

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

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

----- Vice Chairman (A)

EXECUTION PETITION NO. 21/DB/2022

*(Arising out of judgement dated 02.03.2022,
passed in Claim Petition No. 31/DB/2022)*

Sandeep Kumar Chauhan, aged about 41 years, s/o Shri Satya Pal Singh Chauhan, r/o 98 Orangabad Post Office, Orangabad, District Haridwar (Retired Police Constable) C.P. 133 from Police Line, Gopeshwar, District Chamoli.

.....Executioner-Petitioner

vs.

1. State of Uttarakhand through Principal Secretary, Home, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director General of Police, Uttarakhand Police, Garhwal Region, Dehradun.
3. The Superintendent of Police, Chamoli.
4. Director, Treasury and Pension, Chamoli.
5. Director, Treasury and Pension, Dehradun.

.....Respondents

Present: Sri V.P.Sharma & Sri Abhishek Chamoli, Advocates,
for the Petitioner.
Sri V.P. Devrani, A.P.O. for the Respondent No.1.

JUDGMENT

DATED: 21st September, 2022

Justice U.C. Dhyani (Oral)

In claim petition no. 31/DB/2022, Sandeep Kumar Chauhan vs. State of Uttarakhand and others, the Tribunal pronounced the judgement on 02.03.2022, as follows:

“Present claim petition has been filed by the petitioner, who was a Constable in Uttarakhand Police, for setting aside order dated 28.12.2021 (Annexure: A 1), order dated 27.01.2020 (Annexure: A 4) and order dated 02.07.2020 (Annexure: A 5). Petitioner also seeks to direct the respondents to pay gratuity along with 12% interest from due date till the date of actual payment. Petitioner has also sought direction to the respondents to pay the pension along with interest from the date of resignation till the date of actual payment.

2. Petitioner was serving in the Uttarakhand Police. He tendered his resignation on 05.11.2019. Before that he submitted his V.R.S. When a legal notice on behalf of petitioner was served upon respondent department, the department replied that GPF amounting to Rs. 1,31,139-00/-, Leave Encashment Rs.2,05,128-00/-, GIS Rs.20,460-00/- and LIC Rs.12,572-00/- has already been paid to the petitioner. In letter dated 28.12.2021, sent by S.P., Chamoli to Sri Ved Prakash Sharma, Advocate (for the petitioner), it was mentioned that the petitioner was below 45 years of age and had not completed 20 years of service, therefore, he was not entitled to anything else except what has already been paid to him. It has also been mentioned in the letter of S.P., Chamoli, that the petitioner first submitted his V.R.S. and thereafter he tendered resignation on 31.01.2020, which was accepted.

3. Since necessary documents required for deciding this claim petition are available on the file including the departmental version (Copy: Annexure- A 1) along with other papers, therefore, the Tribunal does not think it necessary to grant time to Ld. A.P.O., as prayed for by him, to file C.A./W.S. Ld. Counsel for the petitioner submitted that the claim petition may kindly be decided at the admission stage, inasmuch as the facts are not in dispute and it can be decided on law points only.

4. In Annexure: A 4, which is an order issued by S.P., Chamoli (Respondent No.3) on 27.01.2020, a direction was given to Pension Clerk (of S.P. Office) to release gratuity, insurance, leave encashment. Except gratuity, everything has been released in favour of the petitioner, as has been disclosed by S.P. in its letter dated 28.12.2021 (Annexure: A 1).

5. The resignation of the petitioner has been accepted by S.P. Chamoli (Respondent No.3) *vide* order dated 02.02.2020. It has been mentioned in order dated 02.07.2020 (Annexure: A 5) that it was not possible to accept V.R.S. of the petitioner, inasmuch as he has not

completed 45 years of age or has not put in 20 years of service. A reference of Rule 56 (C), Financial Hand Book, Vol. II, Part 2 to 4 has been given in such order. It has been admitted by Respondent No.3 in order dated 27.01.2020 (Annexure: A 4) that the petitioner was entitled to gratuity and, therefore, a direction was given to the Pension Clerk to release gratuity in favour of the petitioner.

6. It is, therefore, held that the petitioner is entitled to gratuity consequent upon acceptance of petitioner's resignation.

7. This Tribunal, relying upon the Govt. Order dated 10.08.2004 and hosts of other decisions, is of the view that petitioner should be paid interest on delayed payment of gratuity, admissible to him, after three months of acceptance of his resignation till the date of actual payment.

