

**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. 57/DB/2020

Dr. Nasreen Fatima Kazmi, w/o Sri Syed Hamid Zainvi, presently Retd.
Joint Director, Directorate of Homeopathy, Dehradun District Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through its Secretary, Ayush and Ayush Education, Government of Uttarakhand.
2. Director, Homeopathy Department, Uttarakhand, Dehradun.
3. Dr. Rajendra Singh, presently Incharge Director, Homeopathy, Uttarakhand, Dehradun.

.....Respondents.

Present: Dr. N.K.Pant, Advocate for the Petitioner
Sri V.P.Devrani, A.P.O., for the Respondents.

JUDGMENT

DATED: 30TH DECEMBER, 2021

Per: Sri Rajeev Gupta, Vice Chairman (A)

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

“(i) To issue an order or direction calling for the record and to direct the respondents for immediate payment of petitioner’s remaining 10 % GPF, 50% arrear of 7th pay commission and arrear of non practicing allowance immediately with interest on that sum since the date of claim at the rate of 9

percent and with 1 (One) rupees for mentally torturing and harassing the petitioner.

(ii) To issue an order or direction to the respondent no. 1 for taking necessary action against the respondent no. 2 & 3 for non compliance of orders of the higher authorities.

(iii) The Petitioner is aggrieved by unruly and irresponsible behavior of the respondent and sought such sum as the Hon'ble Tribunal thinks fit for causing mental harassment and pain.

(iv) Expenses of the proceedings.

(v) To issue any suitable claim, order of direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(vi) Award the cost of claim petition to the Petitioner."

2. Subsequently, the relief no. 7(i) was amended *vide* amendment application dated 18.01.2021 as below:

"(i) Issue an order or direction calling for the record and to direct the respondent for immediate payment of petitioners 50% arrear of the 7th Pay Commission and arrear of the non practicing allowance immediately and grant 9% interest for the delay payment of the pension, gratuity, commutation, GPF, earn leave encashment, group insurance, 50 % arrear of the 7th pay commission and arrear of the non practicing allowance with one rupee for mentally torturing and harassing the petitioner."

3. Brief facts according to the claim petition are as below:

The petitioner retired from the post of officiating Director/Joint Director, Homeopathy on 30-06-2018. The petitioner did not get payment of her remaining 10 % GPF, 50 % arrear of 7th pay commission and arrear of non practicing allowance (NPA) on due dates of claims. The petitioner made request on 17-12-2018 to the respondent no. 2 for payment of pension, GPF and other legitimate dues. After long struggle, the petitioner got the retirement benefits such as Pension, Gratuity and commutation *vide* letter dated 10-01-2019 of the Directorate of Treasury. Pension and entitlement Uttarakhand. The petitioner requested the respondent no. 1 for the payment of petitioner's

remaining GPF, 50 % arrear of 7th Pay Commission and arrear of non practicing allowance *vide* her letter dated 11-01-2019.

That the petitioner wrote a letter to the Government for payment of remaining legitimate dues of the petitioner. The petitioner again wrote a letter dated 27-06.2019 to the respondent no. 2 for payment of legitimate dues of the petitioner. The respondent no. 2 by his letter dated 22-07 2019 informed the Government that it is possible that recovery may be made of excess payment in the matter of ACP from the petitioner. Therefore the payment of 10% GPF and 50% arrear of 7th pay commission is stopped. The respondent no. 2 wrote a letter dated 10.07.2020 to the Government and intimated that the payment of 10% GPF shall be paid to the petitioner after receiving the authority letter from the A.G. Uttarakhand and payment of arrear of 50% of the 7th pay commission shall be paid after the decision of the Government in the matter of ACP. It is pertinent to mention here that till date Government has not decided about the recovery of the ACP amount from the concerned Officers. The petitioner sent a representation on 23-07-2020 to the respondent no. 1 and prayed for payment of legitimate dues of the petitioner. The respondent No. 1 wrote a letter dated 28.07.2020 to the respondent no 2 to provide point was clear comments with the records to the Government. The A.G. Uttarakhand has issued, third time, a fresh authority letter to the Director Homeopathy *vide* his letter dated 28-07-2020 and ordered the respondent no. 2 that the payment of remaining 10 % GPF be paid to the petitioner immediately. The A.G. Uttarakhand asked for reasons for expiry of authority letter twice & also directed the Director, Treasuries and Accounts, Dehradun that a direction be provided to the all Treasuries / Departments for payment of 90 % and 10 % GPF to be made within the valid time. A legal notice has been sent to the respondents on 06-07-2020 to pray to the respondents no. 1 & 2 for payment of legitimate dues of the petitioner but instead of disposal of

