

**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)

**CONTEMPT APPLICATION NO. 04/DB/2020**

*(Arising out of, Claim Petition No. 87/DB/2018, decided on 23.07.2019, and Execution  
Petition No. 05/DB/2020, decided on 11.03.2020)*

Shri Mahesh Chandra Agarwal

.....Petitioner

**vs.**

Mr. Nitesh Kumar Jha & others

.....Respondents

Present: Sri Kishan Chandra Agarwal s/o Sri Mahesh Chandra Agarwal (in person)  
along with Sri V.P.Sharma, Advocate, for Petitioner (online)  
Sri V.P.Devrani, A.P.O., in assistance of the Tribunal

**JUDGMENT**

**DATED: MARCH 09, 2022**

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

Present contempt petition has been filed by the petitioner for ensuring compliance of the order dated 11.03.2020 passed by this Tribunal in Execution Application No. 05/DB/2020. The said order reads as under:

“Present execution application has been filed by the petitioner for initiating appropriate action against the respondents for the effective compliance of the order dated 23.07.2019, passed in Claim Petition No. 87/DB/2018, which order runs as below:

*“Taking a leaf out of the book of Hon'ble Supreme Court in Dhirendra Pal Singh's decision (supra), we direct that the respondents shall pay interest @ 6% per annum on the unpaid amount of pension from the date it had fallen due and interest @ of 8% per annum on the unpaid amount of gratuity from the date of retirement of the employee till the date of actual payment. Respondents are directed to pay the aforesaid interest on delayed payment of retiral dues to the petitioner within a period of 12 weeks from the date of presentation of certified copy of this order before the authorities concerned. Needless to say that an*

*amount of Rs.3,71,838/, which was deducted from gratuity of the petitioner, be refunded to him along with interest.”*

It is the submission of learned counsel for the petitioner that the order sought to be executed, has not been challenged by the respondents before Hon'ble High Court, and therefore, same has attained finality.

The petitioner, in para 8 of the execution application has stated that non-compliance of the order dated 23.07.2019, by the respondents amounts to Contempt of Court.

Learned counsel for the petitioner-executioner submitted that order dated 23.07.2019 may again be brought to the notice of the respondents, failing which appropriate contempt proceedings may be initiated against them. Learned A.P.O. has no objection, if the said order is reiterated and brought to the notice of the respondents once again, for compliance.

\* \* \*

This Tribunal, therefore, instead of issuing notice to the respondents, reiterates the order dated 23.07.2019, passed by this Tribunal in Claim Petition No. 87/DB/2018, and directs the authorities concerned to comply with the same without further loss of time. We remind them that a duty was cast upon said authorities, which has not been fulfilled. If the respondents do not comply with the order of the Tribunal, they may be liable to face appropriate action under the contempt law, governing the field.

The execution application is, accordingly, disposed of at the admission stage.”

2. The original order was passed on 23.07.2019 in Claim Petition No. 87/DB/2018, which is reproduced for sake of convenience, as below:

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

.....

CLAIM PETITION NO. 87/DB/2018

Mahesh Chandra Agarwal, Age about 71 years, S/o Late Sri Ram Prakash Agarwal, R/o Lane No. 10, H.No. 29, Pragati Vihar, Rishikesh, District Dehradun.

.....Petitioner.

vs.

1. State of Uttarakhand through Secretary, Irrigation, Govt. of Uttarakhand, Dehradun.
2. Chief Engineer, Irrigation Department of Uttarakhand, Yamuna Colony, Dehradun.
3. Executive Engineer, Testing and Control Division, Irrigation Department, (presently known as Avasthapna Khand),Joshiyada, (Uttarkashi).

.....Respondents.

Present: Sri V.P.Sharma, Counsel for the petitioner.  
Sri V.P.Devrani, A.P.O., for Respondents.

**JUDGMENT**

**DATED: JULY 23 2019**

.....

