

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

Present: Hon'ble Mr. Justice J.C.S.Rawat

----- Chairman

&

Hon'ble Sri D.K. Kotia

----- Vice Chairman (A)

CLAIM PETITION NO. 36/2011

Dr. Arun Kumar Jain, S/o Late Sri Kailash Chandra Garg, R/o House No.
S/27, Shivalik Nagar, Haridwar

.....Petitioner

VERSUS

1. State of Uttarakhand through Principal Secretary, Department of Medical, Health and Family Welfare, Civil Secretariat, Dehradun,
2. Director General/Director Administration, Department, Medical & Health Services, Uttarakhand, Dehradun,
3. Chief Medical Officer, Haridwar, Uttarakhand,
4. Principal Secretary, Medical & Health Services, U.P. Lucknow, U.P.,
5. Director General (Admin.), Medical & Health Services, U.P., Lucknow., U.P.,
6. Accountant General (Lekha & Haqdari), Second, U.P. Allahabad, U.P.

.....Respondents

Present: Sri M.C.Pant, Counsel
for the petitioner

Sri Umesh Dhaundiyal, A.P.O.
for the respondents

JUDGMENT

DATE: DECEMBER 10, 2014

DELIVERED BY HON'BLE SRI D.K.KOTIA, VICE CHAIRMAN (A)

1. The petitioner has filed this petition for seeking following relief:

“a). That by issuing appropriate order or direction the impugned order dated 18.05.2010 contained in Annexure no.1 to the Compilation-I, may kindly be quashed and set aside.

b). That by issuing an appropriate order or direction the Opp. party No.2 may kindly be directed to pay the amount of Rs. 25,58,966.00 as interest for causing culpable delay in payment of post retiral dues viz. pension, gratuity and leave encashment.

c). That the Opp. Party may further be directed to pay cost of the litigation to the petitioner.

d). Any other order or direction as may be deemed in the circumstances of the case.”

2. The facts of the claim petition in brief are that the petitioner was appointed as Medical Officer in 1979 and after the service of more than 21 years, on 21.03.2001, he applied for the voluntary retirement. At that time, he was posted in District Haridwar. The said request giving a notice of three months was addressed to the Principal Secretary, Medical, Health and Family Welfare, Uttar Pradesh, Lucknow as the petitioner opted the State of Uttar Pradesh, prior to its reorganization. After the intervention of the Allahabad High Court, Lucknow bench, vide office memorandum dated 18.05.2006, the Uttar Pradesh Government accepted the request and the petitioner was allowed to be voluntarily retired retrospectively from 21.06.2001 (Annexure A-4 of Compilation-II). The petitioner was paid arrears of pension for the period of 22.06.2001 to 30.06.2007 and the amount of gratuity on 10.07.2007, leave encashment on 12.01.2009 and 90 percent of general provident fund on 14.09.2009 by the Government of Uttarakhand. The petitioner's grievance is that he should have also been paid interest for delay in payment of his retiral benefits. He submitted a representation dated 09.03.2010 to respondents (No. 1, 2 and 3) showing detailed calculation for payment of a total amount of Rs. 25,58,966 as interest on delayed payment of pension, gratuity, leave encashment and general provident fund. (Annexure: A-11 to Compilation-II) Respondent no. 2 enclosing the report of respondent no.1 gave a reply (impugned order) to the

petitioner on 18.05.2010 (Annexure:1 of Compilation-I). As the petitioner was not satisfied by this, the present claim petition has been filed challenging this impugned order dated 18.05.2010.

3. The petitioner has challenged the impugned order and claimed the payment of interest mainly on the ground that it is well settled principle of law that retiral benefits are not any bounty but a right of an employee and in case of culpable delay in payment, the aggrieved person is entitled for interest on retiral dues. It has also been pleaded that even absence of statutory rules, administrative instructions or norms prescribed for the purpose, the employee is entitled to claim interest on delay in payment under part III of the Constitution of India relying on Article 14,19 and 21 of the Constitution. It has been further stated in the claim petition that the same principles should also be applied for payment of interest on retiral benefits in case of voluntary retirement. It is also a contention in the petition that the State Government has issued administrative instructions from time to time and directed departmental heads to pay interest @ 12 per cent per annum on the delayed payment of pension and gratuity. It is also a plea of the petitioner that though the State Government has not issued any administrative instructions to pay interest on delayed payment of leave encashment and general provident fund yet the petitioner is entitled to receive interest for withholding the legitimate claims for long period as has been laid down in various cases by the Courts of law. Petitioner has therefore, prayed that the impugned order be quashed.