the legal notice, the respondents have entangled the matter deliberately till date.

4. Separate identical Counter Affidavits have been filed by the respondents No. 2 & 3 and respondent No. 1. They have opposed the claim petition mainly on the following grounds:

As preliminary objection, it is submitted that respondent no.3 has been arrayed as party by name, who at present is discharging his duties on the post of in-charge Director, Homeopathy, Uttarakhand, Dehradun. He is discharging his official duties as fixed under law in official capacity and any orders passed by him in the matter of petitioner are passed in the capacity of competent authority (i.e. In-charge Director, Homoeopathy, Uttarakhand) (as provided under law) to pass such orders. He does not keep any personal enmity towards petitioner and any orders passed by him in the matter of petitioner are passed in discharge of his official duties. The C.A.s also mention that it appears that the respondent no. 3 being arrayed by name is with *malafide* intention. The second preliminary objection against the present Claim Petition is that the petitioner is claiming 10% interest on GPF; for this payment of interest, the competent authority is the Accountant General, Uttarakhand, who has not been arrayed as a necessary party to this claim petition.

The petitioner was appointed as ad-hoc Homeopathy Health Officer in the respondent department in the year 1985 and continued as such till 1994 when she was appointed regularly through U.P. Public Service Commission by direct recruitment on 24-06-1994 on the post of Homeopathy Health Officer in the pay scale Rs.2200-75-2800-100-4000/- . The said date i.e. 24-06 1994 is the date of substantive appointment of the petitioner to the post of Homoeopathic Medical Officer in the respondent department. The petitioner thereafter was promoted to the post of District Homeopathic Medical Officer in the pay scale Rs.8000-275-13500/- on completing 8 (eight) years of satisfactory service on 27-03-2000. Thereafter, the next post of promotion from the post of District

Homeopathic Medical Officer is Joint Director as per Services Rules. The petitioner was promoted to the post of Joint Director on 31-03-2017. The petitioner during her tenure on the post of Joint Director was deputed as In-charge Director, Homeopathy Medical Services, Uttarakhand. The petitioner took charge of In-charge Head of the Department in September 2017 and she continued on such post till her date of retirement. In such circumstances when the petitioner was originally appointed as Joint Director but was given officiating charge as Director, she was solely responsible before her retirement to produce the No dues certificate and charge handing/taking over certificate as per Rule so that her retirement dues/benefits could be paid well within time but the petitioner has not furnished selfsame till today as per Rule hence, the petitioner is herself sole responsible/liable for delay in disbursement of retiral dues.

The procedure to be followed at the time of retirement is that when an employee is due to retire he/she is required to obtain a No dues certificate and charge handing/taken over certificate issued by the various branches of the establishment and approved by the competent authority. Obtaining No dues certificate is mandatory provision to be complied with by an employee due to retire. But in the matter of petitioner, she on her retirement never produced any No dues certificate and charge handing/taken over certificate as mandated under law. Even on the perusal of the transfer of charge certificate (annexure no.2 to the claim petition), it is evident that the said certificate is not countersigned by the competent authority i.e. Secretary, Ayush and Ayush Education, Uttarakhand Government. Thus such certificate has no legal bearance in the eyes of law. Since the petitioner at the time of her retirement was discharging the duties as Head of the Department therefore she was required to obtain a No dues certificate from the State Government. It was only after submission of No dues certificate and charge handing/taken over certificate issued by the competent authority, the

retirement dues of the petitioner could have been given legally as per rule.

