

**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)

**WRIT PETITION NO 277 (S/B) OF 2020
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 21/DB/2023]**

Brahampal Singh Saini, s/o Late Shri Balbir Singh , District Education Officer (Primary Education), Haridwar, at present attached in the office of Director, Intermediate Education, Uttarakhand at Dehradun.

.....Petitioner

vs.

1. State of Uttarakhand through Secretary, Department of Intermediate Education, Secretariat, Dehradun.
2. Dr. Mukul Kumar Sati, Inquiry Officer, presently posted as Addl. State Project Director, Govt. of Uttarakhand, Dehradun.
3. Sri Padam Kumar s/o Sri Karam Singh, r/o Village Rahmatpur, Post Piran Kaliyar, Roorkee, District Haridwar.

.....Respondents.

WITH

**WRIT PETITION NO 257 (S/B) OF 2021
[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 20/DB/2023]**

Brahampal Singh Saini, s/o Late Shri Balbir Singh , District Education Officer (Primary Education), Haridwar, (Retired) R/o 342, Lane No.-D, Subhash Nagar, Roorkee, District Haridwar.

.....Petitioner

vs.

State of Uttarakhand through Secretary, Department of School Education, Secretariat, Dehradun.

.....Respondent(s)

Present: Sri Rakesh Thapliyal, Sr. Advocate,
assisted by Sri Xitij Kaushik, Advocate, for the petitioner.(virtually)
Sri V.P.Devrani, A.P.O. for the Respondents.

JUDGMENT

DATED: MARCH 29, 2022.

Justice U.C.Dhyani (Oral)

BACKGROUND

Writ Petition (PIL) No. 15 of 2020 was filed by one Padam Kumar against State of Uttarakhand and others. Present petitioner was respondent no.6 in that PIL. The said PIL was decided by the Hon'ble High Court of Uttarakhand *vide* judgment and order dated 06.,10.2020, as follows:

“This writ petition is filed in public interest seeking for the following reliefs.

- i) issue a writ, order or direction in the nature of certiorari to quash the transfer order dated 26- 12-2017 which is annexed as annexure no. 2 to this writ petition.
- ii) issue a writ, order or direction in the nature of mandamus directing and commanding the concerned respondents to transfer the private respondent from District Haridwar to any other district in the State of Uttarakhand because having regard to the rules/law he is ineligible to perform his duty as District Education Officer t his own district (as mentioned in annexure no. 1 to this writ petition).
- iii) issue a writ, order or direction in the nature of mandamus directing and commanding the concerned respondents to initiate an independent probe having regard to the corruption activities which is mentioned in the various enquiry reports conducted by the education department.
- iv) issue a writ, order or direction in the nature of mandamus directing and commanding the concerned respondents to take appropriate action on the representation of petitioner dated 18-09- 2019 and letter to S.S.P. Haridwar as mentioned in annexure no. 15 and 16.
- v) issue a suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.
- vi) award the cost of the petition to the petitioner.

2. During the pendency of the proceedings, it was brought to our notice by the State that the sixth respondent has been placed under suspension and, thereafter, a charge-sheet has been issued and proceedings have commenced.

3. In view of the statements and the pleadings, the plea of the petitioner, with regard to prayer nos. 3 and 4, having been answered, nothing further remains to be decided so far as these two prayers are concerned.

4. So far as prayer nos. 1 and 2 are concerned, it is needless to state that no public interest is involved in these two prayers. It would appear that the petitioner has misused the provisions of the public interest litigation.

5. Shri Shakti Singh, learned counsel for the petitioner, has submitted his apology for having sought for prayer nos. 1 and 2. Furthermore, the petitioner is also available through video conferencing. He has also expressed his unconditional apology for seeking prayer nos. 1 and 2. He submits that he has confidence in the judiciary and it is by inert mistake that prayer nos. 1 and 2 have been added.

6. In view of the unconditional apology being stated by the petitioner, we deem it just and necessary to accept the same. However, the petitioner is hereby warned that he shall not indulge in such acts of either making any reckless allegations or misuse of public interest litigation or any other acts or the provisions of law.

