

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
BENCH AT NAINITAL**

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

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

WRIT PETITION NO 71 (S/B) OF 2022

[RECLASSIFIED AND RENUMBERED AS CLAIM PETITION NO. 76/NB/DB/2022]

Mohan Chandra Pandey, aged about 62 years, s/o Shri Keshav Dutt Pandey,
r/o Ward No. 7, Keshavhari Sadan, Elvina Villa Tallital, District Nainital.

.....**Petitioner**

vs.

1. State of Uttarakhand through Principal Secretary, Tourism, Uttarakhand, Dehradun.
2. Managing Director, Kumaon Mandal Vikas Nigam Ltd., Nainital.
3. General Manager, Kumaon Mandal Vikas Nigam Ltd. Nainital.

.....**Respondents**

Present: Sri Dharmendra Barthwal, Advocate for the petitioner (Virtual)

Sri Kishore Kumar, A.P.O. for the respondent 1 (Virtual)

Sri Sandeep Kothari, Advocate, for the respondents no. 2 & 3 (Virtual)

JUDGMENT

DATED: DECEMBER 20, 2022

Justice U.C.Dhyani (Oral)

Hon'ble High Court of Uttarakhand has been pleased to pass an order on 05.09.2022 in WPSB no. 71 of 2022, Mohan Chandra Pandey vs. State of Uttarakhand and others, which reads as under:

“Mr. Dharmendra Barthwal, learned counsel for the petitioner.

Mr. S.S.Chauhan, learned Deputy Advocate General for the State. Mr. Sandeep Kothari, learned counsel for the 2 & 3.

The Writ Application has been filed with the following prayers:

- (i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the remaining amount of enhanced Gratuity to the petitioner in accordance with G.O. dated 30.01.2016 and 30.05.2019.

(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondents to pay the arrears of VI and VII Pay Commission to the petitioner, w.e.f., 01.01.2016 to 31.12.2016 in accordance with G.O. dated 11.06.2019.

It is apparent from the record as well as submissions made by learned counsel for the parties, that the Public Service Tribunal, Nainital, has jurisdiction over the matter.

Hence, the writ application is transferred along with all the pleadings to the aforesaid Tribunal.

Registry is directed to act appropriately in that view of the matter.

Since the petitioner's counsel is very anxious about the disposal of the writ application as already two years has elapsed since retirement of the petitioner, the petitioner is given the liberty to file an application before the Tribunal concerned for an early hearing of the petition, which may be considered liberally."

2. The original record of the writ petition has been transferred to this Tribunal vide Letter No. 12988/UHC/Service (S/B) 2022 dated 13.09.2022 of the Deputy Registrar (Judicial) of the Hon'ble High Court. The same has been registered as Claim Petition No. 76/NB/DB/2022.

3. The petitioner joined the respondent department as Assistant Clerk and served the same for about 38 years. He retired on 31.05.2019 as Personnel Officer, HQ, Kumaon Mandal Vikas Nigam (KMVN). In March 2018, a G.O. was issued for enhancing the gratuity. According to the petitioner, he is entitled to arrears of gratuity flowing from the said G.O. According to the petitioner, the respondents have also not paid arrears as per recommendations of the 6th Pay Commission and 7th Pay Commission, as also enhanced gratuity amount. The G.O. recommending 7th Pay Commission has been adopted by the KMVN on 01.01.2018. As such, the respondents are legally obligated to make payment of all the retiral benefits including arrears of 6th Pay Commission, as also arrears of gratuity. *Vide* G.O. dated 30.05.2019, State Govt. has enhanced the gratuity of employees from Rs. Rs. 10 Lac to 20 Lac. KMVN is required to pay enhanced gratuity from their own resources. The petitioner filed a representation on 11.08.2021 for the same, but the department did not take any action on the same.

Hence, present claim petition.

4. Written Statement has been filed on behalf of the respondents. Sri A.P. Bajpai, G.M., KMVN has filed the affidavit. In para 7 of the W.S., it has been stated that the recommendations of 6th Pay Commission have been made applicable to the GMVN *vide* order dated 30.12.2019 (Annexure-CA-1). The said G.O. provided that arrears of 6th Pay Commission from 01.01.2006 to 31.07.2009 shall be paid only after considering the financial viability of the Govt. Corporation, but in para 11 of the C.A. it has been stated that there were several litigations initiated by the employees before the Hon'ble High Court. Hon'ble High Court has been pleased to direct, in WPSS No. 248 of 2014, Jagdish Chandra Tiwari vs. State of Uttarakhand and others, that the arears of 6th Pay Commission be paid to the employees (Copy Annexure: CA-2). In para 12 of the C.A., it has been stated that the KMVN has taken the initiative for the payment of the arrears of 6th Pay Commission. It has been averred in para 13 of the C.A. that since there was a huge financial liability with regard to arrears of 6th Pay Commission, therefore, it was decided by the Managing Director, KMVN, *vide* order dated 06.09.2017 that the arrears of the 6th pay Commission payable to the employees shall be paid in installments. KMVN is suffering from gross financial losses. The liability of arrears of 6th Pay Commission was around 6.75 Crores. The KMVN has repeatedly requested the Govt. to pay such amount but to no avail (para15 of the C.A.).

