BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL AT DEHRADUN

Present: Hon'ble Mr. Rajendra Singh

……..Acting Chairman

Hon'ble Mr. Arun Singh Rawat

……..Vice Chairman (A)

CLAIM PETITION NO. 165/SB/2024

Sanjeewan Chandra Soontha, aged about 62 years, S/o Shri B.D. Soontha, R/o Khasra-37, Shiv Kunj Uma Sadan, Kedarpur, Mothrowala, Dehradun, Uttarakhand-248001.

……Petitioner

versus

1. State of Uttarakhand through Secretary, Housing, Government of Uttarakhand.
2. Mussoorie Dehradun Development Authority (MDDA), Transport Nagar, Saharanpur Road, Dehradun through its Vice Chairman.
3. Secretary, Department of Finance, Government of Uttarakhand.
4. Director, Local Audit Dehradun, State of Uttarakhand.

…….. Respondents

Present: Sri M.C. Pant, Advocate, for the petitioner
Sri V.P. Devrani, A.P.O., for respondents no. 1, 3 & 4
Sri Amit Chaudhary, Advocate for respondent no. 2

Judgement

Dated: 05th November, 2026

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

> "(i) To issue an order or direction to the respondents to pay the pensionary benefits i.e. Gratuity etc. to the petitioner which is due to him after his superannuation with interest @ 18% p.a.
>
> (ii) To issue an order or direction to the respondents to consider the date of appointment of the petitioner as September, 2002 and not 2016 for the payment of retiral benefits and the fixation of salary.
>
> (iii) To award damages to the petitioner.
>
> iv) To award the cost of petition."

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

2.1. An automated urban development arrangement was to be implemented in MDDA, since the proposed system was a database client server application system, a technical person was to be appointed as system administrator who could provide guidance for such implementation since there were no I.T. Professional in the organization. As a result, a set of resumes were shortlisted for the process of selection as the System Administrator by the office of Additional Secretary (IT) Govt. of Uttarakhand, vide its letter dated 16.08.2002. It was further directed that the candidates whose resume has been shortlisted be called to appear for the interview. Therefore, vide letter dated 18.08.2002 the Petitioner's resume was shortlisted and was invited to appear for the process of interview fixed on 20.08.2002. Thereafter, the Petitioner appeared for the interview fixed on 20.08.2002, as conducted by Additional Secretary (IT) Govt. of Uttarakhand, Vice President and Deputy Secretary, M.D.D.A. The petitioner, after the conduction of the interview, was found suitable to be appointed at such post on the basis of his technical knowledge and experience and was recommended to be appointed by the interviewing Committee. The selection and appointment of the Petitioner was informed to him

vide letter dated 21.08.2002 comprising the terms and conditions, it is to be noted that such appointment was on contractual basis.

2.2. A proposal was made and discussed regarding the hiring of System Administrator on contractual basis in the Authority. Vide the proposal it was decided unanimously by the Secretary and Deputy Secretary that the system administrator will be hired on contract basis for a period of three years at a salary of Rs.13500/- per month with 10% increase every year to computerize the work of the authority and run it smoothly. The Petitioner thereafter continued to render his services till the year 2016. On 10.03.2016 an agreement was made between the Respondent and the petitioner for the renewal of his contract for providing his services as system administrator/programming analyst pursuant to his interview dated 20.08.2002 Vide letter dated 21.03.2016, the post of the petitioner was regularized by the Secretary In-charge, Government of Uttarakhand and vide Office Memorandum dated 24.06.2016, the Petitioner was regularized into service considering his past services rendered as system administrator/programming analyst in the Respondent organization.