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

“(i) To issue an order or direction to set aside the order dated 29.08.2013, under which an amount of Rs.3,71,838/- was recovered from the gratuity of the petitioner and may kindly be directed to pay Rs.3,71,838/- along with interest @ 18%

from the date of retirement till the date of the payment and the interest on gratuity amount Rs.5,23,545/- is payable from 01.05.2008 to 29.07.2013 as per Annexure A-1 and A-2 of the claim petition.

(ii) An amount of Rs.20,41,789/- was paid to the petitioner towards the pension from 01.05.2008 to 31.08.2013 after the retirement of 5 years therefore the interest @ of 18% on the amount of Rs.20,41,789/- payable to the petitioner from 01.05.2008 to 20.08.2013 as per Annexure No. A-3 of this claim petition.

(iii) An amount of Rs.81,480/- was refunded to the petitioner which was payable to the petitioner on 01.05.2008 but paid on 16.05.2018 therefore the interest @ 18% is payable to the petitioner w.e.f. 1.05.2018 as per Annexure A-4 of this claim petition.

(iv) An amount of Rs.3,89,614/- was credited in the bank account of the petitioner on 21.08.2018 towards second time pay scale payable to the petitioner from 01.01.1993 to 30.04.2008 whenever the said amount was paid w.e.f. 01.03.2000 to 30.04.2008. The interest @ 18% on the said amount of Rs.3,89,614/- is payable w.e.f. due date till 20.08.2018 be directed to be paid and further the difference of second time pay scale w.e.f. 01.01.1993 to 29.02.2000.

(v) Against impugned order dated 15.09.2016 the second time scale was granted to the petitioner for 01.01.1996 vide order dated 15.09.2016 but the same was revised to pay the second promotional time pay scale w.e.f.01.03.2000 instead of 01.01.1996 as per Annexure No. A-6 (colly).

(vi) to set aside the orders for constituting the inquiry committee vide office order dated 13.07.2018, 30.06.2017, 22.06.2016 and 16.11.2016 the said inquiry committee cannot be constituted after the date of the retirement, the same are liable to be quashed and set aside as per Annexure: A 7 (colly).

(vii) Any other relief which the Hon'ble Court may deem fit and proper in the circumstances of the case.

(viii) To award the cost of this petition to the petitioner." 2.

Brief facts, giving rise to present claim petition, are as follows:

Petitioner joined on the post of Junior Engineer in the Irrigation Department on 15.11.1966. He attained the age of superannuation on 30.04.2008. Pension, gratuity, commutation of pension and other retiral benefits were not paid to the petitioner. Petitioner filed a complaint before Hon'ble Lokayukta of Uttarakhand. Said complaint was decided on 23.04.2013. The then Executive Engineer committed unnecessary delay in paying retiral benefits to the petitioner. Under the orders of Lokayukta, although the amount of gratuity was paid, but an amount of Rs.3,71,838/- was illegally withheld. No amount should be recovered from the petitioner without issuing any charge sheet. A sum of Rs.3,71,838/- is, therefore, refundable to the petitioner with interest, according to the petitioner. He claims that he should also be awarded interest on delayed payment of gratuity. Pension was credited in his account on 06.09.2013. The petitioner also claims interest on delayed payment of pension. Certain other sums were also credited to his account and, therefore, he claims that he should also be given interest on late payment of those retiral benefits. No departmental inquiry was initiated against the petitioner. After five years' of retirement, retiral benefits were paid. No recovery could be made from the petitioner's retiral benefits as per Article 351-A of U.P. Civil Service Regulations, which has been quoted in Para 4.8 of the claim petition. Petitioner has, therefore, filed present claim petition for the reliefs quoted above.

3. It has been held by Hon'ble Apex Court in State of Kerala vs. Padmanabham Nair, (1985)1 SCC 429 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 in their hands, and any culpable delay in disbursement thereof must be visited with the penalty. In the said decision, Hon'ble Court approved 6% interest p.a. on delayed payment of pension.

4. In Section 7(3-A) of the Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in

sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification specify.

5. In *Y.K. Singla vs. Punjab National Bank*, (2013) 3SCC 472, the Hon'ble Apex Court directed the payment of interest @ 8% p.a. to be paid on delayed payment of gratuity.

