

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

**CLAIM PETITION NO. 03/SB/2021**

Vijay Kumar Sharma aged about 64 years, s/o Sri Bishan Singh, retd. Carpenter, from Irrigation Department, Uttarakhand, r/o P-4, Yamuna Colony, Dehradun.

.....Petitioner.

**vs.**

1. State of Uttarakhand through its Secretary, Department of Irrigation, Secretariat, Subhash Road, Dehradun.
2. Director, Directorate of Pension & Entitlement, Uttarakhand, 23 Laxmi Road, Dalanwala, Dehradun.
3. Executive Engineer, Investigation and Planning Division, Yanuna Colony, Dehradun.
4. Chief Treasury Officer, Dehradun.

.....Respondents.

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

**JUDGMENT**

**DATED: MAY 09, 2022**

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

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

“The petitioner be kindly held entitled to get from the respondents the sum of Rs.1,48,400/- together with interest thereon @ 10% per annum from the date of institution of this claim petition till the actual date of payment by the respondents to the petitioner and the respondents be kindly ordered to pay the same.

The petitioner be kindly allowed against the respondents any other relief in addition to or in modification of the above reliefs as this Hon'ble Tribunal deems fit and proper in the context of the facts and law of this claim petition; and Rs.15,000/- as costs of this claim petition be kindly allowed to the petitioner against the respondents."

2. Chronology of judgments, leading to the filing of present claim petition, is as follows:

2.1 Claim Petition No. 19/2010, Vijay Kumar Sharma vs. State and others was decided by this Tribunal *vide* judgment and order dated 04.03.2015, relevant portion of which is as under:

"1. The petitioner has claimed for the appointment in regular establishment to the post of Carpenter in the pay scale of Rs. 3050-4590 w.e.f June 1<sup>st</sup> 2000 with consequential benefits. The petitioner has also claimed the protection of his last drawn salary.

.....

7. The first question, which needs adjudication as to whether the petitioner is entitled for regularization and if so to which date. In the petition, the petitioner has claimed regularization from the year 1997, but he is not able to make out any definite claim for regularization for which the onus was on the petitioner and in the absence of any definite claim, the petitioner is not entitled to claim regularization from the year 1997. In the alternative, and it is prayed in the prayer clause also, that he should be regularised w.e.f. 01.06.2000 i.e. against the vacancy accrued on retirement of one Sri Phool Singh who was working on the post of carpenter. In support of this claim a copy of information sought by the petitioner under Right to Information Act has been filed as Annexure- 15, which reveals that an employee named Phool Singh in the Yamuna Construction Division-I, Dehradun had retired on 31.05.2000. By this document, it becomes clear beyond any doubt that Phool Singh, Carpenter retired on 31.05.2000 and a vacancy in the cadre of Carpenter had accrued consequent to his retirement. It has further been pleaded on behalf of the petitioner that no appointment was made against this vacancy and petitioner is entitled to be regularized against this vacancy since the date of its accrual. Now we have to see as to whether the petitioner is entitled to claim regularization against this vacancy. In our opinion, no person is entitled to claim recruitment, appointment or regularization since the date of accrual of the vacancies. It is the right of the employer as to which date, the employer wants to employ any employee. So, we are of the considered opinion that the petitioner is not entitled for regularization on 01.06.2000 irrespective of the fact as to whether any appointment was made to that post or not. The petitioner has relied upon the following principles laid down by Hon'ble Supreme Court in State of Haryana Vs. Piara Singh, (1992) AIR (SCW) 2315. In this case, Hon'ble Apex Court has laid down as follows:

*"25. Before parting with this case, we think it appropriate to say a few words concerning the issue of regularisation of adhoc/temporary employees in government service.*

*The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate. The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee.*

*Secondly, an adhoc or temporary employee should not be replaced by another adhoc or temporary employee; he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.*

*Thirdly, even where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless it cannot brook delay in which case the pressing cause must be stated on the file. If no candidate is available or is not sponsored by the employment exchange, some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly.*

*An unqualified person ought to be appointed only when qualified persons are not available through the above processes.*

*If for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.*

*The proper course would be that each State prepares a scheme, if one is not already in vogue, for regularisation of such employees consistent with its reservation policy and if a scheme is already framed, the same may be made consistent without our observations herein so as to reduce avoidable litigation in this behalf. If and when such person is regularised he should be placed immediately below the last regularly appointed employee in that category, class or service, as the case may be.*