7. Since prayer nos. 3 and 4 have already been considered, the writ petition is accordingly disposed off.

8. Pending application(s), if any, also stands disposed off.”

PRESENT PETITIONS

WRIT PETITION (SB) NO. 277 OF 2020

2. Writ Petition (SB) No. 277 of 2020 was filed by the petitioner in the Hon’ble High Court of Uttarakhand for the following reliefs:

“(i) Issue a writ, order or direction in the certiorari, quashing the impugned suspension order dated 06.07.2020 passed by the respondent no.1 (contained as Annexure No.5 to this writ petition) along with the entire disciplinary inquiry pending against the petitioner.

(ii) Issue any other order or direction which this Hon’ble Court may deem fit and proper in the circumstances of the case.

(iii) Award cost of the petition.”

3. Suspension order dated 06.08.2020, passed by Respondent No. 1 (Annexure No.5) is in the teeth of WPSB No. 277/2020, which is as below:

“In pursuance to the order dated 30.07.2020 passed by Hon'ble High Court Uttarakhand, Nainital in Writ Petition (PIL) No. 15/2020, Padam Kumar v. State of Uttarakhand & others, by government order no.568/XXIV-2/2020-05(11)/ 2017 dated 05.08.2020, the charge sheet has been issued against Shri Braham Pal Singh Saini. The charges imposed by this are of very serious nature.

2- Therefore, in view of seriousness of charges, Sh. Braham Pal Singh Saini is hereby suspended with immediate effect.

3- During suspension period, Sh. Braham Pal Singh Saini will be paid subsistence allowance equivalent to amount of leave pay on the half salary according to provisions of original Rule 53 of Part 2 to 4 of Financial Rules compilation Part II and he will not be entitled for any dearness allowance on the amount of this subsistence allowance, who

was not entitled for dearness allowance or any adjustment before the suspension. He will be entitled for other emoluments on the basis of his pay available to him on the date of suspension, only when it is clear that he is expending those emoluments on actual basis for which the emoluments are sanctioned.

4- The emoluments said above will be paid when Sh. Braham Pal Saini will submit a certificate to the extent that he is not engaged in any other service, business or source of income.

5- Sh. Braham Pal Saini, District Education Officer, Primary Education, Haridwar shall be attached with the office of Director Secondary Education, Uttarakhand, during the period of his suspension.

By order of Governor

Sd/-

(R.Meenakshi Sundaram)

Secretary”

4. WPSB No. 277/2020, Brahampal Singh Saini vs. State and others has been transferred by Hon’ble High Court to this Tribunal *vide* order dated 10.11.2022. The order dated 10.11.2022 reads as under:

“The petitioner was a public servant. The reliefs sought in the writ-petition fall within the jurisdiction of the Uttarakhand Public Service Tribunal to grant.

Therefore, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

It shall be open to the Tribunal to consider the case of the respondents for vacation of the interim order on its own merits.

This petition stands disposed of.”

6. WPSB No. 227/2020, Brahampal Singh Saini vs. State and others is, accordingly, reclassified and renumbered as Claim Petition No. 21/DB/2023. Since the reference in this Tribunal shall be of the writ petition filed before the Hon’ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as ‘petition’ and petitioner shall be referred to as ‘petitioner’, in the body of the judgment.

7. As per Annexure No.5, which is order impugned in this petition, a charge-sheet was issued against the petitioner and he was put under suspension. Subsistence allowance was directed to be paid to the petitioner during his suspension. During the pendency of present petition, the petitioner attained the age of superannuation. He retired on 30.09.2020. During pendency of present petition, but after petitioner’s retirement, the petitioner

obtained a stay against all further proceedings. The Hon'ble Court passed an order on 06.10.2020 in WPSB No. 277/2020, as follows:

“Heard learned counsels.

Issue rule nisi.

Prima facie, it would appear that only because of the pendency of Writ Petition (PIL) No. 15 of 2020, the State appears to have issued the suspension order as well as the charge-sheet.

Therefore, prima facie, we are of the considered view that there does not appear to be sufficient material to proceed against the petitioner. However, the same will be subject to verification of the records and after hearing the learned counsels. Therefore, the learned deputy advocate general is directed to produce the records, pertaining to this case, by the next date of listing.

Under these circumstances, we do not find it appropriate that the proceedings should go on against the petitioner till a decision is taken in this matter. Hence, there shall be a stay of all further proceedings against the petitioner until further orders of this Court.

Stay application (CLMA No. 7776 of 2020) is disposed off accordingly.

Post for hearing in the usual course.”