The petitioner till date has not given/produced the No dues certificate and charge handing/taken over certificate as per rule in the Head Office of the Homeopathy Department nor before the State Government. Due to non-compliance of the mandatory provisions at the time of her retirement, the petitioner's alleged dues were not disbursed to the petitioner. The State Government *vide* orders dated 12-03-2020 directed to give 10% GPF to the petitioner. Then *vide* subsequent order dated 05-08-2020 issued from the Directorate Homeopathy to the Treasury Department, the concerned authority *vide* its order dated 13-08-2020 made payment of 10% GPF to the petitioner.

The petitioner during the course of her service (before retirement) when she was discharging the duties of in-charge Director, Homeopathy Department requested for withdrawal of 90% GPF amount of Rs.23,35,505/- before the Treasury Department. The Treasury Department raised objections and returned the request of the petitioner with direction to give demand for payment of pensionary dues only after 30-06-2018 i.e. the date of retirement of petitioner. The petitioner then after her retirement was given her retirement dues in two days from the date of her retirement i.e. on 02-07 2018. She was given 90% GPF *vide* voucher no. B8009003. The leave encashment of Rs. 15,26,890/- has already given to the petitioner.

So far the payment of pension to the petitioner is concerned it is submitted that the petitioner when discharging duties as Joint Director/Director did not submit within time the relevant pension documents before the Pension Directorate. The Directorate Homeopathy then *vide* letter dated 29-11-2018 informed the petitioner to produce the pending dues of departmental items and No dues certificate and charge handing/taken over certificate so that further necessary action could be taken in the matter of petitioner regarding payment of retirement dues. But the petitioner did not respond. The Directorate Homeopathy then

vide letter dated 07-12-2018 addressed to the State Government sought necessary directions from the State Government in the matter of petitioner. *Vide* letter dated 27-12-2018 from the State Government directions were issued to the respondent department to submit the original service book and pension papers of the petitioner before the Pension & Entitlement Directorate, Dehradun. In compliance of the directions dated 27-12-2018, the respondent department without any further delay after completing all necessary requirements and formalities *vide* its office letter dated 01-01-2019 submitted the record of petitioner before the Pension & Entitlement Directorate, Dehradun. The competent pension sanctioning authority sanctioned the pension of the petitioner and the concerned Treasury office issued P.P.O. order dated 10-01-2019 whereby Gratuity of Rs. 20,00,000/- Commutation amount Rs. 28,06,628/- and pension (before Commutation) Rs.71,350/- and relief fund were sanctioned. Later, the payment of Life Insurance (G.I.S) Rs. 1,69,359/- was also made to the petitioner.

So far as the issue of payment of 10% GPF to the petitioner is concerned, it is submitted that the Accountant General, Uttarakhand had issued payment authority letter dated 09-08-2018 to the Department but due to non furnishing of No dues certificate and charge handing/taken over certificate by the petitioner as per rule the same could not be sent to Treasury concerned for payment. Thereafter, Govt. directions were issued to make the payment. The Directorate of Homoeopathy, *vide* its order dated 05-08 2020 sent the matter for payment to the Treasury concerned. Accordingly the Treasury made the payment to the petitioner's 10% G.P.F. amount on 13-08-2020. So far the payment of 15% non-practice allowance is concerned, in this context, it is submitted that the first G.O. of payment of non-practice allowance was issued on 04-01-2017 and later a clarification G.O. dated 19-05-2017 was also issued by the State Government clarifying certain points. At this relevant time, the petitioner was discharging duties as District Homeopathic Medical Officer, District Pauri Garhwal. She was also a drawing and

disbursing authority herself at that relevant point of time; thus she was competent to withdraw the non-practice allowance at that time. Thereafter, the petitioner was promoted as Joint Director on 04-04-2017 and in September 2017 she was made in-charge Director. During this period again she was a competent drawing and disbursing authority and could have withdrawn the non practice allowance herself at that point of time as well. Since the petitioner did not withdraw the non-practice allowance in the past for this in-action on the part of petitioner, the respondent no. 2 & 3 cannot be held guilty and responsible.