*So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell - say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the Government of Haryana (contained in its letter dated 6.4.90 referred to hereinbefore) both in relation to work-charged employees as well as casual labour."*

We have given our considered thought to the principle laid down by the Hon'ble Apex Court in the above noted case, but in our opinion, the above principle is not applicable in the present case because it was a clear direction to the State of Haryana and under the rules applicable in that State. Apart from it, after this judgment, the Hon'ble Apex Court had laid down clear guidelines regarding the regularization of those employees who were working as adhoc, temporary, dailywager or on work charge basis in

*Secretary, State of Karnataka and others Vs. Umadevi and others, (2006)4 SCC 1.* According to principle laid down in the above noted case, now the work charged employees have no right to claim regularization. So, the claim of the petitioner for regularization w.e.f. 01.06.2000 is not made out and no relief can be given to him in this regard. It will however, be pertinent to mention that the petitioner has already been regularized but on subsequent date.

8. It has further been contended on behalf of the petitioner that one Dinesh Prasad Joshi was junior to him and he has been regularized prior to the petitioner and at least petitioner is entitled to be regularized from the date when his junior was regularized and in the same pay scale in which his junior was regularized. It is further stated that Sri Dinesh Prasad Joshi was regularized w.e.f. 04.09.2004 in the pay scale of 2750-4400/- whereas, the petitioner was working in the pay scale of 3050-4590/-. The petitioner was senior to Mr. Dinesh Prasad Joshi even than the petitioner was regularized on 26.05.2008 i.e. after the regularization of Mr. Dinesh Prasad Joshi and that too in the lower scale of Rs. 2610-3540/-. To prove this fact, an affidavit has been filed on 12.08.2014 on behalf of the petitioner. In paragraph 4 of the affidavit, it has clearly been pleaded:

*“That in the unrevised scale of pay of Rs. 3050-4590/- the deponent was the senior most Carpenter in Work Charge Establishment whereas Shri Dinesh Prasad Joshi was 2<sup>nd</sup> in order of seniority as Carpenter in the pre-revised lower scale of pay of Rs. 2750-4400/-. Even then the respondents had discriminately appointed the said Dinesh Prasad Joshi in the Regular Establishment as Carpenter in the pre-revised scale of pay of Rs. 2750-4400/- vide OM dated 04.09.2004.”*

9. No reply has been filed on behalf of the respondents of this affidavit. In the affidavit, there is a clear assertion of the petitioner regarding the fact of regularization of Mr. Dinesh Prasad Joshi. Even in the absence of any reply, we have to see as to whether the petitioner is senior to Mr. Dinesh Prasad Joshi or not and secondly as to whether the petitioner was working on the higher pay scale. In this regard, the petitioner has filed the copy of the seniority list of the employees as paper no. 51-78. This reveals that the petitioner was placed at sl. No. 34 and in the pay scale of 3050-4590/- Whereas, Dinesh Prasad Joshi was placed at sl. No. 41 and his pay scale was Rs. 2750-4400/- This reveals that prior to regularization, the petitioner was definitely senior to Dinesh Prasad Joshi and was also working in a higher pay scale, but Dinesh Prasad Joshi was regularized w.e.f. 04.09.2004 and that too in the pay scale of 2750-4400/- whereas, the petitioner has been regularized w.e.f. 26.05.2008 and that too in the pay scale of 2610-3540/- This cannot be said to be fair and justified. The petitioner being senior is entitled to be regularized prior to Dinesh Prasad Joshi or at least from the date when his junior was regularized and in the same scale of pay in which the junior was regularized. It is also on record that the petitioner was qualified to hold the post of carpenter. So, we are of the view that petitioner is entitled for regularization w.e.f. 04.09.2004, when Dinesh Prasad Joshi who was junior to the petitioner was regularized. The petitioner is further entitled to regularize in the pay scale in which Dinesh Prasad Joshi was regularized.

10. On the basis of the above discussion, the petition deserves to be partly allowed and petitioner is entitled for regularization w.e.f. 04.09.2004 and in pay scale of 2740-4400/-.

#### ORDER

The claim petition is allowed. The respondents are directed to regularize the petitioner w.e.f. 04.09.2004 in the pay scale of Rs. 2740-4400/-. The

petitioner will also be entitled for arrears of pay, if any. No order as to costs.”

