the students concerned admitted during the academic sessions 2001-2005 covering all the subjects concerned. It is entirely left to the discretion of AICTE to come out with such modalities as it may think appropriate and the tests in that behalf shall be conducted in the National Institutes of Technology in the respective States wherever the students are located. The choice may be given to the students to appear at the examination which ideally should be conducted during May-June 2018 or on such dates as AICTE may determine. Not more than two chances be given to the students concerned and if they do not pass the test(s) their degrees shall stand recalled and cancelled. If a particular student does not wish to appear in the test(s), the entire money deposited by such student towards tuition and other charges shall be refunded to that student by the deemed to be university concerned within a month of the exercise of such option. The students be given time till 15-1-2018 to exercise such option. The entire expenditure for conducting the test(s) in respect of students who wish to undergo test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018. If they clear the test(s) within the stipulated time, all the advantages or benefits shall be restored to the candidates concerned. We make it clear at the cost of repetition that if the candidates concerned do not clear the test(s) within the time stipulated or choose not to appear at the test(s), their degrees in Engineering through distance education shall stand recalled and cancelled. It goes without saying that any promotion or advancement in career on the basis of such degree shall also stand withdrawn, however, any monetary benefits or advantages in that behalf shall not be recovered from them.*
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> *66. Accordingly, we direct:*
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> *66.1. The 1994 AICTE Regulations, do apply to deemed to be universities and the deemed to be universities in the present matter were not justified in introducing any new course in technical education without the approval of AICTE.*
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> *66.2. Insofar as candidates enrolled during the academic*

sessions 2001-2005, in the present case the ex post facto approvals granted by UGC and their authorities concerned are set aside.

66.3. Consequent to aforesaid Direction II, all the degrees in Engineering awarded by deemed to be universities concerned stand suspended.

66.4. AICTE shall devise the modalities to conduct an appropriate test(s) as indicated in para 58 above. The option be given to the students concerned whose degrees stand suspended by 15-1-2018 to appear at the test(s) to be conducted in accordance with the directions in para 58 above. Students be given not more than two chances to clear test(s) and if they do not successfully clear the test(s) within the stipulated time, their degrees shall stand cancelled and all the advantages shall stand withdrawn as stated in paras 57 and 58 above. The entire expenditure for conducting the test(s) shall be recovered from the deemed to be universities concerned by 31-3-2018.

66.5. Those students who do not wish to exercise the option, shall be refunded entire money deposited by them towards tuition fee and other charges within one month of the exercise of such option. Needless to say, their degrees shall stand cancelled and all advantages/benefits shall stand withdrawn as mentioned in para 58.

66.6. If the students clear the test(s) within the stipulated time, all the advantages/benefits shall be restored to them and their degrees will stand revived fully.

66.7. As regards students who were admitted after the academic sessions 2001-2005, their degrees in Engineering awarded by the deemed to be universities concerned through distance education mode stand recalled and be treated as cancelled. All benefits secured by such candidates shall stand withdrawn as indicated in para 59 above. However, the entire amount paid by such students to the deemed to be universities concerned towards tuition fees and other expenditure shall be returned by the deemed to be universities concerned by 31-5-2018, as indicated in para 59.

66.8. By 31-5-2018 all the deemed to be universities concerned shall refund the sums indicated above in para 66.7 and an appropriate affidavit to that extent shall be filed with UGC within a week thereafter.

66.9. We direct CBI to carry out thorough investigation into the conduct of the officials concerned who dealt with the matters and went about granting permissions against the policy statement, as indicated in para 60 above and into the conduct of institutions who abused their position to advance their commercial interest illegally. Appropriate steps can thereafter be taken after culmination of such investigation.

66.10. UGC shall also consider whether the deemed to be university status enjoyed by JRN, AAI, IASE and VMRF calls for any withdrawal and conduct an inquiry in that behalf by 30-6-2018 as indicated above. If the moneys, as directed above, are not refunded to the students concerned, that factor shall be taken into account while conducting such exercise.

66.11. We restrain all deemed to be universities to carry on any courses in distance education mode from the academic session 2018-2019 onwards unless and until it is permissible to conduct such courses in distance education mode and specific permissions are granted by the statutory/regulatory authorities concerned in respect of each of those courses and unless the off-campus centres/study centres are individually inspected and

found adequate by the statutory authorities concerned. The approvals have to be course specific.