On the recommendations of the 7th Pay Commission regarding non-practice allowance (NPA), the State Government issued G.O. dated 23-01-2019 wherein provisions were made for the payment of non-practice allowance (NPA) to the Ayush Doctors w.e.f. 01-02-2019. On that date i.e. 01-02-2019 the petitioner had retired and the provisions of G.O. dated 23-01-2019 were not applicable in the case of retired Ayush Doctors including petitioner. Later in a WPSB 239/2018 (Dr. Ajay Dhanik & others Vs. State & others) the Hon'ble High Court passed orders dated 01-11-2018 and directed to grant non practice allowance (NPA) to all Ayush Doctors w.e.f. 04-01-2017. In compliance of this order passed by the Hon'ble High Court, the State Government issued its order dated 22-11-2019. It is submitted that the non-practicing allowance was payable to the petitioner for the period 04-01-2017 to 30-06 2018. At this point, it is relevant to mention here that the petitioner at the time of granting benefits of 3rd ACP under the ACP scheme as per the ACP G.O. dated 08-03-2011 was wrongly provided the Grade Pay Rs.8700/-. This anomaly occurred due to wrong counting of petitioner's *ad-hoc* services with the regular substantive services. As a result of wrong inclusion of ad-hoc services along with regular services the petitioner was granted excess payment due to erroneous benefit of 3rd ACP in the Grade pay of Rs. 8700/-. When this fact came into the knowledge of the Govt., thereafter recovery order dated 09-03-2019 was issued against the petitioner.

The State Government in such circumstances issued G.O. dated 12-06 2019 for adjustment of the loss caused to the State Government due to wrong fixation or payment from the monthly salary of working employees and from the monthly pension of the retired employees. Thus non-practicing allowance was not given to the petitioner. It is also relevant that the payment of second installment of arrears of salary under the 7th Pay Commission recommendation also does not arise, since the excess payment made to the petitioner for the wrong fixation of 3rd ACP has resulted in granting excess/over payment of Rs.11,33,692/- to the petitioner which is recoverable/adjustable amount. Apart from this recovery from retirement dues as per rule and law, other retiral dues of gratuity, commutation and leave encashment, 90% G.P.F., 10% G.P.F., G.I.S. and pension have been paid to the petitioner till today. The petitioner was supposed to be granted as 2nd ACP with Grade Pay Rs.7600/- w.e.f. 24-06-2010 and thereafter the benefits of 3rd ACP with Grade Pay Rs.8,700/-w.e.f. 24-06-2020 but the said benefit was wrongly granted to the petitioner w.e.f. 22-11.2011. As a result of this erroneous payment of 3rd ACP, she was given excess amount in the past which is recoverable. The Finance Department of the State Government *vide* G.O. dated 29.06.2020 have directed to reconsider the matter of excess salary paid and to take necessary action for excess payments made on account of wrong inclusion of ad-hoc services while granting ACP benefits to Ayurvedic and Unani Service Health Officers. The Finance Department has made clear that the ad-hoc services cannot be taken into consideration when calculating length of service for grant of ACP benefits under ACP Scheme.