8. It has been noted above that during pendency of WPSB No. 277/2020, the petitioner has retired and he also obtained stay against all departmental proceedings *vide* order dated 06.10.2020 passed in WPSB No. 277/2020. Suspension does not continue when any Govt. Servant retires. The departmental proceedings may, however, continue under Article 351-A of Civil Service Regulations. Entire amount of G.P.F. has been released in favour of the petitioner *vide* order dated 20.07.2021. The expressions used by the Hon'ble Court while passing order on 06.10.2020 in WPSB No. 277/2020, are very relevant in the context of deciding the present petition. Although the entire order has been reproduced above, but the relevant portion is being reproduced, at the cost of repetition, herein below:

“Prima facie, we are of the considered view that there does not appear to be sufficient material to proceed against the petitioner.”

9. Ld. A.P.O. argued that the above is subject to verification of the records pertaining to the matter in hand, inasmuch as the Hon'ble Court has used the expressions, "However, the same will be subject to verification of the records....."

10. Ld. A.P.O. vehemently opposed the petition, *inter alia*, on the ground that there is interim stay on the suspension order and other departmental proceedings, but the same have not been quashed by the Hon'ble High Court. Ld. A.P.O. submitted that the departmental proceedings against the petitioner must be taken to their logical conclusion.

11. As has been noted by the Tribunal, that W.P. (PIL) No. 15 of 2020 has been decided finally *vide* order dated 06.10.2020, and the Hon'ble Court has ordered in its order dated 06.10.2020 passed in WPSB No. 277/2020, that only because of the pendency of Writ Petition (PIL) No. 15 of 2020, the State appears to have issued the suspension order as well as the charge-sheet. The Hon'ble Division Bench has disposed of the Writ Petition (PIL) No. 15/2020, which is on the selfsame date with the observations that the petitioner of the PIL (Padam Kumar) has misused the provisions of the public interest litigation and with the further observation that, Sri Padam Kumar has also expressed his unconditional apology for seeking prayer nos. 1 & 2, and 'the petitioner is hereby warned that he shall not indulge in such acts of reckless allegations or misuse of public interest litigation or any other acts or the provisions of law.'

12. Since the petitioner has retired, therefore, impugned suspension order dated 06.08.2020 (Annexure No.5) has become redundant. Master servant relationship between Govt. and him has ended with his retirement, therefore, suspension order be deemed to have ended with his retirement.

13. Ld. Counsel for the petitioner further prayed that the respondents may kindly be directed to pay full salary to the petitioner during suspension period. Ld. A.P.O. submitted that for that petitioner will have to move an application before the appropriate authority. In terms of Para 54-B, Financial Handbook, Vol. 2 to 4, that authority alone is competent to decide the issue. It will be appropriate to reproduce Para 54-B, as below:

“54-B (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order—

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2).....

The above noted provision of Financial Handbook provides for a situation which the petitioner is faced with in present petition. The competent authority may, therefore, consider and make a specific order regarding pay and allowances to be paid to the petitioner for the suspension period, on such application moved by the petitioner.

*

*

*

WRIT PETITION (SB) NO. 257 OF 2021

14. WPSB No. 257/2021, Brahampal Singh Saini vs. State and others has been transferred by Hon’ble High Court to this Tribunal *vide* order dated 10.11.2022. The order dated 10.11.2022 reads as under:

“The petitioner was a public servant. The reliefs sought in the writ-petition fall within the jurisdiction of the Uttarakhand Public Service Tribunal to grant.

Therefore, we direct the Registry to transfer the complete records of the case to the Tribunal, which shall be registered as a claim petition and be dealt with by the Tribunal, in accordance with law.

It shall be open to the Tribunal to consider the case of the respondents for vacation of the interim order on its own merits.

This petition stands disposed of.”

15. WPSB No. 257/2021, Brahampal Singh Saini vs. State and others is, accordingly, reclassified and renumbered as Claim Petition No. 20/DB/2023. Since the reference in this Tribunal shall be of the writ petition filed before the Hon’ble High Court, but shall be dealt with as claim petition, therefore, the claim petition shall be referred to as ‘petition’ and petitioner shall be referred to as ‘petitioner’, in the body of the judgment.

16. Petitioner has retired on 30.09.2020. Order dated 05.01.2021 (Annexure No. 8) passed by Respondent No.1 is in the teeth of present petition. Order dated 05.01.2021 reads as below:

“Kindly refer to your letter dated 16-10-2020 and one undated letter. wherein prayed for payment of entire retiral dues, after retirement (date 30-9-2020) like as GPF, Gratuity, Pension, General Insurance, Leave Encashment etc. in view of PIL no. 15/2020 instituted before the Hon'ble High Court Uttarakhand Nainital and as per order dated 6-10-2020 passed by Hon'ble Court in WPSB no. 277/2020 filed by himself.