66.12. UGC is further directed to take appropriate steps and implement Section 23 of the UGC Act and restrain deemed to be universities from using the word "university" within one month from today.

66.13. The Union of India may constitute a three-member Committee comprising of eminent persons who have held high positions in the field of education, investigation, administration or law at national level within one month. The Committee may examine the issues indicated above and suggest a road map for strengthening and setting up of oversight and regulatory mechanism in the relevant field of higher education and allied issues within six months. The Committee may also suggest oversight mechanism to regulate the deemed to be universities. The Union of India may examine the said report and take such action as may be considered appropriate within one month thereafter and file an affidavit in this Court of the action taken on or before 31-8-2018. The matter shall be placed for consideration of this aspect on 11-9-2018."

5. After the judgment rendered by Hon'ble Supreme Court, in the case of ***Rabi Sankar Patro*** (supra), State Authorities issued notices to persons who secured appointment based on B.Tech degree obtained through distance mode, and one such notice was issued to petitioner as well.

6. It appears that petitioner did not respond to the notice, therefore, his services were terminated *vide* order dated 31.05.2023 by invoking the provision contained in Uttarakhand Temporary Government Servant (Termination of Service) Rules, 2003. Petitioner challenged the termination order by filing claim petition before learned Public Service Tribunal, which was disposed of with a direction to Secretary, Irrigation Department to take decision on the

representation made by petitioner against termination order. In terms of direction issued by learned Tribunal, Secretary of the Department rejected the representation made by petitioner *vide* order dated 08.06.2026, which was again challenged by petitioner by filing Claim Petition No.76/DB/2026. The impugned judgment is rendered in that claim petition.

7. We are not inclined to interfere with the impugned judgment. Even though, the claim petition filed by petitioner before learned Tribunal cannot be said to be barred by estoppel, however, the reasoning given in Paragraph No.8 of the impugned judgment is correct. Paragraph No.8 is reproduced below:-

> *"8. In view of the above, it is clear that the representation submitted by Shri Isam Singh (petitioner), has been rejected by the respondent authorities because his B.Tech. degree obtained through distance education is not valid in the eyes of law. Moreover, despite being given adequate opportunity to him, he failed to produce any certificate showing that he had qualified the special examination conducted by the All India Council for Technical Education (AICTE) within the prescribed eight-year period, as directed by the Hon'ble Supreme Court."*

8. It is an admitted position that petitioner has not qualified the test conducted by AICTE in terms of directions issued by Hon'ble Supreme Court in ***Rabi Sankar Patro*** (supra) in Paragraph No.58 of the aforesaid judgment, therefore, B.Tech degree possessed by petitioner stood recalled and cancelled.

9. Since B.Tech/B.E. degree is an essential qualification for appointment as Assistant Engineer and petitioner lacked the essential qualification, therefore, the Competent Authority was justified in terminating service of petitioner, as a person without any qualification in Engineering/ Technology cannot be permitted to serve on a Group-B post of Assistant Engineer in a State Department, where statutory rules provide that B.Tech/B.E. degree is necessary for appointment.

10. It is not in dispute that B.Tech degree possessed by petitioner was obtained through distance mode and the said degree stood recalled and cancelled in terms of judgment rendered by Hon'ble Supreme Court in the case of ***Rabi Sankar Patro*** (supra). Although, petitioner had an opportunity to appear in the test, which was held by AICTE in terms of direction issued by Hon'ble Supreme Court, however, he failed to qualify the test. Thus, the only inference, which is to be drawn, is that petitioner lacks the basic qualification needed for appointment as Assistant Engineer.

11. No one can serve as Assistant Engineer in a State Department without a valid degree in

engineering/ technology, especially when mode of recruitment and conditions of service are governed by statutory rules framed under proviso to Article 309 of the Constitution of India.

12. The Service Rules applicable for the post provide that B.Tech degree is a must for appointment as Assistant Engineer.

13. The sole contention raised on behalf of learned counsel for the petitioner is that a formal disciplinary enquiry by issuing charge-sheet was not initiated against petitioner. However, there is nothing on record to show that services of petitioner were confirmed upon completion of probation period. Thus, petitioner does not have any lien on the post held by him and his status continues to be that of probationer.