6. In *State of U.P. vs. Dharendra Pal Singh*, (2017) 1 SCC 49, the Hon'ble Apex Court quoted with approval Padmanabham's decision and Y.K. Singla's decision, as follows:

"9. In *State of Kerala and others v. M. Padmanabhan Nair* this Court has held 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 in their hands, and any culpable delay in disbursement thereof must be visited with the penalty of payment of interest. In said case the Court approved 6% per annum interest on the amount of pension decreed by the trial court and affirmed by the High Court. As to the rate of interest on amount of gratuity Section 7(3-A) of Payment of Gratuity Act, 1972, it is provided that if the amount of gratuity payable is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may by notification specify. It further provides that no such interest shall be payable if the delay in payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground. In the present case, there is no plea before us that the appellants had sought any permission in writing from the controlling authority. As to the delay on the part of employee, it has come on the record that he made representations, whereafter he filed a suit in respect of withheld amount of gratuity and pension. In *Y.K. Singla v. Punjab National Bank and others*[2], this Court, after discussing the issue relating to interest payable on the amount of gratuity not paid within time, directed that interest at the rate of 8% per annum shall be paid on the amount of gratuity.

10. "In the light of law laid down by this Court, as above, and further considering the facts and circumstances of the case, we modify the impugned order passed by the High Court in respect of interest directed to be paid on the amount of withheld gratuity and pension. We direct that the appellants shall pay interest at the rate of 6% per annum on the unpaid amount of pension from the date it had fallen due and interest at the rate of 8% per annum on the unpaid amount of gratuity from the date of retirement of the employee."

7. This Tribunal does not think it necessary to reproduce Article 351- A of the U.P. Civil Service Regulations, for the sake of brevity, as the same has already been quoted in Para 4.8 of the claim petition.

8. Admittedly, no departmental inquiry was initiated against the petitioner for the misconduct, if any, nor any proceedings were drawn, as provided in Article 351-A of the U.P. Civil Service Regulations. The document, which is the basis of non-payment of retiral dues on time, is attributed to report dated 31.05.2017 of the review inquiry committee, constituted by Superintending Engineer, Dehradun, showing discrepancy in the stock. Such report has been filed along with supplementary C.A. filed on behalf of respondents. The petitioner retired on 30.04.2008. Discrepancy in the stock came to fore on 26.05.2017, i.e., after about nine years' of retirement of the petitioner. Withholding of retiral dues, on the basis of such report, is not proper keeping in view Article 351-A of the U.P. Civil Service Regulations. This Tribunal, therefore, is of the opinion that the respondents should be directed to pay interest on delayed payment of terminal dues to the petitioner.

9. Taking a leaf out of the book of Hon'ble Supreme Court in Dhirendra Pal Singh's decision (supra), we direct that the respondents shall pay interest @ 6% per annum on the unpaid amount of pension from the date it had fallen due and interest @ of 8% per annum on the unpaid amount of gratuity from the date of retirement of the employee till the date of actual payment. Respondents are directed to pay the aforesaid interest on delayed payment of retiral dues to the petitioner within a period of 12 weeks from the date of presentation of certified copy of this order before the authorities concerned. Needless to say that an amount of Rs.3,71,838/-, which was deducted from gratuity of the petitioner, be refunded to him along with interest.

10. During the course of dictation, Ld. Counsel for the petitioner, on seeking instructions from his client, who is present in person before the Tribunal, seeks and is permitted to withdraw the Reliefs No. 8 (ix), (x), (xi), renumbered as 8(iv), (v), (vi), with liberty to avail these remedies, at an opportune moment, before the appropriate forum, in accordance with law, if he is so advised.