5. Rejoinder Affidavit dated 19.10.2020 to these Counter Affidavit has been filed by the petitioner, *inter-alia*, giving reasons to justify making respondent no. 3 as party in personal capacity. According to the petitioner payment of 10% GPF has been done after three times revival of the authority by the A.G., Uttarakhand. The petitioner retired on

30.06.2018 and on that day, handing over the charge of the officer of Director, Homoeopathy was one sided because there were no instructions from the superiors as then Secretary, Ayush was not in the Country. The petitioner signed 10 copies of charge certificates, despatched it, took one copy with her, leaving the rest in anticipation that whosoever shall take over charge of Director would send them with covering letter to be countersigned by the Secretary after his return. Respondent's office had given no dues certificate by Store Officer Incharge and store Incharge, Dr. Deshraj and Mr. Kumud Tiwari respectively. The items missing were never in Store which is evident from letter dated 07.09.2017. The respondent no. 1 issued a show cause notice to the Incharge Director Homoeopathy, Dehradun *vide* his communication dated 03.12.2018 for payment of 10% GPF and other legitimate dues of the petitioner. The respondent no. 1 again ordered Dr. Rajendra Singh, Director Homoeopathy to pay 10 % GPF and other legitimate dues as per rule with immediate effect *vide* communication dated 15.07.2020. However, the legitimate dues of the petitioner were again entangled by the Respondents No. 2 & 3.

The petitioner got benefit of personal pay scale by the Uttar Pradesh Government order dated 12.06.1996 after completing 8 years satisfactory and regular services in the department. Therefore, the respondents' statement that the petitioner has been wrongly granted the pensionary benefit, gratuity, all ACP benefit treating her services/appointment from 13.12.1985 is not correct. The arrears of 7th Pay Commission and Non Practicing Allowance are still pending in the office of the respondents No. 2 & 3. After seven months delay, the petitioner got her retirement benefits while Government order dated 10.08.2004 specifies that the payment of the retirement benefits will be done on the date of retirement.

6. After the amendment of the relief clause 7(i) by the petitioner *vide* amendment application dated 18.01.2021, Supplementary Counter

Affidavit dated 24.03.2021 has been filed on behalf of the respondents by Deputy Director, Homoeopathic Medical Services, Directorate of Homoeopathy, stating that almost all retiral dues admissible to the petitioner have been paid well within time, as follows:

Sr. No.	Dues	Payment Date	Amount
1.	90% GPF	02/07/2018	Rs. 23,35,505/-
2.	Leave encashment	11/12/2018	Rs. 15,26,890/-
3.	Pension/Commutation amount and pension (before commutation)	10/01/2019	Rs. 2,80,628/- Rs. 71,350/-
4.	Gratuity	10/01/2019	Rs. 20,00,000/-
5.	10% GPF	13/08/2020	Rs. 3,28,608/-
6.	Group insurance amount	19/06/2020	Rs. 1,69,359/-

On bare perusal of above mentioned chart, it is crystal clear that the all retiral dues have been paid to the petitioner well within time as per rule. The delay in payment of 10% GPF Amount Rs. 3,28,608/- is due to non submission of the mandatory requirement of No-dues certificates/Charge handing over taken over certificates duly countersigned by the competent Authority i.e. Secretary, AYUSH, Govt. of U.K. as well as non-submission of the relevant pension papers by the petitioner well within time. The self same has been produced before the department in the month of December on 01.12.2018 and same was sent to the Pension and Entitlement Directorate of U.K. well within time on 27.12.2018 after completing all the necessary formality. Hence the petitioner is solely responsible to cause the delay in disbursement and payment of the 10% GPF Amount. Thus, she is not legally entitled to get the benefit of 9% interest as per rule and law.

The petitioner was legally entitled to get benefit of 3rd ACP in the grade pay Rs. 8700/- after completion of 26 year service on 29.06.2020 but the said benefit has wrongly/erroneously been extended to the

petitioner after including the service rendered by the petitioner as Ad-hoc w.e.f. year 1985 to 1994. The 2nd installment of arrear of 7th pay commission amounting Rs. 1,62,900/ and NPA Rs. 3,99,116/- which sum upto Rs. 5,62,016/- are yet to be paid to the petitioner, since the amount of recovery (approx Rs. 11,33,692/-) which has to be recovered from the petitioner is much higher than this amount. Hence the claim petition has no legal force and same being devoid of any legal merit is liable to be dismissed.