8. The respondents are, therefore, directed to release gratuity in favour of the petitioner along with interest, which shall be simple rate of interest payable on General Provident Fund, after three months of the acceptance of his resignation till the date of actual payment.

* * *

9. Petitioner has also claimed pension. Ld. A.P.O. has submitted that the petitioner is not entitled to pension, inasmuch as he had not completed 20 years of service and had not attained the age of 45 years when he tendered his resignation (and when his resignation was accepted). This was also highlighted by Respondent No.3, in its letter dated 28.12.2021(Annexure: A 1) sent to Sri Ved Prakash Sharma, Advocate, who is also representing the petitioner in this case, along with Sri Abhishek Chamoli, Advocate. In order dated 27.01.2020 (Annexure: A 4), issued by Respondent No.3, no direction was given to the Pension Clerk to release pension to the petitioner.

10. Sri Abhishek Chamoli, Ld. Counsel for the petitioner submitted that even if the petitioner had not completed 20 years of service and had not attained 45 years of age, he is entitled to proportionate pension. Ld. Counsel for the petitioner submitted that a Govt. Servant is entitled to full pension on completing 20 years of service, and is entitled to half pension on completion of 10 years of service. Petitioner is, accordingly, entitled to proportionate pension, according to Ld. Counsel for the petitioner.

11. Petitioner's application for VRS was not accepted because he had not completed 20 years of service and was below 45 years of age. The petitioner, therefore, moved resignation letter, which was accepted. Reference of Fundamental Rule 56(C), Financial Hand Book, Vol. II, Part 2 to 4 has been given in order dated 02.07.2020 of S. P., Chamoli (Copy: Annexure- A 5). In various rulings, which have been mentioned in the compilation of G.Os. (Copy: Annexure- A 6), the contents of Annexure: A-5 have been reiterated. In other words, Annexure: A-6 echoes the same law which has been highlighted by S.P., Chamoli, in its order dated 02.07.2020 (Copy: Annexure- A 5). On the contrary, Ld. Counsel for the petitioner could not place any law to show that the petitioner, not having served the respondent

department for 20 years and not having attained the age of 45 years, was entitled to pension.

13. In view of the above discussion, the petitioner is not entitled to pension.

14. Claim petition thus stands disposed at the admission stage. No order as to costs.”

2. For securing compliance of such order, the petitioner filed a contempt petition, in which the following order was passed:

“Learned A.P.O. has stated that State of Uttarakhand has filed Writ Petition against the order dated 02.03.2022, passed by this Tribunal in Claim Petition No. 31/DB/2022, Sandeep Kumar Chauhan vs. State of Uttarakhand and others [writ petition E filing No.- E C-UKHC01-00153-2022 dated 05.09.2022].

Learned Counsel for the petitioner seeks and is permitted to withdraw the contempt petition with liberty to file execution petition, if and when so required, according to law.

The contempt petition is dismissed as withdrawn with liberty, as above.”

3. Consequently, present execution application has been filed by the petitioner.

4. Learned A.P.O. submitted that the writ petition has been filed on behalf of State of Uttarakhand against Sandeep Kumar Chauhan in the Hon’ble High Court of Uttarakhand (E filing No.- E C-UKHC01-00153-2022 dated 05.09.2022).

5. In WPSB No. 23 of 2021, Uttarakhand Jal Vidyut Nigam Ltd. and another vs. Arun Singh Tomar and others, the Hon’ble High Court of Uttarakhand has observed, on 14.01.2021, as below:

“Learned counsel for the petitioner informs this Court that the respondents have initiated the execution proceedings before the learned Tribunal. The matter is listed before the learned Tribunal today. The learned Tribunal is insisting that an order be sought from this Court.

In catena of cases, Hon’ble Supreme Court has expressed its opinion that if a judgment is under challenge before the Appellate

Court, the Court, which has passed the judgment, should restrain its hand, by way of deference to the Appellate Court, and not proceed to execute the impugned judgment.

Therefore, the learned Tribunal is directed not to proceed with the execution of the impugned judgment, till the next date.”

[Emphasis Supplied]

6. Learned Counsel for the petitioner, therefore, seeks and is permitted to withdraw the execution application with liberty to file the same afresh, if and when so required, in accordance with law.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: SEPTEMBER 21, 2022
DEHRADUN
RS