

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

CLAIM PETITION NO. 107/SB/2021

Ashok Kumar, aged about 61 years, s/o Late Shri Batthu Ram, r/o Balmiki Basti,
Kankhal, District Haridwar..

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Urban Development Department,
Government of Uttarakhand, Dehradun.
2. Municipal Commissioner, Nagar Nigam, Haridwar, District Haridwar.

.....Respondents.

Present: Sri Munish Bhardwaj, Advocate for the petitioner. (online)
Sri V.P.Devrani, A.P.O. for the Respondent No.1.
No representation for Respondent No.2

JUDGMENT

DATED: FEBRUARY 18, 2022.

Justice U.C.Dhyani (Oral)

Writ Petition (S/S) No. 437 of 2021, Ashok Kumar vs. State of Uttarakhand and another, decided by Hon'ble High Court of Uttarakhand, on 19.03.2021, is precursor to present claim petition.

2. It will be appropriate to reproduce the decision of Hon'ble Court herein below, for convenience:

“The petitioner seeks the following reliefs:-

- i. Issue a writ, or order or direction in the nature of mandamus commanding and directing the respondent to release gratuity, pension and other retiral benefits including the interest thereon as applicable to the petitioner.
- ii. Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
- iii. Award the writ petition with costs'

2. Heard learned counsel for the parties and perused the record.
3. It is the case of the petitioner that having served with respondent no.2, Nagar Nigam, he has not been paid the retiral dues. It has been denied on the ground that the petitioner was convicted once.
4. At the very outset, the Court wanted to know as to why the matter be entertained in view of existence of State Public Services Tribunal as constituted under the Uttar Pradesh Public Services (Tribunal) Act, 1976.
5. On this, learned counsel for the petitioner would submit that a liberty may be given to the petitioner to make a fresh representation to the Department because according to him, in view of the settled law, the petitioner's retiral dues cannot be withheld by the Nagar Nigam. Learned counsel for the petitioner would submit that within a period of ten days petitioner will make his representation to the respondent no.2/Nagar Nigam.
6. Learned counsel for the respondent no.2 would submit that if such representation is made by the petitioner, it will be decided within a period of six weeks from the date of its presentation.
7. The Court takes on record the statement given by the learned counsel for respondent no.2.
8. The writ petition is disposed of with the direction to the respondent no.2 to decide the representation of the petitioner within six weeks from the date of its presentation. But, in case the dispute is still not resolved, even after consideration of the representation, any writ petition, on the subject, shall not be entertained by this Court merely on the ground that it is in sequel to the instant writ petition.”

[Emphasis supplied]

3. It has been indicated in Para 4.15 of the claim petition that the representation of the petitioner has been rejected by Respondent No.2, without assigning any cogent reason, which fact has led the petitioner to file present claim petition.
4. Petitioner was an employee of *Nagar Palika Parishad* (now *Nagar Nigam*), Haridwar. He retired, as Peon, on 30.06.2020. Still, his retiral dues have not been paid by Respondent No.2.
5. It is the submission of Ld. Counsel for the petitioner that petitioner is a convict of culpable homicide amounting to murder. Against the conviction, his criminal appeal is pending adjudication before Hon'ble High Court of Judicature at Allahabad. Pendency of criminal appeal is no ground to withhold petitioner's retiral dues. Ld. Counsel for the petitioner also stated that the petitioner was released on bail during appeal. The said incident has no connection with his official duties and no departmental proceeding was initiated or is pending against him on this count.

6. Ld. A.P.O. submitted that Respondent No.1 is only a formal party and retiral dues, if any, can only be realized from Respondent No.2, who is the contesting party in present claim petition.
7. Ld. Counsel for the petitioner also stated that postal packet containing registered notices was sent to Respondent No.2, which has been served upon the said respondent. Still, there is no representation on behalf of Respondent No.2. The claim petition was taken up earlier also. On that date also, there was no representation on behalf of Respondent No.2. When registered notice sent to Respondent No.2 did not return served or un-served, it was presumed that such respondent has been served with the notice. Today also, none has appeared in the Tribunal to contest the claim petition.
8. Admittedly, petitioner is a Class-IV employee of Respondent No.2. Since the claim petition has been filed within time, therefore, it was admitted *vide* order dated 28.10.2021. Petitioner has filed various documents to show that he retired from the service of Respondent No.2 on 30.06.2020, yet, no retiral dues have been paid to him.
9. Hon'ble Apex Court in the case of **S.K.Dua vs. State of Haryana and Another (2008)1 Supreme Court Cases (L&S) 563**, 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 reproduced below:
- “13..... 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.”*
10. In the case of Civil Appeal No. 7113 of 2014, D.D. Tiwari (D) v. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, Hon'ble Supreme Court has held, in paragraphs 3 and 4, as under:-

“3. The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, wherein this Court reiterated its earlier view holding that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned.....”

11. In SLP (Civil) No. 1427/2009 arising out of the Civil Appeal No. 6770 of 2013 and SLP (Civil) No. 1428/2009 arising out of Civil Appeal No. 6771 of 2013, State of Jharkhand & others vs. Jitendra Kumar Srivastava & another, Hon’ble Supreme Court has held, as under:

“2. Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings? The High Court has - answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal.

7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

“The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench

in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension.

It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) IILLJ 377SC”

15..... As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.”

12. Hon'ble High Court of Uttarakhand at Nainital in WPSB No. 257 of 2010, Pradeep Kumar vs. State of Uttarakhand and others, decided on 24.06.2013, has observed as under:

“..... Respondent No.2 is directed to reach to the petitioner gratuity, provident fund and leave encashment, to which the petitioner is otherwise entitled together with interest to be calculated at the rate of 10 per cent per annum from the date of his superannuation until the date of payment.”

13. In Claim Petitions No. 30/DB/2013, Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016, 72/DB/2018, Dhanesh Chandra Bhatt vs. State and others, decided on 13.02.2018 and 29/DB/2019, Sita Ram Sharma vs. State and others decided on 20.02.2019, this Tribunal, relying upon the Govt. Order dated 10.08.2004, ruled that the petitioners' claim for interest on delayed payment of Pension, Gratuity and Leave Encashment was justified and the petitioners should be paid interest on arrears of pension, gratuity and leave encashment, after three months of the date of retirement till the date of payment. The rate of interest for delayed payment of gratuity, leave encashment and pension shall be simple rate of interest payable on General Provident Fund during the relevant period

14. On the basis of facts mentioned in the claim petition, the petitioner is entitled to retiral dues along with interest, as above.

15. The claim petition is, accordingly, disposed of by directing Respondent No.2 to pay retiral dues along with admissible interest to the petitioner at an earliest possible and without unreasonable delay. No order as to costs.

JUSTICE U.C.DHYANI
CHAIRMAN

DATED: FEBRUARY 18,2022
DEHRADUN.

VM