7. Supplementary R.A. dated 23.06.2021 has also been filed by the petitioner stating the following delays in the payments made to her:

Sr. No.	Dues	Payment Date	Delay in payment (days/month) (from 30.06.2018)
1.	90% GPF	02/07/2018	2 days
2.	Leave encashment	11/12/2018	164 days
3.	Pension/Commutation amount and pension (before commutation)	10/01/2019	194 days
4.	Gratuity	10/01/2019	194 days
5.	10% GPF	13/08/2020	775 days
6.	Group Insurance Amount	19/06/2020	720 days

While as per G.O., the retirement benefit should be paid as early as possible to the pensioner. It would not be an exaggeration to say that the respondents no. 2 & 3 deliberately entangled the legitimate dues of the petitioner. Hence, the petitioner is legally entitled to get the benefit of 9% interest in all aforesaid mentioned delays of legitimate claim.

In this affidavit, the petitioner has further given reasons why the said sanctioned ACP cannot be recovered and that the petitioner is entitled to get all benefits from the date of her initial appointment.

8. After hearing arguments of learned Counsel for the parties and perusing the record, we come to the following conclusion:

(i) This Tribunal, *vide* its order dated 23.07.2019 in claim petition No. 87/DB/2018, had directed that “the respondents shall pay interest at the rate of six per cent per annum on the unpaid amount of pension from the date it had fallen due, and interest at the rate of eight per cent per annum on the unpaid amount of gratuity from the date of retirement of the employee till the date of actual payment.”

The state challenged this order of the Tribunal dated before Hon’ble High Court of Uttarakhand in Writ Petition (S/B) No. 224 of 2020. This writ petition has been dismissed by the Hon’ble High Court *vide* its judgement dated 09.12.2021.

The extract of the above judgement of the Hon’ble High Court is reproduced below:

“2. Briefly, the facts of the case are that on 15.11.1966, the claimant was appointed on the post of Junior Engineer in the Irrigation Department. On 30.04.2008, he retired from his service. Despite the lapse of five years, the claimant was not paid his pension, gratuity, commutation of pension, and other retiral benefits. Therefore, he filed a complaint before the Hon’ble Lokayukta of Uttarakhand. By order dated 23.04.2013, the complaint was decided, in favour of the claimant. But, despite the decision of the Lokayukta, certain delays were caused by the Executive Engineer in payment of the retiral benefits to the claimant. While, in accordance with the order passed by the Lokayukta, an amount of gratuity was paid, but an amount of Rs.3,71,838/- were illegally withheld. Since the said amount was withheld illegally, the claimant claimed that the said amount along with interest should be paid to him. He further claimed that interest on the delayed payment of gratuity should be granted to him. According to the claimant, the pension was credited in his account on 06.09.2013. Therefore, there was an inordinate delay in payment of the pension from 30.04.2008 to 06.09.2013. Since the claimant was aggrieved by the non-payment of the interest of the delayed payment of the pension, and the delayed payment of the

gratuity amount, he filed a Claim Petition before the learned Tribunal. By order dated 23.07.2019, as mentioned hereinabove, the learned Tribunal allowed the said Claim Petition with the aforementioned directions. Hence, this petition before this Court.

3. Mr. B.S. Parihar, the learned Standing Counsel for the State has raised the following contentions before this Court :-

Firstly, the learned Tribunal has overlooked the fact that the claimant did not raise his voice for five long years with regard to the delayed payment of his pension and his gratuity. It is only after an order was passed by the Hon'ble Lokayukta on 23.04.2013, that the wheel started rolling.

Secondly, the fault does not lie on behalf of the Department, but lies on behalf of the claimant. For, the claimant never submitted the No-dues Certificate, which was required. The said plea although raised by the State before the learned Tribunal has not been taken note of by the learned Tribunal.