2.3. The petitioner thereafter moved a representation dated 14.05.2020 to the respondent organization for the consideration of his service since his appointment in the 2002 and thereafter his services were regularized vide letter dated 21.03.2016 by the Government of Uttarakhand. **Thereafter, it was also ordered that the benefit of Gratuity to all the regular employees from their original date of appointment. T**he Petitioner to determine the grade pay/gratuity by giving the benefits in accordance with the previous years of service. The representation of the Petitioner was sent for the consideration vide letter dated 28.05.2020. The Petitioner was to be superannuated from the service as on 31.12.2022 as per the rules of Financial Handbook Volume-2, Part 2 to 4, Rules-56 (A) after attaining the age of 60 years which was informed to him vide Notice dated 09.12.2022. After the Petitioner

superannuated from the service, his retiral dues (CPF, Leave Encashment, Gratuity etc.) have not been released. The petitioner has addressed multiple representations to the Respondents dated 01.02.2023, 23.02.2023 and 19.04.2023 to release his retirement funds as the reasons for which the same has not been revealed to the Petitioner.

2.4. When the release of gratuity was proposed by the establishment the same was denied by the Accounts Division citing following reasons:

> "*It is to be noted that by the Government Order No. 476 dated 21 March 2016 of the Secretary-in-charge, Housing Section-2, Uttarakhand Government, a single non-cadre post of System Administrator was created under decentralized service in Mussoorie Dehradun Development Authority and by the office order number-02 dated 24. 06 2016 of the Vice Chairman, Mussoorie Dehradun Development Authority, Shri Sanjeevan Chandra Suntha was regularized in the unit by giving him the benefit of pay scale 15600-39100 grade pay 6600 on the post of System Administrator. Regarding the above, it is to be informed that from the order number-02 dated 24.06.2016 of the unit, it was found that Shri Sanjeevan Chandra Suntha was a contract employee in the Authority but no records related to his tender were made available by the unit in audit. Due to which it is not confirmed that from when to when and at what honorarium Shri Suntha was appointed on contract in the unit. In this regard it is to be informed that the pay scale of the post of System Administrator is 15600-39100 grade pay which is higher than the initial grade pay of 6600 first class and is the grade pay for promotion, which is also outside the purview of Public Service Commission. The unit did not follow the appointment process as per rules for the said post nor did it get approval from the government. Apart from this, Shri Suntha was regularized against the rules which is objectionable. In the said case, the audit opinion is that the*

unit should have received applications by doing wide advertisement/publicity for the post of System Administrator and the appointment process should have been followed by getting approval from the government as per rules. The matter is brought to the notice of the high level."

2.5. Withholding of gratuity of the Petitioner is also against The Payments of Gratuity Act, 1972 and violates the fundamental right of the Petitioner. It has been held in the case of Dr. Uma Agarwal vs. State of U.P. & Anr. by the Apex Court that:

"We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retiral benefits. This we have done to remind the various governmental departments of their duties in initiating various steps atleast two years in advance of the date of retirement. If the rules/instructions are followed strictly much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retiral benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the Court can certainly keep in mind the time-schedule prescribed in the rules/instructions apart from other relevant factors applicable to each case."

2.6. In furtherance the right to pensionary benefit is a constitutional right and as such cannot be taken away without proper justification as has been held in the case of "State Of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr. The relevant paragraph of the judgment is being extracted herein:

> *"15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cumRetirement Benefit) Rules, 1971 which conferred the right upon the Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court. 16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property"... Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

2.7. In another case of Harswaroop and Ors. vs. State Of Uttarakhand & Ors. WP(S/S) 1110 0f 2014 the Hon’ble Uttrakhand High Court held that when a class of employees who have been rendering services in an establishment and their services are regularized they are not to be considered as "New Entrants" and that for the purpose of calculating the pensionary benefits of such employees their initial date of appointment is to be given consideration and not the date on which they were regularized.

2.8. The entire service of the applicant w.e.f. 2002 to regularization and till the date of superannuation in continuous

service and without any break thus, the applicant is entitled for all benefits since the date of initial appointment. Moreover, the term used as daily wager only is a misnomer and the applicant has worked at par with the regular employee in substantive capacity. Thus, he cannot be deprived from the same.