Total arrears of 6th Pay Commission of the present petitioner is Rs. 1,36,575/-and as per order dated 06.09.2017, the same is required to be paid in 8 installments (para 16). During pendency of the instant petition, the petitioner has been paid first installment on 10.02.2022 enclosing cheque dated 05.01.2022 (Annexure CA-4 *Colly*). KMVN is making every effort to release the post retiral dues. *Vide* G.O. dated 21.11.2017, the State Govt. has made applicable the recommendations of 7th Pay Commission to the KMVN and others from 01.01.2016. In para 23 of the C.A., it has been stated that the actual revised salary of 7th Pay Commission shall start from

01.01.2017 and with regard to arrears to be paid on 01.01.2016 till 31.12.2016, decision shall be taken later (Annexure: CA-5). In subsequent paragraphs of the C.A., the respondent Corporation has highlighted poor financial condition of the Corporation. The relevant documents have been filed in support of this C.A. The C.A. thus filed, nowhere states that the petitioner is not entitled to the reliefs claimed. It only speaks of the poor financial condition of the respondent corporation making it difficult to pay the arrears.

The reliefs, as prayed for, in the petition, are admitted, in principle, to the respondent corporation, expressing the difficulty in making payment of the same promptly.

5. On 09.11.2022, learned Counsel for the petitioner submitted that the marriage of the daughter of the petitioner has been arranged and he is in urgent need of money. Sri Akram Parvez, in brief of Sri Sandeep Kothari, learned Counsel for the respondents no. 2 & 3 was given time to seek instructions from the respondent corporation.

6. Sri Sandeep Kothari, learned Counsel for the respondents no. 2 & 3 submitted that the department is ready to pay the arrears of 6th Pay Commission in installments. Two installments were paid, but the petitioner refused to accept the same. He also submitted that the matter regarding 7th Pay Commission and granting of enhanced amount of gratuity has been placed before the Board, which is yet to be decided by the Board.

7. Let us see what is the law on payment of retiral dues and interest on delayed payment of such dues. In catena of judgments, Hon'ble Supreme Court has observed as below:

(i) Hon'ble Apex Court has held in the decision of **State of Kerala and others vs. M.Padmanabhan Nair, 1985 (1) SLR 750**, that:

"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 visited with the penalty of payment of interest at the current market rate till actual payment .

2. **Usually the delay occurs by reason of non-production of the L.P.C. (Last Pay Certificate) and the N.L.C. (No Liability Certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed atleast a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month.** The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement.

3. **The instant case is a glaring instance of such culpable delay in the settlement of pension and gratuity claims due to the respondent** who retired on 19.5.1973. His pension and gratuity were ultimately paid to him on 14.8.1975, i e., more than two years and 3 months after his retirement and hence after serving lawyer's notice he filed a suit mainly to recover interest by way of liquidated damages for delayed payment. The appellants put the blame on the respondent for delayed payment on the ground that he had not produced the requisite L.P.C. (last pay certificate) from the Treasury Office under Rule 186 of the Treasury Code. But on a plain reading of Rule 186, the High Court held-and in our view rightly-that a duty was cast on the treasury Officer to grant to every retiring Government servant the last pay certificate which in this case had been delayed by the concerned officer for which neither any justification nor explanation had been given. **The claim for interest was, therefore, rightly, decreed in respondent's favour.**

4. Unfortunately such claim for interest that was allowed in respondent's favour by the District Court and confirmed by the High Court was at the rate of 6 per cent per annum though interest at 12 per cent had been claimed by the respondent in his suit. However, since the respondent acquiesced in his claim being decreed at 6 per cent by not preferring any cross objections in the High Court it could not be proper for us to enhance the rate to 12 per cent per annum which we were otherwise inclined to grant.

5. We are also of the view that the State Government is being rightly saddled with a liability for the culpable neglect in the discharge of his duty by the District Treasury Officer who delayed the issuance of the L.P.C. but since the concerned officer had not been impleaded as a party defendant to the suit the Court is unable to hold him liable for the decretal amount. It will, however, be for the State Government to consider whether the erring official should or should not be directed to compensate the Government the loss sustained by it by his culpable lapses. Such action if taken would help generate in the officials of the State Government a sense of duty towards the Government under whom they serve as also a sense of accountability to members of the public."

