

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

**Claim Petition No. 111/DB/2022**

Dr. Sujit Kumar Yadav, aged about 48 years, s/o Shri Chhedi Lal Yadav, r/o House No. 632/429, Mulayam Nagar Ajay Nagar, Kamta, Post Office Chinhat, Tehsil Sadar, Gomti Nagar, Lucknow, presently posted as Vaigyanik Adhikari (Plant Breeding), 8 Floor, Kishan Mandi Bhawan, Bibhuti Khand, Gomti Nagar, Lucknow.

.....Petitioner

versus

1. State of Uttarakhand through Secretary, Horticulture and Food Processing, Civil Secretariat, Uttarakhand, Dehradun.
2. Director, Horticulture and Food Processing, Horticulture Directorate, Udyan Bhawan, Chaubatiya, Ranikhet, District Almora, Uttarakhand.
3. Director Research Center (Anusandhan Kendra), G.B. Pant University of Agriculture and Technology, Pantnagar, District Udham Singh Nagar.
4. Vice-Chancellor, G.B. Pant University of Agriculture and Technology, Pantnagar, District Udham Singh Nagar.
5. Chief Treasury Officer/ Deputy Registrar Firms, Societies Chits, Pauri Garhwal.

.....Respondents

Present: Sri S.K. Mandal, Advocate, for the petitioner  
Sri V.P. Devrani, A.P.O. for the respondents no. 1, 2 & 5  
Sri Rajendra Dobhal, Senior Advocate, assisted by  
Sri Shubhang Dobhal, Advocates,  
for the respondents no. 3 & 4 (online)

## Judgement

**Dated: 03<sup>rd</sup> April, 2023**

### Justice U.C. Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 07.09.2022 in WPSB No. 20 of 2022, Dr. Sujit Kumar Yadav vs. State of Uttarakhand and others, which (order) reads as under:

“Amendment Application (IA No. 3 of 2022)

By this application, the petitioner seeks to make amendment/correction insofar as the description of respondent no. 5 is concerned.

For the reasons stated in the application, the same is allowed.

Writ Petition (S/B) No. 20 of 2022

**The reliefs sought in the present Writ Petition are the following:-**

**“(i) Issue a writ order or direction in the nature of certiorari quashing the order dated 14.09.2021 passed by the respondent no. 5 (contained in annexure no. 20 to the writ petition).**

**(ii) Issue a writ order or direction in the nature of mandamus directing and commanding the respondents to pay the retirement dues i.e. Pension, Gratuity, Leave Encashment, GPF, Group Insurance and arrears of 6th pay commission from 01.01.2006 to 16.10.2007 with admissible interest.”**

2. The petitioner is a government servant. The subject matter of the Writ Petition squarely falls within the jurisdiction of the Uttarakhand Public Services Tribunal.

3. We direct the Registry to transmit the complete record of present Writ Petition to the Tribunal forthwith to be registered as a Claim Petition.

4. The writ petition is disposed of accordingly.

5. In sequel thereto, all pending applications stand disposed of.”

*[emphasis supplied]*

2. The original record of the writ petition has been transferred to this Tribunal *vide* letter no. 12993/UHC/Service (S/B) 2022 dated 13.09.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as Claim Petition No. 111/DB/2022.

3. ***Vide* letter dated 02.12.2021 (copy Annexure No. 21), Horticulture Specialist made a request to Director, Horticulture and Food Processing, Chaubatiya, Ranikhet, Uttarakhand, to give the directions to release leave encashment in lieu of earned leave of 210 days, G.I.S., gratuity and arrears of 6<sup>th</sup> Pay Commission upto 16.10.2007, to the petitioner.**

4. The same has not been objected to either by the respondent-department or by the Chief Treasury Officer, Pauri Garhwal, in their respective counter affidavits.