11. The claim petition is, accordingly, disposed of. No order as to costs."

3. A writ petition being WPSB No. 224/2020 was filed by the State of Uttarakhand and others against Mahesh Chandra Agarwal. The said writ petition was dismissed by the Hon'ble Court *vide* order dated 09.12.2021. It will also be useful to reproduce the judgment rendered by Hon'ble High Court, herein below for convenience:

**"IN THE HIGH COURT OF UTTARAKHAND  
AT NAINITAL**

**THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CAHUHAN  
AND**

**THE HON'BLE SRI JUSTICE NARAYAN SINGH DHANIK  
WRIT PETITION (S/B) NO. 224 OF 2020**

**9<sup>TH</sup> DECEMBER, 2021**

BETWEEN:

State of Uttarakhand and others ..... Petitioners

And

Mahesh Chandra Aggarwal ..... Respondent

Counsel for petitioners: : Mr. B.S. Parihar, learned Standing  
Counsel for the State/ petitioners

Counsel for respondent: : Mr. M.C. pant, learned Counsel

**The Court made the following:**

**Judgment:** (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

The State has challenged the legality of the order dated 23.07.2019, passed by the Uttarakhand Public Services Tribunal at Dehradun, whereby the learned Tribunal had allowed the Claim Petition No. 87/DB/2018, filed by the claimant Mr. Mahesh Chandra Agarwal, and has 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 respondents were further directed to pay the aforesaid interest on delayed payment of retiral dues to the petitioner within a period of twelve weeks from the date of

presentation of certified copy of this order before the authorities concerned. The learned Tribunal further observed that *“needless to say that an amount of Rs.3,71,838/- which was deducted from gratuity of the petitioner, be refunded to him along with interest.”*

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 Dharendra 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.

9) Therefore, this Court does not find any illegality or perversity in the impugned order dated 23.07.2019.

10) This petition, being devoid of any merit, is hereby dismissed.

11). No order as to costs.

**RAGHVENDRA SINGH CAHUHAN, C.J.**

**NARAYAN SINGH DHANIK, J.**

Dt: 9<sup>th</sup> DECEMBER. 2021ecember, 2021”

4. Contempt petition was filed by the petitioner before this Tribunal, in which, on 23.12.2021, following order was passed:

“23.12.2021

ON MENTION

Present: Sri V.P.Sharma, Advocate, for the petitioner.  
Sri V.P.Devrani, A.P.O., for the Respondents

Sri V.P.Sharma, learned Counsel for the petitioner has filed a copy of judgment dated 09.12.2021, passed by Hon’ble High Court of Uttarakhand in Writ Petition (S/B) No. 224 of 2020 along with affidavit. The writ petition filed by the State against the judgment and order dated 23.07.2019, passed by this Tribunal in Claim Petition No. 87/DB/2018 has been dismissed. Learned Counsel for the petitioner submitted that present contempt petition be treated as Execution Application.

Learned Counsel for the petitioner further submitted that notices be issued to the Respondents No. 2 and 3 for ensuring compliance of the order dated 23.07.2019, passed by this Tribunal in Claim Petition No. 87/DB/2018, as writ petition against the same has been dismissed by Hon’ble High Court vide order dated 09.12.2021, in Writ Petition (S/B) No. 224 of 2020, State of Uttarakhand & others vs. Mahesh Chandra Agarwal.

Issue notices to respondents No. 2 & 3 to ensure compliance of the order dated 23.07.2019, passed by this Tribunal, as early as possible and in any case, within four weeks, of receipt of notices along with certified copy of the order of the Tribunal as also the order of Hon’ble High Court. Steps be taken by the petitioner within a week.

List on 31.1.2022 for filing compliance affidavit.”

5. Today, a compliance affidavit has been filed by learned A.P.O. to submit that the orders sought to be executed have been complied with. The Affidavit of Shri Gunanand Sharma, Executive Engineer, Infrastructure Division, Irrigation Department, Uttarkashi has been filed along with calculation sheet, to show that unpaid amount of pension and gratuity along with interest has been paid to the petitioner. The said affidavit is taken on record.

6. A copy of the compliance affidavit has been given to Sri Krishan Chandra Agarwal, s/o Sri Mahesh Chandra Agarwal, who is satisfied with the same.

7. The contempt/execution application is, accordingly, closed for full satisfaction.

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

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

*DATE: MARCH 09, 2022*  
*DEHRADUN*

*KNP*