4. Respondent Nos. 1, 2 and 3 in their written statement have stated that the petitioner has been paid all retiral benefits after the completion of the formalities; there is no provision of payment of interest while paying retiral benefits; the petitioner had opted for the State of Uttar Pradesh and the issue of accepting voluntary retirement and payment of retiral benefits are subject matter of the Government of Uttar Pradesh and therefore, the claim petition is liable to be dismissed.

5. Petitioner has also filed the rejoinder affidavit and mostly the facts stated in the claim petition have been reiterated. It has additionally been mentioned that the petitioner was working in the territorial jurisdiction of the State of Uttarakhand on 21.03.2001 when he tendered the voluntary retirement. All retiral dues were paid to the petitioner by the State of Uttarakhand and therefore, interest on delay in payment of retiral dues should also be paid by the Government of Uttarakhand.

6. Petitioner also filed an application to implead the State of Uttar Pradesh (Principal Secretary and Director General, Medical and Health as respondent no. 4 and 5) on 02.04.2013 which was allowed. As none appeared on their behalf, it was decided to proceed ex-parte against respondent nos. 4 and 5 on 07.06.2013.

7. We have heard learned counsel for the petitioner and learned A.P.O. on behalf of respondent nos. 1,2 and 3 and also perused the record.

8. The respondents have raised a plea that the claim petition is barred. It is admitted case of the parties that the petitioner sought voluntary retirement in the year 2001 after giving a notice to that effect under Fundamental Rule 56(C). The same was accepted by the Govt. after intervention of Hon'ble High Court in the year 2006 with retrospective effect from 2001. The petitioner has claimed retiral benefits from 2001. The application for claiming the retiral benefits was given by the petitioner in the year 2006, the copies of which have been filed along with W.S. by the respondents as Annexure R-5. Thus, the process of claiming retiral benefits starts from the year 2006 when the application of the petitioner for voluntary retirement was allowed and thereafter he submitted an application for claiming the retiral benefits from retrospective effect. The claim for seeking the arrears of retiral benefits or pension, the cause of action continued from month to month. As such, non-payment of pension is a continuing cause of action. Thus, the petition cannot be held to be barred by limitation.

The petitioner has filed the claim petition in 2011 and claimed interest on retiral benefits. Thus, the petition is not barred by laches and delay also. The Hon'ble Apex Court in the case of Shiv Dass Vs. Union of India, 2007(3) SLR, 444 has held that in the case of pension, the cause of action actually continued from month to month.

9. The second question, which has been raised by learned counsel for the respondents is that Tribunal has no jurisdiction to entertain this petition and the relief, which has been claimed is cognizable by U.P. Public Services Tribunal, Lucknow. The said contention has been refuted by the petitioner. The petitioner is claiming the interest on delayed payment of post-retiral benefits made by the Govt. of Uttarakhand. The entire pension and pos-retiral benefits have been paid by the State of Uttarakhand. If the entire amount is to be paid by the State of Uttarakhand and nothing is to be paid by the State of U.P., this Tribunal has got jurisdiction to entertain the petition. Apart from that, the petitioner was posted in Haridwar within the territory of State of Uttarakhand after the appointed day. If the petitioner had been working in State of Uttarakhand, so he would be deemed to be a Govt. Servant of State of Uttarakhand under Section 73 and 74 of U.P. Reorganization Act, 2000. The circular संख्या: 04/वि0अनु0-1/2001-2002 dated 8.4.2002 of the Principal Secretary, Finance, Govt. of Uttarakhand, clearly provides that persons who had been working in the State of Uttarakhand, would be deemed to be the employees of Uttarakhand State as per provisions of the U.P. Re-organization Act, 2000. In view of the above, this Tribunal is competent to hear this petition.

10. The petitioner has claimed the interest @ 12% per annum on the arrears of the pension w.e.f. 22.6.2001 to 30.6.2007 paid after delay of six years and interest @ 12% per annum on the gratuity amounting to Rs.2 Lacks, 87 thousand paid after delay of six years. The petitioner has also sought the payment of interest on the G.P.F. from 22.6.2001 to 14.9.2009 on the amount of 90% of G.P.F. @ 18% per annum and he has also claimed the interest on the amount of leave encashment w.e.f. 22.6.2001 to 12.1.2009 @ 18% per annum.

