

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL,
DEHRADUN**

Present: Hon'ble Mr. Justice U.C. Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

----- Vice Chairman (A)

EXECUTION PETITION NO. 08/DB/2022

*(Arising out of judgement dated 07.04.2021, passed in
Claim Petition No. 05/SB/2021)*

Jai Prakash Barthwal, s/o Sri Chitra Mani Barthwal, r/o 81/1, C-Nai Basti,
Race Course, Officers Colony, Dehradun.

..... **Petitioner-Executioner**

vs.

1. State of Uttarakhand through Secretary (Transport), Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Uttarakhand Road Transport Corporation through its M.D., Dehradun.
3. Divisional Manager (*Sanchalan*), Uttarakhand Road Transport Corporation, Dehradun.

.....**Respondents**

Present: Sri L.K. Maithani, Advocate, for the Petitioner.
Sri V.P.Devrani, A.P.O., for the Respondent No. 1
Sri Pradeep Sati, Deputy General Manager (Legal),
Uttarakhand Road Transport Corporation, Dehradun,
For Respondents No. 2 and 3

JUDGMENT

DATED: 07th March, 2022

Justice U.C. Dhyani (Oral)

By means of present Execution Application, the petitioner seeks to ensure compliance of order dated 07.04.2021, passed by the Tribunal in claim petition no. 05/SB/2021, Jai Prakash Barthwal vs. State of Uttarakhand and others.

2. In order to understand the entire case, as also the directions given by the Tribunal on 07.04.2021 in the claim petition, referred to above, it will be useful to reproduce the entire judgement herein below for convenience:

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

(i) To issue an order or direction to the respondents to pay the amount of gratuity and other retiral dues i.e. Rs.11,70,904-00/- along with 18% interest till actual realization of the amount.

(ii) To issue any other or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

2. Facts, giving rise to present claim petition, are as follows:

Petitioner was appointed on 05.03.1980 as Junior Booking Clerk in Hill Depot, Dehradun in the respondent department and retired from the post of In-Charge Assistant General Manager, Uttarakhand Transport Corporation, on 30.09.2019.

300 days’ Earned Leave was credited in the leave account of the petitioner. An amount of Rs.6,56,320-00/- was to be paid to the petitioner as leave encashment, at the time of his retirement. The same was sanctioned *vide* order dated 14.10.2019, but the same has not been paid till today.

Gratuity of Rs.15,14,584-00/0 was also to be paid to the petitioner. Such amount has been sanctioned *vide* order dated 27.11.2019. Out of Rs.15,14,584-00/-, a sum of Rs.10,00,000/- has been paid to the petitioner before passing the order dated 27.11.2019, but the balance amount of Rs.5,14,584-00/- is still unpaid.

As per the averments of the claim petition, the respondent department is required to pay a sum of Rs.6,56,320-00 + Rs.5,14,584-00= Rs.11,70,904/- *plus* interest on delay in payment of leave encashment and gratuity to the petitioner.

Petitioner made a request to the respondents to pay the same, but to no avail. Hence, present claim petition.

3. Written Statement/ Counter Affidavit has been filed on behalf of Respondents No. 2 & 3. Respondent No.1, represented by Ld. A.P.O., has adopted the same, stating that Respondents No. 2 & 3 are the main contesting parties and Respondent No.1 is only a formal party.

4. In the C.A. filed by Sri Sanjay Gupta, Divisional Manager (Operation), Uttarakhand Transport Corporation, Dehradun, it has been admitted that the petitioner was appointed as Junior Booking

Clerk in the Hill Depot, Dehradun and has retired on 30.09.2019 from the post of In-Charge Assistant General Manager, Uttarakhand Transport Corporation.

5. It is admitted in the C.A. that on retirement of the petitioner (on 30.09.2019), he was sanctioned an amount of Rs.6,56,320-00/- as his leave encashment *vide* order dated 14.10.2019 (Copy: Annexure- A 1), but the same could not be paid to the petitioner due to financial crisis in the respondent department. Unfortunately, due to poor financial conditions of the Corporation, respondents could not pay to its retired employees the payment due on account of leave encashment since 2015 onwards and liability to this account has been accumulated to Rs.36 Crores. Financial condition of Uttarakhand Transport Corporation further deteriorated due to the spread of pandemic Covid-19 in the Country. The Corporation has not been able to pay even the salaries to its employees for the last 4-5 months.

6. On retirement of the petitioner on 30.09.2019, he was paid maximum admissible amount of gratuity of Rs.10,00,000-00/-, as due to him. Later on, maximum limit of 'gratuity' was enhanced by the Government and since the petitioner became entitled to the gratuity of Rs.15,14,584-00/- and, therefore, balance amount of enhanced gratuity i.e., Rs.5,14,584-00/- was sanctioned to the petitioner *vide* order dated 27.11.2019 (Copy: Annexure- A 2). But the same could not be paid to him due to the financial crisis in the respondent department. Total liability of leave encashment and gratuity of the Respondent Corporation has accumulated to Rs. 59 Crores, and therefore, the payment of leave encashment shall be made to the petitioner as soon as the financial crisis of the Respondent Corporation eases.