14. Learned State Counsel contends that since B.Tech degree possessed by petitioner stood recalled and cancelled in view of law declared by Hon'ble Supreme Court in the case of ***Rabi Sankar Patro*** (supra), therefore, petitioner had no defence whatsoever, to offer in response to the charge-sheet, if issued to him. He submits that charge which could be levelled against petitioner, if charge-sheet was issued,

would be that he do not possess B.Tech degree, which is essential for appointment and he had no defence available against said charge as his B.Tech degree stood cancelled. He submits that since petitioner could never prove that his B.Tech degree is valid, therefore, holding of full-fledged enquiry was not necessary. He submits that Hon'ble Supreme Court, in the case of ***Aligarh Muslim University & others Vs. Mansoor Ali Khan***, reported in ***(2000) 7 SCC 529***, has considered and discussed the 'useless formality theory', as an exception to principle of *'audi alteram partem'*. Paragraph nos.21, 22, 23 and 24 of the said judgment are extracted below:-

> *"21. As pointed recently in M.C. Mehta v. Union of India [(1999) 6 SCC 237] there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Govt. of A.P. [AIR 1966 SC 828 : (1966) 2 SCR 172] it is not necessary to quash the order merely because of violation of principles of natural justice.*
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> *22. In M.C. Mehta [(1999) 6 SCC 237] it was pointed out that at one time, it was held in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 (HL)] that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] Chinnappa Reddy, J. followed Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER 66 (HL)] and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.*
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> *23. Chinnappa Reddy, J. in S.L. Kapoor case [(1980) 4 SCC 379] laid down two exceptions (at SCC p. 395) namely, if upon admitted or indisputable facts only one conclusion was*

possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi v. State Bank of India [(1984) 1 SCC 43 : 1984 SCC (L&S) 62] Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade's Administrative Law (5th Edn., pp. 472-75), as follows: (SCC p. 58, para 31)

"[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. … There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P. [(1996) 5 SCC 460]."

15. Similar view was expressed by Hon'ble Supreme Court, in the case of ***Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise, Gauhati & others,*** reported in ***(2015) 8 SCC 519***. Paragraph No.38 of the said judgment is reproduced below:-

"38. But that is not the end of the matter. While the law on the principle of audi alteram partem has progressed in the manner mentioned above, at the same time, the courts have also repeatedly remarked that the principles of natural justice are very flexible principles. They cannot be applied in any straitjacket formula. It all depends upon the kind of functions performed and to the extent to which a person is likely to be affected. For this reason, certain exceptions to the aforesaid principles have been invoked under certain circumstances. For example, the courts have held that it would be sufficient to allow a person to make a representation and oral hearing may not be necessary in all cases, though in some matters, depending upon

> *the nature of the case, not only full-fledged oral hearing but even cross-examination of witnesses is treated as a necessary concomitant of the principles of natural justice. Likewise, in service matters relating to major punishment by way of disciplinary action, the requirement is very strict and full-fledged opportunity is envisaged under the statutory rules as well. On the other hand, in those cases where there is an admission of charge, even when no such formal inquiry is held, the punishment based on such admission is upheld. It is for this reason, in certain circumstances, even post-decisional hearing is held to be permissible. Further, the courts have held that under certain circumstances principles of natural justice may even be excluded by reason of diverse factors like time, place, the apprehended danger and so on."*

16. When a pointed query was put to learned counsel for the petitioner as regards the prejudice, if any, caused to petitioner due to not holding of disciplinary enquiry, he could not give any satisfactory reply. Since B.Tech degree possessed by petitioner stood recalled and cancelled in view of judgment rendered by Hon'ble Supreme Court in the case of ***Rabi Sankar Patro*** (supra), therefore, without any qualification in engineering, he is ineligible for serving as Assistant Engineer.

17. As per the statutory rules governing mode of appointment on the post of Assistant Engineer, B.Tech degree is a must while petitioner do not have any such qualification, therefore, he is not eligible to serve as Assistant Engineer under the State. Thus, holding of disciplinary enquiry by issuing charge-sheet to him would be a useless formality and petitioner's counsel could not indicate the defence, which petitioner could

have taken against the charge of becoming ineligible for serving as Assistant Engineer.

18. Perusal of record reveals that petitioner was given post-decisional hearing in terms of order passed by learned Tribunal in Claim Petition No.06/SB/2024, earlier filed by petitioner.

19. The view taken by learned Tribunal, thus, cannot be faulted. There is hardly any scope for interference with the impugned judgment. The writ petition, therefore, fails and is dismissed.

20. Pending application, if any, also stands disposed of.

(MANOJ KUMAR TIWARI, A.C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 21st November, 2026
NISHANT

NISHANT KUMAR