[Emphasis supplied]

(ii). 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:

"..... 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.**

9. An affidavit in reply is filed by Special Secretary, Government of Haryana, Irrigation Department. In the counter affidavit which was filed in January, 2005, the deponent has stated that the appellant was paid all his retiral dues as soon as he was exonerated of the charges levelled against him. The deponent referred to the Haryana Civil Service (Punishment and Appeal) Rules, 1987 relating to benefits to which an employee is entitled and contended that after the charge-sheets were finally dropped, the appellant was paid all retiral benefits within three months from the date of dropping of the charge-sheets. But it was further stated that certain vigilance enquiries are "still pending" against the appellant. In the circumstances, **according to the deponent, the appellant was not entitled to interest and the action taken by the Government could not be said to be illegal or otherwise unreasonable. A prayer was, therefore, made to dismiss the appeal.**

10.

11. Having heard the learned counsel for the parties, in our opinion, the appeal deserves to be partly allowed. **It is not in dispute by and between the parties that the appellant retired from service on June 30, 1998. It is also un-disputed that at the time of retirement from service, the appellant had completed more than three decades in Government Service. Obviously, therefore, he was entitled to retiral benefits in accordance with law.** True it is that certain charge-sheets/ show cause notices were issued against him and the appellant was called upon to show cause why disciplinary proceedings should not be initiated against him. It is, however, the case of the appellant that all those actions had been taken at the instance of Mr. Quraishi against whom serious allegations of mal-practices and mis-conduct had been levelled by the appellant which resulted in removal of Mr. Quraishi from the post of Secretary, Irrigation. The said Mr. Quraishi then became Principal Secretary to the Chief Minister. Immediately thereafter charge-sheets were issued to the appellant and proceedings were initiated against him. **The fact remains that proceedings were finally dropped and all retiral benefits were extended to the appellant. But it also cannot be denied that those benefits were given to the appellant after four years. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well- founded that he would be entitled to interest on such benefits. 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 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. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.

12.”

13. The order passed by the High Court, therefore, must be quashed and set aside.

.....

Order accordingly.”

[Emphasis supplied]

(iii). In the decision of Civil Appeal No. 7113 of 2014, **D.D. Tiwari (D) vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, 2014 (5) SLR 721**, Hon’ble Supreme Court has held as under:-

“2. Heard learned counsel on behalf of the parties. The appellant (since deceased) is aggrieved by the impugned order dated 14.03.2011 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 1818 of 2010 in affirming the judgment of the learned single Judge passed in C.W.P. No. 1048 of 2010 **wherein he was not awarded interest for the delayed payment of pension and gratuity amount, for which he was legally entitled to. Therefore, the appellant approached this Court for grant of interest on the delayed payment on the retiral benefits of pension and gratuity payable to him by the respondents.**

3. The appellant was appointed to the post of Line Superintendent on 30.08.1968 with the Uttar Haryana Bijli Vitran Nigam Ltd. In the year 1990, he was promoted to the post of Junior Engineer-I. During his service, the appellant remained in charge of number of transformers after getting issued them from the stores and deposited a number of damaged transformers in the stores. While depositing the damaged transformers in the stores, some shortage in transformers oil and breakages of the parts of damaged transformers were erroneously debited to the account of the appellant and later on it was held that for the shortages and breakages there is no negligence on the part of the appellant. On attaining the age of superannuation, he retired from service on 31.10.2006. **The retiral benefits of the appellant were withheld by the respondents on the alleged ground that some amount was due to the employer. The disciplinary proceedings were not pending against the appellant on the date of his retirement. Therefore, the appellant approached the High Court seeking for issuance of a direction to the respondents regarding payment of pension and release of the gratuity amount which are retiral benefits with an interest at the rate of 18% on the delayed payments.** The learned single Judge has allowed the Writ Petition vide order dated 25.08.2010, after setting aside the action of the respondents in withholding the amount of gratuity and directing the respondents to release the withheld amount of gratuity within

three months without awarding interest as claimed by the appellant. The High Court has adverted to the judgments of this Court particularly, in the case of State of Kerala & Ors. Vs. M. Padmanabhan Nair, 1985 91) SLR 750, 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.** This aspect of the matter was adverted to in the judgment of the learned single Judge without assigning any reason for not awarding the interest as claimed by the appellant. That is why that portion of the judgment of the learned single Judge was aggrieved of by the appellant and he had filed L.P.A. before Division Bench of the High Court. The Division Bench of the High Court has passed a cryptic order which is impugned in this appeal. **It has adverted to the fact that there is no order passed by the learned single Judge with regard to the payment of interest and the appellant has not raised any plea which was rejected by him, therefore, the Division Bench did not find fault with the judgment of the learned single Judge in the appeal and the Letters Patent Appeal was dismissed. The correctness of the order is under challenge in this appeal before this Court urging various legal grounds.**

4. It is an undisputed fact that the appellant retired from service on attaining the age of superannuation on 31.10.2006 and the order of the learned single Judge after adverting to the relevant facts and the legal position has given a direction to the employer-respondent to pay the erroneously withheld pensionary benefits and the gratuity amount to the legal representatives of the deceased employee without awarding interest for which the appellant is legally entitled, **therefore, this Court has to exercise its appellate jurisdiction as there is a miscarriage of justice in denying the interest to be paid or payable by the employer from the date of the entitlement of the deceased employee till the date of payment as per the aforesaid legal principle laid down by this Court in the judgment referred to supra.** We have to award interest at the rate of 9% per annum both on the amount of pension due and the gratuity amount which are to be paid by the respondent.

