

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

CLAIM PETITION NO. 59/NB/SB/2020

Ashwani Rawat, aged about 41 years, s/o Sri D.S. Rawat, r/o Village Rasoolpur, Enfield Tea-Estate, Vikas Nagar, Dehradun, District Dehradun, presently residing at Bhowali, District Nainital.

.....Petitioner

versus

1. State of Uttarakhand through Chief Secretary, Dehradun.
2. Director, Uttarakhand State Seeds & Organic Production Certification Agency, Kisan Bhawan, Mussoorie Bypass, Ring Road, Nehru Gram, Dehradun.

..... Respondents

Present : Sri D.S. Mehta, Advocate, for the petitioner
Sri Kishore Kumar, A.P.O., for the respondent no. 1
Sri Akshay Latwal, Advocate, for respondent no. 2

JUDGEMENT

Dated: 20th December, 2022

Justice U.C. Dhyani (Oral)

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

“(a) To set-aside the impugned orders dated 07.04.2017 and 27.03.2019 (Annexure No. 1 & 2) passed by the respondent no. 2 to the extent not paid the full amount of gratuity, leave encashment, ex-gratia from March, 2003 to 06.01.2015 by the order dated 27.09.2019 the respondent authority not paid the amount of gratuity and only paid the part amount of Leave Encashment and bonus of the year, 2014 paid to the petitioner, so the order dated 27.09.2019 is challenging by the petitioner before this Hon'ble Tribunal (Annexure No. 1) by respondent authority with its effect and operation.

(b) To issue an order or direction to the respondents to pay the amount of gratuity Rs. 3,33,263/- alongwith 24% interest, the amount of Leave Encashment Rs. 409173/- and the amount of ex-gratia Rs. 36408/- alongwith 24% interest.

(c) To award damages and compensation to the petitioner in tune of Rs.10.00 Lacs from erring person or such amount which this Hon'ble Court may deem fit and proper.

(d) To issue any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

(e) To award the cost of the petition to the petitioner.”

2. Whereas the petitioner has claimed certain dues from the respondent-Agency while he was in the service of the said Agency, respondent-Agency has maintained that all his arrears have been paid.

3. Counter affidavit of Sri Hem Chandra Satta, Deputy Director, Uttarakhand State Seeds & Organic Production Certification Agency has been filed citing brief facts of the case along with parawise reply, which is part of the record.

4. Rejoinder affidavit thereto has been filed by the petitioner contradicting the said facts.

5. Petitioner relies upon Section 4 of the Gratuity Act, 1972, which reads as below:

“4(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned.”

6. It is the submission of learned Counsel for the petitioner that gratuity becomes payable to an employee on the termination of his employment on his retirement or resignation. According to learned Counsel for the petitioner,

orders dated 07.04.2017 (Annexure: A1) and 27.03.2019 (Annexure: A2) are illegal, perverse and unsustainable in law.

7. After obtaining VRS, petitioner made a representation to respondent no. 2, on 03.05.2015, wherein he requested the answering respondent to pay his gratuity, leave encashment, ex-gratia, bonus and DA arrears. Sri Akshay Latwal, learned Counsel for the respondent no. 2, drew attention of this Bench towards paras 16, 17, 18, 19 and 20 of the counter affidavit to submit that the petitioner has since completed only 12 years of service in the respondent-Agency, therefore due to non-completion of his qualifying service, the retiral benefits cannot be given to him, as per Rules.

8. *Vide* order dated 01.06.2015, approval was given to pay the petitioner the amount of 45 days leave availed out of the residual leave of 90 days as VRS, taken by the petitioner from the post of Senior Seed Certification Inspector, in accordance with para 4 of the G.O. dated 25.07.1983. Further, *vide* letter dated 27.03.2019, the arrears of leave encashment and bonus of 09 months for the year 2014-15 have been paid to the petitioner through cheque no. 176723 dated 25.02.2019. Documents have also been filed in support thereof.

9. Learned A.P.O. submitted that the petitioner is not legally entitled to the reliefs claimed.

10. At this stage of dictation, learned Counsel for the petitioner submitted that the petitioner has submitted two pages' written submissions, which may kindly be treated as representation, which representation may kindly be directed to be decided by respondent no. 2, in accordance with law.

11. In reply, learned Counsel for the respondent no. 2 submitted that if a direction is given to this effect, respondent no. 2 shall abide by the same, as per law.

12. Without prejudice to rival contentions, the claim petition is disposed of by directing respondent no. 2 to decide fresh representation of the petitioner by a reasoned and speaking order, in accordance with law, without unreasonable delay, after affording an opportunity of personal hearing to the petitioner.

13. Needless to say that the decision on such representation shall be intimated to the petitioner at the earliest. No order as to costs.

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: 20th December, 2022
DEHRADUN
RS