Perusal of the claim petition reveals that the petitioner is claiming the interest w.e.f. 2001 as enumerated above. Now the question arises whether the petitioner is entitled to get the interest from 2001 or from the date when his resignation was accepted or from the date of acceptance of the resignation and thereafter the reasonable period of time by which the payment should have been made to the petitioner. It is the admitted case of the parties that the petitioner submitted his resignation to the respondents/State of U.P. in the year 2001, thereafter the said resignation was accepted on 18.5.2006 w.e.f. 21.6.2001 by the State of U.P.. Now the further question arises whether the amount of pension, gratuity, G.P.F. and leave encashment became due from the date of acceptance or from the date of resignation with retrospective effect from 2001. It is not in dispute that the resignation was accepted with retrospective effect. It is not the case of regular employee who retires from the service after the age of superannuation. The petitioner has sought his voluntary retirement at his own which was accepted in the year 2006 with retrospective effect from 2001. Thus, from 21.6.2001 to 18.5.2006(Annexure 4 to claim petition) the notice of voluntary retirement, given by the petitioner, had not been accepted by the department, so there is no question that the pension, G.P.F., gratuity and leave encashment became payable to the petitioner. The petitioner had no right to claim such amount till his resignation was accepted on 18.05.2006. Merely by accepting the resignation from the back date would not make him entitled to get the interest till the date of acceptance of the voluntary retirement notice. There is also a second aspect of the matter that, it is mandatory under the Civil Services Rules that the persons, who are going to retire from service, they have to complete certain formalities before getting the retiral benefits. The State of U.P. has framed the rules in the year 1995 known as the U.P. Pension Cases (Submission, Disposal and Avoidance of Delay) Rules, 1995 (hereinafter referred to as Pension Cases Delay Rules, 1995). In these rules the Govt. has provided that Head Office or other authority responsible for preparing pension papers, should initiate pension cases two years before the retirement of the Govt. Servant. At that stage, the essential information regarding

the service, should be verified and entire service book and service record should be examined and completed with a view to remove deficiency and defects, if any, in the service record. It is also provided that the process should be completed at least 8 months before the retirement of the Govt. Servant. At least 6 months prior to retirement of the Govt. Servant, the pension and gratuity papers must be sent to the Accountant General and the pension payment order must be issued prior to retirement of the employee. This is the clear position according to the above rules. Fundamental Rules provide for preparation of the papers of pension of the Govt. Servant that every office is to undertake the work of preparation of pension papers in Form-7 two years before the date on which the Govt. Servant due to retire on superannuation. Fundamental Rules provide the stages for completion for pension papers. First stage, deals with verification of the service details and the second stage, makes good the deficiency in the service book and it should be completed well within time. The Pension Cases Delay Rules, 1995, Schedule rule-4 provides that pension form should be provided to the employee before 8 months of his retirement and he should fill up the said form 6 months before the retirement. Thus, 6 months' time has to be presumed for completing the formalities in case of resignation, Voluntary Retirement and Retirement on superannuation. The rules are the same which pertain to the General Pension Rules of the Govt. Servants. In case of Resignation, six months time would be given to the department and thereafter, the State Govt. is liable to pay the interest to the employee. The perusal of the records reveal that the petitioner filled up the pension papers in the month of September 2006 which is evident from Annexure R-5 particularly from the top of the Indemnity Bond. Thus, the pension papers were filled after the acceptance of the resignation in the year 2006. In this case, the petitioner's resignation was accepted on 18.5.2006 plus 6 months i.e 18.11.2006 shall be the date on which he would have been entitled for pension and gratuity and he had been paid the gratuity and pension on 10.07.2007 and thus he is entitled to get the interest on the said amount @ 8% per annum from 18.11.2006

to 10.7.2007. The petitioner is also entitled to get interest on leave encashment and GPF from 18.11.2006 @ 8% per annum.

ORDER

The petition is partly allowed. The impugned order dated 18.5.2010 (Annexure-1 of Compilation-I) is hereby set aside. The respondents are directed to pay interest to the petitioner @ 8% per annum on the amounts of pension from 18.11.2006 to 10.7.2007 and gratuity from 18.11.2006 to 10.7.2007. Respondents are also directed to pay interest on amounts of leave encashment and GPF from 18.11.2006 to actual date of payment of these amounts. The said amounts of interest will be paid by the respondents within a period of two months from the date of this order. No order as to cost.

Sd/-

JUSTICE J.C.S.RAWAT
CHAIRMAN

Sd/-

D.K.KOTIA
VICE CHAIRMAN (A)

DATE: DECEMBER 10, 2014

DEHRADUN

KNP