2- In view of aforesaid, it is informed that because the matter in question is pending before the Hon'ble Court hence till the decision of Hon'ble Court it is not possible to consider your representation.

Yours Faithfully
Anil Kumar Pandey
Under Secretary”

17. C.A. has been filed on behalf of respondents by Sri G.L. Sharma, Joint Secretary, School Education, Govt. of Uttarakhand. In paragraphs no. 9 and 13 it has been mentioned that in compliance of Hon'ble Court's order dated 06.10.2020, passed in WPSB No. 277/2020, Directorate of School Education, *vide* its letter No. 10143-46 dated 13.11.2020, has submitted all the record pertaining to the enquiry of the petitioner before the office of Chief Standing Counsel. WPSB No. 277/ 2020 is still pending consideration and the petitioner's representation will not be considered till the decision in WPSB No.277/2020 (Claim Petition No. 21/DB/2023). It is further mentioned in the C.A. that on the complaint dated 18.09.2019 made against the petitioner by Mr. Padam Kumar, the Addl. Director, Secondary Education, Garhwal Mandal, Pauri was appointed as enquiry officer for conducting preliminary enquiry, by the Director General, School Education, Uttarakhand. The enquiry officer submitted his enquiry report to the Director General, School Education *vide* his letter dated 25.07.2020, who, submitted the said preliminary enquiry report to the Govt. *vide* his letter dated 31.07.2020. The Govt., on the basis of the report received from the Director General, School Education, served the charge-sheet upon the petitioner *vide* O.M. dated 05.08.2020 and the petitioner was also suspended *vide* order dated 06.08.2020.

18. WPSB No. 277 of 2020, renumbered as Claim Petition No. 21/DB/2023 has been decided by this Tribunal, as above. Retiral dues of the petitioner were withheld only because of the fact that WPSB No. 277/2020 (now Claim Petition No. 21/DB/2023) is pending before the Tribunal, which has now been decided. Hence, respondents should have no hesitation in releasing the retiral dues of the petitioner. Ld. A.P.O. has pointed out that the GPF has already been released in favour of the petitioner *vide* order dated 20.07.2021 of the respondent department. The petitioner has acknowledged the fact that the entire GPF amount has been released and credited to his account. He has, however, submitted that other retiral dues have not been paid to him so far.

19. Hon'ble Apex Court, in the decision of **S.K.Dua vs. State of Haryana and Another (2008)1 Supreme Court Cases (L&S) 563**, has observed as below:

“.....

2. This appeal is directed against an order passed by the High Court of Punjab & Haryana at Chandigarh on July 7, 2005 in Writ Petition (C) No. 10025 of 2005. By the impugned order, the High Court dismissed the petition in limine relegating the appellant writ petitioner to avail a remedy by approaching a Civil Court.

3. Facts in brief are that the appellant was working as an Engineer-in-Chief in the Department of Irrigation, Haryana. According to him, he joined the service in Irrigation Department of the erstwhile State of Punjab in August, 1961 and was allocated to the Department of Irrigation and Power in the State of Haryana. He was promoted as Engineer- in-Chief on May 31, 1996 and worked in that capacity till he attained the age of superannuation in June, 1998. The appellant had an unblemished record of service for 37 years. During the course of his duties as Head of the Department, he submitted reports in or about April-May, 1998 to the Government highlighting certain irregularities and mal- practices said to have been committed by Mr. S.Y. Quraishi, the then Secretary, Irrigation & Power and requested the Government to make enquiry through Central Bureau of Investigation (CBI). According to the appellant, in pursuance of the complaint made by him, the Government removed Mr. Quraishi as Secretary, Irrigation allowing him to work only as Secretary, Department of Power.