2.2 The aforesaid decision was challenged by the State before Hon’ble High Court of Uttarakhand at Nainital in WPSB No. 302/2016. The judgment rendered by Hon’ble High Court on 22.04.2017 reads thus:

“1. This writ petition has been filed by the State of Uttarakhand against the judgment and order dated 04.03.2015 passed by Uttarakhand State Service Tribunal, Dehradun (from hereinafter referred to as “Tribunal”) in Claim Petition No. 19 of 2010 whereby the Tribunal partly allowed the claim of the petitioner by directing to regularize the services of the petitioner in the pay scale of `2740-4400 w.e.f. 04.09.2004.

2. Heard Mr. Pradeep Joshi, learned Standing Counsel for the State of Uttarakhand, Mr. M.C. Pant, learned counsel for the respondent and perused the records.

3. Brief facts of the case are that respondent was appointed as a Carpenter, in capacity of a work-charge employee in the Irrigation Department, in the erstwhile State of Uttar Pradesh, way back in the year 1974 and since then the petitioner (herein respondent) is continuing on the post of Carpenter. After the creation of new State of Uttarakhand on 09.11.2000, he was allocated to the new State. His services were regularized on the post of Carpenter w.e.f. 19.06.2008. The claim petition of the petitioner before the Tribunal was that his services ought to have been regularized from 04.09.2004 in the pay scale of `2740-4400, as was done in the case of one Mr. Dinesh Prasad Joshi, who was junior to the petitioner.

4. After hearing learned counsel for the parties, the Tribunal came to the conclusion that since the seniority list shows that one Mr. Dinesh Prasad Joshi was at serial No. 41 whereas petitioner was placed at serial No. 34 in the seniority list, petitioner ought to be senior to Mr. Dinesh Prasad Joshi.

5. The claim of the petitioner for regularization of services from 2004 instead of 2008 was rejected by the Department, though Mr. Dinesh Prasad Joshi stood regularized since 2004. The Tribunal therefore after evaluating the evidence before it, found that the petitioner was always senior to Dinesh Prasad Joshi since the petitioner was at serial No. 34 in the pay scale of `3050-4590 whereas Dinesh Prasad Joshi was placed at serial No. 41 in the pay scale of `2750-4400. Though his junior i.e. Dinesh Prasad Joshi was regularized w.e.f. 04.09.2004 in the pay scale of `2750-4400 whereas the services of the petitioner were regularized on 26.05.2008 in the pay scale of `2610-3540, the Tribunal came to the conclusion that the petitioner being senior to Dinesh Prasad Joshi, at least, is entitled to get the same pay scale on which his junior (Dinesh Prasad Joshi) was regularized.

6. Under these circumstances, the Tribunal gave a finding that the petitioner is entitled for regularization with effect from the date his junior i.e. Dinesh Prasad Joshi was regularized, as the services of his junior – Dinesh Prasad Joshi was regularized on 04.09.2004, the petitioner was also given the same benefit i.e. regularization of service w.e.f. 04.09.2004 in the pay scale of `2740-4400.

7. Considering the submissions of the parties and the perusal of the judgment and the documents available before this Court, we find no anomaly in the impugned judgment and order passed by the Tribunal. The determination by the Tribunal as to the date of regularization seems to be correct. In view thereof, the writ petition is dismissed.”

2.3. Claim Petition No. 55/SB/2018, Vijay Kumar Sharma vs. State & others was decided by this Tribunal *vide* judgment dated 03.04.2019, which reads as below:

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

“(i) To issue an order or direction to the concerned respondents to sanction and release the pension and other retiral dues to the petitioner under the old pension scheme applicable to the employees of State appointed prior to the year 2005 as his date of regularization in service is 04.09.2004..

(ii) To issue an order or direction to the concerned respondents to grant interest at the G.P.F. rate on the amount of monthly pension, amount of gratuity and commutation since the date of retirement up to the date of actual payment.

(iii) To issue an order or direction which this Court may deem fit and proper in the circumstances of case in favour of the petitioner.

(iv) To award the cost of petition.”