5. **A direction is, therefore, issued to the respondents to release leave encashment in lieu of earned leave of 210 days, G.I.S., gratuity and arrears of 6<sup>th</sup> Pay Commission upto 16.10.2007 along with admissible interest on delayed payment of such dues to the petitioner, as per Rules, without unreasonable delay.**

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6. Now the dispute remains only as regards admissibility of pension to the petitioner. None of the respondents, except respondent no. 5, has opposed payment of pension to the petitioner in their respective written statements. In other words, respondents no. 1 to 4 have stated, in their respective counter affidavits, that the petitioner is entitled to the pension.

7. In the counter affidavit filed on behalf of respondent no. 5, it has been stated that the petitioner is not entitled to pension in view of Fundamental Rule 56(1) of Financial Handbook Part 2 to 4; Para 509-A of the Civil Service Regulations; G.O. No. 1844/*karmik-2/2002* Dehradun dated 09.04.2003 and sub-clause (2) of Rule 1 and sub-clause (b) of Rule 6 of the Uttarakhand Retirement Benefits Act, 2018, which is *pari materia* to U.P. Retirement Benefits Rules, 1961.

8. Learned Counsel for the petitioner, on the other hand, submitted that the petitioner is entitled to pension in view of Section 2 of Uttarakhand Retirement Benefits Act, 2018, which has overriding effect on all other Acts and Rules made in this behalf. Learned Counsel for the petitioner also submitted that as per Rules 510 and 514(a) of the Civil Service Regulations, a re-employed person may retain his pension in addition to his pay of the subsequent service.

9. It is also pointed out by learned Counsel for the petitioner that as per revised Office Memorandum No. 1357/*stha-vividh/2021-22* dated 26.07.2021, relinquishment of the petitioner has been treated as voluntary retirement in the light of Section 3(k) of Uttarakhand Retirement Benefits Act, 2018.

10. Learned Counsel for the petitioner, therefore, submitted that the matter of pension of the petitioner be referred to respondent no. 5 for re-consideration, as has been done by the Hon'ble High Court in the decision of Uma Shankar Sharma vs. Secretary, Training and Technical Education, reported in 2019 0 Supreme (UK) 419.

Relevant paras of the judgement are being reproduced herein below for convenience:

“.....  
23. It would be wholly inappropriate for us to examine whether the Government of India O.M. dated 07.02.1986, which has been

made applicable to autonomous bodies under the Government of Uttar Pradesh, would also apply to autonomous bodies under the Government of Uttarakhand, for these are all matters for the Government of Uttarakhand to examine in the first instance. The letter of the Joint Secretary, Government of Uttarakhand, dated 28.01.2016, makes no reference to the Government of India O.M. dated 07.02.1986, and since the said letter was issued before the 2018 Act was made, he could not have made any reference thereto in his letter dated 28.01.2016.

24. Suffice it, in such circumstances, to direct the first respondent to consider whether the Government of India O.M. dated 07.02.1986 is applicable to institutes such as BTKIT, Dwarahat; and whether, in terms of the said O.M, the petitioner is entitled to be extended pensionary benefits for the services rendered by him with the BTKIT, Dwarahat from 04.09.1998 till 18.12.2006. The first respondent shall examine the matter afresh, and take a considered decision on the petitioner's claim to be paid pensionary benefits in terms of the Government of India O.M. dated 07.02.1986, and communicate its decision to the petitioner with utmost expedition and, in any event, within three months from the date of production of a certified copy of this order.

.....”

**11. Learned A.P.O. has no objection if a direction is given to respondent no. 5 to reconsider the matter.**

12. A direction is, therefore, given to respondent no. 5 to re-consider payment of pension to the petitioner in the light of relevant rules and decision of Hon'ble High Court. Such decision may be taken without unreasonable delay preferably within 12 weeks of presentation of certified copy of this order, along with representation.

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

**(RAJEEV GUPTA)**  
VICE CHAIRMAN (A)

**(JUSTICE U.C.DHYANI)**  
CHAIRMAN

*DATE: 03<sup>th</sup> April, 2023*  
*DEHRADUN*  
*RS*