4. The appellant has alleged that, as a measure of vendetta, Mr. Quraishi organized to send the appellant on deputation on May 15, 1998 to a lower and unimportant specially created post of Engineer-

in-Chief, Command Area Development Agency by upgrading it just few weeks before his retirement. In addition to the said action, the appellant was served with three charge-sheets/ show cause notices in June, 1998, few days before his retirement. The appellant, however, retired on June 30, 1998 on reaching the age of superannuation. The appellant was paid provisional pension, but other retiral benefits were not given to him which included Commuted Value of Pension, Leave Encashment, Gratuity, etc. totaling to about Rs. 12 lakhs. They were withheld till finalization of disciplinary proceedings. The appellant submitted replies to the charge- sheets/ show cause notices, inter alia, denying allegations and asserting that they were uncalled for and were issued with mala fide intention and oblique motive. He further submitted that he had acted in public interest in salvaging damage likely to be caused to public exchequer. The replies submitted by the appellant were accepted by the authorities and the appellant was exonerated of all the charges. All retiral benefits were thereafter given to him between June 11 and July 18, 2002. **Thus, according to the appellant though he retired in June, 1998, retiral benefits to which he was otherwise entitled, were given to him after four years of his superannuation.**

5. **The appellant has stated that, in the aforesaid circumstances, he was entitled to interest on the amount which had been withheld by the respondents and paid to him after considerable delay. He, therefore, made several representations.** He also issued legal notice on June 3, 2005 claiming interest at the rate of 18% per annum for delayed payment. **He had invited the attention of the Government to Administrative Instructions issued by the Government under which an employee is entitled to claim interest. Even otherwise, the action of non-payment of interest was arbitrary, unreasonable and violative of Articles 14 and 21 of the Constitution.** There was, however, no reply whatsoever from the Government. The appellant as a senior citizen of 65 years of age then approached the High Court of Punjab & Haryana by filing a writ petition under Article 226 of the Constitution. But the High Court summarily dismissed the writ petition without even issuing notice to the respondents. The appellant has challenged the said order in the present appeal.

6. On October 28, 2005, notice was issued by this Court. Affidavits and further affidavits were filed thereafter and the Registry was directed to place the matter for final hearing. Accordingly, the matter has been placed before us for final disposal.

7. We have heard learned counsel for the parties.

8. The learned counsel for the appellant contended that the High Court was totally unjustified in dismissing the writ petition in limine and the said order is liable to be set aside. He submitted that no questions of fact, much less, disputed questions of fact were involved in the petition and the High Court was wrong in summarily

dismissing it. **It is well settled law, submitted the counsel, that retiral benefits are not in the nature of bounty and an employee is entitled as of right to get those benefits immediately after superannuation unless they are withdrawn or withheld as a matter of punishment.** According to the appellant, he had always acted in the interest of the Government and saved public exchequer by inviting the attention to mal- practices committed by high ranking officers. As a measure of revenge against the appellant, charge-sheets were issued, **but after considering the explanation submitted by the appellant, all proceedings against him were dropped. In view of exoneration of the appellant, the Government ought to have paid interest on retiral benefits which were given to him after long time. As per the Guidelines and Administrative Instructions issued by the Government, the appellant was entitled to such benefit with interest.** The High Court ought to have allowed the writ petition of the appellant and ought to have awarded those benefits. **It was, therefore, submitted that the appeal deserves to be allowed by directing the respondents to pay interest on the retiral dues payable to the appellant which were actually paid to him after considerable delay.”**

20. Today, the petitioner again appeared in person before the Bench. He has filed the rejoinder affidavit, which is taken on record,

20.1 Petitioner submitted that he is facing financial hardship and his retiral dues (but for gratuity) be directed to be released in his favour. He also submitted that departmental inquiry be directed to be completed within a stipulated time frame and his final pension along with other retiral dues be released in his favour. He further submitted that his gratuity may be withheld for the time being, waiting for the outcome of the departmental proceedings and final decision for releasing the same may be taken only after the departmental enquiry is concluded.

20.2 The Tribunal is of the view that such prayer of the petitioner should be accepted.

21. Order accordingly.

22. In view of the above, the Tribunal directs the following:

- (i) Departmental inquiry may be completed as per law, without unreasonable delay, preferably within three months of presentation of certified copy of this order.

(ii) Final pension be released to the petitioner along with admissible interest on delayed payment of pension as per Government Order dated 10.08.2004.

(iii) The decision of payment of gratuity shall be taken by the department after completion of departmental inquiry.

(iv) Other pending retiral dues be also released in favour of the petitioner along with admissible interest on delayed payment of retiral dues, without unreasonable delay.

Let a copy of this judgment be placed in the file of petition no. 20/DB/2023.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 29, 2023
DEHRADUN

VM