Thirdly, the amount of Rs.3,71,838/- were withheld, as in the year 2017, it was discovered that there were some discrepancy in the stock. The respondent No. 3 was of the opinion that it is the claimant, who is responsible for the said discrepancy. Since, a financial loss was caused to the State, the respondents were legally justified in withholding the said amount.

4. On the other hand, Mr. M.C. Pant, the learned counsel for the claimant, has raised the following contentions before this Court :-

Firstly, merely because the claimant never raised his voice with regard to the non-payment of the pension and gratuity would not absolve the responsibility of the respondents to pay the pension and the gratuity. For, the payment of pension and gratuity is not an act of charity, but pension and gratuity, and other retiral benefits, accrued to an employee are by way of a right. Therefore, the denial of such a right is a continuous wrong being committed by the respondents.

Secondly, even if, for the sake of argument, it were accepted that No-dues Certificate were submitted by the claimant, there was no information submitted by the Department that such a No-dues

Certificate is required. According to the Uttar Pradesh Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995 (for short, 'the Rules of 1995'), as adopted in the State of Uttarakhand, it is the duty of the Head of the Office to issue No-dues Certificate two months prior to the retirement. Therefore, the petitioner cannot be blamed for not having submitted the No-dues Certificate. Therefore, the learned counsel has supported the impugned order passed by the learned Tribunal.

Thirdly, admittedly, the claimant had retired on 30.04.2008. A discrepancy in the stock was not discovered till 2013 / 2017, i.e., for nine years after the date of retirement of the claimant. Moreover, no show cause notice was ever issued; no departmental enquiry was ever held. Therefore, without giving an opportunity of hearing, an adverse order of withholding of Rs.3,71,838/- could not have been passed. Therefore, the retention of the said amount is an illegal act being committed by the respondents.

5. Heard the learned counsel for both the parties and perused the impugned order.

6. In the case of State of Kerala Vs M. Padmanabham Nair, (1985) 1 SCC 429, the Hon'ble Supreme Court has clearly opined that pension and gratuity are no longer any bounty to be distributed by the Government to its employees on the retirement, but are valuable rights of the employee. Any delay in disbursement thereof must be visited with the penalty. Therefore, the denial of such a right on a daily basis tantamounts to a continuous wrong being committed by the Government against its employee. Hence, the learned counsel for the State is unjustified in claiming that merely because the claimant maintained a studied silence over a period of five years, and did not raise his voice during this period, he cannot take the benefit of his own wrong. In fact, the wrong was being committed by the Government in denying the pension, and gratuity, for five long years.

7. According to the Rules of 1995, a Time Schedule has been prescribed for taking each and every step for ensuring that a person is paid his pension on time. According to the Time Schedule prescribed under Rule 3(b) and 3(k) of the Rules of 1995, the issuance of No-dues Certificate is

the responsibility of the Head of the Office. According to the said Schedule, the No-dues Certificate, in fact, should be issued two months before the date of retirement. Therefore, it was the duty of the Head of the Office to ensure that the No-dues Certificate was, indeed, issued prior to 29.02.2008, as the claimant was retiring on 30.04.2008. Since the said No-dues Certificate was never issued, the fault cannot be fixed on the shoulders of the claimant. It was the fault committed by the Head of the Office. Therefore, the learned counsel for the State is unjustified in claiming that the fault lies on the part of the claimant in not submitting the No-dues Certificate. In fact, in accordance with the Rules of 1995, the fault lies on behalf of the Head of the Office.

