

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

CLAIM PETITION NO. 02/SB/2022

Prem Shankar Srivastava, aged about 62 years, s/o late Sri Rameshwar Dayal Srivastava, r/o 109 (Municipal No. 456-B), Shanti Nagar, Behind St. Thomas School, opposite lane of Gokul Lawn, Sarojini Nagar, Lucknow, Present Correspondence Address- 2nd Floor, Turner Regency Apartment, Lane C-11, Turner Road, Near SBI Bank, Clement Town, Dehradun-248002.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Transport, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Uttarakhand Road Transport Corporation through its Managing Director, HQ Uttarakhand Transport Corporation, UCF Sadan, Vishnu Vihar, Deep Nagar Road, Ajabpur Kalan, Dehradun.
3. General Manager (Technical), Address-, HQ Uttarakhand Transport Corporation, UCF Sadan, Vishnu Vihar, Deep Nagar Road, Ajabpur Kalan, Dehradun.
4. Deputy General Manager (Legal), Address- , HQ Uttarakhand Transport Corporation, UCF Sadan, Vishnu Vihar, Deep Nagar Road, Ajabpur Kalan, Dehradun.

.....Respondents.

Present: Sri Rohit Srivastava, 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, 3 & 4. (online)

JUDGMENT

DATED: FEBRUARY 18,2022.

Justice U.C.Dhyani (Oral)

By means of present claim petition, the petitioner seeks a direction to Respondents No. 2, 3 & 4 to pay his retiral dues along with interest.

2. Petitioner was Assistant Work Supervisor in Uttarakhand Road Transport Corporation before superannuation. He retired from service on 31.07.2020, but still the amount of Gratuity and Leave Encashment has not been paid to him by the Respondent Department. The petitioner has, therefore, filed present claim petition for releasing his retiral dues along with admissible interest.
3. Sri V.P.Devrani, Ld. A.P.O., submitted that Respondent No.1 is a formal party and the retiral dues along with interest, if any, can only be realized from the Respondent Corporation.
4. When the claim petition was first taken up on 04.01.2022, the petitioner volunteered that he will serve copy of the claim petition along with documents upon the Respondents-Corporation. A copy of the claim petition was given to Ld. A.P.O., representing Respondent No.1/State, who submitted that Uttarakhand Road Transport Corporation is the main contesting party. On 07.01.2022, Ld. Counsel for the petitioner submitted that a copy of the claim petition along with documents have been served upon Respondents No. 2, 3 & 4. The claim petition has been filed within time. The same has been admitted.
5. Respondents were granted time till today to file C.A./W.S., but no such C.A. has been filed by the contesting respondents despite being given opportunity to do the same.
6. Sri Pradeep Sati, Deputy General Manager (Legal), Uttarakhand Road Transport Corporation, Dehradun [Respondent No.4] was heard online, on his mobile number- 9557791521. He stated that Sri Indrajeet Singh, Panel Lawyer, is indisposed and, therefore, some more time may kindly be given for filing W.S.
7. Ld. Counsel for the petitioner prayed that since the facts mentioned in the claim petition are not in dispute, therefore, the claim petition may be disposed of at the admission stage with direction to the Respondent- Corporation to pay the retiral dues, along with admissible interest to the petitioner.

8. Sri Pradeep Sati, Respondent No.4, fairly submitted that the Corporation will pay the admissible retiral dues to the petitioner. Sri Sati, however, qualified his statement by saying that financial condition of Uttarakhand Road Transport Corporation is not good, therefore, payment of retiral dues shall only be made to the petitioner in installments. Ld. Counsel for the petitioner agreed to such offer made on behalf of Respondent- Corporation.

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) 111 LLJ 377 SC"

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, therefore, disposed of at the admission stage, with the consent of parties, by directing Respondent-Corporation 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