3. The claim petition has been contested on behalf of the respondents. C.A. has been filed by Shri Harichand Singh Rana, the then Chief Engineer and In-charge of Legal Section, MDDA, Dehradun, on behalf of respondent no. 2, denying the material averments contained in the claim petition. Relevant documents have been filed by respondent no. 2. A Counter affidavit has been filed mainly stating that the Petitioner was superannuated on 31.12.2022 from the post of System Administrator. His retiral dues except Gratuity and Leave Encashment have already been paid. Payment towards Gratuity and Leave Encashment has been withheld due to Audit Department Objections, to which the Petitioner is fully aware. According to the Audit Objections, a sum of Rs. 1,30,000/- has been paid in excess to the Petitioner and hence his dues towards Gratuity and Leave Encashment were withheld. However, the Respondent No. 2 has replied to all the queries so raised by the Audit Department but the Audit Department has till date not cleared/removed the said objections. In absence of the removal of the Audit Objections from the Audit Department, the Respondent No. 2 will not be able to clear and settle the remaining dues of the Petitioner.

4. Counter affidavit has also been filed on behalf of respondent no. 4 mainly stating that audit opinion is based on the records provided during the audit, which is conducted in accordance with the guidelines set forth in Government Order No. 58/XXVII (11)/2016, dated 10.06.2016, Government Order No. 159/XXVII (26) 2016, dated 07.10.2016 and the letter of the Government of Uttarakhand No. 1/70913/2022, dated 16.10.2022. The compliance with these provisions is executed at the level of the

concerned institution (audit), and in cases of objections, their resolution is carried out as per the instructions laid out in the aforementioned government orders. **It is important to note that the nature of audit objections is not binding.** Moreover, Section 16 of the Uttarakhand Audit Act, 2012, stipulates that, "No suit, prosecution, or other proceedings shall lie against the State Government, the Director, or any other officer, auditor, or subordinate to the Director for anything done or purported to have been done, in good faith, under this Act."

5. Rejoinder affidavits have been filed by learned Counsel for the petitioner reiterating the facts contained in the claim petition and denying the material averments contained in the counter affidavit.

6. We have heard the learned Counsel for the petitioner, learned A.P.O. and learned Counsel for the M.D.D.A. and perused the documents placed before the Tribunal.

7. Learned counsel for the petitioner argued that the petitioner was initially appointed system administrator on 21/8/2002 .He was regularized on the post of the system administrator analyst on 24/08/2016. The benefit of the gratuity was ordered to be given to all the regular employees from their original date of appointment. The Petitioner was to be superannuated from the service as on 31.12.2022 , his retiral dues (CPF, Leave Encashment, Gratuity etc.) have not been released. His release of gratuity was proposed by the establishment and the same was denied by the Accounts Division citing following reasons:

1 *Shri Sanjeevan Chandra Suntha was a contract employee in the Authority but no records related to his tender were made available by the unit in audit. Due to which it is not confirmed that from when to when and at what honorarium Shri Suntha was appointed on contract in the unit.*

2. the pay scale of the post of System Administrator is 15600-39100 grade pay which is higher than the initial grade pay of 6600 first class and is the grade pay for promotion, which is also outside the purview of Public Service Commission. The unit did not follow the appointment process as per rules for the said post nor did it get approval from the government.