7. In Para 11 of the C.A., it is stated that the petitioner has been sanctioned gratuity of Rs.15,14,584-00/-, out of which an amount of Rs.10,00,000-00/- has been paid, but the balance amount of enhanced gratuity of Rs.5,14,584-00/- could not be paid due to financial crisis in the Respondent Corporation.

8. It is the submission of Ld. Counsel for the Respondent Corporation that in many such cases, Hon'ble High Court of Uttarakhand has also passed the orders for payment, but in those cases, the respondents have been seeking extension of time to make payment in view of deteriorating financial condition of the Respondent Corporation due to pandemic Covid-19 and other attenuating circumstances.

9. Thus, claim of the petitioner, as projected through present claim petition, has been admitted by Respondent Corporation in its C.A. Respondent Corporation has come to the Tribunal with clean hands mentioning the circumstances under which Respondent Corporation is unable to make payment of remaining retiral dues to the petitioner.

10. Petitioner has made a mention of Section 4 of the Payment of Gratuity Act, 1972 as also decisions rendered by Hon'ble Courts in R.P.Nair vs. K.S.E. Board, AIR 1979 Kerala (FB) 135; State of Kerala vs. M. Padmanabham Nair, AIR 1985 SC 356; Deokinandan Prasad vs. State of Bihar, AIR 1971 SC 1409, which provision of law and rulings have not been disputed by the respondents, who have fairly conceded that the petitioner is entitled to remaining retiral benefits, as projected through present claim petition. Hence, in any case, the claim petition deserves to be allowed with a direction to Respondents No. 2 & 3 to pay the balance amount of leave encashment, *i.e.* Rs.6,56,320-00/- and remaining amount of gratuity, *i.e.* Rs.5,14,584-00/- with admissible interest to the petitioner, at an earliest possible. Considering the financial condition of the Respondent Corporation, we are not fixing any time frame for making payment to the petitioner.

11. The next question would be what will be the admissible rate of interest?

12. In the decision of *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (SC)*, it was held by Hon'ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest. Regard may also be had to the decision of Hon'ble Apex Court in *S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563*, wherein the Hon'ble Supreme Court has held that even in the absence of specific Rule or order for providing interest, an employee can claim interest on the basis of Articles 14,19 and 21 of the Constitution of India, as retirement benefits are not a bounty. The relevant paragraph of the judgment is being reproduced herein below for convenience:

*"14."In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. **If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof."***

13. This Tribunal has taken a stand while deciding the claim petition No. 30/DB/2013, Dwarika Prasad Bhatt vs. State & others, on 22.09.2016 that interest on gratuity and amount of leave encashment should be given to the petitioner from a date, which will be after three months of his retirement till the date of actual payment. It has further been held in the claim petition of Dwarika Prasad Bhatt (*supra*) that the rate of interest shall be the simple rate of interest

payable on General Provident Fund during that period. This Tribunal should, therefore, pass a similar order in present claim petition also.

14. Respondents are, therefore, directed to pay to the petitioner, (i) interest on the amount of leave encashment (Rs.6,56,320-00/-) from 01.01.2020 till the date of actual payment and (ii) interest on the remaining amount of gratuity (Rs.5,14,584-00/-) from 01.01.2020 till the date of actual payment. The rate of interest shall be the simple rate of interest payable on General Provident Fund during the relevant period.

15. Order accordingly.

16. The claim petition thus stands disposed of. No order as to costs.”

3. Sri V.P. Devrani, learned A.P.O., for respondent no. 1, submitted that the compliance of the order dated 07.04.2021, passed by the Tribunal in claim petition no. 05/SB/2021, has to be ensured by respondents no. 2 and 3 and not by respondent no. 1, who is merely a formal party.

4. Sri Pradeep Sati, Deputy G.M. (legal), Uttarakhand Road Transport Corporation, Dehradun was heard (*online*) on his mobile number 9557791521. Sri Sati, representing respondents no. 2 and 3 fairly conceded that the order of the Tribunal should be complied with. Sri Sati, however, qualified his statement by saying that financial condition of Uttarakhand Road Transport Corporation is not good, therefore, some reasonable time may be given to respondent-corporation to ensure compliance of the order of the Tribunal. Learned Counsel for the petitioner has no objection in granting such time.

5. The Tribunal records the aforesaid statement of Sri Pradeep Sati, Deputy G.M. (legal), Uttarakhand Road Transport Corporation, Dehradun and disposes of the execution application, at the admission stage, with the consent of parties, by giving 6 weeks' time from today to ensure compliance of the order, which is the subject matter of present execution application.

6. Let a copy of this order be supplied to the petitioner to enable him to serve a copy of the order upon the respondent-corporation, for compliance.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 07, 2022
DEHRADUN
RS