2. Facts, necessary for adjudication of present claim petition, are as follows:

Petitioner was appointed in work charge establishment of Irrigation Department, Dehradun, as Carpenter, on 04.07.1974. On 09.11.2000, the State of Uttarakhand came into existence. Since the date of appointment till June, 2008, the petitioner was continuously working under respondents in work charge establishment. On 26.08.2008, the services of the petitioner were regularized by the respondents.

A claim petition No. 19/2010 was filed by the petitioner before this Tribunal for seeking his regularization since 01.06.2000 in the pay scale of Rs.3050-4590/-. This Tribunal, *vide* judgment dated 04.03.2015, allowed the claim petition and directed the respondents to regularize the services of the petitioner *w.e.f.* 04.09.2004, in the pay scale of Rs.2740-4400/-, along with arrears of pay (photocopy of the judgment: Annexure-A1). When this order was not complied with, then the petitioner filed an Execution Application no. Ex.01/DB/2016 before this Tribunal on 25.01.2016, but instead of complying with the judgment, respondent no.2, *vide* order dated 16.03.2016 cancelled the regularization order dated 26.05.2008 on the ground that the petitioner has not fulfilled the educational qualification required for the post. Petitioner filed a contempt petition in Execution Application No. 01/DB/2016. Respondents filed a Writ Petition No. 302/16 SB against the judgment dated 04.03.2015, before Hon’ble High Court of Uttarakhand, who *vide* judgment dated 22.04.2017 dismissed the writ petition of the respondents (Copy of the judgment: Annexure- A 2). When this Tribunal called the personal appearance of respondents in execution application/ contempt application, then only the respondent no.2, *vide* order dated 16.08.2017 regularized the services of the petitioner *w.e.f.* 04.09.2004. *Vide* office order dated 30.08.2017 of Executive Engineer, Research and Planning Division, pay scale of the petitioner was fixed (Copy: Annexure- A

3 colly). Petitioner retired on 31.05.2016. After his retirement, pension and other retiral dues were sanctioned and paid to him under the old pension scheme, as this Tribunal *vide* judgment dated 04.03.2015 directed the respondents to regularize the services of the petitioner *w.e.f.* 04.09.2004, i.e., from the date of regularization of his juniors. Respondents sanctioned and paid the retiral benefits to the petitioner under the new pension scheme, which came into force in 2005, on the basis of the date of previous regularization, i.e., 26.05.2008, of the petitioner.

The department, under the Contributory Pension Scheme (for short, CPS), now known as Central National Pension Scheme (for short, CNPS), deposited 60% of retiral dues in the account of the petitioner on 06.03.2017. Remaining 40% was deposited by the department in the H.D.F.C. Life Insurance company Private Limited (for short, HDFC), Respondent No.5, for the purpose of pension, whereby Rs.1144/- as monthly pension, has been paid to the petitioner. Under CNPS, retiral dues are sanctioned to the employees from contributory funds, in which the share of employee and employer is 50-50%. It is averred in the pleadings that 50% amount was contributed by the petitioner from his monthly salary since his regularization. The amount of gratuity of the petitioner has been withheld. However, leave encashment of 238 days has been paid to the petitioner. After orders dated 16.08.2017 and 30.08.2017 were passed, the petitioner becomes entitled for leave encashment of 300 days. *Vide* office order dated 15.09.2017 of Executive Engineer, the amount of leave encashment of remaining 62 days has been sanctioned and paid to the petitioner, but other retiral dues, such as- pension, gratuity and commutation have not been paid to the petitioner. Pension under the CNPS has been closed by the respondents after passing the regularization order of the petitioner. Petitioner wrote several letters to the respondents, but all in vain. The petitioner has been forced to deposit a sum of Rs.336127/- i.e., the amount of retiral benefits under the CNPS and refused to release the pension under the old pension scheme until deposition of 60% amount, which comes to Rs.336127/-. Only Rs.282295/- and not Rs.336127/-, were paid to the petitioner on 06.03.2017. Out of 60% amount, which has been paid to the petitioner, 50% has been contributed by the petitioner, hence, respondents are entitled to receive only 10% amount from the petitioner. It is pleaded by the petitioner that excess 10% amount may be deducted from his retiral dues. For remaining 40%, which is employer's share, the department has already written a letter to H.D.F.C., from which pension is given to the petitioner. According to the petitioner, directing him to deposit Rs.336127/-, which has been paid to him under CNPS, with interest, is illegal. Although the petitioner retired on 31.05.2016 and writ petition of respondents was dismissed on 22.04.2017, still the retiral benefits, under old pension scheme, have not been sanctioned and paid to the petitioner. The petitioner is fully entitled to get all his retiral dues including pension and gratuity etc., from respondents. Since the respondents delayed the matter of regularization and grant of sanction to the petitioner, therefore, he is legally entitled to get his pensionary dues from respondents.