5. **It is needless to mention that the respondents have erroneously withheld payment of gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972.** Having regard to the facts and circumstances of the case, we do not propose to do that in the case in hand.

6. For the reasons stated above, we award interest at the rate of 9% on the **delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment**. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date of amount falls due to the deceased employee. With the above directions, this appeal is allowed. ”

[Emphasis supplied]

9. The next question which arises for consideration of this Tribunal is, what should be the interest payable on delayed payment of gratuity etc.

10. It will be useful to reproduce the relevant part of the judgment rendered by this Tribunal in ***Ramnarayan Singh vs. State of Uttarakhand, 2019(1) UD 698***, herein below for convenience:

“22. In the backdrop of the above noted facts, the only other question, which is left for determination of this Tribunal now is— how much interest should be awarded to the petitioner for delayed payment of gratuity?

23. In the decision of *D.D.Tiwari (D) Thr. Lrs. vs. Uttar Haryana Bijli Vitran Nigam Ltd. and Others, 2014 (5) SLR 721 (S.C.)*, it was held by Hon’ble Supreme Court that retiral benefit is a valuable right of employee and culpable delay in settlement/ disbursement must be dealt with penalty of payment of interest. Regard may also be had to the decision of Hon’ble Apex Court in *S.K.Dua vs. State of Haryana and Another, (2008) 1 Supreme Court Cases (L&S) 563*, in this context.

24. The aforesaid decisions have been followed by this Tribunal in claim petition *No.30/DB/2013 Dwarika Prasad Bhatt vs. State and others, decided on 22.09.2016.* The direction given in claim petition No. 30/DB/2013 has also been carried out.

25. It is pointed out that Government Order No.979/XXVII(3)Pay/2004 dated 10.08.2004 has been issued by Government of Uttarakhand to regulate interest on delayed payment of gratuity etc. Respondents are, therefore, directed to pay the difference of gratuity, as admissible, and the amount of gratuity which has already been paid, to the petitioner, as per G.O. dated 10.08.2004. The rate of interest of gratuity shall be simple rate of interest payable on General Provident Fund till the date of actual payment.

26. Respondents are directed to pay the difference in the amount of gratuity along with admissible interest, as per G.O. dated 10.08.2004, on or before 30.06.2019.”

[Emphasis supplied]

11. Learned Counsel for the petitioner submitted that on the basis of the recommendation of the 6th Pay Commission, the Govt. of Uttarakhand

issued a G.O. dated 30.12.2009 regarding revised pay scale of the employees of the KMVN & GMVN whereby the State Govt. provided that the employees of the said Nigams were also entitled to get revised pay scale of 6th Pay Commission from 01.08.2009. It has also been submitted on behalf of the petitioner that *vide* G.O. dated 30.12.2016 and 30.05.2019, the amount of Gratuity of the employees of the Corporations of Uttarakhand has been enhanced from 10 Lacs to Rs. 20 Lacs and as per this G.O., enhanced gratuity will be effective from 01.01.2018 *i.e.*, the incumbents who were in service on 01.01.2018 will be entitled to get the enhanced gratuity of Rs. 20 Lacs. The petitioner has retired on 31.05.2019 and thus he is entitled to get remaining amount of Gratuity as per G.Os. dated 30.12.2016 and 30.05.2019. The recommendations of the VII Pay Commission has been made applicable to the respondent corporation *w.e.f.* 01.01.2016 *vide* G.O. dated 11.06.2019. The benefits of 6th Pay Commission has been granted to the petitioner *w.e.f.* 01.01.2018, whereas the same ought to have been granted to him *w.e.f.* 01.01.2016 in view of the G.O. dated 11.06.2019.

12. In a nutshell, the respondent corporation is obligated to pay retiral dues of the petitioner along with interest on delayed payment, notwithstanding the fact that it is suffering from severe financial crunch, as pleaded by learned Counsel for KMVN.

13. The Respondent Corporation is, therefore, directed to release the retiral dues along with admissible interest on delayed payment of such retiral dues, as above, without unreasonable delay, on presentation of certified copy of this order. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 20, 2022
DEHRADUN
KNP