3. Apart from this, Shri Suntha was regularized against the rules which is objectionable.

The gratuity of the petitioner has been withheld against The Payment of Gratuity Act, 1972. It has been held in the case of Dr. Uma Agarwal vs. State of U.P. & Anr. by the Apex Court that:

> *“grant of pension is not a bounty but a right of the government servant. Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit.”*

The right to pensionary benefit is a constitutional right and as such cannot be taken away without proper justification as has been held in the case of "State Of Jharkhand & Ors. vs Jitendra Kumar Srivastava & Anr. The relevant paragraph of the judgment is being extracted herein:

> *"15. In State of W.B. v. Haresh C. Banerjee [(2006) 7 SCC 651 : 2006 SCC (L&S) 1719] this Court recognised that even when, after the repeal of Article 19(1)(f) and Article 31(1) of the Constitution vide Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20-6-1979, the right to property no longer remained a fundamental right, it was still a constitutional right, as provided in Article 300-A of the Constitution. Right to receive pension was treated as right to property. Otherwise, challenge in that case was to the vires of Rule 10(1) of the West Bengal Services (Death-cum -Retirement Benefit) Rules, 1971 which conferred the right upon the*

> *Governor to withhold or withdraw a pension or any part thereof under certain circumstances and the said challenge was repelled by this Court. 16. The fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognised as a right in "property"... Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced."*

In another case of Harswaroop and Ors. vs. State Of Uttarakhand & Ors. WP(S/S) 1110 0f 2014 the Hon’ble Uttrakhand High Court held that when a class of employees who have been rendering services in an establishment and their services are regularized they are not to be considered as "New Entrants" and that for the purpose of calculating the pensionary benefits of such employees their initial date of appointment is to be given consideration and not the date on which they were regularized.

8. Learned Counsel for the respondents no. 2 argued that the retiral dues except Gratuity and Leave Encashment have already been paid. Payment towards Gratuity and Leave Encashment has been withheld due to Audit Department Objections .According to the which a sum of Rs. 1,30,000/- has been paid in excess to the Petitioner and hence his dues towards Gratuity and Leave Encashment were withheld. Respondent No. 2 has replied to all the queries so raised by the Audit Department but the Audit Department has till date not cleared/removed the said objections. In absence of the removal of the Audit Objections from the Audit Department, the Respondent No. 2 will not be able to clear and settle the remaining dues of the Petitioner.

9. Learned APO argued that audit opinion is based on the records provided during the audit, which is conducted in accordance with the existing guidelines and other letters of the Government of Uttarakhand time to time. **The nature of audit objections is not binding on the respondents 2.**

10. Based on the arguments of the parties and the document placed before the tribunal we find that the petitioner has been regularized as system analyst on 24.06.2016 by MDDA. MDDA has regularized the petitioner in the scale of Rs 6600/ which is the promotional post. The appointment of any person in the group A post requires the consultation of the Uttarakhand Public Service commission and there should have been given vide publicity for appointment of any person to the post. The department has agreed to pay amount to employees appointed on contract basis and later on regularized from the date of their appointment on contact basis. The issue in the audit objection is how the payment to the petitioner has been fixed. But there is no fault of the petitioner in determination of his initial payment as well the grade pay in which he was regularized.

11. The Tribunal, during the course of hearing, ordered respondents to settle the audit para, but the respondent No 2 did not provide the requisite information to the Respondent No. 4 to place the information before the committee constituted to settle the audit para. The petitioner who has retired in 2022, has been paid all the retiral dues except the gratuity and leave encashment amount. The gratuity amount cannot be withheld as per the various decisions of the Hon'ble Courts. **Even a person on the daily wages is entitled to get gratuity for 15 days for each completed year of the service as per the Gratuity Act 1972**. The respondent No 4 in the counter affidavit has submitted that the audit objections are not binding on the respondent No 2 and this has been submitted by the Learned A.P.O. in his argument. The petitioner is entitled to

get the gratuity and the leave encashment amount due to him. In view of the above the claim petition is liable to be allowed.

ORDER

The claim petition is allowed. The respondents are directed to release the gratuity and leave encashment amount to the petitioner along with interest as per prevalent GPF rates, within 02 months of presentation of the certified copy of the judgement. No order as to cost.

(RAJENDRA SINGH)
ACTING CHAIRMAN

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

DATE: 05TH NOVEMBER, 2026
DEHRADUN

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