3. Written Statement/ Counter Affidavit has been filed on behalf of Respondents No. 1, 2 & 3. In para 3 of the affidavit of Respondent No.3, it has been pleaded that amount of leave encashment, arrears of salary and GIS has been released in favour of the petitioner. When the matter was referred by Respondent No.3 to Director Treasuries, Pension & Entitlement (Respondent No.4), who raised an objection that until and

unless the petitioner deposits the entire amount of CNPS, no amount under the old pension scheme will be released. Such objections were raised by Respondent No.4 *vide* letter dated 24.04.2018 and the same were communicated to Respondent No.3 *vide* the selfsame letter (Copy: Annexure- R 1). The contents of the said letter were forwarded to the petitioner *vide* letter dated 08.05.2018 (Copy: Annexure- R 2). Respondent No.3 served the reminder on Respondent No.5 on 05.07.2018 (Copy: Annexure- R 3). Subsequent reminders were also given on 24.08.2018 (Copies: Annexure- R 4 and R 5).

4. Ms. Priya Chhabra, Advocate, has appeared on behalf of H.D.F.C., Respondent No.5. She, on seeking instructions from her client, has submitted that the Respondent No.5 is ready to deposit the 40% of annuity amount along with interest in favour of Respondent No.3, within a period of four weeks from today.

5. The petitioner has got an affidavit of him received in the office of Respondent No.3 yesterday. The affidavit is in the form of undertaking. The petitioner has undertaken that he is ready to return 60% amount along with interest under CNPS. He has further expressed, in the affidavit, that he is unable to deposit such amount either in cash or through demand draft. He has, however, submitted in the affidavit that such an amount may be deducted from his gratuity amount and the balance be paid to him. Petitioner has also undertaken that if the amount to be deducted by the department, exceeds 60%, then he is ready to deposit the same in cash.

6. Sri Vikram Singh Jantwal, Deputy Director, Treasuries, representing Respondent No.4, is present in person. Sri Jantwal has submitted that if subscriber, who was earlier part of CNPS, is subsequently, by order of this Tribunal, has become member of old pension scheme, then he is required to deposit subscriber's share of his accumulated pension fund under the CNPS. After depositing the said amount, the Respondent No. 3 is required to prepare the pension papers and submit the same to the pension sanctioning authority i.e., District Treasury, Deheradun.

7. This Court, accordingly, records the aforesaid statements of the petitioner, Respondents No. 1, 2, 3 & 4 and Respondent No.5 and disposes of the claim petition by directing as under:

Respondent No.5 shall deposit 40% of annuity amount along with interest in favour of Respondent No.3, within a period of four weeks from today. Respondent No. 3 shall prepare the pension papers of the petitioner within next two weeks. Since District Treasury, Dehradun, is competent authority to sanction the pension up to the rank of Class-III employees, therefore, Respondent No.3 shall submit the pension papers of the petitioner within next week to District Treasury, Deheradun, who, under the old pension scheme, shall issue pension payment order within two weeks of receipt of papers from Respondent No.3. It is directed that the entire exercise for payment of retiral dues to the petitioner shall be done at the earliest possible, but, in any case not beyond 12 weeks.

8. This Court records appreciation for Sri Vikram Singh Jantwal, Deputy Director, Treasuries, for rendering valuable assistance to the Court in resolving the controversy within no time, much to the satisfaction of all the parties.}



3. W.S. has been filed on behalf of the respondents. C.A. has been filed by Sri Rajesh Kumar Lamba, Executive Engineer, Investigation and Planning Division, Yamuna Colony, Dehradun, on behalf of Respondents No. 1 and 3. Another C.A. has been filed by Sri Romil Chaudhary, Chief Treasury Officer, Dehradun, on behalf of Respondents No. 2 & 4.

4. Although material facts have been admitted in both the Counter Affidavits, but eligibility for grant of interest on delayed payment of pension and gratuity has been denied and opposed. It is the submission of Ld. A.P.O. that the respondents are not liable to pay any interest on delayed payment of pension and gratuity to the petitioner.