8. According to the State, a discrepancy was discovered in the stock. But, the said discrepancy was discovered only in 2013, i.e., five years after the claimant had already retired. The discrepancy was further confirmed in 2017, i.e., nine years after the claimant had retired. Most importantly, the discrepancy was neither brought to the notice of the claimant, nor any explanation was sought from him. Furthermore, no Departmental Enquiry was ever initiated against the claimant. Yet, an amount of Rs.3,71,838/- was withheld from the gratuity, that the claimant was entitled to. It is, indeed, trite to state that no adverse order or action can be taken against a person without putting the person on notice. Therefore, withholding of the said amount behind the back of the claimant, and without giving him an opportunity of hearing, is patently an illegal act. Therefore, the learned Tribunal was well justified in directing that the said amount should be paid to the claimant. Moreover, since there was an inordinate delay of payment of the pension and the gratuity, the learned Tribunal was justified in relying on the case of State of U.P. Vs Dhirendra Pal Singh, (2017) 1 SCC 49, and directing the respondents to pay interest at the rate of six per cent per annum on the unpaid amount of pension, and interest at the rate of eight per cent per annum on the unpaid amount of gratuity.”

(ii) In the instant case, 90% GPF was paid to the petitioner just two days after the retirement on 30.06.2018. However, the remaining 10% GPF has been paid only on 13.08.2020 after inordinate delay; in between the authority for payment of 10% GPF lapsed twice. It was only after

issuance of 3rd authority that the payment was made the petitioner and she is entitled to get interest on this delayed payment of 10 % G.P.F. The same is directed to be given @ 6% per annum from the date it became due to the date of actual payment. However, we are not inclined to fix this responsibility of delay on any individual because respondent no. 1 has concurred with Respondents no. 2 & 3 in their Counter Affidavits and have tried to explain this delay on the basis of non-submission of charge handing over certificate and no dues certificates. The non-submission of charge handing over certificate was a mere technical ground and the store items shown to be outstanding against the petitioner have been shown to be outstanding against the earlier Director as well as clarified in the petitioner's Rejoinder Affidavit thus, making it clear that these items were already short in the Store before the petitioner's retirement for which, the petitioner herself had written to the earlier Director.

(iii) We also observe that the petitioner does not seem to have submitted her pension papers well before retirement as nothing has been mentioned about the same in the claim petition. She was herself the Director, Homeopathy before retirement. According to the claim petition, the petitioner had made a request on 17.12.2018 to the respondent no. 2 for payment of Pension, GPF and other legitimate dues. Subsequently, after completing all formalities, PPO has been issued on 10.01.2019 and Pension, Commutation and Gratuity amount have been released on 17.01.2019. The petitioner also appears to be responsible for delay in this regard. Still, she is entitled to interest at the rate of 6 % on the delay beyond 90 days in the case of pension and commutation and interest at the rate of 8 % per annum on the delay in payment of gratuity.

(iv) The 7th Pay Commission's arrears and the NPA arrears are proposed to be set off against recovery of excess amount of ACP paid to the petitioner and the same is under consideration of the Government, as is clear from the correspondence between the Director, Homoeopathy and Ayush Department of the Govt. We direct the

respondent no. 1 to take conclusive decision in this regard within three months of the presentation of certified copy of this order after affording an opportunity of hearing to the petitioner. Respondent no. 1 may also look into the reasons of delay in payment of leave encashment and GIS after hearing the petitioner and interest on the delay in these payments attributable to the department be also paid to the petitioner @ 6% per annum or set off against the arrears of ACP as the case may be.

(v) Respondent No. 1 may also refix the pension of the petitioner after taking suitable decision about ACP and accounting for the Non-Practicing Allowance (NPA).

9. Order as above. The claim petition is, accordingly disposed of.

10. We also observe that the Director, Homoeopathy has written a letter dated 19.07.2021, to the Registrar of this Tribunal asking whether the name of Dr. Rajendra Singh, retired Director has been removed as respondent no. 3 from this claim petition or not, so that further action about payment of his retiral dues may be taken. This letter mentions that certificate about pendency or non-pendency of case against him in the Court has to be presented before Pension Directorate along with pension papers. We fail to understand how impleadment of Dr. Rajendra Singh in person by the petitioner comes in the way of the pension matter of Dr. Rajendra Singh. Had it been a case filed by the Government/department against Dr. Rajendra Singh, the same could have been relevant. It is advisable that Government may not delay the retiral dues of employees on such flimsy ground.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: December 30th December, 2021.

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