5. It is the submission of Ld. Counsel for the petitioner that *vide* judgment and order dated 03.04.2019 passed by this Tribunal in Claim Petition No. 55/SB/2018, it was directed that the entire exercise for payment of retiral dues to the petitioner shall be done at the earliest possible, but, in any case not beyond 12 weeks.

6. Ld. Counsel for the petitioner also submitted that 12 weeks were completed on 26.06.2019, therefore, the respondents are liable to pay interest on delayed payment of pension and gratuity.

7. Ld. Counsel for the petitioner further submitted that the pension was actually paid to the petitioner on 25.06.2020 and gratuity was actually paid to the petitioner on 26.06.2020. Such dates are not disputed.

8. Hon'ble Apex Court in the case of **S.K.Dua vs. State of Haryana and Another, (2008)1 Supreme Court Cases (L&S) 563**, has held that even in the absence of specific Rule or order for providing interest, an employee can claim interest on the basis of Articles 14,19 and 21 of the Constitution of India as retirement benefits are not a bounty. The relevant paragraph of the judgment is reproduced below:

*"13..... If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim*

*interest under Part III of the Constitution relying on Articles 14,19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof. ...."*

9. In the case of Civil Appeal No. 7113 of 2014, D.D. Tiwari (D) v. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, Hon'ble Supreme Court has held, in paragraphs 3 and 4, as under:-

*"3. .... The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, wherein this Court reiterated its earlier view holding that the pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement, but, have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be dealt with the penalty of payment of interest at the current market rate till actual payment to the employees. The said legal principle laid down by this Court still holds good in so far as awarding the interest on the delayed payments to the appellant is concerned....."*

10. In SLP (Civil ) No. 1427/2009 arising out of the Civil Appeal No. 6770 of 2013 and SLP (Civil ) No. 1428/2009 arising out of Civil Appeal No. 6771 of 2013, State of Jharkhand & others vs. Jitendra Kumar Srivastava & another, Hon'ble Supreme Court has held, as under:

*"2. Crisp and short question which arises for consideration in these cases is as to whether, in the absence of any provision in the Pension Rules, the State Government can withhold a part of pension and/or gratuity during the pendency of departmental/ criminal proceedings? The High Court has -answered this question, vide the impugned judgment, in the negative and hence directed the appellant to release the withheld dues to the respondent. Not happy with this outcome, the State of Jharkhand has preferred this appeal.*

7. It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. Conceptually it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

*"The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?"*

*What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date?"*

We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension.

It was further held that the grant of pension does not depend upon any one's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) ILLJ 377SC"

15..... As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different."

11. Hon'ble High Court of Uttarakhand at Nainital in WPSB No. 257 of 2010, Pradeep Kumar vs. State of Uttarakhand and others, decided on 24.06.2013, has observed as under:

"..... Respondent No.2 is directed to reach to the petitioner gratuity, provident fund and leave encashment, to which the petitioner is otherwise entitled together with interest to be calculated at the rate of 10 per cent per annum from the date of his superannuation until the date of payment."

12. In Claim Petitions No. 30/DB/2013, Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016, 72/DB/2018, Dhanesh Chandra Bhatt vs. State and others, decided on 13.02.2018 and 29/DB/2019, Sita Ram Sharma vs. State and others decided on 20.02.2019, this Tribunal, relying upon the Govt. Order dated 10.08.2004, ruled that the petitioners' claim for interest on delayed payment of Pension, Gratuity and Leave Encashment was justified and the petitioners should be paid interest on arrears of pension, gratuity and leave encashment, after three months of the date of retirement till the date of payment. The rate of interest for delayed payment of gratuity, leave encashment and pension shall be simple rate of interest payable on General Provident Fund during the relevant period

13. On the basis of the above discussion, the claim petition is thus disposed of with the following directions:

The respondents are , accordingly, directed to pay interest on delayed payment of pension and gratuity from 27.06.2019 till the date of actual payment, which is 25.06.2020 in case of pension and 26.06.2020 in case of gratuity. The interest shall be simple rate of interest payable on General Provident Fund during the relevant period. Such payment shall be made at the earliest possible and without unreasonable delay. No order as to costs.

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

*DATE: MAY 09, 2022*  
*DEHRADUN*

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